

countered Rodriguez's measure of damages based on the "paucity" of information that his expert relied upon as well as his "averaging" of Rodriguez's tax returns. Like Franklin, Cargill did not state that he testified to a reasonable degree of professional probability, but as we held with regard to Franklin, this failure is not dispositive. And, because Dr. Cargill explained that he used his "expertise" to make this calculation and attempted to further instruct the district court as to his methodology (though the district court prohibited him from so doing), his testimony was sufficiently certain given its purpose and context. *Williams*, 127 Nev. at \_\_\_, 262 P.3d at 368.

The district court judge also admitted and considered inadmissible testimony by Rodriguez's treating physicians. Rodriguez did not provide a written NRCP 26 expert witness report for any of these physicians. While a treating physician is exempt from the report requirement, this exemption only extends to "opinions [that] were formed during the course of treatment." *Goodman v. Staples the Office Superstore, L.L.C.*, 644 F.3d 817, 826 (9th Cir. 2011); see *Rock Bay, L.L.C. v. Eighth Judicial Dist. Court*, 129 Nev. \_\_\_, \_\_\_ n.3, 298 P.3d 441, 445 n.3 (2013) (noting that when an NRCP is modeled after its federal counterpart, "cases interpreting the federal rule are strongly persuasive"). Where a treating physician's testimony exceeds that scope, he or she testifies as an expert and is subject to the relevant requirements. *Goodman*, 644 F.3d at 826.

One of Rodriguez's physician-witnesses, Dr. Joseph Schifini, treated Rodriguez for pain associated with his knee injury but testified about orthopedic surgery (noting that he often could "predict" what a surgeon would do, deeming the orthopedic surgeon's billing rate

reasonable, and finding Rodriguez's surgeon to be well-educated and qualified); neurology and neurological science (predicting the reasonable cost of a "spinal stimulator" and its likely effect on Rodriguez); podiatry (suggesting that Rodriguez's injury caused his ingrown toenail); radiology (assessing what type of X-ray allowed for the most accurate readings); and damages (criticizing a life-care plan as "one of the worst" he had seen in terms of its assessment of damages). Dr. Schifini testified that he formed these opinions during his review of a compendium of Rodriguez's medical records, which consisted of "thousands of pages of documents" from "many, many providers." To the extent that Dr. Schifini reviewed these documents in the course of providing treatment to Rodriguez, he could offer an opinion based on them. *See Goodman*, 644 F.3d at 826; *see also* NRCP 16.1 drafter's note (2012 amendment). But Dr. Schifini did not testify that he had reviewed the documents during the course of his treatment, only that he had "reviewed all the medical records in this case."

In *Ghiorzi v. Whitewater Pools & Spas Inc.*, No. 2:10-cv-01778-JCM-PAL, 2011 WL 5190804 (D. Nev. Oct. 28, 2011) (not reported), the same Dr. Schifini opined, ostensibly as the plaintiff's treating physician, as to the appropriateness and value of treatments that he did not provide to the plaintiff; that all that treatment was "directly related to" the defendants' alleged negligence; that the plaintiff "had tremendous pain and suffering"; and what future treatment the plaintiff might require. *Ghiorzi*, 2011 WL 5190804, at \*8. Similar to his assertions before the state district court in this case, Dr. Schifini indicated to the federal district court in *Ghiorzi* that he formed these opinions during his review of the plaintiff's medical records, but elaborated that he undertook that review in order to form "opinions regarding the care, appropriateness of care,

necessity of care and relatedness of care provided to [the plaintiff].” *Id.* The federal district court limited Dr. Schifini’s testimony to “his single examination of the [p]laintiff,” the results of MRIs he ordered for the plaintiff, and the necessity and cost of the epidural injection he administered to the plaintiff, because by testifying more broadly Dr. Schifini testified as an expert, not a treating physician. *Id.* at \*9. Given the similar breadth in Dr. Schifini’s testimony in this case and his vagueness as to the purpose of his review of Rodriguez’s medical records, the federal district court’s assessment is applicable. *See Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. \_\_\_, \_\_\_ n.2, 245 P.3d 542, 546 n.2 (2010) (this court may rely on unpublished federal district court opinions as persuasive, though nonbinding authority). Allowing Dr. Schifini to testify as he did without an expert witness report and disclosure was an abuse of the district court’s discretion.

Moreover, even if Dr. Schifini reviewed records from other providers in the course of his treatment of Rodriguez and not in order to form the opinions he proffered, he could only properly testify as to those opinions he formed based on the documents he disclosed to Palms. NRCP 16.1 drafter’s note (2012 amendment); *see also Washoe Cnty. Bd. of Sch. Trustees v. Pirhala*, 84 Nev. 1, 5, 435 P.2d 756, 758 (1968) (noting that the purpose of discovery is to take the “surprise out of trials of cases so that all relevant facts and information pertaining to the action may be ascertained in advance of trial”). And of the “thousands of pages” Dr. Schifini apparently read to form the opinions he expressed at trial, he disclosed only 21 pages of records in discovery.

As to Rodriguez's remaining "treating physician" witnesses, Dr. Walter Kidwell testified for Rodriguez as to "the mechanism" of his injury, and Dr. Maryanne Shannon testified as to whether another doctor's treatment of Rodriguez was "causally related" to his initial injury. Allowing Dr. Kidwell and Dr. Shannon to so testify without requiring an appropriate NRCP 16.1(a)(2)(B) disclosure was also an abuse of the district court's discretion—once they opined as to the cause of Rodriguez's condition and treatments they should have been subject to the section's disclosure standards. See NRCP 16.1(a)(2)(B).

As the Palms notes, the district court judge in this case has heard the evidence that should have been excluded and formed and expressed an opinion on the ultimate merits. We therefore grant the Palms' request to have this case reassigned if remanded. See *Leven v. Wheatherstone Condo. Corp., Inc.*, 106 Nev. 307, 310, 791 P.2d 450, 451 (1990).

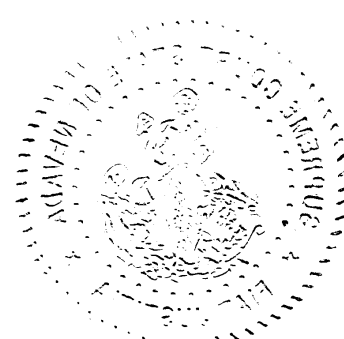
For these reasons, we reverse and remand for reassignment and a new trial consistent with this opinion.

Pickering, J.  
Pickering

We concur:

Hardesty, J.  
Hardesty

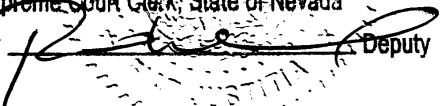
Cherry, J.  
Cherry



**CERTIFIED COPY**

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: OCTOBER 21<sup>ST</sup>, 2014  
Supreme Court Clerk, State of Nevada

By  Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

FCH1, LLC, A NEVADA LIMITED LIABILITY COMPANY F/K/A FIESTA PALMS, LLC, A NEVADA LIMITED LIABILITY COMPANY D/B/A THE PALMS CASINO RESORT,  
Appellant,  
vs.  
ENRIQUE RODRIGUEZ, AN INDIVIDUAL,  
Respondent.

No. 59630

**FILED**

OCT 02 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
CHIEF DEPUTY CLERK

**ORDER DENYING REHEARING AND AMENDING OPINION**

Although this court has determined that rehearing is not warranted, we have determined that a correction to the opinion is warranted. Accordingly, the opinion filed in this matter, *FCH1, L.L.C. v. Rodriguez*, 130 Nev. \_\_\_, 326 P.3d 440 (Adv. Op. No. 46, June 5, 2014), is amended by the opinion filed concurrently with this order, as follows:

In the third to last paragraph of the opinion, the final sentence and its supporting citation shall now read:

Allowing Dr. Kidwell and Dr. Shannon to so testify without requiring an appropriate NRCP 16.1(a)(2)(B) disclosure was also an abuse of the district court's discretion—once they opined as to the cause of Rodriguez's condition and treatments they should have been subject to the section's disclosure standards. See NRCP 16.1(a)(2)(B).

With this amendment, the petition for panel rehearing is denied. NRAP 40(c).

It is so ORDERED.

*Pickering*, J.  
Pickering

*Hardesty*, J.  
Hardesty

*Cherry*, J.  
Cherry

SUPREME COURT OF NEVADA

(O) 197A 

H-32752

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Kemp, Jones & Coulthard, LLP  
Archer Norris  
Lemons, Grundy & Eisenberg  
Matthew L. Sharp, Ltd.  
Hutchison & Steffen, LLC  
Benson, Bertoldo, Baker & Carter, Chtd.  
Eighth District Court Clerk





**CERTIFIED COPY**

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: October 27<sup>th</sup>, 2014  
Supreme Court Clerk, State of Nevada

By [Signature] Deputy



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

FCH1, LLC, A NEVADA LIMITED LIABILITY COMPANY F/K/A FIESTA PALMS, LLC, A NEVADA LIMITED LIABILITY COMPANY D/B/A THE PALMS CASINO RESORT,  
Appellant,  
vs.  
ENRIQUE RODRIGUEZ, AN INDIVIDUAL,  
Respondent.

**Supreme Court No. 59630**  
District Court Case No. A531538

**REMITTITUR**

TO: Steven Grierson, District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: October 27, 2014

Tracie Lindeman, Clerk of Court

By: Rory Wunsch  
Deputy Clerk

cc (without enclosures):

Hon. Jessie Elizabeth Walsh, District Judge  
Benson, Bertoldo, Baker & Carter, Chtd.  
Archer Norris  
Lemons, Grundy & Eisenberg  
Hutchison & Steffen, LLC  
Kemp, Jones & Coulthard, LLP  
Matthew L. Sharp, Ltd.

**RECEIPT FOR REMITTITUR**

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on NOV 04 2014.

HEATHER UNGERMANN MK

Deputy District Court Clerk

**RECEIVED**

**NOV 04 2014**

CLERK OF THE COURT



1 STEVEN M. BAKER, ESQ.  
Nevada Bar No. 4522  
2 **BENSON BERTOLDO, BAKER & CARTER, CHTD.**  
7408 W. Sahara Avenue  
3 Las Vegas, Nevada 89117  
(702) 228-2600 Telephone  
4 (702) 228-2333 Facsimile  
[cheryl@bensonlawyers.com](mailto:cheryl@bensonlawyers.com)  
5 *Attorneys for Plaintiff, Enrique Rodriguez*

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CLERK OF THE COURT

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 ENRIQUE RODRIGUEZ, an individual,  
9 Plaintiff,

CASE NO: A531538  
DEPT NO: V

10 vs.

DATE of HEARING: December 5, 2014  
TIME of HEARING: 9:00 a.m.

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

**NOTICE OF HEARING:**  
**BENSON, BERTOLDO, BAKER &  
CARTER'S MOTION TO  
WITHDRAW AS ATTORNEYS FOR  
PLAINTIFF ENRIQUE RODRIGUEZ;  
AND HEARING ON ORDER  
SHORTENING TIME**

15 **NOTICE OF HEARING BENSON, BERTOLDO, BAKER & CARTER'S MOTION TO**  
16 **WITHDRAW AS ATTORNEYS FOR PLAINTIFF ENRIQUE RODRIGUEZ; AND HEARING**  
17 **ON ORDER SHORTENING TIME**

18 PLEASE TAKE NOTICE that the Motion to Withdraw as Counsel will be brought on for hearing on  
19 the 5<sup>th</sup> day of December, 2014, in Department V, at the Eighth Judicial District Court, 200 South Lewis,  
20 Las Vegas, Nevada.

21 A copy of said Notice of Hearing and a copy of said Motion was served electronically on all  
22 interested parties on November 24, 2014, and is attached hereto.

23 DATED THIS 24 DAY OF Nov, 2014.

BENSON BERTOLDO, BAKER & CARTER, CHAD.

By: 

STEVEN M. BAKER, ESQ.  
Nevada Bar No. 4522  
7408 W. Sahara Avenue  
Las Vegas, Nevada 89117



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24 day of May, 2014, I served a true and correct copy of the foregoing **NOTICE OF HEARING: BENSON, BERTOLDO, BAKER & CARTER'S MOTION TO WITHDRAW AS ATTORNEYS FOR PLAINTIFF ENRIQUE RODRIGUEZ**, and copy of **MOTION** to the following:

\_\_\_\_\_ *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)]

x Pursuant to N.E.F.C.R. Rule 9 and Administrative Order 14-2, by sending via electronic service:

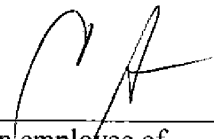
10676  
J. Randall Jones, Esq.  
[r.jones@kempjones.com](mailto:r.jones@kempjones.com)  
Mona Kaveh, Esq.  
[m.kaveh@kempjones.com](mailto:m.kaveh@kempjones.com)  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
Attorneys for Defendant Fiesta Palms, LLC  
d/b/a The Palms Casino Resort

Robert L. Eisenberg, Esq.  
[rle@lge.net](mailto:rle@lge.net)  
LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
Attorneys for Defendant Fiesta Palms, LLC  
d/b/a The Palms Casino Resort

Howard J. Russell, Esq.  
[hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)  
WEINBERG, WHEELER, HUDGNS, GUNN & DIAL

Mathew L. Sharp, Esq.  
[matt@matsharp.com](mailto:matt@matsharp.com)  
MATTHEW L. SHARP, Ltd.

Enrique Rodriguez  
PO Box 20514, Riverside, CA 92516  
951-415-9584 Telephone  
[bernieofcalif@aol.com](mailto:bernieofcalif@aol.com)

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

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

**BERTOLDO  
ENRIQ  
AKER  
&  
CARTER**  
ATTORNEYS AT LAW

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STEVEN M. BAKER, ESQ.  
Nevada Bar No. 4522  
**BENSON BERTOLDO, BAKER & CARTER, CHTD.**  
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(702) 228-2333 Facsimile  
[cheryl@bensonlawyers.com](mailto:cheryl@bensonlawyers.com)  
*Attorneys for Plaintiff, Enrique Rodriguez*

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CLERK OF THE COURT

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ, an individual,  
  
Plaintiff,

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.

CASE NO: A531538  
DEPT NO: V

DATE of HEARING: *12/1/14*  
TIME of HEARING: *9 AM*

**BENSON, BERTOLDO, BAKER &  
CARTER'S MOTION TO  
WITHDRAW AS ATTORNEYS  
FOR PLAINTIFF ENRIQUE  
RODRIGUEZ; AND HEARING  
ON ORDER SHORTENING TIME**


**BENSON, BERTOLDO, BAKER & CARTER'S MOTION TO WITHDRAW AS  
ATTORNEYS FOR PLAINTIFF ENRIQUE RODRIGUEZ; AND HEARING ON  
ORDER SHORTENING TIME**

COMES NOW, STEVEN M, BAKER, ESQ. of the law firm of Benson Bertoldo  
Baker & Carter, attorneys for Plaintiff, ENRIQUE RODRIGUEZ, hereby moves this Court  
to withdraw as counsel, on a shortened time for the Plaintiff, in the above referenced matter.

This Motion is made based on the Points and Authorities and the affidavit of counsel  
herein.

DATED THIS 20 DAY OF Nov, 2014.

**BENSON BERTOLDO, BAKER & CARTER, CHAD.**

By:   
STEVEN M. BAKER, ESQ.  
Nevada Bar No. 4522  
7408 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Attorneys for Plaintiff

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2338



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**ORDER SHORTENING TIME**

It appearing to the satisfaction of the Court, and good cause appearing therefore,  
IT IS HEREBY ORDERED that the time for hearing on BENSON, BERTOLDO, BAKER &  
CARTER'S MOTION TO WITHDRAW AS ATTORNEYS FOR PLAINTIFF ENRIQUE  
RODRIGUEZ, shall be shorten to heard on the 5<sup>th</sup> day of Dec., 2014, at 9:00  
a.m., in Dept. V, of Clark County District Court.

DATED this 21 day of Nov, 2014.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

RESPECTFULLY SUBMITTED BY:  
BENSON BERTOLDO, BAKER & CARTER, CHTD.

By:   
\_\_\_\_\_  
STEVEN M. BAKER, ESQ.  
Nevada Bar No. 4522  
7408 W. Sahara Avenue  
Las Vegas, Nevada 89117



**ATTORNEY AFFIDAVIT IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL, ON ORDER SHORTENING TIME**

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STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK        )

I, STEVEN M. BAKER, being first duly sworn, deposes and says:

1. That I am an attorney and partner of the law firm of BENSON, BERTOLDO, BAKER & CARTER, and I am duly licensed to practice before all courts in the State of Nevada, and I have been the attorney of record in the above-captioned matter.

2. This action was filed on November 15, 2006, by Plaintiff, **ENRIQUE RODRIGUEZ**.

3. Service has been completed on all named Defendants. Affidavits of service have been filed with the court.

4. This action was tried before Judge Walsh resulting in Plaintiff's verdict; then reversed and remanded; Judge Walsh recused herself; then assigned to Judge Timothy Williams, who was preempted by Defense Counsel. Presently this matter is reassigned to this Honorable Court.

5. This motion is being brought, and good cause exists for withdrawal of BENSON, BERTOLDO BAKER & CARTER as the attorneys for the Plaintiff, **ENRIQUE RODRIGUEZ**, due to a breakdown in communications.

6. That communication between the law firm of BENSON, BERTOLDO, BAKER & CARTER and **ENRIQUE RODRIGUEZ** has broken down to such a degree that the firm can no longer effectively represent **RODRIGUEZ'S** interests.

7. Due to the attorney/client privilege, the specifics cannot be disclosed; however, the resulting breakdown in communication has effectively precluded the law firm from continuing to represent **ENRIQUE RODRIGUEZ**.

8. For these reasons, and the fact that your affiant can no longer effectively represent, **ENRIQUE RODRIGUEZ**, your affiant respectfully requests that the Court grant the foregoing Motion to Withdraw as counsel for Plaintiff.

9. Counsel requests this Motion to Withdraw on an Order Shortening Time in order to enable Plaintiff to seek new counsel, as this case has been remanded from the Nevada Supreme Court to this Court for a new trial.

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

**ENSON  
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& CARTER**  
ATTORNEYS AT LAW

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10. Notice has been sent to the last known address provided by Plaintiff, **ENRIQUE RODRIGUEZ**, which counsel has served a copy of this motion, and via email.

**ENRIQUE RODRIGUEZ – PO Box 20514, Riverside, CA 92516**  
**951-415-9584 Telephone**  
**bernieofcalif@aol.com**

11. If called as a witness, I could and would competently testify as to the following matters stated herein from my own personal knowledge.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

STEVEN M. BAKER, ESQ.

SUBSCRIBED and SWORN to before me on this 20<sup>th</sup> day of Nov, 2014.

NOTARY PUBLIC in and for said County and State





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I.

**MEMORANDUM OF POINTS & AUTHORITIES**

This action was filed on November 15, 2006, by Plaintiff, **ENRIQUE RODRIGUEZ**, to recover damages against Defendants as a result of injuries sustained at/by Defendants on subject Defendants' premise.

This Motion to Withdraw as Attorney for **ENRIQUE RODRIGUEZ** is being brought by Benson Bertoldo Baker & Carter, pursuant to Nev. S.C.R. 166(2)(f) and EDCR §7.40, and due to a breakdown in communication with **ENRIQUE RODRIGUEZ**.

As shown by the Affidavit of STEVEN M, BAKER, ESQ., attached hereto, communication between **ENRIQUE RODRIGUEZ** and the law firm of BENSON, BERTOLDO BAKER & CARTER, has broken down to the point where the firm can no longer effectively represent **ENRIQUE RODRIGUEZ'S** interests. To require the firm to continue to represent **ENRIQUE RODRIGUEZ'S** interests will create an undue burden upon the law firm of BENSON, BERTOLDO BAKER & CARTER, as the firm is unable to effectively work with **ENRIQUE RODRIGUEZ** due to the breakdown in communication. Therefore, a motion is being filed so an order may be obtained from the Court, pursuant to EDCR 7.40(b).

This Motion is based on the papers, pleadings, exhibits on file herein, the Memorandum of Points and Authorities included herewith, the Affidavit of STEVEN M, BAKER, ESQ. of the law firm of BENSON, BERTOLDO BAKER & CARTER, in support of this instant Motion and oral argument, if any, as this Honorable Court should chose to entertain at the time of the hearing of this matter.





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II.  
ARGUMENT

A. Lawyer May Withdraw From Representing a Client Pursuant to Nev. S.C.R. 46

Supreme Court Rule 46 contemplates that once an attorney has appeared in an action, he may be changed upon the application of the client or the attorney with the consent of the Court or by stipulation. Orme v. Eighth Judicial Dist. Court in and For County of Clark, 105 Nev. 701, 714, n.1, 782 P.2d 1325 (1989) (citing Aldabe v. Adalbe, 84 Nev. 392, 398, 441 P.2d 691, 695 (1968)). It states in part:

The attorney in action . . . may be changed at any time before judgment or final determination as follows:

1. Upon consent of the attorney, approved by the client.
2. Upon the order of the court or judge thereof on the application of the attorney or client . . . SCR 46.

B. Lawyer May Withdraw From Representing a Client Pursuant to EDCR § 7.40

(b) Counsel in any case may be changed only:

(2) When no attorney has been retained to replace the attorney withdrawing, by order of the court, granted upon written motion, and

(i) If the application is made by the attorney, the attorney must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and the telephone number, or last known telephone number, at which the client may be reached and the attorney must serve a copy of the application upon the client and all other parties to the action or their attorneys.

As to the specific requirements of EDCR § 7.40, **ENRIQUE RODRIGUEZ** can be reached at the address set forth in the Affidavit of counsel. **ENRIQUE RODRIGUEZ'S** telephone number and his email address is also included.



ATTORNEYS AT LAW

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C. Lawyer May Withdraw From Representing a Client Pursuant to Nev. S.C.R. 166(2)(f)

Nev. S.C.R. 166(2)(f) provides that a lawyer may withdraw from representation of a client if good cause for withdrawal exists.

Over the last several years, ENRIQUE RODRIGUEZ and Counsel have communicated via email, on a regular basis, as to the status of his case and the appeal.

On October 14, 2014, and on November 17, 2014, ENRIQUE RODRIGUEZ was made aware that BENSON, BERTOLDO BAKER & CARTER would withdraw as attorney of record should we not hear from RODRIGUEZ within thirty (30) days of October 14, 2014. To date, BENSON, BERTOLDO BAKER & CARTER has not heard from RODRIGUEZ.

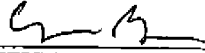
It is submitted that the withdrawal of counsel for ENRIQUE RODRIGUEZ will not impact the trial of this matter nor will it affect any hearing in the case. The new trial in this matter is has not been scheduled by this Court. If any hearing should be scheduled prior to the withdrawal of counsel herein, counsel will attend said hearing.

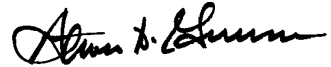
III.  
CONCLUSION

Based on the foregoing and the accompany Affidavit attached hereto, counsel respectfully request that the Court grant BENSON, BERTOLDO BAKER & CARTER's Motion to Withdraw as the Attorney of Record for ENRIQUE RODRIGUEZ.

DATED THIS 10 DAY OF Nov, 2014.

BENSON BERTOLDO, BAKER & CARTER, CHAD.

By:   
STEVEN M. BAKER, ESQ.  
Nevada Bar No. 4522  
7408 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Attorneys for Plaintiff



CLERK OF THE COURT

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

1 J. RANDALL JONES, ESQ. (#1927)  
r.jones@kempjones.com  
2 MONA KAVEH, ESQ. (#11825)  
m.kaveh@kempjones.com  
3 KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
4 Seventeenth Floor  
Las Vegas, Nevada 89169  
5 Telephone: (702) 385-6000  
Facsimile: (702) 385-6001  
6  
7 ROBERT L. EISENBERG, ESQ. (#950)  
rle@lge.net  
8 LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
9 Telephone: (775) 786-6868  
Facsimile: (775) 786-9716  
10 *Attorneys for Defendant Fiesta Palms, LLC*  
*d/b/a The Palms Casino Resort*

DISTRICT COURT  
CLARK COUNTY, NEVADA

14 ENRIQUE RODRIGUEZ,

15 Plaintiff,

16 v.

17 FIESTA PALMS, LLC, a Nevada Limited  
18 Liability Company, d/b/a THE PALMS  
CASINO RESORT; BRANDY L.  
19 BEAVERS, individually; DOES I through X,  
20 inclusive and ROE BUSINESS ENTITIES I  
through X, inclusive,

21 Defendants.  
22  
23

Case No.: A531538

Dept. No.: V

**Notice of Non-Opposition to Benson,  
Bertoldo, Baker & Carter's Motion to  
Withdraw as Attorneys for Plaintiff  
Enrique Rodriguez; and Hearing on  
Order Shortening Time**

24 Defendant Fiesta Palms, LLC d/b/a The Palms Casino Resort, by and through its counsel  
25 of record, Kemp, Jones & Coulthard, LLP and Lemons, Grundy & Eisenberg, hereby files this

26 ///

27 ///

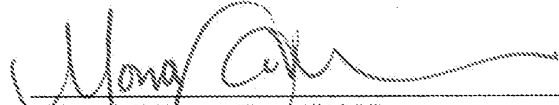
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KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kic@kempjones.com

1 Notice of Non-Opposition to Benson, Bertoldo, Baker & Carter's Motion to Withdraw as  
2 Attorneys for Plaintiff Enrique Rodriguez; and Hearing on Order Shortening Time.

3 DATED this 2nd day of December, 2014.

4 Respectfully submitted by:

5  
6 

7 J. Randall Jones, Esq. (#1927)  
8 Mona Kaven, Esq. (#11825)  
9 KEMP, JONES & COULTHARD, LLP  
10 3800 Howard Hughes Parkway  
11 Seventeenth Floor  
12 Las Vegas, Nevada 89169

13 Robert L. Eisenberg, Esq. (#950)  
14 LEMONS, GRUNDY & EISENBERG  
15 6005 Plumas Street, Third Floor  
16 Reno, Nevada 89519  
17 *Attorneys for Defendant Fiesta Palms, LLC*  
18 *d/b/a The Palms Casino Resort*

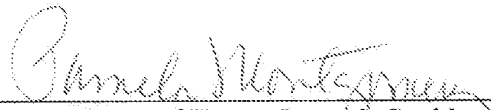
KEMP, JONES & COULTHARD, LLP  
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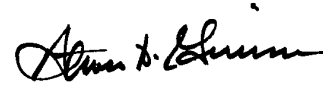
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2014, service of the foregoing **Notice of Non-Opposition to Benson, Bertoldo, Baker & Carter's Motion to Withdraw as Attorneys for Plaintiff Enrique Rodriguez; and Hearing on Order Shortening Time** was served via the Eighth Judicial District Court's electronic service system and U.S. Mail, postage pre-paid envelope addressed to the following person(s):

Steven M. Baker, Esq.  
BENSON, BERTOLDO, BAKER & CARTER  
7408 West Sahara Avenue  
Las Vegas, Nevada 89117  
*Attorney for Plaintiff Enrique Rodriguez*

  
An Employee of Kemp, Jones & Coulthard, LLP



CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*\*

Enrique Rodriguez  
vs  
Fiesta Palms LLC

Case No.: 06A531538

Department 5

ORDER SCHEDULING STATUS CHECK: TRIAL SETTING

YOU ARE HEREBY ORDERED TO APPEAR before the Honorable Carolyn Ellsworth in District Court, Dept. 5, 200 Lewis Avenue, on **Friday, January 09, 2015, at 9:00 a.m.** to give status regarding this matter.

Failure to Appear may result in the dismissal of this action.

DATED this 4th day of December, 2014.

  
CAROLYN ELLSWORTH,  
DISTRICT COURT

I hereby certify that on the date filed, I mailed a copy to, or placed a copy in the attorney folder(s) of the following parties;

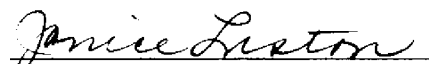
Enrique Rodriguez, P. O. Box 20514, Riverside, CA 92516

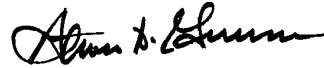
J. Randall Jones, Esq., Kemp, Jones & Coulthard

Howard J. Russell, Esq., Weinberg, Wheeler, Hudgins, Gunn & Dial

Robert L. Eisenberg, Esq., Lemons, Grundy & Eisenberg, 6005 plumas St., 3<sup>rd</sup> Floor,  
Reno, NV 89519

Matthew L. Sharp, Esq., 432 Ridge St., Reno, NV 89501

  
Janice Liston



CLERK OF THE COURT

1 STEVEN M. BAKER, ESQ.  
Nevada Bar No. 4522  
2 **BENSON BERTOLDO, BAKER & CARTER, CHTD.**  
7408 W. Sahara Avenue  
3 Las Vegas, Nevada 89117  
(702) 228-2600 Telephone  
4 (702) 228-2333 Facsimile  
[cheryl@bensonlawyers.com](mailto:cheryl@bensonlawyers.com)  
5 *Attorneys for Plaintiff, Enrique Rodriguez*

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 ENRIQUE RODRIGUEZ, an individual,  
9 Plaintiff,

CASE NO: A531538  
DEPT NO: V

10 vs.

**NOTICE OF ENTRY OF ORDER**

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

*GRANTING*  
**Benson, Bertoldo, Baker & Carter's  
Motion To Withdraw As Attorneys For  
Plaintiff Enrique Rodriguez; And  
Hearing On Order Shortening Time**


15  
16 **NOTICE OF ENTRY OF ORDER GRANTING BENSON, BERTOLDO, BAKER &**  
17 **CARTER'S MOTION TO WITHDRAW AS ATTORNEYS FOR PLAINTIFF ENRIQUE**  
**RODRIGUEZ; AND HEARING ON ORDER SHORTENING TIME**

18 PLEASE TAKE NOTICE, that an ORDER Granting BENSON, BERTOLDO, BAKER  
19 & CARTER'S Motion to Withdraw as Attorneys for Plaintiff ENRIQUE RODRIGUEZ and Hearing  
20 on Order Shortening Time was entered on December 9, 2014. A copy of which is attached  
21 hereto.

22 DATED THIS 9<sup>th</sup> DAY OF Dec, 2014.

BENSON BERTOLDO, BAKER & CARTER, CHAD.

23 By:

  
24 STEVEN M. BAKER, ESQ.  
Nevada Bar No. 4522  
25 7408 W. Sahara Avenue  
Las Vegas, Nevada 89117

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333





**CERTIFICATE OF SERVICE**

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I HEREBY CERTIFY that on this 9<sup>th</sup> day of Dec, 2014, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING BENSON, BERTOLDO, BAKER & CARTER'S MOTION TO WITHDRAW AS ATTORNEYS FOR PLAINTIFF ENRIQUE RODRIGUEZ**, to the following:

\_\_\_\_\_ *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)]

Pursuant to N.E.F.C.R. Rule 9 and Administrative Order 14-2, by sending **via electronic service:**

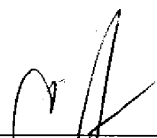
10676  
J. Randall Jones, Esq.  
[r.jones@kempjones.com](mailto:r.jones@kempjones.com)  
Mona Kaveh, Esq.  
[m.kaveh@kempjones.com](mailto:m.kaveh@kempjones.com)  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
Attorneys for Defendant Fiesta Palms, LLC  
d/b/a The Palms Casino Resort

Robert L. Eisenberg, Esq.  
[rle@lge.net](mailto:rle@lge.net)  
LEMONS, GRUNDY & EISENBERG  
6005 Plum Street, Third Floor  
Reno, Nevada 89519  
Attorneys for Defendant Fiesta Palms, LLC  
d/b/a The Palms Casino Resort

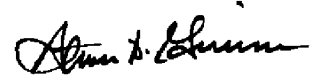
Howard J. Russell, Esq.  
[hrussell@wwhgd.com](mailto:hrussell@wwhgd.com)  
WEINBERG, WHEELER, HUDGNS, GUNN & DIAL

Mathew L. Sharp, Esq.  
[matt@matsharpplaw.com](mailto:matt@matsharpplaw.com)  
MATTHEW L. SHARP, Ltd.

Enrique Rodriguez  
PO Box 20514, Riverside, CA 92516  
951-415-9584 Telephone  
[bernieofcalif@aol.com](mailto:bernieofcalif@aol.com)

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





CLERK OF THE COURT

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333



1 STEVEN M. BAKER, ESQ.  
2 Nevada Bar No. 4522  
3 **BENSON BERTOLDO, BAKER & CARTER, CHTD.**  
4 7408 W. Sahara Avenue  
5 Las Vegas, Nevada 89117  
6 (702) 228-2600 Telephone  
7 (702) 228-2333 Facsimile  
8 [cheryl@bensonlawyers.com](mailto:cheryl@bensonlawyers.com)  
9 *Attorneys for Plaintiff, Enrique Rodriguez*

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 ENRIQUE RODRIGUEZ, an individual,  
9 Plaintiff,  
10 vs.  
11 FIESTA PALMS, L.L.C., a Nevada Limited  
12 Liability Company, d/b/a PALMS CASINO  
13 RESORT, BRANDY L. BEAVERS, individually,  
14 DOES 1 through X, inclusive, and ROE  
15 BUSINESS ENTITIES I through X, inclusive,  
16 Defendants.

CASE NO: A531538  
DEPT NO: V

DATE of HEARING: December 5, 2014  
TIME of HEARING: 9:00 a.m.

**ORDER GRANTING**  
**BENSON, BERTOLDO, BAKER &**  
**CARTER'S MOTION TO**  
**WITHDRAW AS ATTORNEYS FOR**  
**PLAINTIFF ENRIQUE RODRIGUEZ;**  
**AND HEARING ON ORDER**  
**SHORTENING TIME**

16 **ORDER GRANTING BENSON, BERTOLDO, BAKER & CARTER'S MOTION TO**  
17 **WITHDRAW AS ATTORNEYS FOR PLAINTIFF ENRIQUE RODRIGUEZ; AND HEARING**  
18 **ON ORDER SHORTENING TIME**

19 This matter having come on for hearing on December 5, 2014, on BENSON,  
20 BERTOLDO, BAKER & CARTER'S Motion to Withdraw as Attorneys for Plaintiff ENRIQUE  
21 RODRIGUEZ and Hearing on Order Shortening Time and, upon motion by Plaintiff's attorney of  
22 record STEVEN M. BAKER, ESQ., non-opposition having been filed by the Defendants on  
23 December 2, 2014, and no opposition has been filed by Plaintiff ENRIQUE RODRIGUEZ,  
24 and the Court having considered the pleadings and documents on file herein and good cause  
25 appearing therefore:  
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IT IS HEREBY ORDERED, ADJUDGED and DECREED that BENSON, BERTOLDO, BAKER & CARTER'S Motion to Withdraw as Attorneys for Plaintiff ENRIQUE RODRIGUEZ and Hearing on Order Shortening Time is hereby GRANTED.

Plaintiff's last known address is:

ENRIQUE RODRIGUEZ  
PO Box 20514  
Riverside, CA 92516  
951-415-9584 Telephone  
[bernieofcaliff@aol.com](mailto:bernieofcaliff@aol.com)

This matter has been remanded for a new trial and there are no dates or deadlines that have been issued in this matter.

*New trial date is 3-16-15; calendar call is 3-6-15. Trial order will be prepared.*

IT IS SO ORDERED.

Dated: *Dec. 5*, 2014.

*[Signature]*  
DISTRICT COURT JUDGE *gl*

SUBMITTED BY:  
BENSON BERTOLDO, BAKER & CARTER, CHTD.

By: *[Signature]* 7601 for

STEVEN M. BAKER, ESQ.  
Nevada Bar No. 4522  
7408 W. Sahara Avenue  
Las Vegas, Nevada 89117

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Location : District Court Civil/Criminal [Help](#)

**REGISTER OF ACTIONS**  
CASE No. **06A531538**

**Enrique Rodriguez, Plaintiff(s) vs. Fiesta Palms LLC, Defendant (s)**

§  
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§

Case Type: **Negligence - Premises Liability**  
Date Filed: **11/15/2006**  
Location: **Department 15**  
Cross-Reference Case Number: **A531538**  
Supreme Court No.: **59630 72098**

**PARTY INFORMATION**

**Lead Attorneys**

**Defendant**    **Fiesta Palms LLC**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

**Doing Business As**    **Palms Casino Resort**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

**Plaintiff**    **Rodriguez, Enrique**

**Micah S. Echols**  
*Retained*  
702-382-0711(W)

**EVENTS & ORDERS OF THE COURT**

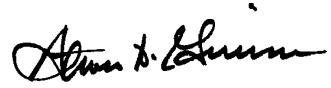
01/09/2015 | **Status Check: Trial Setting** (9:00 AM) (Judicial Officer Ellsworth, Carolyn)  
**01/09/2015, 02/13/2015**

**Minutes**

01/09/2015 9:00 AM  
- STATUS CHECK: TRIAL SETTING Mr. Rodriguez requested matter be continued 30 days as he is trying to retain counsel. COURT ORDERED, any trial date set is VACATED and matter CONTINUED for trial setting. Ms. Kaveh requested they be allowed to file dispositive and/or pre-trial motions after trial is set. Upon Court's inquiry Ms. Kaveh advised they are new counsel on this case. CONTINUED TO: 2/13/15 9 AM

02/13/2015 9:00 AM  
- STATUS CHECK: TRIAL SETTING Mr. Rodriguez advised he just received case file from Steve Baker, needs more time to have new counsel review file and requested 30 more days. Mr. Smerber requested trial setting now. COURT noted discovery is closed, and ORDERED, trial date SET and matter CONTINUED for status check on counsel. 3/20/15 9 AM  
STATUS CHECK: NEW COUNSEL 7/24/15 10 AM  
CALENDAR CALL 8/3/15 1:30 PM JURY TRIAL

[Parties Present](#)  
[Return to Register of Actions](#)



CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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ENRIQUE RODRIGUEZ, an individual, ) CASE NO. 06A531538  
Plaintiff, )

9

vs. ) DEPT. XV  
)

10

FIESTA PALMS, LLC, a Nevada )

11

Limited Liability Company, dba, )

12

Palms Casino Resort, et al., )

13

)  
Defendants. )

14

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

15

FRIDAY, JANUARY 09, 2015

16

**RECORDER'S TRANSCRIPT OF HEARING RE:**

17

**STATUS CHECK: TRIAL SETTING**

18

19

APPEARANCES:

20

For the Plaintiff: ENRIQUE RODRIGUEZ, ESQ.,  
Pro Per

21

22

For the Defendant: MONA KAVEH, ESQ.,  
Attorney at Law

23

24

25

RECORDED BY: LARA CORCORAN, SENIOR COURT RECORDER

1 FRIDAY, JANUARY 09, 2015

2 \* \* \* \* \*

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

4  
5 THE COURT: Case No. 06A531538, Enrique Rodriguez  
6 versus Fiesta Palms. Good morning. Will you please state  
7 your appearances for the record?

8 MS. KAVEH: Good morning, your Honor. Mona Kaveh on  
9 behalf of the Palms.

10 MR. RODRIGUEZ: Good morning, your Honor. My name is  
11 Enrique Rodriguez.

12 THE COURT: Good morning, Mr. Rodriguez. So we put  
13 this one status check following remand and remittitur from the  
14 Supreme Court and assignment for a re-trial to this Court.  
15 Are you seeking counsel, sir?

16 MR. RODRIGUEZ: Yes, ma'am, I am. I have spoken to  
17 several law firms and I'm requesting a 30-day continuance so  
18 that when I come back I will be represented by some attorneys.

19 THE COURT: Does the defendant have any --

20 MS. KAVEH: I guess I just have --

21 THE COURT: -- objection to 30 days.

22 MS. KAVEH: -- a quick question, your Honor.

23 THE COURT: Uh-huh.

24 MS. KAVEH: I -- when we got the order for  
25 plaintiff's former counsel's withdrawal, there's a handwritten

1 note in there that states that the new trial date is  
2 March 16<sup>th</sup>, 2015. We were just curious if that's a firm date  
3 or --

4 THE COURT: I -- you know, I saw that but then there  
5 was no trial order issued, you know, formal trial order  
6 issued. I think the original intent was we wanted to set a  
7 trial date then get everybody in here and see if we needed to  
8 change anything.

9 MS. KAVEH: Okay. We were prepared to go to trial on  
10 that date but, again, we didn't see a trial order as well.  
11 So --

12 THE COURT: Okay.

13 MS. KAVEH: -- we wanted to appear today but --

14 THE COURT: I don't know why that didn't happen. I  
15 was trying to, you know, get everybody's attention so we could  
16 move things along and get a trial date set. So I'm going to  
17 vacate that trial date at this point because if we continue it  
18 30 days for him to get counsel that's not --

19 MS. KAVEH: Sure.

20 THE COURT: -- going to give you time to get things  
21 going. All right. so we're going to set it for a status  
22 check. I won't -- I won't set the trial date until we find  
23 out whether he's got counsel or he's going to remain pro per,  
24 and at that time we'll try -- make sure if you have counsel in  
25 place if they bring their calendar, bring your calendar, and

1 we'll come up with a date that looks fine and reset it.

2 MS. KAVEH: Okay, your Honor. Another quick  
3 question.

4 THE COURT: Sure.

5 MS. KAVEH: Once trial is set will we have an  
6 opportunity to file any sort of dispositive motions or  
7 pretrial motions?

8 THE COURT: Discovery should be closed obviously.  
9 And what type of motions are you -- haven't you already filed  
10 dispositive motions?

11 MS. KAVEH: We weren't trial counsel originally and I  
12 know there have been some discussions about, you know,  
13 potential dispositive motions or motions in limine just based  
14 on the decision that's come out by the Supreme Court and we --

15 THE COURT: Well at this point, all right, the case  
16 is still a bench trial. I don't know whether the parties will  
17 want to move for a jury trial which is allowed potentially  
18 under the rules. Upon motion by the parties the Court can  
19 allow for a jury trial even though, you know, it wasn't  
20 before. But I know that defense counsel before had asked for  
21 a jury trial kind of at the last minute that was opposed  
22 because it was ready to go to trial. Plaintiff's counsel had  
23 indicated that he'd worked the case up as a bench trial and it  
24 would be prejudiced by changing that at the last minute.

25 So whether -- if there are -- I guess I don't want to

1 say no to motions in limine that may bear on the things that  
2 were addressed by the Supreme Court. In other words, there  
3 may be motions in limine in place from the prior -- from the  
4 prior Judge, trial Judge, that have been basically undercut or  
5 eliminated by virtue of the holding in the case. So --

6 MS. KAVEH: Okay. And we may come better prepared --

7 THE COURT: So we'll --

8 MS. KAVEH: -- and discuss that in 30 days.

9 THE COURT: Yeah, we'll talk about that when we come  
10 back for the status check. So also when you get your counsel  
11 they need to be, you know, fully up to speed so we can talk  
12 about these things in 30 days. And so if you don't have  
13 counsel, be prepared to talk about them yourself in 30 days  
14 because I can't --

15 MR. RODRIGUEZ: I understand, your Honor.

16 THE COURT: I won't be able to go much -- any further  
17 than with 30 days.

18 MR. RODRIGUEZ: Okay.

19 THE COURT: All right. Let's have a date.

20 THE CLERK: February 13<sup>th</sup> at 9:00.

21 THE COURT: All right. See you then. Thank you.

22 MS. KAVEH: Thank you, your Honor.

23 MR. RODRIGUEZ: Thank you very much, your Honor.

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THE COURT: All right.

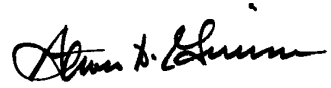
(Whereupon, the proceedings concluded.)

\* \* \* \* \*

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



\_\_\_\_\_  
Kiara Schmidt, Court Recorder/Transcriber



CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

7

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ENRIQUE RODRIGUEZ, an individual, ) CASE NO. 06A531538  
Plaintiff, )

9

vs. ) DEPT. XV  
)

10

FIESTA PALMS, LLC, a Nevada )

11

Limited Liability Company, dba, )

12

Palms Casino Resort, et al., )

13

)  
Defendants. )

14

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

15

FRIDAY, FEBRUARY 13, 2015

16

**RECORDER'S TRANSCRIPT OF HEARING RE:**

17

**STATUS CHECK: TRIAL SETTING**

18

19

APPEARANCES:

20

For the Plaintiff: ENRIQUE RODRIGUEZ, ESQ.,  
Pro Per

21

22

For the Defendant: JUSTIN SMERBER, ESQ.,  
Attorney at Law

23

24

25

RECORDED BY: SANDRA PRUCHNIC, RELIEF COURT RECORDER

1 FRIDAY, FEBRUARY 13, 2015

2 \* \* \* \* \*

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

4  
5 THE COURT: Do we have everybody here now on the  
6 Rodriguez versus Fiesta Palms?

7 MR. SMERBER: Good morning, your Honor. Justin  
8 Smerber, Moran, Brandon, Bendavid, Moran, on behalf of Fiesta  
9 Palms, LLC.

10 THE COURT: Mr. Rodriguez?

11 MR. RODRIGUEZ: Good morning, your Honor.

12 THE COURT: So have you obtained counsel?

13 MR. RODRIGUEZ: I -- let me just go through this. I  
14 just received my case file from Steve Baker with Benson,  
15 Bertoldo, Baker, and Carter --

16 THE COURT: Yes?

17 MR. RODRIGUEZ: -- and it is a very large file --

18 THE COURT: Yes?

19 MR. RODRIGUEZ: -- and I need -- and I -- and it took  
20 a while for me to receive it from them because of the amount  
21 of records in the file, so I need to meet with some attorneys  
22 next week so that they can have some time to review the file  
23 itself.

24 THE COURT: Okay, you told me that last time we were  
25 here which was a month ago that you were -- you had

1 MR. RODRIGUEZ: That -- I believe that --

2 THE COURT: -- meetings scheduled with lawyers.

3 MR. RODRIGUEZ: But last time the -- Benson Bertoldo  
4 had not given me my case file.

5 THE COURT: Okay, but you --

6 MR. RODRIGUEZ: So --

7 THE COURT: -- didn't tell me that and so --

8 MR. RODRIGUEZ: Now I received my case file and  
9 it's 50,000 pages. So that's a lot of records that they have  
10 to go through.

11 THE COURT: Okay.

12 MR. RODRIGUEZ: For that reason and to allow my new  
13 attorneys to look through the records, I'm only requesting one  
14 more 30-day continuance. That's all, you know, in fairness.

15 THE COURT: Who do you have meetings scheduled with?

16 MR. RODRIGUEZ: I have meetings scheduled with Paul  
17 Padda and Ruth Cohen.

18 THE COURT: Okay.

19 MR. RODRIGUEZ: And that's who I have meetings  
20 scheduled with.

21 THE COURT: Oh, just that one firm?

22 MR. RODRIGUEZ: And he is also associating with some  
23 other attorneys.

24 THE COURT: Okay. And do you know who those are?

25 MR. RODRIGUEZ: I believe it is Robert Vannah.

1 THE COURT: All right. So what's the defense  
2 position?

3 MR. SMERBER: Your Honor, we'll do whatever pleases  
4 the Court. We would request a trial setting. If your Honor  
5 were to set a trial setting out and give us time for a  
6 briefing schedule, you know, if you wanted to just do it with  
7 adequate time for him to have 30 more days to retain counsel,  
8 I wouldn't object to that. We would like to get something on  
9 calendar, though.

10 THE COURT: Right. It's -- because we've been kind  
11 of pushing it out, I would want to reserve you a slot. Now my  
12 understanding is -- well discovery is closed. All discovery  
13 is done, so there's not going to be anymore discovery. Your  
14 lawyers have to take the cases they founded if they decide to  
15 take the case.

16 You don't know what our --

17 THE CLERK: No. Do you want me to have her come in  
18 here?

19 THE COURT: Yeah, get my JEA in here. Just a minute.

20 (Pause.)

21 THE COURT: Thank you. So we're needing a trial  
22 date. Discovery is all completed but we'd like to get them on  
23 the schedule here.

24 THE JUDICIAL ASSISTANT: Do you have a time frame or  
25 the next available?

1 THE COURT: What is the next available?

2 THE JUDICIAL ASSISTANT: The next available would be  
3 March 16<sup>th</sup> and after that would be May 26<sup>th</sup>.

4 THE COURT: Of?

5 THE JUDICIAL ASSISTANT: '15.

6 THE COURT: Oh.

7 MR. SMERBER: Your Honor --

8 THE COURT: You're probably not ready to go in March.  
9 That's just --

10 MR. SMERBER: That's right, your Honor. I actually  
11 have a firm trial setting out in Pahrump of all places that's  
12 going to take me through the first and second week of March.  
13 So -- and also, your Honor, just given the procedural history  
14 of this case, I anticipate that there's going to be pretrial  
15 motions and we request some time to file those.

16 THE COURT: Okay. So --

17 THE JUDICIAL ASSISTANT: Should I put that on our  
18 August stack?

19 THE COURT: Do you want to put it in August and  
20 then -- yeah, and then if there's some issue where there needs  
21 to be a continuance of that date then motions can be filed,  
22 but in the meantime we'll give you that date.

23 THE JUDICIAL ASSISTANT: August 3<sup>rd</sup>, 2015, and  
24 calendar call July 24<sup>th</sup>, 2015.

25 THE COURT: Do you want to write those -- do you have

1 something to write those dates down so you can tell --

2 MR. RODRIGUEZ: Yes, I do.

3 THE COURT: -- your lawyers when you meet with them?

4 And -- all right. So -- and discovery is closed, obviously,  
5 dispositive motions and whatnot. We'll have to send out an  
6 order --

7 THE JUDICIAL ASSISTANT: I will do it.

8 THE COURT: -- regarding that.

9 MR. SMERBER: And, your Honor, is that a -- is that a  
10 five-week stack we're going on?

11 THE JUDICIAL ASSISTANT: It is.

12 THE COURT: It is, yeah. Yeah, yeah, five weeks.

13 And right now it was set for -- I mean it's always been set  
14 for a bench trial. I remember in reviewing the case that  
15 there was a request or a motion by the defense for jury trial  
16 that was denied because Mr. Baker indicated that the case had  
17 been worked up and he'd been -- had prepared for it as a bench  
18 trial.

19 MR. SMERBER: Right.

20 THE COURT: So if you intend to bring a motion for a  
21 jury trial, I think it's under Rule 19, then you need to bring  
22 that as soon as possible, and maybe the other -- maybe the  
23 other side wants to get a lawyer in place, will want that as  
24 well.

25 MR. SMERBER: Okay. Very good, your Honor. Thank

1 you.

2 THE COURT: I'd be happy to have it as a jury trial.

3 MR. SMERBER: Very good, your Honor.

4 THE CLERK: Are we having a status check in 30 days?

5 THE COURT: Yeah, let's have another status check 30  
6 days for counsel.

7 THE CLERK: March 13<sup>th</sup> at 9:00. That's really not  
8 quite 30 days. March 20<sup>th</sup>.

9 THE COURT: So March 20<sup>th</sup> we'll see you again.  
10 Hopefully this time you'll have lawyers with you.

11 MR. SMERBER: Very well. Thank you, your Honor.

12 THE COURT: Great. Have a great weekend.

13 MR. RODRIGUEZ: Thank you.

14 (Whereupon, the proceedings concluded.)

15 \* \* \* \* \*

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

18



19

Kiara Schmidt, Court Recorder/Transcriber

20

21

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*[Handwritten signature]*

1 **CHLG**  
Enrique ("Henry") Rodriguez  
2 **PRO SE LITIGANT**  
P.O. Box 20514  
3 Riverside, California 92516  
Tele: (951) 415-9584  
4 Email: bernieofcalif@aol.com  
5 Pro Se Plaintiff

**FILED**

2015 FEB 19 P 3:56

*[Signature]*  
CLERK OF THE COURT

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 **ENRIQUE RODRIGUEZ,**  
9 **Plaintiff,**  
10 **v.**  
11 **FIESTA PALMS, LLC, et. al.,**  
12 **Defendants.**

Case No. A531538  
Dept. No. V

06A531538  
CHLG  
Peremptory Challenge  
4434554



14 **PLAINTIFF'S PEREMPTORY CHALLENGE OF JUDGE**

15 Pursuant to Nevada Supreme Court rule 48.1, Pro Se Plaintiff Enrique Rodriguez hereby  
16 files this peremptory challenge seeking the transfer of this case from the Honorable Carolyn  
17 Ellsworth to another District Court Judge. This challenge is timely filed. On December 4, 2014  
18 Judge Ellsworth issued an Order scheduling a status check for January 9, 2015 for the purpose of  
19 setting a trial date. On January 9, 2015, Plaintiff indicated he was in the process of obtaining  
20 counsel and Judge Ellsworth continued the status check for another 30-days, or until February 13,  
21 2015. On February 13, 2015 Judge Ellsworth notified the parties, for the first time, of a trial date  
22 of August 3, 2015. Accordingly, this peremptory challenge filed on February 19, 2015, or 6-days  
23 after the trial setting, is timely.

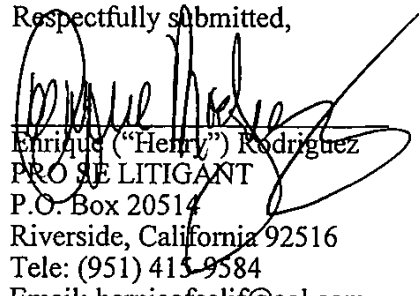
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25 / / / **RECEIVED**  
26 / / / **FEB 19 2015**  
CLERK OF THE COURT

2

1 In compliance with Nevada Supreme Court rule 48.1(2) a fee of \$450.00 has been paid to  
2 the Clerk of the Court.

3 Respectfully submitted,

4   
5 Enrique ("Henry") Rodriguez  
6 PRO SE LITIGANT  
7 P.O. Box 20514  
8 Riverside, California 92516  
9 Tele: (951) 415-9584  
10 Email: bernieofcalif@aol.com

11 Pro Se Plaintiff

12 Dated: February 19, 2015

13 CERTIFICATE OF SERVICE

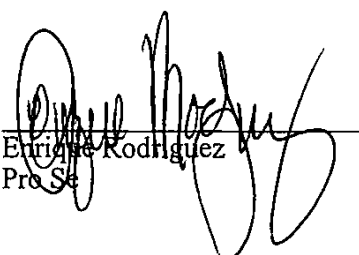
14 Pursuant to Nevada Rule of Civil Procedure 5(b), the undersigned hereby certifies that on  
15 February 19, 2015 copies of "PLAINTIFF'S PEREMPTORY CHALLENGE OF JUDGE" was  
16 served via United States Mail (first-class, postage prepaid) to the following:

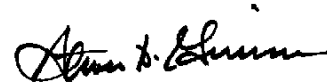
17 Lew Brandon, Esq.  
18 630 South 4<sup>th</sup> Street  
19 Las Vegas, Nevada 89101

20 Robert L. Eisenberg, Esq.  
21 Lemons Grundy Eisenberg  
22 6005 Plumas Street, 3<sup>rd</sup> Floor  
23 Reno, Nevada 89519

24 Matthew L. Sharp, Esq.  
25 432 Ridge Street  
26 Reno, Nevada 89501

Howard J. Russell, Esq.  
Weinberg Wheeler  
6385 South Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118

27   
28 Enrique Rodriguez  
29 Pro Se



CLERK OF THE COURT

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**DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \***

ENRIQUE RODRIGUEZ, PLAINTIFF(S)	Case No.: 06A531538
VS.	DEPARTMENT 15
FIESTA PALMS LLC, DEFENDANT(S)	

**NOTICE OF DEPARTMENT REASSIGNMENT**

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Abbi Silver.

This reassignment follows the filing of a Peremptory Challenge of Judge Carolyn Ellsworth.

Bench Trial will be 8-3-15 @ 1:30pm  
Calendar Call will be 7-24-15 @ 10:00am  
Status Check will be 3-25-15 @ 9:00am

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT. PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: \_\_\_\_\_ /s/ Salevao Asifoa  
S.L. Asifoa, Deputy Clerk of the Court



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Location : District Court Civil/Criminal [Help](#)

## REGISTER OF ACTIONS

CASE No. 06A531538

Enrique Rodriguez, Plaintiff(s) vs. Fiesta Palms LLC, Defendant (s)

§  
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Case Type: **Negligence - Premises Liability**  
Date Filed: **11/15/2006**  
Location: **Department 15**  
Cross-Reference Case Number: **A531538**  
Supreme Court No.: **59630 72098**

---

### PARTY INFORMATION

---

#### Lead Attorneys

Defendant **Fiesta Palms LLC**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

Doing **Palms Casino Resort**  
Business As

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

Plaintiff **Rodriguez, Enrique**

**Micah S. Echols**  
*Retained*  
702-382-0711(W)

---

### EVENTS & ORDERS OF THE COURT

---

03/25/2015 **Status Check** (9:00 AM) (Judicial Officer Bonaventure, Joseph T.)  
**03/25/2015, 04/01/2015, 04/08/2015, 04/29/2015, 05/13/2015**  
*Status Check: New Counsel*

#### Minutes

03/20/2015 9:00 AM

03/25/2015 9:00 AM

- Mr. Paul Padda, Esq. present and requesting more time to discuss with the client. COURT ORDERED, request is GRANTED and matter is CONTINUED. Mr. Smerber, Esq. indicated he will be requesting a Jury Trial. Court directed counsel to place the request in writing. CONTINUED TO: 4/1/15 9:00 A.M.

04/01/2015 9:00 AM

- Mr. Paul Padda, Esq. present and stating he can not confirm as Pltf's counsel at this time, and is requesting more time to discuss with the client. COURT ORDERED, request is GRANTED and matter is CONTINUED. Court clarified this is the last time for a continuance, Def. has pending Pre Trial Motions to be filed. CONTINUED TO: 4/8/15 9:00 A.M.

04/08/2015 9:00 AM

- COURT ORDERED, matter CONTINUED. CONTINUED TO: 4/22/15 9:00 A.M.

04/22/2015 9:00 AM

04/29/2015 9:00 AM

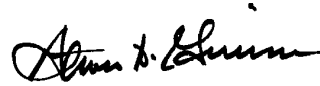
- Mr. Paul Padda, Esq. specially appearing for the Pltf. and advised Mr. Robert Vannah may appear for the Pltf. next date, however he is not certain. Mr. Padda indicated the Pltf. is attempting to obtain the funds needed to proceed with his case

and would like to attempt a settlement conference. Court encouraged both counsel to discuss attending a Settlement Conference. COURT ORDERED, matter CONTINUED. CONTINUED TO: 5/13/15 9:00 A.M.

05/13/2015 9:00 AM

Parties Present

[Return to Register of Actions](#)



CLERK OF THE COURT

1 **NOTA**  
Paul S. Padda, Esq. (NV Bar #10417)  
2 Email: ppadda@caplawyers.com  
COHEN & PADDA, PLLC  
3 4240 West Flamingo Road, Suite 220  
Las Vegas, Nevada 89103  
4 Tele: (702) 366-1888  
Fax: (702) 366-1940  
5 Web: caplawyers.com

6 Attorney for the Plaintiff

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **ENRIQUE RODRIGUEZ,**

10 **Plaintiff,**

11 **v.**

12 **FIESTA PALMS, LLC, et. al.,**

13 **Defendants.**

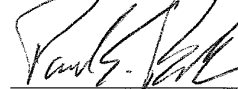
) **Case No. A531538**

) **Dept. No. II**

14 \_\_\_\_\_  
15 **NOTICE OF APPEARANCE**

16 Notice is hereby provided that undersigned counsel, Paul S. Padda, Esq. of the law firm  
17 Cohen & Padda, PLLC, will be representing Plaintiff Enrique ("Henry") Rodriguez in this  
18 matter. All papers, correspondence and communications of any kind should be directed to the  
19 attention of undersigned counsel.

20 Respectfully submitted,



21 \_\_\_\_\_  
22 Paul S. Padda, Esq.  
Cohen & Padda, PLLC

23 Attorney for Plaintiff

24 Dated: May 12, 2015

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), the undersigned hereby certifies that on May 12, 2015 a copy of "NOTICE OF APPEARANCE" was served via the Court's electronic filing system ("Odyssey") upon the following (as well as all other counsel of record):

Lew Brandon, Esq.  
630 South Fourth Street  
Las Vegas, Nevada 89101



Paul S. Padda, Esq.



06A531538

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**May 13, 2015**

---

06A531538 Enrique Rodriguez, Plaintiff(s)  
vs.  
Fiesta Palms LLC, Defendant(s)

---

**May 13, 2015 9:00 AM All Pending Motions**

**HEARD BY:** Scotti, Richard F

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Kristen Brown

**RECORDER:**

**REPORTER:** Loree Murray

**PARTIES**

**PRESENT:** Smerber, Justin W. Attorney

**JOURNAL ENTRIES**

- The Court disclosed that it had previously worked on this case with his former firm of Kemp, Jones & Coulthard which represents the deft., therefore, to avoid the appearance of impropriety and implied bias, this Court hereby disqualifies itself and ORDERED, this case be REASSIGNED at random.

PRINT DATE: 05/15/2015

Page 1 of 1

Minutes Date: May 13, 2015

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*

  
CLERK OF THE COURT

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5 ENRIQUE RODRIGUEZ,

CASE NO: 06A531538

6 PLAINTIFF(S)

DEPARTMENT 15

7 VS.

8 FIESTA PALMS LLC, DEFENDANT(S)  
9

10  
11 **NOTICE OF DEPARTMENT REASSIGNMENT**

12 NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly  
reassigned to Judge Joe Hardy.

13  This reassignment is due to the recusal of Judge SCOTTI. See minutes in file.  
14

15 ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE  
16 RESET BY THE NEW DEPARTMENT.

17 Any motions or hearings presently scheduled in the FORMER department will be  
18 heard by the NEW department as set forth below:

19 **Motion for Mandatory Settlement Conference will be heard, on June 15,  
2015, at 9:00 AM.**

21 PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE  
22 FILINGS.

23 STEVEN D. GRIERSON, CEO/Clerk of the Court

24 By: /s/ Diana Matson

25 Diana Matson,  
26 Deputy Clerk of the Court  
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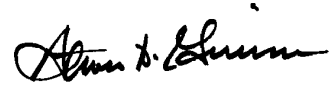
I hereby certify that this: 18th day of May, 2015

The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number 06A531538.

I mailed, via first-class, postage fully prepaid, the foregoing Clerk of the Court, Notice of Department Reassignment to:

Paul S Padda  
Cohen & Padda LLP  
Attn Paul S Padda  
4240 West Flamingo Rd - Suite 220  
Las Vegas NV 89103

/s/ Diana Matson  
Diana Matson,  
Deputy Clerk of the Court



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DISTRICT COURT  
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,	)	CASE NO. A531538
	)	DEPT NO. XV
Plaintiff(s),	)	
	)	
v.	)	
	)	
FIESTA PALMS LLC, et al.	)	
	)	
Defendant(s),	)	
	)	
	)	

**ORDER SETTING STATUS CHECK**

This matter having a conflict with the trial date, it is hereby

**ORDERED**, that this matter is set for a status check in Department 15 on **June 15, 2015, at 9:00 a.m.** to determine a new trial date.

DATED this 8<sup>th</sup> day of June, 2015.

  
JOE HARDY, DISTRICT COURT

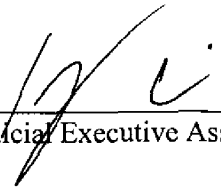
**CERTIFICATE OF SERVICE**

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I hereby certify that on or about the date e-filed, the foregoing was e-served, e-mailed, mailed or a copy of the above document was placed in the attorney's folder in the Clerk's Office, or mailed to the following:

Paul Padda, Esq.  
Lewis Brandon, Jr., Esq.

[ppadda@caplawyers.com](mailto:ppadda@caplawyers.com)  
[l.brandon@moranlawfirm.com](mailto:l.brandon@moranlawfirm.com)

  
\_\_\_\_\_  
Judicial Executive Assistant

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Location : District Court Civil/Criminal [Help](#)

**REGISTER OF ACTIONS**

**CASE No. 06A531538**

**Enrique Rodriguez, Plaintiff(s) vs. Fiesta Palms LLC, Defendant (s)**

§  
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§

Case Type: **Negligence - Premises Liability**  
 Date Filed: **11/15/2006**  
 Location: **Department 15**  
 Cross-Reference Case Number: **A531538**  
 Supreme Court No.: **59630 72098**

**PARTY INFORMATION**

**Lead Attorneys**

**Defendant Fiesta Palms LLC**

**Lewis W Brandon, Jr.**  
*Retained*  
 702-384-6568(W)

**Doing Palms Casino Resort Business As**

**Lewis W Brandon, Jr.**  
*Retained*  
 702-384-6568(W)

**Plaintiff Rodriguez, Enrique**

**Micah S. Echols**  
*Retained*  
 702-382-0711(W)

**EVENTS & ORDERS OF THE COURT**

06/15/2015 **All Pending Motions** (9:00 AM) (Judicial Officer Hardy, Joe)  
*Plaintiff's Motion For A Mandatory Settlement Conference and Status Check: New Trial Date*

**Minutes**

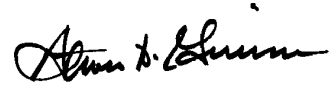
06/15/2015 9:00 AM

- PLAINTIFF'S MOTION FOR A MANDATORY SETTLEMENT CONFERENCE...STATUS CHECK: NEW TRIAL DATE Court made disclosure that its present Law Clerk, Matthew Beckstead was previously employed by the Moran Law Firm, however he has no knowledge of this case. Mr. Smerber, Esq. confirmed they did not have this case until after Matthew left their firm. COURT stated, there is no basis for the Court to recuse therefore matter shall proceed in this Department. Regarding the Status Check: New Trial Date, Court explained this Department has had cases reassigned without having their trial dates reset according to the newly assigned Department, therefore the Court has placed these matters on calendar to reset the trial within a proper Department 15 stack. Mr. Padda, Esq. indicated he has a scheduling conflict with the present Trial date. Accordingly, COURT ORDERED, present Pre Trial Conference, Calendar Call and Jury Trial are RESET. COURT FURTHER ORDERED, a new Trial Order shall issue, Pretrial memorandums are due by 5:00 P.M. on 11/20/15. Argument by counsel regarding Pltf's Motion for a Mandatory Settlement Conference. Court stated it is generally a fan of Alternative Dispute Resolution (ADR) however, given this would go forward with one side not wanting to participate, the harm is a waste of time and resources, for all concerned. Accordingly, COURT FURTHER ORDERED, Pltf's Motion is DENIED WITHOUT PREJUDICE. Mr. Smerber, Esq. moved for the Court to address a previously filed Motion for this matter to go forward as a Jury Trial and not a Bench Trial. COURT FURTHER ORDERED, it will issue a decision regarding the Trial either through a minute order or a written decision, which

will be provided to both sides. COURT NOTED, parties are #1 on their STACK. Court directed Mr. Smerber to prepare the Order and submit to Mr. Padda for his review and signature prior to submitting to the Court for signature. 11/23/15 8:30 A.M. PRETRIAL CONFERENCE 12/09/15 8:30 A.M. CALENDAR CALL 12/14/15 10:30 A.M. JURY TRIAL

Parties Present

[Return to Register of Actions](#)



CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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ENRIQUE RODRIGUEZ, )

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CASE NO. 06-A-531538

Plaintiff, )

9

vs. )

DEPT. NO. XV

10

FIESTA PALMS, LLC, )

11

**Transcript of Proceedings**

12

Defendant. )

13

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

14

**PLAINTIFF'S MOTION FOR A MANDATORY SETTLEMENT CONFERENCE;  
STATUS CHECK: NEW TRIAL DATE**

15

MONDAY, JUNE 15, 2015

16

APPEARANCES:

17

For the Plaintiff: PAUL S. PADDA, ESQ.

18

For the Defendant: JUSTIN W. SMERBER, ESQ.

19

20

RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT

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TRANSCRIBED BY: KRISTEN LUNKWITZ

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Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

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MONDAY, JUNE 15, 2015 AT 9:03 A.M.

THE CLERK: Paul Padda present for the plaintiff, Rodriguez, and Justin Smerber for the defendant, Fiesta Palms.

MR. PADDA: Good morning, Your Honor.

THE COURT: Good morning, counsel.

THE CLERK: I think there's two matters on, Your Honor. One is resetting the trial and the other is for Plaintiff's Motion.

THE COURT: Okay. Before we begin, I need to disclose that my Law Clerk previously worked for the Moran firm once upon a time. Does not recall ever having worked on this particular case. So, I don't see that as a reason to recuse myself but need to make you aware of that.

MR. PADDA: Thank you, Your Honor. I appreciate that.

MR. SMERBER: I can also represent to the Court, Mr. Beckstead was actually not with our firm when we had this case assigned to us.

THE COURT: Oh. Okay.

MR. SMERBER: So, I don't see how that would be in conflict.

THE COURT: That would explain why I didn't recall the case, then. Thank you.

1           So, let's go first to your Motion. Your, meaning  
2 Plaintiff's Motion for Good Faith -- or for Mandatory  
3 Settlement Conference. I did read the briefs. I have to  
4 say, as having conducted several settlement conferences now  
5 as a judge, it is difficult when you have one -- and  
6 difficult is probably too weak of a term, if you will, when  
7 one party doesn't want to be there. And, you know,  
8 understandably, like I said, I did read the briefs and I  
9 think I understand what Fiesta Palms is saying. But, Mr.  
10 Padda, you're welcome to argue.

11           MR. PADDA: The issue is very simple, Your Honor.  
12 At one point, while this matter was on appeal, they made a  
13 settlement offer to Mr. Rodriguez. Unfortunately, that  
14 expired when the appeal came down or the decision from the  
15 Supreme Court came down. And, so, nothing much has changed  
16 since then.

17           A part -- and I think that, frankly, this is a  
18 case that if it wasn't a settlement conference -- and I  
19 think the parties were forced to sit in separate rooms and  
20 have an honest dialogue about the case, including my own  
21 client, having, you know, more reasonable expectations, I  
22 think this case very much well could settle. And, so, I  
23 don't think it's just a pointless exercise.

24           Again, as I said, at one point, they were willing  
25 to settle the case. Now, it's on your docket. That

1 position has changed then so be it. Your Honor can't force  
2 them into a mandatory -- though I referred to it as a  
3 mandatory settlement conference, it is discretionary with  
4 the Court. But I think, given the procedural history, the  
5 very convoluted history, the significant interest for both  
6 sides in this case, I don't really see what harm can result  
7 from that. I think it would -- I think, personally, I  
8 believe it would do a lot to advance resolution of this  
9 case. And, as I said, they were willing to settle at one  
10 point. Nothing has changed.

11 THE COURT: Thank you. So, generally, I am a fan  
12 of -- and, counsel, if you could be seated that'd be great.  
13 You make me nervous when there's -- when we're in a  
14 disputed hearing with multiple attorneys standing up. But,  
15 generally, I'm a big fan of ADR. I read your briefs. So,  
16 tell me, though, why I shouldn't send you there.

17 MR. SMERBER: Well, Your Honor, as we say in our  
18 brief, first, we've been through multiple settlement  
19 conferences, all of which have failed, with the exception  
20 of one which resulted in a partial settlement where before  
21 this matter came back on appeal, counsel is referring to  
22 negotiations that were taking place. We won on appeal and  
23 we're coming back with several things in our favor that we  
24 think are going to benefit us significantly at trial.

25 My client has already paid a significant partial

1 settlement. It -- a seven figure partial settlement, which  
2 I didn't offset against at trial. That was before we came  
3 back on a remand from the Supreme Court. So, you know, my  
4 clients have a position that they've already spent a very  
5 large amount of money. They've already gone through, I  
6 think, it's three settlement conferences and they think  
7 that right now is not an acceptable time for mediation or a  
8 settlement conference. We believe that pretrial motions  
9 should be sorted out first. And, quite frankly, we're in a  
10 great position for trial. So, we don't think we should be  
11 forced to go into a settlement conference and extorted for  
12 more money where we've already paid a significant amount.  
13 Thanks. Appreciate it.

14 THE COURT: Thank you.

15 MR. PADDA: Well, I don't -- I don't think they  
16 were extorted. They paid it willingly.

17 THE COURT: Yeah. I wouldn't use that word  
18 either, so --

19 MR. PADDA: And, I would add, they made another  
20 seven figure offer while this matter was on appeal. So,  
21 clearly, they value this as a significant case. They  
22 clearly see themselves as having significant liability.  
23 They, frankly, doubled what they paid out already as their  
24 settlement offer on appeal.

25 Now, unfortunately, due to some unfortunate

1 circumstances, that offer was communicated to prior counsel  
2 who, for whatever reason, didn't communicate it to Mr.  
3 Rodriguez in enough time that he could accept it. And,  
4 then, unfortunately, the appeal decision came down the next  
5 day.

6           So -- but the reality is, Your Honor, there's risk  
7 for both sides. There's -- going -- this is going to be a  
8 lengthy trial. I don't see what harm a one-day settlement  
9 conference can have in this case, other -- as opposed to  
10 bringing in all kinds of experts, requiring my client who,  
11 frankly -- and let's be -- you know, he's putting out words  
12 like extortion. My client didn't see a penny from that  
13 settlement. That went to attorneys' fees and paying  
14 experts. So, he hasn't benefitted from this case yet.  
15 And, then, we are going to have a lengthy, well over a  
16 weeklong trial. What harm can result from a one day  
17 settlement conference? And I --

18           THE COURT: So, you want me to answer that  
19 question or is it rhetorical?

20           MR. PADDA: Well, it's in part a rhetorical  
21 question but I think, you know, the Court has to balance  
22 judicial resources. What's in the best interest of both  
23 parties? And, frankly, that's the reason the settlement  
24 program exists. If it's meaningless, then let's just get  
25 rid of it.

1           THE COURT: Thank you. Had I not already been a  
2 judge in two or three settlement conferences wherein one of  
3 the parties absolutely did not want to be there, my ruling  
4 might be different. But, to answer the rhetorical  
5 question, you know, when you have one of the parties who is  
6 not wanting to be there, who does not want to participate,  
7 the, quote/unquote, harm, is the waste of time and  
8 resources for the settlement conference judge, as well as  
9 the parties and their attorneys. If you all want to do  
10 mediation, I would strongly suggest that. That might be a  
11 more appropriate ADR.

12           But, right now, I'm going to deny the Motion for  
13 Mandatory Settlement Conference. That's without prejudice.  
14 If you all come back and agree to that, be more than happy  
15 to set it for you. You know, nothing prevents either side  
16 from picking up the phone or writing, you know, settlement  
17 conference letters, or you know, I was always a big fan of  
18 offers of judgment myself to put pressure on the other  
19 side. So -- but going to deny the Motion without  
20 prejudice.

21           Mr. Smerber, go ahead and prepare the Order.  
22 Submit it to Mr. Padda for review.

23           The other thing, are they on for a trial date, as  
24 well?

25           THE JUDICIAL EXECUTIVE ASSISTANT: Yes. The --

1 August 3<sup>rd</sup>. So, I have an August -- I can put you -- your  
2 case is from 2006, so you would be at the top of the stack,  
3 on the August 31<sup>st</sup> stack. So, we have a trial that is  
4 definitely going at the latter part of our five-week stack  
5 so you would absolutely go. So, that meaning your pretrial  
6 motions would be July 6<sup>th</sup>. So, if you are comfortable with  
7 that, we can go ahead and put you on that stack.

8 MR. SMERBER: The -- Your Honor, an interesting  
9 thing here, the defendant has filed a motion to have this  
10 matter set as a jury trial. We filed it initially back in  
11 February. Judge Ellsworth granted it in her minutes and,  
12 then, it was transferred from her courtroom. It was taken  
13 off, put back on a bench trial. We filed the Motion again  
14 in front of Judge Bonaventure. It got moved again. We  
15 filed it again. It got taken off again. We want to get  
16 our Motion for a Jury Trial heard.

17 THE COURT: You're so demanding. So, let me see -  
18 - and I'm glad you mentioned that because when I was  
19 checking the docket, I did kind of see that, although I had  
20 forgotten about it. So, the Motion's fully briefed?

21 MR. SMERBER: That's correct. And opposed, so  
22 everybody's done their part.

23 THE COURT: Okay. And you just need a ruling on  
24 it, then?

25 MR. SMERBER: That's correct.

1 MR. PADDA: And our position, Your Honor, is  
2 that's going to change significantly the amount of trial  
3 prep and how we prepare for the trial. I mean, preparing  
4 for a bench trial is completely different scenario than  
5 preparing a case for a jury. And, if that's the case, then  
6 I'm going to have to -- I'm going to request that the trial  
7 date be pushed out.

8 THE JUDICIAL EXECUTIVE ASSISTANT: That would be  
9 October, then.

10 MR. SMERBER: That'd be --

11 THE JUDICIAL EXECUTIVE ASSISTANT: October 5<sup>th</sup>.  
12 And you would still go first.

13 MR. SMERBER: And that'd be fine. We'd be  
14 agreeable if they're willing to stipulate to a jury trial,  
15 we'll move to the next stack. I don't have a problem with  
16 that.

17 MR. PADDA: But we're not because --

18 THE COURT: Okay.

19 MR. PADDA: -- there's never been a jury trial for  
20 this case.

21 THE COURT: No. I -- yeah. I did not take it as  
22 you stipulating to the jury trial. But what you're saying  
23 is if I do -- which I, you know, I -- I'll be up front, I  
24 have not looked at the briefs on that at all. But what  
25 you're saying is if I do grant that, then you're fine with



1 an October trial stack?

2 MR. SMERBER: That's correct, Your Honor.

3 THE COURT: Okay. Any comments on a potential  
4 October trial stack?

5 MR. PADDA: Your Honor, I have five trials  
6 scheduled between now and then. I have two federal  
7 criminal cases, one going in August and another in  
8 September, and I have three civil jury trials. So, quite  
9 frankly, you know, my preference would be to push it out  
10 even further.

11 THE COURT: So, the question, then, in terms of  
12 that is: Are any of those cases older than this one?

13 MR. PADDA: Well, I think criminal cases --

14 THE COURT: I doubt it but your word --

15 MR. PADDA: No disrespect to the civil docket, but  
16 criminal cases always take precedent over that. You know,  
17 someone's liberty is at stake. And, so, those are cases  
18 where my client is not going to plead. Those are cases in  
19 Federal Court. They're significant and substantial cases.  
20 They are going forward at this point, at least.

21 And, so, while, yes, this case is older than some  
22 of the other cases, however, again, I think whether this is  
23 a bench trial or a jury trial, you know, my client is  
24 willing to waive any arguments regarding, you know, length  
25 of trial date, especially if Your Honor is going to be the

1 trier of fact, then I don't think that would be any harm to  
2 my client. You know --

3 THE COURT: I don't think there would be either  
4 but -- but I do have the pending motion, I guess. You  
5 know, given how old this case is, that's my concern. And,  
6 obviously, I may be reading between the lines and perhaps  
7 erroneously so, correct me if I'm wrong, but it seems like  
8 Fiesta Palms is anxious to get this trial as soon as it  
9 can.

10 MR. SMERBER: Within reason, Your Honor.

11 THE COURT: Okay.

12 MR. PADDA: And there's another issue, Your Honor.  
13 Obviously, I'd have to speak to all the experts that were  
14 involved in this case who testified previously. You know,  
15 there are a number of doctors who testified. I would have  
16 to consult with their schedule to make sure that they would  
17 be available during that period of time.

18 THE COURT: Here's what we're going to do. I will  
19 note that I do need to rule on that Motion for Jury Trial.  
20 Again, I haven't even seen it, so I can't tell you when  
21 I'll rule but as soon as I possibly can. After October,  
22 when's our next opening?

23 THE JUDICIAL EXECUTIVE ASSISTANT: So, it would be  
24 November. However, I have a small window in November. I  
25 have two firm trial setting. So, I have a small window. I

1 could put you in, you said about a week, week and a half on  
2 the trial, no longer than that?

3 MR. SMERBER: If we're going to go -- the last  
4 trial was a bench trial and it went 12 days.

5 THE COURT: Oh.

6 THE JUDICIAL EXECUTIVE ASSISTANT: Oh.

7 MR. SMERBER: So, if we're doing a jury trial,  
8 three weeks.

9 THE COURT: Yeah.

10 THE JUDICIAL EXECUTIVE ASSISTANT: That puts me at  
11 December. So, that would be -- you would -- obviously,  
12 you're still going first because you're by far the oldest  
13 case on any of my trial stacks. So --

14 MR. SMERBER: Okay.

15 THE JUDICIAL EXECUTIVE ASSISTANT: It would be  
16 December 14<sup>th</sup>.

17 MR. SMERBER: Okay.

18 THE JUDICIAL EXECUTIVE ASSISTANT: That would be  
19 during Christmastime.

20 MR. SMERBER: That's fine with me.

21 THE JUDICIAL EXECUTIVE ASSISTANT: Is that okay  
22 with you?

23 THE COURT: Let's go ahead and put them on that  
24 stack, then.

25 THE CLERK: Okay. So, your calendar call date is

1 going to be December 9<sup>th</sup> at 8:30. Your pretrial conference  
2 will be November 23<sup>rd</sup> at 8:30. And the trial stack is  
3 December 14<sup>th</sup> and those are at 10:30. And your pretrial  
4 memos will be due on November 20<sup>th</sup> by 5 p.m.

5 MR. SMERBER: And just so -- we're number one on  
6 that stack?

7 THE JUDICIAL EXECUTIVE ASSISTANT: Yes.

8 MR. SMERBER: Okay.

9 THE JUDICIAL EXECUTIVE ASSISTANT: You're number  
10 one on all the stacks.

11 MR. SMERBER: Very good. And, then, Your Honor,  
12 with regards to the Motion for Jury Trial, should we just  
13 expect that to go on a chambers calendar or --

14 THE COURT: Well, technically, no. But I will --  
15 because it's already submitted, apparently. So,  
16 technically, the answer to your question is no but I will  
17 issue either a minute order or written order myself,  
18 depending on my preference, I guess, as soon as possible  
19 for you all.

20 MR. SMERBER: Okay. Thank you, Your Honor.

21 THE COURT: Thank you.

22

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24 PROCEEDING CONCLUDED AT 9:19 A.M.

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\* \* \* \* \*

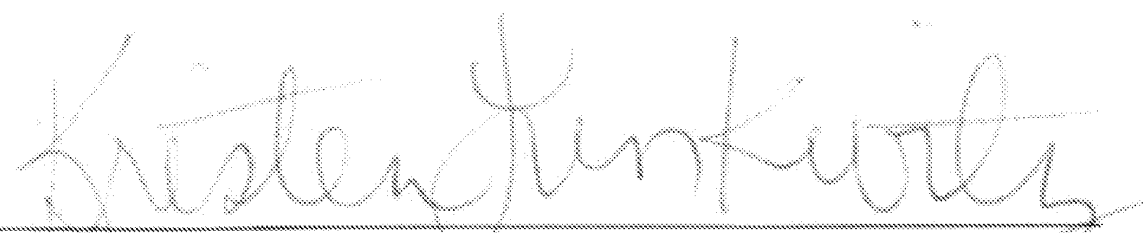
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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

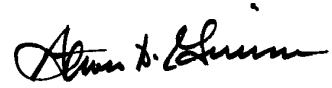
**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



---

KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

1 OSCJ

2  
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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA

6 ENRIQUE RODRIGUEZ,	)	CASE NO.: A531538
	)	DEPT NO.: XV
7 Plaintiff(s),	)	
	)	
8 v.	)	<b><u>FOURTH AMENDED ORDER</u></b>
	)	<b><u>SETTING CIVIL JURY TRIAL,</u></b>
9 FIESTA PALMS LLC, et al.,	)	<b><u>PRE-TRIAL CONFERENCE AND</u></b>
	)	<b><u>CALENDAR CALL</u></b>
10 Defendant(s),	)	
	)	

11  
12 IT IS HEREBY ORDERED that:

- 13 A. The above entitled case is set to be tried to a jury on a five week stack to begin  
14 **Monday, December 14, 2015, at 10:30 a.m.**
- 15 B. A Pre-Trial Conference with the designated trial attorney and/or parties in proper  
16 person will be held on **Monday, November 23, 2015, at 8:30 a.m.**
- 17 C. A calendar call will be held on **Wednesday, December 9, 2015, at 8:30 a.m.** Parties  
18 must bring to calendar call all items listed in EDCR 2.69. At the time of the calendar call, counsel  
19 will set an appointment with the Court Clerk. The appointment must be at least one day before the  
20 first day of trial.
- 21 D. Parties are to appear on **Monday, September 28, 2015, at 9:30 a.m.,** for a Status  
22 Check on the matter.
- 23 E. The Pre-Trial Memorandum must be filed no later than **Friday, November 20, 2015,**  
24 **at 4:00 p.m.,** with a courtesy copy delivered to Department XV. All parties (attorneys and parties  
25 in proper person), **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69.
- 26 F. All motions in limine must be in writing and filed no later than **Monday, October**  
27 **19, 2015,** and must comply with all the requirements set forth in EDCR 2.47, particularly EDCR  
28

1 2.47(b), which requires the lawyers to personally consult with one another by way of face-to-face  
2 meeting or via telephone conference before a motion in limine can be filed. If a personal or  
3 telephone conference was not possible, the attorney's declaration and/or affidavit attached to the  
4 motion in limine shall set forth the reasons. Should a party and/or his or her attorney fail to abide by  
5 the requirements of EDCR 2.47(b) before filing his or her motion in limine, such motion will not be  
6 heard by the Court. **Orders shortening time will not be signed except in extreme emergencies.**


7 **An upcoming trial date is not an extreme emergency.**

8 **Failure of the designated trial attorney or any party appearing in proper person to**  
9 **appear for any court appearances or to comply with this Order shall result in any of the**  
10 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation**  
11 **of trial date; and/or (5) any other appropriate remedy or sanction.**

12 Counsel is required to advise the Court immediately when the case settles or is otherwise  
13 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether  
14 a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy  
15 should be given to Chambers.

16 Finally, if parties are interested in a settlement conference conducted by a District Court  
17 Judge sitting as a Mediator, please contact Judge Wiese's Judicial Executive Assistant at 702-671-  
18 4344.

19 DATED: June 23, 2015


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23 JOE HARDY, DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date e-filed, the foregoing was e-served, e-mailed, mailed, or a copy of the above document was placed in the attorney's folder in the Clerk's Office, or mailed to the following:

Paul Padda, Esq.            [ppadda@caplawyers.com](mailto:ppadda@caplawyers.com)  
Lewis Brandon, Jr., Esq.   [lbrandon@moranlawfirm.com](mailto:lbrandon@moranlawfirm.com)

  
\_\_\_\_\_  
Judicial Executive Assistant



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Location : District Court Civil/Criminal [Help](#)

**REGISTER OF ACTIONS**  
CASE No. **06A531538**

**Enrique Rodriguez, Plaintiff(s) vs. Fiesta Palms LLC, Defendant (s)**

§  
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Case Type: **Negligence - Premises Liability**  
Date Filed: **11/15/2006**  
Location: **Department 15**  
Cross-Reference Case Number: **A531538**  
Supreme Court No.: **59630 72098**

**PARTY INFORMATION**

**Lead Attorneys**

**Defendant**    **Fiesta Palms LLC**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

**Doing Business As**    **Palms Casino Resort**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

**Plaintiff**    **Rodriguez, Enrique**

**Micah S. Echols**  
*Retained*  
702-382-0711(W)

**EVENTS & ORDERS OF THE COURT**

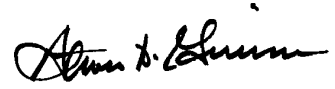
06/25/2015 **Minute Order** (10:30 AM) (Judicial Officer Hardy, Joe)  
*Minute Order Re: Deft's Motion to Set Jury Trial & Pltf's Opposition*

**Minutes**

06/25/2015 10:30 AM

- Having considered Defendant Fiesta Palms Motion to Set Jury Trial and Plaintiff Enrique Rodriguez s opposition to the same, the Court hereby GRANTS the Motion. The Court finds as follows: The parties agree that this Court has discretion to grant a motion seeking relief from a party s waiver of its right to a trial by jury. See NRCP 39(b); Executive Management Ltd. v. Ticor Title Ins. Co., 114 Nev. 823, 963 P.2d 465 (1998); Walton v. Eighth Judicial Dist. Court in and for Cnty. of Clark, 94 Nev. 690, 586 P.2d 309 (1978). The factors considered favor granting Defendant s motion. First, the issues for trial involve negligence which is generally an issue for jury determination. Second, given the trial date in December 2015, trial by jury will not delay the proceedings. Third, any potential undue confusion at trial due to the age of the claims could be handled by a simple jury instruction given even at the beginning of the case. Fourth, any surprise to Plaintiff is mitigated by the fact that Defendants filed a demand for jury trial over four months ago and eight months before the current trial setting. Defendants also moved for a jury trial setting seven months before the current trial setting. Finally, the simple changing from a bench to a jury trial six months before trial will not cause any undue prejudice. Movant is directed to prepare and submit a written order within 10 days, pursuant to EDCR 7.21, after opposing counsel has approved that order as to form and content.

[Return to Register of Actions](#)



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](mailto:l.brandon@moranlawfirm.com)  
12 Attorneys for Defendant,  
13 FIESTA PALMS, LLC d/b/a  
14 PALMS CASINO RESORT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

12 ENRIQUE RODRIGUEZ, an individual,

13 Plaintiff,

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

14 v.

15  
16 FIESTA PALMS, L.L.C., a Nevada  
17 Limited Liability Company, d/b/a  
18 PALMS CASINO RESORT, BRANDY  
19 L. BEAVERS, individually, DOES I  
20 through X, and

20 Defendants

**NOTICE OF ENTRY OF ORDER**

21  
22 YOU, AND EACH OF YOU, will please take notice that on July 22, 2015, an Order to  
23 Granting Defendant's Motion to Set Jury Trial was entered in the above-entitled matter by the  
24 Honorable Joe Hardy.

25 ///

26 ///

27 ///



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

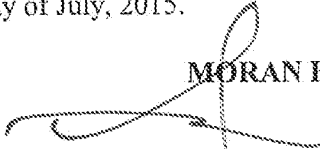
630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568

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A filed copy is attached hereto.

DATED this 7 day of July, 2015.

**MORAN BRANDON BENDAVID MORAN**

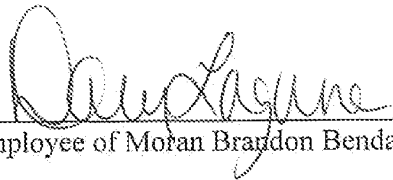


**LEW BRANDON, JR., ESQ.**  
Nevada Bar No. 5880  
**JUSTIN W. SMERBER, ESQ.**  
Nevada Bar No. 10761  
630 S. Fourth Street  
Las Vegas, Nevada 89101  
Attorneys for Defendant, FIESTA PALMS,  
LLC d/b/a PALMS CASINO RESORT

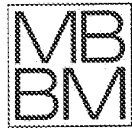
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that on the 23 day of July, 2015, I served the foregoing **NOTICE OF ENTRY OF ORDER** via the Court's electronic filing and service systems ("Wiznet") to all parties on the current service list.

**PAUL S. PADDA, ESQ.**  
Nevada Bar No. 10417  
Cohen & Padda, PLLC  
4240 W. Flamingo Road, Suite 220  
Las Vegas, Nevada 89103  
(702) 366-1888  
Facsimile (702) 366-1940  
Attorney for Plaintiff,  
ENRIQUE RODRIGUEZ



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) 384-8568

ORIGINAL

Electronically Filed  
07/22/2015 04:14:44 PM

*Alvin D. Quinn*  
CLERK OF THE COURT

1 **ORDG**  
2 **LEW BRANDON, JR., ESQ.**  
3 Nevada Bar No. 5880  
4 **JUSTIN W. SMEBER, 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 [lbrandon@moranlawfirm.com](mailto:lbrandon@moranlawfirm.com)  
12 Attorneys for Defendant,  
13 **FIESTA PALMS, LLC d/b/a**  
14 **PALMS CASINO RESORT**

DISTRICT COURT  
CLARK COUNTY, NEVADA

11 ENRIQUE RODRIGUEZ, an individual,

12 Plaintiff,

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

14 v.

15  
16 FIESTA PALMS, L.L.C., a Nevada  
17 Limited Liability Company, d/b/a  
18 PALMS CASINO RESORT, BRANDY  
19 L. BEAVERS, individually, DOES I  
through X, and

20 Defendants

ORDER GRANTING DEFENDANT'S MOTION TO SET JURY TRIAL

21  
22 Defendant, FIESTA PALMS, LLC's Motion for Jury Trial having been submitted to this  
23 Honorable Court, pursuant to the Minute Order dated June 25, 2015, the Court having reviewed  
24 the Motion, the papers and pleadings on file herein, and for good cause appearing:

25 ///

26 ///

27 ///



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE (702) 384-8424  
FAX: (702) 384-8588

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IT IS SO ORDERED THAT DEFENDANT'S MOTION TO SET JURY TRIAL IS  
HEREBY GRANTED.

APPROVED AS TO FORM ONLY:

COHEN & PADDA, PLLC

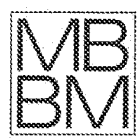
See Attached  
**PAUL S. PADDA, ESQ.**  
Nevada Bar No. 10417  
4240 W. Flamingo Road, Suite 220  
Las Vegas, Nevada 89103  
Attorney for Plaintiff,  
ENRIQUE RODRIGUEZ

IT IS SO ORDERED this 14<sup>th</sup> day of July, 2015.

Col Hardy  
DISTRICT COURT JUDGE  
MB

Respectfully Submitted by:  
MORAN LAW FIRM, LLC.

[Signature]  
**LEW BRANDON, JR., ESQ.**  
Nevada Bar No. 5880  
**JUSTIN W. SMERBER, ESQ.**  
Nevada Bar No.: 10761  
630 S. Fourth Street  
Las Vegas, Nevada 89101  
Attorneys for Defendant,  
FIESTA PALMS, LLC d/b/a  
PALMS CASINO RESORT



MORAN BRANDON  
BENDAVID MORAN  
ATTORNEYS AT LAW  
630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 394-8424  
FAX: (702) 394-8505



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Location : District Court Civil/Criminal [Help](#)

**REGISTER OF ACTIONS**  
CASE No. **06A531538**

**Enrique Rodriguez, Plaintiff(s) vs. Fiesta Palms LLC, Defendant (s)**

§  
§  
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§

Case Type: **Negligence - Premises Liability**  
Date Filed: **11/15/2006**  
Location: **Department 15**  
Cross-Reference Case Number: **A531538**  
Supreme Court No.: **59630 72098**

**PARTY INFORMATION**

**Lead Attorneys**

**Defendant**    **Fiesta Palms LLC**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

**Doing Business As**    **Palms Casino Resort**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

**Plaintiff**    **Rodriguez, Enrique**

**Micah S. Echols**  
*Retained*  
702-382-0711(W)

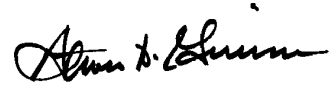
**EVENTS & ORDERS OF THE COURT**

09/28/2015 | **Status Check** (9:30 AM) (Judicial Officer Hardy, Joe)  
*Status Check*

**Minutes**

09/28/2015 9:30 AM  
- Mr. Smerber, Esq. requested a continuance of the trial until some time in 2016. Counsel advised they did not need an extension on the discovery deadline. There being no opposition, COURT ORDERED, request is GRANTED and the Pretrial Conference, Calendar Call and Jury Trial dates are RESET and the last date to file pretrial Motions is 12/28/15. Court's Judicial Executive Assistant will prepare a new Trial Order. 2/1/16 8:30 A.M. PRETRIAL CONFERENCE 2/17/16 8:30 A.M. CALENDAR CALL 2/22/16 10:30 A.M. JURY TRIAL

[Parties Present](#)  
[Return to Register of Actions](#)



CLERK OF THE COURT

1 TRAN

DISTRICT COURT

2

CLARK COUNTY, NEVADA

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\* \* \* \* \*

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ENRIQUE RODRIGUEZ, )

8

CASE NO. 06-A-531538

Plaintiff, )

9

vs. )

DEPT. NO. XV

10

FIESTA PALMS, LLC, )

11

**Transcript of Proceedings**

12

Defendant. )

13

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

14

**STATUS CHECK**

15

MONDAY, SEPTEMBER 28, 2015

16

APPEARANCES:

17

For the Plaintiff: PAUL S. PADDA, ESQ.

18

For the Defendant: JUSTIN W. SMERBER, ESQ.

19

20

RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT

21

TRANSCRIBED BY: KRISTEN LUNKWITZ

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Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

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MONDAY, SEPTEMBER 28, 2015 AT 9:45 A.M.

THE CLERK: A531538. Appearances, please?

MR. PADDA: Good morning. Paul Padda for the plaintiff.

MR. SMERBER: Good morning, Your Honor. Justin Smerber of Moran, Brandon, Bendavid, Moran on behalf of defendant.

THE COURT: Good morning. This is your status check to make sure you're moving along.

MR. SMERBER: Your Honor, and counsel and I had an opportunity to speak before the hearing today. The defense is going to be requesting a continuance. I have a personal matter that's probably going to take me out of the office for most of December. So --

THE COURT: Hopefully it's a good personal matter.

MR. SMERBER: It is not, Your Honor, unfortunately.

THE COURT: Oh, I'm sorry to hear that.

MR. SMERBER: But we're going to be requesting a continuance beyond the new year.

THE COURT: So, is that something you can give us in a stip and order?

MR. SMERBER: I think we agree.

MR. PADDA: And I have no opposition to that, Your

1 Honor. Mr. Smerber explained to me what the circumstances  
2 were and we're obviously want to help so --

3 THE COURT: Okay. Go ahead and submit your stip  
4 an order with -- well, let's see. Let's -- tell them what  
5 trial dates that may --

6 MR. PADDA: Currently, we're set for December 14<sup>th</sup>.  
7 Right?

8 THE CLERK: We've got a stack January 19<sup>th</sup> in 2016.  
9 It's a Tuesday start stack.

10 MR. SMERBER: Can I have the next one?

11 THE CLERK: February 22<sup>nd</sup>.

12 MR. SMERBER: I think that would be better.

13 THE CLERK: Okay. That'll put your pretrial  
14 conference on February 1<sup>st</sup> at 8:30 and your calendar call  
15 would be February 17<sup>th</sup>, also at 8:30, the 17<sup>th</sup>. Jury trial  
16 stack is February 22<sup>nd</sup>. Those are at 10:30.

17 THE COURT: Along those lines to make sure we're  
18 all on the same page since you all are here, would this be  
19 including any extension of discovery?

20 MR. SMERBER: No, Your Honor. We're closed on  
21 discovery.

22 THE COURT: Okay.

23 MR. SMERBER: I think we just have -- I mean, we  
24 do have pretrial motions but I believe we're working  
25 through those.

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THE COURT: That date would be continued to --

THE CLERK: That would be also on February 28<sup>th</sup>,  
last date to file any pretrial motions. Did I say December  
28<sup>th</sup>?

THE COURT: You said February 28<sup>th</sup>.

THE CLERK: I thought I had said it wrong.  
December 28<sup>th</sup>, then, would make sense after their trial.  
Right?

THE COURT: Okay.

MR. SMERBER: Thank you, Your Honor.

THE COURT: Thank you very much.

MR. PADDA: Thank you, Your Honor.

THE CLERK: We'll do a new trial order?

THE COURT: Yes.

MR. SMERBER: So, do you -- do I need to submit a  
formal stip?

THE COURT: No.

MR. SMERBER: Okay.

THE COURT: We'll go ahead since you both are  
here. I apologize. But, yeah, we'll go ahead and give you  
all a new trial order that has those dates in there and --

MR. SMERBER: Very good. Thank you.

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THE COURT: -- no need for a stip. Thank you.

MR. SMERBER: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 9:48 A.M.

\* \* \* \* \*

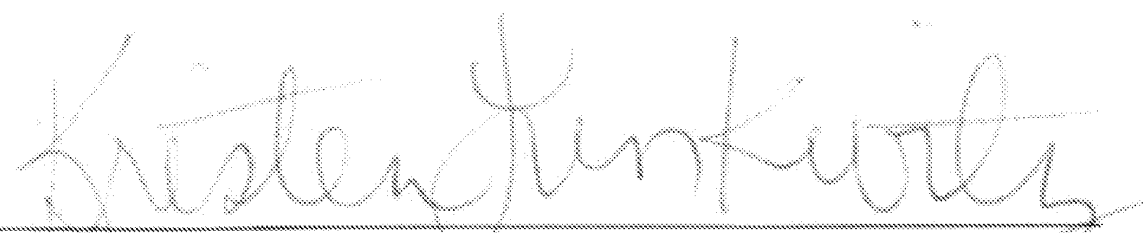
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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

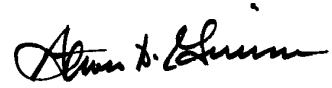
**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



---

KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, )  
)  
Plaintiff(s), )  
)  
v. )  
)  
FIESTA PALMS LLC, )  
)  
Defendant(s), )  
)

CASE NO.: A531538  
DEPT NO.: XV

**FIFTH AMENDED ORDER  
SETTING CIVIL JURY TRIAL,  
PRE-TRIAL CONFERENCE AND  
CALENDAR CALL**

IT IS HEREBY ORDERED that:

- A. The above entitled case is set to be tried to a jury on a five week stack to begin **Monday, February 22, 2016, at 10:30 a.m.**
- B. A Pre-Trial Conference with the designated trial attorney and/or parties in proper person will be held on **Monday, February 1, 2016, at 8:30 a.m.**
- C. A calendar call will be held on **Wednesday, February 17, 2016, at 8:30 a.m.** Parties must bring to calendar call all items listed in EDCR 2.69. At the time of the calendar call, counsel will set an appointment with the Court Clerk. The appointment must be at least one day before the first day of trial.
- D. Parties are to appear on **Monday, November 23, 2015, at 9:30 a.m.,** for a Status Check on the matter.
- E. The Pre-Trial Memorandum must be filed no later than **Friday, January 29, 2016, at 4:00 p.m.,** with a courtesy copy delivered to Department XV. All parties (attorneys and parties in proper person), **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69.
- F. All motions in limine must be in writing and filed no later than **Monday, December 28, 2015,** and must comply with all the requirements set forth in EDCR 2.47, particularly EDCR 2.47(b), which requires the lawyers to personally consult with one another by way of face-to-face

1 meeting or via telephone conference before a motion in limine can be filed. If a personal or  
2 telephone conference was not possible, the attorney's declaration and/or affidavit attached to the  
3 motion in limine shall set forth the reasons. Should a party and/or his or her attorney fail to abide by  
4 the requirements of EDCR 2.47(b) before filing his or her motion in limine, such motion will not be  
5 heard by the Court. **Orders shortening time will not be signed except in extreme emergencies.**


6 **An upcoming trial date is not an extreme emergency.**

7 **Failure of the designated trial attorney or any party appearing in proper person to**  
8 **appear for any court appearances or to comply with this Order shall result in any of the**  
9 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation**  
10 **of trial date; and/or (5) any other appropriate remedy or sanction.**

11 Counsel is required to advise the Court immediately when the case settles or is otherwise  
12 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether  
13 a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy  
14 should be given to Chambers.

15 Finally, if parties are interested in a **settlement conference** conducted by a District Court  
16 Judge sitting as a Mediator, please contact Judge Wiese's Judicial Executive Assistant at 702-671-  
17 3633.

18 DATED: September 29, 2015

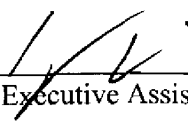
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22 JOE HARDY, DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

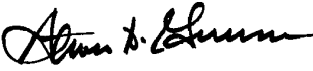
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I hereby certify that on or about the date e-filed, the foregoing was e-served, e-mailed, or a copy of the above document was placed in the attorney's folder in the Clerk's Office, or mailed to the following:

Paul Padda, Esq.      [ppadda@caplawyers.com](mailto:ppadda@caplawyers.com)  
Lewis Brandon, Jr., Esq.      [l.brandon@moranlawfirm.com](mailto:l.brandon@moranlawfirm.com)

  
\_\_\_\_\_  
Judicial Executive Assistant



  
CLERK OF THE COURT

1 MWCN  
Paul S. Padda, Esq. (NV Bar #10417)  
2 Email: psp@paulpadda.com  
PAUL PADDA LAW  
3 4240 West Flamingo Road, Suite 220  
Las Vegas, Nevada 89103  
4 Tel: (702) 366-1888  
Fax: (702) 366-1940  
5 www.paulpadda.com

6 Attorney for Plaintiff

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **ENRIQUE RODRIGUEZ,** )  
10 **Plaintiff,** ) **Case No. A-06-531538-C**  
11 **v.** ) **Dept. No. XV (15)**  
12 **FIESTA PALMS, LLC, et. al.,** )  
13 **Defendants.** )

14 **MOTION TO WITHDRAW AS COUNSEL OF RECORD**  
15 **FOR PLAINTIFF ON ORDER SHORTENING TIME**

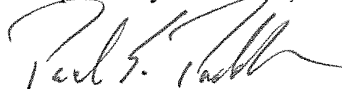
16 Pursuant to Eighth Judicial District Rule (“EDCR”) 7.40(b)(2), undersigned counsel and  
17 his law firm hereby respectfully request permission to withdraw as counsel of record for Plaintiff  
18 Enrique Rodriguez. In support of this request, undersigned counsel relies upon the memorandum  
19 of points and authorities filed herewith, the declaration of Paul S. Padda, Esq., all papers on file

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JAN 19 2016

1 in this litigation and any oral argument the Court may entertain at the time of hearing in this  
2 matter.

3 Respectfully submitted,

4 

5 Paul S. Padda, Esq.  
6 PAUL PADDALAW  
7 4240 West Flamingo Road, #220  
8 Las Vegas, Nevada 89103  
9 Tel: (702) 366-1888  
10 Fax: (702) 366-1940  
11 Web: paulpadda.com

12 Attorney for Plaintiff

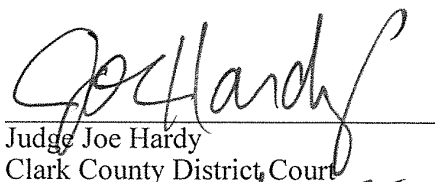
13 Dated: January 19, 2015

14 **NOTICE OF HEARING ON ORDER SHORTENING TIME**

15 All interested parties in this matter will take note that the "MOTION TO WITHDRAW  
16 AS COUNSEL OF RECORD FOR PLAINTIFF ON ORDER SHORTENING TIME" will be  
17 heard before the Court (Department XV), on order shortening time, on the following date and  
18 time:

19 Date: 2-9-16

20 Time: in chambers

21 

22 Judge Joe Hardy  
23 Clark County District Court

24 Dated: January 19th, 2016

1 **DECLARATION OF PAUL S. PADDA**

2 I, Paul S. Padda, do hereby declare the following based upon my personal knowledge:

3 1. I am currently listed as counsel of record for Plaintiff in Enrique Rodriguez v.  
4 Fiesta Palms, LLC A-06-531538-C, a case pending before this Court. I am licensed to practice  
5 law in the State of Nevada.

6 2. I entered an appearance in this case on May 12, 2015.

7 3. At the outset of entering an appearance in this case, I explained to Mr. Rodriguez  
8 certain financial constraints that would have to be overcome in order for me to remain in this  
9 case. As the owner of a small law firm, I am limited by the amount I can financially “invest” in  
10 the prosecution of certain cases.

11 4. After the Court granted Defendant’s motion for a jury trial, I explained to Mr.  
12 Rodriguez the additional and significant financial costs that would be needed to present a case to  
13 a jury that differ from a mere bench trial. Mr. Rodriguez requested that I not withdraw from his  
14 case until he could locate other counsel.

15 5. On or about December 7, 2015, I met with Mr. Rodriguez and explained, once  
16 again, that due to financial limitations I could no longer remain in this case. Mr. Rodriguez again  
17 requested I not withdraw and notified me during our meeting that another attorney would be  
18 “stepping in” to replace me. During this same meeting, Mr. Rodriguez and I had a difference of  
19 opinion on how best to proceed in this litigation.

20 6. To date, I have not been contacted by other counsel. With a trial date looming at  
21 the end of February 2016, I have explained to Mr. Rodriguez that I must withdraw and that due to  
22 our difference of opinion regarding this case, I can no longer effectively represent his interests.

23 7. Counsel for Defendant, Justin Smerber, Esq., has indicated that he does not  
24 oppose this motion and that he will consent to an extension of the trial date to permit Mr.  
25 Rodriguez to locate other counsel or have the attorney Mr. Rodriguez referenced during our

1 December 7, 2016 meeting enter an appearance in this case.

2 8. Should the Court permit withdrawal of undersigned counsel, Mr. Rodriguez  
3 can be served with notice of further proceedings at the following address:

4 Enrique Rodriguez  
5 6673 Yellowstone Drive  
6 Riverside, California 92506

6 Mr. Rodriguez can also be contacted by telephone at (951) 751-1440.

7 9. Mr. Rodriguez will experience no material or adverse prejudice by undersigned  
8 counsel's withdrawal since he previously acknowledged in a December 18, 2015 communication  
9 to undersigned counsel his understanding that this motion would eventually be filed. However,  
10 in fairness to Mr. Rodriguez, undersigned counsel respectfully requests that the Court continue  
11 the trial date to a reasonable time for Mr. Rodriguez to locate replacement counsel. Opposing  
12 counsel, Justin Smerber, Esq., has indicated that he does not oppose this request.

13 10. Requiring undersigned counsel to remain in this case would be both extremely  
14 burdensome to counsel and, more importantly given the disagreements over how to proceed,  
15 adverse to Mr. Rodriguez's best interests.

16 I declare, under penalty of perjury, that the foregoing is true and correct to the  
17 best of my knowledge.

18 

19 Paul S. Padda, Esq.

20 Dated: January 19, 2016

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **ARGUMENT**

3 **I. Legal Standard**

4 EDCR Rule 7.40(b)(2) provides this Court with authority to permit an attorney to  
5 withdraw from a matter pending before the Court if the attorney’s application for withdrawal  
6 includes an affidavit or declaration which contains the client’s address, or last known address, “at  
7 which the client may be served with notice of further proceedings taken in the case” and also  
8 provides the telephone number, or last known telephone number, at which the client may be  
9 reached. The rule requires that the attorney “must serve a copy of the application upon the  
10 client” and other interested parties.

11 **II. “Good Cause” Exists To Permit Counsel’s Withdrawal From This Case**

12 Nevada Rule of Professional Conduct (“NRPC”) 1.16, entitled “Declining or Terminating  
13 Representation,” provides that an attorney may seek withdrawal from a matter where “other good  
14 cause for withdrawal exists.” *See* NRPC 1.16(b)(7).

15 As shown in the attached declaration of undersigned counsel, Paul S. Padda, Esq.,  
16 withdrawal is appropriate in this case because it is in keeping with Mr. Rodriguez’s  
17 understanding of what would eventually occur, appropriate given Mr. Rodriguez’s statements to  
18 undersigned counsel that he was in the process of “interviewing” other attorneys signaling his  
19 intent to retain other counsel and necessary given the difference of opinion regarding how best to  
20 proceed in this matter. As the Plaintiff in this case, Mr. Rodriguez should be permitted to  
21 proceed with counsel of his own choosing. Withdrawal will not have any material or adverse  
22 effect on Mr. Rodriguez’ interests, especially given opposing counsel’s consent to a continuation  
23 of the trial date.

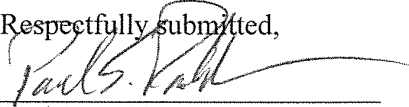
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**CONCLUSION**

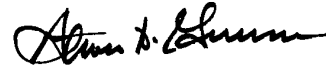
In light of the foregoing, the Court should permit undersigned counsel to withdraw from further representation of Plaintiff in this matter.

Respectfully submitted,  


Paul S. Padda, Esq.  
PAUL PADDA LAW  
4240 West Flamingo Road, #220  
Las Vegas, Nevada 89103  
Tele: (702) 366-1888  
Fax: (702) 366-1940  
Web: caplawyers.com

Attorney for Plaintiff

Dated: January 19, 2016



CLERK OF THE COURT

1 **NOTC**  
Paul S. Padda, Esq. (NV Bar #10417)  
2 Email: psp@paulpadda.com  
PAUL PADDA LAW  
3 4240 West Flamingo Road, Suite 220  
Las Vegas, Nevada 89103  
4 Tel: (702) 366-1888  
Fax: (702) 366-1940  
5 www.paulpadda.com

6 Attorney for Plaintiff

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **ENRIQUE RODRIGUEZ,** )  
10 **Plaintiff,** ) **Case No. A-06-531538-C**  
11 **v.** ) **Dept. No. XV (15)**  
12 **FIESTA PALMS, LLC, et. al.,** )  
13 **Defendants.** )

14 **NOTICE OF FILING MOTION TO WITHDRAW**  
15 **AS COUNSEL OF RECORD FOR PLAINTIFF**  
16 **ON ORDER SHORTENING TIME**

17 Attached herewith as Exhibit A is Plaintiff's counsel's "Motion To Withdraw As Counsel  
18 Of Record For Plaintiff On Order Shortening Time." The motion was filed on January 20, 2016.

19  
20 PAUL PADDA LAW



21 Paul S. Padda, Esq.

22 Counsel for Plaintiff


23 Dated: January 20, 2016  
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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), the undersigned hereby certifies that on January 20, 2016 a copy of "NOTICE OF FILING MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR PLAINTIFF ON ORDER SHORTENING TIME" was served via the Court's electronic filing system ("Wiznet") upon all counsel of record. In addition, a copy was mailed to Plaintiff via United States Mail (first-class, postage prepaid) addressed as follows:

Enrique Rodriguez  
6673 Yellowstone Drive  
Riverside, California 92506

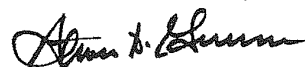
---

Paul S. Padda, Esq.



**EXHIBIT A**

**EXHIBIT A**



CLERK OF THE COURT

1 MWCN  
Paul S. Padda, Esq. (NV Bar #10417)  
2 Email: psp@paulpadda.com  
PAUL PADDA LAW  
3 4240 West Flamingo Road, Suite 220  
Las Vegas, Nevada 89103  
4 Tel: (702) 366-1888  
Fax: (702) 366-1940  
5 www.paulpadda.com

6 Attorney for Plaintiff

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **ENRIQUE RODRIGUEZ,**

10 **Plaintiff,**

11 **v.**

12 **FIESTA PALMS, LLC, et. al.,**

13 **Defendants.**

) **Case No. A-06-531538-C**

) **Dept. No. XV (15)**

14 **MOTION TO WITHDRAW AS COUNSEL OF RECORD**  
15 **FOR PLAINTIFF ON ORDER SHORTENING TIME**

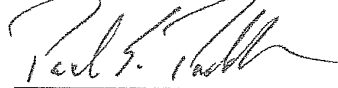
16 Pursuant to Eighth Judicial District Rule ("EDCR") 7.40(b)(2), undersigned counsel and  
17 his law firm hereby respectfully request permission to withdraw as counsel of record for Plaintiff  
18 Enrique Rodriguez. In support of this request, undersigned counsel relies upon the memorandum  
19 of points and authorities filed herewith, the declaration of Paul S. Padda, Esq., all papers on file

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JAN 19 2016

1 in this litigation and any oral argument the Court may entertain at the time of hearing in this  
2 matter.

3 Respectfully submitted,

4 

5 Paul S. Padda, Esq.  
6 PAUL PADDA LAW  
7 4240 West Flamingo Road, #220  
8 Las Vegas, Nevada 89103  
9 Tel: (702) 366-1888  
10 Fax: (702) 366-1940  
11 Web: paulpadda.com

12 Attorney for Plaintiff

13 Dated: January 19, 2015

14 **NOTICE OF HEARING ON ORDER SHORTENING TIME**

15 All interested parties in this matter will take note that the "MOTION TO WITHDRAW  
16 AS COUNSEL OF RECORD FOR PLAINTIFF ON ORDER SHORTENING TIME" will be  
17 heard before the Court (Department XV), on order shortening time, on the following date and  
18 time:

19 Date: 2-9-16

20 Time: in chambers

21 

22 Judge Joe Hardy  
23 Clark County District Court

24 Dated: January 19th, 2016



1 December 7, 2016 meeting enter an appearance in this case.

2 8. Should the Court permit withdrawal of undersigned counsel, Mr. Rodriguez  
3 can be served with notice of further proceedings at the following address:


4 Enrique Rodriguez  
5 6673 Yellowstone Drive  
6 Riverside, California 92506

7 Mr. Rodriguez can also be contacted by telephone at (951) 751-1440.

8 9. Mr. Rodriguez will experience no material or adverse prejudice by undersigned  
9 counsel's withdrawal since he previously acknowledged in a December 18, 2015 communication  
10 to undersigned counsel his understanding that this motion would eventually be filed. However,  
11 in fairness to Mr. Rodriguez, undersigned counsel respectfully requests that the Court continue  
12 the trial date to a reasonable time for Mr. Rodriguez to locate replacement counsel. Opposing  
13 counsel, Justin Smerber, Esq., has indicated that he does not oppose this request.

14 10. Requiring undersigned counsel to remain in this case would be both extremely  
15 burdensome to counsel and, more importantly given the disagreements over how to proceed,  
16 adverse to Mr. Rodriguez's best interests.

17 I declare, under penalty of perjury, that the foregoing is true and correct to the  
18 best of my knowledge.



19 Paul S. Padda, Esq.

20 Dated: January 19, 2016

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**ARGUMENT**

**I. Legal Standard**

EDCR Rule 7.40(b)(2) provides this Court with authority to permit an attorney to withdraw from a matter pending before the Court if the attorney’s application for withdrawal includes an affidavit or declaration which contains the client’s address, or last known address, “at which the client may be served with notice of further proceedings taken in the case” and also provides the telephone number, or last known telephone number, at which the client may be reached. The rule requires that the attorney “must serve a copy of the application upon the client” and other interested parties.

**II. “Good Cause” Exists To Permit Counsel’s Withdrawal From This Case**

Nevada Rule of Professional Conduct (“NRPC”) 1.16, entitled “Declining or Terminating Representation,” provides that an attorney may seek withdrawal from a matter where “other good cause for withdrawal exists.” *See* NRPC 1.16(b)(7).

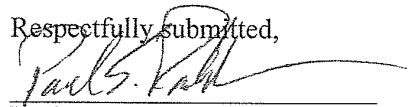
As shown in the attached declaration of undersigned counsel, Paul S. Padda, Esq., withdrawal is appropriate in this case because it is in keeping with Mr. Rodriguez’s understanding of what would eventually occur, appropriate given Mr. Rodriguez’s statements to undersigned counsel that he was in the process of “interviewing” other attorneys signaling his intent to retain other counsel and necessary given the difference of opinion regarding how best to proceed in this matter. As the Plaintiff in this case, Mr. Rodriguez should be permitted to proceed with counsel of his own choosing. Withdrawal will not have any material or adverse effect on Mr. Rodriguez’ interests, especially given opposing counsel’s consent to a continuation of the trial date.

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CONCLUSION

In light of the foregoing, the Court should permit undersigned counsel to withdraw from further representation of Plaintiff in this matter.

Respectfully submitted,  


Paul S. Padda, Esq.  
PAUL PADDALAW  
4240 West Flamingo Road, #220  
Las Vegas, Nevada 89103  
Tele: (702) 366-1888  
Fax: (702) 366-1940  
Web: caplawyers.com

Attorney for Plaintiff

Dated: January 19, 2016

**REGISTER OF ACTIONS**  
CASE No. 06A531538

Enrique Rodriguez, Plaintiff(s) vs. Fiesta Palms LLC, Defendant (s)

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Case Type: **Negligence - Premises Liability**  
Date Filed: **11/15/2006**  
Location: **Department 15**  
Cross-Reference Case Number: **A531538**  
Supreme Court No.: **59630**

---

**PARTY INFORMATION**

---

**Lead Attorneys**

**Defendant**    **Fiesta Palms LLC**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

**Doing Business As**    **Palms Casino Resort**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

**Plaintiff**    **Rodriguez, Enrique**

**Paul S. Padda**  
*Retained*  
702-366-1888(W)

---

**EVENTS & ORDERS OF THE COURT**

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02/01/2016 | **Pre Trial Conference** (8:30 AM) (Judicial Officer Hardy, Joe)

**Minutes**

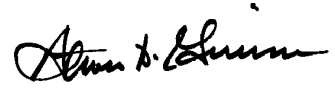
02/01/2016 8:30 AM

- Mr. Smerber indicated he had made several attempts to contact Plaintiff's counsel, and was informed by Mr. Padda's office that Mr. Padda was in a meeting. Additionally, Mr. Smerber noted Plaintiff's pending Motion to Withdraw as Counsel, informing the Court that Defendant had refrained from pre-trial Motion practice due to the pending Motion to Withdraw. Mr. Smerber advised that he was amenable to rescheduling the trial date; however, Defendant would not be waiving the three-year rule regarding a remand from the Supreme Court, nor would Defendant be waiving the five-year rule. Court noted for the record that, if Plaintiff felt the need to protect their interests in terms of complying with applicable timeliness rules, they could file the appropriate Motion with the Court. COURT ORDERED trial date VACATED and RESET; Court to issue a new Trial Order. 4/11/16 8:30 AM PRE TRIAL CONFERENCE 4/27/16 8:30 AM CALENDAR CALL 5/2/16 10:30 AM JURY TRIAL

[Parties Present](#)

[Return to Register of Actions](#)



  
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TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

ENRIQUE RODRIGUEZ,	)	
	)	CASE NO. 06-A-531538
Plaintiff,	)	
	)	
vs.	)	DEPT. NO. XV
	)	
FIESTA PALMS, LLC,	)	
	)	<b>Transcript of Proceedings</b>
Defendant.	)	

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

**PRETRIAL CONFERENCE**

MONDAY, FEBRUARY 1, 2016

APPEARANCES:

For the Plaintiff: NO APPEARANCES

For the Defendant: JUSTIN W. SMERBER, ESQ.

RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

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MONDAY, FEBRUARY 1, 2016 AT 8:33 A.M.

THE CLERK: *Fiesta Palms, LLC.*

THE COURT: Okay. Let's trail that, then.

[Hearing trailed at 8:33 a.m.]

[Hearing resumed at 8:59 a.m.]

THE CLERK: A531538, *Enrique Rodriguez versus Fiesta Palms, LLC.*

MR. SMERBER: Good morning, Your Honor. Justin Smerber of Moran, Brandon, Bendavid, Moran on behalf of the defendant.

Your Honor, I've been trying to contact plaintiff's counsel. He's not here, he's not responding to his e-mail. I've stepped outside and called his office. They've indicated he's in a meeting. They're not sure what is going on with his calendar this morning. But I do know that he has his Motion to Withdraw.

THE COURT: Yeah. I just noticed that, as well. And that's in chambers. So, I guess -- excuse me. You are the only one here. So, do you have any suggestions on what you want?

MR. SMERBER: Well, Your Honor, I did represent to plaintiff's counsel when he indicated he was filing his Motion to Withdraw, that I'd be agreeable to moving the trial date. Plus, we've been working with your staff, who

1 is excellent, about the pretrial motions. I didn't want to  
2 file a bunch of pretrial motions if somebody's getting out  
3 of the case, as a courtesy.

4 So, I guess, if we could get moved to the next  
5 stack, that would give plaintiff time to get a new counsel.  
6 I presume he's going to do that and has to file the  
7 appropriate motions.

8 THE COURT: That's -- that sounds great to me.

9 MR. SMERBER: And, Your Honor, the only caveat  
10 that I want to put on the record is we're not waiving any  
11 type of Three-Year Rule with regards to the remand from the  
12 Supreme Court. Just wanted to --

13 THE COURT: Sure. So, it's clear you're not  
14 waiving any Three-Year Rule, Five-Year Rule, whatever other  
15 rule plaintiff may need to comply with. So, we'll put that  
16 on to make sure that's clear and put you to the stack,  
17 which would be what?

18 THE CLERK: Do you want to go with the March 28<sup>th</sup>  
19 stack, counsel?

20 MR. SMERBER: Yes. Thank you.

21 THE CLERK: Pretrial conference will be March 7<sup>th</sup>  
22 of 2016 at 8:30 a.m. The calendar call will be March 23<sup>rd</sup>  
23 of 2016 at 8:30 a.m. The trial stack will be March 28<sup>th</sup> of  
24 2016 at 10:30 a.m. The pretrial memorandum will be due by  
25 March 4<sup>th</sup> of 2016. And the last day to file pretrial

1 motions will be February 1<sup>st</sup> of 2016.

2 MR. SMERBER: Can I get the pretrial motion date  
3 moved? The purpose -- because today is February 1<sup>st</sup> and  
4 he's still in the case and I represented that I would give  
5 him time to withdraw and let new counsel come on. Is there  
6 any way we can push that out a little bit?

7 THE COURT: What was the date?

8 THE CLERK: February 1<sup>st</sup>, today.

9 THE COURT: Oh.

10 THE CLERK: The last day.

11 THE COURT: Yeah. Yeah. So, let's --

12 MR. SMERBER: I don't mind if we have to go to the  
13 next stack to achieve that or --

14 THE COURT: Yeah. That's a good point. I guess,  
15 though, the question you mentioned the Three-Year Rule  
16 which I, you know, sitting up here, I don't know when --  
17 where you are in that regard. Do you happen to know?

18 MR. SMERBER: That's fair, Your Honor. I don't --  
19 I don't know the exact date either.

20 THE COURT: Okay. Well, let's move you to the  
21 stack that's after March 28 and if plaintiff -- let's put  
22 this in the minute order. If plaintiff believes he needs  
23 to protect his interests in terms of complying with any  
24 applicable timeliness rules, he can file the appropriate  
25 motion with the Court. Otherwise, we'll put you on for --

1 what's the trial date now?

2 THE CLERK: The next trial stack would be May 2<sup>nd</sup>.

3 THE COURT: So, May 2<sup>nd</sup> --

4 THE CLERK: Of 2016 at 10:30. The pretrial  
5 conference will be April 11<sup>th</sup> of 2016 at 8:30 a.m. Calendar  
6 call will be April 27<sup>th</sup> of 2016 at 8:30 a.m. The pretrial  
7 memorandum will be due by April 8<sup>th</sup> of 2016. And the last  
8 day to file pretrial motions will be March 7<sup>th</sup> of 2016.

9 MR. SMERBER: Very good. Thank you very much,  
10 Your Honor.

11 THE COURT: Thank you. Thanks for coming in this  
12 morning.

13

14 PROCEEDING CONCLUDED AT 9:03 A.M.

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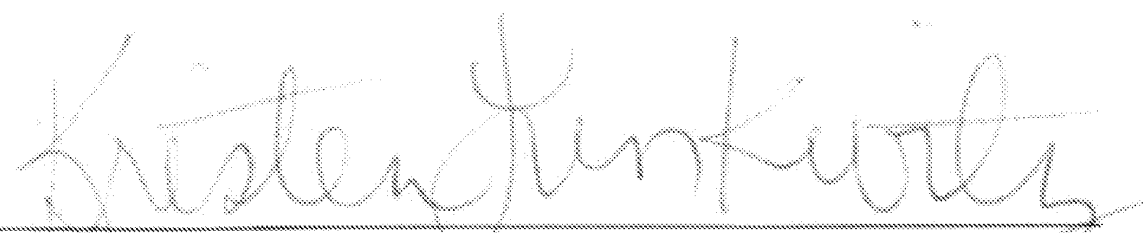
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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

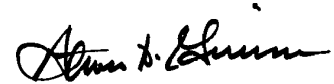
**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



---

KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

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OSCJ

DISTRICT COURT  
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, )  
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 Plaintiff(s), )  
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 v. )  
 )  
 FIESTA PALMS LLC, et al., )  
 )  
 Defendant(s), )  
 )

CASE NO.: A531538  
DEPT NO.: XV

**SIXTH AMENDED ORDER**  
**SETTING CIVIL JURY TRIAL,**  
**PRE-TRIAL CONFERENCE AND**  
**CALENDAR CALL**

IT IS HEREBY ORDERED that:

- A. The above entitled case is set to be tried to a jury on a five week stack to begin **Monday, May 2, 2016, at 10:30 a.m.**
- B. A Pre-Trial Conference with the designated trial attorney and/or parties in proper person will be held on **Monday, April 11, 2016, at 8:30 a.m.**
- C. A calendar call will be held on **Wednesday April 27, 2016, at 8:30 a.m.** Parties must bring to calendar call all items listed in EDCR 2.69. At the time of the calendar call, counsel will set an appointment with the Court Clerk. The appointment must be at least one day before the first day of trial.
- D. The Pre-Trial Memorandum must be filed no later than **Friday, April 8, 2016, at 4:00 p.m.**, with a courtesy copy delivered to Department XV. All parties (attorneys and parties in proper person), **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69.
- E. All motions in limine must be in writing and filed no later than **Monday, March 7, 2016**, and must comply with all the requirements set forth in EDCR 2.47, particularly EDCR 2.47(b), which requires the lawyers to personally consult with one another by way of face-to-face meeting or via telephone conference before a motion in limine can be filed. If a personal or

1 telephone conference was not possible, the attorney's declaration and/or affidavit attached to the  
2 motion in limine shall set forth the reasons. Should a party and/or his or her attorney fail to abide by  
3 the requirements of EDCR 2.47(b) before filing his or her motion in limine, such motion will not be  
4 heard by the Court. **Orders shortening time will not be signed except in extreme emergencies.**

5 **An upcoming trial date is not an extreme emergency.**

6 **Failure of the designated trial attorney or any party appearing in proper person to**  
7 **appear for any court appearances or to comply with this Order shall result in any of the**  
8 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation**  
9 **of trial date; and/or (5) any other appropriate remedy or sanction.**

10 Counsel is required to advise the Court immediately when the case settles or is otherwise  
11 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether  
12 a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy  
13 should be given to Chambers.

14 Finally, if parties are interested in a settlement conference conducted by a District Court  
15 Judge sitting as a Mediator, please contact Judge Wiese's Judicial Executive Assistant at 702-671-  
16 3633.

17 DATED: February 3, 2016

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20 JOE HARDY, DISTRICT JUDGE



**CERTIFICATE OF SERVICE**

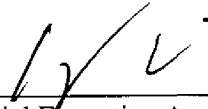
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I hereby certify that on or about the date e-filed, the foregoing was e-served, e-mailed, or a copy of the above document was placed in the attorney's folder in the Clerk's Office, or mailed to the following:

Paul Padda, Esq.  
[psp@paulpadda.com](mailto:psp@paulpadda.com)

Enrique Rodriguez  
6673 Yellowstone Dr.  
Riverside, CA 92506

Lewis Brandon, Jr. Esq.  
[l.brandon@moranlawfirm.com](mailto:l.brandon@moranlawfirm.com)

  
\_\_\_\_\_  
Judicial Executive Assistant

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Location : District Court Civil/Criminal [Help](#)

**REGISTER OF ACTIONS**  
CASE No. 06A531538

Enrique Rodriguez, Plaintiff(s) vs. Fiesta Palms LLC, Defendant (s)

§  
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Case Type: **Negligence - Premises Liability**  
Date Filed: **11/15/2006**  
Location: **Department 15**  
Cross-Reference Case Number: **A531538**  
Supreme Court No.: **59630 72098**

**PARTY INFORMATION**

**Lead Attorneys**

**Defendant**    **Fiesta Palms LLC**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

**Doing Business As**    **Palms Casino Resort**

**Lewis W Brandon, Jr.**  
*Retained*  
702-384-6568(W)

**Plaintiff**    **Rodriguez, Enrique**

**Micah S. Echols**  
*Retained*  
702-382-0711(W)

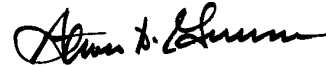
**EVENTS & ORDERS OF THE COURT**

02/09/2016 | **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer Hardy, Joe)  
*Paula S. Padda, Esq's Motion to Withdraw as Counsel of Record for Plaintiff on Order Shortening Time*

**Minutes**

02/09/2016 3:00 AM  
- COURT ORDERED, pursuant to EDCR 7.40(b)(2)(i) and EDCR 2.20(e) (no opposition having been filed), the COURT hereby GRANTS Paul S. Padda, Esq. s Motion to Withdraw as Counsel of Record for Plaintiff Enrique Rodriguez. Movants are directed to prepare a written order that includes Plaintiff Enrique Rodriguez address and phone number and submit it to this Court s chambers within 10 days pursuant to EDCR 7.21. CLERK'S NOTE: A copy of this minute order e-mailed to: Paul S. Padda, Esq. [ppadda@caplawyers.com] and Lewis W. Brandon, Jr. [l.brandon@moranlawfirm.com]. (KD 2/9/16)

[Return to Register of Actions](#)



CLERK OF THE COURT

1 **NOTC**  
2 Paul S. Padda, Esq. (NV Bar #10417)  
3 Email: psp@paulpadda.com  
4 PAUL PADDA LAW  
5 4240 West Flamingo Road, Suite 220  
6 Las Vegas, Nevada 89103  
7 Tel: (702) 366-1888  
8 Fax: (702) 366-1940  
9 www.paulpadda.com

6 Attorney for Plaintiff

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **ENRIQUE RODRIGUEZ,**  
10 **Plaintiff,**

11 **v.**

12 **FIESTA PALMS, LLC, et. al.,**  
13 **Defendants.**

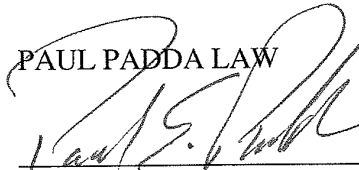
Case No. A-06-531538-C

Dept. No. XV (15)

14 **NOTICE OF FILING ORDER GRANTING**  
15 **WITHDRAWAL OF PLAINTIFF'S COUNSEL**

16 Attached herewith as Exhibit A is an Order dated February 12, 2016 granting the  
17 withdrawal of Paul S. Padda, Esq, and all those associated with his firm, from further  
18 representation of Plaintiff in this matter.

19 PAUL PADDA LAW

20   
21 Paul S. Padda, Esq.

22 Counsel for Plaintiff

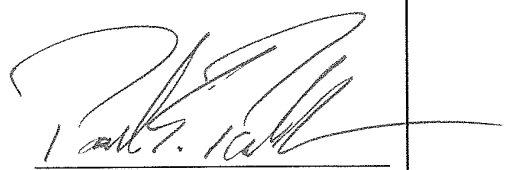
23 Dated: February 16, 2016  
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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), the undersigned hereby certifies that on February 16, 2016 a copy of "NOTICE OF FILING ORDER GRANTING WITHDRAWAL OF PLAINTIFF'S COUNSEL" was served via the Court's electronic filing system ("Wiznet") upon all counsel of record. In addition, a copy was mailed (and emailed) to Plaintiff via United States Mail (first-class, postage prepaid) addressed as follows:

Enrique Rodriguez  
6673 Yellowstone Drive  
Riverside, California 92506  
Email: bernieofcalif@aol.com

---

Paul S. Padda, Esq.

**EXHIBIT A**

**EXHIBIT A**

1 **ORD**  
2 Paul S. Padda, Esq. (NV Bar #10417)  
3 Email: psp@paulpaddalaw.com  
4 PAUL PADDA LAW, PLLC  
5 4240 West Flamingo Road, Suite 220  
6 Las Vegas, Nevada 89103  
7 Tel: (702) 366-1888  
8 Fax: (702) 366-1940  
9 www.paulpaddalaw.com

6 Attorney for Plaintiff

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **ENRIQUE RODRIGUEZ,** )  
10 **Plaintiff,** ) **Case No. A-06-531538-C**  
11 **v.** ) **Dept. No. XV (15)**  
12 **FIESTA PALMS, LLC, et. al.,** )  
13 **Defendants.** )

14 **ORDER**

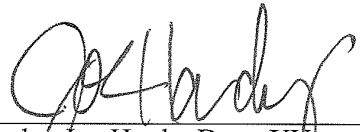
15  
16 On January 20, 2016, counsel for Plaintiff, Paul S. Padda, Esq., on behalf of himself and  
17 all others associated with his law firm on this matter, filed a motion to withdraw from this case.  
18 The Court having considered the motion and the lack of opposition thereto, it is hereby ordered  
19 that, pursuant to Eighth Judicial District Court Rule 7.40(b)(2)(i), the motion is granted. All  
20 further communications shall be directed to Plaintiff at the following address below (last known  
21 address supplied to Plaintiff's counsel):

22 Address: Enrique Rodriguez  
23 6673 Yellowstone Drive  
24 Riverside, California 92506  
25 Telephone: (951) 751-1440  
26 Email: bernieofcalif@aol.com

FEB 10 2016

1 Upon receipt of an executed copy of this Order, Plaintiff's counsel is directed to file notice of  
2 this Order and serve a copy upon Plaintiff at the address above.

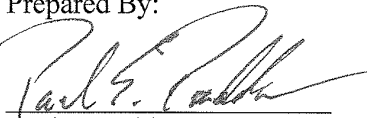
3 IT IS SO ORDERED:

4 

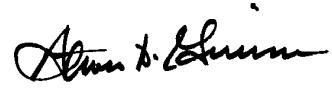
5 \_\_\_\_\_  
6 Judge Joe Hardy, Dept. XV  
7 Clark County District Court  
8 Las Vegas, Nevada

9 Dated: February 12, 2016

10 Prepared By:

11 

12 Paul S. Padda, Esq.  
13 PAUL PADDALAW, PLLC  
14 4240 West Flamingo Road, #220  
15 Las Vegas, Nevada 89103  
16 Tele: (702) 366-1888



CLERK OF THE COURT

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

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ, an individual,

Plaintiff,

v.

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 ROE CORPORATIONS I through X, inclusive,

Defendants.

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

**DEFENDANT, FIESTA PALMS, LLC'S MOTION TO DISMISS PURSUANT TO NRCP 16.1 AND EDCR 2.67**



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BENDAVID MORAN  
ATTORNEYS AT LAW

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**NOTICE OF MOTION**

TO: ALL PARTIES;

YOU, AND EACH OF YOU, will please take notice that the foregoing  
**DEFENDANT’S MOTION TO DISMISS** has been set for Hearing on the 14 day of  
APRIL, 2016 at the hour of 9:00A .m., before the Eighth Judicial District Court in  
Dept. XV.

DATED this 7<sup>th</sup> day of March, 2016.

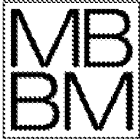
**MORAN BRANDON BENDAVID MORAN**

/s/ Justin W. Smerber, Esq.  
**LEW BRANDON, JR., ESQ.**  
Nevada Bar No. 5880  
**JUSTIN W. SMERBER, ESQ.**  
Nevada Bar No. 10761  
630 S. Fourth Street  
Las Vegas, Nevada 89101  
Attorneys for Defendant,  
FIESTA PALMS, LLC d/b/a  
PALMS CASINO RESORT

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I**  
**FACTS AND PROCEDURAL HISTORY**

This matter involves an alleged incident that occurred at the Palms Casino Resort on  
November 22, 2004. *See Plaintiff’s Complaint, on filed herein.* Plaintiff’s Complaint alleges  
negligence on the part of Defendant, FIESTA PALMS, LLC d/b/a PALMS CASINO RESORT  
(hereinafter “Defendant”) as owner of the premises. See *id.* The Plaintiff was allegedly injured  
while watching a televised football game at the casino when a “Palms girl” threw a promotional



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1 item into the crowd and an unknown patron unexpectedly dove for the item and struck Plaintiff.  
2 See id. Plaintiff has alleged injuries to his left knee, head, and neck. See id.

3 This matter is currently set for a civil jury trial to commence on May 2, 2016. See  
4 Scheduling Order on file herein. The Court has set a final Pre-Trial Conference in accordance  
5 with EDCR 2.68, which is set to occur on April 11, 2016. See id. A previous Pre-Trial  
6 Conference was held in this matter on February 1, 2016, as this matter was previously set for  
7 trial on February 22, 2016. However, Plaintiff did not attend the February 1, 2016 Pre-Trial  
8 Conference mandated by this Court. See Minutes from 2/1/16 Pre-Trial Conference on file  
9 herein.

10 As of March 7, 2016, Plaintiff has not noticed or initiated a Pre-Trial Conference  
11 between the parties in accordance with EDCR 2.67. Further, Plaintiff has not made his NRC  
12 P 16.1(a)(3) disclosures. Accordingly, Defendant now moves to dismiss Plaintiff's complaint in  
13 accordance with EDCR 2.67, EDCR 2.68, NRC P 16.1 and NRC P 37.

14 **II.**  
15 **LEGAL ARGUMENT**

16 Plaintiff's Complaint should be dismissed. Plaintiff has failed to comply with various  
17 procedural rules, which warrant the sanction of dismissal. Specifically, Plaintiff has failed to  
18 comply with EDCR 2.67, EDCR 2.68, NRC P 16 and NRC P 16.1. Accordingly, dismissal of  
19 Plaintiff's Complaint is appropriate under EDCR 2.67, EDCR 2.68 and NRC P 37.

20 **A. Plaintiff's Complaint should be dismissed pursuant to EDCR 2.67.**

21 EDCR 2.67 governs the meetings of counsel that are to be held before trial. The rule  
22 requires a Plaintiff to initiate and designate a meeting place within Clark County, Nevada where  
23 the trial counsel can meet and exchange their witness lists and exhibits. As a result of this



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30 FAX: (702) 248-6666

1 conference, the parties are to create and file a Joint Pre-Trial Memorandum. The rule  
2 specifically states that a person that is not represented by an attorney must still comply with the  
3 requirements of the rule. Finally, a failure to comply with the rule may result in a judgment of  
dismissal.

4 In the present matter, Plaintiff has not initiated an EDCR 2.67 conference. The trial date  
5 in this matter has been moved numerous times. Even at the time of the last Pre-Trial Conference  
6 set by the Court, Plaintiff had not initiated or held an EDCR 2.67 conference. Further, this  
7 matter is now less than two months away from its current trial setting and no EDCR 2.67  
8 Conference has been initiated by Plaintiff. Defense counsel contacted Plaintiff on March 7,  
2016 for purposes of discussing EDCR 2.67; however, Plaintiff did not answer Defense  
9 Counsel's call.

10 Plaintiff's actions are causing further delay of these proceedings, and prejudice to the  
11 Defense. A Joint Pre-Trial Memorandum cannot be created because Plaintiff has not initiated  
12 an EDCR 2.67 Conference. Further, the Plaintiff has not provided the Defendant with its Trial  
13 Exhibits or Witness Lists, which is the very purpose of EDCR 2.67. Finally, because of  
14 Plaintiff's failure to comply with the rule, Defense counsel has not been able to consider and  
15 formulate appropriate objections to Plaintiff's exhibits and witnesses as mandated by EDCR  
16 2.67(b)(5). Accordingly, Defendant requests that Plaintiff's Complaint be dismissed in  
accordance with EDCR 2.67(c).

17 **B. Plaintiff's Complaint should be dismissed pursuant to NRCP 16 and EDCR 2.68.**

18 Both NRCP 16 and EDCR 2.68 grant the Court authority to conduct a pre-trial conference  
19 with counsel. These conferences are designed to allow the parties to discuss and address  
various matters pertinent to an efficient and productive trial. Further, both rules mandate that



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1 designated trial counsel who are knowledgeable must attend the Pre-Trial Conference. A  
2 failure to attend the Pre-Trial Conference may result in a judgment of dismissal under EDCR  
3 2.68 and NRCP 16(f).

4 In the present matter, a Pre-Trial Conference was held in this matter on February 1, 2016.  
5 Plaintiff did not attend the Pre-Trial Conference, nor did any designated trial counsel for  
6 Plaintiff attend the hearing. Defense counsel was present at the hearing; however, an effective  
7 conference cannot be held with one party absent.

8 Defendant does concede that a new Pre-Trial Conference has been set by the Court. Further,  
9 Defense counsel did concede to a continuance of the trial date at the February 1, 2016 Pre-Trial  
10 Conference. However, the new Pre-Trial Conference was only set after Plaintiff failed to attend  
11 the February 1, 2016 conference. Accordingly, should Plaintiff fail to attend and participate in  
12 the new Pre-Trial Conference set for April 11, 2016, this Honorable Court should enter a  
13 judgment of dismissal.

14 **C. Plaintiff's Complaint should be dismissed as a sanction under NRCP 37 due to**  
15 **Plaintiff's failure to Comply with NRCP 16.1(a)(3).**

16 NRCP 16.1(a)(3) requires a party to make Pre-Trial Disclosures. Specifically, the rule  
17 provides as follows:

18 **(3) Pretrial Disclosures.** In addition to the disclosures required by Rule  
19 16.1(a)(1) and (2), a party must provide to other parties the following  
20 information regarding the evidence that it may present at trial, including  
impeachment and rebuttal evidence:

(A) The name and, if not previously provided, the address and telephone  
number of each witness, separately identifying those whom the party expects to  
present, those witnesses who have been subpoenaed for trial, and those whom  
the party may call if the need arises;

(B) The designation of those witnesses whose testimony is expected to be  
presented by means of a deposition and, if not taken steno graphically, a  
transcript of the pertinent portions of the deposition testimony; and



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(C) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under NRS 48.025 and 48.035, shall be deemed waived unless excused by the court for good cause shown.

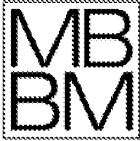
Further, NRCP 16.1(e) addresses a party’s failure to comply with the provisions of NRCP 16.1. The rule reads as follows:

3) If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered pursuant to subsection (d) of this rule, the court, upon motion or upon its own initiative, shall impose upon a party or a party’s attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

- (A) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f);
- (B) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.1(a).

NRCP 37(b)(2)(C) provides that a Court may dismiss an action for failure to comply with the provisions of NRCP 16.1. Finally, a District Court’s decision to dismiss a case for a failure to comply with the provisions of NRCP 16.1 is governed by an “abuse of discretion” standard. See Arnold v. Kip, 123 Nev. 410, 414 (2007).

In the present matter, Plaintiff has not made any Pre-Trial Disclosures in accordance with NRCP 16.1(a)(3). This has prevented Defendant from evaluating Plaintiff’s disclosures and making appropriate objections under NRCP 16.1(a)(3). Accordingly, Plaintiff should be



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1 sanctioned under NRCPC 37 for failing to comply with the rules, and his Complaint should be  
2 dismissed.

3 **IV.**  
4 **CONCLUSION**

4 Based upon the foregoing, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO  
5 RESORT respectfully requests that this Court Dismiss Plaintiff's Complaint pursuant to EDCR  
6 2.67, EDCR 2.68, NRCPC 16 and NRCPC 16.1.

7 DATED this 7<sup>th</sup> day of March, 2016.

8 **MORAN BRANDON BENDAVID MORAN**

9 /s/ Justin W. Smerber, Esq.  
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 SERVICE**

14 Pursuant to NRCPC 5(b), I hereby certify that on the 7<sup>TH</sup> day of March, 2016, I served the  
15 foregoing **DEFENDANT, FIESTA PALMS, LLC'S MOTION TO DISMISS** via the Court's  
16 electronic filing and service systems ("Wiznet") to all parties on the current service list.

17 **VIA U.S. MAIL**  
18 **ENRIQUE RODRIGUEZ**  
19 6673 YELLOWSTONE DRIVE  
20 RIVERSIDE, CALIFORNIA 92506  
TELEPHONE: 951-751-1440  
Plaintiff, In Proper Person

/s/ Angelina M. Martinez  
An Employee of Moran Brandon Bendavid Moran



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FAX: (702) 348-6666

**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.

Case No.: 72098

Electronically Filed  
Jul 31 2017 11:53 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appeal from the Eighth Judicial District  
Court, The Honorable Joe Hardy  
Presiding

**APPELLANT'S APPENDIX**  
**(Volume 1, Bates Nos. 1-235)**

**Marquis Aurbach Coffing**

Micah S. Echols, Esq.

Nevada Bar No. 8437

Adele V. Karoum, Esq.

Nevada Bar No. 11172

10001 Park Run Drive

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mechols@maclaw.com

akaroum@maclaw.com

*Attorneys for Appellant,*

*Enrique Rodriguez*



**INDEX TO APPELLANT’S APPENDIX**

<b>DOCUMENT DESCRIPTION</b>	<b>LOCATION</b>
Complaint (filed 11/15/06)	Volume 1, Bates Nos. 1–10
Defendant Fiesta Palms, LLC dba Palms Casino Resort’s Answer to Plaintiff’s Complaint (filed 04/23/07)	Volume 1, Bates Nos. 11–19
Amended Complaint (filed 07/08/09)	Volume 1, Bates Nos. 20–29
Notice of Entry of Order [for Stipulation and Order to Continue Discovery and Trial] with Stipulation and Order (filed 11/25/09)	Volume 1, Bates Nos. 30–35
Plaintiff’s Request for Trial Setting (filed 03/03/10)	Volume 1, Bates Nos. 36–38
Amended Order Setting Bench Trial (filed 05/11/10)	Volume 1, Bates Nos. 39–40
Notice of Entry of Order [Denying Defendant’s Motion for Mistrial, or in the Alternative, Motion to Strike Plaintiff’s Confidential Trial Brief] with Order (filed 03/14/11)	Volume 1, Bates Nos. 41–46
Notice of Entry of Order [Granting Plaintiff’s Motion on the Issue of Liability] with Order (filed 03/14/11)	Volume 1, Bates Nos. 48–53
Notice of Entry of Order [Granting Plaintiff’s Motion to Strike Defendant Fiesta Palms, LLC’s Expert Witnesses] with Order (filed 03/14/11)	Volume 1, Bates Nos. 54–59
Notice of Entry of Order [Granting Plaintiff’s Motion to Strike Defendant’s Post Trial Brief] with Order (filed 03/14/11)	Volume 1, Bates Nos. 60–64
Notice of Entry of Verdict with Verdict (filed 03/17/11)	Volume 1, Bates Nos. 65–69

<b>DOCUMENT DESCRIPTION</b>	<b>LOCATION</b>
Notice of Entry of Judgment with Judgment (filed 04/15/11)	Volume 1, Bates Nos. 70–75
Notice of Entry of Findings of Fact and Conclusions of Law in Support of Verdict with Findings of Fact and Conclusions of Law and Verdict (filed 04/27/11)	Volume 1, Bates Nos. 76–83
Notice of Entry of Amended Judgment on the Verdict with Amended Judgment (filed 03/09/12)	Volume 1, Bates Nos. 84–89
Notice of Department Reassignment (filed 08/19/14)	Volume 1, Bates Nos. 90–91
Order Setting Hearing Further Proceedings Re: Supreme Court Reversal and Remand (filed 10/13/14)	Volume 1, Bates Nos. 92–93
Peremptory Challenge of Judge (filed 10/23/14)	Volume 1, Bates Nos. 94–96
Notice of Department Reassignment (filed 10/23/14)	Volume 1, Bates No. 97
Nevada Supreme Court Clerk’s Certificate and Judgment-Reversed and Remanded (filed 11/04/14)	Volume 1, Bates Nos. 98–117
Notice of Hearing: Benson, Bertoldo, Baker & Carter’s Motion to Withdraw as Attorneys for Plaintiff Enrique Rodriguez; and Hearing on Order Shortening Time with Motion (filed 11/24/14)	Volume 1, Bates Nos. 118–126
Notice of Non-Opposition to Benson, Bertoldo, Baker & Carter’s Motion to Withdraw as Attorneys for Plaintiff Enrique Rodriguez; and Hearing on Order Shortening Time (filed 12/02/14)	Volume 1, Bates Nos. 127–129
Order Scheduling Status Check: Trial Setting (filed 12/04/14)	Volume 1, Bates No. 130

<b>DOCUMENT DESCRIPTION</b>	<b>LOCATION</b>
Notice of Entry of Order Granting Benson, Bertoldo, Baker & Carter’s Motion to Withdraw as Attorneys for Plaintiff Enrique Rodriguez; and Hearing on Order Shortening Time with Order (filed 12/09/14)	Volume 1, Bates Nos. 131–134
Minutes of January 9, 2015 and February 13, 2015 Status Check Hearings	Volume 1, Bates No. 135
Transcript of January 9, 2015 Status Check Hearing (filed 02/24/17)	Volume 1, Bates Nos. 136–141
Transcript of February 13, 2015 Status Check Hearing (filed 02/24/17)	Volume 1, Bates Nos. 142–148
Plaintiff’s Peremptory Challenge of Judge (filed 02/19/15)	Volume 1, Bates Nos. 149–150
Notice of Department Reassignment (filed 02/19/15)	Volume 1, Bates Nos. 151–152
Minutes of March 25, 2015, April 1, 2015, and April 29, 2015 Status Check Hearings	Volume 1, Bates Nos. 153–154
Notice of Appearance (filed 05/12/15)	Volume 1, Bates Nos. 155–156
Minutes of May 13, 2015 Hearing—Judge Scotti Recusal	Volume 1, Bates No. 157
Notice of Department Reassignment (filed 05/18/15)	Volume 1, Bates Nos. 158–159
Order Setting Status Check (filed 06/08/15)	Volume 1, Bates Nos. 160–161
Minutes of June 15, 2015 Hearing on All Pending Motions	Volume 1, Bates Nos. 162–163
Transcript of June 15, 2015 Hearing on All Pending Motions (filed 02/21/17)	Volume 1, Bates Nos. 164–177

<b>DOCUMENT DESCRIPTION</b>	<b>LOCATION</b>
Fourth Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call (filed 06/23/15)	Volume 1, Bates Nos. 178–180
June 25, 2015 Minute Order on Defendant’s Motion to Set Jury Trial	Volume 1, Bates No. 181
Notice of Entry of Order [Granting Defendant’s Motion to Set Jury Trial] (filed 07/23/15)	Volume 1, Bates Nos. 182–186
Minutes of September 28, 2015 Status Check Hearing	Volume 1, Bates No. 187
Transcript of September 28, 2015 Status Check Hearing (filed 02/21/17)	Volume 1, Bates Nos. 188–193
Fifth Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call (filed 09/29/15)	Volume 1, Bates Nos. 194–196
Motion to Withdraw as Counsel of Record for Plaintiff on Order Shortening Time (filed 01/20/16)	Volume 1, Bates Nos. 197–202
Notice of Filing Motion to Withdraw as Counsel of Record for Plaintiff on Order Shortening Time with Motion (filed 01/20/16)	Volume 1, Bates Nos. 203–211
Minutes of February 1, 2016 Pre-Trial Conference	Volume 1, Bates No. 212
Transcript of February 1, 2016 Pre-Trial Conference (filed 02/21/17)	Volume 1, Bates Nos. 213–218
Sixth Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call (filed 02/04/16)	Volume 1, Bates Nos. 219–221
February 9, 2016 Minute Order on Motion to Withdraw as Counsel of Record for Plaintiff	Volume 1, Bates No. 222
Notice of Filing Order Granting Withdrawal of Plaintiff’s Counsel with Order (filed 02/16/16)	Volume 1, Bates Nos. 223–227

<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
Defendant, Fiesta Palms, LLC's Motion to Dismiss Pursuant to NRCPP 16.1 and EDCR 2.67 (filed 03/07/16)		Volume 1, Bates Nos. 228–235
Motion for Partial Summary Judgment Regarding Punitive Damages (filed 03/07/16)		Volume 2, Bates Nos. 236–248
<b>Exhibits to Motion for Partial Summary Judgment Regarding Punitive Damages</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>A</b>	Excerpted Deposition Transcript of Brandy L. Beavers (dated 04/17/09)	Volume 2, Bates Nos. 249–252
<b>B</b>	Excerpted Deposition Transcript of Sheri Long (dated 01/09/09)	Volume 2, Bates Nos. 253–257
<b>C</b>	Verdict (filed 03/14/11)	Volume 2, Bates Nos. 258–260
<b>D</b>	Amended Judgment on the Verdict (filed 02/15/12)	Volume 2, Bates Nos. 261–264
<b>E</b>	Second Amended or Supplemental Notice of Appeal (filed 03/13/12)	Volume 2, Bates Nos. 265–298
Defendant, Fiesta Palms, LLC's Motion in Limine No. 1 to Exclude Testimony Regarding Witnesses Vikki Kooinga and Sheri Long (filed 03/07/16)		Volume 2, Bates Nos. 299–317
<b>Exhibits to Defendant, Fiesta Palms, LLC's Motion in Limine No. 1 to Exclude Testimony Regarding Witnesses Vikki Kooinga and Sheri Long</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>A</b>	Partial Transcript of October 25, 2010 Bench Trial—Testimony of Vikki Kooinga (filed 11/18/10)	Volume 2, Bates Nos. 318–331

<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
<b>Exhibits to Defendant, Fiesta Palms, LLC’s Motion in Limine No. 1 to Exclude Testimony Regarding Witnesses Vikki Kooinga and Sheri Long (cont.)</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>B</b>	Excerpted Deposition Transcript of Vikki Kooinga (dated 01/09/09)	Volume 2, Bates Nos. 332–347
<b>C</b>	Partial Transcript of October 25, 2010 Bench Trial—Testimony of Sheri Long (filed 11/18/10)	Volume 2, Bates Nos. 348–375
<b>D</b>	Excerpted Deposition Transcript of Sheri Long (dated 01/09/09)	Volume 2, Bates Nos. 376–390
Defendant, Fiesta Palms, LLC’s Motion in Limine No. 2 to Exclude Any Reference that Any Motion in Limine Has Been Filed: that the Court Has Ruled, or May Rule on Any Part of Outside the Presence of the Jury: or Suggesting or Implying to Potential Jurors During Voir Dire or Seated Jurors in Any Manner whatsoever that Defendant Moved to Exclude Proof in Any Manner or that the Court Has Excluded Proof of Any Manner (filed 03/07/16)		Volume 2, Bates Nos. 391–397
Defendant, Fiesta Palms, LLC’s Motion in Limine No. 3 to Exclude Any Monetary Damages of the Plaintiff Not Previously Disclosed or Based Upon Claims Not Previously Asserted (filed 03/07/16)		Volume 2, Bates Nos. 398–404
Defendant, Fiesta Palms, LLC’s Motion in Limine No. 4 to Exclude Any Reference to Liability Insurance or Some Other Similar Contractor Policy Related to the Defendant (filed 03/07/16)		Volume 2, Bates Nos. 405–410
Defendant, Fiesta Palms, LLC’s Motion in Limine No. 5 to Exclude Any Reference that the “Golden Rule” or that the Jury Panel or the Jury Should Do Unto Others as You Have Them Done Unto You (filed 03/07/16)		Volume 2, Bates Nos. 411–416

<b>DOCUMENT DESCRIPTION</b>	<b>LOCATION</b>
Defendant, Fiesta Palms, LLC's Motion in Limine No. 6 to Exclude All Side Bar Comments Made by Counsel During Depositions that Were Recorded on Videotape or Present in Deposition Transcripts (filed 03/07/16)	Volume 2, Bates Nos. 417–423
Defendant, Fiesta Palms, LLC's Motion in Limine No. 7 to Exclude Any Reference that the Attorneys for Defendant Specialize in the Handling of Insurance Cases (filed 03/07/16)	Volume 2, Bates Nos. 424–430
Defendant, Fiesta Palms, LLC's Motion in Limine No. 8 to Exclude Any Questions that Would Invade the Attorney/Client Privilege (filed 03/07/16)	Volume 2, Bates Nos. 431–436
Defendant, Fiesta Palms, LLC's Motion in Limine No. 9 to Exclude Any Statement or Implication that Defendant Sought to Delay This Trial (filed 03/07/16)	Volume 2, Bates Nos. 437–443
Defendant, Fiesta Palms, LLC's Motion in Limine No. 10 to Exclude Any Comments Regarding the Number of Attorneys Representing the Defendant (filed 03/07/16)	Volume 2, Bates Nos. 444–449
Defendant, Fiesta Palms, LLC's Motion in Limine No. 11 to Exclude Any Testimony Offered by Witnesses Who Have Not Already Been Disclosed and Identified Prior to the Close of Discovery (filed 03/07/16)	Volume 2, Bates Nos. 450–456
Defendant, Fiesta Palms, LLC's Motion in Limine No. 12 to Preclude Any Lay Person from Rendering Opinions as to Any Medical Aspects of the Plaintiffs, Specifically Diagnoses from Any Third-Parties as the Expertise Properly Lies with the Medical Provider and Beyond the Scope of a Lay Person's Experience (filed 03/07/16)	Volume 2, Bates Nos. 457–463
Defendant, Fiesta Palms, LLC's Motion in Limine No. 13 to Exclude Any Evidence or Claims of Mental, Psychological or Emotional Damages (filed 03/07/16)	Volume 2, Bates Nos. 464–470

<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
Defendant, Fiesta Palms, LLC's Motion in Limine No. 14 to Preclude Plaintiff's Treating Physicians and Medical Expert from Testifying at Trial (filed 03/07/16)		Volume 3, Bates Nos. 471-479
<b>Exhibits to Defendant, Fiesta Palms, LLC's Motion in Limine No. 14 to Preclude Plaintiff's Treating Physicians and Medical Expert from Testifying at Trial</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>A</b>	Plaintiff's 16.1 List of Documents and Witnesses (filed 09/24/07)	Volume 3, Bates Nos. 480-491
<b>B</b>	Plaintiff's Supplemental Expert Disclosure (dated 06/15/10)	Volume 3, Bates Nos. 492-495
Defendant, Fiesta Palms, LLC's Motion in Limine No. 15 to Preclude Plaintiff from Claiming Medical Specials Exceeding Amounts Disclosed by Plaintiff Pursuant to NRCP 16.1 (filed 03/07/16)		Volume 3, Bates Nos. 496-502
<b>Exhibits to Defendant, Fiesta Palms, LLC's Motion in Limine No. 15 to Preclude Plaintiff from Claiming Medical Specials Exceeding Amounts Disclosed by Plaintiff Pursuant to NRCP 16.1</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>A</b>	Plaintiff's 29th Supplemental Early Case Conference List of Documents and Witnesses (dated 10/04/10)	Volume 3, Bates Nos. 503-524
<b>B</b>	Plaintiff's Second Supplemental Pre-Trial Disclosures (dated 09/14/10)	Volume 3, Bates Nos. 525-534
<b>C</b>	Plaintiff's Confidential Trial Brief (dated 09/27/10)	Volume 3, Bates Nos. 535-556
<b>D</b>	Patient Account Information from Various Providers	Volume 3, Bates Nos. 557-709



<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
Defendant, Fiesta Palms, LLC's Motion in Limine No. 16 to Preclude Plaintiff from Arguing that the Violation of Defendant's Internal Policies Constitutes Negligence Per Se (filed 03/07/16)		Volume 4, Bates Nos. 710–717
<b>Exhibit to Defendant, Fiesta Palms, LLC's Motion in Limine No. 16 to Preclude Plaintiff from Arguing that the Violation of Defendant's Internal Policies Constitutes Negligence Per Se</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>A</b>	Excerpted Deposition Transcript of Sheri Long (filed 01/09/09)	Volume 4, Bates Nos. 718–721
Minutes of April 7, 2016 Hearing on All Pending Motions		Volume 4, Bates Nos. 722–723
Transcript of April 7, 2016 Hearing on All Pending Motions (filed 02/21/17)		Volume 4, Bates Nos. 724–738
Defendant, Fiesta Palms, LLC's, Individual Pre-Trial Memorandum (filed 04/08/16)		Volume 4, Bates Nos. 739–752
Minutes of April 11, 2016 Pre-Trial Conference		Volume 4, Bates No. 753
Transcript of April 11, 2016 Pre-Trial Conference (filed 02/21/17)		Volume 4, Bates Nos. 754–757
Minutes of April 14, 2016 Hearing on All Pending Motions		Volume 4, Bates No. 758
Transcript of April 14, 2016 Hearing on All Pending Motions (filed 02/21/17)		Volume 4, Bates Nos. 759–768
Notice of Entry of Order [Granting Defendant, Fiesta Palms, LLC's Motions in Limine No[s]. 1–16 with Order (filed 04/15/16)		Volume 4, Bates Nos. 769–775

<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
Notice of Entry of Order [Denying Defendant, Fiesta Palms, LLC's Motion for Partial Summary Judgment on Punitive Damages as Moot] with Order (filed 04/21/16)		Volume 4, Bates Nos. 776–779
Notice of Entry of Order [Granting Defendant, Fiesta Palms, LLC's Motion to Dismiss] with Order (filed 04/21/16)		Volume 4, Bates Nos. 780–784
Plaintiff's Substitution of Attorney (filed 10/14/16)		Volume 4, Bates Nos. 785–787
Motion for Relief—NRCP 60 (filed 10/14/16)		Volume 4, Bates Nos. 788–809
<b>Exhibits to Motion for Relief—NRCP 60</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>1</b>	Notice of Filing Order Granting Withdrawal of Plaintiff's Counsel with Order (filed 02/16/16)	Volume 4, Bates Nos. 810–817
<b>2</b>	Sixth Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call (filed 02/04/16)	Volume 4, Bates Nos. 818–821
<b>3</b>	Minutes of February 1, 2016 Pre-Trial Conference	Volume 4, Bates Nos. 822–823
<b>4</b>	Motion to Withdraw as Counsel of Record for Plaintiff on Order Shortening Time with Notice of Filing (filed 01/20/16) 508	Volume 4, Bates Nos. 824–839
<b>5</b>	February 9, 2016 Minute Order on Motion to Withdraw as Counsel of Record for Plaintiff	Volume 4, Bates Nos. 840–841
<b>6</b>	Defendant, Fiesta Palms, LLC's Motion to Dismiss Pursuant to NRCP 16.1 and EDCR 2.67 (filed 03/07/16)	Volume 4, Bates Nos. 842–850

<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
<b>Exhibits to Motion for Relief—NRC P 60 (cont.)</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>7</b>	Order [Granting Defendant, Fiesta Palms, LLC’s Motions in Limine No[s]. 1–16] (filed 04/13/16)	Volume 4, Bates Nos. 851–856
<b>8</b>	Certificate of Service for Defendant, Fiesta Palms, LLC’s Motion in Limine No. 16 to Preclude Plaintiff from Arguing that the Violation of Defendant’s Internal Policies Constitutes Negligence Per Se (filed 03/07/16)	Volume 4, Bates Nos. 857–858
<b>9</b>	Order [Granting Defendant, Fiesta Palms, LLC’s Motion to Dismiss] (filed 04/20/16)	Volume 4, Bates Nos. 859–866
<b>10</b>	In-Home Supportive Services Provider Notification (dated 06/01/15)	Volume 4, Bates Nos. 867–871
Defendant, Fiesta Palms, LLC’s Opposition to Plaintiff’s Motion for Relief Under NRC P 60 (filed 10/26/16)		Volume 5, Bates Nos. 872–885
<b>Exhibits to Defendant, Fiesta Palms, LLC’s Opposition to Plaintiff’s Motion for Relief Under NRC P 60</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>A</b>	Notice of Filing Order Granting Withdrawal of Plaintiff’s Counsel with Order (filed 02/16/16)	Volume 5, Bates Nos. 886–890
<b>B</b>	Motion to Withdraw as Counsel of Record for Plaintiff on Order Shortening Time (filed 01/20/16)	Volume 5, Bates Nos. 891–897
<b>C</b>	Notice of Filing Motion to Withdraw as Counsel of Record for Plaintiff on Order Shortening Time with Motion (filed 01/20/16)	Volume 5, Bates Nos. 898–907
<b>D</b>	Minutes of February 1, 2016 Pre-Trial Conference	Volume 5, Bates Nos. 908–909

<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
<b>Exhibits to Defendant, Fiesta Palms, LLC's Opposition to Plaintiff's Motion for Relief Under NRCP 60</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>E</b>	Sixth Amended Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call (filed 02/04/16)	Volume 5, Bates Nos. 910–913
<b>F</b>	Defendant, Fiesta Palms, LLC's Motion to Dismiss Pursuant to NRCP 16.1 and EDCR 2.67 (filed 03/07/16)	Volume 5, Bates Nos. 914–922
<b>G</b>	Minutes of April 7, 2016 Hearing on All Pending Motions	Volume 5, Bates Nos. 923–925
<b>H</b>	Minutes of April 14, 2016 Hearing on All Pending Motions	Volume 5, Bates Nos. 926–927
<b>I</b>	Order [Granting Defendant, Fiesta Palms, LLC's Motion to Dismiss] (filed 04/20/16)	Volume 5, Bates Nos. 928–931
<b>J</b>	Notice of Entry of Order [Granting Defendant, Fiesta Palms, LLC's Motion to Dismiss] without Order (dated 04/21/16)	Volume 5, Bates Nos. 932–934
<b>K</b>	Mediation Settlement (dated 05/16/11)	Volume 5, Bates Nos. 935–937
Reply in Support of Plaintiff's Motion for NRCP 60 Relief (filed 11/10/16)		Volume 5, Bates Nos. 938–947
Minutes of November 15, 2016 Hearing on Plaintiff's Motion for Relief—NRCP 60		Volume 5, Bates No. 948
Transcript of November 15, 2016 Hearing on Plaintiff's Motion for Relief—NRCP 60 (filed 02/21/17)		Volume 5, Bates Nos. 949–962
Notice of Appearance (filed 12/20/16)		Volume 5, Bates Nos. 963–965

<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
Notice of Entry of Order [Denying Plaintiff's Motion for NRCP 60 Relief] with Order (filed 12/28/16)		Volume 5, Bates Nos. 966–972
Notice of Appeal (filed 01/05/17)		Volume 5, Bates Nos. 973–975
<b>Exhibits to Notice of Appeal</b>		
<b>Exhibit</b>	<b>Document Description</b>	
<b>1</b>	Order [Denying Plaintiff's Motion for NRCP 60 Relief] (filed 12/23/16)	Volume 5, Bates Nos. 976–981
Case Appeal Statement (filed 01/05/17)		Volume 5, Bates Nos. 982–987
Docket of Case No. A531538		Volume 5, Bates Nos. 988–1004

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7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

FILED

1 **COMP**  
2 W. JONATHAN WEBER, ESQ.  
3 Nevada Bar No. 7554  
4 BENSON, BERTOLDO, BAKER & CARTER, CHTD.  
5 7408 W. Sahara Avenue  
6 Las Vegas, Nevada 89117  
7 (702) 228-2600  
8 Attorneys for Plaintiff

Nov 15 4 53 PM '06

*Christy S. Rodriguez*  
CLERK

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

9 ENRIQUE RODRIGUEZ, an individual; )  
10 )  
11 Plaintiffs )  
12 vs. )  
13 )  
14 FIESTA PALMS, L.L.C., a Nevada Limited Liability )  
15 Company, d/b/a PALMS CASINO RESORT; )  
16 DOES I through X, inclusive; and ROE BUSINESS )  
17 ENTITIES I through X, inclusive, )  
18 )  
19 Defendants. )

CASE NO. *A531538*  
DEPT. NO.: *X*

**COMPLAINT**

18 **COMES NOW** Plaintiff ENRIQUE RODRIGUEZ, by and through his attorney of  
19 record W. JONATHAN WEBER, ESQ., of the law firm of BENSON, BERTOLDO, BAKER &  
20 CARTER, CHTD., and for his claims of relief against the Defendants, and each of them, alleges  
21 and complains as follows:  
22

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

1.

25 That Plaintiff, ENRIQUE RODRIGUEZ, was at the time of the Incident, a resident of  
26 Riverside County, State of California.  
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**BENSON BERTOLDO BAKER & CARTER**  
ATTORNEYS AT LAW

COUNTY CLERK

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2.

That at all times herein mentioned, Defendant, FIESTA PALMS, L.L.C., d/b/a PALMS CASINO RESORT (hereinafter, collectively referred to as "PALMS RESORT") was, and still is, a Nevada Limited Liability Company duly authorized and regularly conducting business within Clark County, State of Nevada.

3.

That at all times herein mentioned Defendant JANE DOE #1, as designated hereinafter, was, and still is, a resident of the State of Nevada, County of Clark.

4.

That at all times herein mentioned, Defendant ROE BUSINESS ENTITY #1, as designated hereinafter was, and still is, a business entity regularly conducting business in the State of Nevada, County of Clark.

5.

That the true names and capacities of the Defendants DOES I through X, inclusive, and ROE BUSINESS ENTITIES I through X, inclusive, and each of them, are unknown to Plaintiffs, who, therefore, sue said Defendants by said fictitious names. Defendants designated as DOES I through X are individuals who, as herein alleged, were participating in the events described herein as either a PALM GIRL, a patron of the subject Sports Book/Sports Bar, and/or are individuals responsible for training, supervising, and/or controlling the subject premises, the conduct of the PALM GIRLS, and/or the activities occurring at the time and place alleged herein. Plaintiff is informed, believes and thereon alleges that each of the Defendants designated as DOE is in some manner negligently and/or statutorily responsible for the events and happenings referred to and caused damages proximately to Plaintiff ENRIQUE RODRIGUEZ as herein alleged. Plaintiff will ask leave of the Court to amend his Complaint to insert the true



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names of such Defendants when the same have been ascertained.

6.

That the true names and capacities of the Defendants ROE BUSINESS ENTITIES I through X, inclusive, are unknown to Plaintiff, who, therefore sues said Defendants by said fictitious names. Defendants designated as ROE BUSINESS ENTITIES I through X are owners, operators, agents, employers, employees, assigns, maintainers, inspectors, predecessors and/or successors in interest, contractors, subcontractors, political subdivisions, governmental bodies, insurers or entities otherwise in possession and/or control of the persons and/or premises mentioned herein and/or are agencies, corporations and/or business interests employing, training, contracting, and/or otherwise responsible for the services of the PALM GIRLS and/or the activities occurring on the subject premises at the time and place alleged herein. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated as a ROE BUSINESS ENTITY is in some manner negligently, vicariously, statutorily, contractually, jointly and/or severally or otherwise responsible for the events and happenings referred to and caused damages proximately to Plaintiff as herein alleged. Plaintiff will ask leave of the Court to amend his Complaint to insert the true names of such Defendants when the same has been ascertained.

7.

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

8.

That on or about November 22, 2004, Plaintiff, ENRIQUE RODRIGUEZ, was on the





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premises of PALMS RESORT as a patron at the PALMS RESORT.

9.

That on November 22, 2004, Plaintiff ENRIQUE RODRIGUEZ went to the Palms' sports bar/book to watch a football game. During half-time, agents, employees, and/or assigns of the PALMS (hereinafter known as the "PALMS GIRLS") were participating in a promotion wherein they were throwing souvenirs to Sports Book/Sports Bar patrons while blindfolded.

10.

That the agents, employees, and/or assigns of the PALMS RESORT known as the PALM GIRLS were contracted from, supplied by, and/or otherwise provided by an agency, company, and/or other business entity hereby designated as ROE BUSINESS ENTITY #1.

11.

In response to an unknown PALMS GIRL (hereby designated as "JANE DOE #1") throwing souvenirs in the Sports Book/Sports Bar while blind-folded, a customer within the Sports Book/Sports Bar dove for a thrown souvenir and hit Plaintiff's extended and stationary left knee. Plaintiff then struck the person next to him, hitting the left side of his head, then falling down, thereby sustaining the injuries and damages alleged herein.

**FIRST CAUSE OF ACTION**

**(Defendants JANE DOE #1, individually; ROE BUSINESS ENTITY #1; PALMS RESORT: Negligence)**

12.

That on or about November 22, 2004, Defendant JANE DOE #1 negligently, carelessly, and recklessly threw souvenirs into the crowd at the PALMS RESORT sport book while blindfolded, thereby creating a frenzy among the patrons of said Sports Book/Sports Bar, thereby causing an unknown patron of the Sports Book/Sports Bar to impact with Plaintiff ENRIQUE RODRIGUEZ' knee, thereby causing the injuries and damages complained of herein.



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13.

That on or about November 22, 2004, Defendant, PALMS RESORT, and/or its employees, agents or assigns, negligently, carelessly and recklessly caused, allowed, and permitted Defendant JANE DOE #1 to throw said souvenirs while blindfolded, causing a frenzy among customers, resulting in a situation that Defendant PALMS RESORT, knew, or should have known, was unreasonably dangerous to patrons of the Sports Book/Sports Bar, in particular to Plaintiff ENRIQUE RODRIGUEZ, thereby causing the injuries and damages alleged herein.

14.

That on or about November 22, 2004, Defendant, ROE BUSINESS ENTITY #1, and/or its employees, agents or assigns, negligently, carelessly and recklessly caused, allowed, and permitted Defendant "JANE DOE #1 to throw said souvenirs, causing a frenzy among patrons of the Sports Book/Sports Bar, resulting in a situation that Defendant PALMS RESORT, knew, or should have known, was unreasonably dangerous to patrons of the Sports Book/Sports Bar, in particular to Plaintiff ENRIQUE RODRIGUEZ, thereby causing the injuries and damages alleged herein.

15.

That the aforesaid acts of Defendants, PALMS RESORT, JANE DOE #1, and/or ROE BUSINESS ENTITY #1, and/or their employees, agents or assigns were breaches of the duty of reasonable care owed by said Defendants to Sports Book/Sports Bar patrons, and in particular to Plaintiff ENRIQUE RODRIGUEZ.

16.

That all acts and omissions alleged with respect to Defendant JANE DOE #1 occurred while said defendant was acting within the scope and course of her agency, employment and or



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assignment with Defendant PALMS RESORT and ROE BUSINESS ENTITY #1, and each of them. Defendants PALMS RESORT and ROE BUSINESS ENTITY #1, and each of them, are therefore vicariously, contractually, statutorily and/or otherwise liable for the negligence, carelessness and recklessness of Defendant JANE DOE #1 as alleged herein.

17.

As a direct and proximate result of the negligence, carelessness and recklessness of Defendants, PALMS RESORT, JANE DOE #1, and/or ROE BUSINESS ENTITY #1, 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.

18.

That as a direct and proximate result of the negligence, carelessness and recklessness of Defendants PALMS RESORT, JANE DOE #1, and/or ROE BUSINESS ENTITY #1, 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; ROE BUSINESS ENTITY #1: Negligent Employee Hiring, Training, Retention and Supervision)**

19.

Plaintiff realleges and reasserts each and every statement contained in the above Paragraphs, inclusive. Plaintiff further alleges as follows:



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20.

At all time relevant hereto, Defendant PALMS RESORT and/or ROE BUSINESS ENTITY #1, and each of them, was the employer of and/or otherwise in control of Defendant, JANE DOE #1.

21.

At and before the time of the subject incident, Defendants PALM RESORT and ROE BUSINESS ENTITY #1, and each of them, had a duty to adequately and reasonably hire, train, and supervise Defendant JANE DOE #1, 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, employees.

22.

At all times pertinent hereto, Defendants PALMS RESORT and ROE BUSINESS ENTITY #1, and each of them, negligently and carelessly breached said standard of care by, but not limited to, failing to ascertain said Defendants 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, instructing and allowing for the distribution of souvenirs while blindfolded, 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.

23.

That as a direct and proximate result of the negligent and careless hiring, training, supervision and retention of Defendant JANE DOE #1 by Defendants PALMS RESORT and ROE BUSINESS ENTITY #1, 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.



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24.

That as a direct and proximate result of the negligent and careless hiring, training, supervision and retention of Defendant JANE DOE #1 by Defendants PALMS RESORT and ROE BUSINESS ENTITY #1, 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: Punitive Damages)**

25.

Plaintiff reaffirms and realleges all of the allegations contained in the paragraphs above as though fully set herein. Plaintiff further alleges as follows:

26.

The aforesaid actions and omissions of Defendants PALMS RESORT, ROE BUSINESS ENTITY #1, JANE DOE #1, were malicious, intentional, oppressive and/or in conscious and reckless disregard of the consequences to PALMS RESORT patrons, and in particular to Plaintiff ENRIQUE RODRIGUEZ.

27.

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.



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28.

That as a direct and proximate result of aforesaid malicious, intentional, oppressive or recklessly disregarded actions and omissions of Defendants, 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).

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

**FIRST CAUSE OF ACTION**

1. For general damages and loss in an amount in excess of TEN THOUSAND DOLLARS (\$10,000);
2. For special damages in an amount to be determined at time of trial;
3. For loss of income and earning capacity in an amount as yet undetermined;
4. For reasonable attorneys fees, pre and post-judgment interest, and costs of suit; and
5. For such other and further relief as the Court may deem just and proper.

**SECOND CAUSE OF ACTION**

1. For general damages and loss in an amount in excess of TEN THOUSAND DOLLARS (\$10,000);
2. For special damages in an amount to be determined at time of trial;
3. For loss of income and earning capacity in an amount as yet undetermined;
4. For reasonable attorneys fees, pre and post-judgment interest, and costs of suit; and



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

**THIRD CAUSE OF ACTION**

1. For general damages and loss in an amount in excess of TEN THOUSAND DOLLARS (\$10,000);

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

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

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

5. For reasonable attorneys fees, pre and post-judgment interest, and costs of suit; and

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

DATED this 13<sup>th</sup> day of November, 2006.

BENSON, BERTOLDO, BAKER & CARTER, CHTD.

BY: 

W. JONATHAN WEBER, ESQ.  
Nevada Bar No. 7554  
7408 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Attorneys for Plaintiff

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ANS  
JEFFERY A. BENDAVID, ESQ.  
Nevada Bar No. 6220  
MORAN LAW FIRM, LLC  
630 South Fourth Street  
Las Vegas, Nevada 89101  
(702) 384-8424  
Attorney for Defendant,  
*Fiesta Palms, LLC*

FILED

APR 23 1 54 PM '07

*Cliff*  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual, )  
)  
Plaintiff, )  
)  
)  
)  
vs. )  
)  
)  
FIESTA PALMS, L.L.C., a Nevada )  
Limited Liability Company, dba PALMS )  
CASINO RESORT; DOES I through X, )  
Inclusive; and ROE CORPORATIONS, )  
I -X, inclusive, )  
)  
Defendants. )  
)

Case No. A531538  
Dept . No. X

**DEFENDANT FIESTA PALM'S LLC dba PALMS CASINO RESORT'S**  
**ANSWER TO PLAINTIFF'S COMPLAINT**

COMES NOW, Defendant FIESTA PALMS, LLC dba PALMS CASINO  
RESORT ("FIESTA PALMS") through its attorney of record, JEFFERY A.  
BENDAVID, ESQ., of the MORAN LAW FIRM, LLC, hereby answers Plaintiff's  
Complaint on file herein as follows:

RECEIVED  
APR 23 2007  
CLERK OF THE COURT



MORAN LAW FIRM LLC  
MORAN BRANDON BENDAVID MORAN  
ATTORNEYS AT LAW  
630 SOUTH 4TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: (702) 384-8424  
FAX: (702) 384-6568





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**GENERAL ALLEGATIONS**

1. As to Paragraph 1 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

2. As to Paragraph 2 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

3. As to Paragraph 3 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

4. As to Paragraph 4 of Plaintiff's Amended Complaint on file herein, Defendant FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

5. As to Paragraph 5 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

6. As to Paragraph 6 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

7. As to Paragraph 7 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

8. As to Paragraph 8 of Plaintiff's Complaint on file herein, Defendant



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FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

9. As to Paragraph 9 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

10. As to Paragraph 10 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

11. As to Paragraph 11 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

**FIRST CAUSE OF ACTION**

12. As to paragraph 12 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

13. As to paragraph 13 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

14. As to paragraph 14 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

15. As to paragraph 15 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

16. As to paragraph 16 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

17. As to paragraph 17 of Plaintiff's Complaint on file herein, Defendant



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MORAN BRANDON BENDAVID MORAN  
ATTORNEYS AT LAW

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FIESTA PALMS denies the allegations contained therein.

18. As to paragraph 18 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

**SECOND CAUSE OF ACTION**

19. As to Paragraph 19 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS repeats and realleges each and every response to paragraphs above.

20. As to paragraph 20 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

21. As to paragraph 21 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

22. As to paragraph 22 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

23. As to paragraph 23 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

24. As to paragraph 24 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS denies the allegations contained therein.

**THIRD CAUSE OF ACTION**

25. As to Paragraph 25 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS repeats and realleges each and every response to paragraphs above. Additionally, Defendant denies each allegation in the paragraph. Also Plaintiff's Third Cause of Action has been dismissed pursuant to the Stipulation and Order dated December 26, 2006.



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26. As to Paragraph 26 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS repeats and realleges each and every response to paragraphs above. Additionally, Defendant denies each allegation in the paragraph. Also Plaintiff's Third Cause of Action has been dismissed pursuant to the Stipulation and Order dated December 26, 2006.

27. As to Paragraph 27 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS repeats and realleges each and every response to paragraphs above. Additionally, Defendant denies each allegation in the paragraph. Also Plaintiff's Third Cause of Action has been dismissed pursuant to the Stipulation and Order dated December 26, 2006.

28. As to Paragraph 28 of Plaintiff's Complaint on file herein, Defendant FIESTA PALMS repeats and realleges each and every response to paragraphs above. Additionally, Defendant denies each allegation in the paragraph. Also Plaintiff's Third Cause of Action has been dismissed pursuant to the Stipulation and Order dated December 26, 2006.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Amended Complaint on file herein fails to state a claim against Defendant FIESTA PALMS on which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs are estopped from pursuing any claim against the Defendant FIESTA PALMS.



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**THIRD AFFIRMATIVE DEFENSE**

Any claims of the Plaintiffs are barred by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs have not suffered any injury be reason of any act, or omission, by this Defendant FIESTA PALMS; therefore Plaintiffs do not have any right or standing to assert the claims at issue.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs failed to mitigate their damages received, if any, and therefore, any recovery awarded to the Plaintiffs against the Defendant FIESTA PALMS should be reduced by that amount not mitigated.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred by the doctrine of unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

By virtue of the acts, deeds, conduct and/or the failure or omission to act under the circumstances, the Plaintiffs have waived their rights, if any existed, to assert the claims against the Defendant FIESTA PALMS.

**EIGHTH AFFIRMATIVE DEFENSE**

The damages which are alleged to have been incurred by the Plaintiffs, if any in fact were suffered by Plaintiffs were the direct result in whole or in part, of the Plaintiffs' own intentional, willful, and/or negligent acts and deeds.

**NINTH AFFIRMATIVE DEFENSE**

The claims of the Plaintiffs as alleged in the Complaint, and the loss of damage, if any in fact exist, are the direct and proximate result of the acts, deeds,



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omissions or failure to act, or the conduct of third parties, over whom the Defendant FIESTA PALMS had no control, nor the right, duty or obligation to control.

**TENTH AFFIRMATIVE DEFENSE**

The Plaintiffs lack standing to bring the claims asserted in this lawsuit against this Defendant FIESTA PALMS.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendant FIESTA PALMS denies the allegations of Plaintiffs' Complaint and demand strict proof thereof.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because any alleged injuries to Plaintiffs were the result of superseding or intervening causes.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because Plaintiffs' alleged injuries were not caused by any improper or unwarranted action by Defendant FIESTA PALMS.

**FOURTEENTH AFFIRMATIVE DEFENSE**

It has been necessary for the Defendant FIESTA PALMS to employ the services of an attorney to defend this action and a reasonable sum should be allowed to Defendant FIESTA PALMS for attorney's fees together with costs incurred herein.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Some of the foregoing Affirmative Defenses have been plead for purposes of non-waiver. Defendant FIESTA PALMS has not concluded discovery in this matter



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and specifically reserves the right to amend this Answer to include additional Affirmative Defenses if discovery of facts so warrant.

**WHEREFORE**, Defendant prays for judgment as follows:

1. That Plaintiffs take nothing by way of their Amended Complaint on file herein;
2. For reasonable attorney's fees and costs of suit incurred herein; and
3. For such other and further relief as this Court may deem just and proper in the premises.

DATED this 20 of April, 2007

**MORAN LAW FIRM, LLC**

  
\_\_\_\_\_  
**JEFFERY A. BENDAUID, ESQ.**  
Nevada Bar No. 6220  
630 South 4<sup>th</sup> Street  
Las Vegas, Nevada 89101  
*Attorney for Fiesta Palms, LLC*



**MORAN LAW FIRM, LLC**  
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**CERTIFICATE OF MAILING**

I hereby certify that on the 23 day of April, 2007, I served the foregoing

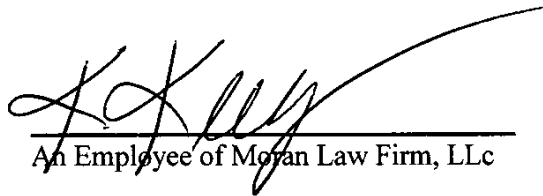
**DEFENDANT FIESTA PALM'S LLC dba PALMS CASINO RESORT'S**

**ANSWER TO PLAINTIFFS' COMPLAINT** upon each of the parties to this

action by depositing copies in the United States mail, pre-paid, addressed to them as

follows:

W. JONATHAN WEBER, ESQ  
7408 W. SAHARA AVE  
LAS VEGAS, NV 89117

  
An Employee of Moran Law Firm, LLC



MORAN LAW FIRM, LLC  
MORAN BRANDON BEN DAVID MORAN  
ATTORNEYS AT LAW

630 SOUTH 4TH STREET  
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ORIGINAL



7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

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**ACOM**  
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  
e-mail : [monique@bensonlawyers.com](mailto:monique@bensonlawyers.com)  
Attorneys for Plaintiff

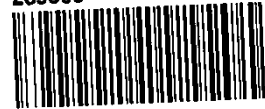
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*Erin J. Smith*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

06A531538  
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\*\*\*

ENRIQUE RODRIGUEZ, an individual,  
Plaintiff,

CASE NO: A531538  
DEPT NO: 10

vs.

AMENDED COMPLAINT

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.

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

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1.

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

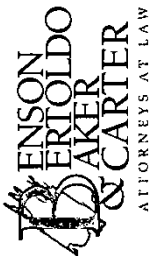
2.

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

BENSON  
BERTOLDO  
BAKER  
& CARTER  
ATTORNEYS AT LAW

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

3.

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

4.

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

5.

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



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

6.

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

7.

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

8.

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

9.

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

10.

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



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

**FIRST CAUSE OF ACTION**  
(Negligence of BRANDY L. BEAVERS and PALMS RESORT)

11.

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

12.

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

13.

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

14.

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



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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.



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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.



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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,



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medical expenses, loss of income, loss of earning capacity, disability, 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).

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

**FIRST CAUSE OF ACTION**

1. For general damages and loss in an amount in excess of Ten Thousand Dollars (\$10,000);
  2. For special damages in an amount to be determined at time of trial;
  3. For loss of income and earning capacity in an amount as yet undetermined;
  4. For reasonable attorney's fees, pre and post-judgment interest, and cost of suit;
- and
5. For such other and further relief as the Court may deem just and proper.

**SECOND CAUSE OF ACTION**

1. For general damages and loss in an amount in excess of Ten Thousand Dollars (\$10,000);
  2. For special damages in an amount to be determined at time of trial;
  3. For loss of income and earning capacity in an amount as yet undetermined;
  4. For reasonable attorneys fees, pre and post-judgment interest, and cost of suit;
- and
5. For such other and further relief as the Court may deem just and proper.

**THIRD CAUSE OF ACTION**

1. For general damages and loss in an amount in excess of Ten Thousand Dollars (\$10,000);
2. For special damages in an amount to be determined at time of trial;
3. For punitive damages in an amount to be determined at trial;
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](mailto:susan@bensonlawyers.com)  
Attorneys for Plaintiff



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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of BENSON, BERTOLDO, BAKER & CARTER and that on the 8<sup>th</sup> day of July, 2009, I served a true and correct copy of the above and foregoing Ameneded Complaint \*\*\* on the parties as shown below:

o 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)]

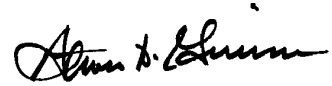
addressed as follows:

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: Juan C. Rhoder  
An Employee of:  
BENSON, BERTOLDO, BAKER & CARTER



CLERK OF THE COURT

1 **NEO**  
2 Marsha L. Stephenson, Esq. (NV Bar No. 6130)  
3 STEPHENSON & DICKINSON, P.C.  
4 2820 West Charleston Blvd., Suite 19  
5 Las Vegas, NV 89102-1942  
6 Telephone: (702) 474-7229  
7 Facsimile: (702) 474-7237

8 Kenneth C. Ward, Esq. (NV Bar No. 6530)  
9 ARCHER NORRIS  
10 2033 North Main Street, Suite 800  
11 P.O. Box 8035  
12 Walnut Creek, CA 94596  
13 Telephone: (925) 930-6600  
14 Facsimile: (925) 930-6620

15 *Co-Counsel for Defendant*  
16 FIESTA PALMS, LLC  
17 d/b/a THE PALMS CASINO RESORT

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

20 ENRIQUE RODRIGUEZ

21 Plaintiff,

22 vs.

23 FIESTA PALMS, LLC, a Nevada Limited  
24 Liability Company d/b/a PALMS CASINO  
25 RESORT; DOES I through X, inclusive; and  
26 ROE BUSINESS ENTITIES I through X,  
27 inclusive,

28 Defendants.

CASE NO. A531538

DEPT. NO. X

**NOTICE OF ENTRY OF ORDER**

YOU AND EACH OF YOU PLEASE TAKE NOTICE THAT an Order to Continue  
Discovery and Trial was entered by this Honorable Court on the 24<sup>th</sup> day of November, 2009.

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A copy of said Order is attached hereto.

DATED this 25<sup>th</sup> day of November, 2009.

STEPHENSON & DICKINSON

By: Marsha Stephenson

Marsha L. Stephenson, Esq.  
Nevada Bar No. 6130  
2820 West Charleston Blvd., Suite 19  
Las Vegas, Nevada 89102  
*Attorneys for Defendant Fiesta Palms, LLC  
d/b/a The Palms Casino Resort*

**CERTIFICATE OF MAILING**

The undersigned does hereby certify that on the 25<sup>th</sup> day of November, 2009 a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** was mailed to the following parties via U.S. Postal Service, first class mail, postage prepaid and addressed as follows:

Steven Baker, Esq.  
BENSON, BERTOLDO & BAKER, CHTD.  
7408 W. Sahara Avenue  
Las Vegas, NV 89117  
Telephone: (702) 228-2600  
*Attorney for Plaintiff*

Kenneth C. Ward, Esq.  
Keith Gillette, Esq.  
ARCHER NORRIS  
2033 North Main Street, Suite 800  
P.O. Box 8035  
Walnut Creek, CA 94596  
Telephone: (925) 930-6600  
Facsimile: (925) 930-6620  
*Attorneys for Defendant Fiesta Palms, LLC  
d/b/a The Palms Casino*

James C. Ward  
Employee of STEPHENSON & DICKINSON

1 **SAO**  
Jeffrey A. Bendavid, Esq. (NV Bar No. 6220)  
2 **MORAN LAW FIRM, LLC**  
630 South Fourth Street  
3 Las Vegas, NV 89101  
Telephone: 702.384.8424  
4 Facsimile: 702.384.6568

5 Marsha L. Stephenson, Esq. (NV Bar No. 6130)  
**STEPHENSON & DICKINSON, P.C.**  
6 2820 West Charleston Blvd., Suite 19  
7 Las Vegas, NV 89102-1942  
Telephone: (702) 474-7229  
8 Facsimile: (702) 474-7237

9 Kenneth C. Ward (Bar No. 6530)  
**ARCHER NORRIS**  
10 A Professional Law Corporation  
2033 North Main Street, Suite 800  
11 PO Box 8035  
Walnut Creek, California 94596-3728  
12 Telephone: 925.930.6600  
Facsimile: 925.930.6620

13 Attorneys for Defendant **FIESTA PALMS, LLC**, a  
14 Nevada Limited Liability Company, d/b/a/ **THE**  
**PALMS CASINO RESORT**

15  
16 **DISTRICT COURT**  
17 **CLARK COUNTY, NEVADA**  
18

19 **ENRIQUE RODRIGUEZ,**  
20 **Plaintiff,**  
21 **v.**  
22 **FIESTA PALMS, LLC**, a Nevada Limited  
Liability Company, d/b/a/ **The Palms Casino**  
23 **Resort, BRANDY L. BEAVERS,**  
24 **individually, DOES I through X, inclusive and**  
**ROE BUSINESS ENTITIES I through X,**  
25 **inclusive,**  
26 **Defendants.**

Case No. A531538  
Dept. No. X

**STIPULATION AND ORDER TO**  
**CONTINUE DISCOVERY AND TRIAL**  
**(SECOND REQUEST)**

27 The parties hereby stipulate and agree to continue discovery and the current trial date of  
28 December 7, 2009 in this case.

ZA126/864803-1

**FILED**  
**NOV 24 2009**  
*Alan H. Johnson*  
**CLERK OF COURT**

1 This request is made for good cause, and specifically due to the fact that plaintiff filed an  
2 amended complaint on July 6, 2009. This amended complaint brings in a new party to the action,  
3 Ms. Brandy Beavers. Ms. Beavers has not yet been served with the amended complaint. Plaintiff is  
4 also continuing medical treatment.

5 Discovery Completed to Date

6 Pursuant to EDCR 2.35 (b), the parties make the following representations:

7 The parties have exchanged NCRP 16.1 initial disclosures, with Plaintiff and Defendant  
8 supplementing same 16 and 14 times, respectively.

9 The parties have exchanged written discovery and document demands, and have responded  
10 to same.

11 The parties have deposed the following witnesses:

12 Fiesta Palms PMK – Ms. Vikki Kooinga

13 Fiesta Palms PMK – Ms. Sherri Long

14 Fiesta Palms PMK – Mr. Frank Schiula

15 Ms. Brandy Beavers

16 Plaintiff Enrique Rodriguez

17 A. Discovery that Remains to be Completed

18 1. Written and document discovery from newly-named party, Ms. Brandy  
19 Beavers;

20 2. Additional written discovery may be required and additional medical  
21 records will be produced by Plaintiff's treating doctors, several of whom are currently residing in  
22 California;

23 3. Plaintiff's taxable income information is being developed by plaintiff's  
24 counsel;

25 4. Depositions of several health care providers; and,

26 5. Disclosure and depositions of additional experts and rebuttal experts.

27 After this discovery is completed, a mediation session will be scheduled.

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B. Reasons Discovery Not Completed by Deadline Set by Discovery Order

As noted above, plaintiff has recently named a new party to the action but who has not yet appeared in this action. Additional discovery may be needed as to Plaintiff's recent medical treatment. The parties submit this request for additional time is not due to any delay on the part of either party, nor caused by bad faith or the unwillingness by either side to meaningfully participate in the discovery process. The parties have fully participated in all discovery to date.

C. Proposed Schedule for Completion of Discovery

This is the parties' second request to continue discovery and trial. The dates below were agreed upon between counsel. The parties propose the new schedule for discovery be as follows:

- Additional Initial Expert Disclosures: June 15, 2010
- Rebuttal Expert Disclosures: July 15, 2010
- Discovery Cut Off: ~~August 2, 2010~~
- Dispositive Motions: ~~September 3, 2010~~

*September 15, 2010 BR*  
*October 15, 2010 BR*  
*Please see*  
*W/10/1/10*

D. Current Trial Date

This matter is set for trial to begin on December 7, 2009. The parties respectfully request a continuance of this trial.

Respectfully submitted this 13 day of November, 2009.

<p>BENSON, BERTOLDO &amp; BAKER, CHTD.</p> <p>By: <u><i>ab</i></u></p> <p>STEVE BAKER, ESQ. Nevada Bar No. 4522 7408 W. Sahara Avenue Las Vegas, Nevada 89117 Attorney for Plaintiff ENRIQUE RODRIGUEZ</p>	<p>STEPHENSON &amp; DICKINSON, P.C.</p> <p>By: <u><i>Marsha L. Stephenson</i></u></p> <p>MARSHA L. STEPHENSON, ESQ. Nevada Bar No. 6130 2820 W. Charleston Boulevard, Suite 19 Las Vegas, Nevada 89102 FIESTA PALMS, LLC, a Nevada Limited Liability Company, d/b/a THE PALMS CASINO RESORT</p>
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**ORDER**

The discovery deadlines will be extended as  
IT IS SO ORDERED. agreed to by the parties and modified  
by the Commissioner;  
a separate  
amended scheduling

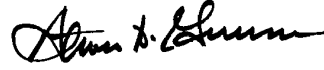
DATED THIS 23 day of November, 2009. Order will NOT  
be issued; the trial  
date of 12-7-09 will  
be vacated and  
reset

D.J. in accordance  
DISCOVERY COMMISSIONER With this  
Stipulation; this  
case will be  
ready for trial  
by November  
29, 2010. BN

Respectfully submitted by:  
STEPHENSON & DICKINSON, P.C.

By: Marsha L. Stephenson  
Marsha L. Stephenson, Esq.  
Nevada Bar No. 6130  
2820 West Charleston Boulevard, Suite 19  
Las Vegas, Nevada 89102  
Telephone: (702) 474-7229  
Attorneys for Defendant FIESTA PALMS, LLC,  
a Nevada Limited Liability Company, d/b/a  
THE PALMS CASINO RESORT





CLERK OF THE COURT

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REQT  
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.

**REQUEST FOR TRIAL SETTING**

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

I hereby request that a trial date be set in the above-entitled matter. I represent to the Court that the case is at issue; that no amended or supplemental complaint or cross-complaint or other affirmative pleading remains unanswered; that to my knowledge no other parties will be served with a summons prior to the time of trial, and I know of no further pleading to be filed and know of no reason why this case should not be tried as soon as the schedule of the Court will permit.

This case arises from a premises liability action on November 22, 2004 wherein Plaintiff ENRIQUE RODRIGUEZ was injured at the Palms Casino. The Complaint in this matter was filed November 15, 2006. Extensive discovery has been conducted, including an Independent Medical Examination. The Amended Summons and Amended Complaint were published for






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service upon Brandy Beavers by Nevada Legal News weekly from December 14, 2009 through January 11, 2010. The Amended Summons and Amended Complaint were further posted for service upon Ms. Beavers at the Clark County Regional Justice Center on January 13, 2010. No appearance having been made, a Default was issued against Brandy Beavers on February 19, 2010 and filed with this Honorable Court on February 25, 2010.

This case is docketed for a bench trial and requires approximately 7 court days.

DATED this 7<sup>th</sup> day of March, 2010.

BENSON, BERTOLDO, BAKER & CARTER

BY:   
STEVEN M. BAKER, ESQ.  
Nevada Bar No.4522  
7408 West Sahara Avenue  
Las Vegas, Nevada 89117  
Attorneys for Plaintiff

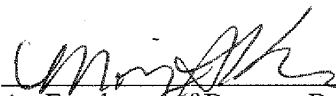


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3rd day of March, 2010, a true and correct copy of Plaintiff's REQUEST FOR TRIAL SETTING was mailed in a sealed envelope by U.S. Mail, postage prepaid to the following addressees:

10676-05 Jeffery A. Bendavid, Esq. Adam S. Davis, Esq. Moran Law Firm 630 South Fourth Street Las Vegas, Nevada 89101 702-384-8424 Telephone 702-384-6568 Facsimile Co-Counsel for Defendant Fiesta Palms, LLC	10676-05 Kenneth C. Ward, Esq. Keith Gillette, Esq. Archer, Norris 2033 North Main Street, Suite 800 P.O. Box 8035 Walnut Creek, California 94596-3728 925-930-6600 Telephone 925-930-6620 Facsimile Attorneys for Defendant
10676-05 Marsha L. Stephenson, Esq. Stephenson & Dickinson 2820 West Charleston Blvd., Suite 19 Las Vegas, Nevada 89102-1942 702-474-7229 Telephone 702-474-7237 Facsimile Co-counsel for Defendant	

  
An Employee of Benson, Bertoldo, Baker & Carter

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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

ENRIQUE RODRIGUEZ, an individual,  
Plaintiff,

CASE NO: A531538  
DEPT NO: 10

vs.

AMENDED ORDER SETTING  
BENCH TRIAL

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.

IT IS HEREBY ORDERD THAT:

A. The above entitled case is set for a BENCH TRIAL on October 4, 2010 at 9:00 a.m.

B. A Pre-Trial Conference with the designated attorney and/or parties in proper person  
will be held on September 10, 2010 at 9:00 a.m.

C. A Calendar Call will be held September 24, 2010 at 9:00 a.m. Trial counsel (any any  
party in proper person) must appear.

D. The Pre-trial Memorandum must be filed no later than 9-22, 2010,  
with a courtesy copy delivered to chambers. EDCR 2.67 must be complied with.

E. All discovery deadlines, deadline for filing dispositive motions and motions to amend  
the pleadings or add parties are controlled by the Stipulation to Extend Discovery filed on  
November 24, 2009.

F. Stipulations to continue a trial date will not be considered by the Court. Pursuant to  
EDCR 2.35, a motion to continue trial due to any discovery issues or deadlines must be made  
before the Discovery Commissioner.

G. All motions in limine shall be filed at least 45 days prior to trial.

CLERK OF THE COURT

RECEIVED  
MAY 11 2010

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BENSON  
BERTOLDO  
AKER  
& CARTER  
ATTORNEYS AT LAW

MC

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BAKER  
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CARTER**  
ATTORNEYS AT LAW

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H. Orders shortening time will not be signed except in extreme emergencies.

**AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY**

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action; (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

Counsel must advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall indicate whether a Scheduling Order has been filed and, if a date has been set, the date of that trial.

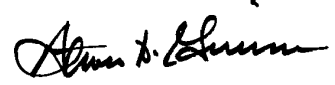
DATE: May 7, 2010

Jessie Walsh  
JESSIE WALSH, District Judge

I hereby certify that on the date filed, I caused to be Placed a copy of the foregoing Order in the folder(s) in the Clerk's Office or mailed to the following:

Steven M. Baker, Esq. (Benson, Bertoldo, Baker & Carter, Chtd.)  
Marsha Stephenson, Esq. (Stephenson & Dickinson)  
Keith Gillette, Esq. (Archer, Norris)

Jeri Winter  
JERI WINTER, Judicial Assistant



CLERK OF THE COURT

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**B**ERTOLDO  
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& **C**ARTER  
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STEVEN M. BAKER  
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Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\*\*\*


ENRIQUE RODRIGUEZ, an individual,	CASE NO: A531538
Plaintiff,	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.	

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order denying Defendant's Motion for Mistrial, or in the Alternative, Motion to Strike Plaintiff's Confidential Trial Brief was filed on the 10<sup>th</sup> day of March, 2011. A copy of said Order is attached hereto.

Date: 3/14/11

BENSON, BERTOLDO, BAKER & CARTER



---

STEVEN M. BAKER  
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Attorneys for Plaintiff



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14<sup>th</sup> day of March, 2011, a true and correct copy of the above referenced document was served via 1<sup>st</sup> Class, U.S. Mail, postage thereon fully prepaid to the following interested parties:

KC Ward, Esq.  
Archer Norris  
2033 North Main Street, Suite 800  
P.O. Box 8035  
Walnut Creek, California 94596  
Co-counsel for Fiesta Palms

Jeffery A. Bendavid, Esq.  
Moran & Associates  
630 S. Fourth St.  
Las Vegas, NV 89101  
Attorneys for Defendant Fiesta Palms

Marsha L. Stephenson, Esq.  
Stephenson & Dickinson  
2820 West Charleston Blvd., Suite 19  
Las Vegas, Nevada 89102  
Co-counsel for Fiesta Palms

  
An Employee of Benson, Bertoldo, Baker & Carter

*Alvin D. ...*  
CLERK OF THE COURT

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**B** ENSON  
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9 Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\*\*\*

10 ENRIQUE RODRIGUEZ, an individual,  
11 Plaintiff,  
12 vs.  
13 FIESTA PALMS, L.L.C., a Nevada Limited  
14 Liability Company, d/b/a PALMS CASINO  
15 RESORT, BRANDY L. BEAVERS,  
16 individually, DOES 1 through X, inclusive,  
17 and ROE BUSINESS ENTITIES I through X,  
18 inclusive,  
19 Defendants.

CASE NO: A531538  
DEPT NO: 10  
**BENCH TRIAL DATE: 10/25/10**  
**HEARING DATE: 1/31/11**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

20 THIS MATTER having come on for hearing on January 31, 2011 with respect to  
21 Defendant's Motion for Mistrial, or in the Alternative, Motion to Strike Plaintiff's  
22 Confidential Trial Brief, before the Honorable Jessie Walsh, presiding, and the Court having  
23 considered the evidence and the arguments of counsel and taken the matter under advisement  
24 for further consideration, this Court finds and concludes as follows:

**FINDINGS OF FACT**

25  
26  
27 Subsequent to the close of evidence, Defendant filed a Motion for Mistrial, or in the  
28 Alternative, Motion to Strike Plaintiff's Confidential Brief.





1 Defendant argued that Plaintiff served secret pre-trial and trial briefs and engaged in a  
2 systemic *ex parte* communication with the Court, rendering the trial unfair and impartial.  
3 This matter was originally set for a Bench Trial to begin on October 4, 2010. Plaintiff, in  
4 accordance with EDCR 7.27, submitted his Confidential Trial brief to this Court on September  
5 27, 2010. At no point during the evidentiary portion of the trial, or otherwise, did Plaintiff file  
6 or submit any additional *confidential* briefs.  
7

8 Rather, in anticipation of Defendant bringing a Rule 52 Motion on the issue of Punitive  
9 Damages, Plaintiff's counsel prepared a "Supplemental Confidential Bench Brief Re: Punitive  
10 Damages (dated November 10, 2010, the date the parties rested) which detailed the trial  
11 testimony of Defendant's employees and security expert. It was Plaintiff's intention to file and  
12 serve the Supplemental Brief when the Defendant moved for Judgment on the issue of punitive  
13 damages. The Supplemental brief was *never submitted, served or filed*, because Defendant  
14 never argued, after the close of evidence but prior to the case being submitted for deliberation,  
15 that the punitive damage claim be dismissed.  
16

17 After the close of evidence, Defendant filed and served a "Post-Trial Brief," which  
18 among other things, argued for the rejection of any punitive damages. Plaintiff inadvertently  
19 made reference to the Supplemental Confidential Brief Re: Punitive Damages, rather than  
20 reiterating the content of the same, in a Motion to Strike said "Post-Trial Brief". This was the  
21 first time such brief was referenced to the Court (in the context of Plaintiff's Motion to  
22 Strike), and it was never filed, submitted or provided in a confidential and/or *ex parte* manner  
23 as suggested by counsel.  
24

25 The EDCR 7.27 Brief was filed and served by Plaintiff before a finding on the liability  
26 issue and verdict. Defendant did not object to, nor question, the propriety of any aspect of the  
27 Confidential Trial Brief filed in this matter.  
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Counsel for Plaintiff filed with their Opposition to Motion for Mistrial affidavits stating under oath that no Supplemental Confidential Trial Briefs were submitted by them after the commencement of trial and that no *ex parte* communication with this Honorable occurred. This Court also finds that no Supplemental Confidential Trial Briefs were submitted or filed by the Plaintiff and that no *ex parte* communication with the Plaintiff occurred. At the hearing on Defendant's Motion for Mistrial, Counsel for Plaintiff requested an evidentiary hearing on the issue of *ex parte* communication should said contention not be abandoned by the Defendant. Counsel for Defendant, at that time, stated that Defendant was satisfied that no *ex parte* communication occurred.

CONCLUSIONS OF LAW

Plaintiff provided the Court with one, and only one, Confidential Trial Brief before the commencement of trial, which was served on Defendant on December 14, 2010, in accordance with EDCR 7.27.

Plaintiff provided the Court with **no** supplements thereto at any time during trial.

Plaintiff and his counsel did not engage in *ex parte* communication with the Court.

As no *ex parte* communication occurred between the Court and the Plaintiff, the Court was under no obligation to divulge the same.

As no *ex parte* communication occurred between the Court and the Plaintiff, no irregularities occurred with respect to said issue and Defendant's Due Process rights were not impacted.

Plaintiff's permissive Confidential Brief was submitted to the Court prior to the commencement of trial on October 25, 2010.

Plaintiff served his permissive Confidential Brief *before the close of trial*, on



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December 14, 2010.

As the Court is still deliberating, and has yet to render a decision, service of Plaintiff's brief on December 14, 2010 was appropriate pursuant to EDCR 7.27.

DATED this 7<sup>th</sup> day of February, 2011.

BENSON, BERTOLDO, BAKER & CARTER

BY: 

STEVEN M. BAKER, ESQ.  
Nevada Bar No.4522  
7408 West Sahara Avenue  
Las Vegas, Nevada 89117  
Attorneys for Plaintiffs

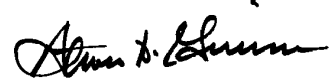
**ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Mistrial is denied.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Alternative Motion to Strike Plaintiff's Confidential Brief is denied.

Date: 3/2/11

  
DISTRICT COURT JUDGE



CLERK OF THE COURT

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**B**ENSON  
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Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \*

ENRIQUE RODRIGUEZ, an individual,  Plaintiff,  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.	CASE NO: A531538  DEPT NO: 10
--	-------------------------------------

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order granting Plaintiff's Motion on the Issue of Liability was filed on the 10<sup>th</sup> day of March, 2011. A copy of said Order is attached hereto.

Date: 3/14/11

BENSON, BERTOLDO, BAKER & CARTER



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14<sup>th</sup> day of March, 2011, a true and correct copy of the above referenced document was served via 1<sup>st</sup> Class, U.S. Mail, postage thereon fully prepaid to the following interested parties:

KC Ward, Esq.  
Archer Norris  
2033 North Main Street, Suite 800  
P.O. Box 8035  
Walnut Creek, California 94596  
Co-counsel for Fiesta Palms

Jeffery A. Bendavid, Esq.  
Moran & Associates  
630 S. Fourth St.  
Las Vegas, NV 89101  
Attorneys for Defendant Fiesta Palms

Marsha L. Stephenson, Esq.  
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2820 West Charleston Blvd., Suite 19  
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Co-counsel for Fiesta Palms

  
An Employee of Benson, Bertoldo, Baker & Carter

CLERK OF THE COURT

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& CARTER  
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8 Facsimile : (702) 228-2333  
9 Attorneys for Plaintiff

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 \* \* \*

13 ENRIQUE RODRIGUEZ, an individual,  
14 Plaintiff,

15 vs.

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

22 Defendants.

CASE NO: A531538

DEPT NO: 10

**BENCH TRIAL DATE: 10/25/10**

**HEARING DATE: 1/31/11**

23 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

24 THIS MATTER having come on for hearing on January 31, 2011 with respect to  
25 Plaintiff's Rule 52 (erroneously designated "Rule-50") Motion on the Issue of Liability before  
26 the Honorable Jessie Walsh, presiding, and the Court having considered the evidence and the  
27 arguments of counsel and taken the matter under advisement for further consideration, it is  
28 hereby found and concluded as follows:

**FINDINGS OF FACT**

During the course of this trial, Plaintiff established that, prior to the subject incident,  
Defendant was aware that promotional items were being thrown into crowds at events on the



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premises; that Defendant knew this behavior was inappropriate because it was a safety issue and could foreseeably cause injury to an individual; that prior to the incident at bar, Defendant conducted a staff meeting where staff was instructed not to cause promotional items to be thrown into crowds because of said safety concerns; and that Defendant, despite this knowledge and awareness, constructed a “field goal” within the sports book for purposes of throwing promotional items at sporting events.

Sheri Long, the Director of Marketing at The Palms, testified that she was aware that promotional items were thrown into crowds before the subject incident; this witness acknowledged this behavior was inappropriate because it constituted a safety issue which could foreseeably cause injury to an individual.

In her testimony, Ms. Long specifically recalled holding a meeting, before the subject incident, and instructing her staff that items should not be thrown into crowds during promotional events.

Ms. Long acknowledged that the injuries suffered by Plaintiff were exactly of the type she was concerned would occur if promotional items were thrown into crowds at promotional events.

Ms. Long further testified that what occurred in this case is what she was trying to prevent when she conveyed to her staff that promotional items were not to be thrown into a crowd at an event.

Vikki Kooinga, Risk Manager at The Palms, also testified that throwing items into a crowd could foreseeably cause injury to someone in the audience.

Ms. Kooinga acknowledged that throwing promotional items into the crowd was inappropriate, wrong and beneath the standard of care for the hotel in protecting the safety of their patrons upon the premises.



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Lastly, Ms. Kooinga testified that she would have expected hotel Security to stop anyone from throwing items into the crowd.

Plaintiff was then injured when promotional items were thrown into the crowd at a promotional event.

**CONCLUSIONS OF LAW**

NRCPC 52(c) states in pertinent part as follows:

If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence.

Liability has been conclusively established by the Plaintiff in this matter. The unequivocal testimony and undisputed facts establish liability and are as follows:

1. Defendant was aware promotional items were being thrown into crowds at events before the incident at bar;
2. Defendant conducted a staff meeting prior to the incident at bar where staff was instructed not to cause or permit promotional items to be thrown into crowds at events;
3. Defendant acknowledged that throwing promotional items into crowds was inappropriate;
4. Defendant acknowledged that throwing promotional items into crowds was a safety concern as it could foreseeably cause injury to an individual;
5. Defendant acknowledged that said foreseeable risk of injury was known by them prior to the incident at bar;
6. Despite this awareness, after said staff meeting, and with knowledge of said foreseeable risk of harm, Defendant constructed a goal post in the sports book for purposes of promotional items to be thrown;
7. Plaintiff was then injured as a direct and proximate result of throwing promotional items at an event upon Defendant's premises.





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Additionally, Defendant has conceded that there was a known safety procedure prohibiting promotional items from being thrown into the crowds.

Defendant's conceded that they violated this known safety procedure as related to the case at bar.

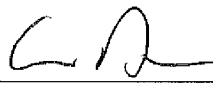
The known safety procedure was admissible as relevant to the issue of liability.

Defendant's policy and the breach thereof both aided this Court, as the finder of fact, in determining the issue of liability. No comparative liability was found on the part of the Plaintiff.

Therefore, this Honorable Court finds and adjudges liability against Defendant PALMS CASINO RESORT and in favor of the Plaintiff ENRIQUE RODRIGUEZ herein. These findings and conclusions are made and based upon the weight of the testimony and evidence aforesaid, and is reached independently of any other finding, ruling, or conclusion of the Court.

DATED this 7<sup>th</sup> day of February, 2011.

BENSON, BERTOLDO, BAKER & CARTER

BY:   
STEVEN M. BAKER, ESQ.  
Nevada Bar No. 4522  
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Las Vegas, Nevada 89117  
702-228-2600  
Attorneys for Plaintiff



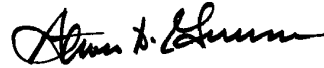
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**ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Rule 52 (erroneously designated "Rule 50") Motion on the Issue of Liability is granted.

Date: 3/2/11

*Jason Walsh*  
DISTRICT COURT JUDGE *J*



CLERK OF THE COURT

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

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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.

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order granting Plaintiff's Motion to Strike  
Defendant Fiesta Palms, L.L.C.'s expert witnesses was filed on the 10<sup>th</sup> day of March, 2011.  
A copy of said Order is attached hereto.

Date: 3/14/11

BENSON, BERTOLDO, BAKER & CARTER



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Attorneys for Plaintiff



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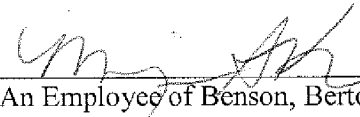
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I HEREBY CERTIFY that on the 14<sup>th</sup> day of March, 2011, a true and correct copy of the above referenced document was served via 1<sup>st</sup> Class, U.S. Mail, postage thereon fully prepaid to the following interested parties:

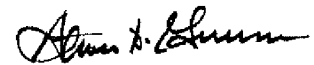
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Co-counsel for Fiesta Palms

Jeffery A. Bendavid, Esq.  
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Co-counsel for Fiesta Palms

  
An Employee of Benson, Bertoldo, Baker & Carter

CAPITAL



CLERK OF THE COURT

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

1 FFCL  
 2 STEVEN M. BAKER  
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 5 Attorneys for Plaintiff

6  
 7 DISTRICT COURT  
 8 CLARK COUNTY, NEVADA

9 \* \* \*

10 ENRIQUE RODRIGUEZ, an individual,  
 11 Plaintiff,

CASE NO: A531538

DEPT NO: 10

12 vs.

BENCH TRIAL DATE: 10/25/10

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

HEARING DATE: 1/31/11

17 Defendants.

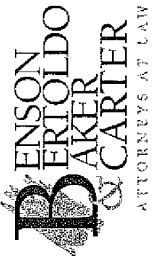
18 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

19  
 20 THIS MATTER having come on for hearing on January 31, 2011 with respect to  
 21 Plaintiff's Motion to Strike Defendant's Experts before the Honorable Jessie Walsh, presiding,  
 22 and the Court having considered the evidence and the arguments of counsel and taken the  
 23 matter under advisement for further consideration, this Honorable Court finds and concludes  
 24 as follows:

25  
 26 FINDINGS OF FACT

27 Defendant presented two (2) experts in this trial, Dr. Thomas Cargill (Economist) and  
 28 Forrest Franklin (Liability), neither of whom opined that their opinions were given to a

**B**ENSON  
**B**ERTOLDO  
**B**AKER  
**B**&  
**C**ARTER  
 ATTORNEYS AT LAW



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reasonable degree of professional probability as required under Nevada law.

Forrest Franklin, Defendant’s liability expert, was retained to develop and render an opinion with respect to the standard of care as it relates to throwing objects, memorabilia, and promotional articles into crowds.

Mr. Franklin offered the following opinions:

1. Throwing memorabilia as a promotional effort into crowds is not a substandard protocol;
2. It is not unsafe to throw things into crowds; and
3. It is not below the standard of care to throw items into a crowd.

None of these opinions, however, were given to a reasonable degree of professional probability.

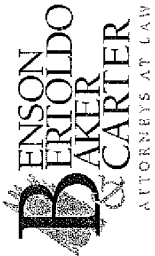
Dr. Cargill offered the following two (2) opinions at trial:

1. Plaintiff could not have made as much in the current financial market as he could have back in 2004 because the bubble burst in the housing market; and
2. Mr. Dineen’s discount rates were inappropriate.

Neither of these opinions was given to a reasonable degree of professional probability.

**CONCLUSIONS OF LAW**

To testify as an expert witness under NRS 50.275, the witness must satisfy the following three requirements: (1) he or she must be qualified in an area of “scientific, technical or other specialized knowledge” (the qualification requirement); (2) his or her specialized knowledge must “assist the trier of fact to understand the evidence or to determine a fact in issue” (the assistance requirement); and (3) his or her testimony must be limited “to matters within the scope of [his or her specialized] knowledge” (the limited scope requirement).



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Dr. Cargill and Mr. Franklin’s testimony failed to satisfy the “assistance” requirement of NRS 50.275, in that neither expert provided opinions to a reasonable degree of professional probability.

Accordingly, their opinions did not rise to the level of “scientific knowledge” within the meaning of NRS 50.275.


The opinions of Dr. Cargill and Mr. Franklin offered insufficient foundation for this court to take judicial notice of the scientific basis of those conclusions.

While counsel for the Defendant may have properly qualified said individuals as experts, the opinions rendered by the respective experts were speculative, as the court was not advised and the record does not reflect whether such opinions were made on the basis of “possibility” or some other standard lower than “a reasonable degree of professional probability.”

Accordingly, the testimony of Cargil and Franklin did not satisfy the “assistance” requirement of NRS 50.275.

DATED this 7<sup>th</sup> day of ~~January~~<sup>February</sup>, 2011.

BENSON, BERTOLDO, BAKER & CARTER

BY: 

STEVEN M. BAKER, ESQ.  
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702-228-2600  
Attorneys for Plaintiff



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ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Strike Defendant's Experts Cargill and Franklin is granted.

Date: 3/2/11

*Jessie Walsh*  
DISTRICT COURT JUDGE





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Attorneys for Plaintiff

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CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*


ENRIQUE RODRIGUEZ, an individual,  Plaintiff,  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.	CASE NO: A531538  DEPT NO: 10
--	-------------------------------------

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order granting Plaintiff's Motion to Strike Defendant's Post Trial Brief was filed on the 10<sup>th</sup> day of March, 2011. A copy of said Order is attached hereto.

Date: 3/14/11

BENSON, BERTOLDO, BAKER & CARTER

  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 17<sup>th</sup> day of March, 2011, a true and correct copy of the above referenced document was served via 1<sup>st</sup> Class, U.S. Mail, postage thereon fully prepaid to the following interested parties:

KC Ward, Esq.  
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2033 North Main Street, Suite 800  
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Co-counsel for Fiesta Palms

Jeffery A. Bendavid, Esq.  
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Attorneys for Defendant Fiesta Palms

Marsha L. Stephenson, Esq.  
Stephenson & Dickinson  
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Las Vegas, Nevada 89102  
Co-counsel for Fiesta Palms

  
An Employee of Benson, Bertoldo, Baker & Carter

ORIGINAL

*Alvin D. Quinn*  
CLERK OF THE COURT

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**BENSON  
BERTOLDO  
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&  
CARTER**  
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Attorneys for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*

ENRIQUE RODRIGUEZ, an individual,  
  
Plaintiff,  
  
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 1 through X,  
inclusive,  
  
Defendants.

CASE NO: A531538  
DEPT NO: 10  
  
**BENCH TRIAL DATE: 10/25/10**  
**HEARING DATE: 1/31/11**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

THIS MATTER having come on for hearing on January 31, 2011 with respect to Plaintiff's Motion to Strike Defendant's Post-Trial Brief before the Honorable Jessie Walsh, presiding, and the Court having considered the evidence and the arguments of counsel and taken the matter under advisement for further consideration,

**FINDINGS OF FACT**

Subsequent to the close of evidence and closing arguments, Defendant filed and served a "Post-Trial" brief which set forth the following five (5) "arguments:"

1. Tossing items at promotional events is within the industry standard of care;



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- 2. Defendant's internal policies do not raise the standard of care/legal duty owed to plaintiff;
- 3. Treating healthcare providers, who were neither designated per NRC 26 as non-retained experts nor provided expert reports, may not offer expert opinions on aspects of plaintiff's condition outside the scope of their treatment of plaintiff.
- 4. Where a plaintiff "is" his business, he must offer more than speculation to bear his burden of proof on damages and lost profits; and
- 5. Punitive Damages are improper.

Defendant did not file any trial memoranda in accordance with EDCR 7.27, or request a Rule 52 Motion seeking judgment as a matter of law.

**CONCLUSIONS OF LAW**

Defendant's Brief was not filed prior to the commencement of trial.


This Court did request to be briefed on any issues contained in Defendant's brief after the close of evidence.

Defendant, after the close of evidence, is not permitted to "brief" the Court on issues tried and presented.

The issues contained in Defendant's brief are not properly before the Court.

DATED this 7<sup>th</sup> day of February, 2011.

BENSON, BERTOLDO, BAKER & CARTER

BY:   
STEVEN M. BAKER, ESQ.  
Nevada Bar No.4522  
7408 West Sahara Avenue  
Las Vegas, Nevada 89117  
702-228-2600  
Attorneys for Plaintiff



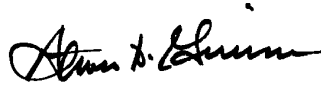
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**ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Strike Defendant's Post-Trial Brief is granted.

Date: 3/2/11

  
DISTRICT COURT JUDGE



CLERK OF THE COURT

1 STEVEN M. BAKER  
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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 1 through X,  
inclusive,

Defendants.

**NOTICE OF ENTRY OF VERDICT**






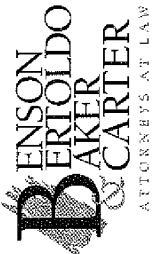
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PLEASE TAKE NOTICE that a Verdict was entered in the above-captioned matter on the 14<sup>th</sup> day of March, 2011. A copy of said Verdict is attached hereto.

DATED this 16<sup>th</sup> day of March, 2011.

**BENSON BERTOLDO, BAKER & CARTER, CHTD.**

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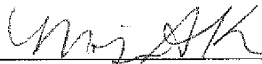
**CERTIFICATE OF SERVICE**

I hereby certify that on the ~~7<sup>th</sup>~~<sup>17<sup>th</sup></sup> day of March, 2011, I served a copy of the foregoing NOTICE OF ENTRY OF VERDICT via 1<sup>st</sup> Class, U.S. Mail, postage thereon fully prepaid to the following:

10676-05 Co-Counsel for Fiesta Palms  
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P.O. Box 8035  
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An employee of Benson, Bertoldo, Baker & Carter, Chtd.



C O U R T

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CLERK OF THE COURT

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**B**ENSON  
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BAKER  
& CARTER  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,  
Plaintiff,

CASE NO: A531538  
DEPT NO: 10

vs.

TRIAL DATE: 10/25/10

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

VERDICT

The Honorable Jessie Walsh, presiding judge in the above-entitled action, hereby finds for  
Plaintiff ENRIQUE RODRIGUEZ as follows:

1. The Court finds against Defendant FIESTA PALMS, L.L.C.
2. The Court finds against Defendant BRANDY BEAVERS.

Yes/No

///

///

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**B** ENSON  
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BAKER  
& CARTER  
ATTORNEYS AT LAW

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

Defendant FIESTA PALMS, L.L.C.	<u>60</u> %
Defendant BRANDY BEAVERS	<u>40</u> %

4. The total amount of the plaintiff's damages is divided as follows:

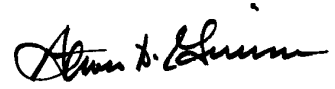
Past Medical Expenses	<u>\$ 396,773.38</u>
Future Medical Expenses	<u>\$ 1,854,938.</u>
Past Pain and Suffering	<u>\$ 1,243,350.</u>
Future Pain and Suffering	<u>\$ 1,865,025.</u>
Past Lost Income	<u>\$ 289,111.</u>
Future Lost Income	<u>\$ 422,592.</u>

5. Further, the Court finds that Defendant Fiesta Palms, L.L.C. acted with conscious disregard of the rights or safety of others when it was aware of the probable dangerous consequences of its conduct and willfully and deliberately failed to avoid those consequences.

Yes / No

DATED this 7<sup>th</sup> day of Mar February, 2011.

Jessie Walsh  
HON. JESSIE WALSH, District Court Judge



CLERK OF THE COURT

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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/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 12<sup>th</sup> day of April, 2011. A copy of said Judgment on the Verdict is attached hereto.

DATED this 15<sup>th</sup> day of April, 2011.

**BENSON BERTOLDO, BAKER & CARTER, CHTD.**

By:   
STEVEN M. BAKER, ESQ.  
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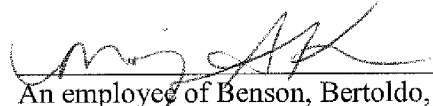
**CERTIFICATE OF SERVICE**

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

10676-05 Co-Counsel for Fiesta Palms  
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CLERK OF THE COURT

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JUDGE  
STEVEN M. BAKER  
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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/baa/a PALMS CASINO  
RESORT, BRANDY L. BEAVERS,  
individually, DOES 1 through X, inclusive,  
and ROE BUSINESS ENTITIES 1 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 FIESTA 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.



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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.<sup>18</sup> as the prevailing party under NRS 18.020 and NRS 18.010.

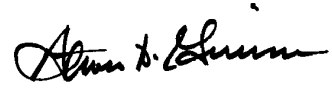
DATED this 11<sup>th</sup> day of Apr, 2011.

  
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





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

6 DISTRICT COURT  
7  
8 CLARK COUNTY, NEVADA

9 \* \* \*

10 ENRIQUE RODRIGUEZ, an individual,

CASE NO: A531538

11 Plaintiff,

DEPT NO: 10

12 vs.

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

19 Defendants.

20 NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW IN

21 SUPPORT OF VERDICT




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PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law in Support of Verdict was entered in the above-captioned matter on the 21<sup>st</sup> day of April, 2011. A copy of said Findings of Fact and Conclusions of Law in Support of Verdict is attached hereto.

DATED this 27<sup>th</sup> 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](mailto:monique@bensonlawyers.com)  
*Attorneys for Plaintiff*



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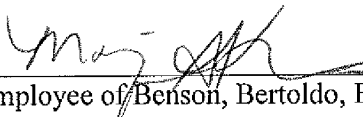
**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of April, 2011, I served a copy of the Findings of Fact and Conclusions of Law in Support of Verdict via 1<sup>st</sup> 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.

*Alvin D. Quinn*  
CLERK OF THE COURT

*Original*

1 **FFCL**  
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 Attorneys for Plaintiff

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 \*\*\*

13 ENRIQUE RODRIGUEZ, an individual, | CASE NO: A531538  
14 |  
15 Plaintiff, | DEPT NO: 10

16 vs.

17 FIESTA PALMS, L.L.C., a Nevada Limited  
18 Liability Company, d/bas/a PALMS CASINO  
19 RESORT, BRANDY L. BEAVERS,  
20 individually, DOES I through X, inclusive,  
21 and ROE BUSINESS ENTITIES I through X,  
22 inclusive,  
23 Defendants.

24 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
25 **IN SUPPORT OF VERDICT**

26 THIS MATTER HAVING COME ON FOR TRIAL before the bench, commencing  
27 on October 25, 2011, and a verdict being entered on March 14, 2011, this Honorable Court  
28 Finds and Concludes as follows:

- 1) Liability in favor of the Plaintiff in this matter was determined as consistent with the Findings of Fact and Conclusions of law granting Directed Verdict pursuant to NRCP 52 entered in this matter on March 10, 2011.

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2) The Court finds the testimony of Plaintiff's treating physicians, including, but not limited to Dr. Shifini, Dr. Mortillaro, Dr. Kidwell, Dr. Shaw, Dr. Shannon, and Dr. Tauber to be persuasive on the issue of the reasonableness, necessity and causation of past and future medical expenses to include, but not limited to, surgeries to Plaintiff's injured knee, carpal tunnel release, future knee replacement, a spinal cord stimulator and replacement of batteries with respect to the same, future lumbar fusion, cervical modalities, and other and further past and future medical services and expenses as elucidated at trial and, accordingly, and in this Court's discretion, awards as past medical expenses the amount of \$376,773.38 and future medical expenses in the amount of \$1,854,738.00.

3) Based upon the testimony of said treating physicians, the Plaintiff Enrique Rodriguez, and "before and after" lay witnesses who testified at the time of trial, the Court finds that Plaintiff Rodriguez suffered extensive, painful, disabling, and permanent injuries as a result of the subject incident which have detrimentally impacted his daily living and functioning and, consistent with that finding, and in this Courts discretion, awards as past pain and suffering the amount of \$1,243,350.00 and future pain and suffering in the amount of \$1,865,025.00.

4) The Court finds the testimony of Plaintiff's economist, Terrence Dineen, persuasive on the issue of Plaintiff's loss of economic opportunity, vocational disability, and loss of past and future earnings, finds and concludes the Plaintiff suffered significant detrimental impact to his ability to transact in the field of real-estate purchases, refurbishment, and sales due to his physical limitations resultant of the subject injury, finds that sufficient opportunity existed and exists in the repressed real estate market for Plaintiff to continue to profitably purchase, refurbish and sell real-estate absent said physical limitations, and is persuaded by and accepts the calculations of Mr. Dineen with respect to the same and, in this Court's discretion, awards



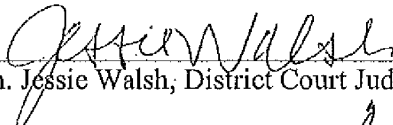
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past lost income in the amount of \$289,111.00 and future lost income in the amount of \$422,593.00.

5) As to the allocation of liability the Court finds liability against Defendant Fiesta Palms, LLC, as set forth in Finding and Conclusion #1, above, but finds that Defendant Beavers also failed to act in the manner of the average reasonable person under similar circumstances in a manner creating a foreseeable harm to patrons of the Palms by throwing promotional items into a crowded environment and in other and further manners as elucidated at the time of trial. The Court, in its discretion, therefore apportions liability at 60% to the Palms and 40% to Beavers, with no finding of comparative fault on the part of the Plaintiff.

WHEREFORE, this Court finds and concludes that a verdict be entered in said amounts as set forth on the stipulated Verdict form attached hereto as Exhibit #1.

Date: 19 Apr 2011

  
Hon. Jessie Walsh, District Court Judge

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*Alvin D. Johnson*  
CLERK OF THE COURT

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2533

**BENSON**  
**EROLDO**  
**BAKER & CARTER**  
ATTORNEYS AT LAW

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DISTRICT COURT  
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,	CASE NO: A531538
Plaintiff,	DEPT NO: 10
vs.	TRIAL DATE: 10/25/10
FIESTA PALMS, L.L.C., a Nevada Limited Liability Company, d/b/a PALMS CASINO RESORT; BRANDY BEAVERS; DOES 1 through X, inclusive, and ROE BUSINESS ENTITIES I through X, inclusive,	
Defendants.	

VERDICT

The Honorable Jessie Walsh, presiding judge in the above-entitled action, hereby finds for Plaintiff ENRIQUE RODRIGUEZ as follows:

1. The Court finds against Defendant FIESTA PALMS, L.L.C.
2. The Court finds against Defendant BRANDY BEAVERS.

Yes / No

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

Defendant FIESTA PALMS, L.L.C.	<u>60</u> %
Defendant BRANDY BEAVERS	<u>40</u> %

4. The total amount of the plaintiff's damages is divided as follows:

Past Medical Expenses	<u>\$ 396,773.38</u>
Future Medical Expenses	<u>\$ 1,854,738.</u>
Past Pain and Suffering	<u>\$ 1,243,350.</u>
Future Pain and Suffering	<u>\$ 1,865,025.</u>
Past Lost Income	<u>\$ 289,111.</u>
Future Lost Income	<u>\$ 422,592.</u>

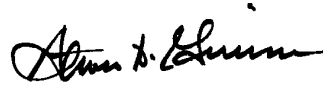
5. Further, the Court finds that Defendant Fiesta Palms, L.L.C. acted with conscious disregard of the rights or safety of others when it was aware of the probable dangerous consequences of its conduct and willfully and deliberately failed to avoid those consequences.

Yes / No

DATED this 7<sup>th</sup> day of Mar ~~February~~, 2011.

Jessie Walsh  
HON. JESSIE WALSH, District Court Judge





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 AMENDED JUDGMENT ON THE VERDICT**

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333






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PLEASE TAKE NOTICE that an Amended Judgment on the Verdict was entered in the above-captioned matter on the 15<sup>th</sup> day of February, 2012. A copy of said Amended Judgment is attached hereto.

DATED this 9<sup>th</sup> day of March, 2012.

**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*



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 09<sup>th</sup> day of <sup>March</sup> ~~February~~, 2012, I served a copy of the foregoing NOTICE OF ENTRY OF AMENDED JUDGMENT ON THE VERDICT via 1<sup>st</sup> 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.

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*Steven M. Baker*  
CLERK OF THE COURT

7408 WEST SALLARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333

**B** ENSON  
ERTOLDO  
BAKER  
& CARTER  
ATTORNEYS AT LAW

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STEVEN M. BAKER  
Nevada Bar No. 4522  
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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,	CASE NO: A531538
Plaintiff,	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.	

AMENDED 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 FIESTA 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.



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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), such interest in the amount of FOUR HUNDRED TWENTY SEVEN THOUSAND TWENTY SEVEN AND 71/100 DOLLARS (\$427,027.71) as of April 4, 2011. The entire judgment, including pre-judgment interest, shall

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89117 • (702) 228-2600 • FAX (702) 228-2333





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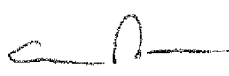
accrue interest at the legal rate from the date of entry of the judgment until the judgment is fully satisfied.

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 15<sup>th</sup> day of Feb, 2012.

  
HONORABLE JESSIE WALSH  
District Court Judge 

SUBMITTED BY:

  
\_\_\_\_\_  
STEVEN M. BAKER  
Nevada Bar No. 4522  
BENSON, BERTOLDO, BAKER & CARTER  
7408 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Attorneys for Plaintiff

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**FILED**  
**AUG 19 2014**  
*Ann Thomson*  
CLERK OF COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\***

ENRIQUE RODRIGUEZ VS FIESTA PALMS LLC	Case No.: 06A531538  DEPARTMENT 16
---	--

**NOTICE OF DEPARTMENT REASSIGNMENT**

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Timothy C. Williams.


- This reassignment follows the filing of a Peremptory Challenge of Judge .
- This reassignment is due to the recusal of Judge Walsh. See minutes in file.
- This reassignment is due to:

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT  
PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: *Ann Thomson*  
Ann Thomson, Deputy Clerk of the Court

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Notice of Department Reassignment  
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**CERTIFICATE OF MAILING**

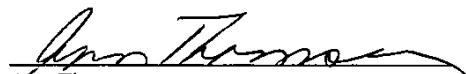
I hereby certify that: 8/19/2014

I mailed, via first-class, postage fully prepaid, the foregoing Clerk of the Court, Notice of Department Reassignment to:

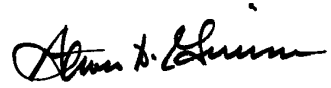
I placed a copy of the foregoing Clerk of the Court Notice of Department Reassignment in the appropriate attorney folder located in the Clerk of the Court's Office:

JOHN WEBER

Jon Randall Jones

  
Ann Thomson  
Deputy Clerk of the Court





CLERK OF THE COURT

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NOTC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FIESTA PALMS, LLC, a Nevada Limited )  
Liability Company, d/b/a THE PALMS )  
CASINO RESORT, BRANDY L. BEAVERS, )  
individually, DOES I through X, inclusive, and )  
ROE BUSINESS ENTITIES I through X, )  
inclusive, )  
 )  
Defendants. )

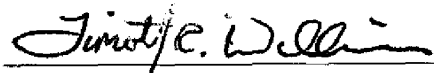
Case No. A531538  
Dept No. XVI

**ORDER SETTING HEARING FURTHER PROCEEDINGS RE:  
SUPREME COURT REVERSAL AND REMAND**

The Reversal and Remand With Instruction, 130 Nev., Advance Opinion 46, was filed by the Nevada Supreme Court on June 5, 2014. The Notice of Department Reassignment from Dept. 10 to Dept. 16 was filed by the District Court Clerk on August 19, 2014. Respondent filed a Petition for Rehearing with the Supreme Court on July 3, 2014, and the Supreme Court's Order Denying Rehearing and Amending Opinion was filed on October 2, 2014.

IT IS HEREBY ORDERED that this matter be set for hearing on **Thursday, November 6, 2014**, at the hour of **9:00 a.m.**, for further proceedings regarding said Order and the scheduling of trial.

DATED this 13<sup>th</sup> day of October, 2014.

  
TIMOTHY C. WILLIAMS  
District Court Judge, Dept. XVI

OCT 13 2014

**TIMOTHY C. WILLIAMS**  
DISTRICT JUDGE  
DEPARTMENT SIXTEEN  
LAS VEGAS NV 89155

CERTIFICATE OF SERVICE

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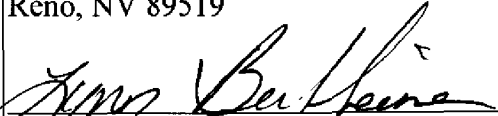
I hereby certify that on or about the date signed, a copy of this Order was electronically served and/or placed in the attorney's folders maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

Steven M. Baker, Esq., BENSON, BERTOLDO, BAKER & CARTER

J. Randall Jones, Esq., KEMP, JONES & COULTHARD

Jeffrey A. Bendavid, Esq., MORAN LAW FIRM

Robert L. Heisenberg, Esq.  
LEMONS, GRUNDY & HEISENBERG  
6005 Plumas Street, Third Floor  
Reno, NV 89519

  
Lynn Berkheimer, Judicial Executive Assistant

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kic@kempjones.com

1 J. RANDALL JONES, ESQ. (#1927)  
r.jones@kempjones.com  
2 MONA KAVEH, ESQ. (#11825)  
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3 KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
4 Seventeenth Floor  
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5 Telephone: (702) 385-6000  
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6 ROBERT L. EISENBERG, ESQ. (#950)  
rle@lge.net  
7 LEMONS, GRUNDY & EISENBERG  
8 6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
9 Telephone: (775) 786-6868  
Facsimile: (775) 786-9716  
10 *Attorneys for Defendant Fiesta Palms, LLC*  
11 *d/b/a The Palms Casino Resort*

DISTRICT COURT  
CLARK COUNTY, NEVADA

14 ENRIQUE RODRIGUEZ,  
15 Plaintiff,

16 v.

17 FIESTA PALMS, LLC, a Nevada Limited  
18 Liability Company, d/b/a THE PALMS  
CASINO RESORT; BRANDY L.  
19 BEAVERS, individually; DOES I through X,  
20 inclusive and ROE BUSINESS ENTITIES I  
through X, inclusive,

21 Defendants.

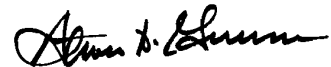
Case No.: A531538  
Dept. No.: XVI

**Peremptory Challenge of Judge**

23 Pursuant to SCR 48.1(1) and (9), Defendant Fiesta Palms, LLC, formerly doing business  
24 as The Palms Casino Resort (the "Palms" or "Defendant")<sup>1</sup>, by and through its counsel of  
25

26 \_\_\_\_\_  
27 <sup>1</sup> On December 7, 2011, Defendant Palms filed an amendment to its articles of organization with the  
28 Nevada Secretary of State, and changed its name to FCH1 LLC. This occurred while the appeal was  
pending. On July 16, 2012, the Nevada Supreme Court ordered the caption of the appeal docket changed

Electronically Filed  
10/23/2014 09:47:52 AM



CLERK OF THE COURT

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kic@kempjones.com

1 record, Kemp, Jones & Coulthard, LLP, and Lemons, Grundy & Eisenberg, hereby exercises a  
2 peremptory challenge against the Honorable Timothy C. Williams, to whom this case was  
3 reassigned on August 19, 2014, following a reversal by the Nevada Supreme Court.<sup>2</sup> This  
4 challenge is accompanied by the \$450 fee required by SCR 48.1(2).

5 DATED this 22nd day of October, 2014.

6 Respectfully submitted by:

7 

8 J. Randall Jones, Esq. (#1927)  
9 Mona Kaveh, Esq. (#11825)  
10 KEMP, JONES & COULTHARD, LLP  
11 3800 Howard Hughes Parkway  
12 Seventeenth Floor  
13 Las Vegas, Nevada 89169

14 Robert L. Eisenberg, Esq. (#950)  
15 LEMONS, GRUNDY & EISENBERG  
16 6005 Plumas Street, Suite 300  
17 Reno, Nevada 89519  
18 Telephone: (775) 786-6868  
19 Facsimile: (775) 786-9716  
20 *Attorneys for Defendant Fiesta Palms, LLC*  
21 *d/b/a The Palms Casino Resort*

22  
23  
24 to reflect Defendant's name change. Subsequent to that Order, FP Holdings, L.P., became the owner and  
25 operator of Palms. Therefore, the caption of this district court case should be changed to reflect  
26 Defendant's name as: "FP Holdings, L.P. d/b/a Palms Casino Resort." If the Court deems it necessary,  
27 Defendant will file a separate Motion to Change Case Caption.

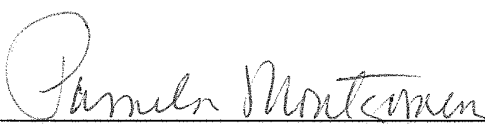
28 <sup>2</sup> Concurrently with this peremptory challenge, Defendant Palms has also filed a motion to, *inter alia*,  
vacate the reassignment of Judge Williams. The motion is based upon the ground that the reassignment  
to Judge Williams took place at a time when the district court lacked jurisdiction. This peremptory  
challenge is therefore intended to only apply if the motion is denied and if the case is deemed to have

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of October, 2014, service of the foregoing  
**Peremptory Challenge of Judge** was served via the Eighth Judicial District Court's electronic  
service system and via hand delivery on the following person(s):

Steven M. Baker, Esq.  
BENSON, BERTOLDO, BAKER & CARTER  
7408 West Sahara Avenue  
Las Vegas, Nevada 89117  
*Attorney for Plaintiff Enrique Rodriquez*

  
An Employee of Kemp, Jones & Coulthard, LLP

been properly reassigned to Judge Williams in the first place.

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DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

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2014 OCT 23 P 2:43

ENRIQUE RODRIGUEZ  
VS  
FIESTA PALMS LLC

CASE NO: 06A531538

*Ann D. Larson*  
CLERK OF THE COURT

DEPARTMENT 3

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Carolyn Ellsworth.

This reassignment follows the filing of a Peremptory Challenge of Judge TIMOTHY C WILLIAMS.

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below:

Motion to: (1) Vacate And Strike Filings and Orders Entered Prior to Issuance of Nevada Supreme Court Remittitur, Including the Reassignment of Judge Timothy C. Williams, and (2) Vacate November 6, 2014, Hearing on Order Shortening Time will be heard on November 14, 2014, at 9:00 AM.  
Order Setting Hearing Further Proceedings Re: Supreme Court Reversal And Remand will be heard on November 14, 2014 at 9:00A.M

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: *[Signature]*  
Diana Matson, Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that: on this the 23rd day of October, 2014

I placed a copy of the foregoing NOTICE OF DEPARTMENT REASSIGNMENT in the appropriate attorney folder located in the Clerk of the Court's Office:

JOHN WEBER  
Jon Randall Jones

*[Signature]*  
Diana Matson, Deputy Clerk of the Court

06A531538  
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Notice of Department Reassignment  
4385293



CLERK OF THE COURT  
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OCT 23 2014

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

FCH1, LLC, A NEVADA LIMITED LIABILITY COMPANY F/K/A FIESTA PALMS, LLC, A NEVADA LIMITED LIABILITY COMPANY D/B/A THE PALMS CASINO RESORT, Appellant,  
vs.  
ENRIQUE RODRIGUEZ, AN INDIVIDUAL, Respondent.

**Supreme Court No. 59630**  
District Court Case No. A531538

**FILED**  
NOV 04 2014

*Tracie Lindeman*  
CLERK OF COURT

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

“Reversed and remanded with instructions”

Judgment, as quoted above, entered this 2nd day of October, 2014.

06A531538  
CCJR  
NV Supreme Court Clerks Certificate/Judge  
4411006



**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

“Rehearing denied”

Judgment, as quoted above, entered this 2nd day of October, 2014.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this November 04, 2014.

Tracie Lindeman, Supreme Court Clerk

By: Rory Wunsch  
Deputy Clerk

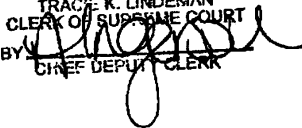
**130 Nev., Advance Opinion 46**  
IN THE SUPREME COURT OF THE STATE OF NEVADA

FCH1, LLC, A NEVADA LIMITED LIABILITY COMPANY, F/K/A FIESTA PALMS, LLC, A NEVADA LIMITED LIABILITY COMPANY D/B/A THE PALMS CASINO RESORT,  
Appellant,  
vs.  
ENRIQUE RODRIGUEZ, AN INDIVIDUAL,  
Respondent.

No. 59630

**FILED**

OCT 02 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:   
CHIEF DEPUTY CLERK

Appeal from a district court judgment following a bench trial in a tort action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

*Reversed and remanded with instructions.*

Lemons, Grundy & Eisenberg and Robert L. Eisenberg, Reno,  
for Appellant.

Hutchison & Steffen, LLC, and Michael K. Wall, Las Vegas,  
for Respondent.

---

BEFORE PICKERING, HARDESTY and CHERRY, JJ.

**AMENDED OPINION**

By the Court, PICKERING, J.:

At issue is the alleged negligence of Palms Casino Resort in allowing promotional actors to toss souvenirs into a crowd of patrons



watching a televised sporting event at the casino's sports bar. Specifically, we must decide whether to extend the limited-duty rule that this court established in *Turner v. Mandalay Sports Entertainment*, 124 Nev. 213, 220-21, 180 P.3d 1172, 1177 (2008), to these facts. We decline to do so, and thus hold there was no error in the district court's refusal to find, as a matter of law, that Palms owed no duty of care. Nonetheless, a new trial is warranted due to evidentiary errors that affected the outcome of the proceeding below.

I.

Respondent, Enrique Rodriguez, sued the Palms Casino Resort to recover damages for the knee injury he suffered while sitting in its "Sportsbook" bar watching Monday Night Football on television. The injury occurred when another patron dove for a sports souvenir that Brandy Beavers, an actress paid by the Palms to dress as a cheerleader for the Monday Night Football event, had tossed into the group.<sup>1</sup> Rodriguez sued Palms on a theory of negligence.

The matter was tried before the court in a bench trial. Over objection by Palms, the district court permitted several of Rodriguez's treating physicians to testify to the nature and severity of his condition, its causes, and the appropriateness of treatment, both rendered to and recommended for him. It then struck the testimony of Palms' experts on security and crowd control, and economics because they failed to "opine[] that their opinions were given to a reasonable degree of professional

---

<sup>1</sup>Whether or not Beavers and two other women who were also engaged in this souvenir tossing were Palms' employees is unclear and not analyzed or argued on appeal.

probability.” Ultimately, the district court determined that Palms was liable as a matter of law and awarded Rodriguez \$6,051,589 in damages. This appeal followed.

## II.

The parties and the district court assumed that Rodriguez’s claim was based on a theory of premises liability, namely that the Palms had increased the risk posed to Rodriguez by not stopping the promotional actors’ souvenir-tossing. This is a somewhat unusual application of the doctrine, because alleged negligent conduct and not a condition on the Palms’ land caused the injury, perhaps settled upon because the employment status of the women doing the tossing could not be established below. But this court has not limited premises liability to circumstances where a condition on the land caused an injury, *see, e.g., Estate of Smith v. Mahoney’s Silver Nugget, Inc.*, 127 Nev. \_\_\_, \_\_\_, 265 P.3d 688, 692 (2011); *Basile v. Union Plaza Hotel & Casino*, 110 Nev. 1382, 1384, 887 P.2d 273, 275 (1994); *Gott v. Johnson*, 79 Nev. 330, 332, 383 P.2d 363, 364 (1963), and the Restatement sanctions such an application where the landowner has acted to increase the risk posed to entrants. *See* Restatement (Third) of Torts: Phys. & Emot. Harm § 51(a) (2012). In any case, because the district court and both parties analyzed the claim as one based on premises liability, we follow suit.

Generally a premises owner or operator owes entrants a duty to exercise reasonable care, *Foster v. Costco Wholesale Corp.*, 128 Nev. \_\_\_, \_\_\_, 291 P.3d 150, 152 (2012), but courts may limit that duty. *See* Restatement (Second) of Torts § 496C cmt. d (1965); Restatement (Third) of Torts: Phys. & Emot. Harm § 7(b) (2010); *see also Turner v. Mandalay Sports Entm’t, L.L.C.*, 124 Nev. 213, 220-21, 180 P.3d 1172, 1177 (2008).

Typically, courts make such limitations in “the sports setting” as this court had occasion to do in *Turner*. See *Nalwa v. Cedar Fair, L.P.*, 290 P.3d 1158, 1162 (Cal. 2012). *Palms* analogizes the circumstances surrounding Rodriguez’s injury to those in *Turner*, as well as those in similar cases cited in an annotation we relied upon in *Turner*: *Pira v. Sterling Equities, Inc.*, 790 N.Y.S.2d 551, 552 (App. Div. 2005); *Harting v. Dayton Dragons Profl Baseball Club, L.L.C.*, 870 N.E.2d 766 (Ohio Ct. App. 2007); *Loughran v. The Phillies*, 888 A.2d 872 (Pa. Super. Ct. 2005).

In *Turner*, a foul ball struck a baseball game attendee in the face while she sat in Cashman Fields’ unfenced “Beer Garden.” *Turner*, 124 Nev. at 216, 180 P.3d at 1174. We held that the duty the stadium’s owners and operators owed an attendee was limited to providing covered seating and otherwise protecting her from “unduly high risk of injury,” and that a foul ball did not pose such a risk because it was a “known, obvious, and unavoidable part of all baseball games.” *Id.* at 216-19, 180 P.3d at 1174-76. In adopting this rule, this court acted as had many others—there is a well-established and long-standing body of case law similarly limiting the duty owed by baseball stadium owners and operators to game attendees. See W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 68, at 485 (5th ed. 1984).

The foreign cases relied upon by *Palms* are part of this body of law. Thus, in *Pira* the plaintiff was struck by a baseball that a player “tossed casually to fans as a souvenir . . . after he completed his pre-game warmup routine.” *Pira*, 790 N.Y.S.2d at 551. The New York court granted summary judgment because “the plaintiff failed to raise a triable issue of fact as to whether the defendants unreasonably increased the inherent risks to spectators associated with the game of baseball.” *Id.* at 552. In

*Loughran*, the plaintiff was hit by a baseball thrown into the stands by a player after the player had caught it for the last out. *Loughran*, 888 A.2d at 874. The appellate court upheld the trial court's grant of summary judgment because "[c]ountless Pennsylvania court cases [had] held that a spectator at a baseball game assumes the risk of being hit by batted balls, wildly thrown balls, foul balls, and in some cases bats." *Id.* at 876. And in *Harting*, the plaintiff was struck by a foul ball while she was "distracted by the antics" of a costumed mascot chicken. *Harting*, 870 N.E.2d at 770. The Ohio court applied the limited-duty rule because the plaintiff "understood the risks associated with being a spectator at a baseball game, and management for the [baseball team] made numerous announcements designed to warn patrons of the possible dangers inherent in the sport." *Id.* at 770-71.

In sum, though the facts vary slightly among these cases, the question in each was the extent to which a baseball stadium owner or operator has a duty to protect game attendees from errant baseballs and bats, and each holding was limited to the specific facts in issue. See *Turner*, 124 Nev. at 216-19, 180 P.3d at 1174-76; *Pira*, 790 N.Y.S.2d at 551; *Harting*, 870 N.E.2d at 768-69; *Loughran*, 888 A.2d at 877. Thus they do not control the circumstances at hand in any obvious way; Rodriguez's injury occurred while he watched a televised sporting event at a bar, not while he attended a live game at a stadium, and he was hit by a third-party patron diving for promotional gear, not a piece of sporting equipment involved in the game itself.

Courts in other jurisdictions have extended the "primary-assumption-of-the-risk," "limited-duty," or "no duty" doctrine—the names are used interchangeably, see *Turner*, 124 Nev. at 218, 180 P.3d at 1176

("limited duty"); *Harting*, 870 N.E.2d at 768-69 ("primary assumption of risk"); *Loughran*, 888 A.2d 872 ("no duty")—from these limited circumstances to other recreational activities "involving an inherent risk of injury to voluntary participants . . . where the risk cannot be eliminated without altering the fundamental nature of the activity." See, e.g., *Nalwa*, 290 P.3d at 1163. Palms claims that "tossing souvenirs to audiences at sporting events and other entertainment venues is a very common, well-accepted activity," and suggests that therefore the risk associated with such promotional tossing cannot be eliminated without altering the fundamental nature of the underlying sporting or entertainment event. But, even assuming that this court was willing to extend the *Turner* doctrine to all recreational activities involving an inherent risk of injury, we cannot agree that any risk of injury inheres in the underlying activity Rodriguez engaged in here, namely attending a televised sporting event at a casino sports bar.

"[M]any spectators prefer to sit where their view of the game is unobstructed by fences or protective netting and the proprietor of a ball park has a legitimate interest in catering to these desires." *Benejam v. Detroit Tigers, Inc.*, 635 N.W.2d 219, 222-23 (Mich. Ct. App. 2001) (quotation marks omitted). A stadium owner or operator cannot eliminate the risk errant balls might pose to spectators in such seating without fundamentally altering the game: a batter cannot predict the flight of a ball, so an owner or operator can only remove the risk that a struck ball might fly foul into uncovered seating by prohibiting all batting; and, the hope of retrieving a baseball as a souvenir has "become inextricably intertwined with a fan's baseball experience." *Loughran*, 888 A.2d at 876. The risk involved in riding in bumper cars, the activity to which the

California Supreme Court extended the limited-duty rule in *Nalwa*, is inherent because “[t]he point of the bumper car is to bump.” *Nalwa*, 290 P.3d at 1164. And, “[i]mposing liability would have the likely effect of the amusement park either eliminating the ride altogether or altering its character to such a degree...that the fun of bumping would be eliminated....Indeed, who would want to ride a *tapper car* at an amusement park?” *Id.* at 1164 (quotation marks omitted).

In *Nalwa*, the California Supreme Court approved a California appellate court’s extension of the limited-duty doctrine where a plaintiff was burned when he “tripped and fell into the remnants of the Burning Man effigy while participating in the festival’s commemorative ritual.” *Id.* at 1163 (citing *Beninati v. Black Rock City, L.L.C.*, 96 Cal. Rptr. 3d 105, 106 (Ct. App. 2009)). In that case the court had noted: “As in previous years, the festival participants had set ablaze a 60-foot combustible sculpture of a man which, because of its gigantic size, was built on an equally large platform made of combustible material and was held upright by wire cables. Once much of the material had burned, and the conflagration had subsided but was still actively burning, Beninati and others walked into the fire.” *Beninati*, 96 Cal. Rptr. 3d at 110. Because “[p]ersons who attend Burning Man throw objects into the fire ‘so attendees can participate...completely with [sic] the Burning Man experience,’” the court determined that the risk of burns associated with the fire was “necessary to the event.” *Id.* at 107, 110.

Put simply: the point of attending a live baseball game is to watch athletes bat at and throw baseballs, the point of driving a bumper car is to bump, the point of attending Burning Man is to participate in a “commemorative ritual” involving a giant bonfire; so batting, throwing,

bumping, and bonfires cannot be eliminated from these activities. But the point of watching a televised sporting event at a sports bar is . . . to watch a televised sporting event at a sports bar; having souvenirs tossed in one's direction may or may not enhance the experience depending on one's preference, but as long as the televised event may still be viewed in that venue the activity retains its character. And, if the proprietor of a sports bar declines to hire promotional actors to toss merchandise at attendees, participants can still watch a game with other fans in a sports-themed, alcohol-fueled venue.

So, assuming but not deciding that *Turner* could be extended along *Nalwa's* lines—and it may be that for certain activities in certain venues the tossing of promotional items is so “inextricably intertwined with [the] . . . experience” that its elimination would alter the fundamental nature of the event in question, *see, e.g., Loughran*, 888 A.2d at 876; though writers elsewhere have suggested that once the injury-causing conduct has strayed too far from the core activity the limited-duty doctrine is inapplicable,<sup>2</sup> *see* Scott B. Kitei, *Is the T-Shirt Cannon “Incidental to the Game” in Professional Athletics?*, 11 Sports Law. J. 37, 56 (2004)—extending it to the circumstances before us here would be a bridge too far. The district court did not err by declining to find that Palms owed no duty as a matter of law.

---

<sup>2</sup>Though, as we note below, even where the connection between the injury-causing conduct and the core activity is attenuated, affirmative defenses may survive.

### III.

We thus turn to whether Palms breached the duty it owed Rodriguez as a premises owner by failing to take reasonable care. See Restatement (Second) of Torts § 341A; Restatement (Third) of Torts § 7 cmts. i & j. Palms called an expert on security and crowd control, Forrest Franklin, who offered an opinion that throwing promotional items into crowds is not uncommon and generally was safe. He described his experience working crowd control and security at events where promoters threw memorabilia, in settings ranging from bicycle races to a conference for “the largest security organization on the planet,” and indicated that he knew of no resulting injuries. And he stated that in his years of experience he had “never read anything anywhere that prohibits or inhibits or suggests that, or mandates that it [throwing items into an audience] shouldn’t be done.” Indeed, according to Franklin the activity was so commonplace that he had “hardly ever heard of anybody not doing it.” This testimony suggests that the Palms’ conduct was both commonly engaged in and safe, and in turn that the Palms acted reasonably and that Rodriguez’s injury was not foreseeable. Given that Rodriguez did not present any expert testimony to the contrary, such evidence could reasonably have shifted the district court’s verdict in the Palms’ favor.

But, the district court struck Franklin’s testimony based on his failure to state that he testified to a “reasonable degree of professional probability.” In doing so the district court relied on *Hallmark v. Eldridge*, 124 Nev. 492, 504, 189 P.3d 646, 654 (2008) (holding that evidence was improperly admitted where a medical expert failed to testify to a “reasonable degree of medical certainty”). This reliance was in error. As



we have previously indicated, *Hallmark's* refrain is functional, not talismanic, because the "standard for admissibility varies depending upon the expert opinion's nature and purpose." *Morsicato v. Sav-On Drug Stores, Inc.*, 121 Nev. 153, 157, 111 P.3d 1112, 1115 (2005). Thus, rather than listening for specific words the district court should have considered the purpose of the expert testimony and its certainty in light of its context. See *Williams v. Eighth Judicial Dist. Court*, 127 Nev. \_\_\_, \_\_\_, 262 P.3d 360, 368 (2011).

Perhaps recognizing this, on appeal Rodriguez attempts to reframe the district court's holding as one finding the Palms' experts' testimony unduly speculative. But Franklin stated that he based his opinion on his years of experience in crowd control and safety and that he had "never read anything anywhere that prohibits or inhibits or suggests that, or mandates that it shouldn't be done." He thus offered a definitive opinion based on research and expertise, not speculation. So, exclusion of his testimony was an abuse of discretion. Inasmuch as it is probable that but for this erroneous ruling a different result might have been reached on the matter of Palms' breach, a new trial is warranted. *Cook v. Sunrise Hosp. & Med. Ctr., L.L.C.*, 124 Nev. 997, 1009, 194 P.3d 1214, 1221 (2008). And because we remand for a new trial on the issue of Palms' negligence, we leave for another day the question of whether Rodriguez engaged in risk assumption so as to implicate any affirmative defense that is available in Nevada.

#### IV.

In light of our decision to remand for a new trial, we offer additional instruction. First, we conclude that the district court improperly excluded testimony by Dr. Thomas Cargill, an economist who