

IN THE SUPREME COURT OF THE STATE OF NEVADA

MDC RESTAURANTS, LLC, a Nevada
limited liability company; LAGUNA
RESTAURANTS, LLC, a Nevada limited
liability company; INKA, LLC, a Nevada
limited liability company,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA in
and for the County of Clark and THE
HONORABLE TIMOTHY C.
WILLIAMS, District Court Judge,
Respondents,

vs.

PAULETTE DIAZ, an individual;
LAWANDA GAIL WILBANKS, an
individual; SHANNON OLSZYNSKI, an
individual; and CHARITY FITZLAFF, an
individual, on behalf of themselves and all
similarly-situated individuals,
Real Parties in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 71289

Eighth Judicial District Court
Case No. A-14-701633-C

District Court Dept. No. XVI

**MOTION TO WITHDRAW AS
ATTORNEY OF RECORD**

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MDC RESTAURANTS, LLC; LAGUNA RESTAURANTS, LLC; INKA, LLC.

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MOTION TO WITHDRAW AS ATTORNEY OF RECORD

Morris Polich & Purdy LLP, pursuant to Nevada Rule of Appellate Procedure 46(e)(3), respectfully moves this Honorable Court for an Order granting a motion to withdraw as attorney of record for Petitioners MDC Restaurants, LLC, Laguna Restaurants, LLC and Ink, LLC in the above-entitled action. This Motion is based upon the records and files in this action, accompanying points and authorities, and the Affidavit of Nicholas M. Wieczorek, Esq.

Respectfully submitted this 22 day of February, 2017.

MORRIS POLICH & PURDY LLP

By: _____

NICHOLAS M. WIECZOREK
Nevada State Bar No. 6170
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Petitioners

AFFIDAVIT OF NICHOLAS M. WIECZOREK

State of Nevada)
) ss:
County of Clark)

1. Affiant is an attorney, duly licensed to practice law before all the Courts

of the State of Nevada, including the Nevada Supreme Court. The following facts are personally known to me, as if called upon as a witness I could and would competently testify to their accuracy.

2. Affiant is a partner in the law firm of Morris Polich & Purdy LLP, counsel of record for Petitioners in this case. Morris Polich & Purdy has been retained counsel for Petitioners for multiple years, including all times relevant to the preparation and filing of the instant Petition for Writ of Mandamus.
3. Affiant is forwarding by United States Mail, upon which postage will be prepaid, a copy of this Motion to Withdraw at the last known address of Petitioners as follows:

Mr. Vince Eupierre and Mr. Brent Dunkin
24422 Avenida De La Corlota, Suite 330
Laguna Hills, California 92653

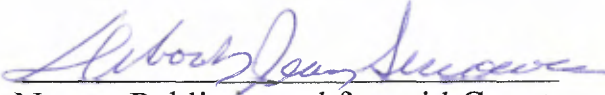
4. Petitioners may be served at said address with any notices of further proceedings regarding this matter.

FURTHER YOUR AFFIANT SAYETH NOT.

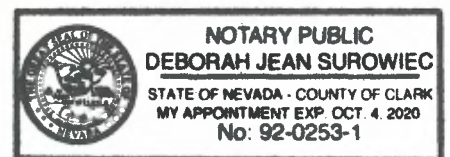


Nicholas M. Wiczorek

Subscribed and Sworn to before me on
This 28 day of February, 2017.



Notary Public in and for said County and State



MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS:

Morris Polich & Purdy LLP has been retained counsel of Petitioners in this matter, primarily MDC Restaurants, Inc., for at least five years. Morris Polich & Purdy represented MDC throughout the dispositive stages of the underlying litigation in Clark County District Court, along with the preparation and filing of the instant Petition for Writ of Mandamus arising from the trial court's order granting summary judgment on issues pertinent to the case.

Morris Polich & Purdy provides services to MDC pursuant to an agreement including payment of an hourly agreed rate for services rendered. Over the last six months the relationship between Morris Polich & Purdy and MDC has deteriorated to the extent that payments due and owing to the firm by MDC have not been made, and the parties have been unable to reach an agreement regarding ongoing representation and payment of outstanding legal expenses. Despite numerous meetings, discussions and requests to MDC for arrangements to enter into either a payment plan or provide payment in full of outstanding invoices, no agreement has been reached to date.

MDC has been notified that this motion would be filed. Pursuant to its ethical and legal obligations, Morris Polich & Purdy has taken steps to fully protect the position of Petitioners in this matter, including the filing of a reply brief with

respect to the pending Petition for Writ of Mandamus consistent with and in compliance with this Court's scheduling order. With the filing of the reply brief, all procedural filings of the case are complete, with the exception of this Court's determination of whether it will schedule oral argument on the issues framed by the Petition.

A similar motion to withdraw has simultaneously been filed in the trial court regarding this issue.

II. ARGUMENT:

Nevada Supreme Court Rule 46 provides in pertinent part:

"The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follow:

1. Upon consent of the attorney, provided by the client.
2. Upon the order of the court or judge thereof on the application of the attorney or the client."

NRAP Rule 46(e)(3) specifically indicates that "a withdrawal of counsel may be effected only by filing a motion with the court. The withdrawing attorney shall serve a copy of the motion on the attorney's client and any adverse party. The motion shall clearly state the reasons for the attorneys' withdrawal consistent with SCR 46 and RPC 1.16."

Rule of Professional Conduct 1.16 outlines a variety of reasons whereby an attorney may withdraw from active representation of a client. Pursuant to Rule 1.16(b)(5) and (6), “a lawyer shall withdraw from representation of a client if the client fails to fulfill obligations to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw, and that continuing representation would result in an unreasonable financial burden on the lawyer.”

The professional relationship between Morris Polich & Purdy and MDC has deteriorated to the extent that MDC has failed to and refuses to pay outstanding legal expenses owed to the firm. Accordingly, continued representation is not feasible, especially in light of the damage to the relationship of confidence and trust between the parties thereby making further representation impossible.

Prior to making this motion, Morris Polich & Purdy has discharged all of its obligations to MDC with respect to the pending Petition. To this end, Morris Polich & Purdy completed and filed with this Court a reply brief regarding the issues framed by the Petition and answer and has taken other steps to ensure that MDC’s interests are properly protected. MDC will have ample opportunity to retain new counsel should this Court schedule further proceedings, including oral argument, on the issues raised by the Petition.

Morris Polich & Purdy no longer has the ability to represent MDC. Accordingly, it requests its motion to withdraw be granted and the Petitioner be given a time frame certain to retain replacement counsel to further advance its interests.

Respectfully submitted this 28 day of February, 2017.

MORRIS POLICH & PURDY LLP

By: 

NICHOLAS M. WIECZOREK

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Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

1. I hereby certify I have read this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This motion has been prepared in a proportionally spaced typeface using Word in Times New Roman style at a font size of 14.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 15 pages.

3. I further certify, this brief and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the transcript or appendix where the matter relied upon may be found. I understand I may be subject to sanctions in the event the accompanying motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted this 28 day of February, 2017.

MORRIS POLICH & PURDY LLP

By: 

NICHOLAS M. WIECZOREK

Nevada State Bar No. 6170

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

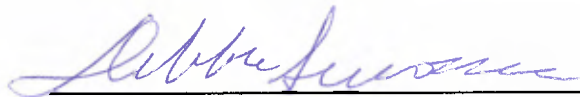
Telephone: (702) 862-8300

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Morris Polich & Purdy LLP, and that on this 29 day of February, 2017, I served a true and correct copy of the foregoing **MOTION TO WITHDRAW AS COUNSEL OF RECORD** via electronic means by operation of the court' s electronic filing system, upon each party to this case who is registered as an electronic case filing user with the clerk as well as U.S. Mail to the following:

Mr. Vince Eupierre and Mr. Brent Dunkin
24422 Avenida De La Corlata, Suite 330
Laguna Hills, California 92653



An Employee of Morris Polich & Purdy LLP