

IN THE SUPREME COURT OF THE STATE OF NEVADA

ENRIQUE RODRIGUEZ, AN
INDIVIDUAL,

Appellant,

vs.

FIESTA PALMS, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
D/B/A PALMS CASINO RESORT,
N/K/A FCH1, LLC, A NEVADA
LIMITED LIABILITY COMPANY,

Respondents.

Electronically Filed
Jan 31 2017 01:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 72098

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XV
County Clark Judge Joe Hardy
District Ct. Case No. A-06-531538

2. **Attorney filing this docketing statement:**

Attorney Micah S. Echols, Esq. and Adele V. Karoum, Esq.
Telephone 702-382-0711
Firm Marquis Aurbach Coffing
Address 10001 Park Run Drive, Las Vegas, NV 89145
Client Enrique Rodriguez ("Mr. Rodriguez")

3. **Attorneys representing respondent:**

Attorney Lew Brandon, Jr., Esq. and Justin W. Smerber, Esq.
Telephone 702-384-8424
Firm Moran Brandon Bendavid Moran
Address 630 S. Fourth Street, Las Vegas, Nevada 89101

and

Attorney Robert L. Eisenberg, Esq.
Telephone 702-786-6868
Firm Lemons, Grundy & Eisenberg
Address 6005 Plumas Street, Third Floor, Reno, Nevada 89519

Client Fiesta Palms, LLC, a Nevada limited liability company, d.b.a. Palms Casino Resort, now known as FCH1, LLC, a Nevada limited liability company ("Palms Resort")

4. **Nature of disposition below (check all that apply):**

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input checked="" type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <ul style="list-style-type: none">• Order Denying Plaintiff's Motion for NRCP 60 Relief (filed 12/23/16) (Exhibit 5) | |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify) |

5. **Does this appeal raise issues concerning any of the following:** N/A.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

FCH1, LLC (Fiesta Palms, LLC) v. Rodriguez (Case No. 59630)—reversed and remanded for reassignment and new trial.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Rodriguez v. Fiesta Palms, LLC (Eighth Judicial Case No. A-06-531538)—dismissed April 20, 2016, motion for NRCP 60 relief denied December 23, 2016, subject of the instant appeal.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

Mr. Rodriguez was in attendance at a sports bar owned and operated by Palms Resort on November 22, 2004 to watch a televised football game. During half-time, Palm Girls, including Brandy L. Beavers (“Ms. Beavers”) in particular, were throwing souvenirs to the sports bar patrons while blindfolded. In response to Ms. Beavers throwing souvenirs, a customer within the sports bar dove for a thrown souvenir and hit Mr. Rodriguez’s extended and stationary left knee. Mr. Rodriguez then struck the person next to him, hitting the left side of his head and falling down, thereby sustaining the life-changing injuries that form the basis of the claims in the instant case.

On February 25, 2010, a default against Ms. Beavers was entered for failure to appear or file an answer. *See Exhibit 2.*

The case against Palms Resort proceeded to a 12-day bench trial, ultimately resulting in a \$6,051,589 award to Mr. Rodriguez for damages. *See Exhibit 3.* Palms Resort appealed (docketed as Supreme Court Case No. 59630), and this Court reversed and remanded for reassignment and a new trial.

Upon remand, the District Court granted Palms Resort's motion to set a jury trial, and a jury trial was set to begin on February 22, 2016.

On January 20, 2016, with trial looming, Mr. Rodriguez's former counsel, Paul Padda, filed a motion to withdraw on shortened time, which was granted. The order itself does not appear to have ever been filed. However, prior to his withdrawal being granted, Mr. Padda did not attend the February 1, 2016 pre-trial conference, but, according to the Court's service records, he received notice that the Court had reset the trial date to May. Mr. Padda failed to inform Mr. Rodriguez of any of the new dates.

On March 7, 2016, Palms Resort, taking advantage of Mr. Rodriguez's unrepresented status, filed 16 motions in limine, a motion for partial summary judgment, and a motion to dismiss. Mr. Rodriguez appeared at the April 7, 2016 hearing on the motions in limine and requested a 6-month extension of time to enable him to retain new counsel and properly respond to the 18 different motions filed by Palms Resort immediately following the withdrawal of his counsel, but the Court denied the request and, instead, granted all of Palms Resort's motions in limine as unopposed.

In addition, Mr. Rodriguez appeared at the April 14, 2016 hearing on the motion to dismiss and the motion for partial summary judgment. Mr. Rodriguez requested a continuance, reporting that he had spoken with counsel who was also supposed to be in attendance with him. The Court denied Mr. Rodriguez's request for continuance, granted Palms Resort's motion to dismiss, and denied Palms Resort's partial motion for summary judgment as moot.

Mr. Rodriguez was finally able to retain Joel Selik, who appeared on October 14, 2016 and filed a motion for relief from judgment pursuant to NRCP 60. The Court denied the motion for relief at the hearing on November 15, 2016. The order denying Plaintiff's motion for NRCP 60 relief was filed on December 23, 2016 and noticed on December 28, 2016. *See Exhibit 5.* Mr. Rodriguez has appealed from this December 23, 2016 order.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):
 - (1) Whether the District Court should have recused itself due to a conflict of interest.
 - (2) Whether the District Court erred by denying Mr. Rodriguez's NRCP 60 motion and refusing to allow this case to proceed to trial.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Mr. Rodriguez is unaware of any cases currently before this Court presenting the same or similar issues.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues? N/A.

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. **Assignment to the Supreme Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Upon remand from this Court in Case No. 59630, this case was reassigned on February 19, 2015 to then District Court Judge Abbi Silver, who is now the Chief Judge of the Nevada Court of Appeals, before being

reassigned to District Court Judge Richard F. Scotti on May 4, 2015. If Chief Judge Silver is disqualified, this case should be assigned to the Supreme Court.

Aside from the disqualification issue, this appeal was previously docketed in this Court as Case No. 59630. The underlying judgment that was reversed and remanded for a new trial exceeded the NRAP 17(b)(5) threshold to be assigned to the Supreme Court.

14. **Trial.** If this action proceeded to trial, how many days did the trial last?

12 days.

Was it a bench or jury trial?

Bench.

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A.

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from:**

The Order Denying Plaintiff's Motion for NRCP 60 Relief was filed December 23, 2016 and is attached as **Exhibit 5**.

17. **Date written notice of entry of judgment or order was served:**

The Notice of Entry of Order Denying Plaintiff's Motion for NRCP 60 Relief was filed December 28, 2016 and is attached as **Exhibit 5**.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59)

N/A.

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ☐ NRCp 50(b) Date of filing
☐ NRCp 52(b) Date of filing
☐ NRCp 59 Date of filing

NOTE: Motions made pursuant to NRCp 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____ .

(c) Date written notice of entry of order resolving tolling motion was served _____ .

Was service by:

- ☐ Delivery
☐ Mail

19. Date notice of appeal filed: January 5, 2017.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) NRAP 3A(b)(8) | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(8) allows for an appeal of a special order entered after final judgment, such as the denial of a Rule 60 motion for relief from judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: Enrique Rodriguez

Defendants: Fiesta Palms, LLC dba Palms Casino Resort, now known as FCH1, LLC

Brandy L. Beavers (“Ms. Beavers”)

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

On February 25, 2010, a default against Ms. Beavers was entered for failure to appear or file an answer. *See Exhibit 2.*

23. Give a brief description (3 to 5 words) of each party’s separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.

In his July 8, 2009 amended complaint, Mr. Rodriguez alleged claims of (1) negligence against both Palms Resort and Ms. Beavers; (2) negligent hiring, training, retention, and supervision against Palms Resort; and (3) punitive damages against both Palms Resort and Ms. Beavers. *See Exhibit 1.* On February 25, 2010, a default against Ms. Beavers was entered for failure to appear or file an answer. *See Exhibit 2.* After a 12-day bench trial, the District Court awarded a total judgment of \$6,051,589.38 to Mr. Rodriguez and against Fiesta Palms and Ms. Beavers. *See Exhibit 3.*

Fiesta Palms appealed (docketed as Case No. 59630), and this Court reversed and remanded for reassignment and a new trial.

Following remand, the case passed through several District Court departments and finally ended up under Judge Joe Hardy. The District Court granted Fiesta Palms’ motion to dismiss in an order entered on April 20, 2016. *See Exhibit 4.* Mr. Rodriguez filed a motion for relief from judgment pursuant to NRCP 60, but the District Court denied it in an order entered on

December 23, 2016. *See Exhibit 5.* Mr. Rodriguez has appealed the December 23, 2016 order.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered “No” to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

EXHIBIT	DOCUMENT DESCRIPTION
1	Amended Complaint (filed 07/08/09)
2	Default Against Brandy Beavers (filed 02/25/10)
3	Notice of Entry of Judgment with Judgment (filed 04/15/11)
4	Notice of Entry of Order [Granting Defendant, Fiesta Palms, LLC's Motion to Dismiss] with Order (filed 04/21/16)
5	Notice of Entry of Order [Denying Plaintiff's Motion for NRCP 60 Relief] with Order (filed 12/28/16)

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Enrique Rodriguez

Name of appellant

Micah S. Echols, Esq. and
Adele V. Karoum, Esq.

Name of counsel of record

December 31, 2017

Date

/s/ Micah S. Echols

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DOCKETING STATEMENT** was filed electronically with the Nevada Supreme Court on the 31st day of January, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Israel Kunin, Esq.
Lew Brandon, Esq.
Robert Eisenberg, Esq.

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

Justin W. Smerber, Esq.
Moran Brandon Bendavid Moran
630 S. Fourth Street
Las Vegas, Nevada 89101
Attorneys for Respondents

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

Exhibit 1

ORIGINAL



1 ACOM
2 STEVEN M. BAKER
3 Nevada Bar No. 4522
4 BENSON, BERTOLDO, BAKER & CARTER
5 7408 W. Sahara Avenue
6 Las Vegas, Nevada 89117
7 Telephone : (702) 228-2600
8 Facsimile : (702) 228-2333
9 e-mail : monique@bensonlawyers.com
10 Attorneys for Plaintiff

FILED

JUL 8 5 06 PM '09

Ed [Signature]
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

06A531538
239860



9 ENRIQUE RODRIGUEZ, an individual,
10 Plaintiff,

CASE NO: A531538

DEPT NO: 10

11 vs.

AMENDED COMPLAINT

12 FIESTA PALMS, L.L.C., a Nevada Limited
13 Liability Company, d/b/a PALMS CASINO
14 RESORT, BRANDY L. BEAVERS,
15 individually, DOES 1 through X, inclusive,
16 and ROE BUSINESS ENTITIES I through X,
17 inclusive,

Defendants.

18 COMES NOW the Plaintiff ENRIQUE RODRIGUEZ, by and through his attorney of
19 record Steven M. Baker, Esq., of the law firm of BENSON, BERTOLDO, BAKER & CARTER,
20 and for his claims of relief against the Defendants, and each of them, alleges and complains as
21 follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

22 1.

23 That Plaintiff, ENRIQUE RODRIGUEZ was at the time of the incident, a resident of
24 Riverside County, State of California.

25 2.

That at all times herein mentioned, Defendant, Fiesta Palms, L.L.C., d/b/a The Palms
Casino Resort (hereinafter, collectively referred to as "PALMS RESORT") was, and still is, a



1 Nevada Limited Liability Company duly authorized and regularly conducting business within
2 Clark County, State of Nevada.

3.

4 That at all times herein mentioned, Defendant BRANDY L. BEAVERS was and is a
5 resident of Clark County or the State of Nevada, now residing in the State of Arizona.

6 4.

7 That the true names and capacities of the Defendants Does I through X, inclusive, and
8 Roe Business Entities I through X, inclusive, and each of them, are unknown to Plaintiffs, who,
9 therefore, sues said Defendants by said fictitious names. Defendants designated as Does I
10 through X are individuals who, as herein alleged, were participating in the events described
11 herein as either as Palm Girl, a patron of the subject Sports Book/Sports Bar, and/or are
12 individuals responsible for training, supervising, and/or controlling the subject premises, the
13 conduct of the Palm Girls, and/or the activities occurring at the time and place alleged herein.
14 Plaintiff is informed, believes and thereon alleges that each of the Defendants designated as Doe
15 is in some manner negligently and/or statutorily responsible for the events and happenings
16 referred to and caused damages proximately to Plaintiff Enrique Rodriguez as herein alleged.
17 Plaintiff will ask leave of the Court to amend his Complaint to insert the true names of such
18 Defendants when the same have been ascertained.

19 5.

20 That the true names and capacities of the Defendants Roe Business Entities I through X,
21 inclusive, are unknown to Plaintiff, who, therefore sues said Defendants by said fictitious names.
22 Defendants designated as Roe Business Entities I through X are owners, operators, agents,
23 employers, employees, assigns, maintainers, inspectors, predecessors and/or successors in
24 interest, contractors, subcontractors, political subdivisions, governmental bodies, insurers or
25 entities otherwise in possession and/or control of the persons and/or premises mentioned herein
26 and/or are agencies, corporations and/or business interests employing, training, contracting,
27 and/or otherwise responsible for the services of the Palm Girls and/or the activities occurring on
28

1 the subject premises at the time and place alleged herein. Plaintiff is informed and believes and
2 thereon alleges that each of the Defendants designated as a Roe Business Entity is in some
3 manner negligently, vicariously, statutorily, contractually, jointly and/or severally or otherwise
4 responsible for the events and happenings referred to and caused damages proximately to
5 Plaintiff as herein alleged. Plaintiff will ask leave of the Court to amend his Complaint to insert
6 the true names of such Defendants when the same has been ascertained.

7
8 6.

9 That at all times pertinent hereto, and particularly on or about November 22, 2004,
10 Defendant Palms Resort owned, operated, maintained and controlled a sports bar/book open to
11 the public, located within the Palms Resort, 4321 West Flamingo Road, Las Vegas, Nevada
12 89103.

13 7.

14 That on or about November 22, 2004, Plaintiff, ENRIQUE RODRIGUEZ was on the
15 premises of Defendant PALMS RESORT as a patron thereof.

16 8.

17 That on November 22, 2004, Plaintiff ENRIQUE RODRIGHUZ went to the Palms'
18 sports bar/book to watch a football game. During half-time, agents, employees, and/or assigns of
19 the Palms and, in particular, Defendant BRANDY L. BEAVERS were participating in a
20 promotion wherein they were throwing souvenirs to Sports Book/Sports Bar patrons while
21 blindfolded.

22 9.

23 That the agents, employees, and/or assigns of the Palms Resort known as the Palm Girls
24 were contracted from, supplied by, and/or otherwise provided by an agency, company, and/or
25 other business entity hereby designated as Roe Business Entity.

26 10.

27 In response to Palm Girl BRANDY L. BEAVERS throwing souvenirs in the Sports
28 Book/Sports Bar while blind-folded, a customer within the Sports Book/Sports Bar dove for a

1 thrown souvenir and hit Plaintiff's extended and stationary left knee. Plaintiff then struck the
2 person next to him, hitting the left side of his head, then falling down, thereby sustaining the
3 injuries and damages alleged herein.

4 **FIRST CAUSE OF ACTION**

5 (Negligence of BRANDY L. BEAVERS and PALMS RESORT)

6 11.

7 That on or about November 22, 2004, Defendant BRANDY L. BEAVERS negligently,
8 carelessly, and recklessly threw souvenirs into the crowd at the Palms Resort sport book while
9 blindfolded,, thereby causing an unknown patron of the Sports Book/Sports Bar to impact with
10 Plaintiff Enrique Rodriguez's knee, thereby causing the injuries and damages complained of
11 herein.

12 12.

13 That on or about November 22, 2004, Defendant, PALMS RESORT, and/or its
14 employees, agents or assigns, negligently, carelessly and recklessly caused, allowed, and
15 permitted Defendant BRANDY L. BEAVERS to throw said souvenirs while blindfolded,
16 thereby causing an unknown patron of the Sports Book/Sports Bar to impact with Plaintiff
17 Enrique Rodriguez's knee, thereby causing the injuries and damages alleged herein.

18 13.

19 That on or about November 22, 2004, Defendant PALMS RESORT, Roe Business
20 Entity, and/or its employees, agents or assigns, negligently, carelessly and recklessly caused,
21 allowed, and permitted Defendant BRANDY L. BEAVERS to throw said souvenirs, thereby
22 causing an unknown patron of the Sports Book/Sports Bar to impact with Plaintiff Enrique
23 Rodriguez's knee, thereby causing the injuries and damages alleged herein.

24 14.

25 That the aforesaid acts of Defendants PALMS RESORT, BRANDY L. BEAVERS
26 and/or Roe Business Entity, and/or their employees, agents or assigns were breaches of the duty
27 of reasonable care owed by said Defendants to Sports Book/Sports Bar patrons, and in particular
28 to Plaintiff ENRIQUE RODRIGUEZ.

15.

That all acts and omissions alleged with respect to Defendant BRANDY L. BEAVERS occurred while said Defendant was acting within the scope and course of her agency, employment and or assignment with Defendant PALMS RESORT and Roe Business Entity, and each of them. Defendants PALMS RESORT and Roe Business Entity, and each of them, are therefore vicariously, contractually, statutorily and/or otherwise liable for the negligence, carelessness and recklessness of Defendant BRANDY L. BEAVERS as alleged herein.

16.

As a direct and proximate result of the negligence, carelessness and recklessness of Defendants PALMS RESORT, BRANDY L. BEAVERS and/or Roe Business Entity, and/or their employees, agents or assigns, and each of them, Plaintiff, ENRIQUE RODRIGUEZ, was injured in his health, strength and activity, sustaining shock and injury to his body, nervous system and person, all of which have caused, and will continue to cause Plaintiff physical, mental and nervous pain and suffering.

17.

That as a direct and proximate result of the negligence, carelessness and recklessness of Defendants PALMS RESORT, BRANDY L. BEAVERS, and/or Roe Business Entity, and/or their employees, agents or assigns, and each of them, Plaintiff ENRIQUE RODRIGUEZ has incurred and continues to incur medical expenses, economic losses, possible future medical expenses and economic losses, and loss of enjoyment of life, all to Plaintiff's damages in an amount in excess of Ten Thousand Dollars (\$10,000).

SECOND CAUSE OF ACTION

(PALMS RESORT and ROE BUSINESS ENTITY
Negligent Employee Hiring, Training, Retention, and Supervision)

18.

Plaintiff repleads and realleges each and every statement contained in the preceding paragraphs as though fully set forth herein.

19.

At all time relevant hereto, Defendants PALMS RESORT and/or Roe Business Entity, and each of them, was the employer of and/or otherwise in control of Defendant BRANDY L. BEAVERS.

20.

At and before the time of the subject incident, Defendants PALMS RESORT and Roe Business Entity, and each of them, had a duty to adequately and reasonably hire, train, and supervise Defendant BRANDY L. BEAVERS and a related duty to effectuate and implement adequate and reasonable policies and procedures with respect to the conduct of their, and each of their, agents and/or employees.

21.

At all times pertinent hereto, Defendants PALMS RESORT and Roe Business Entity, and each of them, negligently and carelessly breached said standard of care by, but not limited to, failing to ascertain said Defendant BRANDY L. BEAVERS', qualifications and ability to responsibly perform her duties, failing to instruct said Defendant regarding safe and reasonable methods of distributing souvenirs to a crowd, failing to instruct said Defendant in safe and reasonable methods of crowd control, failing to create and disseminate clear and concise written and/or verbal protocols with respect to the same, and/or by retaining said Defendant when it was known, or should have been known, that she was incapable of safely performing her work activities.

22.

That as a direct and proximate result of the negligent and careless hiring, training, supervision and retention of Defendant BRANDY L. BEAVERS by Defendants PALMS RESORT and Roe Business Entity, and each of them, Plaintiff, ENRIQUE RODRIGUEZ was injured in his health, strength and activity, sustaining shock and injury to his body, nervous system and person, all of which have caused, and will continue to cause Plaintiff physical, mental and nervous pain and suffering.

23.

That as a direct and proximate result of the negligent and careless hiring, training, supervision and retention of Defendant BRANDY L. BEAVERS by Defendants PALMS RESORT and Roe Business Entity, and each of them, Plaintiff ENRIQUE RODRIGUEZ sustained personal injuries and has incurred, and continues to incur, medical expenses, loss of income, loss of earning capacity, disability, property damage and loss of enjoyment of life, all to Plaintiff's special and general damages in an amount in excess of Ten Thousand Dollars (\$10,000).

THIRD CAUSE OF ACTION

(PALMS RESORT AND BRANDY L. BEAVERS – Punitive Damages)

24.

Plaintiff repleads and realleges each and every statement contained in the preceding paragraphs as though fully set forth herein.

25.

The aforesaid actions and omissions of Defendants PALMS RESORT, BRANDY L. BEAVERS, and Roe Business Entity, were malicious, intentional, oppressive and/or in conscious and reckless disregard of the consequences to patrons of Defendant PALMS RESORT, and, in particular, to Plaintiff ENRIQUE RODRIGUEZ.

26.

As a direct and proximate result of the aforesaid malicious, intentional, oppressive or consciously and recklessly disregarded actions of said Defendants, and each of them, Plaintiff ENRIQUE RODRIGUEZ was injured in his health, strength and activity, sustaining shock and injury to his body, nervous system and person, all of which have caused, and will continue to cause Plaintiff physical, mental and nervous pain and suffering.

27.

That as a direct and proximate result of aforesaid malicious, intentional, oppressive or recklessly disregarded actions and omissions of said Defendants, and each of them, Plaintiff ENRIQUE RODRIGUEZ sustained personal injuries and has incurred, and continues to incur,

1 medical expenses, loss of income, loss of earning capacity, disability, and loss of enjoyment of
2 life, all to Plaintiff's special and general damages in an amount in excess of Ten Thousand
3 Dollars (\$10,000).

4 WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as
5 follows:

6 **FIRST CAUSE OF ACTION**

7 1. For general damages and loss in an amount in excess of Ten Thousand Dollars
8 (\$10,000);

9 2. For special damages in an amount to be determined at time of trial;

10 3. For loss of income and earning capacity in an amount as yet undetermined;

11 4. For reasonable attorney's fees, pre and post-judgment interest, and cost of suit;

12 and

13 5. For such other and further relief as the Court may deem just and proper.

14 **SECOND CAUSE OF ACTION**

15 1. For general damages and loss in an amount in excess of Ten Thousand Dollars
16 (\$10,000);

17 2. For special damages in an amount to be determined at time of trial;

18 3. For loss of income and earning capacity in an amount as yet undetermined;

19 4. For reasonable attorneys fees, pre and post-judgment interest, and cost of suit;

20 and

21 5. For such other and further relief as the Court may deem just and proper.

22 **THIRD CAUSE OF ACTION**

23 1. For general damages and loss in an amount in excess of Ten Thousand Dollars
24 (\$10,000);

25 2. For special damages in an amount to be determined at time of trial;

26 3. For punitive damages in an amount to be determined at trial;

27 4. For loss of income and earning capacity in an amount as yet undetermined;

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5. For reasonable attorneys fees, pre and post-judgment interest, and cost of suit;
and
6. For such other and further relief as the Court may deem just and proper.

DATED: July 6, 2009

BENSON, BERTOLDO, BAKER & CARTER

By: 

STEVEN M. BAKER
Nevada Bar No. 4522
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 228-2600
Facsimile: (702) 228-2333
e-mail : susan@bensonlawyers.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of BENSON, BERTOLDO, BAKER & CARTER and that on the 8th day of July, 2009, I served a true and correct copy of the above and foregoing ~~Amended Complaint~~ on the parties as shown below:

X Via U.S. Mail by placing said document in a sealed envelope, with postage prepaid [N.R.C.P. 5(b)]

_____ Via facsimile [E.D.C.R. 7.26(a)]

_____ Via U.S. Mail [N.R.C.P. 5(b)] and via facsimile [E.D.C.R. 7.26(a)]

addressed as follows:

10676-05 Co-Counsel for Fiesta Palms
Kenneth C. Ward, Esq.
Archer Norris
2033 North Main Street, Suite 800
P.O. Box 8035
Walnut Creek, California 94596
925-930-6600 Telephone
925-930-6620 Facsimile

10676-05 Attorneys for Fiesta Palms
Jeffery A. Bendavid, Esq.
Moran & Associates
630 South Fourth Street
Las Vegas, Nevada 89101
702-384-8424 Telephone
702-284-6568 Facsimile

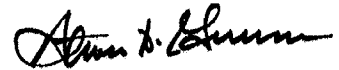
10676-05 Co-Counsel for Fiesta Palms
Marsha L. Stephenson, Esq. Attorneys for Fiesta Palms
Stephenson & Dickinson
2820 West Charleston Blvd., Suite 19
Las Vegas, Nevada 89102
474-7229 Telephone
474-7237 Facsimile

By: Eusan C. Rhader
An Employee of:
BENSON, BERTOLDO, BAKER & CARTER

Exhibit 2

ORIGINAL

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CLERK OF THE COURT

DFLT
STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER.
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/b/a PALMS CASINO
RESORT, BRANDY L. BEAVERS,
individually, DOES 1 through X, inclusive,
and ROE BUSINESS ENTITIES I through X,
inclusive,

Defendants.

DEFAULT

It appearing from the files and records in the above entitled action that BRANDY L. BEAVERS, Defendant herein, being duly served with a copy of the Amended Summons and Amended Complaint on the day 11th day of January, 2010; that more than 20 days, exclusive of the day of service, having expired since service upon the Defendant; that no answer or other



1 appearance having been filed and no further time having been granted; the default of the above-
2 named Defendant for failing to answer or otherwise plead to Plaintiff's Amended Complaint is
3 hereby entered.
4

5 Dated this ____ day of FEB 19 2010, 2010.

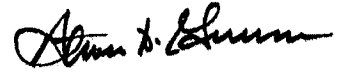
6 
7 Deputy Clerk, Clark County District Court

8 MICHELLE MCCARTHY STEVEN D. GRIERSON
9 Requested by: CLERK OF THE COURT

10 

11 STEVEN M. BAKER
12 Nevada Bar No. 4522
13 BENSON, BERTOLDO, BAKER & CARTER
14 7408 W. Sahara Avenue
15 Las Vegas, Nevada 89117
16 Telephone : (702) 228-2600
17 Facsimile : (702) 228-2333
18 Attorneys for Plaintiff

Exhibit 3



CLERK OF THE COURT

1 STEVEN M. BAKER
2 Nevada Bar No. 4522
3 BENSON, BERTOLDO, BAKER & CARTER
4 7408 W. Sahara Avenue
5 Las Vegas, Nevada 89117
6 Telephone : (702) 228-2600
7 Facsimile : (702) 228-2333
8 Attorneys for Plaintiff

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DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/baa/a PALMS CASINO
RESORT, BRANDY L. BEAVERS,
individually, DOES 1 through X, inclusive,
and ROE BUSINESS ENTITIES I through X,
inclusive,

Defendants.

NOTICE OF ENTRY OF JUDGMENT




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PLEASE TAKE NOTICE that a Judgment was entered in the above-captioned matter on the 12th day of April, 2011. A copy of said Judgment on the Verdict is attached hereto.

DATED this 15th day of April, 2011.

BENSON BERTOLDO, BAKER & CARTER, CHTD.

By: 
STEVEN M. BAKER, ESQ.
Nevada Bar No. 4522
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
(702) 228-2600 Telephone
(702) 228-2333 Facsimile
monique@bensonlawyers.com
Attorneys for Plaintiff



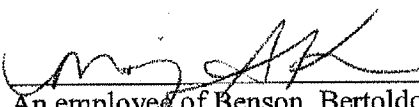
CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of April, 2011, I served a copy of the Notice of Entry of Judgment via 1st Class, U.S. Mail, postage thereon fully prepaid to the following:

10676-05 Co-Counsel for Fiesta Palms
Kenneth C. Ward, Esq.
Archer Norris
2033 North Main Street, Suite 800
P.O. Box 8035
Walnut Creek, California 94596
925-930-6600 Telephone
925-930-6620 Facsimile

10676-05 Attorneys for Fiesta Palms
Jeffery A. Bendavid, Esq.
Moran & Associates
630 South Fourth Street
Las Vegas, Nevada 89101
702-384-8424 Telephone
702-284-6568 Facsimile

10676-05 Co-Counsel for Fiesta Palms
Marsha L. Stephenson, Esq.
Stephenson & Dickinson
2820 West Charleston Blvd., Suite 19
Las Vegas, Nevada 89102
474-7229 Telephone
474-7237 Facsimile


An employee of Benson, Bertoldo, Baker & Carter, Chtd.



ORIGINAL

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Steven M. Baker

CLERK OF THE COURT

JUDGE
STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538
DEPT NO: 10

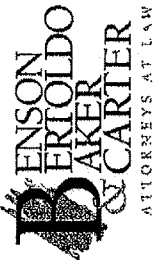
vs.

FIRSTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/baa/a PALMS CASINO
RESORT, BRANDY L. BEAVERS,
individually, DOES 1 through X, inclusive,
and ROB BUSINESS ENTITIES I through X,
inclusive,

Defendants.

JUDGMENT ON THE VERDICT

The above-entitled matter having come on for a bench trial on October 25, 2010 before the Honorable Jessie Walsh, District Court Judge, presiding. Plaintiff ENRIQUE RODRIGUEZ appeared in person with his counsel of record, STEVEN M. BAKER, ESQ. of the law firm of Benson Bertoldo Baker & Carter. Defendant FIRSTA PALMS, L.L.C. appeared by and through its counsel of record, KENNETH C. WARD, ESQ. of the law firm of Archer Norris. Defendant BRANDY BEAVERS is in default and was not in attendance. Testimony was taken, evidence was offered, introduced and admitted. Counsel argued the merits of their cases.



The Honorable Jessie Walsh rendered a verdict in favor of Plaintiff and against the Defendants FIESTA PALMS, L.L.C. and BRANDY BEAVERS, as to claims concerning negligence arising from premises liability resulting in the injuries to ENRIQUE RODRIGUEZ in the amount of \$376,773.38 for past medical expenses; \$1,854,738.00 for future medical expenses; \$1,243,350.00 for past pain and suffering; \$1,865,025.00 for future pain and suffering; \$289,111.00 for past lost income; \$422,592.00 for future lost income, for a total judgment against Defendants FIESTA PALMS, L.L.C. and BRANDY BEAVERS of \$6,051,589.38.

The Court finds the percentage of fault between Defendants as follows:

Defendant FIESTA PALMS, L.L.C.	60%
Defendant BRANDY BEAVERS	40%

NOW, THEREFORE, judgment upon the verdict is hereby entered in favor of the Plaintiff ENRIQUE RODRIGUEZ and against the Defendants FIESTA PALMS, L.L.C. and BRANDY BEAVERS, jointly and severally, as follows:

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff ENRIQUE RODRIGUEZ, shall have and recover against Defendants FIESTA PALMS, L.L.C. and BRANDY BEAVERS, jointly and severally, the sum of SIX MILLION, FIFTY-ONE THOUSAND, FIVE HUNDRED EIGHTY NINE AND 38/100 DOLLARS (\$6,051,589.38).

Pre-judgment interest shall accrue on past damages at the legal rate of 5.25% (3.25 prime + 2) on the amount of \$1,909,234.38 pursuant to NRS 17.130, from the date of service of the Summons and Complaint (12/11/2006) until fully satisfied, such interest in the amount of FOUR HUNDRED TWENTY SEVEN THOUSAND TWENTY SEVEN AND 71/100



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DOLLARS (\$427,027.00) as of April 4, 2011 and accruing at a rate of TWO HUNDRED SEVENTY FOUR AND 62/100 DOLLARS (\$274.62) per diem thereafter.

Post-Judgment Interest shall accrue at the legal rate on future damages in the amount of \$4,142,355.00, until fully satisfied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is entitled to his costs of \$149,146.¹⁸ as the prevailing party under NRS 18.020 and NRS 18.010.

DATED this 11th day of Apr, 2011.


HONORABLE JESSIE WALSH
District Court Judge

SUBMITTED BY:

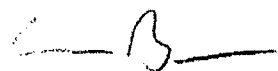
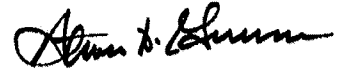
 4/5/11
STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

Exhibit 4



CLERK OF THE COURT

1 **NEOJ**
2 **LEW BRANDON, JR., ESQ.**
3 Nevada Bar No.: 5880
4 **JUSTIN W. SMERBER, ESQ.**
5 Nevada Bar No.: 10761
6 **MORAN BRANDON BENDAVID MORAN**
7 630 S. Fourth Street
8 Las Vegas, Nevada 89101
9 (702) 384-8424
10 (702) 384-6568 - *facsimile*
11 *l.brandon@moranlawfirm.com*
12 Attorneys for Defendant,
13 **FIESTA PALMS, LLC d/b/a**
14 **PALMS CASINO RESORT**

10 **ROBERT L. EISENBERG, ESQ.**
11 Nevada Bar No. 0950
12 **LEMONS, GRUNDY & EISENBERG**
13 6005 Plumas Street, Third Floor
14 Reno, Nevada 89519
15 Telephone: (775) 786-6868
16 Facsimile: (775) 786-9716
17 *rle@lge.net*
18 Attorneys for Defendant,
19 **FIESTA PALMS, LLC d/b/a**
20 **PALMS CASINO RESORT**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

19 **ENRIQUE RODRIGUEZ, an individual,**

20 **Plaintiff,**

21 **v.**

22 **FIESTA PALMS, L.L.C., a Nevada**
23 **Limited Liability Company, d/b/a**
24 **PALMS CASINO RESORT; BRANDY**
25 **L. BEAVERS, individually, DOES I**
26 **through X, and ROE CORPORATIONS I**
27 **through X, inclusive,**

28 **Defendants.**

CASE NO.: 06A531538
DEPT. NO.: XV

NOTICE OF ENTRY OF ORDER



**MORAN BRANDON
BENDAVID MORAN**
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8555

1 **NOTICE OF ENTRY OF ORDER**

2 YOU, AND EACH OF YOU, will please take notice that on April 20, 2016, an Order
3 Granting Defendant, Fiesta Palms, LLC's Motion to Dismiss was entered in the above-entitled
4 matter by the Honorable Joe Hardy.
5

6 A filed copy is attached hereto.

7 DATED this 21 day of April, 2016.

8 MORAN BRANDON BENDAVID MORAN

9
10 LEW BRANDON, JR., ESQ.

11 Nevada Bar No. 5880

12 JUSTIN W. SMERBER, ESQ.

13 Nevada Bar No.: 10761

14 630 S. Fourth Street

15 Las Vegas, Nevada 89101

16 Attorneys for Defendant,

17 FIESTA PALMS, LLC d/b/a

18 PALMS CASINO RESORT

19 **CERTIFICATE OF MAILING**

20 I hereby certify that on the 21 day of April, 2016, I served the foregoing **NOTICE OF**
21 **ENTRY OF ORDER** upon each of the parties to this action by depositing copies in the United
22 States mail, pre-paid, addressed to them as follows:

23 **ENRIQUE RODRIGUEZ**
24 6673 YELLOWSTONE DRIVE
25 RIVERSIDE, CALIFORNIA 92506
26 TELEPHONE: 951-751-1440
27 Plaintiff, In Proper Person

28 Danny Lagina
An Employee of Moran Brandon Bendavid Moran



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8888

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Alvin D. Johnson
CLERK OF THE COURT

ORDG
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
JUSTIN W. SMERBER, ESQ.
Nevada Bar No. 10761
MORAN BRANDON BENDAVID MORAN
630 S. Fourth Street
Las Vegas, Nevada 89101
(702) 384-8424
(702) 384-6568 - *facsimile*
lbrandon@moranlawfirm.com
Attorneys for Defendant,
FIESTA PALMS, LLC d/b/a
PALMS CASINO RESORT

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,

Plaintiff,

CASE NO.: 06A531538
DEPT. NO.: XV

y.

FIESTA PALMS, L.L.C., a Nevada
Limited Liability Company, d/b/a
PALMS CASINO RESORT, BRANDY
L. BEAVERS, individually, DOES I
through X, and

Defendants

ORDER GRANTING DEFENDANT, FIESTA PALMS, LLC'S MOTION TO DISMISS

Defendant, FIESTA PALMS, LLC's Motion to Dismiss having come before this Honorable Court on April 14, 2016 at 9:00 a.m., JUSTIN W. SMERBER, ESQ. of MORAN BRANDON BENDAVID MORAN having appeared on behalf of FIESTA PALMS, LLC, and ENRIQUE RODRIGUEZ having appeared in Proper Person, the Court having reviewed the Motion, the papers and pleadings on file herein, and for good cause appearing orders as follows:

[illegible][illegible]

MORAN BRANDON
BENDAVIO MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6588

APR 14 2006

1 **IT IS ORDERED THAT DEFENDANT'S MOTION TO DISMISS PURSUANT**
2 **TO NRCP 16.1 AND EDCR 2.67 IS GRANTED WITHOUT PREJUDICE.** Defendant's
3 Motion was unopposed and therefore deemed meritorious pursuant to EDCR 2.20(e). Further,
4 the Court notes that while Plaintiff is in Proper Person, Plaintiff is required to comply with
5 NRCP 16.1, EDCR 2.67 and EDCR 2.68. Plaintiff has failed to comply with any of these rules.
6 Additionally, Plaintiff was placed on notice of his obligation to comply with these rules when
7 Defendant filed and served the Plaintiff with the instant Motion on March 8, 2016. A
8 Certificate of Mailing for this Motion was filed with the Court on March 8, 2016 showing
9 service upon Plaintiff at his last known address. Plaintiff had ample time upon the filing of
10 Defendant's Motion to remedy his non-compliance with these rules; however, made no effort to
11 do so. Further, the Court personally admonished Plaintiff on April 7, 2016 that the instant
12 Motion had been filed and was pending. Plaintiff took no action to comply with NRCP 16.1,
13 EDCR 2.67, EDCR 2.68 or to file an opposition to this Motion, despite his being repeatedly
14 informed of his obligations to pursue his claims and comply with the rules of procedure.

15 Further, Plaintiff has represented to the Court that he has retained or attempted to retain
16 various attorneys in this matter; however, no attorney has made any appearance on Plaintiff's
17 behalf since the withdrawal of his prior counsel on February 17, 2016. Accordingly, for
18 purposes of this litigation, Plaintiff remains in Proper Person.
19
20

///

///

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///

///



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 **IT IS FURTHER ORDERED** that the following dates be vacated:

2 1. Calendar Call – April 27, 2016 at 8:30 a.m.; and

3 2. Trial – May 2, 2016 at 10:30 a.m.

4 **IT IS SO ORDERED** this 15th day of April, 2016.

5 
DISTRICT COURT JUDGE

6 *Respectfully Submitted by:*
7 **MORAN BRANDON BENDAVID MORAN**

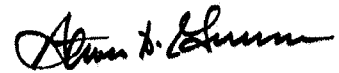
8 **LEW BRANDON, JR., ESQ.**
Nevada Bar No. 5880
9 **JUSTIN W. SMERBER, ESQ.**
Nevada Bar No. 10761
630 S. Fourth Street
10 Las Vegas, Nevada 89101
(702) 384-8424
11 (702) 384-6568 - *facsimile*
lbrandon@moranlawfirm.com
Attorneys for Defendant,
12 FIESTA PALMS, LLC d/b/a
PALMS CASINO RESORT
13
14
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19
20



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

Exhibit 5



CLERK OF THE COURT

1 **NEOJ**
2 **LEW BRANDON, JR., ESQ.**
3 Nevada Bar No.: 5880
4 **JUSTIN W. SMERBER, ESQ.**
5 Nevada Bar No.: 10761
6 **MORAN BRANDON BENDAVID MORAN**
7 630 S. Fourth Street
8 Las Vegas, Nevada 89101
9 (702) 384-8424
10 (702) 384-6568 - *facsimile*
11 *l.brandon@moranlawfirm.com*
12 Attorneys for Defendant,
13 **FIESTA PALMS, LLC d/b/a**
14 **PALMS CASINO RESORT**

15 **ROBERT L. EISENBERG, ESQ.**
16 Nevada Bar No. 0950
17 **LEMONS, GRUNDY & EISENBERG**
18 6005 Plumas Street, Third Floor
19 Reno, Nevada 89519
20 Telephone: (775) 786-6868
21 Facsimile: (775) 786-9716
22 *rle@lge.net*
23 Attorneys for Defendant,
24 **FIESTA PALMS, LLC d/b/a**
25 **PALMS CASINO RESORT**

17 **DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

19 ENRIQUE RODRIGUEZ, an individual,

20 Plaintiff,

21 v.

22 **FIESTA PALMS, L.L.C., a Nevada**
23 **Limited Liability Company, d/b/a**
24 **PALMS CASINO RESORT; BRANDY**
25 **L. BEAVERS, individually, DOES I**
26 **through X, and ROE CORPORATIONS I**
27 **through X, inclusive,**

28 Defendants.

CASE NO.: 06A531538
DEPT. NO.: XV

NOTICE OF ENTRY OF ORDER



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

330 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 384-8424
FAX (702) 384-6568

1 **NOTICE OF ENTRY OF ORDER**

2 YOU, AND EACH OF YOU, will please take notice that on December 23, 2016, an
3 Order Denying Plaintiff's Motion for NRCP 60 Relief was entered in the above-entitled matter
4 by the Honorable Joe Hardy. A filed copy is attached hereto.
5

6 DATED this 27 day of December, 2016.

7 **MORAN BRANDON BENDAVID MORAN**

8 
9 **LEW BRANDON, JR., ESQ.**

10 Nevada Bar No. 5880

11 **JUSTIN W. SMERBER, ESQ.**

12 Nevada Bar No.: 10761

13 630 S. Fourth Street

14 Las Vegas, Nevada 89101

15 Attorneys for Defendant,

16 FIESTA PALMS, LLC d/b/a

17 PALMS CASINO RESORT

18 **CERTIFICATE OF SERVICE**

19 Pursuant to Nev. R. Civ. P. 5(b), I certify that on December 28, 2016, I served a true
20 and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** through the Court's ECF
21 electronic filing system:
22

23 **MICAH S. ECHOLS, ESQ.**

24 Nevada Bar No. 8437

25 **MARQUIS AURBACH COFFING**

26 10001 Park Run Drive

27 Las Vegas, Nevada 89145

28 Attorney for Plaintiff,

ENRIQUE RODRIGUEZ

JOEL SELIK, ESQ.

Nevada Bar No. 402

SELIK LAW

10191 Park Run Drive Suite 110 Las

Vegas, NV 89145

Tel: (702) 243-1930

Fax: (760) 479-0081

Joel@SelikLaw.com

Attorney for Plaintiff,

ENRIQUE RODRIGUEZ



28 **MORAN BRANDON
BENDAVID MORAN**
ATTORNEY AT LAW

300 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 384-8424
FAX (702) 384-8424


An Employee of Moran Brandon Bendavid Moran

1 **ORDR**
2 **LEW BRANDON, JR., ESQ.**
Nevada Bar No.: 5880
3 **JUSTIN W. SMERBER, ESQ.**
Nevada Bar No.: 10761
4 **MORAN BRANDON BENDAVID MORAN**
630 S. Fourth Street
Las Vegas, Nevada 89101
(702) 384-8424
(702) 384-6568 - facsimile
5 *lbrandon@moranlawfirm.com*
Attorneys for Defendant,
6 **FIESTA PALMS, LLC d/b/a**
PALMS CASINO RESORT

Alan J. Blum

CLERK OF THE COURT

7 **ROBERT L. EISENBERG, ESQ.**
Nevada Bar No. 0950
8 **LEMONS, GRUNDY & EISENBERG**
6005 Plumas Street, Third Floor
Reno, Nevada 89519
9 Telephone: (775) 786-6868 / Facsimile: (775) 786-9716
rle@lge.net
10 Attorneys for Defendant,
FIESTA PALMS, LLC d/b/a
11 **PALMS CASINO RESORT**

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **ENRIQUE RODRIGUEZ, an individual,**
Plaintiff,
15 v.
FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/b/a **PALMS CASINO**
16 **RESORT; BRANDY L. BEAVERS, individually,**
DOES I through X, and ROE CORPORATIONS I
through X, inclusive,
17 **Defendants.**

CASE NO.: 06A531538
DEPT. NO.: XV

ORDER DENYING PLAINTIFF'S
MOTION FOR NRCP 60 RELIEF

18 Plaintiff, ENRIQUE RODRIGUEZ's Motion for NRCP 60 Relief having come before
19 this Honorable Court on November 15, 2016 at 9:00 a.m., JUSTIN W. SMERBER, ESQ. of



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
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1 MORAN BRANDON BENDAVID MORAN and ROBERT EISENBERG, ESQ. of LEMONS,
2 GRUNDY & EISENBERG having appeared on behalf of FIESTA PALMS, LLC, and JOEL
3 SELIK, ESQ. of SELIK LAW having appeared on behalf of ENRIQUE RODRIGUEZ, the
4 Court having reviewed the Motion, the papers and pleadings on file herein, and for good cause
appearing finds and orders as follows:

5 Plaintiff has made application to the Court seeking NRCP 60 relief from an order
6 dismissing Plaintiff's case due to a failure to comply with mandatory requirements in NRCP
7 16.1 and EDCR 2.67. The only subpart of Rule 60 on which Plaintiff relies is NRCP 60(b)(1),
8 which allows relief where a party has demonstrated "mistake, inadvertence, surprise, or
9 excusable neglect." Plaintiff has not sufficiently demonstrated any mistake, inadvertence,
10 surprise or excusable neglect relating to his failure to comply with mandatory discovery and
11 pretrial requirements, especially considering the fact that he was personally admonished by the
Court regarding his need to comply.

12 Additionally, the Court has considered Plaintiff's request for Rule 60 relief in
13 accordance with the factors set forth in Yochum v. Davis, 98 Nev. 484 (1982), which include: (1)
14 whether a prompt application was made to remove the judgment; (2) the absence of an intent to
15 delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good
faith. *Id.*

16 The Court finds that Plaintiff did not make a prompt application for relief under Rule 60.
17 Plaintiff has asserted that his Rule 60 motion was timely, because it was filed within six (6)
18 months of the Notice of Entry of Order granting the Motion to Dismiss. The Plaintiff's Motion
19 was filed approximately five (5) months and three (3) weeks after Notice of Entry of Order was
20 served. In accordance with to Union Petrochemical Corp. v. Scott, 96 Nev. 337 (1980), this



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1 Court finds that the mere fact that Plaintiff filed the motion for relief within six (6) months does
2 not make the application "prompt" or timely. As stated in the Union Petrochemical Corp case,
3 "want of diligence in seeking to set aside a judgment is ground enough for denial of such a
4 motion." *Id.* at p. 338 (holding that district court properly denied motion as untimely where
5 motion was filed "almost six months" after entry of the judgment). This is especially true in the
6 instant case where Plaintiff was personally present in Court when the Motion to Dismiss was
7 granted.

8 The Court also finds that Plaintiff's actions have resulted in delay and prejudice to the
9 Defense, and awarding relief under Rule 60 would create further delay and prejudice. This
10 matter has been in District Court on remand since November 4, 2014. There have been
11 numerous continuances of the trial date at the Plaintiff's request. The Nevada Rules of Civil
12 Procedure are to be construed to secure the just, speedy, and inexpensive determination of every
13 action. Dougan v. Gustaveson, 108 Nev. 517 (1992). The timeliness provisions written into the
14 rules will, as a general proposition, be enforced by the courts in order to promote the timely and
15 efficient processing of cases. *Id.* Because this matter has already been significantly delayed by
16 Plaintiff's actions, the Court finds that relief under Rule 60 at this time would create further
17 delay and prejudice to Defendant, and is inappropriate.

18 The Court also finds that Plaintiff had actual knowledge of the mandatory procedural
19 requirements imposed upon him in this case. Plaintiff has argued that he was not aware of the
20 specific procedural requirements imposed upon him, because he was in proper person at the
time that the motion to dismiss was filed. Initially, the fact that Plaintiff was in proper person
does not excuse him from complying with the rules of procedure. See *Bonnell v. Lawrence*, 282
P.3d 712, 718 (2012) citing *Raymond J. German, Ltd. v. Brossart*, 2012 ND 89, 816 N.W.2d 47,



1 (N.D. 2012). Further, the Court finds that Plaintiff was in fact personally and actually aware of
2 the mandatory procedural requirements imposed upon him, due to the fact that: (1) this Court
3 mailed its Trial Scheduling Order to Plaintiff directly at his home address; (2) Defendant filed
4 its motion to dismiss and served it on Plaintiff at his home address, alerting Plaintiff of his
5 procedural requirements at a time when Plaintiff could have rectified any deficiencies; and (3)
6 Plaintiff appeared in person at a hearing on April 7, 2016 and was personally admonished by
7 this Court regarding Defendant's pending dispositive motions and the importance of complying
8 with the rules and taking appropriate action if he wished to pursue this case. Plaintiff did not
9 take any action despite these express warnings.

10 Finally, Plaintiff asserts that relief should be granted under Rule 60 due to the public
11 policy of having matters heard on their merits. While the Court acknowledges the public policy
12 of having matters heard on their merits, the present matter presents issues that warrant a denial
13 of Rule 60 relief. The Plaintiff in this action has shown a blatant disregard for the rules of
14 procedure. Even in the face of numerous opportunities to correct his deficiencies and express
15 warnings from the Court regarding the consequences of his failure to comply with mandatory
16 rules, Plaintiff refused to take the necessary actions in his case. Then upon having his matter
17 dismissed for failure to act, Plaintiff again did nothing to rectify the situation until nearly six (6)
18 months after his case was dismissed. Such are not the actions of a party who is entitled to relief
19 under Rule 60.

20 Accordingly, the Court hereby finds that Plaintiff has failed to establish any of the
grounds for relief set forth in NRCP 60(b)(1), and Plaintiff has failed to establish any of the
factors identified in Yochum v. Davis.



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1 IT IS THEREFORE ORDERED THAT PLAINTIFF'S MOTION FOR NRCP 60
2 RELIEF IS DENIED.

3 IT IS SO ORDERED this 22nd day of December, 2016.

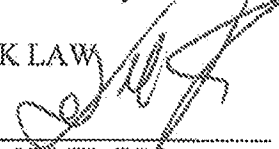
4 
DISTRICT COURT JUDGE

5 Respectfully Submitted by:
6 MORAN BRANDON BENDAVID MORAN

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