

<p style="text-align: right;">241</p> <p>1 throughout the entire park.</p> <p>042258 2 Q. Okay.</p> <p>042259 3 A. So I don't want to say a guess but an</p> <p>4 educated guess by myself and my brother.</p> <p>042259 5 Q. Okay. And do you know how much money</p> <p>6 was -- let me ask this correctly.</p> <p>042259 7 Do you know what the amount of money that</p> <p>8 would have been required to be paid all of the</p> <p>9 lifeguards you were required to have pursuant to the</p> <p>10 Southern Nevada Health District requirements?</p> <p>042259 11 A. I don't know --</p> <p>042259 12 Q. What that would have been?</p> <p>042259 13 A. I don't know what that would have been.</p> <p>042259 14 Q. Okay. Do you know how much was actually</p> <p>15 expended on lifeguards for 2015 as opposed to what</p> <p>16 should have been expended had the plan that you</p> <p>17 submitted and which was approved by the Southern Nevada</p> <p>18 Health District been approved -- been followed?</p> <p>042259 19 MR. EISINGER: Object to the form.</p> <p>042259 20 You can answer.</p> <p>042259 21 THE WITNESS: I'm not familiar with the</p> <p>22 numbers off the top of my head. I would have to go</p> <p>23 back and review the numbers.</p> <p>042259 24 BY MR. CAMPBELL:</p> <p>042259 25 Q. Do you have a ballpark?</p>	<p style="text-align: right;">243</p> <p>042257 1 A. Yes.</p> <p>042257 2 Q. Okay. And is that still in use today?</p> <p>042257 3 A. It is, yes. It's an updated program from</p> <p>4 last season but it's still the system we use.</p> <p>042257 5 Q. Right. But you are still able to retrieve</p> <p>6 the information?</p> <p>042257 7 A. Yes.</p> <p>042257 8 Q. Okay. And could you please tell me whether</p> <p>9 or not you have budgeted for lifeguards for this year</p> <p>10 in the 2016 plan?</p> <p>042257 11 A. Yes, I have.</p> <p>042257 12 Q. And what is that budgeted number that you</p> <p>13 will be required to expand in lifeguards?</p> <p>042257 14 A. I don't know it exactly. I worked with</p> <p>15 Chris. I believe it's around -- I don't know off the</p> <p>16 top of my head. I would have to review the numbers.</p> <p>042257 17 Q. Ballpark it.</p> <p>042257 18 MR. EISINGER: Objection.</p> <p>042257 19 If you can.</p> <p>042257 20 THE WITNESS: Again, I know the budget for</p> <p>21 the entire park, not broken up into departments, so...</p> <p>042257 22 BY MR. CAMPBELL:</p> <p>042257 23 Q. You have no idea?</p> <p>042257 24 A. I believe it was 600,000, around the same.</p> <p>25 700,000.</p>
<p style="text-align: right;">242</p> <p>042257 1 A. I know that overall labor for the entire</p> <p>2 park was around \$1.4 million. So I don't have it</p> <p>3 broken up into categories off the top of my head.</p> <p>042257 4 Q. Okay. Where would you go to determine the</p> <p>5 total expenditure for lifeguards for 2015?</p> <p>042257 6 A. Back to our time clock payroll.</p> <p>042257 7 Q. Okay. And what would you look at?</p> <p>042257 8 A. I would look at the aquatic department and</p> <p>9 I would be able to pull that up.</p> <p>042257 10 Q. And that's fairly easy to do, correct?</p> <p>042257 11 A. Yes, easy report to pull.</p> <p>042257 12 Q. Okay. And, and what would that show?</p> <p>042257 13 A. That would show the hours worked and that</p> <p>14 would show all the list of the lifeguards, and it would</p> <p>15 show their pay as well as the number, total number</p> <p>16 depending on how I set the range. If I wanted a</p> <p>17 monthly or a weekly or June 10th to July 4th, you</p> <p>18 select and then it runs the report.</p> <p>042257 19 Q. Okay. And this report is contained on your</p> <p>20 computers at Cowabunga Bay?</p> <p>042257 21 A. Yes.</p> <p>042257 22 Q. Okay. And what's the program?</p> <p>042257 23 A. I believe it's called SwipeClock or --</p> <p>24 SwipeClock.</p> <p>042257 25 Q. SwipeClock?</p>	<p style="text-align: right;">244</p> <p>042257 1 Q. When you say "around the same," around the</p> <p>2 same as was paid last year?</p> <p>042257 3 A. Yes.</p> <p>042257 4 Q. So your budget for this year is the same as</p> <p>5 last year?</p> <p>042257 6 A. Well, again, I can't recall the exact</p> <p>7 number but it would have been near it.</p> <p>042257 8 Q. All right. And is that how you budgeted</p> <p>9 for this year, by going back and seeing what was</p> <p>10 expended in 2015 for lifeguard services?</p> <p>042257 11 A. Yeah. We would review last year -- and</p> <p>12 actually, it would be higher, because this year we've</p> <p>13 added additional hours to the park, so there would be a</p> <p>14 higher labor budget set.</p> <p>042257 15 Q. And, of course, there are additional</p> <p>16 lifeguards, correct?</p> <p>042257 17 A. We have the guards, the 17 guards last year</p> <p>18 as well after the write-up. So the labor line, the</p> <p>19 labor would fall about the same.</p> <p>042257 20 Q. Okay. All right. Were there any days</p> <p>21 following the write-up that you didn't have 17</p> <p>22 lifeguards at the wave pool?</p> <p>042257 23 A. Following, no.</p> <p>042257 24 Q. Okay. And you have them today; is that</p> <p>25 correct?</p>

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<p>042753 1 A. Correct.</p> <p>042801 2 Q. All right. You are paid a salary, is that</p> <p>3 correct?</p> <p>042804 4 A. I am.</p> <p>042804 5 Q. Does your salary have a bonus feature?</p> <p>042806 6 A. No.</p> <p>042807 7 Q. Okay. It's just a straight salary?</p> <p>042808 8 A. Yes.</p> <p>042810 9 Q. Okay. And who pays your salary?</p> <p>042813 10 A. Henderson Water Park.</p> <p>042815 11 Q. And Henderson Water Park, forgive me,</p> <p>12 that's, that is the main LLC?</p> <p>042821 13 A. Correct..</p> <p>042822 14 Q. In which Double Ott is a member and West</p> <p>15 Coast is a member; is that correct?</p> <p>042826 16 A. Yes.</p> <p>042832 17 Q. Okay. And how much is that salary a year?</p> <p>042837 18 A. It's \$0,000.</p> <p>042840 19 Q. Okay. Do you receive salary from any other</p> <p>20 entity or enterprise?</p> <p>042847 21 MR. EISINGER: I'm going to object.</p> <p>22 Financial information, other than what I let him just</p> <p>23 answer you, on relevance grounds and the grounds I</p> <p>24 stated earlier.</p> <p>042856 25 So I'm going to instruct you not to answer.</p>	<p>042827 1 A. No.</p> <p>042838 2 Q. Okay. What other properties?</p> <p>042841 3 A. Only the Family Fun Center in Wilsonville.</p> <p>042850 4 Q. Okay.</p> <p>042851 5 A. And I receive a once-a-year payment from a</p> <p>6 small investment group called British Family Partnership.</p> <p>042858 7 Q. Do you reside here in Las Vegas, Nevada?</p> <p>042862 8 A. I do.</p> <p>042864 9 Q. You are a Nevada resident?</p> <p>042864 10 A. I'm not. No. I'm not.</p> <p>042868 11 Q. Okay. When you file taxes, your tax</p> <p>12 return, it lists you as a resident of what state?</p> <p>042877 13 A. I believe it's Utah.</p> <p>042829 14 Q. Okay.</p> <p>042820 15 A. Now, I'm not sure last year how I filed, I</p> <p>16 would have to look at that.</p> <p>042823 17 Q. That's fine. That's fine.</p> <p>042828 18 Do you have a home here?</p> <p>042828 19 A. I do now.</p> <p>042848 20 Q. All right. Where do you reside?</p> <p>042848 21 A. I live at 222 Karen Avenue.</p> <p>042850 22 Q. And is that a home an apartment?</p> <p>042850 23 A. It's an apartment. It's a condo.</p> <p>042851 24 Q. Okay. And is that something you pay or</p> <p>25 something Cowabunga Bay pays?</p>
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<p>1 His financial background, there's no bearing on this.</p> <p>042860 2 MR. CAMPBELL: I'm asking whether or not he</p> <p>3 receives any remuneration from any other entity. Not</p> <p>4 the amount, I haven't asked the amount.</p> <p>042869 5 MR. EISINGER: All right. I'll let him</p> <p>6 answer that question.</p> <p>042871 7 THE WITNESS: I don't receive a salary from</p> <p>8 anyone else.</p> <p>042873 9 BY MR. CAMPBELL:</p> <p>042874 10 Q. Or any remuneration?</p> <p>042876 11 A. I don't know what that means, sorry.</p> <p>042877 12 Q. Money?</p> <p>042878 13 A. I do receive money from other sources.</p> <p>042820 14 Q. Okay. What other sources do you receive</p> <p>15 moneys from?</p> <p>042823 16 A. I receive a payout from the Tukwila Family</p> <p>17 Fun Center.</p> <p>042826 18 Q. Okay.</p> <p>042828 19 A. I receive payments from other of the</p> <p>20 properties.</p> <p>042832 21 Q. Okay. In Draper?</p> <p>042834 22 A. Yes.</p> <p>042835 23 Q. Okay.</p> <p>042835 24 A. Actually, no.</p> <p>042836 25 Q. You don't?</p>	<p>042857 1 A. I pay it.</p> <p>042858 2 Q. Okay.</p> <p>042861 3 MR. CAMPBELL: Your indulgence for one</p> <p>4 moment.</p> <p>042864 5 MR. EISINGER: No problem.</p> <p>042866 6 (Brief pause in the proceedings.)</p> <p>042834 7 BY MR. CAMPBELL:</p> <p>042828 8 Q. Do you receive dividends from any entity?</p> <p>042841 9 A. Yes.</p> <p>042842 10 Q. From what entity?</p> <p>042844 11 A. The Tukwila Family Fun Center --</p> <p>042848 12 Q. Okay.</p> <p>042848 13 A. -- and from the Wilsonville Family Fun</p> <p>14 Center.</p> <p>042848 15 Q. Okay. Those are the only ones?</p> <p>042851 16 A. Yes.</p> <p>042853 17 Q. Okay. How is it that you know Jennifer</p> <p>18 Bradley?</p> <p>042857 19 A. Jennifer Bradley was an employee of</p> <p>20 Braintrust, which was the original marketing company</p> <p>21 that we hired when we first opened the park.</p> <p>042858 22 Q. Okay. And who are the principals of</p> <p>23 Braintrust?</p> <p>042860 24 A. I can't remember their names. I believe</p> <p>25 one was Mika. I mostly worked with Jennifer once we</p>

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1 had signed on with them.  
 043221 2 Q. Okay. And what was her assignment when you  
 3 signed on with her?  
 043224 4 A. She was our rep and our public relations  
 5 manager, our PR person.  
 043228 6 Q. Okay. And she was an independent  
 7 contractor?  
 043232 8 A. She was with Braintrust at the time.  
 043236 9 Q. Okay. So the answer is yes, she was an  
 10 independent contractor? She wasn't an employee?  
 043244 11 A. Oh, yes, not of Cowabunga Bay. She was an  
 12 employee of someone else.  
 043247 13 Q. Right.  
 043248 14 A. Yes.  
 043249 15 Q. Did you have a contract --  
 043250 16 A. Yes,  
 043251 17 Q. -- with Braintrust?  
 043251 18 A. Yes, we did.  
 043252 19 Q. Okay. And did you sign that contract?  
 043253 20 A. Yes, I did.  
 043257 21 Q. And who signed it on behalf of Braintrust?  
 043257 22 A. I believe it would have been the owner or  
 23 the manager of Braintrust.  
 043259 24 Q. And do you know who that was?  
 043259 25 A. I don't. I can't recall his name.

043421 1 Q. All right. And when was that contract  
 2 signed?  
 043423 3 A. It would have been after, after the, that I  
 4 let Braintrust go. So around November. But I don't  
 5 think she started working for us until like January,  
 6 because we had the off season, so we didn't need any  
 7 work done.  
 043445 8 Q. Okay. So the -- and the term of the  
 9 contract was for how long?  
 043445 10 A. It was a month by month.  
 043450 11 Q. Month to month?  
 043452 12 A. Yes.  
 043452 13 Q. Okay. And did you sign on behalf of the  
 14 company?  
 043453 15 A. I did.  
 043453 16 Q. And did she sign on behalf of herself?  
 043453 17 A. Yes.  
 043457 18 Q. Okay. And what are the essential  
 19 provisions of the contract? What was she to do and  
 20 what were you to do in exchange for the services that  
 21 were to be rendered?  
 043452 22 A. She was going to be providing us with  
 23 working together with certain charity events. She did  
 24 our promotion. I'm sorry, our public relations  
 25 promoting new attractions. She handled all of our --

043337 1 Q. And what was the term of that contract?  
 043339 2 A. I believe we had a -- that they were going  
 3 to represent us in marketing and PR and produce our  
 4 commercial spots and buy advertising and write press  
 5 releases and things like that.  
 043323 6 Q. Okay. And I understand that.  
 043330 7 What was the term of the contract? How  
 8 long did it run?  
 043337 9 A. It ran until I believe November of 2014.  
 043344 10 Q. Okay. Was it thereafter renewed?  
 043347 11 A. No, it was not.  
 043349 12 Q. And why not?  
 043352 13 A. Because something happened and Jennifer  
 14 Bradley no longer worked there. And I wanted to keep  
 15 working with Jennifer.  
 043403 16 Q. Okay. And so did she have a new company or  
 17 was she associated with a new entity?  
 043408 18 A. I believe she became an independent person  
 19 then.  
 043417 20 Q. And what is the name of her business, do  
 21 you know?  
 043415 22 A. Jennifer Bradley Public Relations.  
 043416 23 Q. All right. And did you sign a contract  
 24 with her?  
 043421 25 A. I believe so, yes.

1 if I ever had to go on the news or something, they  
 2 would call her first and then she would set it up with  
 3 me. And writing press releases.  
 043353 4 Q. Okay. And what was she to receive in terms  
 5 of compensation for those services each month?  
 043349 6 A. I believe she started out at \$3,000 a month  
 7 and then it was -- and then it went down to 1,500. I  
 8 can't really recall. I believe it ended up around  
 9 1,500 a month.  
 043353 10 Q. Okay. And has -- have her -- withdraw --  
 043351 11 Have those services continued on an ongoing  
 12 basis from the time that she signed that contract?  
 043353 13 A. Yes.  
 043353 14 Q. Okay. She works today for Cowabunga Bay?  
 043354 15 A. She works now with a new company called  
 16 MassMedia but she still represents us.  
 043357 17 Q. And when did she join MassMedia?  
 043353 18 A. I think it was the beginning of this year.  
 043353 19 Q. And but she, nevertheless, provided  
 20 services herself up until the time she joined  
 21 MassMedia, is that correct?  
 043359 22 A. Yes.  
 043356 23 Q. And is there now a contract with MassMedia?  
 043359 24 A. No, it's still through her as an  
 25 independent.

043253 1 Q. Okay. And, and do you continue to pay  
2 1,500 a month?  
043258 3 A. Yes.  
043259 4 Q. All right. Do you know of other clients  
5 that Jennifer represents?  
043710 6 A. Umm, I know she -- I believe -- yes, she  
7 represents the Sinclair girl that works at the  
8 Stratosphere. I believe she represented Pia Zadora.  
9 And I'm not sure of any others. I think some charity  
10 groups.  
043743 11 Q. Okay. Any others that you can recall as  
12 you sit here?  
043746 13 A. No.  
043747 14 Q. Okay. And do you know how -- approximately  
15 how old is she?  
043749 15 A. She's probably 42.  
043753 17 Q. Okay. And her services were called upon by  
18 you following the drowning of Leland Gardner, correct?  
043804 19 A. Correct.  
043805 20 Q. Okay. And what was your directive to her:  
21 with respect to that incident?  
043805 22 (No answer provided by deponent.)  
043810 23 MR. EISINGER: I'm going to object. This  
24 falls within the scope of that order. Correct?  
043817 25 MS. McLEOD: Yes.

043820 1 MR. EISINGER: With Ms. Bradley?  
043827 2 MR. CAMPBELL: Bradley and others.  
043833 3 MR. EISINGER: Well, the issue before the  
4 Discovery Commissioner was only Ms. Bradley. If you  
5 have questions of other people, you can go ahead and  
6 ask him. But as far as Ms. Bradley --  
043834 7 MR. CAMPBELL: Ms. Bradley is central to  
8 all of this.  
043838 9 MR. EISINGER: Well --  
043840 10 MR. CAMPBELL: I mean, it is what it is.  
043851 11 MR. EISINGER: I would love to hear. Can I  
12 defer with counsel about where we are at?  
043853 13 MR. CAMPBELL: Sure.  
043858 14 MS. McLEOD: Financial information is  
15 discoverable and the strategic communications are  
16 protected under the Commissioner's ruling.  
043900 17 MR. EISINGER: Off the record, I need one  
18 minute to make sure.  
043911 19 MR. CAMPBELL: Sure.  
043921 20 THE VIDEOGRAPHER: Want me to remain on the  
21 video record, Counsel?  
043925 22 MR. EISINGER: Sure. It will only take a  
23 minute.  
043926 24 THE VIDEOGRAPHER: Should I go off,  
25 Mr. Campbell, or keep rolling?

043918 1 MR. EISINGER: This falls within the scope  
2 of the Discovery Commissioner's ruling regarding what  
3 is confidential. We have produced the communications  
4 that the Discovery Commissioner asked us to produce and  
5 we've also given you a confidential log.  
043939 6 And my understanding of the order by the  
7 Discovery Commissioner is that basically all  
8 communications between Mr. Huish and Ms. Bradley post  
9 incident are confidential and you're not allowed to go  
10 into that. You're only allowed to go into stuff that's  
11 pre incident. I believe that's what it is.  
043958 12 MR. CAMPBELL: Okay. Are you directing him  
13 not to answer question?  
043959 14 MR. EISINGER: Yes. Anything post  
15 incident.  
043959 16 MR. CAMPBELL: I disagree with that. And  
17 we are going to have to bring him back if you continue  
18 to direct him not to answer. I have a lot of questions  
19 to ask him about with respect to that. If he is not to  
20 going to answer them, you know, I'm not going to  
21 belabor the point, but I can tell you I have an awful  
22 lot of questions to ask him about what occurred.  
043923 23 MR. EISINGER: Between communications post  
24 incident?  
043925 25 MR. CAMPBELL: Absolutely.

044004 1 MR. CAMPBELL: Let's just keep rolling for  
2 now.  
044040 3 (Brief pause in the proceedings.)  
044051 4 MR. EISINGER: Okay, Counsel, I have in  
5 front of me the minutes from the Discovery Commissioner  
6 hearing, which I believe Mr. Mirkovich attended.  
044050 7 It's my understanding the Discovery  
8 Commissioner is going to allow you to ask questions  
9 about the factual statements between Ms. Bradley and  
10 Mr. Huish. But issues such as anything to do with  
11 public relations or opinions, writing of the press  
12 releases, all that is off, off limits.  
044050 13 And Mr. Mirkovich, you can tell me if I'm  
14 wrong when I'm reading this how I interpret it. I  
15 mean, I'll let just ask questions of him about her, but  
16 either myself or my co-counsel, who was at the hearing,  
17 I'm going to let her do some of the objections so I  
18 don't misinterpret it.  
044026 19 MR. CAMPBELL: Well, just so we are clear  
20 here.  
044028 21 MR. EISINGER: Okay.  
044027 22 MR. CAMPBELL: All your objections were  
23 waived, first of all. There has been a ruling on that.  
044031 24 MR. EISINGER: I disagree.  
044032 25 MR. CAMPBELL: Separate and apart, separate



1 and apart from that, we do not believe that there is  
2 any basis in the law for the failure to answer  
3 questions based upon confidentiality. If there is a  
4 privilege, that's a different story. Clearly, this  
5 would not be a privileged communication of any kind or  
6 type.

04451 7 But be that as it may, I'm going to ask my  
8 questions and you direct him or not as you see fit.

04452 9 MR. EISINGER: That would be fair. That  
10 was the issue before the Discovery Commissioner was  
11 confidential or privileged and she drew a line  
12 outlining. That's what I'm going to follow. If she  
13 said it was confidential and off limits, I'll object or  
14 my co-counsel. I would ask permission to let her  
15 object as well.

04451 16 MR. CAMPBELL: Sure.

04452 17 MR. EISINGER: So we can move along.

04454 18 So give me a chance to object before you  
19 start your answer, please.

04456 20 THE WITNESS: Okay.

04457 21 BY MR. CAMPBELL:

04452 22 Q. Following, following Leland Gardner's  
23 drowning, did you contact Jennifer?

04452 24 A. I spoke with her. I can't remember if I  
25 contacted her or she contacted me.

04453 1 Q. Just you and she?

04453 2 A. Yes.

04454 3 Q. There was no one from Utah?

04454 4 A. No.

04454 5 Q. Your brother?

04454 6 A. No.

04454 7 Q. Okay. The -- how many times did you  
8 communicate by, by email?

04455 9 A. 30 or 40.

04456 10 Q. Okay. And were others included or cc'd on  
11 the emails?

04457 12 A. There was -- she would forward me questions  
13 from a reporter and I saw that name on the emails.

04458 14 Q. Okay. Were there any other cc's or bcc's  
15 on the emails? Any members of the management team?

04459 16 A. No members of the management team.

04460 17 Q. Any other members of the park such as  
18 Mr. Woodhouse? Is that his name?

04461 19 A. No.

04462 20 Q. Just you?

04463 21 A. There may have been a few that had Tina  
22 Hatcher who was the new advertising company that had  
23 been hired.

04464 24 Q. What advertising company is Tina Hatcher  
25 associated with?

04453 1 Q. Okay. And was this a telephone call?

04453 2 A. Yes.

04457 3 Q. Okay. And just relate the conversation.

04458 4 (No answer provided by deponent.)

04459 5 MS. McLEOD: Objection. The conversation  
6 is going to extend into strategic communications about  
7 how to respond to media requests and public relations  
8 concerns and go beyond factual information protected by  
9 the Discovery Commissioner's ruling.

04459 10 MR. CAMPBELL: Are you directing him not to  
11 answer?

04459 12 MS. McLEOD: I'm directing him not to  
13 answer in the scope the question was asked, yes.

04460 14 BY MR. CAMPBELL:

04460 15 Q. Did you communicate with Jennifer by text?  
16 I'm informed that, that you communicated by text, by  
17 email, and by phone.

04461 18 A. Yes.

04461 19 Q. Okay. How many times did you communicate  
20 with her by phone concerning the Leland Gardner  
21 drowning?

04462 22 A. 10, 10 times. 10, 15 times.

04463 23 Q. During those communications, others were on  
24 the phone as well?

04463 25 A. No.

04465 1 A. She is with 3I Advertising.

04466 2 Q. Okay. Do you have a contract with them?

04466 3 A. I do.

04466 4 Q. And when was that contract entered into?

04466 5 A. The end of '14 or the beginning of 2015.

04467 6 Q. Is it still in place today?

04467 7 A. It is.

04468 8 Q. And how much is that a month?

04467 9 A. You know, I pay all her -- I pay all the  
10 spots. I'm not sure what we actually pay her.

04468 11 Q. And she gets a commission --

04468 12 A. Yes.

04468 13 Q. -- on the spots?

04468 14 A. Yeah. But I believe there is a fee  
15 associated with it. But it's 1,000, 2,000 I'm not  
16 sure.

04469 17 Q. A month?

04469 18 A. Yes.

04469 19 Q. Okay. How many times did you communicate  
20 by text messaging with Jennifer?

04469 21 MS. McLEOD: Objection. Asked and  
22 answered.

04469 23 MR. CAMPBELL: No, email. Now we are into  
24 the texts. He said there were three ways that he  
25 communicated. Now we're into texts.

04:45:01 1 BY MR. CAMPBELL:  
 04:45:02 2 Q. How many text messages?  
 04:45:03 3 A. Texts, probably more.  
 04:45:04 4 Q. More than 50?  
 04:45:05 5 A. No, I don't, I don't believe so.  
 04:45:06 6 Q. Okay. So about the same as emails?  
 04:45:07 7 A. Yeah.  
 04:45:08 8 Q. Okay. All right. Who is your IT person at  
 04:45:09 9 Cowabunga Bay?  
 04:45:10 10 A. We don't have an IT person.  
 04:45:11 11 Q. Who's the person most knowledgeable with  
 04:45:12 12 respect to the preservation of all data including ESI  
 04:45:13 13 or electronically stored information?  
 04:45:14 14 A. We don't have any of that.  
 04:45:15 15 Q. Okay. You, of course, understand that at  
 04:45:16 16 the institution of litigation you have an absolute  
 04:45:17 17 obligation under the law to preserve everything that is  
 04:45:18 18 potentially involved or relevant or in any way relates  
 04:45:19 19 to the matter, subject matter at hand, correct?  
 04:45:20 20 A. Correct.  
 04:45:21 21 Q. And you haven't destroyed or deleted or in  
 04:45:22 22 any way engaged in any sort of effort not to honor that  
 04:45:23 23 obligation?  
 04:45:24 24 A. I have not.  
 04:45:25 25 Q. Okay. Do you -- does Cowabunga Bay use a

04:45:27 1 A. Jenniferbradley@cox.net. And her new email  
 04:45:28 2 is jenniferb@MassMediaInc.com.  
 04:45:29 3 Q. And could you tell me her cell number,  
 04:45:30 4 please.  
 04:45:31 5 A. (702)234-9385.  
 04:45:32 6 Q. Okay.  
 04:45:33 7 MR. CAMPBELL: All right. We will be  
 04:45:34 8 making application to the Court to have him answer the  
 04:45:35 9 questions that you directed him not to answer, and we  
 04:45:36 10 will go from there.  
 04:45:37 11 MR. EISINGER: Thank you.  
 04:45:38 12 MR. CAMPBELL: Thank you very much, sir.  
 04:45:39 13 MR. EISINGER: I have a couple of  
 04:45:40 14 questions.  
 04:45:41 15 MR. CAMPBELL: Oh, go ahead.  
 04:45:42 16  
 04:45:43 17 EXAMINATION  
 04:45:44 18 BY MR. EISINGER:  
 04:45:45 19 Q. Sir, would you go back to Exhibit 10,  
 04:45:46 20 please.  
 04:45:47 21 A. Okay.  
 04:45:48 22 Q. Turn to the page that Mr. Campbell was  
 04:45:49 23 asking you some questions about: The CB2432, do you  
 04:45:50 24 see that?  
 04:45:51 25 A. Yes.

1 particular IT service firm to service your computers  
 2 and your servers and that sort of thing?  
 04:45:53 3 A. Yes.  
 04:45:54 4 Q. And what is that outside agency that does  
 04:45:55 5 that for you?  
 04:45:56 6 A. So we have Dataplus who works our servers  
 04:45:57 7 and our Internet. And then I have an individual  
 04:45:58 8 contractor named Sean, and he comes in if we ever have  
 04:45:59 9 computer problems and fixes it.  
 04:46:00 10 Q. What is Sean's last name?  
 04:46:01 11 A. Sean Dominguez.  
 04:46:02 12 Q. Okay. And do you have a number and contact  
 04:46:03 13 for him?  
 04:46:04 14 A. I'm sorry. (702)286-4054.  
 04:46:05 15 Q. Does he have, does he have an email?  
 04:46:06 16 A. I don't have it coming up on here.  
 04:46:07 17 Q. How about Jennifer? Give me Jennifer's,  
 04:46:08 18 please.  
 04:46:09 19 A. Jennifer Bradley's?  
 04:46:10 20 Q. Yes.  
 04:46:11 21 A. Current or?  
 04:46:12 22 Q. Well, all the ones you have for her.  
 04:46:13 23 A. Okay. I have  
 04:46:14 24 jennifer.bradley@braitntrstv.com.  
 04:46:15 25 Q. Okay.

04:46:17 1 Q. Okay. And go two -- keep that page and  
 04:46:18 2 then flip over two pages to 2434. Do you see that?  
 04:46:19 3 A. Yes.  
 04:46:20 4 Q. Okay. Now, on the latter page, you have  
 04:46:21 5 under the wave pool WP1 and WP2. What does that mean?  
 04:46:22 6 A. Those are the positions.  
 04:46:23 7 Q. Designated spots?  
 04:46:24 8 A. Yes.  
 04:46:25 9 Q. Okay. All right. Now, do you see, it says  
 04:46:26 10 1 through 5 on the wave pool on page 24 of 34 of  
 04:46:27 11 Exhibit 10, is that correct?  
 04:46:28 12 A. Yes.  
 04:46:29 13 Q. Okay. And if you flip back to 2432,  
 04:46:30 14 counsel was asking you questions and suggested like at  
 04:46:31 15 the top under minimum attendance for the wave pool,  
 04:46:32 16 that meant 1 through 5 guards.  
 04:46:33 17 Is it fair to say that the latter number,  
 04:46:34 18 the 5 represents the number of the guards and the 1  
 04:46:35 19 through 5 are the positions referenced two pages later?  
 04:46:36 20 In other words --  
 04:46:37 21 MR. CAMPBELL: Let me object.  
 04:46:38 22 MR. EISINGER: Let me just finish my  
 04:46:39 23 question.  
 04:46:40 24 MR. CAMPBELL: Sure, go ahead.  
 04:46:41 25 ///

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045828 1 BY MR. EISINGER:  
045829 2 Q. That 1 through 5 are the designated spots  
3 for the total of 5 guards when there is a minimum  
4 attendance. Is that fair?  
045827 5 MR. CAMPBELL: Object to the form of the  
6 question. It's a leading, highly suggestive.  
045832 7 MR. EISINGER: It's cross.  
045833 8 BY MR. EISINGER:  
045833 9 Q. Is that correct?  
045834 10 A. Yes.  
045835 11 Q. Okay. All right. So then on the average  
12 attendance day wise of the wave pool, it says, if I'm  
13 interpreting that correctly, and please correct me if  
14 I'm wrong, it's 7 guards and the 1 through 7 refers to  
15 the different designated spots which is on page 2434;  
16 correct?  
045838 17 A. That's correct.  
045857 18 MR. CAMPBELL: Suggestive and leading.  
045859 19 Anything else?  
045701 20 MR. EISINGER: Nothing else.  
045702 21 MR. CAMPBELL: Okay, great.  
045703 22 MR. EISINGER: Thank you.  
045704 23 THE VIDEOGRAPHER: This concludes the  
24 videotape deposition of Shane Huish taken on  
25 March 22nd, 2016.

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045710 1 The original media of today's testimony  
2 will remain in the custody of Las Vegas Legal Video.  
045718 3 We are going off the record at  
4 approximately 4:57 p.m.  
045721 5 (Whereupon, the deposition concluded at 4:57 p.m.)  
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CERTIFICATE OF DEPONENT

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Errata Sheet Page 1 of 3. Deposition of SHANE HUISE

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CERTIFICATE OF DEPONENT

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Errata Sheet Page 2 of 3. Deposition of SHANE HUISE

**CERTIFICATE OF DEPONENT**

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[illegible]

◆◆◆◆◆

I, SHANE BULSH, deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

SHANE HUTSH  
Deponent

This day of \_\_\_\_\_, 2018.

Errata Sheet, Page 3 of 3. Deposition of SHANE RUISE

REPORTER'S DECLARATION

STATE OF NEVADA )  
 ) ss  
COUNTY OF CLARK )

I Denise R. Kelly, CCR #252, RFR, do hereby  
declare:

That I reported the taking of the deposition of the witness, SRANE HUISH, commencing on Tuesday, March 22, 2016, at the hour of 9:33 a.m.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of my said shorthand notes taken down at said time.

During the deposition, the deponent was advised of the opportunity to read and sign the deposition transcript. The original signature page is being forwarded to Paul Sisinger, Esq. to obtain the deponent's signature. After 30 days the original transcript will be sent to Donald Campbell, Esq.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action.

Dated this 31st day of March, 2016.

Denise R. Kelly  
CCR #252, RFR

# EXHIBIT 4

# EXHIBIT 4

1 **ACOMP**  
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8 [pre@cwlawlv.com](mailto:pre@cwlawlv.com)  
9 700 South Seventh Street  
10 Las Vegas, Nevada 89101  
11 Telephone: (702) 382-5222  
12 Facsimile: (702) 382-0540

13 *Attorneys for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

14 PETER GARDNER and CHRISTIAN GARDNER, )  
15 individually and on behalf of minor child, LELAND )  
16 GARDNER, )

17 Plaintiffs, )

18 vs. )

19 HENDERSON WATER PARK, LLC dba )  
20 COWABUNGA BAY WATER PARK, a Nevada )  
21 limited liability company; WEST COAST WATER )  
22 PARKS, LLC, a Nevada limited liability company; )  
23 DOUBLE OTT WATER HOLDINGS, LLC, a Utah )  
24 limited liability company; ORLUFF OPEIKENS, an )  
25 individual; SLADE OPHEIKENS, an individual; )  
26 CHET OPHEIKENS, an individual; SHANE )  
27 HUIISH, an individual; SCOTT HUIISH, an )  
28 individual; CRAIG HUIISH, an individual; TOM )  
29 WELCH, an individual; DOES I through X, )  
30 inclusive; ROE Corporations I through X, inclusive; )  
31 and ROE Limited Liability Company I through X, )  
32 inclusive, )

33 Defendants. )

Case No.: A-15-722259  
Dept. No.: XXX

**AMENDED COMPLAINT**

34 Plaintiffs Peter Gardner and Christian Gardner, individually and on behalf of their minor son,  
35 Leland Gardner, and through their undersigned counsel, hereby complain and allege against  
36 Defendants as follows:

IDENTIFICATION OF THE PARTIES

1. Plaintiff Peter Gardner ("Mr. Gardner") is an individual and a Nevada resident. Mr. Gardner is married to Christian Gardner and is the father of Leland Gardner ("Leland"), a minor child.

2. Plaintiff Christian Gardner ("Mrs. Gardner") is an individual and a Nevada resident. Mrs. Gardner is married to Mr. Gardner and is Leland's mother.

3. Leland Gardner is six (6) years old and a Nevada resident.

4. Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park ("HWP") is a Nevada limited liability company with its principal place of business in Clark County, Nevada.

5. Defendant West Coast Water Parks, LLC is a Nevada limited liability company that owns Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park and regularly conducts business in Clark County, Nevada.

6. Defendant Double Ott Water Holdings, LLC is a Utah limited liability company that owns Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park and regularly conducts business in Clark County, Nevada.

7. Defendant Orluff Opheikens is a Utah resident who, at all relevant times, conducted business in Clark County, Nevada and served as the Chairman of HWP's Management Committee.

8. Defendant Slade Opheikens is a Utah resident who, at all relevant times, conducted business in Clark County, Nevada and served as a member of HWP's Management Committee.

9. Defendant Chet Opheikens is a Utah resident who, at all relevant times, conducted business in Clark County, Nevada and served as a member of HWP's Management Committee.

10. Defendant Shane Huish is a Nevada resident who, at all relevant times, served as a member of HWP's Management Committee.

.....

1 11. Defendant Scott Huish is a Washington resident who, at all relevant times,  
2 conducted business in Clark County, Nevada and served as a member of HWP's Management  
3 Committee.

4 12. Defendant Craig Huish is a Washington resident who, at all relevant times,  
5 conducted business in Clark County, Nevada and served as a member of HWP's Management  
6 Committee.

7 13. Defendant Tom Welch is a Utah resident who, at all relevant times, conducted  
8 business in Clark County, Nevada and served as a member of HWP's Management Committee. At  
9 times, Defendants Orluff Opheikens, Slade Opheikens, Chet Opheikens, Shane Huish, Scott Huish,  
10 Craig Huish, and Tom Welch will be referred to collectively as the "Individual Defendants."

11 14. Upon information and belief, at all times material to this Complaint the Individual  
12 Defendants influenced and governed Defendants HWP, West Coast Water Parks, LLC, and Double  
13 Ott Water Holdings, LLC and were united in interest and ownership with said entities so as to be  
14 deemed inseparable from them. In this regard, the Individual Defendants (1) undercapitalized these  
15 limited liability companies; (2) diverted limited liability company funds; (3) treated limited liability  
16 company assets as their own; and (4) caused the entities to ignore certain required formalities. The  
17 Individual Defendants and Defendants HWP, West Coast Water Parks, LLC, and Double Ott Water  
18 Holdings, LLC, therefore, are one and the same and Plaintiffs should be permitted to pierce the  
19 corporate structure veil of Defendants HWP, West Coast Water Parks, LLC, and Double Ott Water  
20 Holdings, LLC to reach assets belonging to the Individual Defendants in order to prevent the  
21 sanction and/or promotion of an injustice.

22 15. Cowabunga Bay Water Park ("Cowabunga Bay") is a water park located at 900  
23 Galleria Drive, Henderson, Nevada 89011 and is operated by HWP through its Management  
24 Committee composed of the Individual Defendants.



1           16.     The true names and capacities, whether individual, corporate, associate, or otherwise,  
2 of Doe Defendants I through X, are unknown to Plaintiffs, who therefore sue said defendants by such  
3 fictitious names. Plaintiffs are informed and believe and thereupon allege that each of the defendants  
4 designated as a Doe Defendant is responsible in some manner for the events and happenings described  
5 herein, including but not limited to the individuals and entities that provide or should have provided  
6 lifeguard and safety protection for Leland including but not limited to lifeguards, managers,  
7 supervisors, contractors, other water park personnel, and the individual owners and operators of  
8 Cowabunga Bay. As such, Plaintiffs will seek leave of the Court to amend this Complaint to insert the  
9 true names and capacities of said defendants as they become identified and known to Plaintiff.

11           17.     The true names and capacities, whether individual, corporate, associate, or otherwise,  
12 of Defendants Roe Corporations I through X and Roe Limited Liability Companies I through X, are  
13 unknown to Plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs are  
14 informed and believe and thereupon allege that each of the defendants designated as a Roe Corporation  
15 or Roe Limited Liability Company is responsible in some manner for the events and happenings  
16 described herein, including but not limited to the individuals and entities that provide or should have  
17 provided lifeguard and safety protection for Leland including but not limited to swimming pool  
18 management companies and employment staffing agencies. As such, Plaintiffs will seek leave of the  
19 Court to amend this Complaint to insert the true names and capacities of said defendants as they  
20 become identified and known to Plaintiff.

23           18.     Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is  
24 meant that such Defendant's officers, agents, servants, employees, or representatives did such act or  
25 thing and at the time such act or thing was done, it was done with full authorization or ratification of  
26 such Defendant or was done in the normal and routine course and scope of business, or with the actual,  
27 .....  
28

CAMPBELL & WILLIAMS  
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Phone: 702.382.5222 • Fax: 702.382.0540  
www.campbellandwilliams.com

1 apparent and/or implied authority of such Defendant's officers, agents, servants, employees, or  
2 representatives. Specifically, Defendants are liable for the actions of its officers, agents, servants,  
3 employees, and representatives.

4 GENERAL ALLEGATIONS

5 19. At all times material to this Complaint, the acts and omissions giving rise to this action  
6 occurred in Clark County, Nevada.

7 20. HWP was created on or around August 8, 2013 to undertake the construction and  
8 operation of a recreational water park in Henderson, Nevada, which was ultimately named Cowabunga  
9 Bay.

10 21. As stated in HWP's Operating Agreement, and at all relevant times, HWP was operated  
11 and controlled by its Management Committee. HWP's Operating Agreement contains the following  
12 provisions pertaining to the Management Committee's absolute control over every aspect of  
13 Cowabunga Bay's operations:  
14

15 6.1 Rights and Powers of Management: Except as otherwise expressly provided  
16 in this Operating Agreement, all management rights, powers and authority  
17 over the business, affairs and operations of the Company shall be solely and  
18 exclusively vested in the Management Committee.

19 .....

20 [T]he Management Committee shall have the full right, power and authority  
21 to do all things deemed necessary or desirable by it, in its reasonable  
22 discretion, to conduct the business, affairs and operations of [Cowabunga  
23 Bay].

24 22. Among numerous other specific powers identified in the Operating Agreement, HWP's  
25 Management Committee has direct and absolute control over "the selection and dismissal of  
26 employees" and is responsible for "tak[ing] all actions which may be necessary or appropriate to  
27 accomplish the purpose of the [Cowabunga Bay]."

28 23. All actions taken by Cowabunga Bay set forth herein were authorized, directed or  
participated in by the Individual Defendants in their individual capacity as members of the Management

1 Committee. Additionally, as set forth below, the Individual Defendants knew or should have known  
2 that these actions could injure Cowabunga Bay patrons like Leland but negligently failed to take or  
3 order appropriate action to avoid that harm despite the fact that an ordinarily prudent person, knowing  
4 what the Individual Defendants knew at the time, would not have acted similarly under the  
5 circumstances.

6  
7 24. Cowabunga Bay consists of a twenty-five (25) acre for-profit water park featuring  
8 dozens of water slides and attractions. One of its marquee attractions is the Surf-A-Rama Wave Pool  
9 ("the Wave Pool"), which is 35,000 square feet, holds up to 2,619 bathers and produces waves up to  
10 four (4) feet high.

11 25. Before opening its doors to the public, Nevada law required Cowabunga Bay to first  
12 obtain a permit to operate from the Southern Nevada Health District ("SNHD"). Nevada Revised  
13 Statute Chapter 444 governs the operation of public swimming pools and dictates the procedures a  
14 water recreation business such as Cowabunga Bay must follow to obtain such a permit.

15  
16 26. In that regard, NRS 444.080 states that it is "unlawful for any person, firm,  
17 corporation, institution or municipality to construct or to operate or continue to operate any public  
18 swimming pool [ ] within the State of Nevada without a permit to do so from the health authority."  
19 In order to obtain the requisite permit, the operator must submit an application or "lifeguard plan" to the  
20 health authority clarifying *inter alia* "[t]he lifesaving apparatus and measures to insure safety of  
21 bathers." *Id.* The health authority will only approve a permit when it determines that the public  
22 swimming pool in question will not constitute a menace to public health. *Id.*

23  
24 27. On February 19, 2014, Cowabunga Bay applied for its permit and submitted a lifeguard  
25 plan to SNHD. In its lifeguard plan, Cowabunga Bay proposed posting only six (6) lifeguards to  
26 monitor the Wave Pool. Due to the woefully deficient lifeguard coverage proposed for this banner  
27 attraction, SNHD denied Cowabunga Bay's application. In doing so, SNHD specified that seventeen  
28 (17) lifeguards were required to safely operate the Wave Pool.

1           28.       Thus, in order to obtain its permit, Cowabunga Bay submitted a revised lifeguard plan  
2 in line with SNHD's safety requirements for the Wave Pool, i.e., that seventeen (17) lifeguards would  
3 be posted to monitor the Wave Pool at all times. Based on Cowabunga Bay's revised lifeguard plan,  
4 SNHD granted its request for a permit.

5           29.       Cowabunga Bay, however, had no intention of ever providing the lifeguard coverage  
6 required by state law and instead knowingly, intentionally and willfully deviated from the prescribed  
7 lifeguard plan for its Wave Pool and other attractions. Indeed, despite its public proclamations that  
8 safety was its "number one priority," Cowabunga Bay habitually operated the Wave Pool with only 5-7  
9 lifeguards. In sum, Cowabunga Bay made the necessary representations regarding lifeguard staffing to  
10 obtain the required permit and then summarily disregarded those representations in order to operate the  
11 Wave Pool with the staffing levels that were previously rejected by SNHD. Consider, for example, the  
12 recent testimony of Management Committee member (and Individual Defendant) Shane Huish:

13           Mr. Campbell:       [The lifeguard plan] that was approved [by SNHD] on  
14                               6/30/14 following your submission of a plan saying that  
15                               there would be 17 guards at the wave pool, that plan was  
16                               never subsequently amended, correct?

17           Mr. Huish:       That's correct.

18           Q:               All right. So as of June the 30th, 2014 and continuously  
19                               thereafter, the required number of lifeguards for the wave  
20                               pool was 17, correct?

21           A:               That's correct.

22           Q:               By law, correct?

23           A:               Correct.

24           Q:               All right. And, but you did not operate with 17, correct?

25           A:               That's correct.

26           Q:               You adopted your own plan as to how many you would  
27                               allocate at the wave pool, correct?

1 A: We adopted a plan that was advised to us by our aquatics  
2 consultant as well as other industry standards, and that is  
3 the plan that we used.

4 Q: And the plan that you used was one that you determined  
5 you would put in place, correct?

6 A: Correct.

7 Q: Okay. And the one that you determined that you would put  
8 in place was at variance from the one that was approved  
9 and directed by the Southern Nevada Health District,  
10 correct?

11 A: Correct.

12 . . . . .

13 Q: And that's because you made the decision not to comply  
14 with the law, correct?

15 A: That's correct.

16 As Mr. Huish made abundantly clear, Cowabunga Bay knowingly, intentionally and willfully  
17 refused to staff the Wave Pool with the requisite number of lifeguards.

18 30. Moreover, Cowabunga Bay did not provide life poles for use in the rescue of a  
19 drowning swimmer, failed to post the appropriate safety signage, and did not maintain water quality in  
20 clear violation of SNHD requirements.

21 31. During the 2014-2015 school year, Leland was a kindergarten student. After school on  
22 May 27, 2015, Leland had a playdate with a classmate that would be hosted by the classmate's father,  
23 William Ray ("Mr. Ray"), at a water park.

24 32. While visiting Cowabunga Bay, Mr. Ray took his son and Leland to the Wave Pool.  
25 There, Leland—who was not wearing a life vest—fell off of his inner tube and was submerged at the  
26 bottom of the Wave Pool for a lengthy period of time. Leland suffered a non-fatal drowning and  
27 debilitating injuries that required weeks of hospitalization in the pediatric intensive care unit at St. Rose  
28 Hospital—Siena Campus. Since the incident, Leland has required twenty-four (24) hour care for his

1 severe neurological impairments and his devastating injuries will necessitate extensive and ongoing  
2 medical treatment and rehabilitative therapy for the rest of his life.

3 33. On May 27, 2015, Cowabunga Bay illegally operated its Wave Pool with just three (3)  
4 lifeguards on duty. Indeed, Cowabunga Bay knew it was breaking the law when it understaffed its  
5 Wave Pool, but did so anyway.

6 34. Further, on May 27, 2015, Cowabunga Bay failed to provide safety signage, life poles,  
7 clean water with the appropriate levels of visibility, and otherwise chose not to abide by the parameters  
8 of its permit. Finally, Cowabunga Bay did not require children of Leland's age and size to wear life  
9 vests in the Wave Pool.

10 35. The Individual Defendants, as the members of HWP's Management Committee, had  
11 direct knowledge of these hazardous conditions that threatened physical injury to their patrons like  
12 Leland, yet failed to take any action to avoid this harm and, in fact, took action which exacerbated the  
13 risk to patrons like Leland.

14 36. On or around 12:10 p.m. on May 29, 2015, SNHD reported to Cowabunga Bay to  
15 investigate Leland's non-fatal drowning. SNHD observed that proper safety signage and lifepoles were  
16 not present. In addition, although Cowabunga Bay was not scheduled to open for another hour, SNHD  
17 still noted there were only fourteen (14) lifeguards on duty inside Cowabunga Bay at the time when  
18 thirty-five (35) were required by the lifeguard plan.

19 37. SNHD returned to Cowabunga Bay on June 9, 2015 to conduct an additional  
20 investigation while the park was open for business and found only eight (8) lifeguards on duty at the  
21 Wave Pool instead of the seventeen (17) required by the lifeguard plan. SNHD likewise found  
22 lifeguard staffing violations at other attractions in Cowabunga Bay as well as additional problems with  
23 the water quality. SNHD ultimately cited and fined Cowabunga Bay for its inadequate staffing of  
24 lifeguards and other violations of the permitting requirements.

1 38. The tragic incident underlying this litigation is a direct result of Defendants' willful  
2 disregard of its obligations under the law. As a result of his non-fatal drowning arising out of  
3 Defendants' despicable conduct, Leland suffered catastrophic brain injuries that require 24-hour care.  
4 Leland has essentially no motor skills and cannot talk, eat, walk, use his arms, or even sit up.

5 **FIRST CAUSE OF ACTION**

6 (Negligence – Defendants HWP, West Coast Water Parks, LLC,  
7 and Double Ott Water Holdings, LLC)

8 39. Paragraphs 1 through 38 are hereby specifically incorporated herein as though fully set  
9 forth.

10 40. Defendants, through their acts and omissions, owed multiple duties to Plaintiffs  
11 including but not limited to:

- 12 a. The duty to keep Leland safe;
- 13 b. The duty to use reasonable care to protect Leland from known dangers such as  
14 drowning;
- 15 c. The duty to adequately staff lifeguards throughout Cowabunga Bay;
- 16 d. The duty to properly train employees, lifeguards and managers/supervisors to  
17 protect customers from dangers such as drowning;
- 18 e. The duty to provide ongoing training to employees, lifeguards and  
19 managers/supervisors to protect customers from dangers such as drowning;
- 20 f. The duty to maintain clean and clear water within Cowabunga Bay;
- 21 g. The duty to use reasonable care in the hiring, supervision, training and retention  
22 of its employees; and
- 23 h. The duty to act in a matter that does not violate State of Nevada, City of Las  
24 Vegas and Clark County statutes, laws and ordinances.
- 25  
26  
27  
28

1 41. Defendants breached their duties to Plaintiffs when they failed to provide adequate  
2 lifeguard coverage and otherwise failed to take reasonable steps to protect Leland from drowning.

3 42. In addition, Defendants' violations of the law were criminal in nature and constituted  
4 negligence *per se* as Leland's injuries are of the type which the statutes, laws, ordinances, and  
5 regulations of the United States, State of Nevada—including but limited to NRS 444.080—Clark  
6 County, and/or the Cities of Henderson and Las Vegas were intended to prevent.

7 43. As a direct and proximate result of Defendants' negligence and brazen violation of  
8 the law, Plaintiffs have been damaged in an amount greater than \$10,000.

9 44. The conduct of the Defendants, and each of them, individually and in concert with  
10 one another as herein alleged, was grossly negligent, reckless, willful, intentional, oppressive,  
11 fraudulent, malicious, and done in reckless disregard of the safety and rights of Plaintiffs thereby  
12 warranting the imposition of punitive damages.

13 45. Plaintiffs have been forced to retain the services of attorneys to prosecute this action  
14 and are entitled to an award of reasonable attorneys' fees and costs.

15 **SECOND CAUSE OF ACTION**

16 **(Negligence – Individual Defendants)**

17 46. Paragraphs 1 through 45 are hereby specifically incorporated herein as though fully set  
18 forth.

19 47. The Individual Defendants, and each of them, were members of HWP's Management  
20 Committee.

21 48. At all relevant times, HWP's Management Committee had all management rights,  
22 powers and authority over HWP's business, affairs and operations and, as a result, the Individual  
23 Defendants owed multiple duties to Plaintiffs, including but not limited to:

24 a. The duty to keep Leland safe;



1 b. The duty to use reasonable care to protect Leland from known dangers such as  
2 drowning;

3 c. The duty to adequately staff lifeguards throughout Cowabunga Bay;

4 d. The duty to properly train employees, lifeguards and managers/supervisors to  
5 protect customers from dangers such as drowning;

6 e. The duty to provide ongoing training to employees, lifeguards and  
7 managers/supervisors to protect customers from dangers such as drowning;

8 f. The duty to maintain clean and clear water within Cowabunga Bay;

9 g. The duty to use reasonable care in the hiring, supervision, training and retention  
10 of its employees; and  
11

12 h. The duty to act in a matter that does not violate State of Nevada, City of Las  
13 Vegas and Clark County statutes, laws and ordinances.

14 49. The Individual Defendants breached their duties to Plaintiffs when they directed and/or  
15 approved of Cowabunga Bay's unlawful scheme to understaff lifeguards at its Wave Pool and otherwise  
16 failed to take reasonable steps to protect Leland from drowning.

17 50. In addition, the Individual Defendants' violations of the law were criminal in nature  
18 and constituted negligence *per se* as Leland's injuries are of the type which the statutes, laws,  
19 ordinances, and regulations of the United States, State of Nevada—including but limited to NRS  
20 444.080—Clark County, and/or the Cities of Henderson and Las Vegas were intended to prevent.  
21

22 51. As a direct and proximate result of the Individual Defendants' negligence and brazen  
23 violation of the law, Plaintiffs have been damaged in an amount greater than \$10,000.

24 52. The conduct of the Individual Defendants, and each of them, individually and in  
25 concert with one another as herein alleged, was grossly negligent, reckless, willful, intentional,  
26 oppressive, fraudulent, malicious, and done in reckless disregard of the safety and rights of Plaintiffs  
27 thereby warranting the imposition of punitive damages.  
28

1 53. Plaintiffs have been forced to retain the services of attorneys to prosecute this action  
2 and are entitled to an award of reasonable attorneys' fees and costs.

3 JURY DEMAND

4 54. Plaintiff hereby demands a trial by jury for all issues so triable.

5 PRAYER FOR RELIEF

6 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- 7  
8 1. For compensatory damages in excess of \$10,000.00;  
9 2. For punitive damages to be determined by the jury;  
10 3. For attorneys fees and costs of suit incurred herein;  
11 4. For pre-judgment and post-judgment interest, as allowed by law; and  
12 5. For such other and further relief as is appropriate under the circumstances.

13 DATED this \_\_\_\_\_ day of May, 2016.

14 Respectfully submitted,  
15 CAMPBELL & WILLIAMS

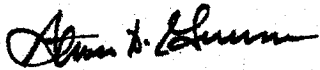
16 By \_\_\_\_\_  
17 DONALD J. CAMPBELL, ESQ. (1216)  
18 SAMUEL R. MIRKOVICH, ESQ. (11662)  
19 PHILIP R. ERWIN, ESQ. (11563)  
20 700 South Seventh Street  
21 Las Vegas, Nevada 89101  
22 Telephone: (702) 382-5222

23 *Attorneys for Plaintiffs*  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this \_\_\_\_\_ day of May, 2016 I caused the foregoing document entitled **Amended Complaint** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

\_\_\_\_\_  
An Employee of Campbell & Williams

  
CLERK OF THE COURT

OPPS

THORNDAL ARMSTRONG DELK  
BALKENBUSH & EISINGER  
PAUL F. EISINGER, ESQ.

Nevada Bar No. 1617

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Attorneys for Defendants,

HENDERSON WATER PARK, LLC dba

COWABUNGA BAY WATER PARK,

WEST COAST WATER PARKS, LLC,

DOUBLE OTT WATER HOLDINGS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

PETER GARDNER and CHRISTIAN  
GARDNER, on behalf of minor child, LELAND  
GARDNER,

Plaintiffs,

vs.

HENDERSON WATER PARK, LLC dba  
COWABUNGA BAY WATER PARK, a  
Nevada limited liability company; WEST  
COAST WATER PARKS, LLC, a Nevada  
limited liability company; DOUBLE OTT  
WATER HOLDINGS, LLC, a Utah limited  
liability company; DOES I through X, inclusive;  
ROE CORPORATIONS I through X, and ROE  
Limited Liability Company I through X,  
inclusive,

Defendants.

CASE NO. A-15-722259-C  
DEPT. NO. XXX

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR LEAVE  
TO FILE AMENDED COMPLAINT AND  
ADD INDIVIDUAL DEFENDANTS**

Date of Hearing: June 14, 2016  
Time of Hearing: 9:00 a.m.

COME NOW Defendants, HENDERSON WATER PARK, LLC dba COWABUNGA  
BAY WATER PARK, WEST COAST WATER PARKS, LLC, DOUBLE OTT WATER

1 HOLDINGS, LLC (collectively "Defendants" or the "Water Park Defendants"), by and through  
2 their counsel of record, THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER,  
3 and hereby submit this Opposition to Plaintiffs' Motion for Leave to File Amended Complaint  
4 and Add Individual Defendants in the above-entitled action pursuant to Nevada Rules of Civil  
5 Procedure 15, and Nevada Revised Statutes 86.371 and 86.381.

6 This Opposition is made and based upon all of the papers and pleadings on file herein,  
7 the Points and Authorities hereinafter to follow, and such oral argument and testimony as this  
8 Honorable Court may entertain at a hearing of the subject Motion, if so desired.

9 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of May, 2016.

10 THORNDAL, ARMSTRONG, DELK,  
11 BALKENBUSH & EISINGER

12 1st Paul F. Eisinger, Esq.  
13 PAUL F. EISINGER, ESQ.  
14 Nevada Bar No. 1617  
15 PHILIP GOODHART, ESQ.  
16 Nevada Bar No. 5332  
17 ALEXANDRA B. McLEOD, ESQ.  
18 Nevada Bar No. 8185  
19 1100 East Bridger Avenue, P.O. Box 2070  
20 Las Vegas, NV 89125  
21 Attorneys for Defendants,  
22 HENDERSON WATER PARK, LLC dba  
23 COWABUNGA BAY WATER PARK,  
24 WEST COAST WATER PARKS, LLC,  
25 DOUBLE OTT WATER HOLDINGS, LLC,  
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1 insufficient lifeguard staffing; (2) failure to provide safety signage, life poles, water with the  
2 appropriate levels of visibility, etc.; and, (3) failure to require children of Leland's age and size to  
3 wear life vests in the wave pool.

4 Negligence was denied by the Defendants in their Answer to Plaintiffs' Complaint filed  
5 August 26, 2015. Contrary to Plaintiffs' allegations, Leland's need for a rescue from the wave  
6 pool was the direct result of wholly insufficient and completely ineffective adult supervision,  
7 as well as his caregiver's failure to adhere to water park safety rules. Cowabunga Bay has  
8 numerous safety measures, all designed to prevent any patron from finding him or herself in a life-  
9 threatening situation where water rescue is required. These safety measures include the following:

- 10 (1) children 12 years old and under are not permitted in the park without a supervising  
11 adult, who should keep children within arms-reach;
- 12 (2) Kids' Cove is provided for kids under 48" tall with slides scaled down to their size;
- 13 (3) Coast Guard-approved lifejackets are provided (free of charge) for guests under 48" tall  
14 or who are weak or non-swimmers;
- 15 (4) in the wave pool specifically, guests 42" inches tall and under must be accompanied by  
16 an adult, and are recommended to wear a lifejacket;
- 17 (5) guests in lifejackets are not permitted in the deep zone of the wave pool; and, finally,
- 18 (6) clear inner tubes are provided for guest use that will not interfere with the line of sight  
19 for lifeguards and staff.

20 Despite these safety rules, Leland, who was only 42 inches tall or less, was not wearing a  
21 lifejacket at the time he was pulled from the water. Lifeguard Heather Meredith previously saw the  
22 boy wearing a lifejacket in the deep end of the wave pool, which is prohibited. In fact, there is a  
23 tiled line in the bottom of the wave pool specifically separating the area where life vests are  
24 allowed and where they are not. As such, Meredith instructed his caregiver that swimmers in  
25 lifejackets must stay in the shallow end, on the other side of the tiled line. Leland was eventually  
26 found in the deep end without a lifejacket after his caregiver allowed him to take off the lifejacket  
27 so he could swim in deeper water. In addition to the blatant negligence by Mr. Ray instructing  
28 Leland to discard the life vest, Ray admitted to investigating police officers that he was distracted

1 from supervising Leland when his own son became separated from his inner tube. As these facts  
2 demonstrate, too little adult supervision combined with Mr. Ray's knowing and purposeful  
3 failure to follow water safety rules led to Leland going underwater, endangering his life, and  
4 requiring lifeguard rescue. Cowabunga Bay lifeguard Armoni Hanson performed the rescue and  
5 brought Leland to the surface, towed him to the exit ladder, and pulled him to the pool deck where  
6 CPR efforts began.

7 With this background in mind, the issue before the Court is whether Plaintiffs can  
8 overcome the protections of NRS Chapter 86 in order to name the members of limited-liability  
9 companies as Individual Parties to these proceedings. Although the standard for amending  
10 pleadings is generally liberal, it would waste judicial resources to allow futile amendments which  
11 impermissibly disregard NRS 86.381 in the case at bar.

12 **III. PLAINTIFFS' PROPOSED AMENDMENT IS FUTILE BECAUSE MEMBERS**  
13 **AND MANAGERS OF AN LLC ARE ABOSLUTELY INSULATED FROM SUIT**  
14 **PURSUANT TO NRS 86.381**

15 NRCP 15(a) provides that leave to amend a complaint shall be "freely given when  
16 justice so requires." Nevertheless, the court may deny a motion to amend in a proper case; if the  
17 intent were otherwise, leave of the court would not be required. See, e.g., Stephens v. Southern  
18 Nev. Music Co., 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). It is important to note that the  
19 statute mandates the grant of leave to amend only when justice so requires, not merely if justice  
20 allows. Furthermore, leave to amend should not be granted if the proposed amendment would  
21 be futile. See Halcrow, Inc. v. Eighth Judicial Dist. Court of the State, 302 P.3d 1148, 129 Nev.  
22 Adv. Rep. 42 (2013); Allum v. Valley Bank of Nev., 109 Nev. 280, 287, 849 P.2d 297, 302  
23 (1993). A proposed amendment may be deemed futile if the plaintiff seeks to amend the  
24 complaint in order to plead an impermissible claim. See Soebbing v. Carpet Barn, Inc., 109  
25 Nev. 78, 84, 847 P.2d 731, 736 (1993) (emphasis added).

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1 **IV. BECAUSE A MEMBER OF A LIMITED-LIABILITY COMPANY IS NOT A**  
2 **PROPER PARTY TO PROCEEDINGS AGAINST THE COMPANY, THE**  
3 **CLAIMS PLAINTIFFS PROPOSE AGAINST THE INDIVIDUAL**  
4 **DEFENDANTS ARE IMPERMISSIBLE**

5 Plaintiffs claim that the argument about futility "misses the mark." (Plaintiff's Motion at  
6 6:10-12) To the contrary, it is Plaintiffs who miss the mark by failing to recognize longstanding  
7 Nevada law which insulates the proposed Individual Defendants from direct liability. Both  
8 corporations and limited liability companies are separate, legal entities from individuals and the  
9 actions undertaken by these business associations are done through the separate legal entity.  
10 See, e.g. Canarelli v. Eighth Judicial Dist. Court of Nev., 127 Nev. Adv. Rep. 72, 265 P.3d 673,  
11 677, (2011) (explaining that under the common law, a corporation is a legal entity that exists  
12 separate and distinct from its shareholders, officers, and directors), citing Black's Law  
13 Dictionary 340 (6th ed. 1990) ("The corporation is distinct from the individuals who comprise  
14 it."). Importantly, **"The concept of limited liability through corporate organization and  
investment has been legally recognized in Nevada since before the granting of its  
statehood."** In re Twin Lakes Village, Inc., 2 B.R. 532, 545 (D. Nev. 1980).

15 Here, however, all of the current Defendants to the action are limited liability  
16 companies, not corporations. Under Nevada law, the analysis for piercing a corporate veil is  
17 statutory under NRS 78.747 and the standard for doing so extremely stringent. However, even  
18 greater protections are extended under NRS Chapter 86 to limited-liability companies such as  
19 Henderson Water Park, LLC. Specifically, NRS 86.381's absolute protection of members of an  
20 LLC is clear: **"A member of a limited-liability company is not a proper party to  
proceedings by or against the company,** except where the object is to enforce the member's  
21 right against or liability to the company." (emphasis added) There are no stated exceptions to  
22 these protections and no mention of any ability to "pierce" the LLC. Moreover, NRS 86.371  
23 similarly sets forth that, "Unless otherwise provided in the articles of organization or an  
24 agreement signed by the member or manager to be charged, no member or manager of any LLC  
25 formed under the law of this State is individually liable for the debts or liabilities of the  
26 company." **Under Nevada's statutory scheme, the limitations on liability for members and  
managers of LLCs are indisputable and absolute.**

1        Thus, because of these clear statutory protections, Plaintiffs' argument, set forth in ¶14  
2 of Plaintiffs' proposed Amended Complaint, is irrelevant and inapplicable to a Chapter 86 LLC.  
3 Plaintiffs' Motion for Leave to Amend is silent as to why the proposed Individual Defendants  
4 should be added as parties to this action except for one vague reference to management: "It is  
5 undisputed that these Individual Defendants had all management rights, powers and authority  
6 over HWP's business, affairs and operations and, therefore, owed a duty to operate Cowabunga  
7 Bay safely." (Plaintiff's Motion at 6:12-14) Mere "management" alone is insufficient to pierce  
8 through a corporation to its shareholders, directors, or officers, and falls very far short of  
9 overcoming NRS 86.381 as it applies to the Defendant LLCs here.

10        Nevada is known for its strictness in sticking to the law when it comes to enforcing  
11 limitations on liability provided by business entities formed under any of the provisions of NRS  
12 Title 7. "The corporate cloak is not lightly thrown aside." Nevada Tax Comm'n v. Hicks, 73  
13 Nev. 115, 310 P.2d 852 (1957). In fact, in the past twenty years, the Nevada courts have only  
14 pierced the corporate veil one time, and undersigned counsel could not find even one  
15 example where a plaintiff overcame the protections of an LLC. See Polaris Indus. Corp. v.  
16 Kaplan, 103 Nev. 598 747 P.2d 884 (1987). Under the absolute protections of NRS Chapter 86  
17 as well as the facts of the case at bar, even as misstated and alleged by Plaintiffs, there is simply  
18 no basis to break through the protections of the limited-liability companies named as  
19 Defendants.

20        Unconvincingly, Plaintiffs assert that "Defendants also cannot claim they will suffer  
21 prejudice as a result of Plaintiffs' proposal to add additional Defendants." (Plaintiff's Motion at  
22 6:5-7) To the contrary, prejudice can be assumed as any defendant would be disadvantaged by  
23 having to defend a direct suit, and these proposed Individual Defendants would be particularly  
24 prejudiced by Plaintiffs' attempt to remove the protections against individual liability afforded  
25 by NRS 86.381.

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1 **V. CONCLUSION**

2 WHEREFORE, because Plaintiffs' proposed amendment ignores the absolute  
3 protections of NRS Chapter 86 and would therefore be futile, Defendants urge the Court to deny  
4 Plaintiff's Motion for Leave to File Amended Complaint and add the proposed Individual  
5 Defendants.

6 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of May, 2016.

7 THORNDAL, ARMSTRONG, DELK,  
8 BALKENBUSH & EISINGER

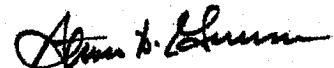
9 /s/ Paul F. Eisinger, Esq.  
10 PAUL F. EISINGER, ESQ.  
11 Nevada Bar No. 1617  
12 PHILIP GOODHART, ESQ.  
13 Nevada Bar No. 5332  
14 ALEXANDRA B. McLEOD, ESQ.  
15 Nevada Bar No. 8185  
16 1100 East Bridger Avenue, P.O. Box 2070  
17 Las Vegas, NV 89125  
18 Attorneys for Defendants,  
19 HENDERSON WATER PARK, LLC dba  
20 COWABUNGA BAY WATER PARK,  
21 WEST COAST WATER PARKS, LLC,  
22 DOUBLE OTT WATER HOLDINGS, LLC,  
23  
24  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4) I hereby certify that on the 23<sup>rd</sup>  
3 day of May, 2016, I forwarded a copy of the above and foregoing **DEFENDANTS'**  
4 **OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED**  
5 **COMPLAINT AND ADD INDIVIDUAL DEFENDANTS** to the following parties via  
6 electronic service through the Eighth Judicial District Court's Odyssey E-File and Service  
7 System:

8 Donald J. Campbell, Esq.  
9 Samuel R. Mirkovich, Esq.  
10 **CAMPBELL & WILLIAMS**  
11 700 South Seventh Street  
12 Las Vegas, NV 89101  
13 Attorneys for Plaintiffs,  
14 **PETER and CHRISTIAN GARDNER** on  
15 behalf of minor child, **LELAND GARDNER**

16  
17  
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*/s/ Alexandra B. McLeod, Esq.*  
An Employee of THORNDAL, ARMSTRONG,  
DELK, BALKENBUSH & EISINGER



CLERK OF THE COURT

RIS  
CAMPBELL & WILLIAMS  
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Fax: (702) 382-0540

*Attorneys for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

PETER GARDNER and CHRISTIAN GARDNER, )  
on behalf of minor child, LELAND GARDNER, )

Plaintiffs, )

vs. )

HENDERSON WATER PARK, LLC dba )  
COWABUNGA BAY WATER PARK, a Nevada )  
limited liability company; WEST COAST WATER )  
PARKS, LLC, a Nevada limited liability company; )  
DOUBLE OTT WATER HOLDINGS, LLC, a Utah )  
limited liability company; DOES I through X, )  
inclusive; ROE Corporations I through X, inclusive; )  
and ROE Limited Liability Company I through X, )  
inclusive, )

Defendants. )

Case No.: A-15-722259-C

Dept. No.: XXX

**PLAINTIFFS' REPLY IN SUPPORT  
OF MOTION FOR LEAVE  
TO FILE AMENDED COMPLAINT**

Date of Hearing: June 16, 2016

Time of Hearing: 9:00 a.m.

Plaintiffs, by and through their undersigned counsel, hereby submit the following Reply in Support of Motion for Leave to File Amended Complaint. This Reply is made and based upon the papers and pleadings on file herein, the exhibits attached hereto, and the Points and Authorities that follow.

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.....

## POINTS AND AUTHORITIES

### I. INTRODUCTION

Notwithstanding Defendants' wholly unsupported and false depiction of the underlying facts of this case,<sup>1</sup> Defendants' response to Plaintiffs' Motion for Leave amounts to nothing more than a conclusory assertion that Orluff Opheikens, Slade Opheikens, Chet Opheikens, Shane Huish, Scott Huish, Craig Huish, and Tom Welch (collectively referred to herein as the "Individual Defendants") are immune from liability because they are members of the limited liability companies ("LLCs") that are named defendants in this action (collectively referred to herein as the "Cowabunga Bay Defendants"). In making this superficial argument, Defendants exhibit a fundamental misunderstanding of the nature of Plaintiffs' proposed claims against the Individual Defendants as well as the governing law. Indeed, the notion that the members and managers of an LLC are completely shielded from personal liability simply by virtue of the corporate structure of an LLC is not the law in the State of Nevada or any other jurisdiction.

In their Opposition, Defendants solely focus on Plaintiffs' claims against the Individual Defendants under the alter ego doctrine and ignore the fact that Plaintiffs alleged that the Individual Defendants personally engaged in tortious conduct that creates direct liability against them. Indeed, Plaintiffs are not bringing claims against the Individual Defendants simply because they are

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<sup>1</sup> In their Opposition, the Cowabunga Bay Defendants include a purported "Background Statement of Facts" to support their representation that "[c]ontrary to Plaintiffs' allegations, Leland's need for a rescue from the wave pool was the direct result of wholly insufficient and completely ineffective adult supervision, as well as his caregiver's failure to adhere to water park safety rules." See Opp. at 3-5. Unlike Plaintiffs' detailed statement of the Cowabunga Bay Defendants' gross negligence and intentional illegal conduct—which is supported by unequivocal deposition testimony and documentary evidence—this inaccurate representation is not based on any competent testimony or evidence. Rather, the Cowabunga Bay Defendants' so-called "Background Statement of Facts" is a contorted mix of attorney argument and unsworn out-of-court statements that would be wholly inadmissible at trial. Simply put, the Court should disregard the Cowabunga Bay Defendants' weak effort to misrepresent the record and shift the blame for Leland's injuries that resulted from their unconscionable misconduct on the date of the incident.

members of the Cowabunga Bay Defendants. Rather, Plaintiffs have alleged that the Individual Defendants actively managed the operations of the Cowabunga Bay Defendants and, in that capacity, authorized, directed, ratified and participated in the tortious conduct that forms the basis of the the Complaint. Moreover, the alter ego doctrine applies equally to LLCs in Nevada, which establishes an alternate route to personal liability against the Individual Defendants. In short, the Individual Defendants cannot hide behind the statutory scheme governing LLCs in Nevada to avoid liability for their willful and wanton negligence in this case.

## II. ARGUMENT

### A. Legal Standard

“Under NRCP 15(a), leave to amend, even if timely sought, need not be granted if the proposed amendment would be ‘futile.’” *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966, 973 (Nev. Ct. App. 2015). “A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint to plead an impermissible claim, such as one that would not survive a motion to dismiss under NRCP 12(b)(5) or a last second amendment alleging meritless claims in an attempt to save a case from summary judgment.” *Id.* “The liberality embodied in NRCP 15(a) requires courts to err on the side of caution and permit amendments that appear arguable or even borderline, because denial of a proposed pleading amendment amounts to denial of the opportunity to explore any potential merit that it might have had.” *Id.* at 975. Here, Defendants argued that Plaintiffs’ claims against the Individual Defendants are barred as a matter of law, which requires that the Court apply the legal standards governing motions to dismiss under NRCP 12(b)(5).

Under NRCP 12(b)(5), dismissal is appropriate “only if it appears beyond a doubt that [the plaintiffs] could prove not set of facts which, if true, would entitle [the plaintiffs] to relief.” *Torres v. Nevada Direct Ins. Co.*, 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1210 (2015) (citing *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008)). When assessing a motion to dismiss for failure to state a claim upon which relief may be granted, this Court must

1 construe the pleadings liberally and draw every reasonable inference in favor of the non-moving  
2 party. *Lubin v. Kunin*, 117 Nev. 107, 110 n. 1, 17 P.3d 422, 425 (2001). All factual allegations of  
3 the complaint must be accepted as true. *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484, 874  
4 P.2d 744, 746 (1994) (citing *Capital Mortgage Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d  
5 126, 126 (1985)). In that regard, NRCF 8(a) provides that a pleading need only contain "a short  
6 and plain statement of the claim showing that the pleader is entitled to relief." *Chavez v.*  
7 *Robberson Steel Co.*, 94 Nev. 597, 599, 584 P.2d 159, 160 (1978). Plaintiffs' Amended  
8 Complaint against the Individual Defendants easily satisfies this lenient standard.

9  
10 **B. Plaintiffs' Amended Complaint States Viable Claims Against The Individual**  
11 **Defendants For Direct Tort Liability As Well As Liability Under The Alter Ego**  
12 **Doctrine.**

13 **1. Plaintiffs Are Permitted To Bring Direct Claims Against The Individual**  
14 **Defendants Arising Out Of Their Negligent Management And Operation**  
15 **Of Cowabunga Bay That Resulted In Leland's Injuries.**

16 Setting aside general statements of law regarding corporate structure in Nevada, Defendants  
17 exclusively rely on two Nevada statutes to support their argument that the Individual Defendants are  
18 wholly immune from liability. NRS 86.371 provides that "[u]nless otherwise provided in the articles  
19 of organization or an agreement signed by the member or manager to be charged, no member of  
20 manager of any limited-liability company formed under the laws of this State is individually liable  
21 for the debts and liabilities of the company." NRS 86.381 further provides that "[a] member of a  
22 limited-liability company is not a proper party to proceedings by or against the company, except  
23 where the object is to enforce the member's right against or liability to the company."

24 What Defendants fail to recognize, however, is that Plaintiffs are not seeking to hold the  
25 Individual Defendants liable "for the debts and liabilities of the company," see NRS 86.371, nor is  
26 this action simply "against the company." See NRS 86.381. To the contrary, Plaintiffs have  
27 requested leave to amend the complaint to hold the Individual Defendants personally liable for their  
28



own tortious conduct. In other words, Plaintiffs would be entitled to bring these claims against the Individual Defendants even if the Cowabunga Bay entities were not named defendants.

Although the Nevada Supreme Court has not addressed direct liability against individual defendants relating to tortious conduct committed in their capacity as members or managers of an LLC, the Nevada Supreme Court did recognize that an individual member of an LLC can be held personally liable along with the LLC in a breach of contract action. In *Batchelor v. Cortese*, 2013 WL 3325208, \*1 (Nev. April 12, 2013), the Nevada Supreme Court rejected the argument that NRS 86.371 and NRS 86.381 provided a complete bar to personal liability for a member of an LLC as follows:

*Respondent asserts that he cannot be held personally liable for an obligation of the limited liability company law firm as outlined under NRS 86.371 and NRS 86.381. This argument fails, however, because it assumes that the liability is only that of the limited liability company. As outlined above, it is unclear whether respondent is personally liable on the contract. Thus, NRS 86.371 and NRS 86.381 do not apply.*

*Id.* (emphasis added).<sup>2</sup>

The United States District Court for the District of Nevada similarly refuted the argument advanced by Defendants in *In re Commercial Mortg. Co.*, 802 F.Supp.2d 1147, 1164-65 (D.Nev. 2011). There, the plaintiff brought a tort claim for conversion against the defendant LLC and two individual defendants that served as the LLC's managing members. *Id.* The United States District Court held that individual members could be held personally liable for the tortious conduct of the LLC as follows:

*As managing members of Compass, Piskin and Blatt are personally liable for engaging in the conversion that plaintiffs proved was committed by Compass. See Pocahontas First Corp. v. Venture Planning Group, Inc., 572 F.Supp. 503, 508*

<sup>2</sup> Although Supreme Court Rule 123 states that an unpublished opinion is not binding legal precedent on this Court, the Nevada Supreme Court's opinion in *Batchelor* is highly persuasive on this issue. Plaintiffs, therefore, rely on *Batchelor* as persuasive (as opposed to binding) authority. Cf. *Villagrana v. Recontrust Co., N.A.*, 2012 WL 1890236, \*7 (D.Nev. May 22, 2012) (unpublished opinions "may be considered for their persuasive authority.").

1 (D.Nev. 1983) ("There is no doubt that an individual who commits a tort while acting  
2 in the capacity of a corporate officer may be held personally liable."); *Marino v. Cross*  
3 *Country Bank*, No. C.A.02-65-GMS, 2003 WL 503257, at \*7 (D.Del. Feb. 14, 2003)  
4 ("Corporate officers are liable for tortious conduct even if they were acting officially  
for the corporation in committing the tort. A corporate officer can be held personally  
liable for the torts he commits and cannot shield himself behind the corporation when  
he is a participant.").

5 *Id.* at 1165 (emphasis added).

6 Numerous other courts have reached the same conclusion that members and managers are  
7 personally liable for their own tortious conduct committed on behalf of an LLC. *See, e.g., D'Elia v.*  
8 *Rice Dev., Inc.*, 147 P.3d 515, 524-25 (Utah Ct. App. 2006) ("We are persuaded by those authorities  
9 that hold that both limited liability members and corporate officers should be treated in a similar  
10 manner when they engage in tortious conduct. We therefore conclude that *Harrison's* imposition of  
11 personal liability on corporate officers who participate in a corporation's tortious acts [ ] also applies  
12 to limited liability members or managers."); *Rothstein v. Equity Ventures, LLC*, 750 N.Y.S.2d 625,  
13 627, 299 A.2d 472, 474 (N.Y.App.Div. 2002) ("We agree that members of limited liability  
14 companies, such as corporate officers, may be held personally liable if they participate in the  
15 commission of a tort in furtherance of company business."); *Weber v. United States Sterling Sec.,*  
16 *Inc.*, 924 A.2d 816 (Conn. 2007) ("Accordingly, we conclude that although § 18-303(a) of the  
17 Delaware Code Annotated shields the defendants from personal liability based solely on their  
18 affiliation with Retail Relief, it does not shield them from personal liability for their own tortious  
19 conduct.") (interpreting Delaware law); *Dzurilla v. All American Homes, LLC*, 2010 WL 559923, \*3  
20 (E.D.Ky. Jan. 4, 2010) ("[A] shareholder of a corporation or a member of an LLC can be held liable  
21 for its individual conduct, without regard to the limited liability status of the corporation or company.  
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1 While mere status as a manager of an LLC will not subject a person to liability, the statute does not  
2 preclude liability for the manager's own tortious conduct."<sup>3</sup>

3 Legal commentators and treatises addressing this issue likewise confirm that a member or  
4 manager of a Nevada LLC can be held personally liable for their own tortious conduct. *See, e.g.,*  
5 *Ltd. Liability Co.* § 14:38 (2015) (analyzing Nevada law governing LLCs and stating "[u]nless  
6 otherwise provided in articles or an operating agreement signed by the member or manager to be  
7 charged, members are not personally liable for LLC debts, obligations, and liabilities. In addition,  
8 the Act provides that members are improper parties to proceedings by or against an LLC [ ]. *There*  
9 *are several important exceptions to the rule that members are not liable for the LLC's debts and*  
10 *obligations. First, members are liable for their own tortious conduct, even when they act on the*  
11 *LLC's behalf.*" (emphasis added); 3A Fletcher Cyc. Corp. § 1135 ("It is the general rule that an  
12 individual is personally liable for all torts the individual committed [ ]. This rule applies equally to  
13 torts committed by those acting in their official capacities as officers or agents of a corporation. It is  
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17 <sup>3</sup> *See also Hoang v. Arbess*, 80 P.3d 863, 867 (Colo.Ct.App. 2003) ("While an officer of a  
18 corporation cannot be held personally liable for a corporation's tort solely by reason of his or her  
19 official capacity, an officer may be held liable for his or her individual acts of negligence even  
20 though committed on behalf of the corporation, which is also held liable. The parties do not  
21 dispute that this principle applies equally to a manager of a limited liability company.");  
22 *Equipoise PM LLC v. Int'l Truck and Engine Corp.*, 2007 WL 2228621, \*10 (N.D.Ill. July 31,  
23 2007) ("As its plain language suggests, this provision will shield Price and Morton from liability  
24 if the only basis defendants have for the claims against them is their membership in Equipoise. If,  
25 however, defendants prove that Price or Morton assumed liability, or committed, authorized or  
26 ratified tortious acts while acting for Equipoise, then this provision provides them no  
27 protection."); *Mbahaba v. Morgan*, 44 A.3d 472 (N.H. 2012) ("When [ ] a member or manager  
28 commits or participates in the commission of a tort, whether or not he acts on behalf of his LLC,  
he is liable to third persons injured thereby."); *Allen v. Dackman*, 991 A.2d 1216, 1228-29  
(Md.Ct.App. 2010) ("These cases discuss tort liability for corporate officers and agents who  
personally committed, inspired, or participated in torts in the name of the corporation. We have  
not previously determined whether these same principles apply to members of LLCs. We agree,  
however, with other jurisdictions that have come to that conclusion."); *Morris v. Cee Dee, LLC*,  
877 A.2d 899, 908-09 (Conn.Ct.App. 2005) ("Furthermore, the law of this state permits the court  
to attach individual assets if a member of a limited liability company personally commits a tort.").

1 immaterial that the corporation may also be liable. [ ]. *These rules have been applied to principals*  
2 *of a limited liability company.*) (emphasis added).

3 Accordingly, there is no doubt that Plaintiffs can pursue negligence claims against the  
4 Individual Defendants related to their reckless operation of Cowabunga Bay irrespective of NRS  
5 86.371 and NRS 86.381.<sup>4</sup> Indeed, while the Individual Defendants are not liable simply by virtue of  
6 their status as managers of Henderson Water Park, LLC's ("HWP"), they cannot escape liability for  
7 the tortious conduct that is detailed in the Complaint. To that end, Plaintiffs have levelled the  
8 following allegations against the Individual Defendants:

- 9
- 10 • The Individual Defendants personally served on Henderson Water Park, LLC's  
11 ("HWP") Management Committee in their individual capacity. See Mot., Ex. 1 at ¶¶  
12 7-13.
  - 13 • Every aspect of Cowabunga Bay's operations was operated and controlled by the  
14 Management Committee pursuant to HWP's Operating Agreement. For example,  
15 Section 6.1 of HWP's Operating Agreement states that "all management rights, powers  
16 and authority over the business, affairs and operations of the Company shall be solely and  
17 exclusively vested in the Management Committee" and "the Management Committee  
18 shall have the full right, power and authority to do all things deemed necessary or  
19 desirable by it, in its reasonable discretion, to conduct the business, affairs and operations  
20 of [Cowabunga Bay]." Among numerous other specific powers identified in the  
21 Operating Agreement, HWP's Management Committee has direct and absolute control  
22 over "the selection and dismissal of employees" and is responsible for "tak[ing] all  
23 actions which may be necessary or appropriate to accomplish the purpose of the  
24 [Cowabunga Bay]." *Id.* at ¶¶ 21-22.
  - 25 • All actions taken by Cowabunga Bay set forth [in the Complaint] were authorized,  
26 directed or participated in by the Individual Defendants in their individual capacity as  
27 members of the Management Committee. Additionally, as set forth below, the Individual  
28 Defendants knew or should have known that these actions could injure Cowabunga Bay

23 <sup>4</sup> Defendants' repeated references to "piercing the corporate veil" or "pierc[ing] the LLC" are  
24 inapposite as Plaintiffs' tort claims against the Individual Defendants have nothing to do with veil  
25 piercing. See, e.g., *Morris*, 877 A.2d at 908-09 ("Contrary to the individual defendant's assertion,  
26 the court did not pierce the corporate veil provided by the act when it attached his personal assets.  
27 The Court ordered a prejudgment attachment of his assets because it found that he, himself, had  
28 committed the tort of negligence."); *D'Elia*, 147 P.3d at 524 ("Several courts and commentators  
make it clear that holding an officer or director personally liable for corporate torts in which they  
participate is distinct from the piercing the veil doctrine.") (listing cases and authorities). As  
such, the Court should disregard Defendants' arguments about veil piercing as they relate to  
Plaintiffs' direct claims against the Individual Defendants.

patrons like Leland but negligently failed to take or order appropriate action to avoid that harm despite the fact that an ordinarily prudent person, knowing what the Individual Defendants knew at the time, would not have acted similarly under the circumstances. *Id.* at ¶ 23.

- The Individual Defendants, as the members of HWP's Management Committee, had direct knowledge of these hazardous conditions that threatened physical injury to their patrons like Leland, yet failed to take any action to avoid this harm and, in fact, took action which exacerbated the risk to patrons like Leland. *Id.* at ¶ 35.
- The Individual Defendants owed multiple duties to Plaintiffs, including but not limited to: (1) the duty to keep Leland safe; (2) the duty to use reasonable care to protect Leland from known dangers such as drowning; (3) the duty to adequately staff lifeguards throughout Cowabunga Bay; (4) the duty to properly train employees, lifeguards and managers/supervisors to protect customers from dangers such as drowning; (5) the duty to provide ongoing training to employees, lifeguards and managers/supervisors to protect customers from dangers such as drowning; (6) the duty to maintain clean and clear water within Cowabunga Bay; (7) the duty to use reasonable care in the hiring, supervision, training and retention of its employees; and (8) the duty to act in a manner that does not violate State of Nevada, City of Las Vegas and Clark County statutes, laws and ordinances. *Id.* at ¶ 48.
- The Individual Defendants breached their duties to Plaintiffs when they directed and/or approved of Cowabunga Bay's unlawful scheme to understaff lifeguards at its Wave Pool and otherwise failed to take reasonable steps to protect Leland from drowning. *Id.* at ¶ 49.
- In addition, the Individual Defendants' violations of the law were criminal in nature and constituted negligence *per se* as Leland's injuries are of the type which the statutes, laws, ordinances, and regulations of the United States, State of Nevada—including but limited to NRS 444.080—Clark County, and/or the Cities of Henderson and Las Vegas were intended to prevent. *Id.* at ¶ 50.

In combination with the extensive facts in the Complaint regarding Defendants' gross negligence and dangerous operation of Cowabunga Bay on the date of the incident, Plaintiffs' specific allegations against the Individual Defendants are clearly sufficient to state a claim for negligence under Nevada's liberal pleading standard. The Court should, therefore, grant Plaintiffs leave to file the Amended Complaint as the claims against the Individual Defendants are not futile under Nevada law.

2. Plaintiffs Are Permitted To Pursue Claims Under The Alter Ego Doctrine Even Though HWP Is An LLC And Not A Corporation.

Defendants conflate and confuse the law governing Plaintiffs' claims against the Individual Defendants, but it is clear that Defendants contend the alter ego doctrine does not apply to LLCs. This is wrong. While Defendants' counsel asserts he "could not find even one example where a plaintiff overcame the protections of an LLC," see Opp. at 7, the Nevada Supreme Court permitted an alter ego claim to proceed against an LLC in *Webb v. Shull*, 128 Nev.Adv.Op. 8, 270 P.3d 1266, 1271-73 (2012) (remanding matter with instructions that district court enter findings as to whether the managing member was the alter ego of the LLC).

Moreover, although the Nevada Supreme Court did not specifically decide whether Nevada law on corporations applied to alter ego claims against an LLC, the Nevada Supreme Court cited two federal cases from the United States District Court for the District of Nevada with approval. *Id.* at 1271 n. 3. For example, in *In re Giampetro*, the federal court considered "whether Nevada law would recognize 'alter ego' claims with respect to limited liability companies." 317 B.R. 841, 845 (Bankr.D.Nev. 2004). After analyzing the alter ego doctrine as it applies to corporations, the court concluded that it was "highly likely that Nevada courts would recognize the extension of the alter ego doctrine to members of limited liability companies." *Id.* at 846. The *In re Giampetro* court then found "Nevada courts would apply the same common law standards for alter ego liability to members of limited liability companies that they have placed on shareholders of corporations." *Id.* at 847-458 and n. 9 (listing cases standing for proposition that "the tests are the same for piercing the veil in a corporate or limited liability context").

In *Montgomery v. eTreppid Tech., LLC*, the United States District Court for the District of Nevada conducted an extensive analysis of the nature of LLCs and noted that "an LLC borrows the characteristics of member protection from personal liability" from a corporation. 548 F.Supp.2d 1175, 1180 (D.Nev. 2008). The court then listed a number of cases standing for the principle that

1 federal and state courts have consistently applied corporate law to LLCs for the purpose of piercing  
2 the veil under the alter ego doctrine. *Id.* at 1180-81. As such, it is indisputable that the alter ego  
3 doctrine applies to LLCs even though the Nevada Supreme Court has not expressly ruled on the  
4 issue.<sup>5</sup>

5 Here, Plaintiffs have made the following allegations against the Individual Defendants related  
6 to their liability under alter ego doctrine:

7 Upon information and belief, at all times material to this Complaint the Individual  
8 Defendants influenced and governed Defendants HWP, West Coast Water Parks,  
9 LLC, and Double Ott Water Holdings, LLC and were united in interest and  
10 ownership with said entities so as to be deemed inseparable from them. In this  
11 regard, the Individual Defendants (1) undercapitalized these limited liability  
12 companies; (2) diverted limited liability company funds; (3) treated limited liability  
13 company assets as their own; and (4) caused the entities to ignore certain required  
14 formalities. The Individual Defendants and Defendants HWP, West Coast Water  
15 Parks, LLC, and Double Ott Water Holdings, LLC, therefore, are one and the same  
16 and Plaintiffs should be permitted to pierce the corporate structure veil of  
17 Defendants HWP, West Coast Water Parks, LLC, and Double Ott Water Holdings,  
18 LLC to reach assets belonging to the Individual Defendants in order to prevent the  
19 sanction and/or promotion of an injustice.

20 See Mot, Ex. 1 at ¶ 14.

21 The foregoing allegations are plainly sufficient to state a claim for liability under the alter ego  
22 doctrine and, as such, the Court should grant leave to file the Amended Complaint on this basis as  
23 well.

24 .....

25 .....

26 <sup>5</sup> The legislative history of Chapter 86 on member and manager liability confirms that the  
27 Legislature intended LLCs to be subject to the same rules as corporations. One Assemblyman  
28 plainly stated that "even though the liability portion [of Chapter 86] was worded differently than  
that for corporations, he did not believe it provided any additional protection over what  
corporations now possessed under the law. Equal protections for limited-liability companies and  
corporations had been the intent in drafting AB 655. He saw no reason the 'alter ego' doctrine  
doctrine' could not be applied to the limited-liability companies and no reason why the corporate  
veil could not be pierced if the entity was ignored in the fashion done in corporations." See  
Exhibit "1," Excerpts of Legislative History.

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III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court grant the Motion for Leave to File Amended Complaint in its entirety.

DATED this 9th day of June, 2016.

CAMPBELL AND WILLIAMS

By /s/ Donald J. Campbell

Donald J. Campbell, Esq. (1216)

Samuel R. Mirkovich, Esq. (11662)

700 South Seventh Street

Las Vegas, Nevada 89101

*Attorneys for Plaintiffs*



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 9th day of June, 2016 I caused the foregoing document entitled **Plaintiffs' Reply in Support of Motion for Leave to File Amended Complaint** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

/s/ John Y. Chong  
An Employee of Campbell & Williams

# **EXHIBIT 1**

# **EXHIBIT 1**

MINUTES OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-sixth Session  
May 21, 1991

The Assembly Committee on Judiciary was called to order by Chairman Robert Sader at 8:12 a.m. on Tuesday, May 21, 1991, in Room 341 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda, Exhibit B is the Attendance Roster.

MEMBERS PRESENT:

Mr. Robert M. Sader, Chairman  
Mr. Gene T. Porter, Vice Chairman  
Mr. Bernie Anderson  
Mr. John W. Bayley  
Mr. John C. Carpenter  
Mr. Joe Elliott  
Mr. Jim Gibbons  
Mr. William D. Gregory  
Mr. Warren B. Hardy  
Mr. Joseph Johnson  
Mr. John L. Norton  
Mr. William A. Petrak  
Mr. Scott Scherer  
Mr. Wendell P. Williams

STAFF MEMBERS PRESENT:

Frank Partlow, Research Analyst

OTHERS PRESENT:

John Hawley, Nevada Supreme Court  
Dr. Jacqueline Kirkland, Truckee Meadows Community College  
Carla R. Leveritt, Board for the Education and Counseling of  
Displaced Homemakers  
Helen Foley, Junior League of Las Vegas  
Bob Cavakis, Youth Services Division  
Bill Lewis, Chief Probation Officers  
Bob Calderone, Youth Services Division  
Lorne Malkiewich, Legislative Counsel Bureau  
John P. Fowler, Law Firm of Vargas & Bartlett

After the secretary called the roll, Mr. Sader asked for testimony on SJR 2.

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might be beneficial on this legislation. He felt if they pursued adding the statement it would be done in the Senate. Mr. Sader mentioned bill drafters did not normally encourage adding legislative intent into the statutes. Mr. Scherer expressed there was some concern about the Indian gaming issue.

ASSEMBLYMAN SCHERER MADE A MOTION TO AMEND AND DO PASS AB 449.

ASSEMBLYMAN ANDERSON SECONDED THE MOTION.

THE MOTION TO AMEND AND DO PASS AB 449 CARRIED UNANIMOUSLY.

SENATE BILL 214 - Ratifies technical corrections made to NRS, Statutes of Nevada 1987 and Statutes of Nevada 1989.

ASSEMBLYMAN SCHERER MADE A MOTION TO DO PASS SB 214.

ASSEMBLYMAN JOHNSON SECONDED THE MOTION.

THE MOTION TO DO PASS SB 214 CARRIED UNANIMOUSLY.

ASSEMBLY BILL 655 - Revises laws governing corporations and similar organizations.

Mr. Gibbons summarized his concerns regarding AB 655 that it would make a significant policy change away from the traditional standards which corporate laws were currently addressed in Nevada. That standard addressed liability first to directors and away from the traditional business practice standard. AB 655 would allow a laundry list of considerations directors could take into view, excluding the traditional business judgment rule. Mr. Gibbons questioned why it was necessary to move away from the long-term standard used as precedence in many court decisions, as well as changing under Section 2, subsection 5, the burden of proof which under AB 655 appeared to favor directors, in a challenge by shareholders from a "preponderance of the evidence" to a more burdensome "clear and convincing" standard. Secondly, Mr. Gibbons stated in the section allowing shareholders to have a right of pre-emption on new issued shares, AB 655 moved away from the traditional "implied right" to one where that right was excluded except if it was specifically mentioned. That was the reverse of the current statutes. He expressed his concern the policy position for Nevada favored business and the corporation over the

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shareholders and making shareholders now face a stiffer burden in challenging corporations.

Mr. John P. Fowler, of the law firm of Vargas and Bartlett in Reno and Las Vegas, testified the focus of AB 655 was a result of the takeover battles of the 1980s, which were waged in part in the markets and in part in the courts. When a takeover artist decided to perform a hostile takeover, he made a proposal and if not immediately accepted by the directors he often went directly to the shareholders and tendered an offer for their shares at a certain price. The directors then typically would fight it saying the price offered was far too low, which it usually was. The directors' strategies in either seeking to sell the company at a higher price, or in seeking not to sell the company at all, usually resulted in a lot more money per share for the shareholders if the company was sold. Alternatively, the company ended up in a somewhat different form after having to defend itself against the takeover artist, or the takeover artist would succeed, in which case it was guaranteed the company would be burdened with a tremendous amount of debt. The effects of the takeover battles of the 1980s had not necessarily been pro-shareholder value.

Mr. Fowler particularly mentioned that Section 2 of AB 655 allowed directors to consider other factors. The reason for that was the focus of the American securities markets seemed to be very short-term. Articles had been written stating the short-term thinking of American corporations had caused problems for American industries in numerous markets, whether automobiles, computers, or development of new technology. Focusing on tomorrow's stock price or quarterly results had not necessarily been good for the country. Section 2 allowed directors to consider other factors other than tomorrow's stock price or last quarter versus next quarter's earnings. It allowed the interests of other constituencies to be considered. Subsection 5 of that section provided for a "clear and convincing" evidence standard, which changed the normal evidence standard from "preponderance of the evidence." It raised the burden of proof to some degree when the duties and obligations of a director were being weighed in a court proceeding. Mr. Fowler stated subsections 3 and 4 were really a more critical part of AB 655 than was subsection 5. Subsections 3 and 4 dealt with the other constituency interests which directors could weigh. But subsection 5 provided some additional protection for directors in lawsuits that were often filed as a part of a takeover battle. If a takeover battle went away, the lawsuits did also. The importance

of a lawsuit in protecting shareholders was often subsidiary to the interests of the takeover artist who often filed them, or to the artist's affiliates. Mr. Fowler opined for that reason they had made it a part of the bill, and it was not simply that they wished to change the standard of proof, but it was part and parcel of a program to allow directors to consider other constituency interests and more long-range interests in making corporate decisions.

Mr. Fowler commented it amounted to a basic policy decision for the legislature and whether it felt a corporate board should be somewhat protected from lawsuits when it considered interests other than tomorrow's stock price or last quarter's earnings in making corporate decisions, and could the board look at more long-term interests and consider other constituencies to some extent. He said if the legislature wanted to make the burden of proof the same as it was for all other lawsuits, the guts of the bill would not be too adversely affected. Mr. Fowler reiterated the crucial part of Section 2 were subsections 3 and 4 concerning the board's ability to consider other constituencies.

As to preemptive rights, Mr. Fowler said AB 655 included that change because many other states had done the same thing under the Revised Model Business Corporation Act of 1984. It adopted an opt-in provision with respect to preemptive rights. He explained preemptive rights were a protective device for shareholders that permitted them to maintain their proportionate ownership interest, which was uniquely beneficial in small-held corporations such as family corporations, but was not useful in a publicly-held corporation. It was like cumulative voting in stockholder agreements, and it was useful in maintaining the percentage interest of each person in ownership.

Mr. Fowler said preemptive rights was something that should be carefully considered before being added to the corporate articles because it was uniquely suited to particular types of circumstances. He felt the Model Code had adopted the opt-in version which would, under AB 655, apply to all corporations formed after October 1, 1991, rather than the opt-out in which case it would be in the articles unless specifically stated to not be included. In addition to cumulative voting which allowed a voting scheme to maintain at least some representation on the board of directors for minority shareholders, preemptive rights would be included in that group of measures which could be taken to protect

shareholders in small holding situations. It was a change that a state going through a major overhaul of its corporate statutes tended to adopt in conformance with the Revised Model Act. Mr. Fowler stated that was not a major change because the statutory provision which was recommended (the Model Act approach) protected those rights if included in the articles. He felt "opt-in" was a better approach, but it was not crucial to the bill, even though he believed most jurisdictions were changing to the "opt-in" approach. The recommended amendments to AB 655 (Exhibit G) allowed existing corporations to continue their present scheme of having pre-emptive rights unless specifically excluded in the articles. All corporations formed after October 1, 1991, would be in a scheme whereby they would need to include pre-emptive rights in the articles in order to be governed thereby.

Mr. Johnson expressed his trouble with the policy statement in AB 655 and the necessity of the short-term view which was set by national monetary policy. He understood AB 655 sought to control the short-term view in a singularly protective way by management, acknowledging there had been obvious abuses, but he felt the method AB 655 used to protect against that was poor public policy which he disagreed with. He asked if the bill would be fundamentally damaged if some early sections were deleted.

Mr. Fowler responded AB 655 did many things and that was only one thrust for changes suggested by the corporate study which had been done. He felt shareholders under AB 655 were protected by the same devices they had enjoyed for a long time. As to the policy, there were good arguments to be made on both sides. However, shareholders had the power to vote out management, and it was power that had not been used enough in the past. Mr. Fowler believed in the future it would be used more, because large institutions that owned large blocks of stock in the largely held corporations were starting to understand they could no longer just sell the stock and get out of the company if they did not like management decisions. It was too difficult to sell easily and it affected the market tremendously. Many stockholders were starting to impact management decisions more and more. In that respect the system was self-correcting and the mechanisms were there for shareholders to control management if they chose to do so. In the narrow area of directors' duties and responsibilities, the subject of these legislative measures was the reaction to the use of lawsuits in takeover battles as another tactical device. When the takeover battle was over the lawsuits were dismissed. AB 655 provided some

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protection to directors, and especially outside directors because they did not make much money from serving on the boards but usually did it for prestige, to further their own careers, or in retirement, and if they constantly had to risk their personal financial status in lawsuits then qualified people would not be found to fill the position of outside directors. Having good outside directors paying attention to what was going on in a corporation was critical. In order to sue a director, there had to be a substantial wrong committed where he had not used good business judgment in a material way. That was a protection Mr. Fowler thought a director ought to have and was a large part of the thrust behind those sections of AB 655. If Section 2 of AB 655 was deleted entirely, there were many other things the bill still accomplished, but Section 2 was an important section and he personally felt it should be passed.

Mr. Gibbons asked Mr. Fowler to explain what Section 2, subsection 3 on page 2, lines 4 and 5, did and what it prevented, and what other challenges could be raised that were not within the subsection. Mr. Fowler read, "This subsection does not create or authorize any causes of action against the corporation or its directors or officers." He said for instance if the board of directors decided to consider the workers in a factory which it thought it must close, typically as a result of a takeover, subsection 3 allowed the board of directors to consider the interests of the workers in that factory, along with all other considerations. The shareholders could not sue them simply because they considered the interest of the workers. Mr. Fowler said on the other hand, they had not wanted to create the situation where the workers by reason of that section could file an action against the directors because they considered only the interests of the shareholders in the decision to close the factory. The idea was to allow directors to consider other interests but not to provide the other interests another cause of action on which to sue the directors if the decision was to close the factory. The measure allowed a little greater latitude to directors, but did not provide stockholders another reason to sue.

ASSEMBLYMAN GIBBONS MADE A MOTION TO AMEND AND DO PASS AB 655 AS AMENDED, WITH THE FURTHER AMENDMENT TO DELETE SUBSECTION 5 OF SECTION 2.

ASSEMBLYMAN GREGORY SECONDED THE MOTION.



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Mr. Petrak expressed concern about Section 2, line 22 on page 1, suggesting the wording be changed to "shall consider" instead of "may consider." Mr. Fowler stated one state had done that and it had been highly criticized in the academic press. That change would require directors to consider other constituency interests, rather than allowing them to do so. The whole idea of the bill was to give the directors the freedom to chose whether they wanted to consider those interests. Some would argue that no interests except the shareholders' should ever be considered, and if they were then the directors should be sued; corporate law in the past had always held that tradition. However, to compel the directors to consider other interests might be construed as considering them to the exclusion of the interests of the shareholders, the owners. Mr. Fowler strongly recommended the wording remain "may consider" to make sure the shareholders interests were properly protected and the directors gave proper consideration to the owners and did not focus exclusively on the interests of other constituencies.

ASSEMBLYMAN PORTER MADE A MOTION TO AMEND THE MAIN MOTION TO AB 655 BY DELETING SECTIONS 275 THROUGH 331 CONCERNING LIMITED-LIABILITY COMPANIES.

Mr. Porter explained Sections 276 through 331 provided all the advantages of a partnership as well as the total shield of doing business in the corporate form. In particular Section 310 on page 17, which summarized, "The members of a limited-liability company and the managers of a limited-liability company managed by a manager or managers are not liable under a judgment, decree or order of court, or in any other manner, for a debt, obligation or liability of the company." He said present corporate law prohibited the use of the corporate vehicle as a shield, and there was also the "alter ego doctrine" that said a person could be responsible for the debts and obligations of the corporation. Mr. Porter disagreed a statute could state that a court could not order a person or entity to be liable in any fashion for any debts, obligations or any liabilities of the company. He was sure people would use this to go out and make a lot of money and never have to pay its debts. Nevada would be only the fourth state in the country to consider the limited-liability company and consequently there was no body of case law yet developed. He was concerned with making Nevada a testing ground, especially with the knowledge of some businesses that had chosen to locate in Nevada in the past.

ASSEMBLYMAN JOHNSON SECONDED THE MOTION.

Mr. Fowler responded a limited-liability company would have the advantages of a partnership for tax purposes and some of the advantages of corporations for state law purposes, the most important of which was the limited liability of its owners and managers. Corporations provided limited liability for their stockholders, and most often shareholders were not liable for the debts of the company. Shareholders might lose their investment, but they could not be sued and their assets were not subject to any judgment against the company. Section 310 of AB 655 provided the same immunity to the limited-liability company. Mr. Fowler said even though the liability portion was worded differently than that for corporations, he did not believe it provided any additional protection over what corporations now possessed under the law. Equal protections for limited-liability companies and corporations had been the intent in drafting AB 655. He saw no reason the "alter ego doctrine" could not be applied to the limited-liability companies and no reason why the corporate veil could not be pierced if the entity was ignored in the fashion done in corporations. Even though piercing the corporate veil was difficult to prove, there was very good case law in that area in Nevada. Mr. Fowler opined those same standards would end up applying to limited-liability companies, but no one would know until some case law had developed. He asserted the limited liability protection in Section 310 was extremely important and was one reason for establishing the limited-liability company.

Mr. Porter pointed out the names had merely been changed: shareholders became members and directors became managers. Under Section 310 the immunity had been extended to everyone, directors, shareholders and everyone involved in the company, and further, everyone had immunity from the arm of the court. That was not the case in present corporate law. Mr. Fowler pointed out the section stated they were "not liable under a judgment, decree, or order of court, for any debts, obligations or liabilities of the company," which was exactly present corporate law. Mr. Porter asked Mr. Fowler if it was his testimony that a court of competent jurisdiction in Nevada could not under any circumstances order a director or shareholder to be liable for the debt of the corporation? Mr. Fowler responded, "No, because you have the alter-ego doctrine which is piercing the corporate veil." He declared the same statement, in effect, was contained in Chapter 78 of NRS with respect to shareholders, although different wording was used. The alter-ego doctrine could be used to circumvent the statutes under certain limited circumstances. Mr. Porter

Minutes of the Nevada State Legislature  
Assembly Committee on Judiciary  
Date: May 21, 1991  
Page: 18

summarized Mr. Fowler's testimony to mean the wording in Section 310 did not change the alter-ego doctrine despite the fact it specifically said a court could not order a member, shareholder, or director to do anything. Mr. Fowler stated he could not answer 100 percent either way because there was no case law.

Mr. Sader intervened to opine that conceptually, the alter-ego doctrine or piercing the corporate veil philosophically found the corporation was not a corporation, that it had instead been handled as the alter-ego of the persons owning the corporation. Therefore it was not a corporation and the owners were liable for the debts. He felt that was entirely consistent with Section 310. In a limited-liability company the members and managers were not liable, the same as in a corporation where the directors, shareholders and officers were not liable. But if there was not a company because there was an alter-ego, and because the corporate veil had been pierced, then the owners and managers were personally liable. Mr. Fowler emphasized that was exactly the statement of doctrine the courts used. If the corporation's formalities and existence were persistently ignored, then it really was not a corporation. He opined there was no reason the same principle would not be applicable to a limited-liability company, and felt a court would agree.

Mr. Sader stated his opposition to the motion, saying he did not feel there was any change in current policy by creating the limited-liability company and that alter-egos and piercing the corporate veil could still be used as defenses. The limited-liability company was a very helpful tool to combine the concepts of partnerships and corporations which allowed new types of business entities without changing relationships to third party creditors.

Mr. Johnson agreed with Mr. Porter the absence of case law in the area of limited-liability companies raised many questions. He understood the arguments for establishing the mechanism, but felt Nevada should wait and possibly address it in the future, and enacting it now was premature.

Mr. Scherer asked if it was believed the availability of limited-liability companies would bring additional companies to Nevada. Mr. Fowler answered he felt that would happen because it provided an additional vehicle which would allow those who wished to form a company to choose a Nevada venue because of the choice of a limited-

Minutes of the Nevada State Legislature  
Assembly Committee on Judiciary  
Date: May 21, 1991  
Page: 19

liability company or a corporation. Fees would be collected by the Secretary of State for limited-liability companies as they were for corporations.

Mr. Norton mentioned his entire career was spent in economic business development, and after reviewing AB 655 and limited-liability companies, felt it would help bring more diversified companies to Nevada.

THE MOTION TO AMEND THE MAIN MOTION TO AB 655 TO DELETE SECTIONS 275 THROUGH 331 PERTAINING TO LIMITED-LIABILITY COMPANIES FAILED FOR LACK OF A MAJORITY. VOTING YES WERE ASSEMBLYMEN GREGORY, JOHNSON AND PORTER. VOTING NO WERE ASSEMBLYMEN ANDERSON, BAYLEY, CARPENTER, ELLIOTT, GIBBONS, HARDY, NORTON, PETRAK, SCHERER, AND SADER. ASSEMBLYMAN WILLIAMS WAS ABSENT.

THE MOTION TO AMEND AND DO PASS AB 655 AS AMENDED, WITH THE FURTHER AMENDMENT TO DELETE SUBSECTION 5 OF SECTION 2 CARRIED BY A MAJORITY OF THOSE PRESENT. VOTING NO WAS ASSEMBLYMAN PORTER; ASSEMBLYMAN WILLIAMS WAS ABSENT.

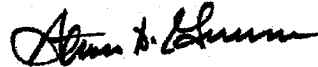
ASSEMBLY BILL 715 - Restricts expenditure of money appropriated to counties for special supervision programs.

Mr. Sader mentioned no one from the counties had been available to testify the previous day on AB 715, but since that time representatives of the Nevada Association of Counties, Clark County and Washoe County, had all said there was no opposition to the bill.

ASSEMBLYMAN ANDERSON MADE A MOTION TO DO PASS AB 715.

ASSEMBLYMAN PETRAK SECONDED THE MOTION.

THE MOTION TO DO PASS AB 715 CARRIED UNANIMOUSLY BY THOSE PRESENT.



CLERK OF THE COURT

1 **ORDER**

2 THORNDAL ARMSTRONG DELK

3 BALKENBUSH & EISINGER

4 PAUL F. EISINGER, ESQ.

5 Nevada Bar No. 1617

6 PHILIP GOODHART, ESQ.

7 Nevada Bar No. 5332

8 ALEXANDRA B. MCLEOD, ESQ.

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20 Attorneys for Defendants,

21 HENDERSON WATER PARK, LLC dba

22 COWABUNGA BAY WATER PARK,

23 WEST COAST WATER PARKS, LLC,

24 DOUBLE OTT WATER HOLDINGS, LLC

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

15 PETER GARDNER and CHRISTIAN GARDNER,  
16 on behalf of minor child, LELAND GARDNER,

17 Plaintiffs,

18 vs.

19 HENDERSON WATER PARK, LLC dba  
20 COWABUNGA BAY WATER PARK, a Nevada  
21 limited liability company; WEST COAST WATER  
22 PARKS, LLC, a Nevada limited liability company;  
23 DOUBLE OTT WATER HOLDINGS, LLC, a Utah  
24 limited liability company; DOES I through X,  
inclusive; ROE CORPORATIONS I through X, and  
ROE Limited Liability Company I through X,  
inclusive,

Defendants.

CASE NO. A-15-722259-C  
DEPT. NO. XXX

**ORDER DENYING PLAINTIFFS'**  
**MOTION FOR LEAVE TO**  
**AMEND COMPLAINT**

1 Date of Hearing:

June 16, 2016 at 9:00 a.m.

2 For Plaintiffs:

Donald J. Campbell, Esq. and  
Samuel R. Mirkovich, Esq. of  
CAMPBELL & WILLIAMS

4 For Defendants:

Paul F. Eisinger, Esq. and  
Alexandra B. McLeod, Esq. of  
THORNDAL ARMSTRONG DELK  
BALKENBUSH & EISINGER

7 Plaintiffs' Motion for Leave to Amend Complaint, having come on for hearing before the  
8 above-entitled Court on the 16<sup>th</sup> day of June, 2016, at the hour of 9:00 a.m.; and this Honorable  
9 Court having considered all of the papers and pleadings on file herein, as well as the argument of  
10 counsel for the parties hereto; and good cause appearing therefor;

11 THE COURT HEREBY FINDS as follows:

12 I. FINDINGS OF FACT

13 1. Plaintiff seeks to add various individuals, who make up the Defendant's  
14 Management Committee, as Defendants.

15 2. This Court finds that the Nevada Revised Statutes protect members of an LLC, not  
16 only from debts incurred by an LLC, but also from liabilities incurred by the LLC. NRS 86.371  
17 indicates that "...no member or manager of any limited-liability company formed under the laws  
18 of this State is *individually liable* for the debts or liabilities of the company." (emphasis added).

19 3. This Court finds further that although the Nevada corporation statutes include an  
20 alter ego exception to the corporate protections, the LLC statutes do not contain a similar  
21 exception, creating a negative inference that the Nevada legislature did not intend for it to apply to  
22 LLCs. (*Suing the Man Behind the Curtain: Can Nevada LLC Members be Liable Under the Alter*  
23 *Ego Doctrine?* by Ryan Lower, Esq., NEVADA LAWYER, November, 2014, pg. 16, citing to *Dep't.*  
24 *of Taxation v. DaimlerChrysler*, 121 Nev. 541, 548, 119 P.3d 135, 139 [2005]).

Therefore, THE COURT HEREBY CONCLUDES as follows:

**II CONCLUSIONS OF LAW**

1. This Court concludes that the requested amendment and inclusion of the individuals who make up the Defendant's Management Committee would be futile, as such individuals are improper Defendants. See *Halcrow, Inc. v. Eighth Judicial Dist. Court of the State*, 302 P.3d 1148, 129 Nev. Adv. Rep. 42 (2013); *Alum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993); *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 84, 847 P.2d 731, 736 (1993).


2. IT IS HEREBY ORDERED that the Motion for Leave to Amend is hereby DENIED without prejudice.

DATED this 25 day of Feb, 2016.

HON. JERRY C. WIESE  
DISTRICT COURT JUDGE, DEPARTMENT 30

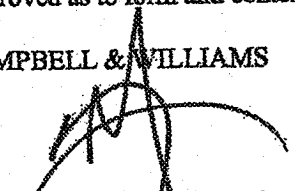
Respectfully submitted by:

THORNDAL ARMSTRONG  
DELK BALKENBUSH & EISINGER

By   
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ALEXANDRA B. McLEOD, ESQ.  
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Attorneys for Defendants

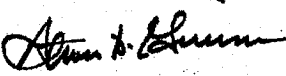
Approved as to form and content by:

CAMPBELL & WILLIAMS

By   
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SAMUEL R. MIRKOVICH, ESQ.  
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Attorneys for Plaintiffs

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CLERK OF THE COURT

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2 THORNDAL ARMSTRONG DELK  
3 BALKENBUSH & EISINGER  
4 PAUL F. EISINGER, ESQ.  
5 Nevada Bar No. 1617  
6 PHILIP GOODHART, ESQ.  
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20 Attorneys for Defendants,  
21 HENDERSON WATER PARK, LLC dba  
22 COWABUNGA BAY WATER PARK,  
23 WEST COAST WATER PARKS, LLC,  
24 DOUBLE OTT WATER HOLDINGS, LLC

DISTRICT COURT  
CLARK COUNTY, NEVADA

16 PETER GARDNER and CHRISTIAN  
17 GARDNER, on behalf of minor child, LELAND  
18 GARDNER,

Plaintiffs,

vs.

20 HENDERSON WATER PARK, LLC dba  
21 COWABUNGA BAY WATER PARK, a Nevada  
22 limited liability company; WEST COAST  
23 WATER PARKS, LLC, a Nevada limited liability  
24 company; DOUBLE OTT WATER HOLDINGS,  
25 LLC, a Utah limited liability company; DOES I  
26 through X, inclusive; ROE CORPORATIONS I  
27 through X, and ROE Limited Liability Company  
28 I through X, inclusive,

Defendants.

CASE NO. A-15-722259-C  
DEPT. NO. XXX

NOTICE OF ENTRY OF ORDER  
DENYING PLAINTIFFS' MOTION FOR  
LEAVE TO AMEND COMPLAINT

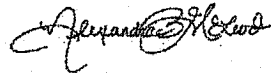
1                                    NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS'  
2                                    MOTION FOR LEAVE TO AMEND COMPLAINT

3                    PLEASE TAKE NOTICE that on July 5, 2016, the Court entered an Order Denying  
4 Plaintiffs' Motion for Leave to Amend Complaint.

5                    A true and correct copy of that filed Order is attached hereto.

6                    RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of July, 2016.

7                                    THORNDAL, ARMSTRONG, DELK,  
8                                    BALKENBUSH & EISINGER

9                                    

10                                   PAUL F. EISINGER, ESQ.  
11                                   Nevada Bar No. 1617  
12                                   PHILIP GOODHART, ESQ.  
13                                   Nevada Bar No. 5332  
14                                   ALEXANDRA B. MCLEOD, ESQ.  
15                                   Nevada Bar No. 8185  
16                                   1100 East Bridger Avenue, P.O. Box 2070  
17                                   Las Vegas, NV 89125  
18                                   Attorneys for Defendants,  
19                                   HENDERSON WATER PARK, LLC dba  
20                                   COWABUNGA BAY WATER PARK,  
21                                   WEST COAST WATER PARKS, LLC,  
22                                   DOUBLE OTT WATER HOLDINGS, LLC,  
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b)(2)(D) and EDCR 7.26(a)(4) I hereby certify that on the 5<sup>th</sup> day of  
3 July, 2016, I forwarded a copy of the above and foregoing NOTICE OF ENTRY OF ORDER  
4 DENYING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT to the following  
5 parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and  
6 Service System:

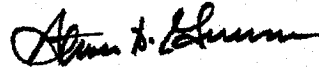
7 Donald J. Campbell, Esq.  
8 Samuel R. Mirkovich, Esq.  
9 Philip R. Erwin, Esq. Esq.  
10 CAMPBELL & WILLIAMS  
11 700 South Seventh Street  
12 Las Vegas, NV 89101  
13 Attorneys for Plaintiffs,  
14 PETER and CHRISTIAN GARDNER on behalf  
15 of minor child, LELAND GARDNER  
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/s/ Adam Crawford  
An Employee of THORNDAL, ARMSTRONG,  
DELK, BALKENBUSH & EISINGER



LAW OFFICES  
**THORNDAL ARMSTRONG  
DELK BALKENBUSH & EISINGER**  
A PROFESSIONAL CORPORATION  
[www.thorndal.com](http://www.thorndal.com)

# EXHIBIT A



CLERK OF THE COURT

1 **ORDER**

2 THORNDAL ARMSTRONG DELK

3 BALKENBUSH & EISINGER

4 PAUL F. EISINGER, ESQ.

5 Nevada Bar No. 1617

6 PHILIP GOODHART, ESQ.

7 Nevada Bar No. 5332

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20 Attorneys for Defendants,

21 HENDERSON WATER PARK, LLC dba

22 COWABUNGA BAY WATER PARK,

23 WEST COAST WATER PARKS, LLC,

24 DOUBLE OTT WATER HOLDINGS, LLC

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

PETER GARDNER and CHRISTIAN GARDNER,  
on behalf of minor child, LELAND GARDNER,

Plaintiffs,

vs.

HENDERSON WATER PARK, LLC dba  
COWABUNGA BAY WATER PARK, a Nevada  
limited liability company; WEST COAST WATER  
PARKS, LLC, a Nevada limited liability company;  
DOUBLE OTT WATER HOLDINGS, LLC, a Utah  
limited liability company; DOES I through X,  
inclusive; ROE CORPORATIONS I through X, and  
ROE Limited Liability Company I through X,  
inclusive,

Defendants.

CASE NO. A-15-722259-C

DEPT. NO. XXX

**ORDER DENYING PLAINTIFFS'**  
**MOTION FOR LEAVE TO**  
**AMEND COMPLAINT**

1 Date of Hearing:

June 16, 2016 at 9:00 a.m.

2 For Plaintiffs:

Donald J. Campbell, Esq. and  
Samuel R. Mirkovich, Esq. of  
3 CAMPBELL & WILLIAMS

4 For Defendants:

Paul F. Eisinger, Esq. and  
Alexandra B. McLeod, Esq. of  
5 THORNDAL ARMSTRONG DELK  
6 BALKENBUSH & EISINGER

7 Plaintiffs' Motion for Leave to Amend Complaint, having come on for hearing before the  
8 above-entitled Court on the 16<sup>th</sup> day of June, 2016, at the hour of 9:00 a.m.; and this Honorable  
9 Court having considered all of the papers and pleadings on file herein, as well as the argument of  
10 counsel for the parties hereto; and good cause appearing therefor,

11 THE COURT HEREBY FINDS as follows:

12 **I. FINDINGS OF FACT**

13 1. Plaintiff seeks to add various individuals, who make up the Defendant's  
14 Management Committee, as Defendants.

15 2. This Court finds that the Nevada Revised Statutes protect members of an LLC, not  
16 only from debts incurred by an LLC, but also from liabilities incurred by the LLC. NRS 86.371  
17 indicates that "...no member or manager of any limited-liability company formed under the laws  
18 of this State is *individually liable* for the debts or liabilities of the company." (emphasis added).

19 3. This Court finds further that although the Nevada corporation statutes include an  
20 alter ego exception to the corporate protections, the LLC statutes do not contain a similar  
21 exception, creating a negative inference that the Nevada legislature did not intend for it to apply to  
22 LLCs. (*Suing the Man Behind the Curtain: Can Nevada LLC Members be Liable Under the Alter*  
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24 *of Taxation v. DaimlerChrysler*, 121 Nev. 541, 548, 119 P.3d 135, 139 [2005]).

Therefore, THE COURT HEREBY CONCLUDES as follows:

**II. CONCLUSIONS OF LAW**

1. This Court concludes that the requested amendment and inclusion of the individuals who make up the Defendant's Management Committee would be futile, as such individuals are improper Defendants. *See Halcrow, Inc. v. Eighth Judicial Dist. Court of the State*, 302 P.3d 1148, 129 Nev. Adv. Rep. 42 (2013); *Alum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993); *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 84, 847 P.2d 731, 736 (1993).

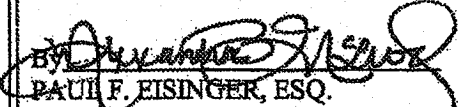
2. IT IS HEREBY ORDERED that the Motion for Leave to Amend is hereby DENIED without prejudice.

DATED this 25 day of Feb, 2016.

HON. JERRY C. WIESEM  
DISTRICT COURT JUDGE, DEPARTMENT 30

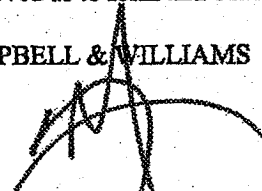
Respectfully submitted by:

THORNDAL ARMSTRONG  
DELK BALKENBUSH & EISINGER

By   
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ALEXANDRA B. MCLEOD, ESQ.  
1100 E. Bridger Avenue, P.O. Box 2070  
Las Vegas, Nevada 89125  
Attorneys for Defendants

Approved as to form and content by:

CAMPBELL & WILLIAMS

By   
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Attorneys for Plaintiffs

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1 CASE NO. A-15-722259-C

2

3

IN THE DISTRICT COURT OF LAS VEGAS

4

CLARK COUNTY, NEVADA

5

-oOo-

6

PETER GARDNER and CHRISTIAN )  
GARDNER, on behalf of minor child, )

7

LELAND GARDNER, )

8

Plaintiffs, )

9

Department No. XXX

10

HENDERSON WATER PARK, LLC dba )

11

COWABUNGA BAY WATER PARK, a Nevada )

12

limited liability company; WEST )

13

COAST WATER PARKS, LLC, a Nevada )

14

limited liability company; DOUBLE )

15

OTT WATER HOLDINGS, LLC, a Utah )

16

limited liability company; DOES I )

17

through X, inclusive; ROE )

18

CORPORATIONS I through X; and ROE )

19

limited liability company I through )

20

X, inclusive, )

21

Defendants. )

22

REPORTER'S TRANSCRIPT  
OF

23

MOTION FOR LEAVE TO AMEND COMPLAINT

24

BEFORE THE HONORABLE JERRY A. WIESE,

25

THURSDAY, JUNE 16, 2016  
AT 9:46 A.M.

Reported by: Leah Armendariz, RPR, CCR No. 921

A P P E A R A N C E S

For the Plaintiff:

Donald J. Campbell, ESQ.  
Samuel R. Mirkovich, ESQ.  
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djcc@campbellandwilliams.com

For the Defendants:

Paul F. Eisinger, ESQ.  
Alexandra B. McLeod, ESQ.  
Thorndal, Armstrong, Delk,  
Balkenbush & Eisinger  
1100 East Bridger Avenue  
Las Vegas, Nevada 89101  
peisinger@thorndal.com

1 LAS VEGAS, CLARK COUNTY, NV, THURSDAY, JUNE 16, 2016  
2 9:46 A.M.,

3 P R O C E E D I N G S

4 THE COURT: Gardner versus Henderson Water  
5 Park.

6 MR. CAMPBELL: Good morning, Your Honor,  
7 Donald Jim Campbell on behalf of plaintiff.

8 MR. MIRKOVICH: Good morning. Samuel  
9 Mirkovich appearing on behalf of the plaintiff.

10 MR. McLEOD: Good morning, Your Honor,  
11 Alexandra McLeod from Thorndal Armstrong on behalf of  
12 defendants.

13 MR. EISINGER: Paul Eisinger, Bar  
14 Number 1617, of Thorndal Armstrong on behalf of  
15 defendants.

16 THE COURT: Good morning, guys.

17 All right. So two things. The first one I  
18 want to address with you is my calendar is showing on  
19 June 23rd Water Park's motion to quash subpoenas of  
20 nonparties.

21 Shouldn't that be in front of Commissioner  
22 Bulla?

23 MR. MIRKOVICH: It should, Your Honor. I  
24 didn't realize it would be set for your calendar.  
25 When she made me aware of that, that's when I

1 advised -- but in any case, Ms. McLeod and I have  
2 worked it out. That motion is going to be taken off  
3 calendar. There's no pending dispute.

4 THE COURT: All right. That's vacated. I  
5 can just vacate it now.

6 MR. McLEOD: Yes, Your Honor. Even -- we  
7 believe we resolved the issue. Even if we haven't, we  
8 believe it should be reset on the discovery calendar.

9 THE COURT: All right. I'm going to vacate  
10 it.

11 All right. So today we're here for  
12 plaintiff's motion for leave to file amended complaint.

13 I understand you want to bring in the  
14 individuals?

15 MR. CAMPBELL: Yes, Your Honor.

16 THE COURT: Who are the members of the LLC,  
17 but don't you have to prove alter ego before you get  
18 there?

19 MR. CAMPBELL: No, you don't, Your Honor.  
20 There's an abundance of case law on this very issue.  
21 You can sue individual members of a LLC, not for the  
22 liability for deaths, but you can sue them  
23 individually for their individual torts with respect  
24 to their operation of the LLC if they committed  
25 individual torts. That's what we are suing them for,

1 the manner in which they operated. They're complete  
2 violations of the law with respect to the structures  
3 that were put on by the law by the counter.

4 And this isn't something new or novel, Your  
5 Honor. This is adopted by substantial case law that has  
6 existed for over, like almost 100 years with respect to  
7 corporations. If you'll see our citations to Fletcher  
8 on corporations it says exactly that, Your Honor, in our  
9 brief. These rules have been applied to principals of  
10 limited liability companies.

11 You'll also see the case that we cited that's  
12 here locally, Your Honor, the USA Mortgage Company by  
13 the United States Supreme Court across the street on  
14 that very issue. If you're talking about a corporate  
15 officer that commits a tort, you can sue them for that.

16 I was involved in a case directly on point in  
17 that regard with respect to Trump versus Wynn. Mr. Wynn  
18 sued Mr. Trump individually in the corporation that he  
19 was operating because he committed a personal tort or  
20 alleged the same.

21 There's no difference now that we have an LLC,  
22 Your Honor. And all of the case law -- all of the case  
23 law holds that standard. For example, if I can just  
24 read you just one part of USA Commercial Mortgage.

25 "As managing members of Compass,

1 Pinkton [phonetic] and Black are  
2 personally liable for engaging in the  
3 conversion that plaintiff's proved  
4 was committed by Compass."

5 Citing Pocahontas First Corporation versus  
6 Venture Planning, also a Nevada case on that very issue.

7 "There is no doubt that an  
8 individual who commits a tort while  
9 acting in the capacity of a corporate  
10 officer may be personally liable."

11 Citing Marina [phonetic]. Now this was  
12 dealing with an LLC. They went on to say:

13 "Officers are liable for their  
14 tortious conduct even if they were  
15 acting officially for the entity."

16 Your Honor, and that's exactly what you have  
17 here. Quite frankly, this isn't even a close case.  
18 There's literally no jurisdiction that we are aware of  
19 anywhere, anywhere, whether it's federal or state, who  
20 has adopted the position that's being advanced to you by  
21 the defense here.

22 The simple fact of the matter is if you engage  
23 in a tort, you engage in a tort, and you can be sued  
24 personally for engaging in that tort. This is not a  
25 situation -- I want to make this absolutely clear to the

1 Court. This is not a situation where we are seeking to  
2 hold them liable for a debt of the corporation insofar  
3 as an act of the corporation or the LLC with respect to  
4 a contract. Contracts are different. We're not  
5 claiming contracts here. We are claiming torts and not  
6 only torts but intentional torts.

7           And you'll see one of the cases that I think  
8 we also cited was one that was decided in that regard  
9 was then Judge Markell, now Professor Markell, one of  
10 the leading bankruptcy scholars in the country, saying  
11 exactly that same thing where they tried to advance that  
12 argument in front of him in bankruptcy court saying,  
13 Wait a second, we're not talking about a corporation,  
14 okay, being responsible for an individual debt.

15           We're talking about the individuals that run  
16 that corporation, not in a contract sense, but we're  
17 talking about them operating in a tortious sense, not a  
18 contract action, but a tort action. That makes all the  
19 difference in the world. We're not claiming any sort of  
20 a contract action whatsoever, Your Honor. None.

21           THE COURT: Okay.

22           MR. CAMPBELL: Thank you, Your Honor.

23           THE COURT: Thank you.

24           MR. McLEOD: Plaintiff's are eager to point  
25 out all of the federal case law and case law from

1 other states because there's no Nevada state case law  
2 on this point. The creation of business entities is  
3 strictly a state statutory provision, and that is why  
4 they differ from state to state.

5 States intentionally make decisions in those  
6 statutory constructions to lure businesses to their  
7 state, and as we know, Nevada and Delaware are both very  
8 popular states for businesses to do their formation in  
9 precisely because of the protections.

10 Plaintiff would have us do away with all of  
11 those because they want to sue the members of the  
12 managing committee. They said that they want to sue for  
13 individual torts, that these are for a person who  
14 engages in a tort then, they can be sued for a tort.

15 Their proposed amended complaint at  
16 Paragraph 48 links all of the duties of these  
17 individuals to their position as a management company,  
18 not that they have individual duties and that they  
19 individually committed torts.

20 They want to sue the management committee of  
21 an LLC. They want to do away with the statutory  
22 protections in Chapter 86 of our revised statutes that  
23 specifically are intended to protect the LLCs, and its  
24 members.

25 Specifically NRS 86.381 says:



1                   "A member of a limited liability  
2                   company is not a proper party to  
3                   proceedings by or against the  
4                   company."

5                   That's exactly what they want to get around.  
6                   And Paragraph 14 of their proposed amended complaint,  
7                   they basically recite the standard for piercing a  
8                   corporate veil under Chapter 78 of the Nevada Revised  
9                   Statutes, which pertains to corporations, not to limited  
10                  liability companies.

11                  We have confidence in our legislature, and if  
12                  the legislature wanted those same exceptions to the  
13                  protections to apply in Chapter 86, they would put them  
14                  in there. They are notably absent.

15                  And plaintiff's argument that they are suing  
16                  individuals is disingenuous because what they want to do  
17                  is sue the managing -- the management committee, the  
18                  members of the LLC, and get around these protections.  
19                  That is an essential flaw that submits their petition --  
20                  excuse me, their amended complaint to a motion to  
21                  dismiss the minute it's filed, and that's what makes  
22                  that amendment futile and why we believe that motion for  
23                  leave to amend should be denied here.

24                  THE COURT: Okay. Last word.

25                  MR. CAMPBELL: Last word, Your Honor. The

1 case that I wanted to cite to the Court was an In Re:  
2 Giampetro decided by Judge Markell, and in that he  
3 specifically made a finding that there may not be a  
4 Nevada case that says that, but every other case in  
5 the country is that way so Nevada would decide it the  
6 same way.

7           And I also would advise the Court if you look  
8 at one of our footnotes -- and I can't think of it right  
9 now. Yes, Your Honor, if you look at our Footnote  
10 Number 3 in our reply, Your Honor, we cite the  
11 legislative history of this, which likewise is the same  
12 wise application of the corporate law to LLCs with  
13 respect to limits of liabilities and the differentiation  
14 of the standards with respect to contract and with  
15 respect to torts. This is a tort action. They keep on  
16 talking about contract cases. This is not a contract  
17 case. This is a tort action.

18           THE COURT: All right. I'm not comfortable  
19 with this one yet, so.

20           MR. CAMPBELL: Just one thing, Your Honor.

21           THE COURT: I'm going to do a little bit  
22 more research on my own, and then I'll --

23           MR. CAMPBELL: In that regard, they're  
24 suggesting that if it is somehow contract related, we  
25 are going to demonstrate through discovery in this

1 matter -- we're going to demonstrate through discovery  
2 in this matter of their individual liability on all  
3 this.

4           It's one thing to come in and argue at a  
5 motion for summary judgment after you have a body of  
6 evidence upon which the Court can reply, but to suggest  
7 that in a case right up front you don't get to do it at  
8 all when we're entitled to every single inference, and  
9 the Court is saying in Rule 15, even in the most  
10 borderline of cases, you allow the amendment and  
11 they can move to dismiss or move for summary judgment at  
12 a later point in time. And that's what we're doing  
13 here.

14           We want you to remember this. We were  
15 grossly, grossly misled by the testimony of the  
16 individual that was running the company that said that  
17 he was running the company, that no one else was  
18 involved. We have determined absolutely that they were  
19 involved. All of these other individuals were guilty of  
20 the same tort.

21           Thank you, Your Honor.

22           THE COURT: Thank you.

23           All right. I'll get you a decision probably  
24 in the next couple weeks.

25           MR. CAMPBELL: Thank you very much, Your

1 Honor.

2 MR. MCLEOD: Thank you, Your Honor.

3 MR. EISINGER: Thank you, Judge.

4 (The proceedings were concluded at  
5 9:58 a.m.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA )  
COUNTY OF CLARK ) ss

I, Leah Armendariz, CCR 921, RPR, CRR, do hereby certify that I took down in Stenotype all of the proceedings had in the before-entitled matter at the time and place indicated and that thereafter said shorthand notes were transcribed into typewriting by me and that the foregoing transcript constitutes a full, true, and accurate record of the proceedings had.

IN THE WITNESS WHEREOF, I have hereunto set my hand and affixed my signature in the County of Clark, State of Nevada, this 12th day of July, 2016.

Leah D. Armendariz, RPR, CRR, CCR 921

# SUING THE MAN BEHIND THE CURTAIN: CAN NEVADA LLC MEMBERS BE LIABLE UNDER THE ALTER EGO DOCTRINE?

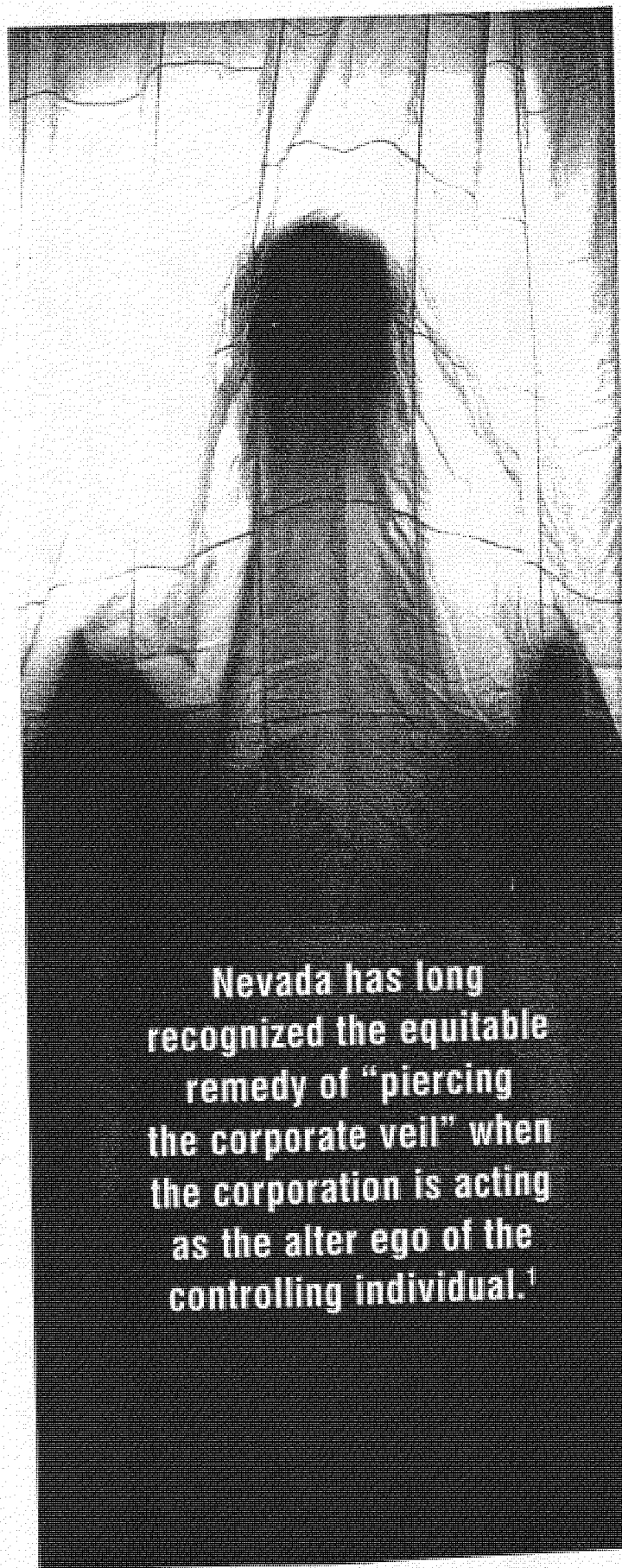
BY RYAN LOWER, ESQ.

## THE SITUATION

Without consulting a lawyer, your client, a Nevada resident, contracts to sell goods to a limited liability company (LLC), which two of his neighbors own and operate, along with one other person, who lives in New York but who does not participate in the company's operations. The client delivers the goods, but the LLC fails to pay for them and thereby breaches the contract. Your client wants to sue the LLC for damages, but informs you that it is insolvent. Because your client knows the owners, however, he tells you that the members of the LLC have significant assets. Can your client recover from the LLC's members for the LLC's breach? Not likely.

### A Member of a Nevada LLC is Generally Not Liable for LLC's Debts

As the name limited liability company implies, no owner or member of an LLC is "vicariously liable for the obligations of the LLC." (Larry E. Ribstein & Robert R. Keatinge, 1 Ribstein and Keatinge on Limited Liability Company, § 1:5 (2d ed. 2013)). Nevada law states that, "[u]nless otherwise provided in the articles of



Nevada has long recognized the equitable remedy of "piercing the corporate veil" when the corporation is acting as the alter ego of the controlling individual.<sup>1</sup>

organization or an agreement signed by the member or manager to be charged, no member or manager of any limited-liability company formed under the laws of this State is individually liable for the debts or liabilities of the company." (Nev. Rev. Stat. § 86.371). Moreover, a "limited liability company is an entity distinct from its managers and members." (Nev. Rev. Stat. § 86.201(3)). For these reasons, "[a] member of a limited-liability company is not a proper party to proceedings by or against the company..." (Nev. Rev. Stat. § 86.381).

If the business entity is a Nevada corporation, the result is the same, with one exception: a stockholder, officer or director may be liable for the corporation's obligations, if that person acts as the alter ego of the corporation. (Nev. Rev. Stat. § 78.747(1)).

## Does the Alter Ego Doctrine Apply to Nevada Limited Liability Companies?

Nevada has long recognized the equitable remedy of "piercing the corporate veil" when the corporation is acting as the alter ego of the controlling individual.<sup>1</sup> Courts use the doctrine to "do justice" when the corporate shield is abused to protect a corporate stockholder, director or officer from liability.<sup>2</sup> The Nevada legislature added the alter ego exception to Nevada's private corporation statute in 2001. (Nev. Rev. Stat. § 78.747(1), added by ch. 601, § 1, 2001 Nev. Stat. 3170).

Unlike Nevada's corporation statute, however, the alter ego doctrine is not included in Nevada's LLC statute. (Nev. Rev. Stat. § 86.001 et seq.). This omission creates a negative inference that the Nevada legislature did not intend for it to apply to LLCs.<sup>3</sup> Indeed, if the Nevada legislature had wanted the doctrine to apply to LLCs, it would have followed other states whose LLC statutes explicitly state that the alter ego doctrine applies to LLCs.<sup>4</sup> Although some courts have found the alter ego doctrine applies to LLCs without express statutory provisions,<sup>5</sup> it is for the Nevada legislature, not the courts, to rewrite Nevada's LLC statute.<sup>6</sup>

This history notwithstanding, one federal bankruptcy court predicted that Nevada would apply the alter ego doctrine to LLCs.<sup>7</sup> The Nevada Supreme Court, however, has not done so, nor has it considered the question.<sup>8</sup> Therefore, until the Nevada legislature amends NRS Chapter 86 to address the application of the alter ego doctrine to Nevada LLCs or the Nevada Supreme Court addresses this issue, both lawyers and clients should be careful about relying on it to recover from a member of an LLC.

## Nevada Courts Do Not Automatically Have Jurisdiction Over Nevada LLC Members

Even if the alter ego doctrine does apply to Nevada LLCs, and that is still uncertain, there may be jurisdictional obstacles blocking your client's attempt to sue the LLC members. Because an LLC is a distinct entity, separate from its managers and members, "[p]ersonal jurisdiction over a limited liability company does not automatically extend to its members." (See *Mountain Funding, LLC v. Blackwater Crossing, LLC*, No. 3:05CV513-MU, 2006 WL 1582403, \*2 (W.D.N.C. June 5, 2006) (granting LLC member's motion to dismiss for lack of personal jurisdiction); see also *Amerireach.com, LLC v. Walker*, 719 S.E.2d 489, 495-96 (Ga. 2011) (holding personal jurisdiction over a member of LLC does not automatically follow from personal jurisdiction over the LLC and that each member's contacts with the forum state must be assessed individually to satisfy due process requirements); *Fisk Ventures, LLC v. Segal*, CIV.A. 3017-CC, 2008 WL 1961156, \*7 (Del. Ch. May 7, 2008) ("Mere ownership of a Delaware [LLC] does not constitute a sufficient basis for personal jurisdiction."); *Graymore, LLC v. Gray*, No. 06-C-00638, 2007 WL 1059004, \*8 (D. Colo. April 6, 2007) (holding that because "LLCs expressly protect members from liability for company obligations," it follows that personal jurisdiction over an LLC "does not automatically extend to its members.")).

"Instead, the members must have the requisite minimum contacts with the forum state independently of the limited liability company." (*Mountain Funding*, 2006 WL 1582403, at \*2 (emphasis added)). Therefore, a plaintiff must plead sufficient facts to show that a member's own minimum contacts with Nevada are independent of the LLC's contacts before a Nevada court can exercise personal jurisdiction over the member. (*Mountain Funding*, 2006 WL 1582403 at \*2). Here, it is clear that a Nevada court would have jurisdiction over your client's two neighbors, but it may not have jurisdiction over the New York member of the LLC. Thus, you, on behalf of your client, must demonstrate that the New York member has the requisite minimum contacts with Nevada.

## Conclusion

Do not presume that a Nevada court will consider an LLC to be a corporation and pierce the corporate veil to find LLC members liable for the LLC's debts under the alter ego doctrine, NRS § 86.371 notwithstanding. As Judge Frank Easterbrook and his co-author Daniel Fishel have noted, "[p]iercing seems to happen freakishly. Like lightning, it is rare, severe, and unprincipled."<sup>9</sup> Therefore, your clients should avoid trying to sue the man behind the curtain, who, like the great and powerful Oz, may be no more than an illusion for judgment purposes, providing no recovery. A writ of execution would not be returned as satisfied against an illusion. ■

1. See *McCleary Cattle Co. v. Seweel*, 73 Nev. 279, 317 P.2d 957 (1957); *LFCMktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 903, 8 P.3d 841, 846 (2000).
2. *Polaris Indust. Corp. v. Kaplan*, 103 Nev. 598, 603, 747 P.2d 884, 888 (1987).
3. *Dep't of Taxation v. DaimlerChrysler*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005) ("[O]missions of subject matters from statutory provisions are presumed to have been intentional."); *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967).

continued on page 18

# CAN NEVADA LLC MEMBERS BE LIABLE UNDER THE ALTER EGO DOCTRINE?

continued from page 17

("The maxim 'EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS', the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State.").

4. See, e.g., Cal. Corp. Code § 17703.04(b) (LLC is subject to liability under the common law governing alter ego liability); Colo. Rev. Stat. § 7-80-107(1) (applying the case law which interprets the circumstances under which the corporate veil of a corporation may be pierced under Colorado law to LLCs); Tex. Code Ann. § 101.002 (applying corporate alter ego statute to LLCs); Was. Rev. Code § 25.15.060 (LLC members are liable for any act, debt, obligation, or liability of the LLC to the extent that shareholders of a Washington business corporation would be).
5. See, e.g., *Howell Contractors, Inc. v. Berling*, 383 S.W.3d 465, 467-69 (Ky. Ct. App. 2012) (recognizing piercing of veil for an LLC in cases of fraud, illegality, or other unlawfulness); *Westmeyer v. Flynn*, 889

N.E.2d 671, 678 (Ill. Ct. App. 2008) (holding that Illinois LLC act "does not bar the other bases for corporate veil piercing, such as alter ego, fraud or undercapitalization").

6. *Holiday Ret. Corp. v. State, DIR*, 128 Nev. Adv. Op. 13, 274 P.3d 759, 761 (2012) ("It is the prerogative of the Legislature, not this court, to change or rewrite a statute.") (citation omitted).
7. *In re Giampietro*, 317 B.R. 841, 846 (D. Nev. 2004) ("If presented with the issue, this court believes it highly likely that Nevada courts would recognize the extension of the alter ego doctrine to members of limited liability companies.").
8. *Webb v. Shull*, 128 Nev. Adv. Op. 8, at 6 n.3, 270 P.3d 1266, 1272 n.3 (2012) ("The parties assume that NRS 78.747, which is part of the statutory chapter governing corporations, applies to the alter ego assertion against Shull and Celebrate, an LLC. Accordingly, for purposes of this appeal, we likewise assume, without

deciding, that the statute applies and analyze their alter ego arguments under that standard.") (emphasis added).

9. Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89, 89 (1985).



**RYAN LOWER** practices with the Morris Law Group. He concentrates his practice on commercial litigation, representing clients in contract disputes, business torts, real estate and other commercial disputes. Lower received his J.D. from The Ohio State University Moritz College of Law. He can be reached at (702) 474-9400 or [rm1@morrislawgroup.com](mailto:rm1@morrislawgroup.com).

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Case No.

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

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Electronically Filed  
JAN 19 2016 04:37 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

PETER and CHRISTIAN GARDNER, on behalf of minor child, LELAND  
GARDNER,  
Plaintiffs-Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK; and THE HONORABLE JERRY A.  
WIESE II, DISTRICT JUDGE

and

HENDERSON WATER PARK, LLC DBA COWABUNGA BAY WATER  
PARK, WEST COAST WATER PARKS, LLC, AND DOUBLE OTT WATER  
HOLDINGS, LLC  
Defendants-Real Parties in Interest,

---

Extraordinary Writ from the Eighth Judicial District Court of the State of Nevada,  
in and for County of Clark

---

**PETITIONERS' APPENDIX**

---

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## DISTRICT COURT CIVIL COVER SHEET

A-15-722259-C

County, Nevada

Case No.

(Assigned by Clerk's Office)

XXX

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Defendant(s) (name/address/phone):

PETER and CHRISTIAN GARDNER on behalf of minor child,

HENDERSON WATER PARK, LLC dba COWABUNGA

LELAND GARDNER

BAY WATER PARK WEST COAST WATER PARKS, LLC

DOUBLE OTT WATER HOLDING, LLC

Attorney (name/address/phone):

Donald J. Campbell, Esq. and Samuel R. Mirkovich, Esq.

Attorney (name/address/phone):

Campbell &amp; Williams-700 S. 7th Street, Las Vegas, Nevada, 89101

(702) 382-5222 phone

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

Real Property	Negligence	Torts
<b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input checked="" type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate (select case type and estate value)</b> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil cover sheet.

7/28/15  
Date

Signature of initiating party or representative

See other side for family-related case filings.

GARD1

  
CLERK OF THE COURT

1 **COMP**  
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13 *Attorneys for Plaintiffs*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 **PETER GARDNER and CHRISTIAN GARDNER, )**  
17 **on behalf of minor child, LELAND GARDNER, )**

18 **Plaintiffs, )**

19 **vs. )**

20 **HENDERSON WATER PARK, LLC dba )**  
21 **COWABUNGA BAY WATER PARK, a Nevada )**  
22 **limited liability company; WEST COAST WATER )**  
23 **PARKS, LLC, a Nevada limited liability company; )**  
24 **DOUBLE OTT WATER HOLDINGS, LLC, a Utah )**  
25 **limited liability company; DOES I through X, )**  
26 **inclusive; ROE Corporations I through X, inclusive; )**  
27 **and ROE Limited Liability Company I through X, )**  
28 **inclusive, )**

29 **Defendants. )**

**A-15-722259-C**

**Case No.:**

**Dept. No.: XXX**

**COMPLAINT**

30 Plaintiffs Peter and Christian Gardner, on behalf of their minor son, Leland Gardner, and  
31 through their undersigned counsel, hereby complain and allege against Defendants as follows:

32 .....

33 .....

34 .....

IDENTIFICATION OF THE PARTIES

1. Plaintiff Peter Gardner ("Mr. Gardner") is an individual and a Nevada resident. Mr. Gardner is married to Christian Gardner and is the father of Leland Gardner ("Leland"), a minor child.

2. Plaintiff Christian Gardner ("Mrs. Gardner") is an individual and a Nevada resident. Mrs. Gardner is married to Mr. Gardner and is Leland's mother.

3. Leland Gardner is six (6) years old and a Nevada resident.

4. Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park is a Nevada limited liability company with its principal place of business in Clark County, Nevada.

5. Defendant West Coast Water Parks, LLC is a Nevada limited liability company that manages and/or owns Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park and regularly conducts business in Clark County, Nevada.

6. Defendant Double Ott Water Holdings, LLC is a Utah limited liability company that manages and/or owns Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park and regularly conducts business in Clark County, Nevada.

7. Cowabunga Bay Water Park ("Cowabunga Bay") is a water park located at 900 Galleria Drive, Henderson, Nevada 89011 and is owned and operated by Defendants Henderson Water Park, LLC dba Cowabunga Bay Water Park, West Coast Water Parks, LLC, and Double Ott Water Holdings, LLC (collectively "Defendants").

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Doe Defendants I through X, are unknown to Plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs are informed and believe and thereupon allege that each of the defendants designated as a Doe Defendant is responsible in some manner for the events and happenings described herein, including but not limited to the individuals and entities that provide or should have provided lifeguard and safety protection for Leland including but not limited to lifeguards, managers,

1 supervisors, contractors, other water park personnel, and the individual owners and operators of  
2 Cowabunga Bay. As such, Plaintiffs will seek leave of the Court to amend this Complaint to insert the  
3 true names and capacities of said defendants as they become identified and known to Plaintiff.

4 9. The true names and capacities, whether individual, corporate, associate, or otherwise,  
5 of Defendants Roe Corporations I through X and Roe Limited Liability Companies I through X, are  
6 unknown to Plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs are  
7 informed and believe and thereupon allege that each of the defendants designated as a Roe Corporation  
8 or Roe Limited Liability Company is responsible in some manner for the events and happenings  
9 described herein, including but not limited to the individuals and entities that provide or should have  
10 provided lifeguard and safety protection for Leland including but not limited to swimming pool  
11 management companies and employment staffing agencies. As such, Plaintiffs will seek leave of the  
12 Court to amend this Complaint to insert the true names and capacities of said defendants as they  
13 become identified and known to Plaintiff.  
14

15 10. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is  
16 meant that such Defendant's officers, agents, servants, employees, or representatives did such act or  
17 thing and at the time such act or thing was done, it was done with full authorization or ratification of  
18 such Defendant or was done in the normal and routine course and scope of business, or with the actual,  
19 apparent and/or implied authority of such Defendant's officers, agents, servants, employees, or  
20 representatives. Specifically, Defendants are liable for the actions of its officers, agents, servants,  
21 employees, and representatives.  
22

#### 23 GENERAL ALLEGATIONS

24 11. At all times material to this Complaint, the acts and omissions giving rise to this action  
25 occurred in Clark County, Nevada.  
26

27 12. Cowabunga Bay is a twenty-five (25) acre for-profit water park featuring dozens of  
28 water slides and attractions. One of its marquee attractions is the Surf-A-Rama Wave Pool ("the Wave

1 Pool”), which is 35,000 square feet, holds up to 2,619 bathers and produces waves up to four (4) feet  
2 high.

3 13. Before opening its doors to the public, Nevada law required Cowabunga Bay to first  
4 obtain a permit to operate from the Southern Nevada Health District (“SNHD”). Nevada Revised  
5 Statute Chapter 444 governs the operation of public swimming pools and dictates the procedures a  
6 water recreation business such as Cowabunga Bay must follow to obtain such a permit.

7  
8 14. In that regard, NRS 444.080 states that it is “unlawful for any person, firm,  
9 corporation, institution or municipality to construct or to operate or continue to operate any public  
10 swimming pool [ ] within the State of Nevada without a permit to do so from the health authority.”  
11 In order to obtain the requisite permit, the operator must submit an application or “lifeguard plan” to the  
12 health authority clarifying *inter alia* “[t]he lifesaving apparatus and measures to insure safety of  
13 bathers.” *Id.* The health authority will only approve a permit when it determines that the public  
14 swimming pool in question will not constitute a menace to public health. *Id.*

15  
16 15. On February 19, 2014, Cowabunga Bay applied for its permit and submitted a lifeguard  
17 plan to SNHD. In its lifeguard plan, Cowabunga Bay proposed posting only six (6) lifeguards to  
18 monitor the Wave Pool. Due to the woefully deficient lifeguard coverage proposed for this banner  
19 attraction, SNHD denied Cowabunga Bay’s application. In doing so, SNHD specified that seventeen  
20 (17) lifeguards were required to safely operate the Wave Pool.

21  
22 16. Thus, in order to obtain its permit, Cowabunga Bay submitted a revised lifeguard plan  
23 in line with SNHD’s safety requirements for the Wave Pool, *i.e.*, that seventeen (17) lifeguards would  
24 be posted to monitor the Wave Pool at all times. Based on Cowabunga Bay’s revised lifeguard plan,  
25 SNHD granted its request for a permit.

26  
27 17. Cowabunga Bay, however, had no intention of ever providing the lifeguard coverage  
28 required by state law and instead knowingly, intentionally and willfully deviated from the prescribed  
lifeguard plan for its Wave Pool and other attractions. Indeed, despite its public proclamations that

1 safety was its "number one priority," Cowabunga Bay habitually operated the Wave Pool with an  
2 inadequate amount of lifeguards. In sum, Cowabunga Bay made the necessary representations  
3 regarding lifeguard staffing to obtain the required permit and then summarily disregarded those  
4 representations in order to operate the Wave Pool with the staffing levels that were previously rejected  
5 by SNHD.

6  
7 18. Moreover, Cowabunga Bay did not provide life poles used to rescue a drowning  
8 swimmer, failed to post the appropriate safety signage, and did not maintain water quality in clear  
9 violation of SNHD requirements.

10 19. During the 2014-2015 school year, Leland was a kindergarten student. After school on  
11 May 27, 2015, Leland had a playdate with a classmate that would be hosted by the classmate's father,  
12 William Ray ("Mr. Ray"), at a "water park."

13  
14 20. While visiting Cowabunga Bay, Mr. Ray took his son and Leland to the Wave Pool.  
15 There, Leland—who was not wearing a life vest—fell off of his inner tube and was submerged at the  
16 bottom of the Wave Pool for a lengthy period of time. Leland suffered a non-fatal drowning and, as a  
17 result, debilitating injuries that required weeks of hospitalization in the pediatric intensive care unit at  
18 St. Rose Hospital-Siena Campus. Since the incident, Leland has required twenty-four (24) hour care  
19 for his severe neurological impairments and his devastating injuries will necessitate extensive and  
20 ongoing medical treatment and rehabilitative therapy for the rest of his life.

21  
22 21. On May 27, 2015, Cowabunga Bay failed to adequately staff lifeguards at numerous  
23 attractions throughout the water park, including the Wave Pool. Further, Cowabunga Bay failed to  
24 provide safety signage, life poles, clean water with the appropriate levels of visibility, and otherwise  
25 abide by the parameters of its permit. Finally, Cowabunga Bay did not require children of Leland's age  
26 and size to wear life vests in the Wave Pool.

27 22. On or around 12:10 p.m. on May 29, 2015, SNHD reported to Cowabunga Bay to  
28 investigate Leland's non-fatal drowning. SNHD observed that proper safety signage and lifepoles were



1 not present. In addition, although Cowabunga Bay was not scheduled to open for another hour, SNHD  
2 still noted there were only fourteen (14) lifeguards on duty inside Cowabunga Bay at the time when  
3 thirty-five (35) were required by the lifeguard plan.

4 23. SNHD returned to Cowabunga Bay on June 9, 2015 to conduct an additional  
5 investigation while the park was open for business. Despite Cowabunga Bay's May 29, 2015  
6 representations—and its absolute legal obligation to provide adequate staffing of lifeguards—SNHD  
7 found only eight (8) lifeguards on duty at the Wave Pool instead of the seventeen (17) required by the  
8 lifeguard plan. SNHD likewise found lifeguard staffing violations at other attractions in Cowabunga  
9 Bar as well as additional problems with the water quality. SNHD ultimately cited and fined  
10 Cowabunga Bay for its inadequate staffing of lifeguards and other violations of the permitting  
11 requirements.  
12

#### 13 FIRST CAUSE OF ACTION

##### 14 (Negligence – All Defendants)

15 24. Paragraphs 1 through 23 are hereby specifically incorporated herein as though fully set  
16 forth.  
17

18 25. Defendants, through their acts and omissions, owed multiple duties to Plaintiffs  
19 including but not limited to:

- 20 a. The duty to keep Leland safe;
- 21 b. The duty to use reasonable care to protect Leland from known dangers such as
- 22 drowning;
- 23 c. The duty to adequately staff lifeguards throughout Cowabunga Bay;
- 24 d. The duty to properly train employees, lifeguards and managers/supervisors to
- 25 protect customers from dangers such as drowning;
- 26 e. The duty to provide ongoing training to employees, lifeguards and
- 27 managers/supervisors to protect customers from dangers such as drowning;
- 28

- 1 f. The duty to maintain clean and clear water within Cowabunga Bay;
- 2 g. The duty to use reasonable care in the hiring, supervision, training and retention
- 3 of its employees; and
- 4 h. The duty to act in a matter that does not violate State of Nevada, City of Las
- 5 Vegas and Clark County statutes, laws and ordinances.

6 26. Defendants breached their duties to Plaintiffs when they failed to provide adequate

7 lifeguard coverage and otherwise failed to take reasonable steps to protect Leland from drowning.

8 27. In addition, Defendants' violations of the law were criminal in nature and constituted

9 negligence *per se* as Leland's injuries are of the type which the statutes, laws, ordinances, and

10 regulations of the United States, State of Nevada—including but limited to NRS 444.080—Clark

11 County, and/or the Cities of Henderson and Las Vegas were intended to prevent.

12 28. As a direct and proximate result of Defendants' negligence and brazen violation of

13 the law, Plaintiffs have been damaged in an amount greater than \$10,000.

14 29. The conduct of the Defendants, and each of them, individually and in concert with

15 one another as herein alleged, was grossly negligent, reckless, willful, intentional, oppressive,

16 fraudulent, malicious, and done in reckless disregard of the safety and rights of Plaintiffs thereby

17 warranting the imposition of punitive damages.

18 30. Plaintiffs have been forced to retain the services of attorneys to prosecute this action

19 and are entitled to an award of reasonable attorneys' fees and costs.

20 **JURY DEMAND**

21 31. Plaintiff hereby demands a trial by jury for all issues so triable.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- 24 1. For compensatory damages in excess of \$10,000.00;
- 25 2. For punitive damages to be determined by the jury;

3. For attorneys fees and costs of suit incurred herein;
4. For pre-judgment and post-judgment interest, as allowed by law; and
5. For such other and further relief as is appropriate under the circumstances.

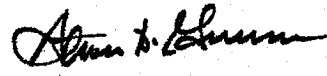
DATED this 28th day of July, 2015.

Respectfully submitted,  
CAMPBELL & WILLIAMS

By /s/ Donald J. Campbell, Esq.

DONALD J. CAMPBELL, ESQ. (1216)  
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*Attorneys for Plaintiffs*



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17 Attorneys for Defendants,  
18 HENDERSON WATER PARK, LLC dba  
19 COWABUNGA BAY WATER PARK,  
20 WEST COAST WATER PARKS, LLC and  
21 DOUBLE OTT WATER HOLDINGS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

17 PETER GARDNER and CHRISTIAN GARDNER,  
18 on behalf of minor child, LELAND GARDNER,

19 Plaintiffs,

20 vs.

21 HENDERSON WATER PARK, LLC dba  
22 COWABUNGA BAY WATER PARK, a Nevada  
23 limited liability company; WEST COAST WATER  
24 PARKS, LLC, a Nevada limited liability company;  
25 DOUBLE OTT WATER HOLDINGS, LLC, a Utah  
26 limited liability company; DOES I through X,  
27 inclusive; ROE CORPORATIONS I through X, and  
28 ROE Limited Liability Company I through X,  
inclusive,

Defendants.

CASE NO. A-15-722259-C  
DEPT. NO. XXX

ANSWER TO COMPLAINT

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**ANSWER TO COMPLAINT**

Defendants, HENDERSON WATER PARK, LLC dba COWABUNGA BAY WATER PARK, WEST COAST WATER PARKS, LLC and DOUBLE OTT WATER HOLDINGS, LLC, by and through their counsel of record, Paul F. Eisinger, Esq. and Philip Goodhart, Esq., of the law firm of THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER, do herein answer the Plaintiffs' Complaint on file and admit, deny and allege as follows:

**I. IDENTIFICATION OF THE PARTIES**

1. These answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 5, 6, 7, and 9 of the Complaint and therefore deny same.
2. These answering Defendants deny the allegations contained in paragraphs 8 and 10 of the Complaint.
3. These answering Defendants admit the allegations contained in paragraph 4 of the Complaint.

**II. GENERAL ALLEGATIONS**

4. These answering Defendants deny the allegations contained in paragraphs 11, 17, 18 and 21 of the Complaint.
5. These answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 12, 19 and 20 of the Complaint and therefore deny same.
6. These answering Defendants object to paragraphs 13, 14, 15, 16, 22 and 23 of the Complaint on the grounds that said paragraphs call for several legal conclusions. Without waiving said objections, and in a good faith effort to respond, these answering Defendants deny the allegations set forth paragraphs 13, 14, 15, 16, 22 and 23 of the Complaint.

**III. FIRST CAUSE OF ACTION (Negligence-All Defendants)**

7. Answering paragraph 24 of the Complaint, these Defendants reaffirm and incorporate by reference each and every response to the allegations contained in the preceding paragraphs 1 through 23 of the Complaint as though fully set forth herein.

1           8.     These answering Defendants deny the allegations contained in paragraphs 26, 27,  
2 28, 29 and 30 of the Complaint.

3           9.     These answering Defendants object to paragraph 25 of the Complaint on the  
4 grounds that said paragraph calls for several legal conclusions. Without waiving said objections,  
5 and in a good faith effort to respond, these answering Defendants deny the allegations set forth  
6 paragraph 25 of the Complaint.

7 **IV. JURY DEMAND**

8           10.    These answering Defendants state that Paragraph 31 of the Complaint is the  
9 Plaintiffs' Jury Demand and therefore no formal response is required.

10 **AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12           Defendants allege that the allegations contained in the Complaint fail to state a claim  
13 against them upon which relief can be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15           Defendants state that the Plaintiffs' alleged injuries and damages, if any, were caused in  
16 whole or in part by the negligence of the Plaintiffs.

17 **THIRD AFFIRMATIVE DEFENSE**

18           Defendants state that the Plaintiffs' alleged injuries and damages, if any, were caused in  
19 whole or in part by the negligence of a third party or parties.

20 **FOURTH AFFIRMATIVE DEFENSE**

21           Plaintiffs have failed to mitigate their damages, if any.

22 **FIFTH AFFIRMATIVE DEFENSE**

23           Plaintiffs have failed to name a necessary party.

24 **SIXTH AFFIRMATIVE DEFENSE**

25           Assuming arguendo that liability is found, these answering Defendants would not be  
26 jointly liable and would be only severally liable (these answering Defendants deny any  
27 negligence) for that portion of Plaintiffs' claim that represents the percentage of negligence  
28 attributable to them.

1                                   **SEVENTH AFFIRMATIVE DEFENSE**

2           The Plaintiffs alleged injuries or damages, if any, were caused by the acts of unknown  
3 third persons who were not agents, servants or employees of these answering Defendants, and  
4 who were not acting on behalf of these answering Defendants in any manner or form and, as  
5 such, these answering Defendants are not liable in any manner to the Plaintiffs.

6                                   **EIGHTH AFFIRMATIVE DEFENSE**

7           Defendants state that an independent intervening force or circumstance caused the  
8 incident alleged in the Plaintiffs' Complaint.

9                                   **NINTH AFFIRMATIVE DEFENSE**

10          The damages or injuries, if any, alleged by Plaintiffs in the Complaint, came as a result of  
11 a superseding cause and/or intervening acts of others which bars this suit.

12                                  **TENTH AFFIRMATIVE DEFENSE**

13          There is no evidence of oppression, fraud or malice to support an award of punitive  
14 damages against these answering Defendants.

15                                  **ELEVENTH AFFIRMATIVE DEFENSE**

16          These answering Defendants did not act with a wanton, willful or otherwise conscious  
17 disregard of Plaintiffs and, therefore, there can be no factual or legal basis for punitive damages.

18                                  **TWELFTH AFFIRMATIVE DEFENSE**

19          All possible affirmative defenses may not have been alleged herein insofar as sufficient  
20 facts were not available after reasonable inquiry upon the filing of the Defendants' Answer to the  
21 Complaint, and, therefore, these answering Defendants reserve the right to amend their Answer  
22 to the Complaint to allege additional affirmative defenses if subsequent investigation so  
23 warrants.

24          ...

25          ...

26          ...

27          ...

1 WHEREFORE, Defendants, HENDERSON WATER PARK, LLC dba  
2 COWABUNGA BAY WATER PARK, WEST COAST WATER PARKS, LLC and DOUBLE  
3 OTT WATER HOLDINGS, LLC, pray that Plaintiffs takes nothing by way of their Complaint  
4 on file herein, and that the same be dismissed with prejudice, and that these answering  
5 Defendants be awarded their fees and costs incurred herein.  
6

7 DATED this 26th day of August, 2015.

8 THORNDAL, ARMSTRONG, DELK,  
9 BALKENBUSH & EISINGER

10 /s/ Paul F. Eisinger

11 PAUL F. EISINGER, ESQ.

12 Nevada Bar No. 001617

13 PHILIP GOODHART

14 Nevada Bar No. 005332

15 1100 East Bridger Avenue

16 Las Vegas, NV 89101-5315

17 Attorneys for Defendants,

18 HENDERSON WATER PARK, LLC dba

19 COWABUNGA BAY WATER PARK,

20 WEST COAST WATER PARKS, LLC and

21 DOUBLE OTT WATER HOLDINGS, LLC  
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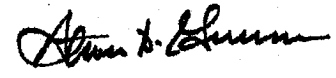
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**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b)(D), I hereby certify that on the 26th day of August, 2015,  
service of the foregoing **ANSWER TO COMPLAINT** was made upon the following parties via  
electronic service through the Eighth Judicial District Court's Odyssey E-File and Service  
System:

Donald J. Campbell, Esq.  
Samuel R. Mirkovich, Esq.  
Philip R. Erwin, Esq. Esq.  
**CAMPBELL & WILLIAMS**  
700 South Seventh Street  
Las Vegas, NV 89101  
Attorneys for Plaintiffs,  
**PETER GARDNER and CHRISTIAN**  
**GARDNER** on behalf of minor child,  
**LELAND GARDNER**

/s/ Terry Kelly-Lamb  
An Employee of THORNDAL, ARMSTRONG, DELK,  
BALKENBUSH & EISINGER

  
CLERK OF THE COURT

MOT  
CAMPBELL & WILLIAMS  
DONALD J. CAMPBELL, ESQ. (1216)  
E-mail: [djc@cwlawlv.com](mailto:djc@cwlawlv.com)  
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Fax: (702) 382-0540

*Attorneys for Plaintiffs*

DISTRICT COURT  
CLARK COUNTY, NEVADA

PETER GARDNER and CHRISTIAN GARDNER, )  
on behalf of minor child, LELAND GARDNER, )  
Plaintiffs, )  
vs. )

Case No.: A-15-722259-C  
Dept. No.: XXX

**PLAINTIFFS' MOTION FOR LEAVE  
TO FILE AMENDED COMPLAINT**

HENDERSON WATER PARK, LLC dba )  
COWABUNGA BAY WATER PARK, a Nevada )  
limited liability company; WEST COAST WATER )  
PARKS, LLC, a Nevada limited liability company; )  
DOUBLE OTT WATER HOLDINGS, LLC, a Utah )  
limited liability company; DOES I through X, )  
inclusive; ROE Corporations I through X, inclusive; )  
and ROE Limited Liability Company I through X, )  
inclusive, )  
Defendants. )

Date of Hearing:  
Time of Hearing:

Plaintiffs, by and through their undersigned counsel, hereby submit the following Motion  
for Leave to File Amended Complaint. This Motion is made and based upon the papers and  
pleadings on file herein, the exhibits attached hereto, and the Points and Authorities that follow.

.....

.....

.....

**NOTICE OF MOTION**

TO: ALL PARTIES and

TO: THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 14 at the hour of 9:00a A.M., or as soon thereafter as counsel can be heard, Plaintiff will bring the foregoing motion on for hearing before the above-entitled Court at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada, 89155.

DATED this 5th day of May, 2016.

CAMPBELL & WILLIAMS

By /s/ Donald J. Campbell

DONALD J. CAMPBELL, ESQ. (1216)

SAMUEL R. MIRKOVICH, ESQ. (11662)

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Las Vegas, Nevada 89101

Tel. (702) 382-5222

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*Attorneys for Plaintiffs*

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## POINTS AND AUTHORITIES

### I. INTRODUCTION

This tragic case arises from the non-fatal drowning of six-year old Plaintiff Leland Gardner ("Leland") on May 27, 2015 at the Cowabunga Bay water park. Cowabunga Bay is owned and operated by Defendants Henderson Water Park, LLC, West Coast Water Parks, LLC, and Double Ott Water Holdings, LLC (collectively "Defendants" or "Cowabunga Bay"). Leland's drowning was a direct result of Cowabunga Bay's refusal to adequately staff its premises with lifeguards as required by Nevada law.

Pursuant to Nevada Revised Statute Chapter 444, the Southern Nevada Health District ("SNHD") required Cowabunga Bay to post seventeen (17) lifeguards at the Wave Pool at all times. Although Cowabunga Bay submitted a lifeguard plan to SNHD representing that it would comply with the law in this regard, it habitually operated its Wave Pool with only 5-7 lifeguards. *See Exhibit "1," Cowabunga Bay Internal Lifeguard Plan.* On the date of the incident, in fact, Cowabunga Bay illegally operated its Wave Pool with just *three (3) lifeguards* on duty. *See Exhibit "2," Lifeguard Staffing Sheet for May 27, 2015.*

Cowabunga Bay's unlawful scheme to understaff its Wave Pool is undisputed. Indeed, Cowabunga Bay knew it was breaking the law when it understaffed the Wave Pool, but did so anyway. Consider, for example, Mr. Huish's deposition testimony:

Mr. Campbell: [The lifeguard plan] that was approved [by SNHD] on 6/30/14 following your submission of a plan saying that there would be 17 guards at the wave pool, that plan was never subsequently amended, correct?

Mr. Huish: That's correct.

Q: All right. So as of June the 30th, 2014 and continuously thereafter, the required number of lifeguards for the wave pool was 17, correct?

A: That's correct.

- 1 Q: By law, correct?
- 2 A: Correct.
- 3 Q: All right. And, but you did not operate with 17, correct?
- 4 A: That's correct.
- 5 Q: You adopted your own plan as to how many you would
- 6 allocate at the wave pool, correct?
- 7 A: We adopted a plan that was advised to us by our aquatics
- 8 consultant as well as other industry standards, and that is
- 9 the plan that we used.
- 10 Q: And the plan that you used was one that you determined
- 11 you would put in place, correct?
- 12 A: Correct.
- 13 Q: Okay. And the one that you determined that you would
- 14 put in place was at variance from the one that was
- 15 approved and directed by the Southern Nevada Health
- 16 District, correct?
- 17 A: Correct.
- 18 Q: All right. And so you knew that the plan that had been
- 19 designated by law was not being complied with, correct?
- 20 Mr. Eisinger: Object to the form.
- 21 Mr. Campbell: You can answer.
- 22 Mr. Huish: Correct.
- 23 Q: And that's because you made the decision not to comply
- 24 with the law, correct?
- 25 A: That's correct.

26 See Exhibit "3," Huish Deposition Transcript at 154:1-155:12.

27 The tragic incident underlying this litigation is a direct result of Defendants' willful

28 disregard of its obligations under the law. As a result of his non-fatal drowning arising out of

Defendants' despicable conduct, Leland suffered catastrophic brain injuries that require 24-hour care. Leland has essentially no motor skills; he cannot talk, eat, walk, use his arms, or even sit up.

Plaintiffs request leave to file the First Amended Complaint in order to conform the factual allegations in the Complaint to the evidence developed thus far during discovery and add additional Defendants. Because leave to amend should be freely granted and Plaintiffs have sought such relief prior to the expiration of the deadline to amend pleadings and add parties, the Court should permit Plaintiffs to file the First Amended Complaint, which is attached hereto as Exhibit "4."

## II. ARGUMENT

"[A] party may amend its pleading only with...the court's leave" and "[t]he court should freely give leave when justice so requires." Nev. R. Civ. P. 15(a)(2). "Sufficient reasons to deny a motion to amend a pleading include undue delay, bad faith, or dilatory motives on the part of the movant." *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). A proposed amendment may also be denied as "futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim." *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. Adv. Op. 42, 302 P.3d 1148, 1152 (2013). Nevertheless, the policy for leave to amend should be "applied with extreme liberality." *Lay v. Treesource Industries, Inc.*, 143 Fed.Appx. 786, 789 (9th Cir. 2005) (citing *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003)).<sup>1</sup> Plaintiffs easily satisfy this lenient standard.

At the outset, Plaintiffs filed the instant Motion prior to the deadline to amend pleadings and add parties of June 20, 2016. Accordingly, Plaintiffs' request for leave to amend is timely and

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<sup>1</sup> "Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." See *Executive Mgmt. v. Ticor Title Ins. Co.*, 188 Nev. 46, 53, 38 P.3d 872, 876 (2002).

Defendants cannot claim undue delay. In that regard, there is no evidence of bad faith or dilatory motive on the part of Plaintiffs as the request for leave to amend simply seeks to conform the factual allegations in the Complaint to the evidence developed in discovery and ensure the proper parties are named in this litigation. Indeed, this is not a situation where Plaintiffs seeks leave to amend in order to surprise Defendants with new and distinct claims at a late stage in discovery. Defendants also cannot claim they will suffer prejudice as a result of Plaintiffs' proposal to add additional Defendants. Lastly, Plaintiffs' proposed amendments are not futile as they are not seeking to bring new and impermissible causes of action.

Defendants may argue that the addition of the seven individual defendants ("Individual Defendants") who make up Defendant Henderson Water Park, LLC's ("HWP") Management Committee is futile. This argument misses the mark. It is undisputed that these Individual Defendants had all management rights, powers and authority over HWP's business, affairs and operations and, therefore, owed a duty to operate Cowabunga Bay safely. Instead, the Individual Defendants approved Cowabunga Bay's unlawful and despicable conduct that caused Leland's non-fatal drowning and, as a result, are properly named as defendants in their individual capacity.

### III. CONCLUSION

Based on the foregoing, the Court should grant Plaintiffs leave to file the Second Amended Complaint.

DATED this 5th day of May, 2016.

CAMPBELL AND WILLIAMS

By /s/ Donald J. Campbell

Donald J. Campbell, Esq. (1216)  
Samuel R. Mirkovich, Esq. (11662)  
700 South Seventh Street  
Las Vegas, Nevada 89101

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 5th day of May, 2016 I caused the foregoing document entitled **Plaintiffs' Motion for Leave to File Amended Complaint** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

/s/ John Y. Chong  
An Employee of Campbell & Williams

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# EXHIBIT 1

# EXHIBIT 1

### BREAK AND ROTATION SCHEDULE-Aquatics

MINIMUM ATTENDANCE - ZONE 1- Tower 1(1-6), East end of River (1, 2, 6-8), Z.Z. run out (1)	<u>TOTAL 12</u>
ZONE 2-Wave Pool (1-5), VIP (1), West end of River (3-5), Tower 2 (1, 3, 4)	<u>TOTAL 12</u>
Zone 3- Tower 3(1-6), Kids Cove (1-2), USA Run outs (5-6)	<u>TOTAL 10</u>
2 BREAKERS PER ZONE (3 ZONES) - ( 1.75-2 HRS. BREAK TIME ALLOTMENT PER ZONE)	<u>TOTAL GUARDS 38</u>

### BREAK AND ROTATION SCHEDULE

AVERAGE ATTENDANCE - ZONE 1- Tower1 (1-8), East end of River (8-9)	<u>TOTAL 10</u>
ZONE 2- River (1-7), Zuma Zooma (1-2), USA (3-4)	<u>TOTAL 11</u>
ZONE 3- Wave Pool (1-7), V.I.P. (1), USA Run Outs (5-6)	<u>TOTAL 10</u>
ZONE 4- Tower 3 (1-7), Kids Cove (1-3)	<u>TOTAL 10</u>
2 BREAKERS PER ZONE (4 ZONES) - ( 1.75-2 HRS. BREAK TIME ALLOTMENT PER ZONE)	<u>TOTAL GUARDS 31</u>

### BREAK AND ROTATION SCHEDULE

MAXIMUM ATTENDANCE - ZONE 1- Tower1 (1-8), East end of River (9-10)	<u>TOTAL 11</u>
ZONE 2- River (1-8), Zuma Zooma (1-2), USA (3-4)	<u>TOTAL 12</u>
ZONE 3- Wave Pool (1-8), V.I.P. (1), USA run outs (5-6)	<u>TOTAL 11</u>
ZONE 4- Tower 3(1-7), Kids Cove (1-4)	<u>TOTAL 14</u>
2 BREAKERS PER ZONE (4 ZONES) - ( 1.75-2 HRS. BREAK TIME ALLOTMENT PER ZONE)	<u>TOTAL GUARDS 48</u>

# EXHIBIT 2

# EXHIBIT 2



# EXHIBIT 3

# EXHIBIT 3

1

DISTRICT COURT  
CLARK COUNTY, NEVADA

PETER GARDNER and CHRISTIAN  
GARDNER, on behalf of minor  
child, LELAND GARDNER,  
Plaintiffs,

vs.

CASE NO.  
A-15-722259-C

HENDERSON WATER PARK, LLC d/b/a  
COWABUNGA BAY WATER PARK, a  
Nevada limited liability company;  
WEST COAST WATER PARKS, LLC, a  
Nevada limited liability company;  
DOUBLE OTT WATER HOLDINGS, LLC,  
a Utah limited liability company;  
DOES I through X, inclusive; ROE  
Corporations I through X, inclusive;  
and ROE Limited Liability Company  
I through X, inclusive,  
Defendants.

VIDEOTAPED DEPOSITION OF SHANE HUISH  
Taken at the offices of Campbell & Williams  
on Tuesday, March 22, 2016  
at 9:33 a.m.  
at 700 South Seventh Street  
Las Vegas, Nevada

Reported by: Denise R. Kelly, CCR #252, RFR

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///		

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1 APPEARANCES:  
2 For the Plaintiffs: DONALD J. CAMPBELL, ESQ.  
3 SAMUEL R. MIRKOVICH, ESQ.  
4 ELIJAH TREDUP, LAW CLERK  
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6 700 South Seventh Street  
7 Las Vegas, Nevada 89101

For the Defendants: PAUL F. EISINGER, ESQ.  
ALEXANDRA B. MCLEOD, ESQ.  
THORNDAL, ARMSTRONG, DELK,  
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1100 East Bridger Avenue  
Las Vegas, Nevada 89101

Also present: SHANE GODFREY,  
LAS VEGAS LEGAL VIDEO  
PETER GARDNER  
CHRISTIAN GARDNER

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INFORMATION TO BE SUPPLIED  
None

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CSR ASSOCIATES OF NEVADA  
LAS VEGAS, NEVADA (702) 382-5015

GARD28

<p style="text-align: center;">5</p> <p>1 LAS VEGAS, NEVADA, TUESDAY, MARCH 22, 2016, 2 9:33 A.M. 3 * * * * * 4 THE VIDEOGRAPHER: Good morning. 023415 5 Today is Tuesday, March 22nd, 2016. The 6 time is approximately 9:33 a.m. 023431 7 This begins the video deposition of Shane 8 Huish. We are located at Campbell &amp; Williams, 9 700 South Seventh Street, Las Vegas, Nevada 89101. 023442 10 My name is Shane Godfrey, court 11 videographer with Las Vegas Legal Video, located at 12 729 South Seventh Street, Las Vegas, Nevada 89101. 023442 13 This is District Court, Clark County, 14 Nevada, Case No. A-15-722259-C, entitled Peter Gardner 15 and Christian Gardner, on behalf of minor child, Leland 16 Gardner, plaintiffs, versus Henderson Water Park, LLC 17 dba Cowabunga Bay Water Park, a Nevada limited 18 liability company, et al., defendants. 023438 19 This video deposition is requested by the 20 attorneys for the plaintiff. 023440 21 Will counsel and all present please state 22 your appearances for the record. 023443 23 MR. CAMPBELL: Donald Jude Campbell, 24 Campbell &amp; Williams, 700 South Seventh Street, 25 Las Vegas, Nevada 89101.</p>	<p style="text-align: center;">7</p> <p>023455 1 A. No. 023458 2 Q. Okay. The procedures that we are going to 3 be following here today are procedures that are 4 detailed by the Nevada Supreme Court and the Nevada 5 Revised Statutes. These procedures that we are going 6 to be following here today are procedures that are 7 designed to elicit testimony from you as a witness in 8 this particular piece of litigation. 023459 9 The opportunity for us to take your 10 deposition is one that's provided for by law. It is an 11 important procedure; and, accordingly, we want to talk 12 to you a little bit about the parameters of it so you 13 have an understanding of just exactly what is expected 14 and required of you by law. 023459 15 The most important feature of today's 16 proceedings is that your testimony is being taken under 17 oath. Any false and material misrepresentation by you 18 could subject you to the pains and penalties of 19 perjury, which is a felony under the laws of the State 20 of Nevada, and subjects you to the pains and penalties 21 of going to prison and/or a fine, depending upon what 22 the likely sentence would be depending upon the judge 23 in the various circumstance. 023451 24 Now, that's not to suggest that you would 25 commit such a serious crime, but it's to impart upon</p>
<p style="text-align: center;">6</p> <p>023450 1 MR. EISINGER: Paul Eisinger and Alexandra 2 McLeod for the defendants. 023453 3 MR. MIRKOVICH: Sam Mirkovich, Campbell &amp; 4 Williams, on behalf of the plaintiffs. 023456 5 MR. TREDUP: Elijah Tredup, law clerk, 6 Campbell &amp; Williams. 023503 7 MR. EISINGER: Please let the record 8 reflect that the plaintiffs are also present. Thank 9 you. 023450 10 THE VIDEOGRAPHER: The witness may now be 11 sworn in by Denise Kelly with CSR Associates. 12 13 SHANE HUISH, 14 having been first duly sworn, was 15 examined and testified as follows: 16 17 EXAMINATION 18 BY MR. CAMPBELL: 023521 19 Q. Would you kindly state your name, spelling 20 your last name. 023525 21 A. Shane Huish, H-u-i-s-h. 023526 22 Q. Mr. Huish, have you ever given deposition 23 testimony? 023531 24 A. I have not. 023532 25 Q. Have you ever testified in a court of law?</p>	<p style="text-align: center;">8</p> <p>1 you the importance of telling the truth in these 2 proceedings at all times. 023532 3 Do you understand that? 023533 4 A. Um-hum, yes. 023534 5 Q. Is that a "yes," okay. 023537 6 It's also important that you understand the 7 questions being asked of you so that you can 8 appropriately respond to it. That is to say, if you 9 don't understand a question that I'm asking of you, 10 please alert me to that fact. I'm happy to reframe the 11 question, put it in other words, address in such a 12 manner that you'll be able to understand it. 023540 13 Will you do that for me? 023542 14 A. Yes. 023542 15 Q. We are under no time constraints today with 16 respect to the taking of your deposition. Accordingly, 17 I want you to take all the time you feel is necessary 18 to think about the question before responding to it. 023548 19 Will you do that? 023547 20 A. Yes, I will. 023548 21 Q. All right. Now, it's important that you 22 answer audibly. While you are being digitally recorded 23 for both sound and visual, the court reporter cannot 24 take down gesticulation and gesturing of the head. For 25 example, in everyday conversation it's not unusual to</p>

2 (Pages 5 to 8)

9

1 nod your head or shake your head to indicate  
2 affirmative or negative responses. We don't mind that  
3 you do that here, just accompany it by a "yes" or a  
4 "no."

08:38:24 5 Do you understand?

08:38:26 6 A. Yes.

08:38:26 7 Q. Okay. Similarly, answering "uh-huhs,"  
8 "huh-uhs" aren't particularly helpful to the court  
9 reporter. So I ask you to always answer "yes" and  
10 "no." Okay?

08:38:28 11 A. Okay.

08:38:36 12 Q. In almost 40 years of doing this and taking  
13 testimony before federal grand juries and in the  
14 private sector in cases such as this, I don't think I  
15 ever had an occasion where I didn't have to remind a  
16 witness to answer audibly.

08:38:38 17 So if I remind you, it's not in any way any  
18 sort of impugning of your character or harassing you,  
19 it's simply to remind you of the importance of going  
20 ahead and answering audibly.

08:38:40 21 Will you do that?

08:38:40 22 A. Yes.

08:38:41 23 Q. Okay. Similarly, you're going to  
24 anticipate some of the questions I ask, upon me asking,  
25 you know, maybe half of the question. In everyday

10

1 conversation if you understand what the person is about  
2 to ask you, not a bit unusual or in any way  
3 discourteous to go ahead and answer the question before  
4 the full question is out. But that creates a bit of a  
5 havoc for the court reporter. So allow me to get the  
6 full question out and then you can answer it fully,  
7 rather than half question, answer, the rest of the  
8 question. All right?

08:38:46 9 A. Okay.

08:38:51 10 Q. All right. I'm going to be asking you  
11 questions based upon your observations, your  
12 communications, your discussions with other persons,  
13 maybe your discussions with other persons about their  
14 discussions with other persons, and all of that is fair  
15 game in these proceedings. It's not Perry Mason time  
16 where somebody is going to be objecting to hearsay, for  
17 example. Hearsay is all admissible in these  
18 proceedings.

08:40:22 19 But your attorney can object on the basis  
20 that there is something maybe wrong with the form of  
21 the question. Irrespective of those objections, which  
22 he may or may not make, you are to answer the question.

08:40:34 23 Do you understand that?

08:40:36 24 A. Yes.

08:40:40 25 Q. The only time that you don't answer the

11

1 question is if you're directed by counsel not to answer  
2 a question based upon some specific privilege, such as  
3 the attorney/client privilege, which is the one most  
4 often provoking a direction not to answer a question at  
5 a deposition.

08:41:01 6 Do you understand that?

08:41:02 7 A. Yes.

08:41:02 8 Q. All right. Similarly, I'm not going to be  
9 asking you to engage in any sort of wild speculation.  
10 But I am entitled to your observations and your best  
11 estimates and conclusions based upon the fact that you  
12 may have witnessed certain events or participated in  
13 certain events.

08:41:12 14 Now, let me explain the difference between  
15 the two. If I ask you, for example, "How long is this  
16 board room table?" You might say, "I don't know,  
17 Mr. Campbell, it looks to me to be about 18' or  
18 20 feet." And you are able to do that based upon the  
19 fact that you've lived a certain number of years, that  
20 you have a certain level of education and  
21 sophistication which allows you to gauge how long this  
22 table is.

08:41:30 23 If, on the other hand, I said to you,  
24 "Mr. Huish, how long is the dining room table in my  
25 living room?" Well, you would have no way of answering

12

1 that question but for rank speculation. First of all,  
2 you've never been to my home. You don't know how long  
3 the table is or even if I have a table.

08:42:10 4 Do you see the difference between the two?

08:42:11 5 A. I do, yes.

08:42:12 6 Q. All right. Now, at a certain point in time  
7 following this deposition, the court reporter is going  
8 to prepare a transcript. That transcript is going to  
9 reflect a verbatim question and answer that took place  
10 here, and in fact every objection, every comment that  
11 was entered into the record.

08:42:37 12 Now, you may, if you elect, change your  
13 testimony with respect to certain matters in that  
14 transcript. Most frequently we see changes reflective  
15 of changes in the nature of spelling, apostrophes,  
16 adding punctuation, that sort of thing. But if you  
17 change your testimony in any material way, for example,  
18 if this were a traffic accident and you testified in  
19 these proceedings that "the light was yellow," and then  
20 upon receiving your transcript you changed your  
21 testimony to say that "the light was red," all right,  
22 that could be used to impeach you. In other words, to  
23 say that you lied at one time or the other, either  
24 during your deposition or afterwards. And of course  
25 you understand why you don't want to place yourself in



13

1 that predicament. Correct?

02:43:33 2 A. Yes.

02:43:34 3 Q. All right. You certainly don't want to be

4 in a situation where we are arguing to the judge and

5 jury that you committed perjury in these proceedings.

6 So we are entitled to your best testimony today.

02:43:54 7 A. Okay.

02:43:55 8 Q. Okay. All right.

02:43:58 9 Is there anything about the procedures that

10 I've detailed for you today that you're not quite sure

11 of or you would like me to address further or amplify

12 for you?

02:44:00 13 A. Not at this point.

02:44:01 14 Q. All right. Is there any reason why your

15 deposition cannot go forward? For example, are you

16 suffering from any mental condition or cognitive

17 impairment which prevents you from understanding the

18 questions that I'm asking of you and you giving me

19 correct, truthful, and responsive answers?

02:44:24 20 A. No.

02:44:25 21 Q. Okay.

02:44:27 22 With that, then I'm going to begin today's

23 deposition of you.

02:44:34 24 You have stated that you have never given

25 testimony in a court of law, nor have you ever given

14

1 testimony in a deposition.

02:44:42 2 Have you given testimony in any proceeding

3 of any kind or type, for example, administrative

4 proceeding or filed affidavits with any official body?

02:44:53 5 A. I'm not sure what you mean by that.

02:44:55 6 Q. Okay. I'm happy to explain it. Thank you

7 to alerting me to that.

02:45:00 8 For example, if you appeared before the

9 Gaming Control Board, you would be sworn, raise your

10 hand, and they would swear you in and you would have to

11 give truthful testimony pursuant to the oath that you

12 took.

02:45:21 13 Have you ever appeared in front of any body

14 like that, any administrative body where you were sworn

15 to tell the truth?

02:45:28 16 A. Umm, yeah. I have been, yeah.

02:45:30 17 Q. Okay. And what administrative body would

18 you have been sworn to tell the truth before?

02:45:37 19 A. Umm, I applied for a beer and wine license

20 for the park.

02:45:41 21 Q. Okay. All right.

02:45:44 22 A. And I --

02:45:44 23 Q. For which park?

02:45:45 24 A. For Cowabunga Bay.

02:45:47 25 Q. I understand there are two Cowabunga Bays?

15

02:45:50 1 A. Yes.

02:45:52 2 Q. Okay. And are you associated with both,

3 sir?

02:45:53 4 A. I am, yes.

02:45:54 5 Q. Okay. Which one did you apply for a beer

6 and liquor license?

02:45:58 7 A. For the one down here. In Las Vegas.

02:46:00 8 Q. In Henderson, Nevada?

02:46:01 9 A. Yes.

02:46:01 10 Q. Okay. So you appeared in front of --

02:46:04 11 A. I think I had to fill out the forms. I

12 can't recall if I had to be sworn in. It was just you

13 fill out the form for it.

02:46:10 14 Q. Oh, okay. You fill out an application for

15 a liquor license wherein you assert that all your

16 answers are true and correct --

02:46:19 17 A. Correct.

02:46:19 18 Q. -- under pains and penalties --

02:46:20 19 MR. EISINGER: Let him finish.

02:46:22 20 BY MR. CAMPBELL:

02:46:22 21 Q. Under pains and penalties of perjury or a

22 similar admonition?

02:46:26 23 A. Correct.

02:46:27 24 Q. Okay. Anything other than that?

02:46:28 25 A. I don't recall. No.

16

02:46:37 1 Q. All right. Tell me a little bit about your

2 background.

02:46:41 3 First of all, how old are you? What is

4 your date of birth?

02:46:47 5 A. I'm 30. And I was born on September 30th,

6 1965.

02:46:51 7 Q. And where were you born?

02:46:52 8 A. I was born in La Mesa, California.

02:46:53 9 Q. Okay. And where did you grow up?

02:46:59 10 A. In that area.

02:47:00 11 Q. Okay. And do you have brothers and

12 sisters?

02:47:04 13 A. I do.

02:47:04 14 Q. Okay. How many?

02:47:05 15 A. I have four brothers -- three brothers, I'm

16 sorry, and one sister.

02:47:10 17 Q. Okay. And you attended school in the

18 La Mesa area?

02:47:16 19 A. I did, yes.

02:47:17 20 Q. Grade school and high school?

02:47:18 21 A. Yes.

02:47:19 22 Q. All right. Did you go on to college?

02:47:20 23 A. I did, yes.

02:47:21 24 Q. All right. And where did you attend

25 college?

17

024724 1 A. I attended Brigham Young University in  
2 Provo, Utah.  
024728 3 Q. Okay. The Y, okay?  
024730 4 A. Yes.  
024730 5 Q. What years did you attend Brigham Young?  
024734 6 A. I was there from '83 until '89, I believe  
7 it was.  
024741 8 Q. Okay. And did you get a degree?  
024743 9 A. I did, yes.  
024744 10 Q. And what was your degree in?  
024745 11 A. In design and architecture.  
024748 12 Q. Okay. What did mom and dad do for a  
13 living?  
024752 14 A. My father at the time owned miniature golf  
15 courses and go-kart tracks, and they were called Family  
16 Fun Centers in southern California.  
024802 17 Q. Okay. And when was it that you --  
18 withdraw.  
024805 19 After you graduated from Brigham Young  
20 University, what did you do?  
024819 21 A. I went to work for my father in San Diego.  
024819 22 Q. Okay. And presumably, you worked managing  
23 the Fun Centers?  
024826 24 A. I worked in the area of processing new  
25 parks and getting them designed, built, and permitted,

18

1 and stuff like that.  
024834 2 Q. Okay.  
024834 3 A. And new attractions for the parks.  
024837 4 Q. Did your siblings work in the business as  
5 well?  
024840 6 A. Yes, they did.  
024840 7 Q. Okay. All of them?  
024841 8 A. No.  
024842 9 Q. Which ones?  
024844 10 A. My brother Scott and my brother Dave, yeah.  
024846 11 Q. And do they still do so?  
024853 12 A. My father has since sold his business, so  
13 not for that business anymore.  
024858 14 Q. Okay. What does Scott and Dave do now?  
024901 15 A. Scott runs a park in Seattle. And Dave  
16 runs the park in Draper.  
024909 17 Q. The park --  
024910 18 A. For Utah, the Cowabunga Bay.  
024912 19 Q. All right. Is there a Cowabunga Bay in  
20 Seattle?  
024915 21 A. No, there is not. It's a different  
22 business.  
024917 23 Q. Okay. What is that business?  
024918 24 A. It's called Family Fun Center.  
024921 25 Q. All right. Which is what the business was

19

1 known in La Mesa?  
024927 2 A. Correct.  
024927 3 Q. Okay. How many Family Fun Centers were  
4 operating in La Mesa at the height of the enterprise?  
024933 5 A. I believe seven.  
024935 6 Q. Okay. Now, you have other siblings that  
7 are not employed in the amusement park business?  
024942 8 A. Correct.  
024942 9 Q. What do they do?  
024943 10 A. My sister is a housewife. And my brother  
11 owns an asphalt recycling company.  
024947 12 Q. Do -- other than your one brother, do any  
13 of your other siblings work with you or for you or in  
14 conjunction with your duties --  
024951 15 A. No.  
024952 16 Q. -- at Cowabunga Bay?  
024954 17 A. No.  
024957 18 Q. Okay. When you went back to California to  
19 work for your father and engage in design and  
20 operations, as I understand it, for what period of time  
21 was that? For example, from when to when was that?  
024958 22 A. I was there for probably three to four  
23 years.  
025001 24 Q. Okay. And then what did you do?  
025002 25 A. And then I took a job with Paramount Parks.

20

025008 1 Q. And what is Paramount Parks?  
025009 2 A. Paramount Parks is a chain of theme parks  
3 located on the East Coast that included five different  
4 theme parks.  
025010 5 Q. All right. And what were the five  
6 different themes at those parks?  
025014 7 A. There was Paramount's Great America in  
8 Santa Clara; Paramount's Kings Island in Cincinnati;  
9 Paramount Canada's Wonderland in Toronto; and Paramount  
10 King Dominion in Virginia; and Paramount Carowinds in  
11 Charlotte, North Carolina.  
025015 12 Q. And were you stationed at one in  
13 particular?  
025018 14 A. I was. I was corporate, so I was at the  
15 corporate headquarters in Charlotte, North Carolina,  
16 and then I had responsibility over two parks.  
025023 17 Q. All right. And were any of those parks  
18 water parks?  
025027 19 A. They were theme parks and one of them had a  
20 water park in it.  
025032 21 Q. Which one was that?  
025034 22 A. Carowinds.  
025038 23 Q. All right. And where was Carowinds  
24 located?  
025039 25 A. Carowinds is in Charlotte, North Carolina.

5 (Pages 17 to 20)

CSR ASSOCIATES OF NEVADA  
LAS VEGAS, NEVADA (702) 382-5015

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<p style="text-align: right;">21</p> <p>00:5140 1 Q. And was that one of the parks that was 2 under your direct supervision? 00:5149 3 A. Yes, it was. Now, the park wasn't under my 4 direct supervision, I was the creative director for the 5 park. 00:5151 6 Q. Okay. So you said that there were two 7 parks that you had some sort of direct involvement with 8 in addition to being corporate. 00:5200 9 A. Correct. 00:5201 10 Q. Carowinds is one? 00:5202 11 A. And Great America. 00:5204 12 Q. And Great America. 00:5205 13 Okay. How do you spell Carowinds for the 14 court reporter? 00:5207 15 A. C-a-r-o-w-i-n-d-s. 00:5212 16 Q. Okay. And what does Carowinds stand for? 17 I mean, is it just a location? 00:5217 18 A. Carowinds is a theme park on the border of 19 North and South Carolina, and they got the name from 20 the winds that blow through the Carolinas. 00:5225 21 Q. Got it. All right. 00:5225 22 And Great America is located where? 00:5227 23 A. Santa Clara, California. 00:5230 24 Q. Santa Clara, all right. 00:5232 25 And what was your exact title?</p>	<p style="text-align: right;">23</p> <p>1 was -- it was probably '98 or '99. 00:5251 2 Q. All right. Let me jump back just a little 3 bit. 00:5344 4 What was the name of the organization that 5 you were with that you assumed the responsibility for 6 more direct involvement in Carowinds and Great America, 7 what was the overall -- 00:5405 8 A. Paramount Park. 00:5411 9 Q. Paramount Parks. You told me that and I 10 forgot, I apologize. 00:5415 11 Okay. So then you went after 12 five-and-a-half years or so to? 00:5424 13 A. Six Flags. 00:5425 14 Q. Six Flags. And was that corporate? 00:5426 15 A. It was a corporate position. 00:5428 16 Q. And where was that located? 00:5430 17 A. Oklahoma City. 00:5432 18 Q. Okay. And what was your position at 19 Six Flags? 00:5435 20 A. I was director of design for the West Coast 21 parks. 00:5443 22 Q. Basically the same thing that you had done 23 for Paramount? 00:5446 24 A. I had more responsibility and more parks. 25 And I was more -- at the time Six Flags had just</p>
<p style="text-align: right;">22</p> <p>00:5233 1 A. Creative director. 00:5236 2 Q. Okay. And for what period of time did you 3 occupy that position? 00:5244 4 A. I was there for roughly five-and-a-half, 5 six years. 00:5248 6 Q. Okay. And during that period of time, did 7 your duties change? 00:5254 8 A. My responsibilities changed, yes. 00:5256 9 Q. How so? 00:5256 10 A. I became more of the water park specialist 11 for the company, because we were developing the water 12 park at Carowinds. And so as the other parks started 13 to add water parks to their theme parks, I was pulled 14 into those projects. 00:5313 15 Q. Okay. And did your title at any time 16 change? 00:5320 17 A. No. 00:5321 18 Q. Okay. So your title always remained the 19 same when you were with that particular organization? 00:5329 20 A. Correct. 00:5337 21 Q. When did you leave? 00:5339 22 A. I don't recall the exact year. But after 23 six years, I then took a job with Six Flags. 00:5338 24 Q. Okay. What year was that? 00:5341 25 A. Let's see. My son was born in '96 and I</p>	<p style="text-align: right;">24</p> <p>1 purchased a bunch of mid market parks, and so I was 2 responsible for the rebranding of those parks into 3 Six Flags Parks. 00:5354 4 Q. Okay. And again, what year did you begin 5 with Six Flags? 00:5358 6 A. I don't know the -- I think it would have 7 been '98 or '99. 00:5360 8 Q. And did you have a particular designated 9 corporate title? 00:5367 10 A. I was director of design. 00:5367 11 Q. Was your degree a BA or a BS? 00:5370 12 A. BA. 00:5371 13 Q. Okay. And the exact degree that you 14 achieved at BYU? 00:5375 15 A. It was architecture design. 00:5377 16 Q. Do you have an engineering background? 00:5379 17 A. No, I don't. 00:5383 18 Q. How long did you work for Six Flags in that 19 capacity? 00:5386 20 A. I was there for about a year-and-a-half, 19 21 months, somewhere around there. 00:5387 22 Q. And then what happened? 00:5389 23 A. And then at the time I got divorced and I 24 then went back to work for my family. 00:5391 25 Q. Were they still operating?</p>

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<p>25</p> <p>02:58:22 1 A. At the time they had sold the parks in 2 California and they were building a new park in 3 Seattle. 02:58:28 4 Q. And that was in what year? 02:58:42 5 A. '99. 02:58:52 6 Q. I should have asked you this earlier. When 7 did you, when did you get married? 02:58:57 8 A. In '93. 02:59:08 9 Q. And to whom did you marry? 02:59:24 10 A. Amy Reich. 02:59:40 11 Q. Is she a Utah girl? 02:59:55 12 A. Yes, she is. 02:59:58 13 Q. Okay. Is now? 02:59:57 14 A. Is now. 02:59:58 15 Q. Okay. 02:59:58 16 A. I'm sorry. Her maiden name is Amy Clegg. 17 Amy Reich is her current married name. 02:59:58 18 Q. She is remarried? 02:59:58 19 A. Yes. 02:59:58 20 Q. Okay. Where does she reside? 02:59:58 21 A. She lives in Sandy, Utah. 02:59:58 22 Q. Okay. And Sandy, Utah where -- no, it's 23 Draper where Cowabunga Bay is. 02:59:58 24 A. Yes. 02:59:58 25 Q. How many children do you have?</p>	<p>27</p> <p>02:58:30 1 Q. All right. What were the circumstances 2 under which you departed employment there? 02:58:39 3 A. My wife moved back to Utah, and I needed to 4 have the freedom to be able to leave to see my kids. 5 So I had to leave them and work for my family. I then 6 moved to Utah and then commuted to Seattle for work so 7 I could be near my children. 02:58:54 8 Q. Okay. During the period of time that you 9 were with Paramount or Six Flags, was there any 10 litigation that you were aware of regarding water parks 11 and/or personal injuries that had occurred at water 12 parks? 02:59:13 13 A. No. Not that I'm aware of, no. 02:59:16 14 Q. Okay. 02:59:22 15 Now, after you got divorced and you started 16 working at the family business again in Seattle, how 17 long did that last? What period of time was that? 02:59:27 18 A. Well about -- well, I had been with them 19 sort of since. Yeah, I'm still kind of -- I don't 20 understand. I still work for -- well, I still work for 21 the family, I guess. 02:59:35 22 Q. Okay. All right. You seem to be 23 struggling with, with answering my question in that 24 regard. So let's see if we can work through it. 02:59:44 25 A. Okay.</p>
<p>26</p> <p>02:59:52 1 A. I have two. 02:59:54 2 Q. And how old are they? 02:59:55 3 A. They are 20, 19 and 20. 02:59:56 4 Q. What do they do? 02:59:56 5 A. They are both in school. 02:59:56 6 Q. Where do they attend? 02:59:57 7 A. One is at University of Utah and the other 8 one is at Utah State. 02:59:58 9 Q. Do they reside in Utah? 02:59:58 10 A. Yes. 02:59:58 11 Q. Okay. Are they in any way involved in your 12 business enterprises, family business? 02:59:58 13 A. During the summers they work at the park. 02:59:58 14 Q. What park? 02:59:58 15 A. They work at the Draper, Utah park. 02:59:58 16 Q. What do they do there? 02:59:58 17 A. My one son was a lifeguard supervisor last 18 year and the other one was a cabana server. 02:59:58 19 Q. Okay. What is a cabana server? 02:59:58 20 A. We have rental cabanas at the park and then 21 he takes the food to them. 02:59:58 22 Q. Got it. 02:59:58 23 Okay. So you were with Six Flags about 18 24 months or so? 02:59:58 25 A. Yes.</p>	<p>28</p> <p>02:59:58 1 Q. Is your family associated with the 2 Cowabunga ventures in Draper, Utah and in Las Vegas, 3 Nevada? 02:59:58 4 A. They are under different partnerships, 5 so... 02:59:58 6 Q. Is the answer "yes"? 02:59:58 7 MR. HISINGER: Object. It's been asked and 8 answered. 02:59:58 9 MR. CAMPBELL: I'm asking him. 02:59:58 10 BY MR. CAMPBELL: 02:59:58 11 Q. Is the answer "yes"? 02:59:58 12 A. Can you repeat the question. 02:59:58 13 Q. Sure. Is your family associated with the 14 business enterprises of Cowabunga Bay in Draper and in 15 Henderson, Nevada? 02:59:58 16 A. Not the family entity that I worked for in 17 Seattle, but my partners in the parks are my brothers. 02:59:58 18 Q. Okay. So the answer is "yes"? 02:59:58 19 A. Yes. 02:59:58 20 Q. Okay. So let's drill down on that a little 21 bit. 02:59:58 22 Let's talk about Draper. Your brothers are 23 involved in the entity in Draper? 02:59:58 24 A. Correct. 02:59:58 25 Q. Are your brothers also involved in the</p>

1 entity in Henderson?

10:01:18 2 A. Yes, they are.

10:01:17 3 Q. Okay. Dealing now with Draper. What is

4 your brothers' involvement?

10:01:22 5 A. There is a partnership that owns the park

6 and we are all partners in that partnership.

10:01:27 7 Q. And who are the people that are partners in

8 that partnership?

10:01:32 9 A. Scott Huish, Dave Huish, Mike Huish, Tina

10 Huish, myself, and then some other members. Tom Short

11 who is a manager during our California parks. And I

12 believe Rich Yee, who is the manager of the Seattle

13 park. And I believe that's all that's involved.

10:01:39 14 Q. Okay. We went pretty quickly through that.

15 So Scott?

10:02:03 16 A. Scott.

10:02:04 17 Q. Dave, Tina. Who else?

10:02:06 18 A. Mike.

10:02:09 19 Q. Mike. Those are the Huish --

10:02:10 20 A. Those are the Huishes.

10:02:12 21 Q. The Huish family members; is that correct?

10:02:14 22 A. Correct.

10:02:15 23 Q. Any others?

10:02:16 24 A. Myself.

10:02:18 25 Q. And yourself. Okay. And then Tom Short

1 and then Rich?

10:02:23 2 A. Rich Yee.

10:02:25 3 Q. I apologize.

10:02:26 4 And that's a partnership that operates the

5 Cowabunga Bay in Draper, Utah?

10:02:34 6 A. That's the partnership that owns it.

10:02:36 7 Q. Owns it?

10:02:38 8 A. Yes.

10:02:37 9 Q. All right.

10:02:37 10 A. And then Dave manages it.

10:02:40 11 Q. Your brother manages it?

10:02:42 12 A. Yes.

10:02:43 13 Q. And does he have basically the same job and

14 function that you are here in Las Vegas?

10:02:50 15 A. Yes.

10:03:02 16 Q. Okay. Now, moving on to Henderson. What

17 is, what is the family involvement in Henderson?

10:03:06 18 A. Henderson Water Park is made up of

19 different entity partners and our group, which is a

20 different group than that, is part of the Henderson

21 partnership.

10:03:21 22 Q. Which is a different group than that.

23 Okay. Let's see if we can't be a little bit clearer on

24 that.

10:03:28 25 Henderson Water Park is what?

10:03:31 1 A. Henderson Water Park is made up of two LLCs

2 and two other, two others. I'm not sure how they're

3 partnered, if they are an LLC or if they're just listed

4 as individuals.

10:03:47 5 Q. Okay. So in Henderson Water Park. And

6 Henderson Water Park, is that the overall entity so to

7 speak?

10:03:54 8 A. Henderson Water Park is the, the owners of

9 the park.

10:03:54 10 Q. Okay. And the owner, when you say owners

11 of the park, you mean Cowabunga Bay Henderson?

10:04:05 12 A. Correct.

10:04:08 13 Q. Land and facilities?

10:04:08 14 A. Correct.

10:04:10 15 Q. Okay. And is that a corporation? An LLC?

16 What is it?

10:04:20 17 A. It's an LLC.

10:04:23 18 Q. Okay.

10:04:26 19 All right. And members of that LLC

20 include, to the best of your knowledge and belief, two

21 other LLCs and possibly two other individuals; is that

22 correct?

10:04:42 23 A. Correct.

10:04:45 24 Q. All right. What are the two other LLCs

25 that are members?

10:04:46 1 A. Double Ott and West Coast Water Parks.

10:04:50 2 Q. And who are the individuals that are

3 members?

10:04:55 4 A. Craig Nielsen. And I'm not sure how he is

5 listed as a partner. If it's his name or if he goes on

6 under Craig Nielsen Aquatics or I'm not sure.

10:05:17 7 Q. How do you spell Mr. Nielsen's last name?

10:05:18 8 A. N-i-e-l-s-e-n (nib).

10:05:24 9 Q. And the other person?

10:05:27 10 A. Tom Welch.

10:05:30 11 Q. And is that c-h or s-h?

10:05:33 12 A. A c-h.

10:05:37 13 Q. And you believe that Craig Nielsen may

14 actually be associated with another water park entity

15 of some sort?

10:05:43 16 A. I'm not sure how he would have listed his

17 partnership, if it's an LLC or if he is just Craig

18 Nielsen as an individual. I know that we are like

19 West Coast Water Parks, LLC. I don't know how Craig

20 has named his investment group or his partnership.

10:05:57 21 Q. Okay. And Tom Welch you believe is just an

22 individual?

10:06:11 23 A. He is. He is a very, very small owner.

10:06:14 24 Q. Okay. When you say small?

10:06:17 25 A. I think he is less than 2 percent.

100625 1 Q. Okay.

100626 2 All right. And what percentage of

100627 3 Henderson Water Park is owned by Double Ott?

100628 4 A. I'm not aware of the exact percentage.

100629 5 It's somewhere between 43 and 46.

100630 6 Q. And West Coast Water Parks?

100631 7 A. 39 and 42.

100632 8 MR. EISINGER: Between those numbers?

100633 9 THE WITNESS: Yeah, I'm not real sure on

100634 10 the percentages but I kind of know the --

100635 11 MR. EISINGER: That's fine.

100636 12 MR. CAMPBELL: Let me work with him and

100637 13 I'll get him through it, okay.

100638 14 BY MR. CAMPBELL:

100639 15 Q. So Craig Nielsen would own a very small

100640 16 percentage --

100641 17 A. Correct.

100642 18 Q. -- based upon that?

100643 19 Okay. Let's talk a little bit about

100644 20 Double Ott. Who are the individuals that are involved

100645 21 in Double Ott?

100646 22 A. I, I know the people, but I don't know how

100647 23 the company is formed. So I don't know who is in that

100648 24 ownership, but I know individuals that I work with. I

100649 25 don't know if they are actually involved in that

100650 1 partnership.

100651 2 Q. Okay. You work with some people that are

100652 3 in some way associated with Double Ott?

100653 4 A. Yes.

100654 5 Q. But you don't know what their exact

100655 6 association is. Fair enough?

100656 7 A. Correct, yes.

100657 8 Q. Okay. Who are these people?

100658 9 A. Orluff Ophaikens.

100659 10 Q. Orluff?

100660 11 A. Orluff.

100661 12 Q. Orluff. How do you spell that?

100662 13 A. O-r-l-u-f-f. Ophaikens is

100663 14 O-p-h-a-i-k-e-n-s.

100664 15 Q. Where is Mr. Ophaikens from? Is he in

100665 16 Las Vegas?

100666 17 A. He is in Ogden.

100667 18 Q. What does he do in Ogden?

100668 19 A. I think he's retired.

100669 20 Q. And do you know what he did before he

100670 21 retired?

100671 22 A. Yes. He owns a construction company.

100672 23 Q. And the name of that construction company?

100673 24 A. R&O Construction.

100674 25 Q. Do they do business here in Las Vegas,

100675 1 Nevada?

100676 2 A. They do.

100677 3 Q. Are they involved in any projects

100678 4 currently?

100679 5 A. Building?

100680 6 Q. That's the question.

100681 7 A. I believe so, yes.

100682 8 Q. Do you know which ones?

100683 9 A. I know they are working on the IKEA.

100684 10 Q. Any others?

100685 11 A. Not that I'm aware. Well, I don't know.

100686 12 Q. And do you know who the principal of the

100687 13 company is, of the construction company is now? Is it

100688 14 one of Mr. Ophaikens' family members?

100689 15 A. I believe that Slade and Chet work with

100690 16 him. I'm not sure how it's made up or how the

100691 17 hierarchy is.

100692 18 Q. Do Slade and Chet work with you or are they

100693 19 associated with Double Ott?

100694 20 A. That's what I don't know.

100695 21 Q. You don't know?

100696 22 A. I don't know how -- I know that they are a

100697 23 family, but I don't know how that Double Ott is made

100698 24 up. If they are involved in it or not.

100699 25 Q. Well, let me ask a slightly different

100700 1 question whether they are involved in Double Ott or

100701 2 not.

100702 3 Do you meet with them, deal with them,

100703 4 communicate with either Slade or Chet?

100704 5 A. Yes, I do.

100705 6 Q. All right. And how so? How do you deal

100706 7 with them? That is to say, on what matters do you deal

100707 8 with them?

100708 9 A. We will discuss the financial performance

100709 10 of the park.

100710 11 Q. Okay. And is Slade the older or the

100711 12 younger?

100712 13 A. He is the older one.

100713 14 Q. Okay. And what is the age difference

100714 15 between those gentlemen?

100715 16 A. I don't know. I would imagine he's --

100716 17 Slade would be in his 45 and Chet is 42.

100717 18 Q. And Orluff?

100718 19 A. 78, 76.

100719 20 Q. Do Slade and/or Chet reside in Las Vegas or

100720 21 are they both Utah residents?

100721 22 A. Slade is a Utah resident. Chet lives here.

100722 23 Q. All right. And how frequently do you

100723 24 interact with the --

100724 25 A. Ophaikens?

12:10:07 1 Q. -- Ophelians?  
 12:10:07 2 A. Chet will stop by the park every now and  
 3 then with his family because he is local. And usually  
 4 we will meet at the end of the season and go over the  
 5 financial numbers with them and the performance of the  
 6 park.  
 12:11:13 7 Q. Is there any communication with them during  
 8 the season?  
 12:11:13 9 A. Yeah. You know, every now and then I'll  
 10 get a phone call, "How's it going?" Stuff like that.  
 12:11:20 11 Q. Okay. Any meetings?  
 12:11:20 12 A. Usually not during the season, no.  
 12:11:21 13 Q. The meetings take place?  
 12:11:23 14 A. During the off season.  
 12:11:23 15 Q. During the off season. How many meetings  
 16 take place during the off season?  
 12:11:29 17 A. One.  
 12:11:47 18 Q. Now, tell me about West Coast Water Parks.  
 19 Who are the principals of that?  
 12:11:55 20 A. Myself and my two brothers would be the  
 21 major partners.  
 12:12:29 22 Q. What about your sister Tina?  
 12:12:30 23 A. She has a small percentage.  
 12:12:33 24 Q. Okay. Which percentage of West Coast Water  
 25 Parks do you own?

12:12:40 1 A. In the 40s. 41.  
 12:12:43 2 Q. And Scott?  
 12:12:49 3 A. Equal.  
 12:12:53 4 Q. And Dave?  
 12:12:54 5 A. I take that back. It has to be less  
 6 because Dave owns 10. So I must be at -- well,  
 7 probably 38, 37, or 39, somewhere in there. I really  
 8 am not --  
 12:13:11 9 Q. Let's start over.  
 12:13:12 10 A. Okay.  
 12:13:13 11 Q. Okay. Tell me who all of the -- you've  
 12 told me that there are certain people involved. Are  
 13 they all equity partners? For example, is Rich Yee an  
 14 equity partner? Is Tom an equity partner?  
 12:13:26 15 A. Yes, they have an involvement in West Coast  
 16 Water Parks.  
 12:13:31 17 Q. All right. So here's -- let's do it this  
 18 way. Starting with yourself, what percentage do you  
 19 now believe that you own?  
 12:13:39 20 A. I'm somewhere around 35, 36.  
 12:13:44 21 Q. Scott?  
 12:13:45 22 A. Would be the same.  
 12:13:51 23 Q. Dave?  
 12:13:54 24 A. Would be 10.  
 12:13:53 25 Q. Tina?

12:13:55 1 A. All the rest of them are going to be around  
 2 1 or 2. And I'm not sure how it adds up or how much it  
 3 falls for each one. But it would be Tina and Mike and  
 4 I believe Tom Short and Rich Yee.  
 12:14:09 5 Q. Mike who, I'm sorry?  
 12:14:11 6 A. Mike Eulish --  
 12:14:12 7 Q. Okay.  
 12:14:12 8 A. -- is my brother.  
 12:14:28 9 Q. Okay.  
 12:14:27 10 All right. Now, in addition to being  
 11 investors, you have, you have hands-on responsibility  
 12 at the park in some measure; is that correct?  
 12:14:33 13 A. I am the general manager at the park.  
 12:14:39 14 Q. Right. And what about Scott?  
 12:14:44 15 A. No.  
 12:14:53 16 Q. No what?  
 12:14:53 17 A. He doesn't work at the park.  
 12:14:58 18 Q. Okay. What does he do for a living?  
 12:15:00 19 A. He is in Seattle and he oversees the park  
 20 up there.  
 12:15:04 21 Q. Okay. And when you say the park in  
 22 Seattle?  
 12:15:07 23 A. I'm sorry, the Family Fun Center.  
 12:15:10 24 Q. Family Fun Center.  
 12:15:11 25 A. Yes.

12:15:11 1 Q. And presumably, that Family Fun Center is  
 2 much like the ones that were operated in La Mesa where  
 3 you have --  
 12:15:19 4 A. Correct. Miniature golf and go-karts and  
 5 those sort of attractions.  
 12:15:24 6 Q. Got it, okay.  
 12:15:24 7 Not water parks?  
 12:15:25 8 A. It's not a water park.  
 12:15:26 9 Q. All right. How about Dave?  
 12:15:26 10 A. Dave is the general manager of  
 11 Cowabunga Bay in Draper.  
 12:15:33 12 Q. Okay. Tina?  
 12:15:39 13 A. She's just, she stays home with her family.  
 12:15:44 14 Q. Okay. How about Tom?  
 12:15:45 15 A. Tom works for the Family Fun Centers in  
 16 Seattle.  
 12:15:53 17 Q. Rich Yee?  
 12:15:59 18 A. He works for the Family Fun Centers in  
 19 Seattle.  
 12:16:00 20 Q. What does he do?  
 12:16:11 21 A. He is the general manager of the Seattle,  
 22 the Tukwila Family Fun Center.  
 12:16:16 23 Q. Are there multiple Fun Centers in Seattle?  
 12:16:20 24 A. There are.  
 12:16:21 25 Q. How many?

12:1821 1 A. There are two in the Seattle area and then  
2 there is half of a partnership in Portland.  
12:1827 3 Q. Okay. Is that a Fun Center as well as --  
12:1831 4 A. It is.  
12:1831 5 Q. -- opposed to an aquatic park?  
12:1834 6 A. It's a Fun Center.  
12:1835 7 MR. EISINGER: Let him finish asking his  
8 question.  
12:1838 9 THE WITNESS: Sorry.  
12:1841 10 BY MR. CAMPBELL:  
12:1842 11 Q. And Mike, what is it that he does?  
12:1845 12 A. Mike owns an asphalt recycling company.  
12:1848 13 Q. Where?  
12:1854 14 A. In Salt Lake City.  
12:1700 15 Q. Does he have any business interests or  
16 connection to -- I know I'm going to butcher this --  
17 the Ophaikens? Do I have the name correct?  
12:1715 18 A. Correct.  
12:1718 19 Q. Ophaikens?  
12:1718 20 A. No, he does not.  
12:1734 21 Q. He does not, okay.  
12:1735 22 Please detail for me, taking as much time  
23 as you feel is necessary, all of your duties and  
24 responsibilities as the general manager for  
25 Cowabunga Bay here in Henderson, Nevada.

12:1753 1 A. I'm responsible for the overall day-to-day  
2 operation in each one of the departments. I'm  
3 responsible for the financial performance. I'm  
4 responsible for making sure that it is run properly,  
5 safely, and to our expectations.  
12:1800 6 Q. Okay. Do you wish to add to that in any  
7 way?  
12:1804 8 A. That's generally what I do.  
12:1809 9 Q. Have you done that at all times since the  
10 park has been opened?  
12:1815 11 A. Yes.  
12:1820 12 Q. Is there anyone at the park physically  
13 besides yourself to whom you answer on a daily basis?  
12:1822 14 A. No.  
12:1823 15 Q. All right. But you do answer to other  
16 owners at some point in time; is that correct?  
12:1824 17 A. I report to them, yes.  
12:1825 18 Q. Okay. And who do you report to? Just give  
19 me their names.  
12:1841 20 A. Scott Huish, Craig Nielsen, Orloff  
21 Ophaikens, Slade Ophaikens, and Chat Ophaikens.  
12:1850 22 Q. And how frequently do you report to them?  
12:1854 23 A. We meet once a year to review the  
24 performance of the park.  
12:2003 25 Q. Okay. A little bit -- I understand that

1 you told me that.  
12:2006 2 How often do you report to these  
3 individuals? How often do you speak to them?  
12:2011 4 MR. EISINGER: Asked and answered. Object  
5 to the form.  
12:2013 6 BY MR. CAMPBELL:  
12:2013 7 Q. Go ahead.  
12:2015 8 A. I speak with Chat when he comes into the  
9 park. I see him. I speak with Slade and Orloff  
10 roughly two times a year through the season.  
12:2027 11 Q. Here in Las Vegas?  
12:2028 12 A. Yes. So if Orloff comes down to town, he  
13 will stop by with his family.  
12:2037 14 Q. Okay.  
12:2037 15 A. Slade I usually only see in Utah when we  
16 meet.  
12:2044 17 Q. And the annual meetings are in Utah?  
12:2047 18 A. Yes.  
12:2048 19 Q. Where?  
12:2050 20 A. At RSO Construction office in Salt Lake.  
12:2122 21 Q. When was the last meeting with two or more  
22 of the owners?  
12:2133 23 A. I believe it was in -- well, you mean like  
24 an official meeting or the last time we were --  
12:2141 25 Q. Any meeting.

12:2143 1 A. We were together yesterday.  
12:2146 2 Q. Okay. And who is -- when you say "we," who  
3 is that?  
12:2152 4 A. Slade, Scott, Orloff, Chat, and Craig.  
12:2201 5 Q. And where did this meeting take place?  
12:2204 6 A. It took place on a dirt lot at  
7 Cowabunga Bay.  
12:2211 8 Q. Was anyone else present?  
12:2215 9 A. No.  
12:2217 10 Q. All right. And how long did the meeting  
11 last?  
12:2220 12 A. Two hours.  
12:2225 13 Q. And when was this meeting first scheduled?  
12:2226 14 A. It was scheduled about two weeks ago.  
12:2235 15 Q. And who scheduled it?  
12:2240 16 A. I believe it was Slade.  
12:2247 17 Q. And what was the purpose of scheduling the  
18 meeting?  
12:2250 19 A. There is a land developer who purchased the  
20 property next to us, and he wants us to build a  
21 retaining wall against our property. And so he has  
22 been coming to us asking for us to do that. So they  
23 came into town to see the site and to meet with the  
24 owner.  
12:2310 25 Q. All right. And did that meeting with the



45

1 owner take place?

102315 2 A. I don't believe it has yet.

102318 3 Q. Who is the owner?

102318 4 A. The project name is Gateway and the contact

5 I've had is Jim.

102328 6 Q. And what is the business that Gateway is

7 involved in?

102332 8 A. I believe they are developing medical

9 buildings next to us.

102343 10 Q. So that's the most recent meeting that was

11 had with the other owners?

102358 12 A. Yes.

102400 13 Q. Okay. What was the most recent meeting

14 before that?

102405 15 A. It was in November.

102408 16 Q. And what was that about?

102410 17 MR. EISINGER: I'm going to caution you, if

18 counsel was present, Ms. Gordon was present, Aviva

19 Gordon was present, I would caution you not to divulge

20 attorney/client privilege, which --

102428 21 MR. CAMPBELL: I'm not going to ask you

22 about attorney/client privilege.

102434 23 BY MR. CAMPBELL:

102434 24 Q. What was it about?

102438 25 MR. EISINGER: Wait a second. If there was

46

1 a lawyer in the room at this meeting, I'm going to

2 instruct him not to answer. It's attorney/client

3 privilege.

102452 4 MR. CAMPBELL: That's not -- no, that's not

5 the standard. So let's work through this because --

102454 6 MR. EISINGER: I --

102454 7 MR. CAMPBELL: -- I have been in front of

8 the Discovery Commissioner many times. Excuse me.

102458 9 MR. EISINGER: I haven't said a word. I'm

10 just listening.

102460 11 MR. CAMPBELL: Many times on this. Simply

12 because a lawyer is present doesn't make everything

13 attorney/client privilege. Let's work through it and

14 see what we are talking about.

102468 15 BY MR. CAMPBELL:

102468 16 Q. So when was this meeting?

102468 17 A. November.

102451 18 MR. EISINGER: Wait. I'm asking --

102451 19 MR. CAMPBELL: He said November.

102452 20 MR. EISINGER: Wait. I have a right as my

21 client here.

102454 22 Was Ms. Gordon present?

102458 23 MR. CAMPBELL: Excuse me. This is not your

24 deposition.

102458 25 MR. EISINGER: I can certainly ask my

47

1 client a question.

102502 2 MR. CAMPBELL: No. No, you can't.

102503 3 MR. EISINGER: I'll instruct you that if

4 Ms. Gordon was present, do not answer the question.

102508 5 THE WITNESS: Ms. Gordon wasn't there.

102511 6 MR. EISINGER: Okay. As simple as that.

7 I'll let him answer the question, Counsel.

102517 8 MR. CAMPBELL: I'm not going to acquiesce

9 in the notion that you can ask questions during this

10 deposition, number one, or otherwise instruct him to

11 answer a question or not answer a question solely on

12 whether or not another lawyer was present or not

13 present. And that's the state of the record now and

14 I'll deal with that later.

102527 15 MR. EISINGER: Fine. I'm going to

16 represent my client as best as. We have a difference

17 of opinion on this.

102533 18 BY MR. CAMPBELL:

102533 19 Q. So what was the reason for this meeting?

102535 20 A. We reviewed the financials of the park.

102538 21 Q. Okay. And where was this meeting?

102542 22 A. It was in Salt Lake City.

102548 23 Q. Where?

102550 24 A. At the R&O Construction office.

102553 25 Q. And who was present?

48

102557 1 A. Orloff, Chat. No, I don't think Chat was

2 there. It was Glade, Craig, Tom, myself, and Scott.

3 And their accountant was there as well, Charlie Auger.

102558 4 Q. How do you spell Charlie's last name?

102561 5 A. A-u-g-e-r.

102565 6 Q. When you say their accountant, whose

7 accountant?

102568 8 A. I would assume -- well, he works for R&O so

9 he is on that side.

102570 10 Q. Double Ott and the Opheikens?

102571 11 A. Opheikens.

102572 12 Q. Opheikens.

102575 13 A. Kook me a while too.

102578 14 Q. I was going to ask you how long did it take

15 you to...

102581 16 They are the majority equity holders?

102585 17 A. In Henderson Water Park?

102588 18 Q. Correct.

102590 19 A. Yes.

102593 20 Q. Okay. All right. That was November. Do

21 you remember the day?

102594 22 A. No, I don't.

102598 23 Q. How was it scheduled?

102601 24 A. They basically say, "Hey, we are all going

25 to be in Utah this week. Can we meet?" And I'll make

1 a drive up there if I'm there. And we just sit down  
2 and meet in their conference room. And then we'll go  
3 over financials, what our projections are, and how much  
4 money is in the bank, and just, you know, current  
5 situation of the park.

1022612 6 Q. Okay. So that was in November.

1022617 7 When was the meeting before the November  
8 meeting? When was the last time before the November  
9 meeting that you met with another equity holder?

1022635 10 A. It would have been after the 2014 season.  
11 I'm not too sure of the date. It would have been in  
12 the fall, I would imagine.

1022648 13 Q. So is it your testimony that between the  
14 fall of 2014 and the fall of 2015 that you did not have  
15 any meeting of any kind with any other individual  
16 associated with the ownership of the park?

1022653 17 A. There was a meeting where Ms. Gordon was  
18 present.

1022658 19 Q. All right. And when was that meeting?

1022673 20 A. That was sometime in June of 2015.

1022677 21 Q. And who was present besides her?

1022682 22 A. Craig Nielsen, Scott Huish, Shane Huish,  
23 Chet Ophaikens, and I believe Orluff and Glade were on  
24 a phone.

1022693 25 Q. And where physically were you located?

1022697 1 A. Here in Las Vegas.

1022699 2 Q. Where?

1022700 3 A. At the R&O Construction office.

1022701 4 Q. How long did this meeting last?

1022711 5 A. It was probably an hour.

1022724 6 Q. Were there any sorts of minutes that were  
7 kept at the meeting?

1022728 8 A. Not that I'm aware of.

1022729 9 Q. How did you become aware that this meeting  
10 was to take place?

1022737 11 A. They just -- well, they'll usually call and  
12 say, "Hey, when are you going to be able to come over,  
13 because we are all in town?" So phone calls.

1022749 14 Q. Okay. What was the purpose of this  
15 meeting?

1022750 16 (No answer provided by deponent.)

1022751 17 MR. EISINGER: I'm going to object and  
18 instruct you not to answer. Attorney/client privilege.

1022759 19 MR. CAMPBELL: As to the purpose of the  
20 meeting?

1022768 21 MR. EISINGER: Yes. Asking what it was  
22 about, that's attorney/client privilege. Ms. Gordon  
23 was there. She's also private counsel for these people  
24 in this litigation.

1022767 25 MR. CAMPBELL: Well, we are going to be

1 back in court on this. Simple as that.

1023140 2 MR. EISINGER: I understand your position,  
3 Counsel. We don't have to argue about that, we have a  
4 difference of opinion.

1023145 5 MR. CAMPBELL: I'm not going to argue about  
6 it. There is abundant case law that says that you're  
7 wrong. If you want to give me a case that stands for  
8 the proposition --

1023149 9 MR. EISINGER: Of attorney/client  
10 privilege?

1023152 11 MR. CAMPBELL: That my merely asking what  
12 the general subject matter was about and the purpose of  
13 the meeting.

1023153 14 BY MR. CAMPBELL:

1023153 15 Q. What was the purpose of meeting?

1023153 16 (No answer provided by deponent.)

1023153 17 MR. EISINGER: Objection. Instruct him not  
18 to answer. Attorney/client privilege.

1023154 19 MR. CAMPBELL: For purposes of making my  
20 record, I believe that that's obstructive to the  
21 deposition process. It's consistent with the  
22 obstruction that has been taking place so far, and  
23 we'll deal with at a later point in time. But I'm not  
24 acquiescing in the assertion to the privilege. I  
25 believe it's absolutely incorrect.

1023156 1 However, that being the case, let me move  
2 on.

1023157 3 BY MR. CAMPBELL:

1023157 4 Q. Was there anyone other than the owners of  
5 the water park present at this last meeting that you  
6 discussed?

1023158 7 A. Which meeting are we talking about? The  
8 one in --

1023221 9 Q. That you were directed not to tell me about  
10 what the subject matter, general subject matter of the  
11 meeting was.

1023231 12 A. No, there wasn't.

1023233 13 Q. It was the attorney and all of the equity  
14 owners; is that correct?

1023235 15 A. Yes.

1023235 16 Q. Okay. And the attorney's name?

1023240 17 A. Aviva Gordon.

1023240 18 Q. Who is Aviva Gordon?

1023252 19 A. She's an attorney here in town.

1023253 20 Q. All right. And does she provide legal  
21 services to Cowabunga Bay or the entities that  
22 operate --

1023301 23 A. She has in the past, yes.

1023303 24 Q. All right. And what are the general nature  
25 of those legal services?

123308 1 A. She represented us in a lawsuit.  
 123311 2 Q. And what lawsuit was that?  
 123313 3 A. That was a lawsuit with our original  
 4 partners in the park.  
 123316 5 Q. And those original partners were?  
 123320 6 A. They were under the management group called  
 7 Splash, and their names were Ben Howell, Mark Howell,  
 8 and Shawn Bassett.  
 123325 9 Q. And that matter was mediated, is that  
 10 correct?  
 123328 11 A. It was.  
 123330 12 Q. Through a court settlement?  
 123332 13 A. Yes.  
 123340 14 Q. By the Honorable Betsy Gonzalez, is that  
 15 correct?  
 123344 16 A. Correct.  
 123346 17 Q. And you were present?  
 123348 18 A. I was at the case, yes.  
 123349 19 Q. Okay. And do you know when that mediation  
 20 took place?  
 123350 21 A. I believe it was in October of 2013.  
 123352 22 Q. Okay. Besides that lawsuit, was there any  
 23 other matter that Ms. Gordon provided legal services to  
 24 the water park?  
 123417 25 A. I believe she works for Double Ott.

123422 1 A. Correct.  
 123423 2 Q. All right. And what about for the meetings  
 3 that take place in the fall of each year, who pays for  
 4 those meetings?  
 123422 5 A. We don't pay for those.  
 123425 6 Q. You just show up?  
 123426 7 A. Yeah.  
 123427 8 Q. Okay. No expenses are associated with  
 9 that?  
 123431 10 A. Well --  
 123432 11 Q. Do you fly up there?  
 123434 12 A. No, I drive up there. I have a home up  
 13 there, so I go see my kids. I just schedule the  
 14 meeting around that.  
 123440 15 Q. Okay. And do you charge for gasoline?  
 123443 16 A. I don't.  
 123443 17 Q. Okay. Have you ever flown up there for a  
 18 meeting?  
 123447 19 A. Yeah.  
 123448 20 Q. And who pays for that?  
 123450 21 A. Well, I have Southwest tickets for free  
 22 that we got through Cowabunga Bay so I use those.  
 123453 23 Q. Okay.  
 123454 24 A. But if --  
 123458 25 Q. Go ahead. You wanted to amplify, go ahead.

123421 1 Q. All right. And when you say she works for  
 2 Double Ott, she is an attorney that provides services  
 3 for Double Ott or is she in-house counsel for  
 4 Double Ott?  
 123431 5 A. She provides service for them.  
 123433 6 Q. Double Ott is an unusual moniker or styling  
 7 for an LLC. Do you know what it relates to?  
 123501 8 A. I don't.  
 123502 9 Q. Okay. Do you know any other services that  
 10 Ms. Gordon has rendered to Cowabunga Bay?  
 123521 11 A. Yes. She has drafted some documents for us  
 12 as needed.  
 123525 13 Q. Okay. Anything else?  
 123525 14 A. If ever I have questions, I go to her.  
 123530 15 Q. Is she on a retainer or just on a regular  
 16 basis?  
 123544 17 A. She -- I get bills from her. So I pay her  
 18 bills when we use her.  
 123549 19 Q. All right. And when you say, "I pay her  
 20 bills," you mean?  
 123553 21 A. Henderson Water Park pays the bills.  
 123556 22 Q. Okay. And those bills are submitted to  
 23 you?  
 123560 24 A. Correct.  
 123561 25 Q. And you pay them?

123728 1 A. No, go ahead.  
 123728 2 Q. So have you ever actually expended any  
 3 funds of any kind for any travel?  
 123716 4 A. Yes, I have.  
 123717 5 Q. Okay. And for what travel have you  
 6 expended such funds?  
 123720 7 A. Whenever I travel to conventions or  
 8 seminars or safety training or anything related to the  
 9 park, then I expense that.  
 123733 10 Q. To Cowabunga Bay?  
 123734 11 A. Yes, to Henderson Water Park.  
 123735 12 Q. What about for meetings that take place in  
 13 Utah?  
 123742 14 A. Well, I haven't.  
 123745 15 Q. Okay. Do you have an executive assistant?  
 123758 16 A. No.  
 123804 17 Q. Okay. Do you have an individual at the  
 18 park that works with you on a regular and ongoing basis  
 19 more so than anyone else in your management team?  
 123819 20 A. Yes, I have.  
 123821 21 Q. All right. Who would that be?  
 123822 22 A. So there's an assistant manager at the  
 23 park.  
 123825 24 Q. And who is that?  
 123828 25 A. Rich Woodhouse.

123837 1 Q. Okay.

123837 2 A. And then each department at the park has

3 managers.

123841 4 Q. And then department managers below that.

123845 5 MR. CAMPBELL: Okay. We have been at it

6 for a little while here. Let's take a 10-minute break

7 or so. If you need to use the restroom, they are down

8 the hall.

123848 9 THE VIDEOGRAPHER: We are going off the

10 record. The time is approximately 10:39 a.m.

123851 11 (Recessed from 10:39 a.m. to 10:51 a.m.)

123859 12 THE VIDEOGRAPHER: We are going back on the

13 record. The time is approximately 10:51 a.m.

123857 14 BY MR. CAMPBELL:

123857 15 Q. Do you have any clerical assistance at the

16 park?

123859 17 A. No.

123859 18 Q. People that work in your office?

123864 19 A. No.

123865 20 Q. So bills come in, they come directly to

21 you?

123866 22 A. Oh, I do, yeah. I get a lot of the bills.

123868 23 Q. Well, does somebody else help you with the

24 bills and the day-to-day paperwork?

123869 25 A. Our bills, they either come through email

1 to me, or they come in the mail and then they are

2 shipped to an accounting company in Tacoma where the

3 checks are written, and then they are sent back to us

4 where we approve them and send them out.

123877 5 Q. Tacoma, Washington?

123878 6 A. Um-hum.

123879 7 Q. That's a CPA?

123881 8 A. It's a -- their name is Waterfront CPA.

123885 9 Q. Waterfront CPA.

123888 10 And do they do the family accounting?

123892 11 A. Yes. Well, yes.

123893 12 Q. For Cowabunga Bay here?

123893 13 A. Correct.

123894 14 Q. And for Draper?

123894 15 A. Correct.

123896 16 Q. And for Seattle and Portland --

123896 17 A. Yes.

123898 18 Q. -- amusement parks?

123899 19 A. The Family Fun Centers, yes.

123902 20 Q. Okay. So they do the day-to-day

21 bookkeeping, so to speak?

123903 22 A. Correct.

123903 23 Q. And you transmit the invoices and bills and

24 things of that nature to them by email?

123909 25 A. Well, they go into a bill package and then

1 it's mailed to them.

123914 2 Q. Explain that to me.

123915 3 A. Okay. So all the bills will go into a

4 manila envelope.

123920 5 Q. All right.

123920 6 A. It's then addressed to Waterfront. They

7 send it to Seattle, and then they send us everything

8 back through the mail.

123928 9 Q. Okay. And so who puts them literally in,

10 in the envelope?

123932 11 A. Sage Harper.

123934 12 Q. Who is that?

123934 13 A. Who is my food and beverage manager at the

14 park.

123939 15 Q. And why was he selected to do this

16 ministerial task?

123947 17 A. Because I trust him to do it.

123951 18 Q. Okay. So in addition to being food and

19 beverage manager, he also has additional duties, Sage?

123951 20 A. Yes.

123952 21 Q. What are those duties?

123954 22 A. He handles bookkeeping. Well, he does the

23 bill package, I should say, and he oversees the hiring.

123959 24 Q. And what else? When you say he does the

25 bookkeeping, what does he do in that sense?

123964 1 A. He gets the bills, he compiles them, he

2 then puts them into the package and makes sure that

3 it's sent off to the CPAs. He then gets it back here,

4 he then addresses the envelopes and makes sure that the

5 bills get out by putting the stamps on them and getting

6 them into the mail.

123968 7 Q. Okay. Now, with respect to the payment of

8 invoices, are checks actually cut from Tacoma?

123969 9 A. Yes.

123969 10 Q. All right. And but they are mailed from

11 Las Vegas; is that correct?

123975 12 A. Correct.

123974 13 Q. Okay. All right. Are there any

14 ministerial duties he does besides bookkeeping and

15 overseeing the hiring?

123983 16 A. Well, he is the food and beverage manager.

123987 17 Q. Other than that?

123989 18 A. He works with the guests, and deals with

19 making sure that the employees are doing their job.

123991 20 Q. Okay. Let's talk a little bit about, about

21 communications. Do you have a cell phone?

123990 22 A. Yes.

123991 23 Q. All right. And who pays for the cell

24 phone?

123994 25 A. Seattle. The Tukwila Family Fun Center

<p style="text-align: right;">61</p> <p>1 pays for it.</p> <p>12:58:16 2 Q. The what?</p> <p>12:58:16 3 A. The Seattle Family Fun Center is actually</p> <p>4 in a town called Tukwila, so we refer to it as Tukwila.</p> <p>12:58:26 5 Q. And do you have just one phone?</p> <p>12:58:29 6 A. (Witness nods head.)</p> <p>12:58:32 7 Q. Is that a "yes"?</p> <p>12:58:33 8 A. I'm sorry. Yes.</p> <p>12:58:34 9 Q. See, I told you. I've never had any</p> <p>10 witness not do it.</p> <p>12:58:37 11 What is that phone number?</p> <p>12:58:39 12 A. (801) 865-6294.</p> <p>12:58:50 13 Q. Now, if calls come into Cowabunga Bay</p> <p>14 seeking to speak to someone, seeking to speak to the</p> <p>15 general manager, who forwards those calls on to you?</p> <p>16 Is there any sort of a receptionist?</p> <p>12:57:28 17 A. We have an attendant at the front desk that</p> <p>18 answers the phones.</p> <p>12:57:44 19 Q. What is that attendant's name?</p> <p>12:57:46 20 A. It can be anybody who is scheduled for that</p> <p>21 day. They are a seasonal employee.</p> <p>12:57:23 22 Q. Okay. And what about if you're not open?</p> <p>12:57:28 23 A. When the phones are off.</p> <p>12:57:32 24 Q. Okay. And what is the, what is the number</p> <p>25 for Cowabunga Bay?</p>	<p style="text-align: right;">63</p> <p>1 really don't even -- I don't use it. But it's one of</p> <p>2 those.</p> <p>12:58:42 3 Q. It's on your computer at work?</p> <p>12:58:42 4 A. Yes.</p> <p>12:58:43 5 Q. Do you, do you use an iPad or similar</p> <p>6 device?</p> <p>12:58:50 7 A. I have one, yes.</p> <p>12:58:52 8 Q. Okay. And do you use that for the</p> <p>9 transmission of emails?</p> <p>12:58:59 10 A. No, I don't.</p> <p>12:59:15 11 Q. Have you ever used your iPad for the</p> <p>12 transmission of any email at any time?</p> <p>12:59:22 13 A. When I first had an iPad, I did, back when</p> <p>14 they first came out.</p> <p>12:59:27 15 Q. When was that?</p> <p>12:59:33 16 A. 2009 or '10, I can't recall my first</p> <p>17 email -- my first iPad, I mean.</p> <p>12:59:40 18 Q. Do you have an iPad now?</p> <p>12:59:42 19 A. I do. I have a current one, yes.</p> <p>12:59:45 20 Q. Okay. And when was that purchased?</p> <p>12:59:47 21 A. Probably a year-and-a-half ago.</p> <p>12:59:51 22 Q. And who paid for it?</p> <p>12:59:54 23 A. I did.</p> <p>12:59:54 24 Q. Personally?</p> <p>12:59:55 25 A. Yep.</p>
<p style="text-align: right;">62</p> <p>12:57:37 1 A. (702) 850-9000.</p> <p>12:57:39 2 Q. Do you utilize more than one email?</p> <p>12:57:37 3 A. Yes.</p> <p>12:57:43 4 Q. All right. How many do you have?</p> <p>12:58:01 5 A. I have two.</p> <p>12:58:02 6 Q. All right. And please give me those email</p> <p>7 addresses.</p> <p>12:58:08 8 A. One is shane@cowabungabay and the other is</p> <p>9 shanehuish@cowabungabay.</p> <p>12:58:23 10 Q. How long have you used those email</p> <p>11 addresses?</p> <p>12:58:30 12 A. The Shane Huish one I've used since 2009</p> <p>13 and the shane@cowabungabay just more recent, because it</p> <p>14 got too hard to say Shane Huish. So I dropped, and I'm</p> <p>15 trying to get them all to Shane. But I've used Shane</p> <p>16 since 2015.</p> <p>12:58:35 17 Q. Okay. Have you used any other email</p> <p>18 address in the last five years?</p> <p>12:58:44 19 A. I think I have a Gmail account that I don't</p> <p>20 use, but I had to sign up for one so I could download</p> <p>21 documents through Google, Share or something. I don't</p> <p>22 even know the password.</p> <p>12:58:49 23 Q. And what is that Gmail address?</p> <p>12:58:59 24 A. It's either Shanehuish22 or</p> <p>25 Shanehuish858@gmail. Like it's on my computer so I</p>	<p style="text-align: right;">64</p> <p>12:58:57 1 Q. What type of phone do you use?</p> <p>12:58:59 2 A. An Apple iPhone.</p> <p>12:59:07 3 Q. And what model?</p> <p>12:59:12 4 A. 6, I think.</p> <p>12:59:14 5 Q. Do you have it with you today?</p> <p>12:59:15 6 A. I do.</p> <p>12:59:16 7 Q. Take a look at it.</p> <p>12:59:18 8 A. I don't know how to get this off. Sorry.</p> <p>9 It just says iPhone on it. And I don't have it on. Do</p> <p>10 you want me to turn it on?</p> <p>12:59:24 11 Q. No. Not just yet.</p> <p>12:59:29 12 Could you please tell me, if you can</p> <p>13 recall, we can use anything to refresh your</p> <p>14 recollection, what the e-mail addresses are for your</p> <p>15 brothers?</p> <p>12:59:33 16 A. Dave Huish's email is dhuish, H-u-i-s-h,</p> <p>17 @cowabungabay.</p> <p>12:59:44 18 And my brother Scott's email is</p> <p>19 huish@aol.com.</p> <p>12:59:49 20 And I don't know my other brother's or</p> <p>21 sister's email.</p> <p>12:59:57 22 Q. Do you have them in your email address</p> <p>23 book?</p> <p>12:59:59 24 A. Yeah, probably.</p> <p>12:59:59 25 Q. Okay. Can you just interrogate that,</p>

16 (Pages 61 to 64)

65

1 refresh your recollection.

11:04:17 2 A. Whose would you like?

11:04:21 3 Q. Your, your other members of your family

4 organization. You gave me, I believe you gave me Dave

5 and you gave me Scott.

11:04:25 6 A. Oh, okay. I don't have my brother Mike's

7 email address in my phone. And the one I have for my

8 sister is jtkargis@gmail.com.

11:04:32 9 Q. Could you give me the email addresses for

10 the Ophalkens?

11:04:31 11 A. Slade is slade@randoco.

11:04:39 12 Q. C-o?

11:04:39 13 A. Yes. .com.

11:04:43 14 Chat's is cheto@randoco.com.

11:04:49 15 Q. Is -- and the and is an a-n-d?

11:04:53 16 A. A-n-d.

11:04:53 17 And Orloff is orloff -- that's with two

18 O's -- o@randoco.com.

11:04:53 19 Q. Could you provide me the phone numbers for

20 the Orloffs (sic).

11:04:59 21 A. Slade is (801) 430-1303.

11:05:07 22 Chat's is (702) 895-9322.

11:05:04 23 Orloff's is (801) 540-9357.

11:05:07 24 Q. And could you give me your brother's call

25 phone or phone numbers.

66

11:05:05 1 Those are cell phone numbers that you gave

2 me there, right?

11:05:08 3 A. I believe so. They are the numbers I have

4 in my phone.

11:05:12 5 Dave is (801) 369-6113.

11:05:17 6 Scott's is (803) 381-9590.

11:05:27 7 Q. 381 what?

11:05:29 8 A. 381-9590.

11:05:35 9 Q. 9550? I'm sorry.

11:05:38 10 A. 381-9590.

11:05:43 11 Q. 9-0. Thank you, sir.

11:05:46 12 Who pays the monthly bill for your phone?

11:05:50 13 A. The Tukwila Family Fun Center.

11:05:55 14 Q. Okay. And who is your carrier?

11:05:58 15 A. Sprint.

11:06:03 16 Q. And is Sprint the carrier for all of your

17 family members?

11:06:05 18 A. I don't know.

11:06:09 19 Q. Do you know who the carrier is for Dave and

20 Scott?

11:06:12 21 A. I don't.

11:06:16 22 Q. But Sprint locally is your carrier?

11:06:19 23 A. No, it's out of -- well, I get the phone

24 through Seattle.

11:06:22 25 Q. Through -- what is the name of the business

67

1 that you get it through?

11:06:25 2 A. Family Fun Center.

11:06:31 3 Q. And you also had a name attached to that, a

4 town?

11:06:35 5 A. Tukwila.

11:06:38 6 Q. Could you spell that?

11:06:47 7 A. T-u-k-w-i-l-a.

11:06:53 8 Q. Where is that located?

11:06:54 9 A. It's just south of Seattle near the

10 airport.

11:06:58 11 Q. Okay. What is the address of the park, the

12 Fun Center?

11:07:01 13 A. 7300 Fun Center Way.

11:07:05 14 Q. Tukwila?

11:07:08 15 A. Yes. I don't know the zip code.

11:07:15 16 Q. Okay. Following the time that the

17 mediation resolved the outstanding differences with the

18 owners or ownership entities that were the equity

19 holders, the next order of business, as I understand,

20 was to get the park up, running, licensed, and opened

21 for business; is that correct?

11:07:25 22 A. Yes.

11:07:27 23 Q. Okay. And who was the person that had

24 day-to-day primary responsibility for that?

11:07:29 25 A. For getting the park built?

68

11:07:29 1 Q. Let's start, let's start with that.

11:07:33 2 A. Yes.

11:07:35 3 Q. So let's talk about getting the park built.

4 Who was responsible for that?

11:07:39 5 A. R&O was the contractors. And then I

6 oversaw the design. And my brother Scott was here to

7 help make sure that things were getting built.

11:07:43 8 Q. Okay. Who for R&O was responsible for the

9 construction?

11:07:46 10 A. Slade. And then we had project managers at

11 the site. So there was actually a project manager

12 there getting the building done.

11:07:50 13 Q. Who was that?

11:07:53 14 A. His name was, there was Jeff Contanta and

15 there was Mark.

11:07:56 16 Q. Give me those names again.

11:07:57 17 A. I'll have to look up Mark's last name on

18 the phone, I don't know his last name.

11:08:01 19 Q. Go ahead.

11:08:04 20 A. Jeff Contanta and Mark, Mark Lee.

11:08:07 21 Q. How do you spell Contanta?

11:08:10 22 A. C-o-n-t-a-n-t-a.

11:08:13 23 Q. And Mark Lee?

11:08:16 24 A. Um-hum.

11:08:19 25 Q. Are both of those individuals still with

1 R&O?  
 11:13:57 2 A. I believe so.  
 11:14:07 3 Q. Okay. All right. So who was thereafter  
 4 responsible for getting the Cowabunga Bay licensed with  
 5 all of the appropriate authorities so it could open for  
 6 business?  
 11:14:18 7 A. R&O did that.  
 11:14:28 8 Q. And how did they do that? Who was  
 9 responsible for that?  
 11:14:35 10 A. Jeff Contanta.  
 11:14:47 11 Q. Was anyone else a participant in that  
 12 process?  
 11:14:52 13 A. I'm sure the architect was, getting the  
 14 permits.  
 11:15:07 15 Q. You're talking about for building; is that  
 16 correct?  
 11:15:11 17 A. And the certificate of occupancy.  
 11:15:21 18 Q. Occupancy?  
 11:15:34 19 A. And the pool permits and all those things.  
 11:15:43 20 Q. All that?  
 11:15:57 21 A. Right.  
 11:16:08 22 Q. Right. From the City of Henderson?  
 11:16:20 23 A. Yes.  
 11:16:30 24 Q. Okay. That was -- again, Jeff Contanta was  
 25 responsible for that?

11:16:39 1 A. I believe he did the majority of it, yes.  
 11:16:47 2 Q. Was there an attorney that assisted  
 3 Mr. Contanta in that effort?  
 11:16:53 4 A. I don't know.  
 11:17:05 5 Q. All right. Once all the proper licenses  
 6 were obtained for building and opening or occupancy,  
 7 whose responsibility was it to deal with all of the  
 8 requirements that would be necessary with respect to  
 9 operations and health and safety issues?  
 11:17:18 10 A. That would have been -- that would have  
 11 fallen on R&O as well as our team.  
 11:17:33 12 Q. Who's your team? You?  
 11:17:41 13 A. Me and the aquatics manager and staff like  
 14 that.  
 11:17:50 15 Q. Okay. From R&O, who would that be?  
 11:18:01 16 A. Jeff Contanta.  
 11:18:08 17 Q. Okay. Who else?  
 11:18:14 18 A. Like I say, I filed for a beer and wine  
 19 permit.  
 11:18:26 20 Q. Well, no, no. I'm talking about, I'm not  
 21 talking about beer and wine. I'm talking about the  
 22 health and safety issues and the communications and  
 23 working with the Department of Health. You told me,  
 24 "That would have been R&O and my team."  
 11:18:35 25 A. That would have been me.

11:18:38 1 Q. So it would be who? You?  
 11:18:50 2 A. Me.  
 11:18:57 3 Q. Right.  
 11:19:07 4 A. And I believe Jeff was somewhat involved.  
 11:19:21 5 Q. Jeff?  
 11:19:31 6 A. In processing the pool permits.  
 11:19:44 7 Q. Jeff who?  
 11:19:58 8 A. Contanta.  
 11:20:07 9 Q. Okay. So the two of you would have been  
 10 responsible for that?  
 11:20:20 11 A. Yes.  
 11:20:31 12 Q. All right. And did you meet with  
 13 individuals associated with the Clark County Health  
 14 District?  
 11:20:42 15 A. I did.  
 11:20:52 16 Q. All right. And did Mr. Contanta do so as  
 17 well?  
 11:21:03 18 A. He was more of the onsite person.  
 11:21:16 19 Q. What does that mean?  
 11:21:27 20 A. That means that when the inspectors came  
 21 out to inspect the pools and stuff on the site, he was  
 22 there --  
 11:21:41 23 Q. Okay.  
 11:21:51 24 A. -- to facilitate that.  
 11:22:01 25 Q. Okay. Now, so it would have been you and

1 Mr. Contanta would have been -- withdraw. I stand  
 2 corrected.  
 11:22:13 3 You, your team, and Mr. Contanta would have  
 4 been the individuals primarily responsible for dealing  
 5 with the Health District, correct?  
 11:22:28 6 A. Yes.  
 11:22:37 7 Q. Okay. And your team consisted of your  
 8 brothers?  
 11:22:50 9 A. No.  
 11:22:59 10 Q. Who?  
 11:23:12 11 A. It was me and at the time our aquatics  
 12 manager, his name was Trevor Wood.  
 11:23:21 13 Q. Trevor?  
 11:23:32 14 A. Wood.  
 11:23:43 15 Q. Anyone else?  
 11:23:51 16 A. No.  
 11:24:02 17 Q. All right. And tell me about Trevor Wood.  
 18 Is he still with you?  
 11:24:19 19 A. No, he is not.  
 11:24:29 20 Q. Okay. And for what period of time was he  
 21 with you?  
 11:24:42 22 A. He was with us during the construction of  
 23 the park.  
 11:24:54 24 Q. Okay.  
 11:25:05 25 A. And he actually left before the park even

1 opened.  
 11:12:28 2 Q. Why did he leave?  
 11:12:29 3 A. Because he was in the military and he got a  
 4 promotion.  
 11:12:32 5 Q. And what branch of the military is he in?  
 11:12:33 6 A. I believe he is a Marine.  
 11:12:37 7 Q. Okay. And so he would have been in the  
 8 Marine Reserves?  
 11:12:41 9 A. I think, yeah.  
 11:12:43 10 Q. Okay. And do you know what reserve unit he  
 11 was attached to?  
 11:12:49 12 A. I don't, no.  
 11:12:50 13 Q. Was he a Utah kid or a Nevada kid?  
 11:12:51 14 A. He's a Utah kid.  
 11:12:54 15 Q. Okay.  
 11:12:55 16 A. He's a Utah man. He is not a kid.  
 11:12:56 17 Q. He's a what?  
 11:12:58 18 A. He was a -- he's not a kid.  
 11:12:59 19 Q. What is his rank, do you know?  
 11:13:00 20 A. I don't know.  
 11:13:02 21 Q. Okay. Is he an officer?  
 11:13:03 22 A. I don't know.  
 11:13:05 23 Q. Okay. Do you know where he is today?  
 11:13:11 24 A. I don't.  
 11:13:14 25 Q. What was his background?

11:13:18 1 A. Yes.  
 11:13:24 2 Q. Please detail for me all the litigation of  
 3 which you were aware.  
 11:13:29 4 A. We had one individual that injured his foot  
 5 on the water slide and they sued us.  
 11:13:28 6 Q. Anything else?  
 11:13:29 7 A. I believe that's all.  
 11:13:31 8 Q. How was that case resolved?  
 11:13:34 9 A. It was dismissed.  
 11:13:35 10 Q. Okay. And was it dismissed at trial or  
 11 prior to trial?  
 11:13:36 12 A. It was -- his claim was proven I guess.  
 13 false and so they withdrew it.  
 11:13:38 14 Q. Okay. Who's the insurance carrier for the  
 15 Draper park?  
 11:13:40 16 A. I don't know.  
 11:13:42 17 Q. Was there any other litigation at the  
 18 Draper park besides that one personal injury case? For  
 19 example, was there any litigation involving commercial  
 20 interests or disputes?  
 11:13:43 21 A. No.  
 11:13:45 22 Q. So there was only one piece of litigation  
 23 and that was a personal injury case involving somebody  
 24 who claimed that they had hurt their foot somehow --  
 11:13:46 25 A. Yes.

11:13:48 1 A. He was our aquatic supervisor and then  
 2 manager at the Utah park.  
 11:13:51 3 Q. For what period of time?  
 11:13:52 4 A. From 2009 until 2014.  
 11:13:53 5 Q. Did you ever work at the Utah park, Draper  
 6 park?  
 11:13:56 7 A. Yes, I did.  
 11:13:59 8 Q. Okay. For what period of time did you work  
 9 there?  
 11:14:03 10 A. From 2009 -- well, from 2008; because we  
 11 were building it, to 2013.  
 11:14:06 12 Q. Who built it?  
 11:14:07 13 A. We did. My brothers, myself, and then we  
 14 had a general contractor we hired.  
 11:14:09 15 Q. Who was that?  
 11:14:10 16 A. His name was Mike Ball.  
 11:14:12 17 Q. And what was the name of the company?  
 11:14:13 18 A. Mike Ball Construction.  
 11:14:15 19 Q. Is Mr. Ball still in business?  
 11:14:16 20 A. I believe so.  
 11:14:18 21 Q. What was your job at the Draper park?  
 11:14:19 22 A. I was a general manager.  
 11:14:21 23 Q. During the period of time that you were at  
 24 the Draper park, was there any litigation that you were  
 25 aware of?

11:14:23 1 Q. -- is that right?  
 11:14:24 2 Q. Okay. With respect to your dealings, you,  
 3 your team, and Mr. Contenta's dealings with the Clark  
 4 County Health District, did those dealings with the  
 5 Clark County Health District fall into designated  
 6 responsibilities? That is to say, did you handle one  
 7 particular issue with the district, Mr. Contenta  
 8 another, Trevor Wood possibly another?  
 11:14:26 9 A. Yes.  
 11:14:27 10 Q. Okay. So tell me what you were responsible  
 11 for.  
 11:14:28 12 A. I was responsible for making sure that all  
 13 the pools had the proper signage and the requirements  
 14 done to get the facility open.  
 11:14:29 15 Q. Okay. Well, you told me the signage and  
 16 requirements. So signage would be one requirement?  
 11:14:30 17 A. Correct.  
 11:14:31 18 Q. Okay. What would be the other requirement?  
 11:14:32 19 A. They required staffing plans. They  
 20 required certain water testing on the day that we were  
 21 open and things like that.  
 11:14:33 22 Q. Anything else?  
 11:14:34 23 A. You know, there were permit fees that had  
 24 to be paid that I took down and resolved. That's  
 25 about...



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112431 1 Q. Okay. What was Mr. Contenta responsible  
2 for?

112433 3 A. He would meet with the inspectors onsite  
4 and then find out -- they would get a punchlist of  
5 things that were required before they could get the  
6 permit. So he was our superintendent at the park, the  
7 construction.

112438 8 Q. And Trevor Wood, what was his  
9 responsibility?

112444 10 A. He worked with myself and our aquatics  
11 consultant to prepare the plan.

112446 12 Q. Okay. Trevor Wood worked with your  
13 aquatics consultant and what?

112452 14 A. And he then prepared the plan.

112453 15 Q. He prepared what plan?

112458 16 A. The staffing plan to permit to -- for the  
17 park.

112463 18 Q. To submit to the --

112464 19 A. Health Department.

112465 20 Q. -- Health Department?

112466 21 A. Correct.

112467 22 Q. And who was the aquatics consultant?

112468 23 A. We hired NASCO Aquatics.

112469 24 Q. And who at NASCO did you work with?

112470 25 A. Chat. And I don't know his last name off

78

1 the top of my head.

112471 2 I just always refer to him as Chat. Chat  
3 Jacobsen.

112484 4 Q. What is his email address?

112485 5 A. His actual first name is Eric Chat  
6 Jacobsen. And he is chatnasco, N-A-S-C-O, @aol.com.

112487 7 Q. Could you give me Trevor Wood's phone  
8 number, please.

112494 9 A. Last number I have on file is  
10 (801) 634-5686.

112496 11 Q. What is his email?

112497 12 A. I don't have his email.

112498 13 Q. Do you have Jeff Contenta's email?

112499 14 A. Yes.

112500 15 Q. What is it?

112501 16 A. It's jeffrey@xandoco.com.

112502 17 Q. One more time, I'm sorry.

112503 18 A. jeffrey@xandoco.com.

112504 19 Q. Thank you.

112505 20 Let's talk a little bit about your  
21 responsibilities.

112506 22 And you said, using your words, that you  
23 were responsible for making sure that you had  
24 compliance with respect to those matters to get the  
25 park open, including signage, submission of staffing

79

1 plans, certain testing that was required, that sort of  
2 thing, correct?

112508 3 A. Yes. Pertaining to the Health Department,  
4 overall everything.

112509 5 Q. Well, you said -- my questions were in that  
6 regard were directed the Health Department.

112510 7 A. Okay. Yes.

112511 8 Q. And that's how you answered.

112512 9 A. Yes.

112513 10 Q. Okay. And you said that you also had  
11 assistance in that regard from Trevor Wood who is the  
12 aquatics manager and also NASCO?

112514 13 A. Correct.

112515 14 Q. Okay. Now, there had been to a plan that  
15 was submitted to the Health Department with respect to  
16 signage and staffing, correct?

112516 17 A. Correct.

112517 18 Q. And one of the principal features of the  
19 staffing plan dealt with the number of lifeguards,  
20 correct?

112518 21 A. That's correct.

112519 22 Q. Okay. And there originally was a plan that  
23 was submitted and for which you sought approval from,  
24 from the Health District, correct?

112520 25 A. Correct.

80

112521 1 Q. All right. And that original plan that you  
2 submitted for which you sought approval was denied,  
3 that is to say, it was not approved?

112522 4 A. We submitted a plan that I dealt with that  
5 I worked with from NASCO to give us the basic coverage  
6 for a safe operation of the wave pool. So we submitted  
7 that and they did not accept it.

112523 8 Q. Okay.

112524 9 A. Because --

112525 10 Q. Go ahead and tell me why they didn't accept  
11 it.

112526 12 A. Because we based our plan on the national  
13 standard for water park of a respond and rescue, which  
14 is a time-based zone. And they based their numbers on  
15 a square-footage zone.

112527 16 Q. Okay. "They" meaning?

112528 17 A. The Health Department.

112529 18 Q. The Health Department?

112530 19 A. Correct.

112531 20 Q. And who did you deal with at the Health  
21 Department?

112532 22 A. Lorraine Forston.

112533 23 Q. And what was Lorraine's job? What was her  
24 job description?

112534 25 A. She was just our inspector.

20 (Pages 77 to 80)

113150 1 Q. She was inspector?

113151 2 A. Correct.

113157 3 Q. All right. And do you have her email

113158 4 address?

113159 5 A. It's forston@nhdmail.org. Her last name

113160 6 is Forston, F-o-r-s-t-o-n.

113211 7 Q. When, when you submitted the plan that was

113212 8 subsequently rejected, did you submit it to Lorraine?

113220 9 A. I did.

113221 10 Q. Okay. And was this an informal submission

113222 11 in the sense that it wasn't at a, at an actual meeting

113223 12 of the board of Southern Nevada Health District?

113233 13 A. I had submitted the plan to Lorraine --

113234 14 Q. Okay.

113237 15 A. -- and I let her know that we didn't feel

113238 16 this was the safest possible operation of the park

113239 17 based on square footage rather than rescue and response

113240 18 time. So she informed me that I would have to get the

113241 19 codes changed if we wanted to operate that way.

113250 20 MR. CAMPBELL: Miss Kelly, could you kindly

113251 21 read me back his answer.

113252 22 (Record read as follows:)

113253 23 "A. I had submitted the plan to

113254 24 Lorraine and I let her know that we didn't

113255 25 feel this was the safest possible operation

1 of the park based on square footage rather

2 than rescue and response time. So she

3 informed me that I would have to get the

4 codes changed if we wanted to operate that

5 way."

113327 6 BY MR. CAMPBELL:

113327 7 Q. When you say it wasn't the safest possible

113328 8 operation, what wasn't the safest possible operation?

113333 9 A. Staffing based on the square footage.

113337 10 Q. Okay. And Lorraine's response was: Well,

113338 11 that's what the code demands. And accordingly if you

113339 12 want to do something different, you have to get the

113340 13 code changed, or words to that effect?

113353 14 A. Yeah.

113357 15 Q. Okay. And what was the square footage of

113358 16 the wave pool?

113404 17 A. 32,000 square feet.

113405 18 Q. Okay. How many gallons?

113410 19 A. 650,000.

113410 20 Q. What was -- now, when you submitted the

113411 21 plan to her, did you at that time tell her the fact

113412 22 that you didn't feel it was the safest possible plan by

113413 23 considering square footage or did that take place at a

113414 24 different point in time?

113433 25 A. I told her that at the time of the

1 submittal. And there was a letter and then we had our

2 aquatic department draft up a letter as well.

113505 3 Q. And that was submitted, is that correct?

113507 4 A. Correct.

113508 5 Q. And with respect to your initial

113509 6 submission, that was also, that also incorporated your

113510 7 aquatic department, meaning Trevor Wood, is that

113511 8 correct?

113523 9 A. Trevor didn't submit the plan, he just

113524 10 prepared it for me.

113531 11 Q. Okay. Then who was it that you said?

113534 12 A. I'm sorry, can you repeat your question.

113537 13 Q. Okay. I thought you said that you in

113538 14 conjunction with someone else?

113543 15 A. NASCO.

113543 16 Q. Okay. So it was NASCO that arrived at the

113544 17 conclusion --

113547 18 A. Correct.

113547 19 Q. -- somehow that this wasn't the safest way

113548 20 to operate the park in terms of the number of

113549 21 lifeguards, and, therefore, they submitted a letter.

113550 22 Is that what you said?

113553 23 A. We hire an aquatic consultant company to

113554 24 help us manage and train the lifeguards.

113557 25 Q. That's NASCO?

113558 1 A. Yes. And they also prepare us a staffing

113559 2 plan based on the safest way to operate the park. And

113560 3 that is in conjunction with every other park in the

113561 4 country, as well our national industry standard.

113562 5 So they were very concerned about the

113563 6 requirements being based on the square footage rather

113564 7 than on the rescue and response time. Because with the

113565 8 rescue and response, each guard is given an accurate

113566 9 zone that they are held accountable for. And that

113567 10 allows them to scan that zone within 15 seconds and

113568 11 then respond to a victim in need within that 15

113569 12 seconds. And that's the plan we proposed.

113569 13 Q. And that was the plan that was rejected?

113569 14 A. It was.

113569 15 Q. All right. And it was rejected on the

113570 16 basis that it did not meet code, correct?

113573 17 A. Correct.

113574 18 Q. All right. And Lorraine was the one that

113575 19 told you that?

113577 20 A. Yes.

113578 21 Q. And did she communicate that to you in

113579 22 writing?

113579 23 A. I'm sure there was something. I just can't

113580 24 recall.

113580 25 Q. There was a form of rejection of the plan?

<p>85</p> <p>11:37:12 1 A. Yeah. Well --</p> <p>11:37:19 2 Q. Let me finish. What form did that formal</p> <p>3 rejection take?</p> <p>11:37:20 4 A. I think she just came back and said, "You</p> <p>5 have to have guards based on square footage, this won't</p> <p>6 work."</p> <p>11:37:26 7 Q. Okay. And that was prior to any action by</p> <p>8 the Clark County Health District Board; is that</p> <p>9 correct?</p> <p>11:37:33 10 A. Well, then we submitted something to the</p> <p>11 board to ask them to --</p> <p>11:37:36 12 Q. Overrule her?</p> <p>11:37:39 13 A. Yeah.</p> <p>11:37:40 14 Q. Okay. And what did you submit?</p> <p>11:37:42 15 A. The letter along with diagrams of the zones</p> <p>16 that was prepared by NASCO.</p> <p>11:37:49 17 Q. And was there a meeting that was held at</p> <p>18 which that issue was addressed, a public meeting?</p> <p>11:37:55 19 A. No.</p> <p>11:37:58 20 Q. Okay. So you weren't on any agenda?</p> <p>11:38:00 21 A. No. I think it went through Lorraine's</p> <p>22 boss.</p> <p>11:38:03 23 Q. And who was Lorraine's boss?</p> <p>11:38:07 24 A. At the time it was Jacqui Curl, Jacqui</p> <p>25 Raiche-Curl.</p>	<p>87</p> <p>11:40:20 1 A. It may have gone to Jeff and then he let me</p> <p>2 know.</p> <p>11:40:25 3 Q. Or both of you?</p> <p>11:40:27 4 A. Yeah, maybe. I don't recall.</p> <p>11:40:28 5 Q. That's all right.</p> <p>11:40:32 6 A. I had a lot of things going on at the time,</p> <p>7 so...</p> <p>11:40:35 8 Q. That's okay. I'm not in any way being</p> <p>9 critical of you in that regard.</p> <p>11:40:44 10 A. Okay.</p> <p>11:40:44 11 Q. Okay. Nobody is expected to remember every</p> <p>12 single detail of their life, you know, by the minute.</p> <p>13 So I understand.</p> <p>11:40:50 14 But nevertheless, it would have gone to</p> <p>15 you --</p> <p>11:40:53 16 A. And Jeff.</p> <p>11:40:54 17 Q. -- or Jeff or both of you?</p> <p>11:40:58 18 A. Yes.</p> <p>11:40:57 19 Q. Makes sense.</p> <p>11:40:57 20 So what happened next? Back to square one?</p> <p>11:41:04 21 A. Well, I continued to express concern over</p> <p>22 it and then I -- then the park opened. So the</p> <p>23 submittal was made showing the staffing plan per code</p> <p>24 at that time.</p> <p>11:41:20 25 Q. Okay. And then the park opened?</p>
<p>86</p> <p>11:42:18 1 Q. Spell her name, please.</p> <p>11:42:19 2 A. It's like with a J-a-c-q-u-i. And the last</p> <p>3 name is C-u-r-l.</p> <p>11:42:24 4 Q. Go ahead and look. It's not a problem.</p> <p>11:42:31 5 A. I spelled it Jacqui. It's with a Q, as I</p> <p>6 recall.</p> <p>11:42:53 7 Jacquelyn Curl is her name. And that's</p> <p>8 J-a-c-q-u-e-l-y-n.</p> <p>11:43:00 9 Q. What is her email?</p> <p>11:43:13 10 A. Raiche-Curl, a-u-r-l, @snhdmail.org.</p> <p>11:43:33 11 Q. Snhd mail?</p> <p>11:43:35 12 A. Yes.</p> <p>11:43:35 13 Q. M-a-i-l?</p> <p>11:43:37 14 A. M-a-i-l.</p> <p>11:43:44 15 Q. And so what did Jacquelyn, how did</p> <p>16 Jacquelyn reject your --</p> <p>11:43:51 17 A. I believe she sent a letter saying that we</p> <p>18 had to follow the square footage until revisions could</p> <p>19 be made.</p> <p>11:44:00 20 Q. What revisions?</p> <p>11:44:00 21 A. Rewriting of the code.</p> <p>11:44:08 22 Q. Okay. And how was that communicated to</p> <p>23 you?</p> <p>11:44:12 24 A. I think it was an email.</p> <p>11:44:16 25 Q. Okay. And that went to you?</p>	<p>88</p> <p>11:44:24 1 A. And then we opened.</p> <p>11:44:24 2 Q. Okay. The park didn't open until the plan</p> <p>3 was approved?</p> <p>11:44:28 4 A. We wouldn't have gotten our permits without</p> <p>5 it, correct.</p> <p>11:44:32 6 Q. Correct?</p> <p>11:44:32 7 A. Yes.</p> <p>11:44:33 8 Q. So was there a specific designated number</p> <p>9 of lifeguards by the Southern Nevada Health District.</p> <p>10 Was there a number that they gave you that you had to</p> <p>11 comply with?</p> <p>11:44:50 12 A. Yes.</p> <p>11:44:51 13 Q. And what was that number?</p> <p>11:44:53 14 A. 17.</p> <p>11:44:54 15 Q. Okay. And the number that you had</p> <p>16 previously given was what?</p> <p>11:42:55 17 A. Five on a slow attended day and seven on a</p> <p>18 busy day.</p> <p>11:42:14 19 Q. And that had been rejected?</p> <p>11:42:16 20 A. Yes.</p> <p>11:42:17 21 Q. As not being in compliance with law,</p> <p>22 correct?</p> <p>11:42:22 23 A. Nevada's law.</p> <p>11:42:23 24 Q. Right. Yes. Well, you are not operating</p> <p>25 Cowabunga Bay Handerson in anywhere else other than</p>

22 (Pages 85 to 88)

1 Nevada, right? That's the entity and this is the  
2 jurisdiction whose laws you must comply with, correct?  
11:42:23 3 A. Correct.  
11:42:29 4 Q. Okay. Now, how was it that they first  
5 communicated to you that you would be required to have  
6 17 lifeguards by law?  
11:42:54 7 A. Well, we originally submitted a plan based  
8 on what we had talked to NASCO about, and then they  
9 came back and they said, "This isn't per code," and we  
10 said "Okay."  
11:43:07 11 Just thinking okay, well, what do we need  
12 to do? Do we need to redefine the zone? But then she  
13 said, "Oh, no, you need 17 guards, because it's based  
14 on the square footage."  
11:43:16 15 And so I'd never heard of such a thing  
16 within my industry. So we were kind of taken back by  
17 it. And so I thought we would be able to go in and  
18 meet with them and say, "Look, this is how the industry  
19 standard for wave pools operate." And they said,  
20 "Well, we don't -- this line right here says per square  
21 footage."  
11:43:40 22 And they understood that we were a unique  
23 situation that wasn't, you know, something typical that  
24 they built. And they understood that this defining  
25 code wasn't really applicable to our wave pool. And we

1 would then have to get the change made to where it  
2 would allow us to operate that pool according to our  
3 plan.  
11:44:02 4 Q. What communications were had and  
5 memorialized --  
11:44:08 6 A. Well, this would have been --  
11:44:08 7 Q. Excuse me.  
11:44:10 8 -- with respect to what you just said?  
11:44:12 9 A. This would have been onsite discussions  
10 with Lorraine.  
11:44:16 11 Q. Okay. So you're not suggesting that  
12 there's any sort of documentation or corroboration in  
13 writing with respect to what you just said, correct?  
11:44:25 14 A. For these conversations, we then started to  
15 address the issue.  
11:44:30 16 Q. Okay. I --  
11:44:31 17 MR. EISINGER: He answered, Counsel.  
11:44:32 18 MR. CAMPBELL: I'll withdraw the question.  
19 I think he misunderstood the question, okay.  
11:44:37 20 BY MR. CAMPBELL:  
11:44:37 21 Q. I understand that you addressed the issue.  
22 But my question was with respect to these onsite  
23 communications that you had with Lorraine to the effect  
24 that you didn't think that it was really required or  
25 that you were somehow different or unique in that area.

11:44:51 1 Those discussions were not, those actual  
2 discussions were not memorialized, for example, in an  
3 email or a memo or a letter, is that correct?  
11:45:04 4 A. I'm not sure. I don't recall.  
11:45:07 5 Q. Well, you would have produced it in this  
6 litigation, wouldn't you have?  
11:45:11 7 A. I produced a letter that we sent to them  
8 stating that we would like to operate the wave pool  
9 with the guards that we had proposed.  
11:45:20 10 Q. Right. I've seen that. But that's not  
11 what you just said. So I'm talking about this onsite  
12 meeting that somehow you were different. Is there  
13 any -- there is no memorialization that I've seen about  
14 that.  
11:45:31 15 MR. EISINGER: Object to the form.  
11:45:34 16 BY MR. CAMPBELL:  
11:45:34 17 Q. Go ahead.  
11:45:35 18 A. Throughout our conversations with the  
19 Health Department, we would always sit down in  
20 conference meetings and we would discuss each  
21 individual attraction, because they were so unique to  
22 the codes that were written. Because the current code  
23 was written years ago and they didn't take into account  
24 lazy rivers or wave pools or different attractions that  
25 we had.

11:45:57 1 Q. My question is different.  
11:45:58 2 A. Okay. I don't understand your question  
3 then, I'm sorry.  
11:46:01 4 Q. Okay. And I'll repeat it.  
11:46:04 5 Were any of these discussions that you had  
6 with respect to the uniqueness of your operation  
7 memorialized in writing in the form of a memo or an  
8 email or a letter, anything like that?  
11:46:27 9 A. Maybe they were in the Health Department  
10 notes, minutes that we took.  
11:46:33 11 Q. But you don't have any, is that correct?  
11:46:38 12 A. No, I don't.  
11:46:37 13 Q. You say you had Health Department minutes  
14 or notes. Are those minutes or notes generated by you?  
11:46:45 15 A. No, by the Health Department.  
11:46:48 16 Q. By the Health Department, okay.  
11:46:52 17 So then let me get back to the subject  
18 matter. So ultimately, they said: You know, we don't  
19 care what you do anywhere else but you need 17, right?  
11:46:57 20 A. They did.  
11:46:58 21 Q. Okay. Now, were you aware that Wet 'N Wild  
22 had operated a water park in Las Vegas, Nevada?  
11:47:12 23 A. Yes, I am aware.  
11:47:13 24 Q. Okay. And do you know when they began  
25 their operations?

11:47:18 1 A. I don't.  
 11:47:18 2 Q. Okay. And did they have a wave pool at any  
 3 point in time?  
 11:47:20 4 A. They did.  
 11:47:21 5 Q. Okay. And do you know whether or not their  
 6 requirements in staffing of lifeguards was based upon  
 7 square footage of the wave pool?  
 11:47:31 8 A. I don't know that.  
 11:47:32 9 Q. Okay. Did you make any inquiry with  
 10 respect to that?  
 11:47:38 11 A. I didn't.  
 11:47:57 12 Q. Okay. Is there a reason why you didn't?  
 11:47:58 13 A. I believe that I wasn't focused on what  
 14 they did. They had probably filed for a variance to  
 15 get the staffing that they required.  
 11:47:59 16 Q. They probably? You don't know is what  
 17 you're saying?  
 11:48:03 18 A. I don't know. No, I don't.  
 11:47:54 19 Q. So are you speculating then?  
 11:47:59 20 A. Yes. I guess I would be, yes.  
 11:47:59 21 Q. Okay. Then I don't want your speculation.  
 11:48:00 22 Well, are you aware that that Wet 'N Wild  
 23 park that opened on Las Vegas Boulevard, The Strip, was  
 24 subsequently closed?  
 11:48:11 25 A. Yes.

11:48:11 1 Q. And are you aware that another Wet 'N Wild  
 2 opened here in Clark County, Nevada?  
 11:48:16 3 A. Yes.  
 11:48:19 4 Q. All right. And do you know where they  
 5 opened?  
 11:48:21 6 A. Yes.  
 11:48:22 7 Q. And where did they open?  
 11:48:23 8 A. They are over on Fort Apache in Summerlin.  
 11:48:27 9 Q. And when did they open?  
 11:48:29 10 A. 2014.  
 11:48:29 11 Q. Okay. Did they open before you?  
 11:48:32 12 A. Yes.  
 11:48:33 13 Q. Did they have a wave pool?  
 11:48:34 14 A. Yes, they do.  
 11:48:35 15 Q. And do you know if their lifeguard plan was  
 16 based upon approval by the Clark County Health  
 17 District?  
 11:48:48 18 A. I would imagine it was.  
 11:48:50 19 Q. And did you understand that their wave pool  
 20 requirement of lifeguards was based upon square  
 21 footage?  
 11:48:57 22 A. I did after the fact.  
 11:48:58 23 Q. Okay. And how did you acquire that  
 24 information?  
 11:49:00 25 A. Because we then asked how many guards had

1 to be on Wet 'N Wild when we heard we had to have 17.  
 11:49:07 2 Q. And what did they tell you?  
 11:49:09 3 A. They told us -- I can't recall if they  
 4 filed for a variance to have it reduced or if the  
 5 standard of five to seven guards met their wave pool  
 6 because their wave pool is significantly smaller than  
 7 ours.  
 11:49:28 8 Q. Okay.  
 11:49:35 9 A. So it may not have been an issue for them.  
 11:49:39 10 Q. Well, but it was based upon the size of the  
 11 wave pool, correct?  
 11:49:45 12 A. It would have been, yes.  
 11:49:48 13 Q. Right. As opposed to any other standard.  
 14 It was based upon the size of the wave pool pursuant to  
 15 Clark County law, correct?  
 11:49:44 16 A. Correct.  
 11:49:51 17 Q. Okay. Have you ever had any communications  
 18 with anyone at Wet 'N Wild concerning the tragic event  
 19 about which we are here today, the drowning of Leland  
 20 Gardner?  
 11:50:25 21 A. No.  
 11:50:29 22 Q. Okay. Do you know if anyone from your  
 23 operation or business organizations that operate your  
 24 park had any communications with anyone from the  
 25 Wet 'N Wild organization?

11:50:29 1 A. No.  
 11:50:33 2 Q. About Leland Gardner?  
 11:50:35 3 A. No.  
 11:50:37 4 Q. Okay. I would like to move off that  
 5 subject and on to another one.  
 11:50:42 6 A. Okay.  
 11:50:43 7 Q. Okay. So you have, you are the primary  
 8 person with primary responsibility for the park, its  
 9 operations, and day-to-day events, correct?  
 11:51:00 10 A. Correct.  
 11:51:07 11 Q. Okay. And who is second in command?  
 11:51:04 12 A. Rich Woodhouse.  
 11:51:06 13 Q. What is his title again?  
 11:51:08 14 A. He's the assistant manager.  
 11:51:10 15 Q. And who's under Rich Woodhouse?  
 11:51:17 16 A. Then each department would have a manager.  
 11:51:19 17 Q. Okay. And give me those departments.  
 11:51:21 18 A. Food and beverage would be Sage Harper.  
 19 Facilities management is Gary Hoffman. Guest services  
 20 is Alex Barilla. And cabanas is Bobby Kovac.  
 11:51:59 21 Q. Cabana services?  
 11:52:00 22 A. He is over all of the cabanas.  
 11:52:04 23 Q. Bobby Kovac?  
 11:52:11 24 A. Sales department is Norma Stewart.  
 11:52:18 25 Q. Stewart?

<p>97</p> <p>11:52:23 1 A. Uh-huh.</p> <p>11:52:24 2 Q. Okay.</p> <p>11:52:24 3 A. And we have, at the time we had two</p> <p>4 aquatics managers and we have a different one now.</p> <p>11:52:25 5 Q. Who are the aquatics managers?</p> <p>11:52:27 6 A. Sierra Beggs.</p> <p>11:52:28 7 Q. Sierra?</p> <p>11:52:29 8 A. Beggs. And Emily --</p> <p>11:52:30 9 Q. How do you spell that?</p> <p>11:52:31 10 A. B-e-g-g-s.</p> <p>11:52:32 11 Q. Okay.</p> <p>11:52:32 12 A. And Emily Decker. And those two reported</p> <p>13 to Rich who his position is also operations manager.</p> <p>11:52:33 14 Q. And when did Sierra and Emily work there?</p> <p>11:52:34 15 A. They were there in 2015.</p> <p>11:52:34 16 Q. And they reported to who?</p> <p>11:52:35 17 A. Rich Woodhouse.</p> <p>11:52:36 18 Q. Okay. What does an aquatics manager do?</p> <p>11:52:37 19 A. They do the scheduling. They do the</p> <p>20 rotations. They do the training. They do -- you know,</p> <p>21 just making sure that that department runs.</p> <p>11:52:38 22 Q. Could you give me both of their phone</p> <p>23 numbers, please.</p> <p>11:52:39 24 A. Sierra is (702) 371-7852. And Emily Decker,</p> <p>25 I don't have her phone number, but I have her email.</p>	<p>99</p> <p>11:52:36 1 A. She was a seasonal employee. So she had a</p> <p>2 management style that was a little too bossy for me and</p> <p>3 she rubbed guards the wrong way. So we did not bring</p> <p>4 her back.</p> <p>11:52:39 5 Q. Did she apply?</p> <p>11:52:41 6 A. No. As a matter of fact, we gave her a</p> <p>7 leave of absence for the last three weeks of operation.</p> <p>11:52:42 8 Q. And when was the last three weeks of</p> <p>9 operation?</p> <p>11:52:43 10 A. September. Actually into October. So it</p> <p>11 would have been the last two weekends in September and</p> <p>12 one weekend in October.</p> <p>11:52:44 13 Q. And did either one of these ladies, Emily</p> <p>14 or Sierra, have any, any management powers to, to bind</p> <p>15 the corporation or to speak on behalf of the</p> <p>16 corporation?</p> <p>11:52:45 17 MR. EISINGER: Object to the form.</p> <p>11:52:46 18 BY MR. CAMPBELL:</p> <p>11:52:47 19 Q. Or, excuse me, the LLC, whatever it may</p> <p>20 have been, such as yourself?</p> <p>11:52:48 21 MR. EISINGER: Same objection. Calls for a</p> <p>22 legal conclusion.</p> <p>11:52:49 23 THE WITNESS: I'm not sure what you mean.</p> <p>11:52:50 24 BY MR. CAMPBELL:</p> <p>11:52:51 25 Q. Okay. They were -- I mean, they were</p>
<p>98</p> <p>11:52:52 1 Q. Okay. What is that?</p> <p>11:52:52 2 A. It's edecker44@gmail.com.</p> <p>11:52:53 3 Q. And what is Sierra's?</p> <p>11:52:54 4 A. Sierrab, that's cierrab16@hotmail.com</p> <p>5 (sic).</p> <p>11:52:54 6 Q. Okay. Have you now told me all of the</p> <p>7 operations team members?</p> <p>11:52:55 8 A. Right now we have a new aquatics manager,</p> <p>9 his name is Chris Norman.</p> <p>11:52:57 10 Q. What were the circumstances under which</p> <p>11 Sierra Beggs and Emily Decker were dissociated from the</p> <p>12 company?</p> <p>11:52:58 13 A. Sierra (sic) is an engineering student and</p> <p>14 so she continued on with her studies and education.</p> <p>15 And Sierra, there was some personal issues with her and</p> <p>16 the other guards and so we did not bring her back.</p> <p>11:52:59 17 Q. And what were those issues?</p> <p>11:53:00 18 A. She had a --</p> <p>11:53:01 19 Q. Excuse me. The person who is the engineer</p> <p>20 student is Emily?</p> <p>11:53:02 21 A. Emily.</p> <p>11:53:03 22 Q. Okay. And so Sierra was terminated because</p> <p>23 she had problems with the guards?</p> <p>11:53:04 24 A. She wasn't terminated.</p> <p>11:53:05 25 Q. Okay.</p>	<p>100</p> <p>1 called aquatics managers, but their, their function was</p> <p>2 very limited, is that correct?</p> <p>11:53:06 3 A. Yes. They would have been, yeah.</p> <p>11:53:07 4 Q. They're basically scheduling and that sort</p> <p>5 of thing, ministerial duties, as opposed to, you know,</p> <p>6 functioning as a manager in the sense of dealing with</p> <p>7 overall operations speaking on behalf --</p> <p>11:53:08 8 A. No. They had to make sure that the</p> <p>9 schedules were filled and the positions were filled,</p> <p>10 there were guards trained, and I never left them in</p> <p>11 charge of the park.</p> <p>11:53:09 12 Q. Were they, were they hourly employees?</p> <p>11:53:10 13 A. Yes, they were.</p> <p>11:53:11 14 Q. Okay. You are a salaried employee?</p> <p>11:53:12 15 A. Yes.</p> <p>11:53:13 16 Q. Is the other member of your management</p> <p>17 team, Rich Woodhouse, salary?</p> <p>11:53:14 18 A. He is.</p> <p>11:53:15 19 Q. Okay. And all of the rest of the</p> <p>20 department people, are they hourly or salary?</p> <p>11:53:16 21 A. They are all salaried. Norma is a</p> <p>22 contracted employee.</p> <p>11:53:17 23 Q. She's an independent contractor?</p> <p>11:53:18 24 A. Yeah.</p> <p>11:53:19 25 Q. Okay. And your food and beverage manager,</p>

25 (Pages 97 to 100)

<p style="text-align: right;">101</p> <p>1 is he salary?</p> <p>11:52:21 2 A. He is.</p> <p>11:52:26 3 Q. Okay. And then facilities manager, is he</p> <p>4 salary?</p> <p>11:52:28 5 A. Yes.</p> <p>11:52:31 6 Q. Guest services --</p> <p>11:52:32 7 A. Yes.</p> <p>11:52:33 8 Q. -- salary?</p> <p>11:52:34 9 Okay. Cabana services salary?</p> <p>11:52:35 10 A. Yes.</p> <p>11:52:36 11 Q. But these aquatics managers were hourly?</p> <p>11:52:37 12 A. Correct.</p> <p>11:52:38 13 Q. Anyone else that fell into that category?</p> <p>11:52:39 14 A. As far as salary?</p> <p>11:52:41 15 Q. Hourly.</p> <p>11:52:42 16 A. Well, all of our employees that are</p> <p>17 seasonal are hourly. So this list is our only</p> <p>18 full-time employees.</p> <p>11:52:49 19 Q. Okay.</p> <p>11:52:50 20 MR. CAMPBELL: Okay. We are going to take</p> <p>21 a quick break for lunch. And when we come back, I'm</p> <p>22 going to talk to you a little bit about some of the</p> <p>23 other projects that you have been involved with in the</p> <p>24 past. So let's take about an hour --</p> <p>11:52:53 25 MR. EISINGER: That's fine.</p>	<p style="text-align: right;">103</p> <p>1 smaller market.</p> <p>01:02:25 2 Q. Okay. A smaller footprint all the way</p> <p>3 around?</p> <p>01:02:28 4 A. Correct.</p> <p>01:02:28 5 Q. Okay. How many employees are employed at</p> <p>6 the Draper facility?</p> <p>01:02:34 7 A. Approximately 180.</p> <p>01:02:37 8 Q. And how many of those are seasonal?</p> <p>01:02:41 9 A. They are all seasonal. And then they have</p> <p>10 a full-time management staff of about three -- three --</p> <p>11 four including a salesperson.</p> <p>01:02:51 12 Q. And was that the case when you were the</p> <p>13 general manager there?</p> <p>01:02:55 14 A. When I was general manager, there was --</p> <p>15 yes.</p> <p>01:03:04 16 Q. Okay. During the period of time that you</p> <p>17 were general manager, was there any citation that was</p> <p>18 issued by any regulatory authority with respect to the</p> <p>19 operation of the water park?</p> <p>01:03:17 20 A. No.</p> <p>01:03:18 21 Q. Okay. Are you aware of any citation that</p> <p>22 has been issued by any regulatory authority in the</p> <p>23 State of Utah to the Cowabunga Bay in Draper?</p> <p>01:03:21 24 A. No, I'm not aware.</p> <p>01:03:21 25 Q. Okay.</p>
<p style="text-align: right;">102</p> <p>11:52:54 1 MR. CAMPBELL: -- that's generally what's</p> <p>2 provided, and we will see you back here at 1:00. Okay?</p> <p>11:52:58 3 THE WITNESS: That's fine.</p> <p>11:52:59 4 MR. CAMPBELL: Thank you.</p> <p>11:53:00 5 THE VIDEOGRAPHER: We are going off the</p> <p>6 record. The time is approximately 11:59 a.m.</p> <p>11:53:00 7 (Recased from 11:59 a.m. to 1:01 p.m.)</p> <p>8 THE VIDEOGRAPHER: We are going back on the</p> <p>9 record. The time is approximately 1:01 p.m.</p> <p>10 BY MR. CAMPBELL:</p> <p>01:01:40 11 Q. At the break I informed you that we were</p> <p>12 going to talk a little bit about your work at other</p> <p>13 parks, including the one in Draper. So let's start</p> <p>14 with that one.</p> <p>01:01:53 15 During the period of time that you were --</p> <p>16 first of all, where is Draper, Utah located?</p> <p>01:01:59 17 A. It's a suburb of Salt Lake City, so it's in</p> <p>18 between Salt Lake and Provo, about 10 minutes south of</p> <p>19 downtown.</p> <p>01:02:08 20 Q. Okay. So the market for that is Salt Lake</p> <p>21 City and Provo area?</p> <p>01:02:14 22 A. The park in Draper is significantly</p> <p>23 different than the park here.</p> <p>01:02:18 24 Q. How so?</p> <p>01:02:20 25 A. It's on two-and-a-half acres, so it has a</p>	<p style="text-align: right;">104</p> <p>01:04:04 1 MR. MIRKOVICH: It will be Plaintiffs'</p> <p>2 Exhibit 1, please.</p> <p>01:04:05 3 (Plaintiffs' Exhibit No. 1 marked.)</p> <p>01:04:09 4 BY MR. CAMPBELL:</p> <p>01:04:09 5 Q. I'm going to show you what has been marked</p> <p>6 in this action as Plaintiffs' Exhibit No. 1.</p> <p>01:04:09 7 MR. CAMPBELL: Can we have agreement that,</p> <p>8 that throughout the course of this discovery process,</p> <p>9 that our deposition exhibits can just be sequentially</p> <p>10 numbered? So, for example, if I do 1 through 10 today,</p> <p>11 you do additional ones when you take yours, they will</p> <p>12 just sequentially be marked?</p> <p>01:04:28 13 MR. EISINGER: So stipulated. I don't</p> <p>14 think I had any for the first depositions. So that's fine.</p> <p>15 That's fine. I agree.</p> <p>01:04:34 16 BY MR. CAMPBELL:</p> <p>01:04:34 17 Q. Okay. So we're going to hand you what's</p> <p>18 been marked as Exhibit No. 1.</p> <p>01:04:38 19 A. Okay.</p> <p>01:04:37 20 Q. The reason why we mark them as Exhibit</p> <p>21 No. 1 is so we can know exactly what we are talking</p> <p>22 about. Sometimes we use, you know, multiple copies of</p> <p>23 the same basic document, but they differ slightly. So</p> <p>24 each individual one has their own individual number.</p> <p>01:04:52 25 Have you ever seen this document before?</p>

26 (Pages 101 to 104)

01:05:41 1 MR. EISINGER: Counsel, can I see the first  
2 page? Can I see it for a second?  
01:05:47 3 Thank you.  
01:07:25 4 THE WITNESS: Yes, I've seen this before.  
01:07:26 5 BY MR. CAMPBELL:  
01:07:28 6 Q. Okay. I'm going to take you very quickly  
7 through this.  
01:07:30 8 If you'll look at page 25 of the document.  
9 It indicates that this particular document was put into  
10 force and effect by Tom Welch on or about the 8th day  
11 of August 2013.  
01:07:50 12 Do you see that?  
01:07:51 13 A. I do.  
01:07:54 14 Q. And subsequent thereto in September,  
15 shortly thereafter, there is the admission of the  
16 entities which run the operation today. If you'll look  
17 at addendum 1, you will see that. See that there?  
01:08:12 18 A. Okay.  
01:08:12 19 Q. Do you see that?  
01:08:14 20 A. Uh-huh.  
01:08:14 21 Q. All right. And, and so this was, this was  
22 the transfer that took place at or about the time that  
23 the dispute had -- either was underway or was about to  
24 be resolved, is that correct?  
01:08:29 25 A. I believe that's correct, yes.

01:08:39 1 Q. That's sort of what I understand from Judge  
2 Gonzalez who was remarking about it yesterday and the  
3 involvement of you guys in this.  
01:08:39 4 So you identified all those persons  
5 therein. Do you see your name listed there?  
01:08:44 6 A. I do, yes.  
01:08:46 7 Q. And is that your signature?  
01:08:48 8 A. Yes, it is.  
01:08:47 9 Q. Do you recognize the signatures of the  
10 other individuals that have signed that document?  
01:08:55 11 A. I recognize my brother's signature. I  
12 recognize the other's names.  
01:09:02 13 Q. Good enough.  
01:09:08 14 And if you'll go two documents over, you'll  
15 see those same names listed and signatures; is that  
16 correct?  
01:09:21 17 A. Yes.  
01:09:23 18 Q. Okay. Now, I want to turn to -- and this  
19 is the, and this is the Operating Agreement for  
20 Henderson Water Park, LLC, a Nevada limited liability  
21 company, correct?  
01:09:39 22 A. Yes.  
01:09:39 23 Q. And that's the entity you previously  
24 testified to with respect to folks from Double Ott  
25 being involved and folks from your family being

1 involved, and the name of your family's entity is  
2 West Coast Water Parks, LLC?  
01:09:59 3 MR. EISINGER: I object to the form. You  
4 can answer.  
01:10:01 5 BY MR. CAMPBELL:  
01:10:02 6 Q. Correct?  
01:10:02 7 A. Yes.  
01:10:03 8 Q. Okay. So I want you to turn to the  
9 operating agreement which controls the management and  
10 operation of the Henderson Water Park, and I would like  
11 to start, if I could, at Article 6, the management  
12 committee, which is 6.1.  
01:10:24 13 A. What page is that on?  
01:10:25 14 Q. 7, I'm sorry, sir.  
01:10:30 15 First question is, do you know who crafted  
16 this particular document?  
01:10:41 17 A. I believe it may have been Tom Welch and  
18 Aviva Gordon.  
01:10:43 19 Q. Okay.  
01:10:47 20 A. I'm not for sure on that.  
01:10:48 21 Q. Okay. And do you know who hired them to do  
22 it?  
01:10:52 23 A. Yes.  
01:10:52 24 Q. Who paid them?  
01:10:54 25 A. Yes.

01:10:54 1 Q. Who was that?  
01:10:59 2 A. Tom Welch was not paid for doing this. He  
3 received his percentage. And I'm not sure who would  
4 have been the entity that hired Aviva, because this  
5 wasn't created at the time, but we all hired her to  
6 help do it.  
01:11:20 7 Q. Understood. Got it.  
01:11:21 8 Okay. In order to effectuate the LLC  
9 getting up and running, that sort of thing?  
01:11:27 10 A. Right.  
01:11:30 11 Q. So take a look Article 6, it's on page 7.  
12 It starts 6.1. See that?  
01:11:32 13 A. Uh-huh.  
01:11:32 14 Q. It states, and I will read it into the  
15 record. 6.1 is styled "Rights and Powers of  
16 Management."  
01:11:40 17 "Except as otherwise expressly  
18 provided in this operating agreement, all  
19 management rights, powers and authority over  
20 the business affairs and operation of the  
21 company shall be solely and exclusively  
22 vested in the management committee.  
01:11:58 23 "In addition to the powers now or  
24 hereinafter granted the managers (management  
25 committee) of a limited liability company



<p style="text-align: right;">109</p> <p>1 under applicable law and which are granted to</p> <p>2 the voting members and any other provisions</p> <p>3 of this agreement, the management committee</p> <p>4 shall have the full right, power and</p> <p>5 authority to do all things deemed necessary</p> <p>6 or desirable by it in its reasonable</p> <p>7 discretion to conduct the business and</p> <p>8 affairs and operations of the company."</p> <p>01:12:28 9 Do you see that, sir?</p> <p>01:12:31 10 A. Um-hum.</p> <p>01:12:32 11 Q. It then details what those powers shall</p> <p>12 include without limitation. Specifically at</p> <p>13 parenthetical B, it states:</p> <p>01:12:34 14 "(1): The making of any expenditures,</p> <p>15 the borrowing of money, the guaranteeing of</p> <p>16 indebtedness and other liabilities, issuance</p> <p>17 of evidence of indebtedness, and the</p> <p>18 incurring of any obligations it deems</p> <p>19 necessary for the conduct and activities of</p> <p>20 the company."</p> <p>01:12:54 21 Next:</p> <p>01:12:54 22 "The acquisition, disposition,</p> <p>23 mortgage, pledge, encumbrance, hypothecation,</p> <p>24 exchange of any and all assets of the</p> <p>25 company," et cetera et cetera.</p>	<p style="text-align: right;">111</p> <p>1 general partnerships."</p> <p>01:13:33 2 Following that is:</p> <p>01:13:54 3 "The control of any matters affecting</p> <p>4 the rights and obligations of the company,</p> <p>5 including the conduct of litigation and the</p> <p>6 incurring of legal expense, settlements of</p> <p>7 claims and litigation."</p> <p>01:14:08 8 Next is:</p> <p>01:14:27 9 "The purchase sale or other</p> <p>10 acquisition or disposition of the securities</p> <p>11 of the company."</p> <p>01:14:12 12 Next is:</p> <p>01:14:13 13 "The lending or borrowing of any</p> <p>14 money, assumption or guarantee of any other</p> <p>15 contracting for indebtedness."</p> <p>01:14:19 16 Next:</p> <p>01:14:19 17 "Bringing and defending of actions at</p> <p>18 law or in equity and the indemnifications of</p> <p>19 any person against liabilities."</p> <p>01:14:27 20 Do you see all that, sir?</p> <p>01:14:28 21 A. I do.</p> <p>01:14:28 22 Q. And you are familiar with that section,</p> <p>23 you've seen it before?</p> <p>01:14:32 24 A. I've seen this document. I haven't read</p> <p>25 through it. This is the first time I've read through</p>
<p style="text-align: right;">110</p> <p>01:13:01 1 Next:</p> <p>01:13:02 2 "The use of assets of the company</p> <p>3 (including, without limitation, the cash on</p> <p>4 hand) for any purpose that the committee</p> <p>5 deems appropriate, lending of funds,</p> <p>6 et cetera.</p> <p>01:13:12 7 Next one is:</p> <p>01:13:13 8 "The negotiation and execution on any</p> <p>9 terms deemed desirable and in the performance</p> <p>10 of the contracts." It goes on.</p> <p>01:13:22 11 The next one:</p> <p>01:13:23 12 "The distribution of company cash."</p> <p>01:13:28 13 Next one:</p> <p>01:13:28 14 "The selection and dismissal of</p> <p>15 employees including such officers and</p> <p>16 subordinate officers as deemed necessary, and</p> <p>17 outside attorneys, accountants, consultants,</p> <p>18 and contractors and the determination of</p> <p>19 their compensation and other terms of</p> <p>20 employment of hiring."</p> <p>01:13:42 21 Next:</p> <p>01:13:42 22 "The maintenance of such insurance for</p> <p>23 the benefit of the company."</p> <p>01:13:48 24 Next item deals with:</p> <p>01:13:50 25 "The formation of any limited or</p>	<p style="text-align: right;">112</p> <p>1 this.</p> <p>01:14:38 2 Q. Okay. Go down to the section 6.4. "Duties</p> <p>3 and Obligations of the Management Committee."</p> <p>01:14:50 4 It states:</p> <p>01:14:51 5 "Unless otherwise agreed by majority</p> <p>6 vote of the voting members, the management</p> <p>7 committee shall have the following duties and</p> <p>8 obligations.</p> <p>01:14:58 9 "(a) To take all actions which may be</p> <p>10 necessary or appropriate to accomplish the</p> <p>11 purpose of the company.</p> <p>01:15:01 12 "(b) To take all actions which may be</p> <p>13 necessary or appropriate for the continuation</p> <p>14 of the company's valid existence.</p> <p>01:15:08 15 "(c) To conduct its affairs and the</p> <p>16 affairs of the company in such a manner that</p> <p>17 no member will have any personal liability</p> <p>18 for any obligation or liabilities of the</p> <p>19 company, except as agreed by each affected</p> <p>20 member."</p> <p>01:15:22 21 Do you see that, sir?</p> <p>01:15:24 22 A. Yes.</p> <p>01:15:25 23 Q. Okay. Could you please tell me who the</p> <p>24 members of the management committee are as that</p> <p>25 committee is defined in 6.1 and 6.4.</p>

28 (Pages 109 to 112)

01:15:41 1 A. I believe the management committee is made  
2 up of Orloff, Glade, and my brother Scott, and there  
3 may be an outside person to cast a defining vote.  
01:15:50 4 Q. Orloff? Glade?  
01:15:52 5 A. Ophalkens.  
01:15:53 6 Q. Ophalkens. Okay. I'm sorry. And then?  
01:15:55 7 A. And my brother Scott.  
01:15:58 8 Q. Okay. And one, and one other individual?  
01:16:00 9 A. There may be. I seem to recall they had  
10 someone else who could cast a nonbiased vote in case  
11 there was a deadlock.  
01:16:20 12 Q. But you don't know who that is?  
01:16:22 13 A. I'm not sure if Craig is one of them as  
14 well, I'm not really sure.  
01:16:23 15 Q. Well, how is it that you report to the  
16 management committee? Is there, is there a scheduled  
17 meeting? Do you do it on the phone? Do you do it by  
18 email?  
01:16:33 19 A. So we have a meeting at the end of the  
20 year --  
01:16:40 21 Q. Right.  
01:16:40 22 A. -- the season, where I, I just -- you know,  
23 we review the financial success or problems of the park  
24 and then we make decisions based how to take the  
25 company and move it forward.

01:17:57 1 A. Yes. Those are the ones that I meet  
2 with --  
01:17:58 3 Q. That you meet with?  
01:18:00 4 A. -- and we discuss the park.  
01:18:02 5 Q. And when you discuss the park, you discuss  
6 management issues presumably of the park, how it's  
7 managed, and how it conducts its business, that sort of  
8 thing?  
01:18:11 9 A. Well, we basically go over financial  
10 numbers and we make sure that there is enough money in  
11 the bank to get us through the season so the investors  
12 don't have to put any more money into the park.  
01:18:22 13 Q. Right.  
01:18:22 14 A. So a lot of the discussions are that. And  
15 also, we discuss about the bank loan.  
01:18:25 16 Q. Okay.  
01:18:25 17 A. So there is some pretty tight financial  
18 situations going on right now because the park is new.  
19 And so that's a lot of the discussion.  
01:18:33 20 Q. You also mentioned that, that you would  
21 also discuss with the owners at these meetings certain  
22 operational issues.  
01:18:41 23 MR. EISINGER: Objection. Misstatement of  
24 his testimony.  
01:18:44 25 MR. CAMPBELL: I don't think it is.

01:18:54 1 Q. Okay. But that's like a meeting of all the  
2 owners, so to speak, correct?  
01:18:58 3 A. That's correct.  
01:18:58 4 Q. Okay. I'm talking about the management  
5 committee, just this management committee.  
01:19:02 6 A. So from what I understand of the management  
7 committee is if there is ever a situation where you  
8 have to sell the park or something, then those have,  
9 those management committee has the authority to make  
10 that decision.  
01:19:13 11 Q. Well, who do you answer to?  
01:19:20 12 A. I guess the people in the room. So these  
13 names on the -- the investors, all the investors.  
01:19:27 14 Q. All right. So are you saying that there is  
15 a separate management committee or are you saying that  
16 the management committee is all the investors and there  
17 may be a micro committee that signs documents or  
18 something of that nature?  
01:19:41 19 MR. EISINGER: Object to the form.  
01:19:42 20 BY MR. CAMPBELL:  
01:19:42 21 Q. Do you understand the question?  
01:19:44 22 A. I do. But I don't know the answer to it.  
01:19:48 23 Q. Okay. So are you saying that there could  
24 be a micro committee, but the management committee is  
25 likely the members that are also the owners?

01:19:48 1 BY MR. CAMPBELL:  
01:19:48 2 Q. What type of operational issues would you  
3 discuss typically?  
01:19:49 4 A. Well, it's more, it has to do with the  
5 property and the business there. They want to know how  
6 did a promotion go; or if we tried something new, how  
7 did that perform.  
01:19:51 8 Q. What other type of operational matters  
9 would be discussed?  
01:19:55 10 A. We'll discuss like what sort of money are  
11 we going to set apart for a capital expenditure if we  
12 are going to do a new attraction.  
01:19:56 13 Q. Okay. What other sort of operational  
14 issues arise?  
01:19:59 15 MR. EISINGER: Objection. Misstatement.  
01:20:00 16 Go ahead.  
01:20:01 17 THE WITNESS: If I had any sort of problems  
18 with my management staff, I would bring that up and  
19 say: I'm concerned about this salesperson. I'm not  
20 happy with her performance. And what are your  
21 opinions?  
01:20:09 22 BY MR. CAMPBELL:  
01:20:09 23 Q. Do you, do you generally seek out the input  
24 of the management committee that you believe to be  
25 composed of the owners to discuss termination of an

1 employee or an executive?  
 01:19:43 2 A. No.  
 01:19:45 3 Q. Okay. In what circumstances would you seek  
 4 them out to talk about terminating an employee as you  
 5 just mentioned that may come about?  
 01:19:54 6 A. I talk to my brother about it. For  
 7 instance, I had a salesperson who I didn't believe  
 8 performed.  
 01:20:02 9 Q. Okay.  
 01:20:02 10 A. So I would discuss it with him. Because  
 11 he's better at firing someone than I would be, and so  
 12 he helped me go through the process of that.  
 01:20:14 13 Q. Okay. What other operational issues would  
 14 you bring up to the management committee?  
 01:20:22 15 A. Well, what do you mean by management?  
 01:20:23 16 Q. Well, I mean as it's defined here. You  
 17 believe that it's composed of the owners. So what  
 18 other type of issues would you bring to their attention  
 19 in their role as the management committee?  
 01:20:38 20 A. So we have a, we have a sewer problem  
 21 that's left over from the construction.  
 01:20:43 22 Q. Okay.  
 01:20:43 23 A. And in the morning the building smells  
 24 really bad.  
 01:20:47 25 Q. That's not good.

01:20:48 1 A. Right. So I bring that to them and I say,  
 2 "We still need to get the sewer fixed."  
 01:20:52 3 Q. Okay.  
 01:20:53 4 A. Or there was an outstanding issue with the  
 5 slide manufacturers and some money that was owed to  
 6 them. And, quite honestly, I'm too busy running the  
 7 parks. So I say, "These are the problems I need you  
 8 guys to work with," and they'll focus on those.  
 01:21:03 9 Q. Right. Okay. And so how do you bring that  
 10 to the attention of the management committee that you,  
 11 for example, have a sewage problem?  
 01:21:17 12 A. Well, I would call Jeff Contenta, who is  
 13 the, who is with R&O, and I would say, "Jeff, the sewer  
 14 problem is still happening."  
 01:21:23 15 Q. Okay.  
 01:21:27 16 A. And then he would get on the phone and he  
 17 would say, "Well, you need to go try to get the grease  
 18 trap emptied." And then we'll go and --  
 01:21:40 19 Q. Contenta is Orluff's guy?  
 01:21:43 20 A. Jeff Contenta works for R&O. He was the  
 21 superintendent during the construction.  
 01:21:45 22 Q. Okay. And then you said you had another  
 23 problem you brought to their attention?  
 01:21:47 24 A. Well, that was an example. I mean, there's  
 25 things that due to construction that, you know, I would

1 always kind of let them know since they were over the  
 2 construction of it.  
 01:22:04 3 Q. Okay. If you wanted to -- you said you  
 4 were so busy, you know, operating the park, that you  
 5 let them handle the other issues. For example, the  
 6 vendor I think you said with respect to one of the  
 7 slides or something.  
 01:22:14 8 A. Yes. So there was some outstanding issues.  
 9 They had -- during construction, there was a lot of  
 10 money that the slide vendors were going to refund back  
 11 to the construction company. So R&O would handle that.  
 12 But those were the things that were discussed in the  
 13 meetings.  
 01:22:32 14 Q. Okay. All right. That gives me a general  
 15 idea.  
 01:22:38 16 So let's move on to -- I don't need to mark  
 17 this, but I note that your submission to the City of  
 18 Henderson business registration declared your gross  
 19 revenue declaration to be \$9 million a year. Is that  
 20 accurate?  
 01:22:44 21 A. No, that's not accurate.  
 01:22:44 22 Q. What is the accurate number?  
 01:22:48 23 (No answer provided by deponent.)  
 01:22:48 24 MR. EISINGER: I'm going to instruct you  
 25 not to answer questions concerning finances.

01:22:48 1 That's before the Court right now, as I  
 2 understand it, Counsel. As you're aware, the judge  
 3 allowed us time to file a motion, which was going to be  
 4 filed next week, on the issue of punitive. We've  
 5 objected to all the financial information.  
 01:22:56 6 MR. CAMPBELL: Well, I'm asking about  
 7 something they submitted. It's a public record.  
 01:22:58 8 BY MR. CAMPBELL:  
 01:22:58 9 Q. So why isn't this accurate?  
 01:23:00 10 (No answer provided by deponent.)  
 01:23:02 11 MR. EISINGER: Same objection.  
 01:23:03 12 MR. CAMPBELL: Why is this document --  
 13 let's mark this document if we have to.  
 01:23:02 14 MR. MIRKOVICH: We will have to make  
 15 copies.  
 01:23:05 16 MR. CAMPBELL: I'll put in front of you and  
 17 make a copy.  
 01:23:06 18 (Plaintiffs' Exhibit No. 2 identified.)  
 01:23:08 19 BY MR. CAMPBELL:  
 01:23:08 20 Q. This is the document I'm talking about,  
 21 okay. This document, and we will mark it later on, is  
 22 P012239. And it lists the gross revenue declaration as  
 23 \$9 million. Is that correct?  
 01:24:03 24 (No answer provided by deponent.)  
 01:24:05 25 MR. EISINGER: Can I have a chance to see

<p style="text-align: center;">121</p> <p>1 the document, Counsel?</p> <p>012448 2 MR. CAMPBELL: Sure. Go ahead.</p> <p>012449 3 MR. EISINGER: Thank you. Can I take it</p> <p>4 out of your book?</p> <p>012451 5 Thank you.</p> <p>012453 6 Counsel, I'm going to stand by my objection</p> <p>7 that questions concerning financial information are not</p> <p>8 relevant at this time in this litigation. That issue</p> <p>9 is also before the Court and was also discussed at a</p> <p>10 recent hearing.</p> <p>012459 11 So until that issue is resolved before the</p> <p>12 Court, I'm going to instruct you not to answer any</p> <p>13 questions concerning financial questions.</p> <p>012469 14 MR. CAMPBELL: Read the question back to</p> <p>15 him that I asked him.</p> <p>16 (Record read as follows:)</p> <p>17 "Q. This document P012239 lists the</p> <p>18 gross revenue declaration as \$9 million. Is</p> <p>19 that correct?"</p> <p>012481 20 MR. EISINGER: I'll instruct you not to</p> <p>21 answer.</p> <p>012484 22 MR. CAMPBELL: You're instructing him not</p> <p>23 to answer that question with respect to this document;</p> <p>24 is that correct?</p> <p>012487 25 MR. EISINGER: Yes. For the reason I</p>	<p style="text-align: center;">123</p> <p>012492 1 (Plaintiffs' Exhibit No. 3 marked.)</p> <p>012497 2 MR. EISINGER: Sam, can you have somebody</p> <p>3 make a copy of Exhibit 2 so I can have it.</p> <p>012501 4 MR. MIRKOVICH: That's what is being done</p> <p>5 right now.</p> <p>012504 6 MR. EISINGER: Okay. Thank you.</p> <p>012513 7 BY MR. CAMPBELL:</p> <p>012514 8 Q. Showing you what has been marked as Exhibit</p> <p>9 No. 3. Have you ever seen this document before?</p> <p>012526 10 A. No, I have never seen this document.</p> <p>012534 11 Q. Okay. Can you tell me what raised chairs</p> <p>12 for lifeguards are?</p> <p>012537 13 A. Yes. It is a chair that is raised above</p> <p>14 the deck.</p> <p>012539 15 Q. I imagine any chair would be raised above</p> <p>16 the deck.</p> <p>012543 17 A. Okay.</p> <p>012545 18 Q. Wouldn't you agree? Can you think of a</p> <p>19 chair that it wouldn't be raised above the deck that</p> <p>20 it's sitting on?</p> <p>012547 21 A. I guess there is -- yeah, that's true. So</p> <p>22 it's raised further up above the deck. It's -- I don't</p> <p>23 know how else to say it. That's what it is.</p> <p>012552 24 Q. Is a lifeguard raised chair one that has,</p> <p>25 for example, a platform that is raised above the normal</p>
<p style="text-align: center;">122</p> <p>1 stated before.</p> <p>012559 2 MR. CAMPBELL: A publicly filed document,</p> <p>3 which is an exhibit which was turned over in discovery</p> <p>4 in this matter, and you're telling me that he is not</p> <p>5 allowed to answer any question about it; is that</p> <p>6 correct?</p> <p>012562 7 MR. EISINGER: That's correct.</p> <p>012563 8 MR. CAMPBELL: Okay. I'm not going to</p> <p>9 acquiesce in that.</p> <p>012568 10 MR. EISINGER: I understand you have some</p> <p>11 issues and we have a difference of opinion on some</p> <p>12 issues.</p> <p>012569 13 MR. CAMPBELL: Well, we are going to have,</p> <p>14 I think, more than a difference of opinion on issues.</p> <p>15 I'll move on.</p> <p>012578 16 MR. EISINGER: Was that a proposed exhibit</p> <p>17 number?</p> <p>012582 18 MR. MIRKOVICH: We will mark it as</p> <p>19 Exhibit 2.</p> <p>012584 20 MR. EISINGER: That's fine.</p> <p>012585 21 MR. CAMPBELL: We will mark it as 2.</p> <p>012586 22 MR. EISINGER: Okay. Thank you.</p> <p>012492 23 (Plaintiffs' Exhibit No. 2 marked.)</p> <p>012594 24 MR. MIRKOVICH: Plaintiffs' Exhibit 3,</p> <p>25 please.</p>	<p style="text-align: center;">124</p> <p>1 height of a chair situated on a deck?</p> <p>012597 2 A. I believe it's raised above the water</p> <p>3 level. So not on the deck, above the water level.</p> <p>012603 4 Q. Not on the deck. How does --</p> <p>012605 5 A. So it would be, I think, I believe the</p> <p>6 term, it is defined from water level to the height of</p> <p>7 the chair.</p> <p>012622 8 Q. Water level.</p> <p>012623 9 A. Because decks can be at different levels.</p> <p>012627 10 Q. So is there any reason why you have never</p> <p>11 seen this document before?</p> <p>012633 12 A. I believe this document was done prior to</p> <p>13 us being involved in the project. And at the time, our</p> <p>14 partners were doing all of the health permitting.</p> <p>012647 15 Q. Okay.</p> <p>012648 16 A. Our partners at that time.</p> <p>012649 17 Q. Uh-huh. And you didn't review the file?</p> <p>012652 18 A. No, I wasn't involved in this at that time.</p> <p>012655 19 Q. No, I'm sorry. My question is when you did</p> <p>20 become involved in the project, did you review the</p> <p>21 file?</p> <p>012661 22 MR. EISINGER: Object to the form.</p> <p>012664 23 THE WITNESS: No, I didn't.</p> <p>012668 24 BY MR. CAMPBELL:</p> <p>012669 25 Q. Okay. All right. Well, let's, let's</p>

<p style="text-align: right;">125</p> <p>1 Familiarize you with one of the particular items in</p> <p>2 this.</p> <p>013029 3 First of all, do you see that this is</p> <p>4 styled as a Memo for the Record, Cowabunga Bay Water</p> <p>5 Park, Reviewer Lorraine Forston, BHS II?</p> <p>013032 6 A. Yes.</p> <p>013032 7 Q. Who is Lorraine Forston BHS II?</p> <p>013037 8 A. She was the inspector assigned to our</p> <p>9 project.</p> <p>013040 10 Q. Okay. By the Southern --</p> <p>013047 11 A. Nevada Health District.</p> <p>013047 12 Q. -- Nevada Health District, is that correct?</p> <p>013049 13 MR. EISINGER: Let him finish so you are</p> <p>14 not speaking over each other. You're fine.</p> <p>013053 15 BY MR. CAMPBELL:</p> <p>013054 16 Q. Let's go to page, what's been marked as</p> <p>17 P1537. Do you see the paragraph, third full paragraph</p> <p>18 from the bottom, "Lifeguards"?</p> <p>013119 19 A. Yes.</p> <p>013120 20 Q. "Lifeguards must be adequate for</p> <p>013122 21 the facility, one is presumed adequate for</p> <p>013125 22 every 2,000 square feet or major fraction</p> <p>013129 23 of the pool in question, one is required on</p> <p>013131 24 either side of the pool if it is 40 feet or</p> <p>013135 25 more in width, lifeguards must be in raised</p>	<p style="text-align: right;">127</p> <p>1 at the caisson on area. Too few guards at</p> <p>2 the shallow portion in the wave pool; open</p> <p>3 item on the application. (17 required, 10</p> <p>4 provided)."</p> <p>013422 5 Do you understand that to mean 17</p> <p>6 lifeguards in total are required for the wave pool?</p> <p>013428 7 A. That's what I would assume that meant.</p> <p>013433 8 Q. Okay. And you did not review this document</p> <p>9 either?</p> <p>013435 10 A. No.</p> <p>013434 11 Q. Okay. Let me ask you this. Did you review</p> <p>12 any documents in preparation for giving your deposition</p> <p>13 here today?</p> <p>013442 14 A. Yes.</p> <p>013443 15 Q. Okay. And what documents did you review?</p> <p>013447 16 A. We went over the things that had been</p> <p>17 submitted, the schedules and some photos.</p> <p>013459 18 Q. The things that have been submitted. What</p> <p>19 does that mean?</p> <p>013509 20 A. Well, there was the interrogations that I</p> <p>21 had to review and then sign.</p> <p>013507 22 Q. The interrogatories?</p> <p>013508 23 A. The interrogatories.</p> <p>013509 24 Q. Okay.</p> <p>013511 25 A. There were questions that my attorneys had</p>
<p style="text-align: right;">126</p> <p>013140 1 chairs so that the pool can be surveilled by</p> <p>013143 2 the guards. They must be able to see into</p> <p>013146 3 the pool. There are zero depth platform-raised</p> <p>013150 4 'chairs' designed specifically for beach entry</p> <p>013151 5 pools. The total number of minimum guards is</p> <p>013154 6 17 in chairs with a set of lifesaving equipment</p> <p>013200 7 at each chair (IAW) NAC 444.132, 266.272 and</p> <p>013208 8 274."</p> <p>013218 9 Do you know what NAC is?</p> <p>013219 10 A. No, I don't.</p> <p>013219 11 Q. Do you know what IAW is?</p> <p>013226 12 A. No.</p> <p>013246 13 MR. MIRKOVICH: Exhibit 4, please.</p> <p>013248 14 (Plaintiffs' Exhibit No. 4 marked.)</p> <p>013306 15 BY MR. CAMPBELL:</p> <p>013308 16 Q. Showing you Exhibit No. 4. Have you ever</p> <p>17 seen this before?</p> <p>013345 18 A. I've never seen this before.</p> <p>013347 19 Q. Okay. Could I ask that you call your</p> <p>20 attention to paragraph under the head styling of</p> <p>21 "Application" and the paragraph styled "Lifeguards."</p> <p>013408 22 Do you see that?</p> <p>013408 23 A. Um-hmm.</p> <p>013408 24 Q. It says:</p> <p>013408 25 "Lifeguard plan. Too many guards up</p>	<p style="text-align: right;">128</p> <p>1 I needed to explain how things I submitted worked.</p> <p>013519 2 MR. EISINGER: Don't, don't discuss with</p> <p>3 him what we talked about. He asked specifically for</p> <p>4 what documents.</p> <p>013523 5 BY MR. CAMPBELL:</p> <p>013524 6 Q. What documents? I don't want you telling</p> <p>7 me what you said to your attorneys or what they said to</p> <p>8 you. Okay, are we clear?</p> <p>013531 9 A. Okay.</p> <p>013531 10 Q. Okay. So just tell me what documents you</p> <p>11 reviewed.</p> <p>013535 12 A. We reviewed the police photos.</p> <p>013535 13 Q. Okay.</p> <p>013536 14 A. We reviewed the scheduling of the time-in</p> <p>15 and the time-out forms of the employees. We reviewed</p> <p>16 the rotations. We reviewed the proposed plan that was</p> <p>17 submitted and the submitted plan.</p> <p>013542 18 Q. To the Health Department?</p> <p>013544 19 A. Health Department.</p> <p>013550 20 We reviewed all of the requests that were</p> <p>21 given to us.</p> <p>013547 22 Q. For production of documents?</p> <p>013549 23 A. Yes. And I think that was about it.</p> <p>013554 24 Q. Okay. And when did you review those</p> <p>25 documents?</p>

32 (Pages 125 to 128)

01:32:30 1 A. Well, from the time that I started getting  
2 the service notices to do that and then in the last two  
3 weeks, three weeks. Well, yeah.  
01:32:43 4 Q. Okay. On how many occasions did you review  
5 those documents?  
01:32:46 6 A. I think there's probably been five or six.  
01:32:52 7 Q. Okay. And when was the first one, the  
8 first occasion that you reviewed those documents?  
01:33:00 9 A. I believe we started reviewing them back in  
10 November.  
01:33:08 11 Q. Of 2015?  
01:33:17 12 A. Yes, I started to submit them.  
01:33:20 13 Q. Submit them to who?  
01:33:24 14 A. To my attorney.  
01:33:27 15 Q. Okay. And when was the last time that you  
16 reviewed those documents?  
01:33:35 17 A. Yesterday.  
01:33:40 18 Q. And where did you review them?  
01:33:43 19 A. At his office.  
01:33:47 20 Q. And who was present?  
01:33:50 21 A. Alex and Paul.  
01:33:53 22 Q. All right. And was anyone else present?  
01:33:56 23 A. No.  
01:34:00 24 Q. And how long did that meeting take place?  
01:34:03 25 A. It was about two hours in the morning and

1 then another two in the afternoon.  
01:34:17 2 Q. Okay.  
01:34:20 3 MR. MIRKOVICH: Plaintiffs' Exhibit 5,  
4 please.  
01:34:23 5 (Plaintiffs' Exhibit No. 5 marked.)  
01:34:26 6 BY MR. CAMPBELL:  
01:34:29 7 Q. Showing you what has been marked as Exhibit  
8 No. 5. Have you ever seen that before?  
01:34:32 9 A. No, I haven't seen this before.  
01:34:35 10 Q. Okay. You see down at the bottom that at  
11 least as of January 24th, 2013, Lorraine Forston of the  
12 Health District stated that lifeguards was an open item  
13 that still needed approval.  
01:34:41 14 Do you see that?  
01:34:44 15 A. I do.  
01:34:47 16 Q. But it was also listed on there that there  
17 was a request for a variance but that was not related  
18 to the lifeguards but rather the bathhouse.  
01:34:53 19 Do you see that?  
01:34:56 20 A. Yes.  
01:34:59 21 Q. Okay.  
01:35:02 22 MR. MIRKOVICH: Plaintiffs' Exhibit 6.  
01:35:05 23 (Plaintiffs' Exhibit No. 6 marked.)  
01:35:08 24 BY MR. CAMPBELL:  
01:35:11 25 Q. Showing you Exhibit No. 6. I presume you

1 have seen this before, correct?  
01:35:14 2 A. I have seen this one, yes.  
01:35:17 3 Q. When did you first see it?  
01:35:20 4 A. This would have been probably prior to the  
5 park opening.  
01:35:23 6 Q. Okay.  
01:35:26 7 A. I'm trying to remember if it was -- we had  
8 a job shut down. And I don't remember if this was --  
9 well, I see the date now, so. This would have been  
10 prior to the park opening in 2014.  
01:35:32 11 Q. Okay. And do you know what this is?  
01:35:35 12 A. I do.  
01:35:38 13 Q. What is it?  
01:35:41 14 A. This is our staffing submittal that we  
15 proposed based on NASCO's recommendations.  
01:35:44 16 Q. "We" being who?  
01:35:47 17 A. Me. And at this point, I was now handling  
18 the submittals.  
01:35:50 19 Q. Okay. So we would have included your  
20 equations director?  
01:35:53 21 A. He would have prepared it for me. I  
22 would -- I then prepared it and I submitted to Jeff  
23 Contanta and he then submitted it to Lorraine.  
01:35:56 24 Q. And the aquatic director who prepared it  
25 for you, what was his name again? I know I have it in

1 my notes..  
01:36:02 2 A. Trevor.  
01:36:05 3 Q. Trevor, yes.  
01:36:08 4 So turn to the next page, if you would.  
5 All right. Do you see the depiction on the schematic  
6 of the wave pool?  
01:36:11 7 A. Yes.  
01:36:14 8 Q. And do you see where there is a handwritten  
9 notation?  
01:36:17 10 A. Um-hum.  
01:36:20 11 Q. It looks like in architect's pen or pencil?  
12 Do you see that?  
01:36:23 13 A. Um-hum.  
01:36:26 14 MS. MCLEOD: Is that a "yes"?  
01:36:29 15 THE WITNESS: Yes, I'm sorry.  
01:36:32 16 BY MR. CAMPBELL:  
01:36:35 17 Q. Is that 33,000?  
01:36:38 18 A. Yes.  
01:36:41 19 Q. And that number is meaningful to you?  
01:36:44 20 A. That would be the approximation of the  
21 square footage.  
01:36:47 22 Q. And the number in circle underneath that is  
23 17, correct?  
01:36:50 24 A. Correct.  
01:36:53 25 Q. And do you understand that to be the number

<p style="text-align: right;">133</p> <p>1 of designated lifeguards that were required under the</p> <p>2 law?</p> <p>01:42:18 3 A. That's what they required us to have, yes.</p> <p>01:42:30 4 Q. Okay. Do you know who made -- withdraw.</p> <p>01:42:33 5 Is it your understanding that those</p> <p>6 notations were made by the Southern Nevada Health</p> <p>7 District?</p> <p>01:42:38 8 A. I'm not sure who made the notations on</p> <p>9 here.</p> <p>01:42:41 10 Q. They were not made by your side of the</p> <p>11 table, but rather by someone at the Southern Nevada</p> <p>12 Health District but you don't know who?</p> <p>01:42:49 13 A. I don't know if, if they wrote this down as</p> <p>14 a note after a meeting or if Lorraine wrote this down.</p> <p>15 I'm not sure who wrote it down.</p> <p>01:42:53 16 Q. Okay.</p> <p>01:43:00 17 MR. MIRKOVICH: Plaintiffs' Exhibit 7,</p> <p>18 please.</p> <p>01:43:02 19 (Plaintiffs' Exhibit No. 7 marked.)</p> <p>01:43:23 20 BY MR. CAMPBELL:</p> <p>01:43:23 21 Q. Showing you what has been marked as Exhibit</p> <p>22 No. 7. You'll see that this is a memorandum of the</p> <p>23 Southern Nevada District Board of Health dated</p> <p>24 March 13th, 2014.</p> <p>01:43:28 25 Do you see that, sir?</p>	<p style="text-align: right;">135</p> <p>01:44:01 1 A. Yes.</p> <p>01:44:02 2 Q. -- submitted the lifeguard and</p> <p>01:44:05 3 attendant plan for all bodies of water</p> <p>01:44:08 4 and the respective slides and flumes."</p> <p>01:44:20 5 And you did do that, right?</p> <p>01:44:22 6 A. I did.</p> <p>01:44:22 7 Q. All right. Going down to the bottom, it</p> <p>8 says:</p> <p>01:44:27 9 "The wave pool..."</p> <p>01:44:28 10 Do you see that?</p> <p>01:44:33 11 A. Yes.</p> <p>01:44:34 12 Q. It says:</p> <p>01:44:35 13 "The wave pool requires 17 lifeguards</p> <p>14 and only 6 have been proposed to cover this</p> <p>15 water recreation area."</p> <p>01:44:39 16 Do you see that?</p> <p>01:44:45 17 A. I do.</p> <p>01:44:48 18 Q. It goes on to say that:</p> <p>01:44:49 19 "The Adventure River requires 14</p> <p>20 lifeguards and only 7 have been proposed to</p> <p>21 cover this water recreation attraction.</p> <p>22 Additional guards and specifics are required</p> <p>23 before the lifeguard and slide attendant plan</p> <p>24 can be approved".</p> <p>01:44:52 25 Do you see that?</p>
<p style="text-align: right;">134</p> <p>01:43:38 1 A. Yes.</p> <p>01:43:38 2 Q. And it's from Jacqueline Rezetar, MS,</p> <p>3 director of environmental health, and Joseph P. Iser,</p> <p>4 M.D., chief health officer.</p> <p>01:43:51 5 Do you see that, sir?</p> <p>01:43:53 6 A. Um-hm.</p> <p>01:43:53 7 Q. Okay.</p> <p>01:43:54 8 MS. McLEOD: Is that a "yes"?</p> <p>01:43:56 9 THE WITNESS: Yes.</p> <p>01:43:59 10 BY MR. CAMPBELL:</p> <p>01:43:59 11 Q. Calling your attention to page 13, Bates</p> <p>12 stamped 26.</p> <p>01:44:00 13 First of all, have you seen this before?</p> <p>14 This document that you're looking at, have you seen it</p> <p>15 before?</p> <p>01:44:11 16 A. I don't believe so.</p> <p>01:44:16 17 Q. Let's go to page 13, Bates' stamp 26.</p> <p>18 Page 13 is up here, sir.</p> <p>01:44:28 19 A. Oh, okay.</p> <p>01:44:27 20 Q. No worries.</p> <p>01:44:33 21 A. Okay.</p> <p>01:44:34 22 Q. Okay. It states:</p> <p>01:44:36 23 "February 19th, Cowabunga Bay</p> <p>24 representative Shayna (sic) Huish" --</p> <p>01:44:41 25 That's you?</p>	<p style="text-align: right;">136</p> <p>01:44:38 1 A. I do.</p> <p>01:44:38 2 Q. All right. Does this now refresh your</p> <p>3 recollection of this official action that was taken by</p> <p>4 the Southern Nevada Health District with respect to</p> <p>5 your submission of a plan?</p> <p>01:44:40 6 MR. EISINGER: I'm sorry. Miss Reporter,</p> <p>7 can you read that back?</p> <p>01:44:45 8 MR. CAMPBELL: I'll just restate it.</p> <p>01:44:49 9 MR. EISINGER: I couldn't hear it.</p> <p>01:44:51 10 MR. CAMPBELL: Not a worry.</p> <p>01:44:53 11 BY MR. CAMPBELL:</p> <p>01:44:53 12 Q. Mr. Huish, does this now refresh your</p> <p>13 recollection with respect to the action taken by the</p> <p>14 Southern Nevada Health District following the time that</p> <p>15 you submitted the plan to them?</p> <p>01:44:59 16 A. Yes, I believe so.</p> <p>01:45:02 17 Q. Okay. All right. So is it fair to say</p> <p>18 while you cannot, don't have any specific recollection</p> <p>19 of this particular document, you were, nevertheless,</p> <p>20 aware of what the ruling was with respect to the</p> <p>21 subject matter of lifeguards?</p> <p>01:45:05 22 MR. EISINGER: Object to the form.</p> <p>01:45:07 23 You can answer.</p> <p>01:45:08 24 THE WITNESS: Yes, because I was very, I</p> <p>25 was very adamant about operating it with the guards</p>

34 (Pages 133 to 136)

<p style="text-align: right;">137</p> <p>1 recommended, because I felt it was a safer operation.</p> <p>2 So this is why we kept going back and forth on it.</p> <p>01:46:49 3 BY MR. CAMPBELL:</p> <p>01:46:50 4 Q. And you thought it would be safer with</p> <p>5 fewer guards as opposed to more guards, correct?</p> <p>01:46:52 6 A. Absolutely.</p> <p>01:46:53 7 MR. CAMPBELL: Okay. Let's go to this.</p> <p>01:46:57 8 MR. MIRKOVICH: Plaintiffs' Exhibit 8,</p> <p>9 please.</p> <p>01:47:05 10 (Plaintiffs' Exhibit No. 8 marked.)</p> <p>01:47:23 11 BY MR. CAMPBELL:</p> <p>01:47:23 12 Q. Showing you Exhibit No. 8, Cowabunga Bay</p> <p>13 Lifeguard's Location Plan, Responsibilities and</p> <p>14 Rotation Schedule, as of 6/24/14.</p> <p>01:47:35 15 Have you ever seen that document before?</p> <p>01:47:37 16 A. I have.</p> <p>01:47:38 17 Q. This is a document that you submitted to</p> <p>18 the Southern Nevada Health District; is that correct?</p> <p>01:47:47 19 A. Yes.</p> <p>01:47:47 20 Q. And in this document how many -- and you</p> <p>21 may see this by the second page. How many lifeguards</p> <p>22 did you say would be positioned at the wave pool?</p> <p>01:48:03 23 A. Seven.</p> <p>01:48:05 24 Q. How many?</p> <p>01:48:08 25 A. I believe there is seven. This contradicts</p>	<p style="text-align: right;">139</p> <p>1 please.</p> <p>01:50:04 2 (Plaintiffs' Exhibit No. 9 marked.)</p> <p>01:50:28 3 BY MR. CAMPBELL:</p> <p>01:50:29 4 Q. Okay. Have you ever seen Exhibit No. 9?</p> <p>01:50:32 5 A. Yes, I have.</p> <p>01:50:34 6 Q. All right. This is styled as</p> <p>7 "Cowabunga Bay Lifeguard Location Plan,</p> <p>8 Responsibilities and Rotation Schedule, Revised</p> <p>9 6/30/14." Correct?</p> <p>01:50:44 10 A. Correct.</p> <p>01:50:44 11 Q. So this followed Exhibit 8 by six days,</p> <p>12 correct? So the next week?</p> <p>01:50:57 13 A. Correct.</p> <p>01:50:58 14 Q. Okay. Six days later you submitted this</p> <p>15 document; is that correct?</p> <p>01:51:02 16 A. That's correct.</p> <p>01:51:03 17 Q. And, and it was approved; is that correct,</p> <p>18 as amended?</p> <p>01:51:09 19 A. Yes.</p> <p>01:51:09 20 Q. And the manner in which your plan was</p> <p>21 amended was consistent with the requirement under the</p> <p>22 Health District requirements and the state</p> <p>23 administrative code and regulations that would allow</p> <p>24 you to open, correct?</p> <p>01:51:31 25 A. Yes.</p>
<p style="text-align: right;">138</p> <p>1 what is shown on the map of what I looked at first. It</p> <p>2 shows seven guards have proposed for the wave pool.</p> <p>01:48:34 3 MR. EISINGER: What page is that?</p> <p>01:48:38 4 MR. CAMPBELL: That's on 1832 which is the</p> <p>5 prior.</p> <p>01:48:44 6 BY MR. CAMPBELL:</p> <p>01:48:47 7 Q. What does, what does the second page of</p> <p>8 this document show?</p> <p>01:48:55 9 A. I can't really see it in the red. This</p> <p>10 shows positions for the wave pool, deep end, shallow</p> <p>11 end, and middle, as well as the lazy river. Guards</p> <p>12 that are off stand and kids cove.</p> <p>01:49:23 13 Q. Okay. Let's talk about the wave pool.</p> <p>01:49:27 14 A. Okay.</p> <p>01:49:27 15 Q. What in the aggregate is the number of</p> <p>16 positions that you represented would be designated</p> <p>17 positions with specific lifeguard duties for the wave</p> <p>18 pool?</p> <p>01:49:49 19 A. There is 17.</p> <p>01:49:49 20 Q. Excuse me?</p> <p>01:49:49 21 A. 17.</p> <p>01:49:49 22 Q. All right. And again, this is what you</p> <p>23 submitted, correct?</p> <p>01:49:52 24 A. Yes.</p> <p>01:50:01 25 MR. MIRKOVICH: Plaintiffs' Exhibit 9,</p>	<p style="text-align: right;">140</p> <p>01:51:33 1 Q. Okay.</p> <p>01:51:34 2 A. Allowed us to open.</p> <p>01:51:35 3 Q. And this particular plan, all right, go to</p> <p>4 page 3, listed 17 individuals that would occupy</p> <p>5 positions as lifeguards, correct?</p> <p>01:51:55 6 A. Yes, that's correct.</p> <p>01:51:58 7 Q. Which was the same one that was in</p> <p>8 Exhibit 8, correct?</p> <p>01:52:05 9 A. It looks to be the same.</p> <p>01:52:11 10 Q. And this one in fact includes a schematic</p> <p>11 of the wave pool area; is that correct?</p> <p>01:52:17 12 A. That's correct.</p> <p>01:52:17 13 Q. All right. And it is bordered in green; is</p> <p>14 that correct?</p> <p>01:52:21 15 A. Yes. That is, that's area one. So it also</p> <p>16 includes the VIP pool.</p> <p>01:52:26 17 Q. Okay. And I'm not going to -- and the VIP</p> <p>18 pool is off to the left; is that correct?</p> <p>01:52:32 19 A. Correct.</p> <p>01:52:32 20 Q. Okay. Let's just talk about the, the wave</p> <p>21 pool. Okay?</p> <p>01:52:35 22 A. Okay.</p> <p>01:52:37 23 Q. Each one of those, each one of those</p> <p>24 particular red dots bears a number; is that correct?</p> <p>01:52:45 25 A. Correct.</p>

35 (Pages 137 to 140)



01:52:46 1 Q. All right. And how many red dots are  
2 there?  
01:52:49 3 A. There are 17.  
01:52:52 4 Q. Okay. In conformance with what the Clark  
5 County, State of Nevada Health District required,  
6 correct?  
01:53:02 7 A. Correct.  
01:53:03 8 Q. Okay. And this was a plan that was drawn  
9 up by whom?  
01:53:09 10 A. I'm not sure who did this plan. I'm not  
11 sure who did it.  
01:53:15 12 Q. All right. But it was, it was done at your  
13 request by someone?  
01:53:23 14 A. Yes, correct.  
01:53:24 15 Q. Okay. And the reason it was done and  
16 submitted was to get approval to open the water park?  
01:53:30 17 A. That's correct.  
01:53:30 18 Q. Okay. And based upon your representation,  
19 as reflected in this document that you had drawn up and  
20 that you yourself submitted to the Southern Nevada  
21 Health District, in fact the Health District allowed  
22 you to open, correct?  
01:53:46 23 A. Correct.  
01:53:48 24 Q. And if you look at the very first page, it  
25 says approved Southern Nevada Health District

1 this manual be distributed to the lifeguards and the  
2 aquatic managers?  
01:53:53 3 A. I believe this would have been prepared in  
4 conjunction with NASCO.  
01:53:53 5 Q. Okay. My question was different.  
01:53:56 6 A. Okay.  
01:53:56 7 Q. Did you direct that this be distributed to  
8 the lifeguards and aquatic managers?  
01:53:59 9 A. I did not.  
01:54:01 10 Q. Okay. Who, who directed that it be  
11 distributed to the lifeguards and aquatic managers?  
01:54:03 12 A. Probably Rich Woodhouse.  
01:54:03 13 Q. Okay. All right. And -- but was it done  
14 with your approval?  
01:54:04 15 A. Well, yes, I guess it would have been, yes.  
01:54:05 16 Q. Okay. You certainly didn't disapprove of  
17 this manual being distributed, is that correct?  
01:54:06 18 A. Oh, yeah. That's correct.  
01:54:06 19 Q. It is correct that you didn't disapprove of  
20 it being distributed?  
01:54:08 21 A. I knew that we needed to have a training  
22 manual distributed to the guards so they knew what to  
23 do. I didn't -- I wasn't -- that was my operations  
24 manager's job to get that done and distribute it.  
01:54:09 25 Q. I presume that you reviewed this at some

1 Environmental and Health Plan Review.  
01:53:57 2 A. That's correct.  
01:53:58 3 Q. And it was approved the very same day that  
4 you actually walked it through, correct?  
01:54:02 5 A. Yes.  
01:54:03 6 Q. Okay. Being June of -- 30th of 2014,  
7 correct?  
01:54:09 8 A. Correct.  
01:54:13 9 Q. Okay.  
01:54:16 10 MR. MIRKOVICH: Plaintiffs' Exhibit 10,  
11 please.  
01:54:20 12 (Plaintiffs' Exhibit No. 10 marked.)  
01:54:24 13 BY MR. CAMPBELL:  
01:54:26 14 Q. Handing you what has been marked as Exhibit  
15 No. 10, can you please tell me what that is.  
01:54:34 16 A. This is a training manual and documents for  
17 our lifeguards.  
01:54:36 18 Q. Okay. Would this be also a manual for your  
19 aquatic managers?  
01:54:42 20 A. Yes.  
01:54:44 21 Q. Okay. Because they handled schedules and  
22 break times and that sort of clerical work, correct?  
01:54:51 23 A. Yes.  
01:54:52 24 Q. Okay.  
01:54:53 25 Turn to -- first of all, did you direct

1 point prior to distribution?  
01:57:06 2 A. Most likely, yes.  
01:57:10 3 Q. Okay. Let me call your attention to what  
4 is marked at the bottom as CB2432. It looks like this  
5 (indicating).  
01:57:21 6 A. Okay.  
01:57:22 7 Q. Do you see that?  
01:57:23 8 MR. EISINGER: What page, Counsel, sorry?  
01:57:24 9 MR. CAMPBELL: Sure. 2432.  
01:57:26 10 MR. EISINGER: Thank you.  
01:57:29 11 MR. CAMPBELL: You bet.  
01:57:30 12 BY MR. CAMPBELL:  
01:57:32 13 Q. Are you there, sir?  
01:58:01 14 A. I am.  
01:58:01 15 Q. Okay. Let's start at the stop. It says  
16 "Break and Rotation Schedule Aquatics." Okay?  
01:58:07 17 A. Okay.  
01:58:08 18 Q. And it appears that this is broken down  
19 into sections with respect to a styling known as  
20 Minimum Attendance, then Average Attendance, and then  
21 Maximum Attendance.  
01:58:25 22 Do you see that?  
01:58:27 23 A. I do.  
01:58:28 24 Q. Okay. And what constitutes minimum  
25 attendance?

01:58:34 1 A. Attendance of approximately 1,200 and  
2 under.  
01:58:41 3 Q. Okay. And what constitutes average  
4 attendance?  
01:58:43 5 A. 1,201 to 2,500.  
01:58:46 6 Q. Okay. And what constitutes maximum  
7 attendance?  
01:58:50 8 A. Over 2,500.  
01:58:51 9 Q. Okay. And where are those particular  
10 designations memorialized?  
01:58:54 11 A. We basically have an understanding of  
12 budget projections of what the attendance will be based  
13 on weather, based on school schedules, or other events,  
14 or day of the week.  
01:58:57 15 Q. All right. I thank you for that answer but  
16 it's nonresponsive to the question. So let me repeat  
17 the question.  
01:59:23 18 Where are those numbers --  
01:59:25 19 MR. EISINGER: It was responsive. But go  
20 ahead.  
01:59:27 21 MR. CAMPBELL: No, it wasn't.  
01:59:28 22 BY MR. CAMPBELL:  
01:59:28 23 Q. Where are those numbers established and  
24 documented as to minimum attendance, average  
25 attendance, and maximum attendance? Where would I see

1 formulated. And based upon those numbers placed into  
2 Exhibit No. -- what is this, 10?  
02:00:55 3 MR. MIRKOVICH: Yes.  
02:00:58 4 BY MR. CAMPBELL:  
02:00:58 5 Q. Is that correct?  
02:00:58 6 A. Yes.  
02:01:00 7 Q. Okay. And so let's go to this styling that  
8 you came up of minimum attendance, and I think you said  
9 that that was anything under 1,200?  
02:01:12 10 A. Yes.  
02:01:12 11 Q. Okay. And so let's go to what we are  
12 concerned with here and that's the wave pool. And it  
13 says, okay, Zone 2, wave pool, 1 to 5.  
02:01:24 14 Do you see that?  
02:01:25 15 A. I do.  
02:01:28 16 Q. Okay. Meaning that you would have only 1  
17 to 5 lifeguards on duty at the wave pool with minimum  
18 attendance?  
02:01:27 19 A. No, I believe that's positions compliance.  
02:01:32 20 Q. That's positions?  
02:01:32 21 A. Yes.  
02:01:32 22 Q. What does that mean?  
02:01:33 23 A. We would have had 5 guards on the wave  
24 pool.  
02:01:42 25 Q. Well, why does it say "1 to 5"?

1 those numbers in writing someplace in the, in the  
2 documents of Cowabunga Bay?  
02:00:48 3 A. On our daily attendance figures.  
02:00:51 4 Q. Okay. And, but when you -- I'm not talking  
5 what the daily attendance figures are. I'm talking  
6 about specifically the designation of minimum  
7 attendance, average attendance, and maximum attendance.  
02:00:55 8 Who came up with those numbers, let me ask  
9 you that question?  
02:01:10 10 A. The actual numbers of the people or --  
02:01:13 11 Q. The designation, yeah. Right, the  
12 designation.  
02:01:15 13 A. I came up with them with Rich and then with  
14 NASCO.  
02:01:18 15 Q. Okay. So you came up with, you came up  
16 with designations as to what would constitute, in your  
17 view, minimum attendance, correct?  
02:01:22 18 A. Yes.  
02:01:22 19 Q. And then you came up with what, in your  
20 view, was an average attendance; is that correct?  
02:01:23 21 A. Yes.  
02:01:24 22 Q. And then you came up with what was viewed  
23 by you as maximum attendance; is that correct?  
02:01:28 24 A. Yes.  
02:01:28 25 Q. Okay. And, and those numbers were

02:01:45 1 MR. EISINGER: Asked and answered.  
02:01:48 2 Tell him again.  
02:01:53 3 THE WITNESS: I don't know. That is not a  
4 number to be -- 5 was the one, the number we would have  
5 done. I'm not sure why it's labeled as 1 to 5.  
02:02:01 6 BY MR. CAMPBELL:  
02:02:01 7 Q. Okay, sir. But you'll agree with me that  
8 that's not what it says, it says 1 to 5, correct?  
02:02:05 9 MR. EISINGER: It's a misstatement.  
02:02:08 10 But go ahead.  
02:02:10 11 THE WITNESS: Yeah.  
02:02:11 12 BY MR. CAMPBELL:  
02:02:11 13 Q. Okay.  
02:02:13 14 All right. Let's go down to average  
15 attendance. Okay?  
02:02:21 16 A. Okay.  
02:02:21 17 Q. And again, let's go to the wave pool. And  
18 again average attendance as, as formulated and adopted  
19 by you for Cowabunga Bay was what?  
02:02:34 20 A. 1,200 to 2,500.  
02:02:37 21 Q. Okay. And so for your average attendance  
22 designation for wave pool, I see, would require between  
23 1 and 7 lifeguards; is that correct?  
02:02:39 24 MR. EISINGER: I object to the form.  
02:02:41 25 You can answer.

<p style="text-align: right;">149</p> <p>02:03:02 1 THE WITNESS: We would have required 7 on 2 that day. 02:03:03 3 BY MR. CAMPBELL: 02:03:05 4 Q. Okay. All right. What does it say there? 02:03:07 5 A. It says wave pool, 1 through 7. 02:03:10 6 Q. Okay. 1 to 7, that's what it says; is that 7 correct? 02:03:14 8 MR. EISINGER: Objection. 02:03:15 9 THE WITNESS: I don't believe it to say 1. 10 We never would have put just 1 guard on the wave pool, 11 so... 02:03:20 12 BY MR. CAMPBELL: 02:03:20 13 Q. Okay. Well -- 02:03:21 14 A. 7 would have been the number required for 15 that day. 02:03:24 16 Q. I'm just asking you what is in your 17 document that you formulated and approved the 18 distribution of, and it says 1 to 7. 02:03:31 19 Do you agree? 02:03:32 20 A. Yes. 02:03:32 21 Q. Okay. 02:03:33 22 MR. EISINGER: Object to form. 02:03:34 23 THE WITNESS: I agree. 02:03:35 24 MR. EISINGER: Argumentative. 02:03:35 25 ///</p>	<p style="text-align: right;">151</p> <p>02:04:33 1 A. 3,800. 02:04:34 2 Q. 3,800? 02:04:35 3 A. Yes. 02:04:37 4 Q. Okay. So for maximum attendance of above 5 2,500, did you say? 02:04:41 6 A. Yes. 02:04:43 7 Q. Okay. For the wave pool, you have 8 designated between 1 and 8 -- 02:04:48 9 A. Correct. 02:04:50 10 Q. -- as reflected; is that correct? 02:04:51 11 A. Yes. 02:04:52 12 Q. Now -- 02:04:53 13 MR. EISINGER: I'm going to object to the 14 form. 02:04:55 15 BY MR. CAMPBELL: 02:04:56 16 Q. Tell me when it was that you submitted this 17 plan for a breakdown of the number of lifeguards that 18 would be at the wave pool by your designations of 19 minimum attendance, average attendance, and maximum 20 attendance to -- 02:05:16 21 MR. EISINGER: Object to the form. Sorry. 02:05:18 22 BY MR. CAMPBELL: 02:05:19 23 Q. -- to the Southern Nevada Health District 24 for their approval? 02:05:22 25 MR. EISINGER: Object to the form.</p>
<p style="text-align: right;">150</p> <p>02:03:36 1 BY MR. CAMPBELL: 02:03:37 2 Q. You're not suggesting that we somehow 3 doctored this document? 02:03:39 4 A. No, I don't think you doctored it; but I 5 think you're interpreting it incorrectly. 02:03:44 6 Q. Okay. I'm just, I'm just -- I'm correctly 7 reading what is here, am I not? 02:03:48 8 MR. EISINGER: Asked and answered. 9 Misstatement of his testimony. 02:03:50 10 BY MR. CAMPBELL: 02:03:51 11 Q. Am I, sir? 02:03:53 12 MR. EISINGER: Let him answer the question. 02:03:54 13 BY MR. CAMPBELL: 02:03:54 14 Q. I'm correctly reading what is here, am I 15 not? 02:03:57 16 A. Yeah. 02:03:58 17 Q. Okay. Now let's go to maximum attendance. 18 And again, that designation and the numbers associated 19 as adopted by, created and adopted by you was between 20 what and what? 02:04:14 21 A. Above 2,500. 02:04:16 22 Q. Okay. And what's the, what's the most you 23 ever had at the water park? 02:04:23 24 A. I think we had at the most 4,000. 02:04:25 25 Q. 4,000?</p>	<p style="text-align: right;">152</p> <p>02:05:23 1 You can answer. 02:05:24 2 BY MR. CAMPBELL: 02:05:25 3 Q. When did you submit this? 02:05:26 4 A. I did not -- we did not submit this plan. 02:05:28 5 Q. And why did you not submit it for approval? 02:05:33 6 A. Because I believe that this is the safest 7 way to operate the pool, and so I made the decision 8 that we would operate it in the safest way possible. 02:05:41 9 Q. Okay. You made the decision not to submit 10 this plan to the Southern Nevada Health District; is 11 that correct? 02:05:50 12 A. I was working with the Southern Nevada 13 Health District on a revision of the number of 14 guards -- 02:05:55 15 Q. Did you ever send -- 02:05:56 16 A. -- during this time. 02:05:57 17 Q. Did you ever send this plan to the Southern 18 Nevada Health District? 02:06:00 19 A. No, we did not. 02:06:02 20 Q. And -- 02:06:03 21 MR. EISINGER: Belated objection to the 22 form. 02:06:05 23 You can answer, that's fine, sir. 02:06:07 24 BY MR. CAMPBELL: 02:06:10 25 Q. And this policy was in effect at your water</p>

38 (Pages 149 to 152)

1 park in 2013, correct?  
 02:08:23 2 A. Correct.  
 02:08:24 3 Q. Okay. And the Southern Nevada Health  
 4 District plan which approved on 6/30/14 had never been  
 5 amended by the Southern Nevada Health District, had it?  
 02:08:40 6 A. It hadn't. However, I had been on a  
 7 committee to rewrite the regulation through the  
 8 beginning of that year, and a new plan was, was  
 9 proposed and drafted that allowed, that would allow us  
 10 to operate like this on a rescue and response time  
 11 rather than a square-footage time.  
 02:09:02 12 Q. Let me reask the question. Apparently, you  
 13 didn't understand it.  
 02:09:04 14 A. Okay.  
 02:09:04 15 MR. EISINGER: Objection. Argumentative.  
 02:09:07 16 BY MR. CAMPBELL:  
 02:09:08 17 Q. I'm not arguing with you. I'm just -- I  
 18 just don't believe that you understood the question.  
 02:09:10 19 A. Okay.  
 02:09:10 20 Q. So I'm going to rephrase it for you because  
 21 I want to be courteous and I want to give you every  
 22 opportunity to answer the question that I'm asking of  
 23 you. Okay?  
 02:09:17 24 A. Okay.  
 02:09:18 25 Q. All right. So this plan, Exhibit No. 9,

1 Health District, correct?  
 02:09:22 2 A. Correct.  
 02:09:23 3 Q. All right. And so you knew that the plan  
 4 that had been designated by law was not being complied  
 5 with, correct?  
 02:09:29 6 MR. EISINGER: Object to the form.  
 02:09:30 7 You can answer.  
 02:09:32 8 THE WITNESS: Correct.  
 02:09:32 9 BY MR. CAMPBELL:  
 02:09:33 10 Q. And that's because you made the decision  
 11 not to comply with the law, correct?  
 02:09:37 12 A. That's correct.  
 02:09:37 13 Q. Okay. Now --  
 02:09:42 14 MR. EISINGER: Object to the form of that  
 15 last question.  
 02:09:42 16 BY MR. CAMPBELL:  
 02:09:43 17 Q. Let's go to 2434 on the same document, sir.  
 02:09:47 18 Do you see under "Surf-A-Rama Wave Pool"?  
 02:10:02 19 A. I do.  
 02:10:02 20 Q. Okay. Surf-A-Rama is the, the commercial  
 21 styling or name of the wave pool, is that correct?  
 02:10:07 22 A. Correct.  
 02:10:07 23 Q. All right. And it lists WP1 through WP8.  
 24 Do you see that?  
 02:10:14 25 A. I do.

1 that was approved on 6/30/14 following your submission  
 2 of a plan saying that there would be 17 guards at the  
 3 wave pool, that plan was never subsequently amended,  
 4 correct?  
 02:09:43 5 A. That's correct.  
 02:09:44 6 Q. All right. So as of June the 30th, 2014  
 7 and continuously thereafter, the required number of  
 8 lifeguards for the wave pool was 17, correct?  
 02:09:52 9 A. That's correct.  
 02:09:55 10 Q. By law, correct?  
 02:09:55 11 A. Correct.  
 02:09:55 12 Q. All right. And, but you did not operate  
 13 with 17, correct?  
 02:09:57 14 A. That's correct.  
 02:10:04 15 Q. You adopted your own plan as to how many  
 16 you would allocate at the wave pool, correct?  
 02:10:25 17 A. We adopted a plan that was advised to us by  
 18 our aquatics consultant as well as other industry  
 19 standards, and that is the plan that we used.  
 02:10:33 20 Q. And the plan that you used was one that you  
 21 determined you would put in place, correct?  
 02:10:38 22 A. Correct.  
 02:10:39 23 Q. Okay. And the one that you determined that  
 24 you would put in place was at variance from the one  
 25 that was approved and directed by the Southern Nevada

02:10:41 1 Q. Okay. And under WP1 through WP8, that  
 2 means the number of lifeguards that would be assigned  
 3 to the wave pool, correct?  
 02:10:48 4 A. Correct.  
 02:10:48 5 Q. All right. Again, so the absolute maximum  
 6 under your plan, unilaterally adopted by you and put  
 7 into effect, was that there would never be more than  
 8 17, correct -- never more than 8; is that correct?  
 02:10:49 9 MR. EISINGER: Object to the form.  
 02:10:49 10 You can answer.  
 02:10:49 11 THE WITNESS: I believe that there would  
 12 never be more than 7. On busy days, the 8th guard was  
 13 at the life jackets, assisting passing out the life  
 14 jackets.  
 02:10:51 15 BY MR. CAMPBELL:  
 02:10:52 16 Q. So the most that you would have there on  
 17 any given day, irrespective of the amount of people,  
 18 would be seven persons would be designated --  
 02:11:01 19 A. Correct.  
 02:11:02 20 Q. -- as lifeguards? Okay.  
 02:11:01 21 And once again, that was your unilateral  
 22 decision, correct?  
 02:11:08 23 A. Yes.  
 02:11:08 24 Q. And you accept responsibility for that?  
 02:11:18 25 MR. EISINGER: Object to the form.

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02:11:19 1 You can answer.

02:11:20 2 BY MR. CAMPBELL:

02:11:21 3 Q. Is that "yes"?

02:11:21 4 A. Yes.

02:11:25 5 Q. Okay. And what was the management

6 committee's position on that? Did they agree with you

7 in that regard?

02:11:23 8 A. They weren't aware of it.

02:11:34 9 Q. They weren't aware of it?

02:11:35 10 A. No.

02:11:38 11 Q. Okay. Why weren't they aware of it?

02:11:38 12 A. Because they are not involved in that sort

13 of thing, the day-to-day stuff like that.

02:11:44 14 Q. Why aren't they? Isn't that their job?

02:11:47 15 A. Which management are you talking about?

02:11:50 16 Q. The management committee, the ones that

17 sit on the management committee that you answer to and

18 you are responsible to.

02:11:56 19 MR. EISINGER: Object to the form.

02:11:57 20 Go ahead.

02:11:57 21 THE WITNESS: No, they are not involved in

22 the day-to-day operation. They don't know how many

23 people are doing cashiers or guarding or -- that's my

24 job.

02:12:04 25 ///

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02:12:04 1 BY MR. CAMPBELL:

02:12:04 2 Q. Well, why aren't they involved in that?

3 In, for example, not necessarily cashiers, but life and

4 death matters such as lifeguards, why have they

5 exhibited no interest in being involved in that

6 process?

02:12:17 7 A. Well --

02:12:17 8 MR. EISINGER: Object to the form.

02:12:19 9 THE WITNESS: They are just investors.

10 They are not involved in doing those sort of things.

02:12:24 11 BY MR. CAMPBELL:

02:12:24 12 Q. You understand that they are members of the

13 management committee, right?

02:12:27 14 A. Well, I think it's a management of the

15 partnerships, not of the park.

02:12:32 16 Q. So they have nothing to do with the

17 management of the park at all?

02:12:35 18 A. No.

02:12:38 19 Q. But that's not what your documents say, is

20 it?

02:12:38 21 A. I'm, I'm not sure about that. But, no,

22 they are not involved in the day-to-day operation. The

23 management committee votes on things if we are going to

24 sell the park or if we're going to divide the

25 partnerships or...

159

02:12:31 1 Q. So they've abdicated their management to

2 you?

02:12:54 3 A. Correct.

02:12:58 4 Q. Okay. How were you informed that they were

5 abdicated their management to you?

02:13:03 6 A. Well, I was hired as the general manager to

7 run the park.

02:13:07 8 Q. And so that's the evidence of that, is that

9 correct?

02:13:09 10 A. Yes.

02:13:10 11 Q. Okay.

02:14:11 12 MR. MIRKOVICH: Plaintiffs' Exhibit 11,

13 please.

02:14:33 14 (Plaintiffs' Exhibit No. 11 marked.)

02:14:42 15 BY MR. CAMPBELL:

02:14:42 16 Q. I'm going to show you, this is known as an

17 aggregate exhibit, it's Exhibit No. 11, do you see

18 that? I'll represent to you that these documents were

19 turned over to us by your counsel. I presume you were

20 the ones that did the search for the documents, is that

21 correct?

02:14:50 22 A. I did the search for my personal

23 information. I had the aquatic department pull all

24 these documents and then I delivered them.

02:15:09 25 Q. Okay. Who else performed the searches that

160

1 led to the production of documents in this case besides

2 you and someone from the aquatic department?

02:15:16 3 A. Rich Woodhouse, Bianca Beggs, and Emily

4 would have provided the stuff for me, the documents.

02:15:44 5 Q. Okay. So turn to the second page of this

6 document.

02:15:59 7 MR. MIRKOVICH: Bates stamp No. CV3081.

02:16:04 8 THE WITNESS: 3081?

02:16:05 9 MR. MIRKOVICH: Correct. It's about five

10 pages in to your exhibit.

02:16:14 11 MR. EISINGER: One more time.

02:16:17 12 MR. MIRKOVICH: CV3081, it's about five

13 pages into the exhibit.

02:16:20 14 BY MR. CAMPBELL:

02:16:20 15 Q. Tell me what that is.

02:16:26 16 A. I'm not sure what this is. This is -- this

17 would have been a rescue in the wave pool possibly.

18 I'm not sure.

02:16:40 19 Q. Well, that's sort of what it appears to us

20 too, but this is not in a rescue log. We didn't see

21 the rescue log that you have. Where is the rescue log

22 located?

02:17:00 23 A. It would be with all the first aid

24 statements, I believe.

02:17:04 25 Q. Okay. And it's designated a rescue log?

40 (Pages 157 to 160)

<p>161</p> <p>02:17:28 1 A. I'm not sure of that. You would have to 2 ask Rich Woodhouse about -- 02:17:32 3 Q. Or words to that effect; is that correct? 02:17:38 4 A. Anytime a guard has to go into the river or 5 any one of the pools. 02:17:38 6 Q. They have to do a detailed statement as to 7 what occurred; is that correct? 02:17:42 8 A. Well, there's varying degrees of rescue. 9 So if they go in, for instance, this one describes, I 10 guess he slipped off the tube and someone had to go 11 into the water. So we would have documented this. 02:17:52 12 Q. Okay. Does this -- this qualifies for a 13 rescue, correct? 02:17:44 14 A. Yes. 02:17:56 15 Q. Okay. That's all I needed on that. 02:18:20 16 So let's talk a little bit about the water 17 park itself. 02:18:22 18 And can you tell me as of May 27th, 2015 19 how many, if you can, years, months, and days you had 20 managed a water park, be it here in Las Vegas or 21 Henderson or in Draper, Utah? 02:18:32 22 A. Since June 12th of? 02:18:38 23 Q. May 27th. 02:18:38 24 A. Oh. 02:18:39 25 Q. Of 2015.</p>	<p>163</p> <p>1 training that you have taken at any time. 02:21:48 2 A. I have taken training in lifeguard, in all 3 of the lifeguard certification. And I've trained at 4 seminars on auditing. And I've attended seminars at 5 trade shows and workshops on aquatic safety. 02:21:57 6 Q. Okay. So you have taken lifeguard training 7 yourself? 02:21:58 8 A. Yes. 02:21:59 9 Q. You've taken courses in auditing? 02:21:42 10 A. Auditing, yes. 02:21:59 11 Q. Okay. And then what was the third? 02:21:54 12 A. I attend safety seminars at conventions for 13 aquatic safety. 02:21:59 14 Q. Okay. When is the last safety seminar you 15 attended? 02:21:55 16 A. The last one was just in January. 02:21:57 17 Q. And you attended that? 02:21:59 18 A. I did. 02:22:00 19 Q. Did anyone else from your Cowabunga Bay 20 Water Park attend? 02:22:07 21 A. Yes. 02:22:08 22 Q. Who? 02:22:08 23 A. Chris Norman. 02:22:10 24 Q. Who is that? 02:22:10 25 A. He's our aquatics manager.</p>
<p>162</p> <p>02:18:39 1 A. Okay. I'm sorry, repeat the question. 02:18:42 2 Q. Sure. As of May 27th, 2015, that's the day 3 that little Leland Gardner drowned, okay. 02:18:54 4 MR. EISINGER: Object to the form. 02:18:56 5 You can go ahead. 02:18:58 6 BY MR. CAMPBELL: 02:18:58 7 Q. Do you understand? 02:18:58 8 A. That he was rescued. Yes, I understand. 02:18:59 9 Q. No, he drowned. He drowned, okay. 10 That's -- I can tell you that that's the actual medical 11 designation for what occurred to him. 02:20:09 12 MR. EISINGER: Object to the form. 02:20:12 13 BY MR. CAMPBELL: 02:20:12 14 Q. On the day that he drowned, how many years, 15 months, and days had you managed a water park either 16 here or in Utah? 02:20:24 17 A. Prior to the date or after the date? 02:20:28 18 Q. Prior to, including that day. 02:20:31 19 A. Since June of 2009. 02:20:37 20 Q. Since June what? 02:20:39 21 A. June 12th. 02:21:00 22 Q. Did you, yourself, ever personally 23 undertake any training in water safety? 02:21:00 24 A. Yes, I have. 02:21:01 25 Q. And please detail for me all of the</p>	<p>164</p> <p>02:22:14 1 Q. He's your aquatics -- 02:22:14 2 A. Current. 02:22:16 3 Q. Current? 02:22:16 4 A. Yes. 02:22:16 5 Q. And who did he replace? 02:22:17 6 A. He replaced Sierra Beggs and Emily Decker. 02:22:24 7 Q. Now, is he salaried or is he seasonal? 02:22:28 8 A. He is salaried but not by Cowabunga Bay. 02:22:28 9 Q. By what? 02:22:34 10 A. By IAM. 02:22:36 11 Q. What is IAM? 02:22:37 12 A. It's an aquatics management group. 02:22:42 13 Q. And has Cowabunga Bay hired an aquatics 14 management group to provide services on a contract 15 basis? 02:22:49 16 A. Yes.. 02:22:51 17 Q. When did that first occur? 02:22:54 18 A. This is the first season. 02:22:57 19 Q. And there is a contract that has been 20 executed, correct? 02:23:02 21 A. Yes. 02:23:03 22 Q. And who signed the contract on behalf of 23 Cowabunga Bay? 02:23:09 24 A. I did. 02:23:10 25 Q. And who signed the contract on behalf of --</p>

<p style="text-align: right;">165</p> <p>1 what is it, IA --</p> <p>022316 2 A. M.</p> <p>022318 3 Q. -- M.</p> <p>022318 4 Do you know what that stands for?</p> <p>022319 5 A. Innovative Attraction Management, I</p> <p>6 believe.</p> <p>022322 7 Q. Who signed the contract on their behalf?</p> <p>022328 8 A. Mike Friscia, I believe.</p> <p>022334 9 Q. Okay. And who was it that engaged in the</p> <p>10 negotiations with IAM to provide independent services</p> <p>11 in the field of aquatic management?</p> <p>022342 12 A. That was me.</p> <p>022344 13 Q. Okay. And when did you undertake</p> <p>14 contacting IAM and discussing your need for aquatic</p> <p>15 services?</p> <p>022354 16 A. That was in November of 2013.</p> <p>022358 17 Q. All right. And was your decision in that</p> <p>18 regard approved by the management committee?</p> <p>022403 19 A. No.</p> <p>022404 20 Q. Okay. This was something that you just</p> <p>21 did?</p> <p>022408 22 A. I did.</p> <p>022407 23 Q. And why did you determine that you needed</p> <p>24 outside independent consultants to help you in aquatic</p> <p>25 service management?</p>	<p style="text-align: right;">167</p> <p>1 question out.</p> <p>022328 2 -- indicating that any auditing was ever</p> <p>3 done by any agency or firm, Are you suggesting that</p> <p>4 those were not turned over to us?</p> <p>022338 5 A. We don't receive written documents from</p> <p>6 them. They come out and they meet with us and that's</p> <p>7 basically it.</p> <p>022354 8 Q. Do you pay them?</p> <p>022358 9 A. Yeah.</p> <p>022359 10 Q. And you don't require any documentation</p> <p>11 from them memorializing the results of an audit?</p> <p>022358 12 A. They, they won't give us written results.</p> <p>13 I've asked them for stuff like that, but they don't</p> <p>14 provide it.</p> <p>022359 15 Q. Does that strike you as odd?</p> <p>022359 16 A. It did at first, but I think for their</p> <p>17 legal reasons. I asked why and they told me it was</p> <p>18 because of those reasons, so...</p> <p>022357 19 Q. Liability reasons?</p> <p>022358 20 A. Yes.</p> <p>022359 21 Q. Really? What individuals did you deal with</p> <p>22 from that firm that told you that they would not</p> <p>23 provide you written audits --</p> <p>022359 24 A. John --</p> <p>022359 25 Q. -- because of legal --</p>
<p style="text-align: right;">166</p> <p>022415 1 MR. EISINGER: Object to the form.</p> <p>022417 2 Go ahead and answer.</p> <p>022418 3 THE WITNESS: I wasn't looking for a</p> <p>4 management group, I was looking for a new aquatics</p> <p>5 certification program to certify our lifeguards. So I</p> <p>6 heard about this group. And upon discussing with them,</p> <p>7 I found out that they had a management program that</p> <p>8 they could offer to us.</p> <p>022438 9 BY MR. CAMPBELL:</p> <p>022438 10 Q. All right. And, and what services do they</p> <p>11 provide under your contract?</p> <p>022448 12 A. They provide all the certification, the</p> <p>13 training, they keep all the records, they do the</p> <p>14 payroll, and they do audits.</p> <p>022457 15 Q. Okay. Prior to IAM becoming involved,</p> <p>16 Cowabunga Bay had never undergone an audit, correct?</p> <p>022507 17 A. That's not correct.</p> <p>022508 18 Q. How many audits had it undergone?</p> <p>022511 19 A. We have NASCO as our aquatics company and</p> <p>20 they come in and they do several audits during the</p> <p>21 season.</p> <p>022516 22 Q. Okay. We have not seen any documents</p> <p>23 produced --</p> <p>022520 24 A. Okay.</p> <p>022521 25 Q. -- indicating -- excuse me. Let me get the</p>	<p style="text-align: right;">168</p> <p>022544 1 MR. EISINGER: Let him finish his</p> <p>2 questions, please. You are jumping in. Listen to the</p> <p>3 question.</p> <p>022548 4 BY MR. CAMPBELL:</p> <p>022548 5 Q. -- because of legal liability?</p> <p>022551 6 A. That would have been John Hingsucker.</p> <p>022558 7 Q. Did you have a written contract with NASCO</p> <p>8 to do audits?</p> <p>022559 9 A. I don't know if there was a contract. I</p> <p>10 don't, I don't know. I'm not aware of that.</p> <p>022559 11 Q. But as you sit here today, you are not even</p> <p>12 able to tell me on what dates these audits were</p> <p>13 conducted, is that correct?</p> <p>022559 14 A. That's correct.</p> <p>022559 15 Q. Because there is no written documentation</p> <p>16 of any kind or type anywhere?</p> <p>022559 17 A. They -- no.</p> <p>022559 18 Q. Okay. So does IAM do audits for you?</p> <p>022559 19 A. They do.</p> <p>022559 20 Q. And those audits are written?</p> <p>022559 21 A. They will be, yes.</p> <p>022559 22 Q. Have they just completed their first audit?</p> <p>022559 23 A. They haven't done an audit yet.</p> <p>022559 24 Q. Okay. They are going to?</p> <p>022559 25 A. They do them unannounced, as we don't know.</p>

022749 1 Q. You don't know.  
 022750 2 And when they do them, they create an audit  
 3 trail, so to speak, correct, of what they observe and  
 4 did not observe?  
 022803 5 A. I, I believe so. That would. --  
 022803 6 Q. And one of the things that they seek to  
 7 determine and to verify is compliance with all  
 8 regulatory requirements, correct?  
 022826 9 A. They -- well, yeah. For their  
 10 certifications.  
 022833 11 Q. Not just certifications but, for example,  
 12 for lifeguards, number of lifeguards?  
 022839 13 MR. EISINGER: Object to the form.  
 022840 14 BY MR. CAMPBELL:  
 022840 15 Q. There is a specific provision within your  
 16 contract about that, isn't there?  
 022844 17 A. I would have to read it. I'm not sure.  
 022847 18 Q. Okay.  
 022847 19 A. They recommend a staffing plan to us based  
 20 on their experience and their, their standards.  
 022857 21 Q. Does that staffing plan deviate from what  
 22 is required under law and per directive of the Nevada  
 23 Health District?  
 022900 24 A. I would assume not.  
 022912 25 Q. Okay. So they encourage you to comply with

1 form. Also foundation.  
 023053 2 But go ahead.  
 023054 3 THE WITNESS: Visibility, crowd, water  
 4 clarity, water ingestion, being unconscious or not..  
 023111 5 BY MR. CAMPBELL:  
 023112 6 Q. How long did it take little Leland Gardner  
 7 to drown?  
 023118 8 A. I'm not aware of the time on it.  
 023120 9 Q. Well, tell me what directives you issued to  
 10 determine that in your post rescue studies.  
 023129 11 A. I don't understand your question.  
 023140 12 Q. Well, didn't you have an all hands on deck  
 13 meeting with respect to what had occurred with Leland  
 14 and how it could be prevented in the future?  
 023143 15 A. At the time our guards were operating on  
 16 the rescue and respond time system, and that we  
 17 continue to do.  
 023201 18 Q. Okay.  
 023202 19 MR. CAMPBELL: Read back the question.  
 023202 20 BY MR. CAMPBELL:  
 023203 21 Q. This is the question, and it's a "yes" or  
 22 "no" question.  
 023208 23 MR. EISINGER: I disagree.  
 023211 24 MR. CAMPBELL: We will find out.  
 023227 25 ///

1 the law, not deviate or breach the compliance  
 2 standards, correct?  
 022920 3 A. Correct.  
 022921 4 Q. Okay. And that in fact is part of the  
 5 contract, is it not?  
 022924 6 MR. EISINGER: Object to the form.  
 022926 7 You can answer.  
 022927 8 THE WITNESS: I don't know.  
 022930 9 BY MR. CAMPBELL:  
 022930 10 Q. Was -- did anyone review that contract with  
 11 IAM before you signed it?  
 022939 12 A. I did.  
 022940 13 Q. Anyone else?  
 022940 14 A. No.  
 022949 15 I may have had Rich Woodhouse review it.  
 022952 16 Q. Okay.  
 022952 17 A. But I can't recall.  
 023014 18 Q. How much time does it take a 7-year-old boy  
 19 typically to drown, do you know?  
 023022 20 A. I don't know.  
 023025 21 Q. Well, can you give me an estimate?  
 023034 22 A. Depending on a lot of factors, anywhere  
 23 from 30 seconds to 8 minutes.  
 023042 24 Q. What are those factors?  
 023045 25 MR. EISINGER: I'm going to object to the

1 (Record read as follows:)  
 2 "Q. Well, didn't you have an all  
 3 hands on deck meeting with respect to what  
 4 had occurred with Leland and how it could be  
 5 prevented in the future?"  
 023228 6 THE WITNESS: I had a discussion -- I had  
 7 discussions with my management team to find out if  
 8 things were done properly. And the guards probably  
 9 had -- the guards discussed it, the situation. So that  
 10 was the extent.  
 023247 11 BY MR. CAMPBELL:  
 023248 12 Q. Okay. When did that, when did that meeting  
 13 take place?  
 023254 14 A. The meeting I had with the managers,  
 15 probably that night. And the guards, the next morning.  
 16 They, they meet every morning before going onto the  
 17 shift, so they would have discussed it then.  
 023308 18 Q. All right. How many hours in total were --  
 19 how much time was dedicated to this process following  
 20 the drowning of little Leland?  
 023322 21 MR. EISINGER: Object to the form of the  
 22 question.  
 023323 23 You can answer.  
 023324 24 THE WITNESS: As far as further training  
 25 or --



<p>173</p> <p>023328 1 BY MR. CAMPBELL:</p> <p>023329 2 Q. No.</p> <p>023330 3 A. Discussion?</p> <p>023331 4 Q. Yes. Where you were drilling down on what</p> <p>023332 5 occurred.</p> <p>023333 6 A. Probably two hours that night.</p> <p>023334 7 Q. And the next day?</p> <p>023335 8 A. They were probably in it for 30, 40</p> <p>023336 9 minutes. And then they continued to have ongoing</p> <p>023337 10 training throughout the season.</p> <p>023338 11 Q. I'm not talking about the ongoing training.</p> <p>023339 12 I mean in the aftermath of this little boy's drowning.</p> <p>023340 13 It was two-and-a-half hours spent drilling down on what</p> <p>023341 14 occurred that night and another 45 minutes?</p> <p>023342 15 A. 30 to 45 minutes with the guards.</p> <p>023343 16 Q. The next day?</p> <p>023344 17 A. Yes.</p> <p>023345 18 Q. And how, how was that process memorialized?</p> <p>023346 19 Were there minutes taken? Was this recorded on</p> <p>023347 20 videotape or on audio or videotape?</p> <p>023348 21 A. No.</p> <p>023349 22 Q. Was there notes taken?</p> <p>023350 23 A. No.</p> <p>023351 24 Q. Not even notes?</p> <p>023352 25 A. No.</p>	<p>175</p> <p>1 days when the census or the customers admitted -- what</p> <p>2 do you call that?</p> <p>023353 3 A. Attendance.</p> <p>023354 4 Q. Attendance. And the attendance is below</p> <p>023355 5 1,200, correct?</p> <p>023356 6 A. Correct.</p> <p>023357 7 Q. All right. So with -- so in juxtaposition</p> <p>023358 8 to the maximum amount of guards, would the lowest risk</p> <p>023359 9 be below 1,200 in attendance?</p> <p>023360 10 A. When it's below that point, we would have</p> <p>023361 11 the zones only at 5. And then on busy days, the zones</p> <p>023362 12 would go to 7. So those zones are more defined.</p> <p>023363 13 Q. What do you mean zones?</p> <p>023364 14 A. NASCO takes the wave pool and they set up a</p> <p>023365 15 zone based on a rescue and respond time. So a</p> <p>023366 16 lifeguard knows his zone and he's able to see the zone,</p> <p>023367 17 witness anything if it goes wrong within 15 seconds and</p> <p>023368 18 then he able to respond in 15 seconds.</p> <p>023369 19 MR. CAMPBELL: Let's mark the photos.</p> <p>023370 20 MR. MIRKOVICH: So this will be Exhibit 12.</p> <p>023371 21 (Plaintiffs' Exhibit No. 12 marked.)</p> <p>023372 22 MR. EISINGER: Counsel, can we take a</p> <p>023373 23 break?</p> <p>023374 24 MR. CAMPBELL: Sure. We will mark these</p> <p>023375 25 and take a break.</p>
<p>174</p> <p>023422 1 Q. You didn't take any notes?</p> <p>023423 2 A. No.</p> <p>023424 3 Q. Was there any sort of transcription like</p> <p>023425 4 Mr. Kelly?</p> <p>023426 5 A. No. We don't have that kind of management</p> <p>023427 6 style.</p> <p>023428 7 Q. Okay. Any sort of videotape at all?</p> <p>023429 8 A. No.</p> <p>023430 9 Q. Nothing?</p> <p>023431 10 A. No.</p> <p>023432 11 Q. So there is no evidence of what took place</p> <p>023433 12 in these purported aftermath meetings, correct?</p> <p>023434 13 A. Correct.</p> <p>023435 14 Q. Are there certain drowning -- withdraw.</p> <p>023436 15 Do you know what a high-risk victim is?</p> <p>023437 16 A. No.</p> <p>023438 17 Q. Okay.</p> <p>023439 18 Is there a risk factor associated with the</p> <p>023440 19 attendance number at a pool on a given day? That is,</p> <p>023441 20 is there a low-risk factor, medium-risk factor,</p> <p>023442 21 high-risk factor associated with an attendance number?</p> <p>023443 22 A. I'm not sure what you mean by low risk, but</p> <p>023444 23 on a busy day we would have guards in more positions.</p> <p>023445 24 Q. Well, for example, you seemingly designated</p> <p>023446 25 that the minimum amount of guards would be required on</p>	<p>176</p> <p>023447 1 THE VIDEOGRAPHER: We are going off the</p> <p>023448 2 record. The time is approximately 2:38 p.m.</p> <p>023449 3 (Recessed from 2:38 p.m. to 2:47 p.m.)</p> <p>023450 4 (Plaintiffs' Exhibit Nos. 13 and 14 marked.)</p> <p>023451 5 THE VIDEOGRAPHER: We are going back on the</p> <p>023452 6 record. The time is approximately 2:47 p.m.</p> <p>023453 7 BY MR. CAMPBELL:</p> <p>023454 8 Q. I'm going to hand you what has been marked</p> <p>023455 9 in these proceedings as Exhibit 12, 13, and 14.</p> <p>023456 10 12 is an aerial photograph of the</p> <p>023457 11 Cowabunga Bay Water Park here in Henderson, Nevada,</p> <p>023458 12 correct?</p> <p>023459 13 A. Yes.</p> <p>023460 14 MR. CAMPBELL: Yours are right there, sir.</p> <p>023461 15 BY MR. CAMPBELL:</p> <p>023462 16 Q. And 13 is a close-up aerial of the wave</p> <p>023463 17 pool, is that correct?</p> <p>023464 18 A. That's correct.</p> <p>023465 19 Q. And 14 is the plan that you submitted to</p> <p>023466 20 the Southern Nevada Health Authority depicting the</p> <p>023467 21 amount of lifeguards that you would have present at the</p> <p>023468 22 pool, at the wave pool, and upon which the Southern</p> <p>023469 23 Nevada Health District on June the 30th, 2014 approved</p> <p>023470 24 your ability to open and operate with those 17</p> <p>023471 25 lifeguards, correct?</p>

<p style="text-align: right;">177</p> <p>02:42:40 1 A. Correct.</p> <p>02:42:41 2 Q. Okay. At no time did you inform the</p> <p>3 Southern Nevada Health District that you had determined</p> <p>4 to reduce the number of lifeguards that were present at</p> <p>5 the wave pool, correct?</p> <p>02:42:53 6 A. Correct.</p> <p>02:42:57 7 Q. Now, Exhibits No. 12 and 13 fairly and</p> <p>8 accurately depict the wave pool and the park itself, is</p> <p>9 that correct?..</p> <p>02:43:21 10 A. Yes.</p> <p>02:43:24 11 Q. Okay. So I'm going to call your attention</p> <p>12 to a blow-up of Exhibit 13, which is a close-up of the</p> <p>13 wave pool. Do you see that, sir?</p> <p>02:43:48 14 A. Yes.</p> <p>02:43:51 15 Q. Now, I'm going to hand you stickers, little</p> <p>16 arrow stickers, and I'm going to ask you to place an</p> <p>17 arrow sticker on each, on the area at which a lifeguard</p> <p>18 was present and posted on the day that Leland Gardner</p> <p>19 drowned.</p> <p>02:50:28 20 THE VIDEOGRAPHER: I'm sorry to interrupt.</p> <p>02:50:31 21 Mr. Eisinger, would you scoot back just a</p> <p>22 tad for me so I can get this in the frame.</p> <p>02:50:38 23 MR. EISINGER: Sure.</p> <p>02:50:38 24 THE VIDEOGRAPHER: Thank you.</p> <p>02:50:38 25 MR. EISINGER: I'm going to object to the</p>	<p style="text-align: right;">179</p> <p>02:52:29 1 A. Because those are the positions that we</p> <p>2 would have had for the lifeguards on that day. Those</p> <p>3 are the positions.</p> <p>02:52:46 4 Q. No, I want to know the lifeguards that were</p> <p>5 there, where were they on that day. I don't want to</p> <p>6 know about the positions that you would have had or</p> <p>7 should have had or anything else.</p> <p>02:52:59 8 MR. EISINGER: Objection. Argumentative.</p> <p>02:53:03 9 MR. CAMPBELL: I'm not arguing.</p> <p>02:53:03 10 MR. EISINGER: You asked him a question and</p> <p>11 he did what you asked him to do.</p> <p>02:53:07 12 MR. CAMPBELL: Excuse me. You're arguing,</p> <p>13 okay.</p> <p>02:53:14 14 BY MR. CAMPBELL:</p> <p>02:53:15 15 Q. Here's by question. Was there --</p> <p>02:53:27 16 MR. EISINGER: I'm here to represent him</p> <p>17 and I object, sir.</p> <p>02:53:36 18 BY MR. CAMPBELL:</p> <p>02:53:39 19 Q. Was there a lifeguard present at the first</p> <p>20 spot? You said yes, Armoni?</p> <p>02:53:43 21 A. Armoni.</p> <p>02:53:47 22 Q. But you say that the other yellow sticker</p> <p>23 there, you don't know if there was one there or not, or</p> <p>24 who it was, but that was a posting?</p> <p>02:53:55 25 A. That's a lifeguard position. So it was.</p>
<p style="text-align: right;">178</p> <p>1 form of the question.</p> <p>02:53:42 2 BY MR. CAMPBELL:</p> <p>02:53:43 3 Q. Go ahead.</p> <p>02:53:45 4 A. (Deponent complies.)</p> <p>02:53:47 5 Q. Okay. Calling your attention to the first</p> <p>6 sticker that you put on on the far right, do you see</p> <p>7 that, sir?</p> <p>02:53:47 8 A. This one here?</p> <p>02:53:49 9 Q. Yes. Is that where a lifeguard was posted?</p> <p>02:53:52 10 A. Yes.</p> <p>02:53:53 11 Q. What was that lifeguard's name?</p> <p>02:53:54 12 A. I believe that was Armoni Hanson.</p> <p>02:53:58 13 Q. Okay. And again on the right there is</p> <p>14 another yellow sticker. Do you see that?</p> <p>02:53:57 15 A. Um-hmm.</p> <p>02:53:58 16 MS. McLEOD: Is that a "yes"?</p> <p>02:53:59 17 THE WITNESS: Yes.</p> <p>02:53:59 18 BY MR. CAMPBELL:</p> <p>02:53:59 19 Q. And who was that?</p> <p>02:53:59 20 A. I am not sure of the position of that</p> <p>21 person, who it would have been.</p> <p>02:53:59 22 Q. What is the name? You don't know the name?</p> <p>02:54:00 23 A. I know who was on the pool, I don't know</p> <p>24 which positions they were actually in at the time.</p> <p>02:54:04 25 Q. Well, so why did you put a marker there?</p>	<p style="text-align: right;">180</p> <p>1 most likely Becki or Lourdes.</p> <p>02:53:54 2 Q. Becki who?</p> <p>02:53:55 3 A. I don't know her last name. Starts with an</p> <p>4 R.</p> <p>02:53:58 5 Q. Or Lourdes?</p> <p>02:53:59 6 A. (Deponent nods head.)</p> <p>02:54:00 7 Q. But you don't know?</p> <p>02:54:01 8 A. I don't know their last name.</p> <p>02:54:02 9 Q. But one, one of those two ladies would have</p> <p>10 been there?</p> <p>02:54:07 11 A. Correct.</p> <p>02:54:08 12 Q. Okay. Going to the opposite side of the</p> <p>13 pool, starting at the lower left of the wave pool, who</p> <p>14 was the person that was there on that day?</p> <p>02:54:12 15 A. That would have been either Becki or</p> <p>16 Lourdes from the reports that I've read.</p> <p>02:54:17 17 Q. Okay. All right. Moving up to the same</p> <p>18 side of the pool but more towards the shallow area, who</p> <p>19 was that person?</p> <p>02:54:21 20 A. That was Meredith or -- Meredith, I can't</p> <p>21 remember her first name right now. Heather Meredith.</p> <p>02:54:25 22 Q. Heather Meredith. All right. And she was,</p> <p>23 she was there that day and that was her assignment to</p> <p>24 be there?</p> <p>02:54:29 25 A. Yes.</p>

45 (Pages 177 to 180)

02540 1 Q. Okay. And then you have someone at the  
2 very shallow end, is that correct?  
02544 3 A. Oh, I'm sorry, this is where Heather would  
4 have been.  
02546 5 Q. That's where who?  
02547 6 A. I understand that Heather was in that  
7 position.  
02548 8 Q. Okay. And who would have been in the  
9 position over here?  
02549 10 A. That would have been a breaker.  
02550 11 Q. What does that mean, a breaker?  
02551 12 A. That means that they are rotated out to  
13 help do breaks for the lifeguards.  
02552 14 Q. Is it your testimony that there were 5  
15 lifeguards there at all times on that day?  
02553 16 A. Yes.  
02554 17 Q. Okay. And how was that documented?  
02555 18 A. It would have been documented on a rotation  
19 plan or just on the positions being filled. They  
20 don't --  
02556 21 Q. How does a breaker --  
02557 22 MR. EISINGER: Are you done, sir? Are you  
23 done with your answer?  
02558 24 MR. CAMPBELL: Go ahead. Read his answer  
25 back.

1 say: "Okay, you go to wave pool 5 and replace wave pool  
2 5." And so they rotate like that. So it's done on --  
3 these are the positions. And whoever is coming in off  
4 their break at that time or coming in off a new shift  
5 goes into that position.  
02559 6 Q. I'm going to show you what has been marked  
7 as Exhibit No. 11.  
02560 8 MR. EISINGER: Are we done with this so I  
9 can sit down?  
02561 10 MR. CAMPBELL: Yes, go ahead and sit down.  
11 Leave it up.  
02562 12 MR. EISINGER: You are back on him?  
02563 13 THE VIDEOGRAPHER: I am.  
02564 14 MR. EISINGER: Let me know and I'll move.  
02565 15 THE VIDEOGRAPHER: I will. Thank you.  
02566 16 MR. EISINGER: Thank you.  
02567 17 BY MR. CAMPBELL:  
02568 18 Q. I'm going to show you what has been marked  
19 as Exhibit No. 11. You have seen it before, okay. And  
20 specifically Bates stamp 3210. It's the lifeguard  
21 roster for May 27th, 2015. Okay?  
02569 22 A. Okay.  
02570 23 Q. Now, the zone of the wave pool is zone 2,  
24 right?  
02571 25 A. Yes.

1 (Record read as follows)  
2 "A. It would have been  
3 documented on a rotation plan or just on the  
4 positions being filled."  
5 BY MR. CAMPBELL:  
02572 6 Q. I don't know what that means, so could you  
7 explain that to me?  
02573 8 A. So they set up a rotation plan and then  
9 they, the supervisors go and they rotate the guards.  
10 So if -- the original positions would have been  
11 documented; however, the rotations I don't believe are  
12 documented, or the breaks.  
02574 13 Q. Why not?  
02575 14 A. Because if we had to document every break  
15 that took place, that's all we would be doing and they  
16 just have a simple rotation plan.  
02576 17 Q. It would be too much work to document  
18 breaks?  
02577 19 A. Well, yeah, they occur quite often and they  
20 rotate to different positions to keep them alert. So  
21 they are constantly moving throughout the park.  
02578 22 So we have a position that's lifeguard --  
23 or wave pool 4, wave pool 5. And then a guard comes  
24 off break and you say, "Please go to wave pool position  
25 5." Then 10 minutes later another one comes in and we

02579 1 Q. All right. And the -- under zone 2  
2 lifeguards, wave pool 1 is Armoni Hanson, correct?  
02580 3 A. Correct.  
02581 4 Q. Okay. There is nobody for wave pool 2,  
5 correct?  
02582 6 A. According to this, correct.  
02583 7 Q. Okay. Where would wave pool 2 be?  
02584 8 A. Well, this rotation sheet is filled out at  
9 the beginning of the day. And so as those people come  
10 in, they would have been assigned a position. If  
11 someone was, did not show up for their shift, then we  
12 would have pulled somebody from another position to  
13 fill that one. So...  
02585 14 Q. Most respectfully, that wasn't the  
15 question. My question was a little bit different.  
02586 16 Armoni Hanson, where is wave pool 1?  
02587 17 A. (Indicating.)  
02588 18 Q. Okay. Where is wave pool 2?  
02589 19 A. My assumption would be right here  
20 (indicating).  
02590 21 Q. That's your assumption?  
02591 22 A. Yeah. I don't know the exact positions of  
23 them.  
02592 24 Q. All right. Then it has --  
02593 25 THE VIDEOGRAPHER: Excuse me, Mr. Rush.

1 will you point out wave pool 1 again for the camera.  
 02:52:35 2 THE WITNESS: (Indicating.)  
 02:52:41 3 MR. CAMPBELL: We can pull that over.  
 02:52:41 4 You seem very exasperated, and I don't want  
 5 to do that to you. Would you like me to move that over  
 6 here just a little bit?  
 02:52:47 7 MR. EISINGER: That would be nice so I  
 8 don't have to keep -- if you let me know so I don't  
 9 block the picture. I mean, where he's pointing, I'm  
 10 sitting.  
 02:52:58 11 MR. CAMPBELL: There you go.  
 02:52:58 12 MR. EISINGER: Is that okay?  
 02:53:00 13 THE VIDEOGRAPHER: Much better.  
 02:53:01 14 MR. EISINGER: Okay. Great, that's fine.  
 15 Otherwise, I've got to keep getting up. So I do  
 16 appreciate that. Thank you.  
 03:00:06 17 MR. CAMPBELL: Happy to do it.  
 03:00:07 18 BY MR. CAMPBELL:  
 03:00:07 19 Q. Okay. So your guess was that wave pool 2  
 20 is where, sir? Just point to it.  
 03:00:16 21 A. (Indicating.)  
 03:00:17 22 Q. What would tell you that that was the  
 23 position as opposed to you guessing that that was the  
 24 position?  
 03:00:23 25 A. Going back and looking at our plan, our

1 staffing plan.  
 03:00:27 2 Q. We will get to that in a minute.  
 03:00:28 3 What is the VIP?  
 03:00:31 4 A. That is a pool over here.  
 03:00:33 5 Q. And there is no one there, correct?  
 03:00:37 6 A. There is no one listed here, yes.  
 03:00:39 7 Q. And then there is Lourdes Barreras, wave  
 8 pool 4. Where is that?  
 03:00:46 9 A. (Indicating.)  
 03:00:52 10 Q. So I only see three lifeguards indicated  
 11 there.  
 03:00:56 12 A. Becki is the supervisor, so she would have  
 13 filled in for one of the positions. And --  
 03:01:00 14 Q. Go ahead.  
 03:01:06 15 Well, let's talk just about the lifeguards.  
 16 I'm not talking about the supervisors filling in or  
 17 anything else. Let's talk about the lifeguards. Okay?  
 03:01:16 18 A. She is a lifeguard.  
 03:01:17 19 Q. Okay. But just let's talk about the  
 20 lifeguards, not the supervisory lifeguards. Okay?  
 03:01:22 21 A. Okay.  
 03:01:22 22 Q. So just the lifeguards. You have three,  
 23 correct?  
 03:01:24 24 MR. EISINGER: Object to the form.  
 03:01:25 25 ///

03:01:27 1 BY MR. CAMPBELL:  
 03:01:28 2 Q. Ammoni, Lourdas, and Heather?  
 03:01:30 3 MR. EISINGER: Asked and answered. Object  
 4 to the form.  
 03:01:33 5 Go ahead.  
 03:01:34 6 THE WITNESS: Yes.  
 03:01:35 7 BY MR. CAMPBELL:  
 03:01:35 8 Q. And where was Heather located?  
 03:01:37 9 A. (Indicating.)  
 03:01:39 10 Q. Now, you said Becki. What is her last  
 11 name?  
 03:01:46 12 A. Rosbel, I don't know. I can't read that.  
 03:01:51 13 Q. Where was she located?  
 03:01:53 14 A. I believe she was here (indicating).  
 03:01:55 15 Q. All right. So take me through once again  
 16 and tell me where everyone was.  
 03:02:02 17 A. I know that Ammoni was here.  
 03:02:04 18 Q. Okay.  
 03:02:04 19 A. I know that Heather was here.  
 03:02:08 20 Q. Okay.  
 03:02:08 21 A. I believe Lourdas or Becki was here or  
 22 Lourdas and Becki was here.  
 03:02:11 23 Q. All right.  
 03:02:12 24 A. I'm not sure which one they were in.  
 03:02:14 25 Q. But we still have a 5th out there?

03:02:16 1 A. Correct.  
 03:02:18 2 Q. Okay. And who was that?  
 03:02:20 3 A. At this time I don't know who that would  
 4 have been. They would have -- they could have pulled  
 5 this position from one of the slide attractions or one  
 6 of the breakers.  
 03:02:30 7 Q. The fact of the matter is you don't have a  
 8 single document that suggests that there was a 4th  
 9 lifeguard at all, correct?  
 03:02:35 10 A. I don't know if we do or not.  
 03:02:39 11 Q. Well, you certainly haven't produced one.  
 03:02:42 12 MR. EISINGER: I'll object to the form.  
 03:02:44 13 BY MR. CAMPBELL:  
 03:02:44 14 Q. The only document that's been produced in  
 15 that regard is what you're looking at right here. Do  
 16 you see that, sir?  
 03:02:51 17 A. I do.  
 03:02:51 18 Q. And it lists three lifeguards and one  
 19 supervisor, correct?  
 03:02:54 20 A. Correct.  
 03:02:55 21 Q. Four in total, correct?  
 03:02:58 22 A. According to that, yes.  
 03:02:59 23 Q. Okay. And so this would have been per the  
 24 approval and requirement of the Southern Nevada Health  
 25 District, there should have been 17 lifeguards there

1 that day, correct?  
 03:32:22 2 A. Per that plan, yes.  
 03:32:23 3 Q. Okay. Per the plan that was approved and  
 4 consistent with law, correct?  
 03:32:26 5 MR. EISINGER: Object to the form.  
 03:32:28 6 You can answer.  
 03:32:31 7 THE WITNESS: Correct.  
 03:32:34 8 BY MR. CAMPBELL:  
 03:32:34 9 Q. Okay. But according to your own documents,  
 10 there were only three lifeguards and one supervisor,  
 11 correct?  
 03:32:44 12 MR. EISINGER: Asked and answered.  
 03:32:45 13 MR. CAMPBELL: Don't bark at me, please.  
 03:32:46 14 MR. EISINGER: I'm not barking at you.  
 03:32:49 15 BY MR. CAMPBELL:  
 03:32:49 16 Q. Correct?  
 03:32:49 17 MR. EISINGER: You have been speaking much  
 18 louder than me the whole day.  
 03:32:49 19 Go ahead.  
 03:32:49 20 BY MR. CAMPBELL:  
 03:32:49 21 Q. Is that correct, sir?  
 03:32:50 22 A. Yes.  
 03:32:53 23 Q. Okay. Does Backi -- what is her last name?  
 03:32:54 24 A. I don't know her last name.  
 03:32:57 25 Q. Does she still work at the pool?

1 at the park.  
 03:32:58 2 Q. She is an EMT at the park, okay.  
 03:32:58 3 Now, taking this green sticker arrow,  
 4 please place that green sticker arrow in the location  
 5 at which Leland Gardner drowned and was pulled  
 6 initially by one of the lifeguards.  
 03:32:59 7 A. To my best approximation?  
 03:33:02 8 Q. Yes.  
 03:33:03 9 A. (Indicating.)  
 03:33:03 10 Q. Okay. And that approximation is based upon  
 11 what?  
 03:33:03 12 A. On the witness accounts and the reports  
 13 that I've read.  
 03:33:03 14 Q. Okay. Now, were there any lifeguard chairs  
 15 there that day?  
 03:33:07 16 A. Yes. They have chairs.  
 03:33:09 17 Q. What kind of chairs are they?  
 03:33:11 18 A. It's just a chair. It's just a deck chair.  
 03:33:12 19 Q. What is a deck chair?  
 03:33:13 20 A. Like a chair, patio chair.  
 03:33:13 21 Q. Like a stackable?  
 03:33:14 22 A. Yes.  
 03:33:14 23 Q. Like those white stackables you get at  
 24 Costco?  
 03:33:16 25 A. Yes.

03:34:19 1 A. She does.  
 03:34:19 2 Q. Okay. What is her position?  
 03:34:21 3 A. She is a supervisor.  
 03:34:23 4 Q. The same position that she had last year?  
 03:34:24 5 A. Yes.  
 03:34:25 6 Q. Is she a supervisor at the wave pool?  
 03:34:27 7 A. She is the supervisor of all the lifeguards  
 8 so she rotates around.  
 03:34:34 9 Q. Okay. Armoni Hanson, does he work there?  
 03:34:35 10 A. He does not.  
 03:34:35 11 Q. Where is he?  
 03:34:36 12 A. I believe he's in college.  
 03:34:37 13 Q. Do you know where?  
 03:34:38 14 A. St. George.  
 03:34:38 15 Q. Lourdes Barreras, is she with you?  
 03:34:42 16 A. She was with us. However, I think she just  
 17 put in her two weeks.  
 03:34:47 18 Q. Okay. And when did that happen?  
 03:34:48 19 A. Just on Saturday.  
 03:34:49 20 Q. And why did he put in her two weeks?  
 03:34:51 21 A. She got another job full time.  
 03:34:54 22 Q. Do you know where?  
 03:34:54 23 A. I don't.  
 03:34:55 24 Q. Okay. And Heather Meredith?  
 03:34:58 25 A. She still works for us. Currently an EMT

03:34:59 1 Q. Okay. And how many of those chairs are  
 2 there?  
 03:35:02 3 A. They are at every position for the guards.  
 03:35:03 4 Q. Okay. And how many chairs were there that  
 5 day?  
 03:35:05 6 A. I would assume there would have been the  
 7 four at those positions.  
 03:35:05 8 Q. Four of them, all right. Are you  
 9 speculating or do you know?  
 03:35:09 10 A. No, I know.  
 03:35:10 11 Q. Okay. How do you know?  
 03:35:11 12 A. Because they are always there.  
 03:35:13 13 Q. Okay. So where are they? Point out the  
 14 four and where they are at.  
 03:35:17 15 A. One, two, three, four (indicating).  
 03:35:22 16 Q. Are there still those deck chairs being  
 17 used today?  
 03:35:26 18 A. Yes.  
 03:35:28 19 Q. At Cowabunga Bay?  
 03:35:29 20 A. Correct.  
 03:35:30 21 Q. Okay. And they are at each of those  
 22 positions?  
 03:35:34 23 A. Correct.  
 03:35:36 24 Q. Are there lifeguard stands?  
 03:35:36 25 A. The health inspectors allowed us to use

1 these in place of the lifeguard stands because the deck  
2 of the wave pool is raised four feet above the water  
3 level.  
03:02:26 4 Q. I'm simply asking the question. Are there  
5 lifeguard stands?  
03:02:31 6 A. At the park or on the pool?  
03:02:32 7 Q. Are there lifeguard stands on the wave  
8 pool?  
03:02:35 9 A. No.  
03:02:32 10 Q. Are there, are there lifeguard houses? Do  
11 you know what a lifeguard house is?  
03:02:40 12 A. Like a raised platform deck?  
03:02:42 13 Q. Yes.  
03:02:43 14 A. I know what that is.  
03:02:44 15 Q. Are there lifeguard houses?  
03:02:46 16 A. No.  
03:02:46 17 Q. Have there ever been lifeguard houses?  
03:02:48 18 A. No.  
03:02:49 19 Q. Okay.  
03:02:50 20 A. However, can I clarify one thing?  
03:02:51 21 Q. Absolutely.  
03:02:51 22 A. There are these two structures here that  
23 are themed to look like lifeguard towers, but they are  
24 not usable, it's just a prop on the pool.  
03:02:53 25 Q. Following the time of the tragic drowning.

1 of little Leland, were you subject to an inspection of  
2 any kind or type by the Southern Nevada Health  
3 District?  
03:02:57 4 A. They did come in, I believe, three days  
5 after.  
03:02:58 6 Q. And when you say they came in, do you know  
7 who came in?  
03:02:59 8 A. I believe it was Jackie Peet, Al -- Al  
9 Kears, and there was another woman, I don't know the  
10 name.  
03:03:01 11 Q. And did you meet with them?  
03:03:02 12 A. I did.  
03:03:03 13 Q. Okay. And tell me what occurred on your  
14 meeting.  
03:03:04 15 A. They came out and they wanted to know --  
03:03:07 16 Q. What time did they come out?  
03:03:08 17 A. It was right before opening, so about  
18 12:00.  
03:03:09 19 Q. And where did you meet?  
03:03:10 20 A. I met with them first at the cabana  
21 check-in and then we walked through the park.  
03:03:11 22 Q. Okay. Did you have anyone with you?  
03:03:12 23 A. At that time, no, it was just me and them.  
03:03:13 24 Q. And them being who again?  
03:03:14 25 A. There was three of them. It was Jackie

1 Peet, I know, Al Kears, and I don't know the third  
2 woman's name.  
03:03:11 3 Q. Okay. And so what did you do?  
03:03:13 4 A. They asked about the situation that took  
5 place. They asked -- and then they took water clarity.  
6 And then they walked around the park. And then they  
7 came back and reviewed their findings with me. And  
8 they said that we needed to put up some no diving signs  
9 and I think our pF was off or something. And that was  
10 their submission, that's what we talked about.  
03:03:13 11 Q. Okay. Did they ever issue any sort of  
12 written report --  
03:03:14 13 A. Yes.  
03:03:15 14 Q. -- of any kind to you?  
03:03:16 15 All right. What did they issue to you?  
03:03:17 16 A. What I told you. That our pF was off and  
17 that our -- we needed a no diving sign. And I believe  
18 the no diving sign also had -- we had to post the  
19 capacity of the wave pool.  
03:03:18 20 Q. Okay.  
03:03:19 21 A. And, oh, I think also upon their  
22 investigation they said that we didn't have any  
23 shepherd's ladders, so they wrote us up for that and we  
24 had to get a shepherd's ladder.  
03:03:20 25 Q. What is a shepherd's ladder?

03:03:22 1 A. It's like a big long hook that you use.  
03:03:23 2 Q. All right. And so this would have been on  
3 what day?  
03:03:24 4 A. I believe it was three days after. Might  
5 have been on the Saturday.  
03:03:25 6 Q. So if this took place -- if Leland drowned  
7 on the 27th, this would have been on the 30th?  
03:03:26 8 MR. EISINGER: Object to the form.  
03:03:27 9 You can answer.  
03:03:28 10 THE WITNESS: I believe it was right around  
11 that time, yeah. It was soon after.  
03:03:29 12 BY MR. CAMPBELL:  
03:03:30 13 Q. Okay. And did they ask you how many  
14 lifeguards were present that day?  
03:03:31 15 A. I believe they did.  
03:03:32 16 Q. What did you tell them?  
03:03:33 17 A. I told them we had the 5 on.  
03:03:34 18 Q. What did they say in response to that?  
03:03:35 19 A. They didn't say anything.  
03:03:36 20 Q. Okay. And you say that you received some  
21 sort of written report on this; is that correct?  
03:03:37 22 A. Yes.  
03:03:38 23 Q. Okay.  
03:03:39 24 MR. MIRKOVICH: Exhibit 15, please.  
03:03:40 25 (Plaintiffs' Exhibit No. 15 marked.)

03:14:10 1 BY MR. CAMPBELL:  
 03:14:10 2 Q. Showing what has been marked as Exhibit  
 03:14:10 3 No. 15. Have you ever seen this document before?  
 03:14:21 4 A. Yes, I did see this one.  
 03:14:22 5 Q. Had you ever heard that there was a  
 03:14:22 6 whistleblower complaint to the Southern Nevada Health  
 03:14:22 7 District about the violations of law that were taking  
 03:14:22 8 place at the Cowabunga Bay theme park including the  
 03:14:22 9 wave pool?  
 03:14:47 10 MR. EISINGER: Object to the form.  
 03:14:48 11 But go ahead.  
 03:14:50 12 THE WITNESS: Can you ask me that again.  
 03:14:51 13 MR. CAMPBELL: Sure.  
 03:14:52 14 Could you kindly repeat it.  
 03:14:52 15 (Record read as follows:)  
 03:14:52 16 "Q. Had you ever heard that there was  
 03:14:52 17 a whistleblower complaint to the Southern  
 03:14:52 18 Nevada Health District about the violations  
 03:14:52 19 of law that were taking place at the  
 03:14:52 20 Cowabunga Bay theme park including the wave  
 03:14:52 21 pool?"  
 03:14:52 22 THE WITNESS: No. I hadn't.  
 03:14:52 23 BY MR. CAMPBELL:  
 03:14:52 24 Q. All right. When is the last time you've  
 03:14:52 25 seen Exhibit No. 15?

03:14:58 1 A. This is when they came out the second time.  
 03:15:25 2 Q. My question is little bit different.  
 03:15:27 3 When is the last time you've seen this  
 03:15:27 4 document? Did you see the document in preparation for  
 03:15:27 5 your deposition here?  
 03:15:30 6 A. No.  
 03:15:30 7 Q. Okay.  
 03:15:30 8 A. The last time I would have seen this is  
 03:15:30 9 when I copied it and brought it to my counsel.  
 03:15:34 10 Q. Okay. For the production of documents?  
 03:15:35 11 A. Yes.  
 03:15:37 12 Q. Okay. So tell us all that you can recall  
 03:15:37 13 with respect to the issuance of this Notice of  
 03:15:37 14 Inspection and Violation.  
 03:15:38 15 A. Okay. So, per our first meeting when we  
 03:15:38 16 discussed the number of guards, there had been prior  
 03:15:38 17 meetings that I've had with the health board on  
 03:15:38 18 rewriting the codes for the pool.  
 03:15:40 19 And so I had received a draft of the new  
 03:15:40 20 proposals, which would have allowed this wave pool to  
 03:15:40 21 operate on a rescue and respond time rather than square  
 03:15:40 22 footage. So I was under the assumption that those  
 03:15:40 23 plans were now valid for us to operate under.  
 03:15:47 24 Q. And who told you that they were valid?  
 03:15:49 25 A. I sat on the board and so I was there while

03:15:50 1 they were rewriting them, and then I received a draft.  
 03:16:35 2 Q. Were they ever approved by the Southern  
 03:16:35 3 Nevada?  
 03:16:38 4 A. They have not been approved yet.  
 03:16:40 5 Q. Okay. Continue, please.  
 03:16:43 6 A. So because they were all there during those  
 03:16:43 7 meetings, when they came out the first time, they  
 03:16:43 8 weren't -- they didn't say anything about the number of  
 03:16:43 9 guards being incorrect on the wave pool.  
 03:16:52 10 However, when they -- I guess when they  
 03:16:52 11 went back and checked, they came out and they told us  
 03:16:52 12 that now until the new regulations were adopted, we had  
 03:16:52 13 to have observe the 17.  
 03:17:11 14 Q. Those what you call the new regulations  
 03:17:11 15 have never been adopted, have they?  
 03:17:18 16 A. At this time, no.  
 03:17:18 17 Q. Never means never at any time were they  
 03:17:18 18 adopted, right?  
 03:17:20 19 MR. EISINGER: Object. Argumentative.  
 03:17:22 20 MR. CAMPBELL: No, it's not.  
 03:17:23 21 BY MR. CAMPBELL:  
 03:17:23 22 Q. You are saying "at this time." I'm saying  
 03:17:23 23 they've never been adopted, have they?  
 03:17:28 24 A. They haven't.  
 03:17:30 25 Q. Okay. So they came out. Was this a

03:17:34 1 surprise inspection?  
 03:17:34 2 A. Yes.  
 03:17:35 3 Q. It reads:  
 03:17:37 4 "Upon arrival, eight lifeguards were  
 03:17:37 5 observed at the wave pool. As per lifeguard  
 03:17:37 6 plan submitted to Southern Nevada Health  
 03:17:37 7 District, 17 lifeguards are required. The  
 03:17:37 8 complaint is valid."  
 03:17:38 9 Now, were you aware that there was a  
 03:17:38 10 complaint that had been issued in advance of this  
 03:17:38 11 particular visit to the effect that you didn't have  
 03:17:38 12 enough lifeguards on duty?  
 03:18:00 13 A. No, I wasn't aware of that.  
 03:18:10 14 Q. Okay. Well, you would agree with me that  
 03:18:10 15 somebody made a complaint to that effect, correct?  
 03:18:14 16 A. Correct.  
 03:18:14 17 MR. EISINGER: Object to the form.  
 03:18:18 18 BY MR. CAMPBELL:  
 03:18:18 19 Q. Then it states:  
 03:18:17 20 "Lifeguards observed at stations 46,  
 03:18:17 21 47, 5, 9, 44, 45, 15 and 4.  
 03:18:28 22 "Failure to maintain adequate coverage  
 03:18:28 23 could result in closure with fees. Adequate  
 03:18:28 24 coverage must be observed prior to Southern  
 03:18:28 25 Nevada Health Department departure."

<p style="text-align: right;">201</p> <p>Q31837 1 So prior to departure apparently, 18</p> <p>2 lifeguards and two supervisors were observed at the</p> <p>3 wave pool prior to departure?</p> <p>Q31846 4 A. Correct.</p> <p>Q31851 5 Q. Were you fined?</p> <p>Q31853 6 A. Yes, we were.</p> <p>Q31855 7 Q. I'm sorry?</p> <p>Q31856 8 A. Yes.</p> <p>Q31857 9 Q. You paid the fine?</p> <p>Q31858 10 A. I did.</p> <p>Q31859 11 Q. There was no appeal?</p> <p>Q31861 12 A. No.</p> <p>Q31862 13 Q. There was no submission by Cowabunga Bay to</p> <p>14 the effect of, golly, gee whiz, you know, or anything</p> <p>15 to that effect, I didn't know that we were something</p> <p>16 wrong and you didn't say anything the other day?</p> <p>Q31864 17 MR. EISINGER: Object to the form.</p> <p>Q31866 18 BY MR. CAMPBELL:</p> <p>Q31868 19 Q. Correct?</p> <p>Q3187 20 A. At the time I was under the impression that</p> <p>21 the, the new health code regulations would be passed.</p> <p>Q31873 22 Q. Not my question.</p> <p>Q31874 23 My question is, you didn't submit anything</p> <p>24 in writing to the effect that, gee, I thought I was</p> <p>25 okay doing what I was doing?</p>	<p style="text-align: right;">203</p> <p>Q32200 1 MR. EISINGER: Like the last two questions.</p> <p>2 Go back two minutes.</p> <p>Q32212 3 BY MR. CAMPBELL:</p> <p>Q32213 4 Q. Go ahead, sir.</p> <p>Q32214 5 A. I was on a board that was responsible for</p> <p>6 rewriting the regulations. The new regulations were</p> <p>7 formed and put into a draft and that would have</p> <p>8 required us to have guards based on a rescue and</p> <p>9 respond time rather than square footage.</p> <p>Q32225 10 So, yeah, I was under the impression that</p> <p>11 this was going to happen.</p> <p>Q32231 12 Q. But it never did happen, did it?</p> <p>Q32233 13 A. It did not.</p> <p>Q32234 14 Q. The law never changed, did it?</p> <p>Q32235 15 A. Not yet.</p> <p>Q32237 16 Q. Your obligation to comply with that law</p> <p>17 never changed, did it?</p> <p>Q32240 18 MR. EISINGER: Objection. Calls for a</p> <p>19 legal conclusion.</p> <p>Q32242 20 BY MR. CAMPBELL:</p> <p>Q32242 21 Q. Did it?</p> <p>Q32243 22 MR. EISINGER: Argumentative.</p> <p>Q32243 23 Go ahead.</p> <p>Q32244 24 Could I have it read back, please.</p> <p>Q32247 25 ///</p>
<p style="text-align: right;">202</p> <p>Q31833 1 MR. EISINGER: Asked and answered.</p> <p>Q31833 2 BY MR. CAMPBELL:</p> <p>Q31834 3 Q. Right?</p> <p>Q31834 4 A. No, because I thought I was okay doing what</p> <p>5 I was doing.</p> <p>Q31837 6 Q. But you knew you weren't okay because they</p> <p>7 had never been passed, right?</p> <p>Q31841 8 MR. EISINGER: Argumentative.</p> <p>Q31842 9 BY MR. CAMPBELL:</p> <p>Q31843 10 Q. Right?</p> <p>Q31843 11 A. That's not right.</p> <p>Q31844 12 Q. So are you telling me that you didn't know</p> <p>13 that you were breaking the law?</p> <p>Q31849 14 MR. EISINGER: Objection. Calls for a</p> <p>15 legal conclusion. Also argumentative.</p> <p>Q31855 16 BY MR. CAMPBELL:</p> <p>Q31856 17 Q. Go ahead, sir.</p> <p>Q31858 18 MR. EISINGER: Getting close to harassment.</p> <p>Q31858 19 Go ahead.</p> <p>Q32000 20 MR. CAMPBELL: I would like a copy of this</p> <p>21 particular colloquy. Thank you.</p> <p>Q32005 22 MR. EISINGER: Give me one too.</p> <p>Q32009 23 BY MR. CAMPBELL:</p> <p>Q32010 24 Q. Go ahead.</p> <p>Q32010 25 A. I was on a board --</p>	<p style="text-align: right;">204</p> <p>Q32048 1 BY MR. CAMPBELL:</p> <p>Q32048 2 Q. Sure.</p> <p>Q32048 3 Your obligation to comply with the law</p> <p>4 never changed, correct?</p> <p>Q32052 5 MR. EISINGER: Same objection.</p> <p>Q32053 6 Go ahead.</p> <p>Q32054 7 THE WITNESS: I have an obligation to</p> <p>8 operate the park the safest way possible. And I didn't</p> <p>9 believe that the outdated regulations provided that</p> <p>10 experience.</p> <p>Q32103 11 BY MR. CAMPBELL:</p> <p>Q32103 12 Q. But the law required you to have 17 and you</p> <p>13 did not have 17, correct?</p> <p>Q32107 14 MR. EISINGER: Asked and answered.</p> <p>Q32107 15 Go ahead.</p> <p>Q32108 16 THE WITNESS: That's correct. But I didn't</p> <p>17 do it to violate the law, I did it to provide a safe --</p> <p>Q32113 18 BY MR. CAMPBELL:</p> <p>Q32113 19 Q. But you did violate the law, didn't you?</p> <p>Q32114 20 MR. EISINGER: Objection. Asked and</p> <p>21 answered.</p> <p>Q32118 22 BY MR. CAMPBELL:</p> <p>Q32118 23 Q. You made the unilateral decision not to</p> <p>24 have 17, correct?</p> <p>Q32118 25 MR. EISINGER: Asked and answered. One</p>

51 (Pages 201 to 204)

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<p style="text-align: center;">205</p> <p>1 more time I'm going to tell him not to respond to the 2 question. 032124 3 MR. CAMPBELL: You go ahead and do whatever 4 you want to do. 032125 5 MR. EISINGER: That's fine. 032126 6 MR. CAMPBELL: And we'll seek sanctions 7 against you again. 032127 8 MR. EISINGER: I would like to have this 9 excerpt again. 032128 10 BY MR. CAMPBELL: 032129 11 Q. Go ahead, sir. 032130 12 MR. EISINGER: It's been asked and answered 13 five times. 032131 14 Go ahead. 032132 15 BY MR. CAMPBELL: 032133 16 Q. Go ahead, sir. 032134 17 A. Can you repeat the question. 032135 18 MR. CAMPBELL: Please repeat the question. 19 (Record read as follows:) 20 "Q. You made the unilateral decision 21 not to have 17, correct?" 032136 22 THE WITNESS: Correct. 032137 23 BY MR. CAMPBELL: 032138 24 Q. Okay. Why were you denied a liquor 25 license?</p>	<p style="text-align: center;">207</p> <p>1 violations of the law, any violations. Particularly 2 with respect to any questions with respect to attacking 3 his veracity, that is, that he lied particularly with 4 respect to regulatory authorities here in the State of 5 Nevada in conjunction with your application to become a 6 licensee. 032139 7 BY MR. CAMPBELL: 032140 8 Q. Now, as you mentioned earlier, do you 9 recall that you said that you had to submit certain 10 matters under oath to get your license? 032141 11 A. Yes. 032142 12 Q. That was your license for a liquor license, 13 correct? 032143 14 A. Correct. 032144 15 Q. And you did not state that you had faced 16 criminal charges in Utah, correct? 032145 17 A. I didn't know they were criminal charges. 032146 18 Q. Well, what did you think the charges were? 032147 19 A. I was -- 032148 20 (No answer provided by deponent.) 032149 21 MR. EISINGER: Wait, wait, wait. If we are 22 talking about, unless we are talking about a felony 23 conviction within the last 10 years, you are not 24 answering the question. 032150 25 Was it a felony conviction within the last</p>
<p style="text-align: center;">206</p> <p>032151 1 A. Because I had an incident on my record that 2 I had forgotten about. 032152 3 Q. You had forgotten about it? 032153 4 A. Yeah. Well, I didn't know it was actual -- 5 I didn't know it was recorded as a -- I don't know what 6 you call it. 032154 7 Q. You were, you were charged with violations 8 of the law in Utah, correct? 032155 9 A. Correct. 032156 10 Q. Do you know what those violations were? 032157 11 A. Yes. 032158 12 Q. They said that you obstructed justice. Do 13 you recall that? 032159 14 A. When? 032160 15 Q. When you were charged with crimes in Utah. 032161 16 (No answer provided by deponent.) 032162 17 MR. EISINGER: I'm going to object. Unless 18 we are talking about a felony within the last 10 years, 19 I'm going to instruct him not to answer. 032163 20 BY MR. CAMPBELL: 032164 21 Q. Go ahead, sir. 032165 22 MR. EISINGER: No. I'm going to instruct 23 him not to answer the question unless you're talking 24 about a felony conviction within the last 10 years. 032166 25 MR. CAMPBELL: I can ask him about any</p>	<p style="text-align: center;">208</p> <p>1 10 years? 032167 2 THE WITNESS: No. 032168 3 MR. EISINGER: Okay. 032169 4 MR. CAMPBELL: And you're directing him not 5 to answer the question? 032170 6 MR. EISINGER: Absolutely. 032171 7 MR. CAMPBELL: Okay. So -- 032172 8 MR. EISINGER: Based upon -- 032173 9 MR. CAMPBELL: We are going to suspend the 10 deposition and we are going to seek further sanctions 11 against you. 032174 12 MR. EISINGER: Why don't we get the 13 Discovery Commissioner on the phone right now and ask 14 her if you can ask the question about this. 032175 15 MR. CAMPBELL: I'm going to file, I'm going 16 to file what has occurred here today with the Discovery 17 Commissioner, sir. 032176 18 MR. EISINGER: Okay. 032177 19 MR. CAMPBELL: I'm going to let her see for 20 herself what you have done with respect to directing 21 this witness not to answer questions that he is 22 absolutely compelled to answer, particularly in a case 23 as serious as this involving the drowning of a little 24 boy that has suffered irreversible brain damage. 25 That's what we are going to do. We are suspending it</p>

1 now and I'm going to seek further sanctions against  
2 you.  
032437 3 MR. EISINGER: Well, I'm going to make my  
4 record.  
032440 5 I think the objections are valid. It's a  
6 standard objection. To bring up a criminal charge, it  
7 has to be a felony conviction within the last 10 years.  
8 And I'm going to move that this deposition is concluded  
9 since we are very close to the seven-hour time period.  
10 He has been going all day and now he wants to suspend  
11 to go longer. That's all this is.  
032458 12 MR. CAMPBELL: Well, we will see what the  
13 judge says.  
032458 14 MR. EISINGER: Counsel, do you want to talk  
15 for a minute outside?  
032458 16 MR. CAMPBELL: No, I really don't.  
032457 17 MR. EISINGER: Okay. I'm willing to talk  
18 about this to see if we can resolve right it now.  
032458 19 MR. CAMPBELL: Well, then let's do so on  
20 the record. I'm going to do so on the record.  
032452 21 MR. EISINGER: Okay. You tell me the basis  
22 of going into an allegation about a criminal charge  
23 that's not a felony within the last 10 years. What's  
24 the relevance in that?  
032451 25 MR. CAMPBELL: It goes to his veracity.

032452 1 MR. EISINGER: Well, you can say that about  
2 any criminal charge, right?  
032455 3 MR. CAMPBELL: Absolutely. And I can go  
4 into criminal charges all day long here. Whether or  
5 not they are admitted is a different story.  
032456 6 MR. EISINGER: I don't believe so.  
032451 7 MR. CAMPBELL: It doesn't have to be  
8 admissible.  
032452 9 MR. EISINGER: My understanding of the  
10 rule, and if you think I'm wrong, tell me, is that the  
11 only thing that is -- you can question on is a felony  
12 conviction within the last 10 years.  
032442 13 MR. CAMPBELL: No. You are wrong. I can  
14 question him with respect to any lack of veracity in  
15 dealing with public officials.  
032450 16 MR. EISINGER: I don't believe you are  
17 correct.  
032451 18 MR. CAMPBELL: Okay.  
032451 19 MR. EISINGER: I would like, I would like  
20 two minutes to consult with my counsel on that issue.  
032458 21 MR. CAMPBELL: Go ahead.  
032457 22 MR. EISINGER: Let's talk.  
032451 23 THE VIDEOGRAPHER: We are going off the  
24 record. The time is approximately 3:26 p.m.  
032454 25 (Recessed from 3:26 p.m. to 3:28 p.m.)

032455 1 THE VIDEOGRAPHER: We're going back on the  
2 record. The time is approximately 3:28 p.m.  
032450 3 MR. CAMPBELL: Okay. You can go ahead and  
4 ask me.  
032452 5 MR. EISINGER: Ask who?  
032453 6 MR. CAMPBELL: Me. You were going to ask  
7 me.  
032455 8 MR. EISINGER: I thought you were talking  
9 to him.  
032456 10 Okay. I'm trying to resolve this with you,  
11 Counsel, rather than get the Discovery Commissioner.  
12 We had some difference of opinion today. But I would  
13 like to try and resolve what we can.  
032454 14 I'm asking for 10 seconds with my client  
15 because it is -- I know this is not admissible if it's  
16 not a felony conviction. You raised the point about it  
17 being on an application. I would like 10 seconds to  
18 talk to my client to ask him about that.  
032450 19 MR. CAMPBELL: No, this is cross. This is  
20 my examination of him. And I intend -- and this  
21 purported limitation to 10 years is only for  
22 impeachment purposes. And I might add just in the  
23 State of Nevada, okay, but --  
032454 24 MR. EISINGER: That's where we are at.  
032455 25 MR. CAMPBELL: -- that's for a criminal

1 conviction.  
032459 2 MR. EISINGER: Right.  
032440 3 MR. CAMPBELL: In and of itself. This,  
4 this relates to a completely separate matter. And so  
5 you do what you want to do, okay.  
032445 6 MR. EISINGER: I'm going to let you go  
7 forward for a while and see where it goes. I'm trying  
8 to do a good faith effort to resolve the discovery  
9 dispute without waiving my other objections.  
032441 10 (Brief pause in the proceedings.)  
032444 11 THE VIDEOGRAPHER: Counsel, I'm still on  
12 the video record.  
032455 13 MR. CAMPBELL: Yes, I'm just waiting for  
14 our colleagues to join us.  
032440 15 THE VIDEOGRAPHER: Thank you.  
032429 16 BY MR. CAMPBELL:  
032432 17 Q. So have you ever been criminally charged?  
18 Have you ever been criminally charged? Have you ever  
19 been charged with a crime?  
032442 20 A. Yes.  
032443 21 Q. Okay. How many crimes have you been  
22 criminally charged?  
032446 23 A. One.  
032446 24 Q. Okay. What was it?  
032446 25 A. It was for shoplifting when I was 18.

<p style="text-align: right;">213</p> <p>034252 1 Q. That was on December 6th, 1983?</p> <p>034257 2 A. I believe so, yes.</p> <p>034257 3 Q. Retail theft?</p> <p>034258 4 A. Yes.</p> <p>034259 5 Q. In Utah?</p> <p>034260 6 A. Yes.</p> <p>034260 7 Q. Where?</p> <p>034260 8 A. At the BYU bookstore.</p> <p>034260 9 Q. You were also criminally charged on</p> <p>10 October 1st, 2003, were you not?</p> <p>034264 11 A. I don't know what that is.</p> <p>034265 12 Q. Providing false information to a police</p> <p>13 officer. Do you recall that?</p> <p>034265 14 A. Yeah, I do recall that, yeah.</p> <p>034267 15 Q. And tell us the facts and circumstances of</p> <p>16 that.</p> <p>034268 17 A. I got pulled over and I didn't have my</p> <p>18 driver's license so I gave my brother's name.</p> <p>034268 19 Q. You were also charged on October 3rd, 2003</p> <p>20 with obstruction of justice, is that correct?</p> <p>034268 21 A. I'm not sure what that was for.</p> <p>034268 22 Q. In any event, none of those criminal</p> <p>23 charges were detailed or listed on your application for</p> <p>24 a liquor license, were they?</p> <p>034268 25 A. Correct.</p>	<p style="text-align: right;">215</p> <p>1 correct?</p> <p>034268 2 A. I, I don't know. I don't recall.</p> <p>034268 3 Q. Did you produce another driver's license?</p> <p>034268 4 A. I don't recall. I believe I did and that's</p> <p>5 why it was dismissed.</p> <p>034268 6 Q. The driver's license belonged to your</p> <p>7 brother?</p> <p>034268 8 A. No. I provided the information they</p> <p>9 requested and I, I was under the impression that that</p> <p>10 had been dismissed.</p> <p>034268 11 Q. Well, how many crimes have you been</p> <p>12 convicted of?</p> <p>034268 13 A. I don't, I don't know what that means,</p> <p>14 convicted. I've never gone to jail.</p> <p>034268 15 Q. Well, you may never have gone to jail, but</p> <p>16 you may have suffered a conviction where you were found</p> <p>17 guilty of an offense without going to jail. It happens</p> <p>18 every day.</p> <p>034268 19 A. I don't believe I ever even went to court.</p> <p>20 That's why I wasn't under the impression that these</p> <p>21 were violations of the law, so that's why I didn't</p> <p>22 bring them to their attention because I was unaware</p> <p>23 that they were even on my record.</p> <p>034268 24 Q. But nevertheless, you didn't appeal the</p> <p>25 finding of unsuitability, that you were unsuitable to</p>
<p style="text-align: right;">214</p> <p>034269 1 Q. And as a result of your failure to list</p> <p>2 those, you were recommended for denial by the Henderson</p> <p>3 Police Department for your lack of candor and honesty,</p> <p>4 correct?</p> <p>034269 5 MR. EISINGER: Object to the form.</p> <p>034269 6 You can answer.</p> <p>034269 7 THE WITNESS: Yes.</p> <p>034269 8 BY MR. CAMPBELL:</p> <p>034269 9 Q. And that in fact was the case that on or</p> <p>10 about April 16th, 2014, your business license was</p> <p>11 denied, correct?</p> <p>034269 12 A. Yes.</p> <p>034269 13 Q. And, in fact, you were notified that in</p> <p>14 writing by the Business License Department of the City</p> <p>15 of Henderson, correct?</p> <p>034269 16 A. Correct.</p> <p>034269 17 Q. And they informed you that you could appeal</p> <p>18 if you so desired, correct?</p> <p>034269 19 A. Correct.</p> <p>034269 20 Q. And you did not appeal, correct?</p> <p>034269 21 A. Correct.</p> <p>034269 22 Q. And with respect to your driving or the</p> <p>23 stop that resulted in you being charged with providing</p> <p>24 false information to a police officer, in fact, your</p> <p>25 driving privileges had been suspended at that time,</p>	<p style="text-align: right;">216</p> <p>1 hold a liquor license, correct?</p> <p>034269 2 A. I didn't, I didn't appeal for another one.</p> <p>3 I didn't appeal it.</p> <p>034269 4 Q. Now, did you -- have you communicated at</p> <p>5 any time with the Southern Nevada Health District</p> <p>6 concerning how many lifeguards are required at the wave</p> <p>7 pool for this year, 2016?</p> <p>034269 8 A. Yes, I have.</p> <p>034269 9 Q. And when did you do so?</p> <p>034269 10 A. I have met with them on a couple months, a</p> <p>11 couple -- maybe last month.</p> <p>034269 12 Q. Okay. And who did you meet with?</p> <p>034269 13 A. I met with Jeremy Harper, Jackie Peet, Al</p> <p>14 Kern, and there may have been others there.</p> <p>034269 15 Q. Okay. And was this a meeting that was</p> <p>16 attended by anyone else besides yourself and the</p> <p>17 individuals you just identified?</p> <p>034269 18 A. Yes.</p> <p>034269 19 Q. And who else was there?</p> <p>034269 20 A. Chris Norman.</p> <p>034269 21 Q. And who is Chris Norman?</p> <p>034269 22 A. My aquatics manager.</p> <p>034269 23 Q. From IAM?</p> <p>034269 24 A. Correct.</p> <p>034269 25 Q. Okay. And what was the subject matter?</p>

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033828 1 A. We -- because we -- because the plans have  
2 not been adopted yet, the Health Department is  
3 suggesting that we submit a variance to them so we can  
4 operate with the guards based on the response time  
5 rather than the square footage until the new codes are  
6 adopted.

033847 7 Q. Okay. And did you share with them you had  
8 chronically disobeyed the requirement for the number of  
9 lifeguards that had been at the wave pool?

033857 10 MR. EISINGER: Object to the form.

033859 11 BY MR. CAMPBELL:

033859 12 Q. Prior to coming in and talking with them in  
13 2016?

033866 14 MR. EISINGER: Form.

033867 15 THE WITNESS: I have constantly  
16 communicated with them my concern about the  
17 conversation, so it was an ongoing conversation that we  
18 had.

033874 19 BY MR. CAMPBELL:

033895 20 Q. Did you share with them that you were in  
21 fear of being criminally prosecuted?

033820 22 A. No.

033922 23 Q. Have you discussed the possibility of your  
24 criminal prosecution for violation, for willful  
25 violation of these requirements?

218

033923 1 MR. EISINGER: Object to the form.

033923 2 THE WITNESS: No.

033946 3 BY MR. CAMPBELL:

033948 4 Q. Tell me all that you did in seeking to  
5 recover emails relevant to this case, including any  
6 emails discussing lifeguard requirements or numbers  
7 and/or the drowning of my client Leland Gardner.

033958 8 A. So I went back and identified the people  
9 that would have -- you wanted -- would have wanted  
10 emails from. And then I did a search through my  
11 computer and then copied and printed all of them.

034026 12 Q. Okay. What people that I wanted?

034023 13 A. Well, there was a request to have emails  
14 from the Health Department, from any and all people  
15 that I communicated with, with my managers, with -- any  
16 other emails that had been sent out regarding the  
17 incident.

034049 18 Q. Okay. And what did you discover?

034046 19 A. I found the emails that were, that were  
20 under those names and I printed them.

034054 21 Q. Under what names?

034055 22 A. Slade or whoever was for each category. So  
23 the Health Department. I put in all the names that I  
24 dealt with for Health Department. And any emails that  
25 popped up, I would put into a folder and I submitted

219

1 them electronically or actually on paper. And I did  
2 the same with the management team and with the NASCO.

034118 3 Q. Management team meaning who? Who are the  
4 members of the management team?

034118 5 A. The other partners.

034120 6 Q. Tell me the members of the management team  
7 so we have it on the record that you searched for.

034125 8 A. Okay. Orluff, Chet, Slade, Spott, Tom  
9 Welch maybe, or Craig Nielsen, the management, the  
10 partners.

034127 11 Q. And you found none?

034141 12 A. I don't recall. Whatever I found, I  
13 submitted.

034144 14 Q. Did you find any?

034148 15 A. I don't recall.

034149 16 Q. All right. And when did you turn these  
17 over to counsel?

034153 18 A. Back in November, I believe it was.

034153 19 Q. And, and when you turned them over to  
20 counsel, did you turn them over personally?

034207 21 A. Some were sent. There was a lot of them  
22 for like the Health Department and stuff, so they were  
23 sent electronically, and then papers were sent. I  
24 copied and brought them.

034219 25 Q. Okay. And how many were there accumulated?

220

034224 1 A. I don't know.

034224 2 Q. Hundreds?

034226 3 A. 50, 50.

034227 4 Q. Okay. And in those 50 or 60, they didn't  
5 deal just with Leland Gardner's drowning, but also the  
6 issue of the number of lifeguards that were or were not  
7 present there that day?

034243 8 A. Correct. Yeah.

034243 9 Q. Okay. And who did you discuss that with in  
10 emails?

034245 11 A. It was mostly with the Health Department.

034251 12 Q. Okay. What about with your partners, the  
13 management team?

034257 14 A. That wasn't done through emails.

034259 15 Q. Okay. What wasn't done through emails?

034302 16 A. Communication on that.

034303 17 Q. Okay. You communicated with the management  
18 team over the fact that there were not the required  
19 number of lifeguards there on the day that Leland  
20 drowned, correct?

034313 21 A. I did.

034314 22 Q. Okay. And how was this done?

034315 23 A. Via phone call.

034317 24 Q. Okay. To whom?

034319 25 A. I believe Slade called me and he then

<p style="text-align: right;">221</p> <p>1 started asking the questions about what had happened</p> <p>2 and so then I told him.</p> <p>034325 3 Q. Okay. And who else did you communicate</p> <p>4 with about the fact that you weren't complying with the</p> <p>5 Health District's requirement of 17 lifeguards at the</p> <p>6 pool at all times?</p> <p>034341 7 MR. EISINGER: Object to the form.</p> <p>034347 8 You can answer.</p> <p>034347 9 THE WITNESS: I communicated with Chat</p> <p>10 Ophaikans as well.</p> <p>034349 11 BY MR. CAMPBELL:</p> <p>034349 12 Q. Okay. And how did you do that?</p> <p>034350 13 A. In person at the park.</p> <p>034354 14 Q. Okay. Anyone else?</p> <p>034354 15 A. We then had a discussion, the meeting that</p> <p>16 was talked about earlier with Aviva Gordon is where we</p> <p>17 discussed it.</p> <p>034405 18 Q. Okay. The fact that you didn't have 17</p> <p>19 people?</p> <p>034407 20 (No answer provided by deponent.)</p> <p>034407 21 MR. EISINGER: Object as attorney/client</p> <p>22 privilege.</p> <p>034411 23 BY MR. CAMPBELL:</p> <p>034411 24 Q. I'm not going to ask you what the</p> <p>25 particulars were, I'm just talking about the subject</p>	<p style="text-align: right;">223</p> <p>034416 1 Q. Okay. And IAM has instructed you to be in</p> <p>2 full compliance with those requirements; is that</p> <p>3 correct?</p> <p>034421 4 A. Correct.</p> <p>034423 5 Q. How much is the contract for IAM's</p> <p>6 consulting?</p> <p>034430 7 A. They have a management fee of \$50,000.</p> <p>034433 8 Q. A year?</p> <p>034433 9 A. Yes.</p> <p>034434 10 Q. Or a season, I should say?</p> <p>034437 11 A. A season, yes.</p> <p>034439 12 Q. Audits are conducted without advance</p> <p>13 notice?</p> <p>034442 14 A. Correct.</p> <p>034444 15 Q. And you never had such an audit without</p> <p>16 advance notice from -- what is it?</p> <p>034452 17 A. NASCO.</p> <p>034453 18 Q. NASCO?</p> <p>034455 19 A. Can you repeat the question.</p> <p>034455 20 Q. You said that they conducted sort of an</p> <p>21 audit, but it wasn't an audit that was without notice</p> <p>22 with reports, follow-up, that sort of thing?</p> <p>034458 23 A. I knew as the manager that NASCO was coming</p> <p>24 in to do the audits, yes, they weren't surprise audits.</p> <p>034458 25 Q. Right. And again, there was no</p>
<p style="text-align: right;">222</p> <p>1 matter.</p> <p>034416 2 MR. EISINGER: And again, I'm not going to</p> <p>3 let him, Counsel.</p> <p>034419 4 I'm instructing you not to divulge any</p> <p>5 information in the meeting where you had counsel, Aviva</p> <p>6 Gordon, in that meeting, okay. You are to give him who</p> <p>7 was there or where it took place. Everything else, any</p> <p>8 question about the substance of what took place, it's</p> <p>9 all attorney/client privilege.</p> <p>034435 10 BY MR. CAMPBELL:</p> <p>034438 11 Q. What other, what other meetings took place</p> <p>12 or conversations that you engaged in regarding the fact</p> <p>13 that you weren't in compliance with the Health</p> <p>14 Department's requirement to have 17 lifeguards at the</p> <p>15 wave pool?</p> <p>034452 16 A. That was it.</p> <p>034453 17 Q. Okay. Now as it stands today, now that</p> <p>18 you're open for business, do you have 17 lifeguards at</p> <p>19 the wave pool?</p> <p>034501 20 A. We do.</p> <p>034504 21 Q. You're in full compliance --</p> <p>034506 22 A. We are.</p> <p>034508 23 Q. -- with the requirements of the, of the</p> <p>24 Southern Nevada Health District; is that correct?</p> <p>034515 25 A. Yes.</p>	<p style="text-align: right;">224</p> <p>1 documentation of those audits at any time --</p> <p>034521 2 A. No.</p> <p>034524 3 Q. -- correct?</p> <p>034525 4 Okay. The \$50,000 that was paid to IAM,</p> <p>5 that was paid when?</p> <p>034531 6 A. It's paid in a monthly fee.</p> <p>034535 7 Q. How much a month?</p> <p>034540 8 A. I, I don't recall what, how it's broken up.</p> <p>9 If it's over -- I think it's over the entire year, so</p> <p>10 it's like \$2,500 a month that adds up.</p> <p>034551 11 Q. Okay. You told me that they are</p> <p>12 responsible for training, auditing, and there was a</p> <p>13 third category.</p> <p>034555 14 A. They certify all the guards as well.</p> <p>034554 15 Q. Okay.</p> <p>034556 16 A. So they have a national accreditation with</p> <p>17 the lifeguard, their lifeguards, and certifications.</p> <p>18 So they do all their documentation.</p> <p>034558 19 Q. Can you tell me what percentage of</p> <p>20 lifeguards that are currently working at the park also</p> <p>21 worked at the park last year in 2015?</p> <p>034554 22 A. I believe it's probably 50 or 60 percent</p> <p>23 are back.</p> <p>034558 24 Q. Or what?</p> <p>034558 25 A. 50 or 60 percent of them are back.</p>

034733 1 Q. Okay. And how is it that you recruit  
2 lifeguards?  
034739 3 A. We put our application online and then we  
4 let people know that we are hiring through Facebook or  
5 at the schools. And then they come into the park and  
6 then we meet each one of them individually. And if  
7 they want to lifeguard, they're -- and they pass our  
8 screening for employment, they are then put onto our  
9 aquatic manager's desk and then he interviews all of  
10 them and then decides who he will hire.  
034811 11 Q. With respect to termination of lifeguards  
12 who terminates them?  
034819 13 A. Chris Norman will terminate them.  
034821 14 Q. And who again is Chris Norman?  
034823 15 A. He's the aquatic manager through IAM.  
034828 16 Q. But before Chris Norman and before the  
17 contract with IAM, who was responsible for terminating  
18 lifeguards?  
034837 19 A. That would have been Sierra, Emily, or Rich  
20 Woodhouse.  
034843 21 Q. Okay. And what sort of violations would  
22 result in lifeguards being terminated?  
034850 23 A. If they didn't -- if they showed. If  
24 they had poor performance. If they had bad attitudes.  
25 Or if they didn't pass drug tests.

034854 1 Q. Okay. How many lifeguards were employed at  
2 Cowabunga Bay in the year 2015?  
034916 3 A. Probably 250, 250.  
034920 4 Q. Okay. We've talked at length with respect  
5 to your failure to implement the required 17 lifeguards  
6 at the wave pool.  
034925 7 Did you likewise fail to implement similar  
8 lifeguard requirements at other aquatic attractions?  
034947 9 A. There was an incident on one of the slides,  
10 yes, where they had required us to have an attendant at  
11 the bottom of each flume. And within the first three  
12 weeks I had several guards that were -- because they  
13 were in the direction of the sliders coming out had  
14 dislocated shoulders. So for safety reason, I pulled  
15 the guards out of the pool.  
035011 16 Q. Did you inform anyone from the Health  
17 District of that?  
035018 18 A. No, I don't believe so.  
035019 19 Q. Okay. Any other pools at, or attractions,  
20 or rides that you did not have the required number of  
21 personnel in attendance?  
035034 22 A. I believe we also operated our river  
23 according to the NASCO plan.  
035040 24 Q. Is the answer to the question that you also  
25 operated the, the river in a noncompliant fashion?

035150 1 MR. EISINGER: Object to the form.  
035153 2 THE WITNESS: I'm not sure of the number of  
3 guards that were on the river. It may have matched.  
035158 4 BY MR. CAMPBELL:  
035158 5 Q. Okay. Let's go again to Exhibit 10. And  
6 also call your attention to Exhibit No. 14.  
035225 7 Now, in 14, what zone is the lazy -- or the  
8 river?  
035230 9 A. It falls into all three zones.  
035232 10 Q. Okay. And that is the plan that was  
11 submitted by you and approved by the Nevada -- or the  
12 Health District, right, Southern Nevada Health  
13 District?  
035243 14 A. Correct.  
035244 15 MS. McLEOD: Objection. What is you said  
16 "that"?  
035248 17 BY MR. CAMPBELL:  
035248 18 Q. That is the plan that was approved by the  
19 Southern Nevada Health District as submitted by you,  
20 correct?  
035259 21 A. This is, yes.  
035257 22 Q. Okay. And how many lifeguards are required  
23 on the river pursuant to that plan?  
035304 24 A. One, two, three, four, five, six, seven,  
25 eight, nine, ten, eleven, twelve.

035316 1 Q. And I'm going to show you the approved  
2 plan. I don't know if you have that in front of you.  
3 Do you have that in front of you?  
035347 4 MR. CAMPBELL: Counsel, do you by any  
5 chance have the exhibit with you there?  
035352 6 MR. EISINGER: Which exhibit?  
035353 7 MR. CAMPBELL: The approved plan, Exhibit  
8 No. --  
035358 9 MR. MIRKOVICH: I think it's 9.  
035412 10 MR. CAMPBELL: There it is. It's in your  
11 pile.  
035418 12 Thank you.  
035417 13 MR. EISINGER: That's not it.  
035420 14 MR. CAMPBELL: Where is the stamped copy?  
035428 15 THE WITNESS: Is this it?  
035430 16 MR. CAMPBELL: That's it. Okay.  
035433 17 BY MR. CAMPBELL:  
035433 18 Q. Handing you Exhibit No. 9.  
035451 19 Could you point out to me the color coding  
20 for the number of guards. I know we have that  
21 demarcation, but the color coding and listing of the  
22 lifeguards for the lazy river.  
035503 23 A. They are in the red.  
035512 24 Q. Okay. Now, the red there --  
035524 25 A. I'm sorry. I can't read it with the red,

1 it's too dark.  
 03:53:23 2 Q. Okay. Let's go, then let's just with the  
 3 number that you have for that for the lazy river zone.  
 4 That's how many again?  
 03:53:48 5 A. 12.  
 03:53:47 6 Q. 12, okay.  
 03:53:54 7 Could you go to again 2432. And you'll see  
 8 this was your -- the plan you put in place for a  
 9 minimum attendance, average attendance, and maximum  
 10 attendance, which you unilaterally created and assigned  
 11 a certain value to with respect to lifeguards, correct?  
 03:53:52 12 A. Correct.  
 03:53:53 13 Q. Okay. For -- let's take minimum  
 14 attendance. For the river, how many do you have?  
 03:53:42 15 A. Well, it's divided up into each zone. So  
 16 for the east end of the river there would be six to  
 17 eight.  
 03:53:48 18 Q. What is the one and two that precedes that?  
 03:53:53 19 A. I think -- I'm not sure what that means.  
 03:53:47 20 Oh, what that means is there is a, a beach  
 21 entrance in the river and position 1 and 2 is actually  
 22 referred to as the bay. So those two would have been  
 23 in the pool section of the river.  
 03:53:38 24 Q. Yes. So let's just talk about the river.  
 03:53:38 25 A. Okay. So the river would have been 6

03:53:31 1 A. 9 to 10.  
 03:53:32 2 Q. 9 to 10.  
 03:53:34 3 And again, all of those numbers are less  
 4 than the required, is that correct?  
 03:53:41 5 A. That is correct.  
 03:53:41 6 Q. And were you ever cited by the Southern  
 7 Nevada Health District for that violation?  
 03:53:47 8 A. I don't believe so.  
 03:53:25 9 MR. MIRKOVICH: Exhibit 16, please.  
 03:53:28 10 (Plaintiffs' Exhibit No. 16 marked.)  
 03:53:47 11 BY MR. CAMPBELL:  
 03:53:47 12 Q. Have you ever seen Exhibit No. 16 before?  
 04:00:07 13 A. I probably have seen this, yes.  
 04:00:10 14 Q. Do you recall this?  
 04:00:11 15 A. I do now, yes.  
 04:00:12 16 Q. Okay. Let's start at the top. There were  
 17 four different violations cited here. Do you see that?  
 04:00:22 18 A. Um-hum.  
 04:00:23 19 Q. Do you recall this now, sir?  
 04:00:24 20 A. I do, yes.  
 04:00:28 21 Q. Okay. So the first one is:  
 04:00:28 22 "Rocket slide observed with" --  
 04:00:24 23 I can't read that.  
 04:00:28 24 A. Adequate.  
 04:00:27 25 Q. -- adequate lifeguard coverage as

1 through 8.  
 03:57:42 2 Q. Okay. And what was required per plan?  
 03:57:48 3 A. 1, 2 -- well, I have to add it all up. So  
 4 we have to go down, and so we have 6 to 8 in this zone.  
 03:57:58 5 Q. Right. And that's east?  
 03:57:58 6 A. Yes.  
 03:58:00 7 Q. And then west, 3 to 5?  
 03:58:04 8 A. 8 to 9.  
 03:58:09 9 Q. Where do you see that, I'm sorry.  
 03:58:08 10 A. So on -- okay, I'm sorry, I'm looking in  
 11 the wrong place. I'm looking at the different  
 12 attendance.  
 03:58:15 13 So east of river is 6 to 8; west of river  
 14 is 3 to 5, and then the 2 would have been in the pool.  
 03:58:23 15 Q. So then let's go to the average attendance.  
 16 East end 8 to 9?  
 03:58:28 17 A. Um-hum.  
 03:58:31 18 MS. McLEOD: Is that a "yes"?  
 03:58:32 19 THE WITNESS: Yes.  
 03:58:38 20 And so it looks like on an average -- or  
 21 when it gets a little busier, we then divide up into  
 22 four zones and the river is then one zone. So it has 8  
 23 to 9.  
 03:58:59 24 BY MR. CAMPBELL:  
 03:58:59 25 Q. Okay. And maximum attendance?

04:00:40 1 per plan submitted. 1 observed at top of  
 04:00:42 2 flume and one observed at base of runoff."  
 04:00:48 3 Correct?  
 04:00:47 4 A. Correct.  
 04:00:47 5 Q. "River observed with 8 lifeguards."  
 04:00:50 6 And then it details the stations. Do you  
 7 see that?  
 04:00:54 8 A. Um-hum.  
 04:00:55 9 MS. McLEOD: Is that a "yes"?  
 04:00:57 10 THE WITNESS: Yes. Yes.  
 04:01:05 11 BY MR. CAMPBELL:  
 04:01:08 12 Q. "Not present as stated or (sic) as per  
 04:01:10 13 plan as well as the 85, 35 & 40."  
 04:01:17 14 Do you see that, sir?  
 04:01:18 15 A. I do.  
 04:01:18 16 Q. Okay. Next is:  
 04:01:20 17 "River requires 14 lifeguards per  
 18 approved plan and construction release.  
 19 Facility observed without adequate lifeguard  
 20 coverage at time of inspection. The  
 21 complaint was valid."  
 04:01:25 22 Do you know who made the complaint?  
 04:01:28 23 A. I don't.  
 04:01:29 24 Q. "Failure to maintain adequate  
 04:01:41 25 lifeguard coverage could result in closure

040145 1 with fees. Adequate coverage must be  
040146 2 obtained prior to Southern Nevada Health  
040151 3 District departure to avoid closure with  
040153 4 fees."  
040154 5 Do you see that?  
040155 6 A. Um-hum.  
040156 7 Q. And thereafter, you put 16 lifeguards in  
040158 8 the river. Is that correct?  
040200 9 A. Yes.  
040200 10 Q. How many do you have working today?  
040205 11 A. Whatever is on this plan.  
040207 12 Q. Whatever is required --  
040208 13 A. Yes.  
040209 14 Q. -- the legal requirement?  
040211 15 MR. EISINGER: Let him finish his  
040212 16 questions, please.  
040219 17 BY MR. CAMPBELL:  
040214 18 Q. Whatever is on the plan as per the legal  
040215 19 requirements that were directed by the Southern Nevada  
040216 20 Health District on the 30th day of June 2014, correct?  
040223 21 A. I don't believe that's correct. I  
040224 22 believe --  
040225 23 Q. When was this submitted?  
040226 24 A. Okay --  
040227 25 MR. EISINGER: Were you done with your

040228 1 answer? You cut him off. Can you --  
040229 2 MR. CAMPBELL: I'm sorry.  
040230 3 MR. EISINGER: -- give him a chance to  
040231 4 answer.  
040231 5 BY MR. CAMPBELL:  
040231 6 Q. When was this plan submitted? If I have  
040232 7 the date wrong, tell me.  
040233 8 A. That's the correct information on that  
040234 9 plan.  
040237 10 Q. Okay. All right. And how many?  
040238 11 A. I believe the Health Department, the  
040239 12 inspectors came in and did some modifications and  
040240 13 allowed us to operate with fewer on the, on the  
040241 14 lazy river.  
040243 15 Q. Okay. And where is that?  
040244 16 A. That was done with Rich and Jackie and Al.  
040245 17 Q. When?  
040246 18 A. I believe last year.  
040247 19 Q. Okay. And where is, where is the  
040248 20 memorialization of that in any of the files?  
040249 21 A. I don't know. We would have to ask Rich  
040250 22 Woodhouse. He was involved with that.  
040251 23 Q. Okay. And was this fine paid?  
040252 24 A. Yes, it was.  
040253 25 Q. This was not appealed?

040324 1 A. No.  
040324 2 Q. Okay.  
040324 3 MR. CAMPBELL: It's 4:00. Let's take a  
040325 4 quick break if we could,  
040325 5 MR. EISINGER: Sure.  
040327 6 THE VIDEOGRAPHER: We are going off the  
040328 7 record. The time is approximately 4:03 p.m.  
040329 8 (Recessed from 4:03 p.m. to 4:15 p.m.)  
040330 9 THE VIDEOGRAPHER: Going back on the  
040331 10 record. The time is approximately 4:15 p.m.  
040332 11 BY MR. CAMPBELL:  
040333 12 Q. Who prepares the budgets for the water  
040334 13 park?  
040335 14 A. My brother Scott.  
040336 15 Q. And where are the budgets maintained?  
040337 16 A. With him.  
040338 17 Q. Okay. And where is he?  
040339 18 A. He is in Seattle.  
040340 19 Q. Okay. And the -- within the budget, there  
040341 20 is a line item for personnel, correct?  
040342 21 A. Correct.  
040343 22 Q. And a breakdown of that line item into  
040344 23 personnel positions, correct?  
040345 24 A. Correct.  
040346 25 Q. Okay. And personnel positions includes,

040347 1 for example, lifeguards, correct?  
040348 2 A. Yes.  
040349 3 Q. Lifeguard supervisors, correct?  
040350 4 A. Yes.  
040351 5 Q. Servers?  
040352 6 A. Yes.  
040353 7 Q. Okay. Towel people?  
040354 8 A. They don't have towels, no.  
040355 9 Q. What other sort of positions do you have  
040356 10 out there?  
040357 11 A. We have cashiers, park services, guest  
040358 12 services.  
040359 13 Q. What is guest services?  
040360 14 A. Guest services deals with season pass  
040361 15 processing, and guest issues, lost and found. They  
040362 16 answer the phones.  
040363 17 Q. Okay. What else?  
040364 18 A. And there's maintenance. And I believe I  
040365 19 named them all.  
040366 20 Q. Okay.  
040367 21 A. Oh, I'm sorry, kitchen and cooks.  
040368 22 Q. Okay. Tell me for your operating budget  
040369 23 for 2015, what was the, what was the hourly pay for a  
040370 24 lifeguard?  
040371 25 A. I believe it was 8.25.



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04:17:55 1 Q. \$8.25?

04:17:56 2 A. Correct.

04:17:58 3 Q. Were there any additional expenditures by

4 the park in association with the hiring of lifeguards

5 other than the payment of salary of \$8.25?

04:18:02 6 A. They paid for their lifeguard

7 certification.

04:18:08 8 Q. Anything else?

04:18:23 9 A. I don't believe so.

04:18:23 10 Q. So a lifeguard is paid \$8.25 and that's the

11 minimum wage?

04:18:29 12 A. Correct.

04:18:29 13 Q. Okay. They don't get any bonuses or

14 anything like that?

04:18:32 15 A. Not in 2015.

04:18:40 16 Q. Okay. What was the, what was the amount

17 paid servers?

04:18:47 18 A. Minimum.

04:18:51 19 Q. Hourly?

04:18:52 20 A. \$8.25.

04:18:53 21 Q. What was the amount paid cooks?

04:18:58 22 A. \$8.25. And some may have made \$7.75

23 depending on their experience.

04:18:54 24 Q. What about maintenance?

04:18:55 25 A. We have some maintenance guys. At the time

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1 they were hourly, I believe they made 11, 12.

04:18:58 2 Q. But all persons other than maintenance were

3 essentially hourly at the minimum wage. Fair enough?

04:19:03 4 A. Other than supervisors.

04:19:05 5 Q. Right.

04:19:06 6 Q. Okay. How much an hour did, for example,

7 the aquatic managers get?

04:19:08 8 A. I believe they made 15. One made 15 and

9 one made 16.

04:19:14 10 Q. And how much did a lifeguard supervisor

11 make?

04:19:19 12 A. They ranged between \$9 and 11.

04:19:33 13 Q. Okay. Why did an aquatic scheduler or

14 supervisor get paid more than a lifeguard supervisor?

04:20:07 15 A. I'm confused by your question.

04:20:10 16 Q. Sure. I'll repeat it.

04:20:11 17 You said that you had two lifeguard aquatic

18 supervisors that basically did the scheduling and that

19 sort of thing. Do you recall that?

04:20:21 20 A. I'm sorry, they are aquatic managers.

04:20:24 21 Q. Aquatic managers. I stand corrected.

22 Aquatic managers, okay.

04:20:27 23 Why did they get more money than the

24 lifeguard supervisors?

04:20:31 25 A. Because they were managers of the

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1 department and responsible for the scheduling and

2 maintaining of the employees, their training and their

3 certification.

04:20:44 4 Q. Okay. And they got how much?

04:20:49 5 A. I believe 15 and 16.

04:20:52 6 Q. All right. And you had two young ladies

7 doing that --

04:20:55 8 A. Yes.

04:20:58 9 Q. -- on an hourly basis, correct?

04:21:00 10 A. Correct.

04:21:00 11 Q. One of whom was asked to leave three weeks

12 before the season ended, as I recall?

04:21:03 13 A. She was given a leave of absence with pay.

04:21:09 14 Q. Right. And she didn't get along with

15 anyone?

04:21:16 16 A. She had some attitude problems, yes.

04:21:17 17 Q. Okay. And the other one, what was her

18 problem?

04:21:21 19 A. Emily Dackar, just she finished out the

20 season and she is just going into her career now as an

21 engineer.

04:21:31 22 Q. Okay. And those positions are now

23 positions that have been subsumed in part by IAM?

04:21:34 24 A. Chris Norman has that position now, yes.

04:21:34 25 Q. And Chris Norman does that and a whole lot.

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1 more, correct?

04:21:38 2 A. Yes.

04:21:40 3 Q. Under the IAM contract?

04:21:42 4 A. Correct.

04:21:44 5 Q. Okay. Now, what was the total budget for

6 lifeguards in 2015?

04:21:49 7 A. When you ask budget?

04:21:51 8 Q. What was it budgeted for in advance of the

9 season, your budget? You create a budget in advance of

10 your season, correct?

04:21:53 11 A. We didn't have a budget for that season,

12 no.

04:22:03 13 Q. You didn't?

04:22:03 14 A. No.

04:22:04 15 Q. Was there a reason?

04:22:05 16 A. Yes. Because we hadn't been opened a full

17 season yet, so we didn't know how to base that. We

18 didn't know how to determine a budget. We had an

19 approximation, but there wasn't any hard line budget of

20 what we had to be under.

04:22:09 21 Q. Well, your approximations, how were they

22 constructed? How were your budget approximations

23 constructed?

04:22:17 24 A. They were based on just our experience and

25 what positions needed to be filled and how many