

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 21ST, 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.

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

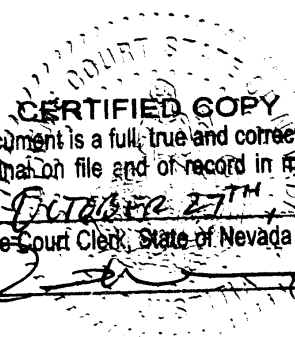
SUPREME COURT
OF
NEVADA

(O) 1947A

4-32752

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



A circular seal of the Supreme Court of the State of Nevada is visible in the background of the text. The seal features the words "SUPREME COURT" and "STATE OF NEVADA" around the perimeter, with a central emblem.
CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: OCTOBER 27TH, 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



STEVEN M. BAKER, ESQ.
Nevada Bar No. 4522
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7408 W. Sahara Avenue
Las Vegas, Nevada 89117
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(702) 228-2333 Facsimile
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,

CASE NO: A531538
DEPT NO: V

vs.

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

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 HEARING:

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

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


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

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

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

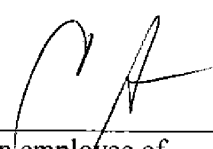
J. Randall Jones, Esq.
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Mona Kaveh, Esq.
m.kaveh@kempjones.com
KEMP, JONES & COULTHARD, LLP
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d/b/a The Palms Casino Resort

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d/b/a The Palms Casino Resort

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WEINBERG, WHEELER, HUDGNS, GUNN & DIAL

Mathew L. Sharp, Esq.
matt@matsharpaw.com
MATTHEW L. SHARP, Ltd.

Enrique Rodriguez
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951-415-9584 Telephone
bernieofcalif@aol.com



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



STEVEN M. BAKER, ESQ.
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(702) 228-2333 Facsimile
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



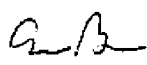
ORDER SHORTENING TIME

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 5th 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**

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
FRIOLDO
BAKER
& CARTER**
ATTORNEYS AT LAW

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.

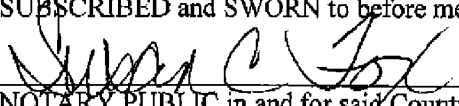
ENRIQUE RODRIGUEZ – PO Box 20514, Riverside, CA 92516
951-415-9584 Telephone
bernieofcalif@aol.com

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 20th day of Nov, 2014.


NOTARY PUBLIC in and for said County and State





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.



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.



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

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

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

7 On October 14, 2014, and on November 17, 2014, **ENRIQUE RODRIGUEZ** was
8 made aware that **BENSON, BERTOLDO BAKER & CARTER** would withdraw as attorney
9 of record should we not hear from **RODRIGUEZ** within thirty (30) days of October 14,
10 2014. To date, **BENSON, BERTOLDO BAKER & CARTER** has not heard from
11 **RODRIGUEZ**.

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

16 **III.**

17 **CONCLUSION**

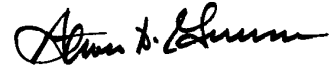
18 Based on the foregoing and the accompany Affidavit attached hereto, counsel
19 respectfully request that the Court grant **BENSON, BERTOLDO BAKER & CARTER's**
20 Motion to Withdraw as the Attorney of Record for **ENRIQUE RODRIGUEZ**.

21 DATED THIS 10 DAY OF Nov, 2014.

BENSON BERTOLDO, BAKER & CARTER, CHAD.

22 By:

23 STEVEN M. BAKER, ESQ.
24 Nevada Bar No. 4522
25 7408 W. Sahara Avenue
26 Las Vegas, Nevada 89117
27 Attorneys for Plaintiff
28



CLERK OF THE COURT

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9 Telephone: (775) 786-6868
Facsimile: (775) 786-9716
10 *Attorneys for Defendant Fiesta Palms, LLC*
d/b/a The Palms Casino Resort

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

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 ///

28

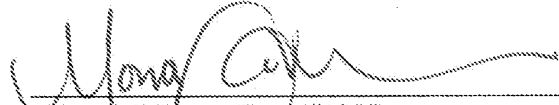
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kic@kempjones.com

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
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169

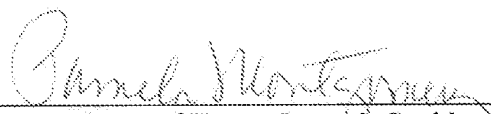
10
11 Robert L. Eisenberg, Esq. (#950)
12 LEMONS, GRUNDY & EISENBERG
13 6005 Plumas Street, Third Floor
14 Reno, Nevada 89519
15 Attorneys for Defendant Fiesta Palms, LLC
16 d/b/a The Palms Casino Resort
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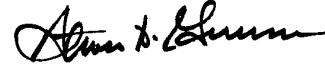
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

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;

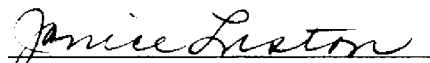
Enrique Rodriguez, P. O. Box 20514, Riverside, CA 92516

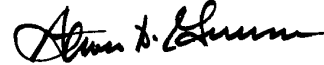
J. Randall Jones, Esq., Kemp, Jones & Coulthard

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

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

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


Janice Liston



CLERK OF THE COURT

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ, an individual,

Plaintiff,

CASE NO: A531538
DEPT NO: V

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**

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

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

DATED THIS 9th DAY OF Dec, 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 9th 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)]

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

10676

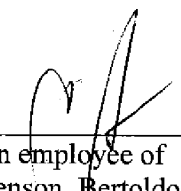
J. Randall Jones, Esq.
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Mona Kaveh, Esq.
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Attorneys for Defendant Fiesta Palms, LLC
d/b/a The Palms Casino Resort

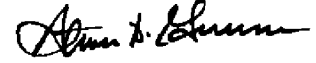
Robert L. Eisenberg, Esq.
rle@lge.net
LEMONS, GRUNDY & EISENBERG
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Attorneys for Defendant Fiesta Palms, LLC
d/b/a The Palms Casino Resort

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Mathew L. Sharp, Esq.
matt@matsharpplaw.com
MATTHEW L. SHARP, Ltd.

Enrique Rodriguez
PO Box 20514, Riverside, CA 92516
951-415-9584 Telephone
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

BENSON
BERTOLDO
BAKER
& CARTER
ATTORNEYS AT LAW

STEVEN M. BAKER, ESQ.
Nevada Bar No. 4522
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7408 W. Sahara Avenue
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(702) 228-2600 Telephone
(702) 228-2333 Facsimile
cheryl@bensonlawyers.com
Attorneys for Plaintiff, Enrique Rodriguez

**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: 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

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

This matter having come on for hearing on December 5, 2014, on BENSON, BERTOLDO, BAKER & CARTER'S Motion to Withdraw as Attorneys for Plaintiff ENRIQUE RODRIGUEZ and Hearing on Order Shortening Time and, upon motion by Plaintiff's attorney of record STEVEN M. BAKER, ESQ., non-opposition having been filed by the Defendants on December 2, 2014, and no opposition has been filed by Plaintiff ENRIQUE RODRIGUEZ, and the Court having considered the pleadings and documents on file herein and good cause appearing therefore:



1 IT IS HEREBY ORDERED, ADJUDGED and DECREED that BENSON,
2 BERTOLDO, BAKER & CARTER'S Motion to Withdraw as Attorneys for Plaintiff ENRIQUE
3 RODRIGUEZ and Hearing on Order Shortening Time is hereby GRANTED.

4 Plaintiff's last known address is:

5 ENRIQUE RODRIGUEZ
6 PO Box 20514
7 Riverside, CA 92516
8 951-415-9584 Telephone
9 bernieofcaliff@aol.com

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

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

14 IT IS SO ORDERED.

15 Dated: *Dec. 5*, 2014.

[Signature]
16 DISTRICT COURT JUDGE *ge*

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

19 By: *[Signature]* 7601 for
20 STEVEN M. BAKER, ESQ.
21 Nevada Bar No. 4522
22 7408 W. Sahara Avenue
23 Las Vegas, Nevada 89117
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25
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28

REGISTER OF ACTIONS

CASE No. 06A531538

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

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

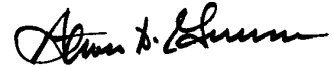
- STATUS CHECK: TRIAL SETTING Mr. Rodriguez requested matter be continued 30 days as he is trying to retain counsel. COURT ORDERED, any trial date set is VACATED and matter CONTINUED for trial setting. Ms. Kaveh requested they be allowed to file dispositive and/or pre-trial motions after trial is set. 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

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,) CASE NO. 06A531538
Plaintiff,)
vs.) DEPT. XV
FIESTA PALMS, LLC, a Nevada)
Limited Liability Company, dba,)
Palms Casino Resort, et al.,)
Defendants.)

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
FRIDAY, JANUARY 09, 2015

**RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: TRIAL SETTING**

APPEARANCES:

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

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

RECORDED BY: LARA CORCORAN, SENIOR COURT RECORDER

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FRIDAY, JANUARY 09, 2015

* * * * *

P R O C E E D I N G S

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

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

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

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

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

THE COURT: Does the defendant have any --

MS. KAVEH: I guess I just have --

THE COURT: -- objection to 30 days.

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

THE COURT: Uh-huh.

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

1 note in there that states that the new trial date is
2 March 16th, 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 13th 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.

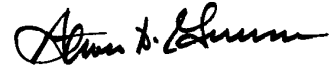
(Whereupon, the proceedings concluded.)

* * * * *

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

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,) CASE NO. 06A531538
Plaintiff,)
vs.) DEPT. XV
FIESTA PALMS, LLC, a Nevada)
Limited Liability Company, dba,)
Palms Casino Resort, et al.,)
Defendants.)

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
FRIDAY, FEBRUARY 13, 2015

**RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: TRIAL SETTING**

APPEARANCES:

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

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

RECORDED BY: SANDRA PRUCHNIC, RELIEF COURT RECORDER

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FRIDAY, FEBRUARY 13, 2015

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P R O C E E D I N G S

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

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

THE COURT: Mr. Rodriguez?

MR. RODRIGUEZ: Good morning, your Honor.

THE COURT: So have you obtained counsel?

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

THE COURT: Yes?

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

THE COURT: Yes?

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

THE COURT: Okay, you told me that last time we were 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 16th and after that would be May 26th.

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 3rd, 2015, and
24 calendar call July 24th, 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 13th at 9:00. That's really not
8 quite 30 days. March 20th.

9 THE COURT: So March 20th 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

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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

Ann L. Shuman
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.

24 / / /

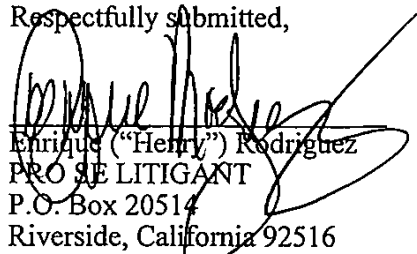
25 / / / **RECEIVED**

26 / / / **FEB 19 2015**

CLERK OF THE COURT

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

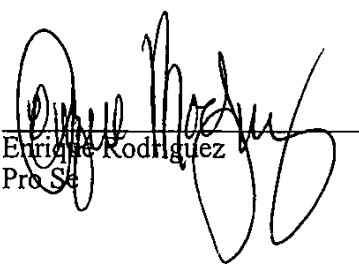
14 Pursuant to Nevada Rule of Civil Procedure 5(b), the undersigned hereby certifies that on
15 February 19, 2015 copies of "PLAINTIFF'S PEREMPTORY CHALLENGE OF JUDGE" was
16 served via United States Mail (first-class, postage prepaid) to the following:

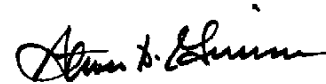
17 Lew Brandon, Esq.
18 630 South 4th Street
19 Las Vegas, Nevada 89101

20 Robert L. Eisenberg, Esq.
21 Lemons Grundy Eisenberg
22 6005 Plumas Street, 3rd 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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

ENRIQUE RODRIGUEZ, PLAINTIFF(S)

VS.

FIESTA PALMS LLC, DEFENDANT(S)

Case No.: 06A531538

DEPARTMENT 15

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Abby 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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CERTIFICATE OF SERVICE

I hereby certify that this 19th day of February, 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:

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

☒ 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:

Lewis W Brandon – Moran Brandon Bendavid Moran

/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)	§ § § § § § § §	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. <i>Retained</i> 702-384-6568(W)
Doing Business As	Palms Casino Resort	Lewis W. Brandon, Jr. <i>Retained</i> 702-384-6568(W)
Plaintiff	Rodriguez, Enrique	Micah S. Echols <i>Retained</i> 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, Deft. 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

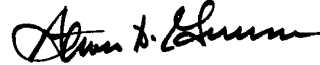
- Mr. Paul Padda, Esq. specially appearing for the Pltf. and advised Mr. Robert Vannah may appear for the Pltf. next date, however he is not certain. Mr. Padda indicated the Pltf. is attempting to obtain the funds needed to proceed with his case

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

10 Attorney for the Plaintiff

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

13 **ENRIQUE RODRIGUEZ,**

14 **Plaintiff,**

15 **v.**

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

17 **Defendants.**

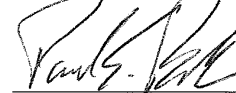
18 **Case No. A531538**

19 **Dept. No. II**

20 **NOTICE OF APPEARANCE**

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

25 Respectfully submitted,



26 Paul S. Padda, Esq.
Cohen & Padda, PLLC

Attorney for Plaintiff


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.

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

ENRIQUE RODRIGUEZ,

CASE NO: 06A531538

PLAINTIFF(S)

DEPARTMENT 15

VS.

FIESTA PALMS LLC, DEFENDANT(S)

NOTICE OF DEPARTMENT REASSIGNMENT

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

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

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

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Diana Matson

Diana Matson,
Deputy Clerk of the Court

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CERTIFICATE OF SERVICE

I hereby certify that this: 18th day of May, 2015

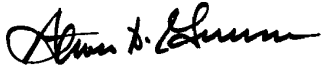
☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number 06A531538.

☒ 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



CLERK OF THE COURT

1 OSCH

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 ENRIQUE RODRIGUEZ,) CASE NO. A531538
7) DEPT NO. XV
8 Plaintiff(s),)
9 v.)
10 FIESTA PALMS LLC, et al.)
11 Defendant(s),)
12)

13
14 **ORDER SETTING STATUS CHECK**

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

16
17 **ORDERED**, that this matter is set for a status check in Department 15 on **June 15,**
18 **2015, at 9:00 a.m.** to determine a new trial date.

19 DATED this 8th day of June, 2015.

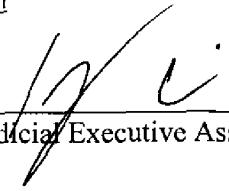
20
21
22 
23 JOE HARDY, DISTRICT COURT
24
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CERTIFICATE OF SERVICE

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.
Lewis Brandon, Jr., Esq.

ppadda@caplawyers.com
l.brandon@moranlawfirm.com



Judicial Executive Assistant

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REGISTER OF ACTIONS

CASE No. 06A531538

<p>Enrique Rodriguez, Plaintiff(s) vs. Fiesta Palms LLC, Defendant (s)</p> <p>§ § § § § § §</p>	<p>Case Type: Negligence - Premises Liability</p> <p>Date Filed: 11/15/2006</p> <p>Location: Department 15</p> <p>Cross-Reference Case Number: A531538</p> <p>Supreme Court No.: 59630 72098</p>
---	---

PARTY INFORMATION

Lead Attorneys

<p>Defendant Fiesta Palms LLC</p> <p>Doing Business As Palms Casino Resort</p>	<p>Lewis W. Brandon, Jr. <i>Retained</i> 702-384-6568(W)</p> <p>Lewis W. Brandon, Jr. <i>Retained</i> 702-384-6568(W)</p> <p>Micah S. Echols <i>Retained</i> 702-382-0711(W)</p>
---	---

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

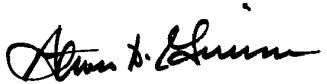
06/15/2015 9:00 AM

- 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 Plt'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, Plt'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

1 TRAN

DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 * * * * *

7 ENRIQUE RODRIGUEZ,

8 Plaintiff,

10 vs.

11 FIESTA PALMS, LLC,

12 Defendant.

) CASE NO. 06-A-531538

) DEPT. NO. XV

) **Transcript of Proceedings**

13 BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE
14 **PLAINTIFF'S MOTION FOR A MANDATORY SETTLEMENT CONFERENCE;**
15 **STATUS CHECK: NEW TRIAL DATE**

16 MONDAY, JUNE 15, 2015

17 APPEARANCES:

18 For the Plaintiff: PAUL S. PADDA, ESQ.

19 For the Defendant: JUSTIN W. SMERBER, ESQ.

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

22
23
24 Proceedings recorded by audio-visual recording, transcript
25 produced by transcription service.

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

2

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

6 MR. PADDA: Good morning, Your Honor.

7 THE COURT: Good morning, counsel.

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

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

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

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

21 THE COURT: Oh. Okay.

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

24 THE COURT: That would explain why I didn't recall
25 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 3rd. 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 31st 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 6th. 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 5th.
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 14th.

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 9th at 8:30. Your pretrial conference
2 will be November 23rd at 8:30. And the trial stack is
3 December 14th and those are at 10:30. And your pretrial
4 memos will be due on November 20th 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

23

24 PROCEEDING CONCLUDED AT 9:19 A.M.

25 * * * * *

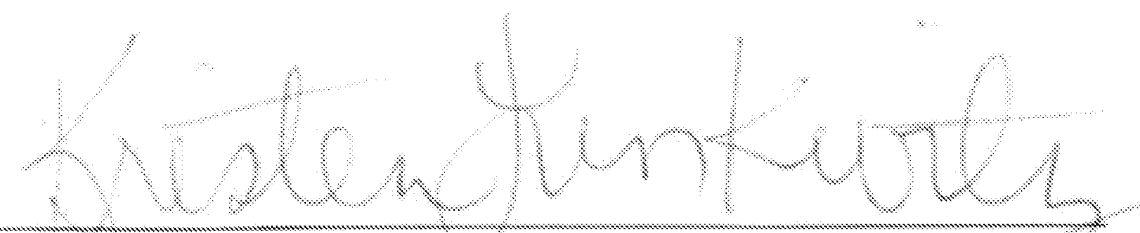
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CERTIFICATION

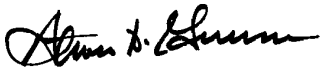
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

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

A handwritten signature in cursive script, reading "Kristen Lunkwitz", written in dark ink. The signature is positioned above a horizontal line.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

1 OSCJ

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 ENRIQUE RODRIGUEZ,

7 Plaintiff(s),

8 v.

9 FIESTA PALMS LLC, et al.,

10 Defendant(s),

) CASE NO.: A531538

) DEPT NO.: XV

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

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.**

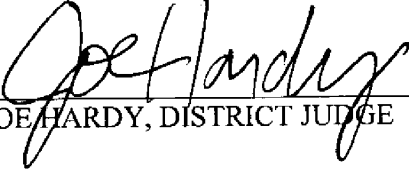
7 **An upcoming trial date is not an extreme emergency.**

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

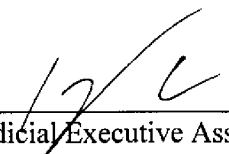
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21 _____
22 JOE HARDY, DISTRICT JUDGE
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CERTIFICATE OF SERVICE

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
Lewis Brandon, Jr., Esq. 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)	§ § § § § § §	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. <i>Retained</i> 702-384-6568(W)
Doing Business As Palms Casino Resort	Lewis W Brandon, Jr. <i>Retained</i> 702-384-6568(W)
Plaintiff Rodriguez, Enrique	Micah S. Echols <i>Retained</i> 702-382-0711(W)

EVENTS & ORDERS OF THE COURT

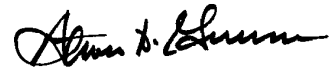
06/25/2015 **Minute Order** (10:30 AM) (Judicial Officer Hardy, Joe)
Minute Order Re: Deft's Motion to Set Jury Trial & Plt's Opposition

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
12 Attorneys for Defendant,
13 FIESTA PALMS, LLC d/b/a
14 PALMS CASINO RESORT

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

17 ENRIQUE RODRIGUEZ, an individual,

18 Plaintiff,

19 v.

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

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

25 Defendants

26 **NOTICE OF ENTRY OF ORDER**

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

///

///

///



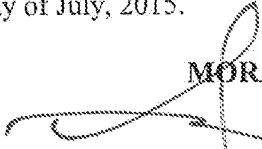
MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 A filed copy is attached hereto.

2 DATED this 23 day of July, 2015.

3 MORAN BRANDON BENDAVID MORAN

4 
5 LEW BRANDON, JR., ESQ.

6 Nevada Bar No. 5880

7 JUSTIN W. SMERBER, ESQ.

8 Nevada Bar No. 10761

9 630 S. Fourth Street

10 Las Vegas, Nevada 89101

11 Attorneys for Defendant, FIESTA PALMS,

12 LLC d/b/a PALMS CASINO RESORT

13 CERTIFICATE OF SERVICE

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

17
18
19 PAUL S. PADDA, ESQ.

20 Nevada Bar No. 10417

21 Cohen & Padda, PLLC

22 4240 W. Flamingo Road, Suite 220

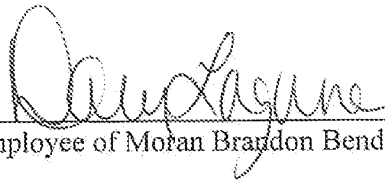
23 Las Vegas, Nevada 89103

24 (702) 366-1888

25 Facsimile (702) 366-1940

26 Attorney for Plaintiff,

27 ENRIQUE RODRIGUEZ

28 
An Employee of Moran Brandon Bendavid Moran

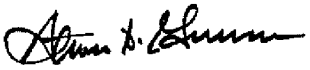


MORAN BRANDON
BENDAVID MORAN
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CLERK OF THE COURT

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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
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
20 through X, and

21 Defendants

ORDER GRANTING DEFENDANT'S MOTION TO SET JURY TRIAL

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) 384-8568

JUL 10 2015

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

3
4 *APPROVED AS TO FORM ONLY:*

5 COHEN & PADDA, PLLC

6
7
8 See Attached
9 **PAUL S. PADDA, ESQ.**

10 Nevada Bar No. 10417
11 4240 W. Flamingo Road, Suite 220
12 Las Vegas, Nevada 89103
13 Attorney for Plaintiff,
14 ENRIQUE RODRIGUEZ

15 IT IS SO ORDERED this 14th day of July, 2015.

16
17
18 Jeff Hardy
19 **DISTRICT COURT JUDGE**
20 MB

21 *Respectfully Submitted by:*
22 **MORAN LAW FIRM, LLC.**

23
24 [Signature]
25 **LEW BRANDON, JR., ESQ.**

26 Nevada Bar No. 5880
27 **JUSTIN W. SMERBER, ESQ.**
28 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
BEN DAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 394-8424
FAX: (702) 394-8505

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

3
4 *APPROVED AS TO FORM ONLY:*

5 COHEN & PADDA, PLLC

6
7 

8 **PAUL S. PADDA, ESQ.**

9 Nevada Bar No. 10417
10 4240 W. Flamingo Road, Suite 220
11 Las Vegas, Nevada 89103
12 Attorney for Plaintiff,
13 ENRIQUE RODRIGUEZ

14
15 IT IS SO ORDERED this _____ day of _____, 2015.

16
17
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DISTRICT COURT JUDGE

16 *Respectfully Submitted by:*
17 **MORAN LAW FIRM, LLC.**

18 *See Attached*
19 **LEW BRANDON, JR., ESQ.**
20 Nevada Bar No. 5880
21 **JUSTIN W. SMERBER, ESQ.**
22 Nevada Bar No.: 10761
23 630 S. Fourth Street
24 Las Vegas, Nevada 89101
25 Attorneys for Defendant,
26 FIESTA PALMS, LLC d/b/a
27 PALMS CASINO RESORT
28



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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)	§	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

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

* * * * *

Transcript of Proceedings

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

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

2

3 THE CLERK: A531538. Appearances, please?

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

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

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

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

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

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

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

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

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

24 MR. SMERBER: I think we agree.

25 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 14th.
7 Right?

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

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

11 THE CLERK: February 22nd.

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

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

1 THE COURT: That date would be continued to --

2 THE CLERK: That would be also on February 28th,
3 last date to file any pretrial motions. Did I say December
4 28th?

5 THE COURT: You said February 28th.

6 THE CLERK: I thought I had said it wrong.
7 December 28th, then, would make sense after their trial.
8 Right?

9 THE COURT: Okay.

10 MR. SMERBER: Thank you, Your Honor.

11 THE COURT: Thank you very much.

12 MR. PADDA: Thank you, Your Honor.

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

14 THE COURT: Yes.

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

17 THE COURT: No.

18 MR. SMERBER: Okay.

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

22 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.

* * * * *

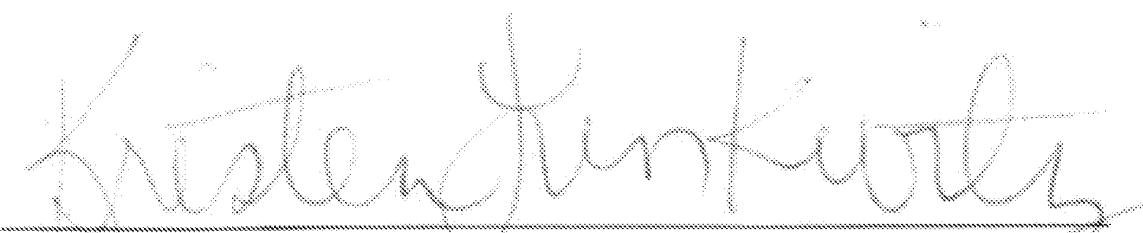
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CERTIFICATION

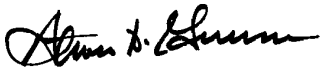
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

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

A handwritten signature in cursive script, reading "Kristen Lunkwitz", is written over a horizontal line.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

1 OSCJ

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 ENRIQUE RODRIGUEZ,

7 Plaintiff(s),

8 v.

9 FIESTA PALMS LLC,

10 Defendant(s),
11

) CASE NO.: A531538

) DEPT NO.: XV

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

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, February 22, 2016, 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, February 1, 2016, at 8:30 a.m.**

17 C. A calendar call will be held on **Wednesday, February 17, 2016, 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, November 23, 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, January 29, 2016, at**
24 **4:00 p.m.,** with a courtesy copy delivered to Department XV. All parties (attorneys and parties in
25 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, December**
27 **28, 2015,** and must comply with all the requirements set forth in EDCR 2.47, particularly EDCR
28 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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20 
21 _____
22 JOE HARDY, DISTRICT JUDGE
23
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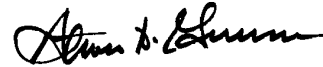
CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, the foregoing was e-served, e-mailed, 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
Lewis Brandon, Jr., Esq. lbrandon@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,**

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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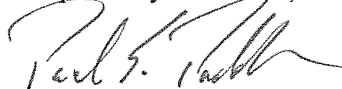
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JAN 19 2016

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

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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.

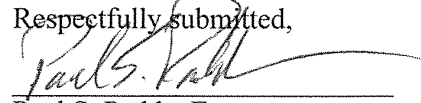
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1 CONCLUSION

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

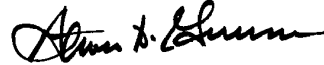
4 Respectfully submitted,

5 

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

13 Attorney for Plaintiff

14 Dated: January 19, 2016



CLERK OF THE COURT

NOTC

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

Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ,

Plaintiff,

v.

FIESTA PALMS, LLC, et. al.,

Defendants.

Case No. A-06-531538-C

Dept. No. XV (15)

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

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

PAUL PADDA LAW



Paul S. Padda, Esq.

Counsel for Plaintiff

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


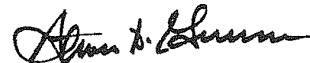

Paul S. Padda, Esq.

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

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

Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ,

Plaintiff,

v.

FIESTA PALMS, LLC, et. al.,

Defendants.

Case No. A-06-531538-C

Dept. No. XV (15)

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

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

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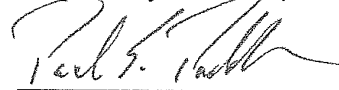
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JAN 19 2016

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

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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

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10 to undersigned counsel his understanding that this motion would eventually be filed. However,
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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 

20 Paul S. Padda, Esq.

21 Dated: January 19, 2016

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **ARGUMENT**

3 **I. Legal Standard**

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15 As shown in the attached declaration of undersigned counsel, Paul S. Padda, Esq.,
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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

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 **Palms Casino Resort**
Business As

~~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

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](#)

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

ENRIQUE RODRIGUEZ,)
)
) CASE NO. 06-A-531538
)
) Plaintiff,)
)
)
 vs.)
) DEPT. NO. XV
)
)
)
 FIESTA PALMS, LLC,)
)
)
) **Transcript of Proceedings**
)
) 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 28th
19 stack, counsel?

20 MR. SMERBER: Yes. Thank you.

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

1 motions will be February 1st of 2016.

2 MR. SMERBER: Can I get the pretrial motion date
3 moved? The purpose -- because today is February 1st 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 1st, 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 2nd.

3 THE COURT: So, May 2nd --

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

15 * * * * *

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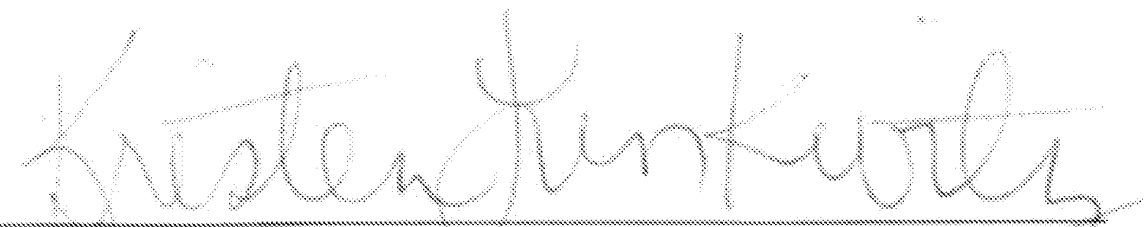
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CERTIFICATION

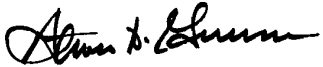
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

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

A handwritten signature in cursive script, reading "Kristen Lunkwitz", written in dark ink over a horizontal line.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

1 OSCJ

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 ENRIQUE RODRIGUEZ,

7 Plaintiff(s),

8 v.

9 FIESTA PALMS LLC, et al.,

10 Defendant(s),

) CASE NO.: A531538

) DEPT NO.: XV

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

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, May 2, 2016, 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, April 11, 2016, at 8:30 a.m.**

17 C. A calendar call will be held on **Wednesday April 27, 2016, at 8:30 a.m.** Parties must
18 bring to calendar call all items listed in EDCR 2.69. At the time of the calendar call, counsel will set
19 an appointment with the Court Clerk. The appointment must be at least one day before the first day
20 of trial.

21 D. The Pre-Trial Memorandum must be filed no later than **Friday, April 8, 2016, at**
22 **4:00 p.m.**, with a courtesy copy delivered to Department XV. All parties (attorneys and parties in
23 proper person), **MUST** comply with **All REQUIREMENTS** of EDCR 2.67, 2.68 and 2.69.

24 E. All motions in limine must be in writing and filed no later than **Monday, March 7,**
25 **2016**, and must comply with all the requirements set forth in EDCR 2.47, particularly EDCR
26 2.47(b), which requires the lawyers to personally consult with one another by way of face-to-face
27 meeting or via telephone conference before a motion in limine can be filed. If a personal or
28

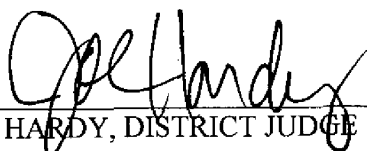
1 telephone conference was not possible, the attorney's declaration and/or affidavit attached to the
2 motion in limine shall set forth the reasons. Should a party and/or his or her attorney fail to abide by
3 the requirements of EDCR 2.47(b) before filing his or her motion in limine, such motion will 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

18 
19 _____
20 JOE HARDY, DISTRICT JUDGE

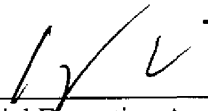
CERTIFICATE OF SERVICE

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

Enrique Rodriguez
6673 Yellowstone Dr.
Riverside, CA 92506

Lewis Brandon, Jr. Esq.
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)	§ § § § § § § §	Case Type: Negligence - Premises Liability Date Filed: 11/15/2006 Location: Department 15 Cross-Reference Case Number: A531538 Supreme Court No.: 59630 72098
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PARTY INFORMATION

Lead Attorneys

Defendant Fiesta Palms LLC	Lewis W. Brandon, Jr. <i>Retained</i> 702-384-6568(W)
Doing Business As Palms Casino Resort	Lewis W. Brandon, Jr. <i>Retained</i> 702-384-6568(W)
Plaintiff Rodriguez, Enrique	Micah S. Echols <i>Retained</i> 702-382-0711(W)

EVENTS & ORDERS OF THE COURT

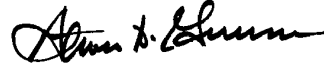
02/09/2016 **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer Hardy, Joe)
Paula S. Padda, Esq's Motion to Withdraw as Counsel of Record for Plaintiff on Order Shortening Time

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

NOTC

Paul S. Padda, Esq. (NV Bar #10417)

Email: psp@paulpadda.com

PAUL PADDA LAW

4240 West Flamingo Road, Suite 220

Las Vegas, Nevada 89103

Tel: (702) 366-1888

Fax: (702) 366-1940

www.paulpadda.com

Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ,

Plaintiff,

v.

FIESTA PALMS, LLC, et. al.,

Defendants.

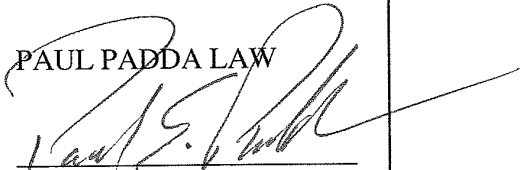
Case No. A-06-531538-C

Dept. No. XV (15)

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

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

PAUL PADDA LAW



Paul S. Padda, Esq.

Counsel for Plaintiff

Dated: February 16, 2016

1 CERTIFICATE OF SERVICE

2 Pursuant to Nevada Rule of Civil Procedure 5(b), the undersigned hereby certifies that on
3 February 16, 2016 a copy of "NOTICE OF FILING ORDER GRANTING WITHDRAWAL OF
4 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:

5 Enrique Rodriguez
6 6673 Yellowstone Drive
7 Riverside, California 92506
8 Email: bernieofcalif@aol.com

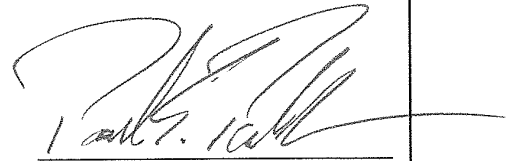
9 
10 Paul S. Padda, Esq.

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,**

11 **v.**

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

13 **Defendants.**

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

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

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

24 Telephone: (951) 751-1440


25 Email: bernieofcalif@aol.com

26 . . .

FEB 10 2016

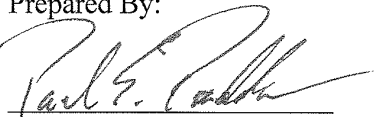
1 Upon receipt of an executed copy of this Order, Plaintiff's counsel is directed to file notice of
2 this Order and serve a copy upon Plaintiff at the address above.

3 IT IS SO ORDERED:

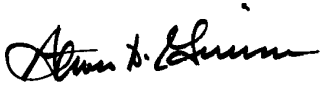
4 
5 _____
6 Judge Joe Hardy, Dept. XV
7 Clark County District Court
8 Las Vegas, Nevada

Dated: February 12, 2016

8 Prepared By:

9 

10 Paul S. Padda, Esq.
11 PAUL PADDA LAW, PLLC
12 4240 West Flamingo Road, #220
13 Las Vegas, Nevada 89103
14 Tele: (702) 366-1888
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26



CLERK OF THE COURT

1 **MDSM**

LEW BRANDON, JR., ESQ.

Nevada Bar No.: 5880

2 **JUSTIN W. SMERBER, ESQ.**

Nevada Bar No.: 10761

3 **MORAN BRANDON BENDAVID MORAN**

630 S. Fourth Street

4 Las Vegas, Nevada 89101

(702) 384-8424

(702) 384-6568 - facsimile

5 l.brandon@moranlawfirm.com

Attorneys for Defendant,

6 FIESTA PALMS, LLC d/b/a

PALMS CASINO RESORT

7 **ROBERT L. EISENBERG, ESQ.**

Nevada Bar No. 0950

8 **LEMONS, GRUNDY & EISENBERG**

6005 Plumas Street, Third Floor

9 Reno, Nevada 89519

Telephone: (775) 786-6868 / Facsimile: (775) 786-9716

rle@lge.net

10 Attorneys for Defendant,

FIESTA PALMS, LLC d/b/a

11 PALMS CASINO RESORT

12 **DISTRICT COURT**
CLARK COUNTY, NEVADA

13 ENRIQUE RODRIGUEZ, an individual,

14 Plaintiff,

15 v.

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

18 Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

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



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 348-6568

1 **DEFENDANT, FIESTA PALMS, LLC'S MOTION TO DISMISS PURSUANT TO NRCP**
2 **16.1 AND EDCR 2.67**

3 COMES NOW, Defendant, FIESTA PALMS, LLC., by and through its undersigned
4 attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of MORAN
5 BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS, GRUNDY &
6 EISENBERG, hereby submit the following Motion to Dismiss Plaintiff's Complaint for failure
7 to Comply with NRCP 16.1 and EDCR 2.67.

8 This Motion is made and based upon the Points and Authorities attached hereto, along
9 with all papers and pleadings on file herein, and oral arguments at the time of hearing.

10 DATED this 7th day of March, 2016.

11 **MORAN BRANDON BENDAVID MORAN**

12 /s/ Justin W. Smerber, Esq.
13 **LEW BRANDON, JR., ESQ.**
14 Nevada Bar No. 5880
15 **JUSTIN W. SMERBER, ESQ.**
16 Nevada Bar No.: 10761
17 630 S. Fourth Street
18 Las Vegas, Nevada 89101
19 Attorneys for Defendant,
20 FIESTA PALMS, LLC d/b/a
PALMS CASINO RESORT

///

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MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-3424
FAX: (702) 348-6666

1 **NOTICE OF MOTION**

2 TO: ALL PARTIES;

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

7 DATED this 7th 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 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I**

21 **FACTS AND PROCEDURAL HISTORY**

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



27 MORAN BRANDON
28 BENDAVID MORAN
29 ATTORNEYS AT LAW

30 630 SOUTH 4TH STREET
31 LAS VEGAS, NEVADA 89101
32 PHONE: (702) 384-3424
33 FAX: (702) 348-6666

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 NRCP
12 16.1(a)(3) disclosures. Accordingly, Defendant now moves to dismiss Plaintiff's complaint in
13 accordance with EDCR 2.67, EDCR 2.68, NRCP 16.1 and NRCP 37.

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

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

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

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



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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
21 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 stenographically, a
transcript of the pertinent portions of the deposition testimony; and



MORAN BRANDON
& DAVID MORAN
ATTORNEYS AT LAW

636 SOUTH 4TH STREET
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1 (C) An appropriate identification of each document or other exhibit, including
2 summaries of other evidence, separately identifying those which the party
expects to offer and those which the party may offer if the need arises.

3 Unless otherwise directed by the court, these disclosures must be made at least
4 30 days before trial. Within 14 days thereafter, unless a different time is
5 specified by the court, a party may serve a list disclosing (i) any objections to
6 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.

7
8 Further, NRCP 16.1(e) addresses a party's failure to comply with the provisions of
NRCP 16.1. The rule reads as follows:

9 3) If an attorney fails to reasonably comply with any provision of this rule, or if
10 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,
11 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:

12 (A) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f);

13 (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).

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

18 In the present matter, Plaintiff has not made any Pre-Trial Disclosures in accordance
19 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 NRCP 37 for failing to comply with the rules, and his Complaint should be
2 dismissed.

3 **IV.**
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, NRCP 16 and NRCP 16.1.

7 DATED this 7th day of March, 2016.

8 **MORAN BRANDON BENDAVID MORAN**

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

13 **CERTIFICATE OF SERVICE**

14 Pursuant to NRCP 5(b), I hereby certify that on the 7TH 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**
6673 YELLOWSTONE DRIVE
RIVERSIDE, CALIFORNIA 92506
TELEPHONE: 951-751-1440
19 Plaintiff, In Proper Person

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



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

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DOCUMENT DESCRIPTION		LOCATION
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ORIGINAL

FILED

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Nov 15 4 53 PM '06

Christy E. Rodriguez
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual;

Plaintiffs

vs.

FIESTA PALMS, L.L.C., a Nevada Limited Liability

Company, d/b/a PALMS CASINO RESORT;

DOES I through X, inclusive; and ROE BUSINESS

ENTITIES I through X, inclusive,

Defendants.

CASE NO. *A531538*

DEPT. NO.: *X*

COMPLAINT

COMES NOW Plaintiff ENRIQUE RODRIGUEZ, by and through his attorney of record W. JONATHAN WEBER, ESQ., of the law firm of BENSON, BERTOLDO, BAKER & CARTER, CHTD., 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.



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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

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

2 9.

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

7 10.

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

11 11.

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

17 **FIRST CAUSE OF ACTION**

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

20 12.

21 That on or about November 22, 2004, Defendant JANE DOE #1 negligently, carelessly,
22 and recklessly threw souvenirs into the crowd at the PALMS RESORT sport book while
23 blindfolded, thereby creating a frenzy among the patrons of said Sports Book/Sports Bar, thereby
24 causing an unknown patron of the Sports Book/Sports Bar to impact with Plaintiff ENRIQUE
25 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



1 assignment with Defendant PALMS RESORT and ROE BUSINESS ENTITY #1, and each of
2 them. Defendants PALMS RESORT and ROE BUSINESS ENTITY #1, and each of them, are
3 therefore vicariously, contractually, statutorily and/or otherwise liable for the negligence,
4 carelessness and recklessness of Defendant JANE DOE #1 as alleged herein.
5

6 17.

7 As a direct and proximate result of the negligence, carelessness and recklessness of
8 Defendants, PALMS RESORT, JANE DOE #1, and/or ROE BUSINESS ENTITY #1, and/or
9 their employees, agents or assigns, and each of them, Plaintiff, ENRIQUE RODRIGUEZ, was
10 injured in his health, strength and activity, sustaining shock and injury to his body, nervous
11 system and person, all of which have caused, and will continue to cause Plaintiff physical,
12 mental and nervous pain and suffering.
13

14 18.

15 That as a direct and proximate result of the negligence, carelessness and recklessness of
16 Defendants PALMS RESORT, JANE DOE #1, and/or ROE BUSINESS ENTITY #1, and/or
17 their employees, agents or assigns, and each of them, Plaintiff, ENRIQUE RODRIGUEZ, has
18 incurred and continues to incur medical expenses, economic losses, possible future medical
19 expenses and economic losses, and loss of enjoyment of life, all to Plaintiff's damages in an
20 amount in excess of TEN THOUSAND DOLLARS (\$10,000).
21

22 **SECOND CAUSE OF ACTION**

23 **(PALMS RESORT; ROE BUSINESS ENTITY #1: Negligent Employee Hiring, Training,**
24 **Retention and Supervision)**

25 19.

26 Plaintiff realleges and reasserts each and every statement contained in the above
27 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.



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



1 5. For such other and further relief as the Court may deem just and
2 proper.
3

4 **THIRD CAUSE OF ACTION**

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

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

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

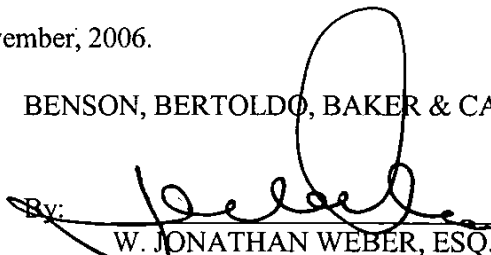
9 4. For loss of income and earning capacity in an amount as yet undetermined;

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

12 6. For such other and further relief as the Court may deem just and
13 proper.
14

15 DATED this 13th day of November, 2006.

16 BENSON, BERTOLDO, BAKER & CARTER, CHTD.

17
18 BY: 
19 W. JONATHAN WEBER, ESQ.
20 Nevada Bar No. 7554
21 7408 W. Sahara Avenue
22 Las Vegas, Nevada 89117
23 Attorneys for Plaintiff
24
25
26
27
28

ORIGINAL

6

pd

FILED

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CLERK OF THE COURT

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

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

6000

1
2 **GENERAL ALLEGATIONS**

3 1. As to Paragraph 1 of Plaintiff's Complaint on file herein, Defendant
4 FIESTA PALMS is without knowledge or information sufficient to form a belief as
5 to the truth of the allegations contained therein.
6

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

10 3. As to Paragraph 3 of Plaintiff's Complaint on file herein, Defendant
11 FIESTA PALMS is without knowledge or information sufficient to form a belief as
12 to the truth of the allegations contained therein.
13

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

17 5. As to Paragraph 5 of Plaintiff's Complaint on file herein, Defendant
18 FIESTA PALMS is without knowledge or information sufficient to form a belief as
19 to the truth of the allegations contained therein.
20

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

24 7. As to Paragraph 7 of Plaintiff's Complaint on file herein, Defendant
25 FIESTA PALMS is without knowledge or information sufficient to form a belief as
26 to the truth of the allegations contained therein.
27

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



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FAX: (702) 384-6568

1
2 FIESTA PALMS is without knowledge or information sufficient to form a belief as
3 to the truth of the allegations contained therein.

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

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

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

13
14
15 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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



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1
2 FIESTA PALMS denies the allegations contained therein.

3 18. As to paragraph 18 of Plaintiff's Complaint on file herein, Defendant
4 FIESTA PALMS denies the allegations contained therein.
5

6 **SECOND CAUSE OF ACTION**

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

10 20. As to paragraph 20 of Plaintiff's Complaint on file herein, Defendant
11 FIESTA PALMS denies the allegations contained therein.
12

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

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

17 23. As to paragraph 23 of Plaintiff's Complaint on file herein, Defendant
18 FIESTA PALMS denies the allegations contained therein.
19

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

22 **THIRD CAUSE OF ACTION**

23 25. As to Paragraph 25 of Plaintiff's Complaint on file herein,
24 Defendant FIESTA PALMS repeats and realleges each and every response to
25 paragraphs above. Additionally, Defendant denies each allegation in the paragraph.
26 Also Plaintiff's Third Cause of Action has been dismissed pursuant to the
27 Stipulation and Order dated December 26, 2006.
28



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1
2 26. As to Paragraph 26 of Plaintiff's Complaint on file herein,
3 Defendant FIESTA PALMS repeats and realleges each and every response to
4 paragraphs above. Additionally, Defendant denies each allegation in the paragraph.
5 Also Plaintiff's Third Cause of Action has been dismissed pursuant to the
6 Stipulation and Order dated December 26, 2006.
7

8 27. As to Paragraph 27 of Plaintiff's Complaint on file herein,
9 Defendant FIESTA PALMS repeats and realleges each and every response to
10 paragraphs above. Additionally, Defendant denies each allegation in the paragraph.
11 Also Plaintiff's Third Cause of Action has been dismissed pursuant to the
12 Stipulation and Order dated December 26, 2006.
13

14 28. As to Paragraph 28 of Plaintiff's Complaint on file herein,
15 Defendant FIESTA PALMS repeats and realleges each and every response to
16 paragraphs above. Additionally, Defendant denies each allegation in the paragraph.
17 Also Plaintiff's Third Cause of Action has been dismissed pursuant to the
18 Stipulation and Order dated December 26, 2006.
19
20

21 **AFFIRMATIVE DEFENSES**

22 **FIRST AFFIRMATIVE DEFENSE**

23 Plaintiffs' Amended Complaint on file herein fails to state a claim against
24 Defendant FIESTA PALMS on which relief can be granted.
25

26 **SECOND AFFIRMATIVE DEFENSE**

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



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2 **THIRD AFFIRMATIVE DEFENSE**

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

4
5 **FOURTH AFFIRMATIVE DEFENSE**

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

9 **FIFTH AFFIRMATIVE DEFENSE**

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

13
14 **SIXTH AFFIRMATIVE DEFENSE**

15 Plaintiffs are barred by the doctrine of unclean hands.

16 **SEVENTH AFFIRMATIVE DEFENSE**

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

20
21 **EIGHTH AFFIRMATIVE DEFENSE**

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

25 **NINTH AFFIRMATIVE DEFENSE**

26
27 The claims of the Plaintiffs as alleged in the Complaint, and the loss of
28 damage, if any in fact exist, are the direct and proximate result of the acts, deeds,



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FAX: (702) 384-6568

1
2 omissions or failure to act, or the conduct of third parties, over whom the Defendant
3 FIESTA PALMS had no control, nor the right, duty or obligation to control.

4
5 **TENTH AFFIRMATIVE DEFENSE**

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

8 **ELEVENTH AFFIRMATIVE DEFENSE**

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

11
12 **TWELFTH AFFIRMATIVE DEFENSE**

13
14 Plaintiffs' claims are barred because any alleged injuries to Plaintiffs were
15 the result of superseding or intervening causes.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20
21 It has been necessary for the Defendant FIESTA PALMS to employ the
22 services of an attorney to defend this action and a reasonable sum should be allowed
23 to Defendant FIESTA PALMS for attorney's fees together with costs incurred
24 herein.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26
27 Some of the foregoing Affirmative Defenses have been plead for purposes of
28 non-waiver. Defendant FIESTA PALMS has not concluded discovery in this matter



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1
2 and specifically reserves the right to amend this Answer to include additional
3 Affirmative Defenses if discovery of facts so warrant.
4
5

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

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

12 DATED this 20 of April, 2007
13
14

MORAN LAW FIRM, LLC

15
16
17 
JEFFERY A. BENDAUID, ESQ.

18 Nevada Bar No. 6220
19 630 South 4th Street
20 Las Vegas, Nevada 89101
21 *Attorney for Fiesta Palms, LLC*
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23
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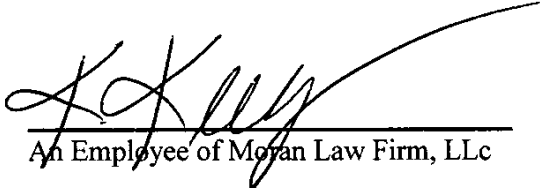
MORAN LAW FIRM, LLC
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ATTORNEYS AT LAW

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PHONE: (702) 384-8424
FAX: (702) 384-6568

1
2 **CERTIFICATE OF MAILING**

3 I hereby certify that on the 23 day of April, 2007, I served the foregoing
4
5 **DEFENDANT FIESTA PALM'S LLC dba PALMS CASINO RESORT'S**
6 **ANSWER TO PLAINTIFFS' COMPLAINT** upon each of the parties to this
7 action by depositing copies in the United States mail, pre-paid, addressed to them as
8 follows:

9 W. JONATHAN WEBER, ESQ
10 7408 W. SAHARA AVE
11 LAS VEGAS, NV 89117

12 
13 An Employee of Moran Law Firm, LLC
14
15
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MORAN LAW FIRM, LLC
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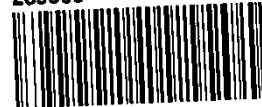
E. J. Smith
CLERK OF THE COURT

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

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

13 ***

06A531538
239860



14 ENRIQUE RODRIGUEZ, an individual,
15 Plaintiff,

CASE NO: A531538

DEPT NO: 10

16 vs.

AMENDED COMPLAINT

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

23 Defendants.

24 COMES NOW the Plaintiff ENRIQUE RODRIGUEZ, by and through his attorney of
25 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



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

3.

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

4.

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

5.

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



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

7
8 6.

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

13
14 7.

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

17
18 8.

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

24
25 9.

26 That the agents, employees, and/or assigns of the Palms Resort known as the Palm Girls
27 were contracted from, supplied by, and/or otherwise provided by an agency, company, and/or
28 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

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

4 **FIRST CAUSE OF ACTION**
5 (Negligence of BRANDY L. BEAVERS and PALMS RESORT)

6 11.

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

12 12.

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

18 13.

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

24 14.

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

15.

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

16.

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

17.

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

SECOND CAUSE OF ACTION

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

18.

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

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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,

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

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

6 **FIRST CAUSE OF ACTION**

- 7 1. For general damages and loss in an amount in excess of Ten Thousand Dollars
8 (\$10,000);
9 2. For special damages in an amount to be determined at time of trial;
10 3. For loss of income and earning capacity in an amount as yet undetermined;
11 4. For reasonable attorney's fees, pre and post-judgment interest, and cost of suit;
12 and
13 5. For such other and further relief as the Court may deem just and proper.

14 **SECOND CAUSE OF ACTION**

- 15 1. For general damages and loss in an amount in excess of Ten Thousand Dollars
16 (\$10,000);
17 2. For special damages in an amount to be determined at time of trial;
18 3. For loss of income and earning capacity in an amount as yet undetermined;
19 4. For reasonable attorneys fees, pre and post-judgment interest, and cost of suit;
20 and
21 5. For such other and further relief as the Court may deem just and proper.

22 **THIRD CAUSE OF ACTION**

- 23 1. For general damages and loss in an amount in excess of Ten Thousand Dollars
24 (\$10,000);
25 2. For special damages in an amount to be determined at time of trial;
26 3. For punitive damages in an amount to be determined at trial;
27 4. For loss of income and earning capacity in an amount as yet undetermined;
28



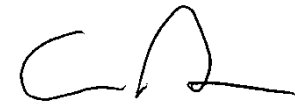
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5. For reasonable attorneys fees, pre and post-judgment interest, and cost of suit;
and

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

DATED: July 6, 2009

BENSON, BERTOLDO, BAKER & CARTER

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



CERTIFICATE OF SERVICE

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

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

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

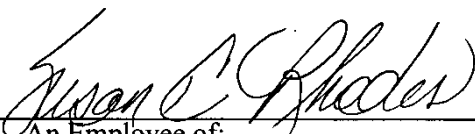
Via U.S. Mail [N.R.C.P. 5(b)] and via facsimile [E.D.C.R. 7.26(a)]

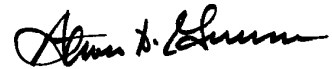
addressed as follows:

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

10676-05 Attorneys for Fiesta Palms
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702-384-8424 Telephone
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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: 
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

CASE NO. A531538

21 Plaintiff,

DEPT. NO. X

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,

NOTICE OF ENTRY OF ORDER

28 Defendants.

29 YOU AND EACH OF YOU PLEASE TAKE NOTICE THAT an Order to Continue
30 Discovery and Trial was entered by this Honorable Court on the 24th day of November, 2009.

31 //

32 //

1 A copy of said Order is attached hereto.

2 DATED this 25th day of November, 2009.

3 STEPHENSON & DICKINSON

4
5 By: Marsha L. Stephenson

6 Marsha L. Stephenson, Esq.

7 Nevada Bar No. 6130

8 2820 West Charleston Blvd., Suite 19

9 Las Vegas, Nevada 89102

10 *Attorneys for Defendant Fiesta Palms, LLC*

11 *d/b/a The Palms Casino Resort*

12 **CERTIFICATE OF MAILING**

13 The undersigned does hereby certify that on the 25th day of November, 2009 a true and
14 correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** was mailed to the following
15 parties via U.S. Postal Service, first class mail, postage prepaid and addressed as follows:

16 Steven Baker, Esq.

17 BENSON, BERTOLDO & BAKER, CHTD.

18 7408 W. Sahara Avenue

19 Las Vegas, NV 89117

20 Telephone: (702) 228-2600

21 *Attorney for Plaintiff*

22 Kenneth C. Ward, Esq.

23 Keith Gillette, Esq.

24 ARCHER NORRIS

25 2033 North Main Street, Suite 800

26 P.O. Box 8035

27 Walnut Creek, CA 94596

28 Telephone: (925) 930-6600

Facsimile: (925) 930-6620

Attorneys for Defendant Fiesta Palms, LLC

d/b/a The Palms Casino

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Employee of STEPHENSON & DICKINSON

FILED
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Alan H. Williams
CLERK OF COURT

SAO

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Attorneys for Defendant FIESTA PALMS, LLC, a
Nevada Limited Liability Company, d/b/a/ THE
PALMS CASINO RESORT

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,

Plaintiff,

v.

**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. X

**STIPULATION AND ORDER TO
CONTINUE DISCOVERY AND TRIAL**

(SECOND REQUEST)

The parties hereby stipulate and agree to continue discovery and the current trial date of
December 7, 2009 in this case.

ZA126/864803-1

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.

28 ///

1 B. Reasons Discovery Not Completed by Deadline Set by Discovery Order

2 As noted above, plaintiff has recently named a new party to the action but who has not yet
3 appeared in this action. Additional discovery may be needed as to Plaintiff's recent medical
4 treatment. The parties submit this request for additional time is not due to any delay on the part of
5 either party, nor caused by bad faith or the unwillingness by either side to meaningfully
6 participate in the discovery process. The parties have fully participated in all discovery to date.

7 C. Proposed Schedule for Completion of Discovery

8 This is the parties' second request to continue discovery and trial. The dates below were
9 agreed upon between counsel. The parties propose the new schedule for discovery be as follows:

10 Additional Initial Expert Disclosures: June 15, 2010

11 Rebuttal Expert Disclosures: July 15, 2010


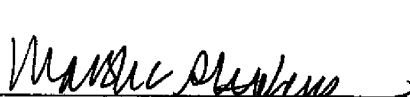
12 Discovery Cut Off: ~~September 15, 2010~~
~~August 2, 2010~~

13 Dispositive Motions: ~~October 15, 2010~~
~~September 3, 2010~~

14 D. Current Trial Date

15 This matter is set for trial to begin on December 7, 2009. The parties respectfully request
16 a continuance of this trial.

17 Respectfully submitted this 13 day of November, 2009.

BENSON, BERTOLDO & BAKER, CHTD.	STEPHENSON & DICKINSON, P.C.
<p>20 By: </p> <p>21 STEVE BAKER, ESQ. 22 Nevada Bar No. 4522 23 7408 W. Sahara Avenue 24 Las Vegas, Nevada 89117 25 Attorney for Plaintiff 26 ENRIQUE RODRIGUEZ</p>	<p>20 By: </p> <p>21 MARSHA L. STEPHENSON, ESQ. 22 Nevada Bar No. 6130 23 2820 W. Charleston Boulevard, Suite 19 24 Las Vegas, Nevada 89102 25 FIESTA PALMS, LLC, a Nevada Limited 26 Liability Company, d/b/a THE PALMS 27 CASINO RESORT</p>

26 //

27 //

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

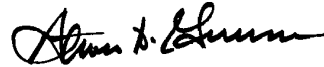
J. J. _____ in accordance
DISCOVERY COMMISSIONER With this
Stipulation; this
case will be
ready for trial
by November
29, 2010. BN

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

1 **REQT**
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

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

9 * * *

9 ENRIQUE RODRIGUEZ, an individual,
10 Plaintiff,

CASE NO: A531538

DEPT NO: 10

11 vs.

REQUEST FOR TRIAL SETTING

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

16 Defendants.

17
18 I hereby request that a trial date be set in the above-entitled matter. I represent to the
19 Court that the case is at issue; that no amended or supplemental complaint or cross-complaint or
20 other affirmative pleading remains unanswered; that to my knowledge no other parties will be
21 served with a summons prior to the time of trial, and I know of no further pleading to be filed
22 and know of no reason why this case should not be tried as soon as the schedule of the Court will
23 permit.
24

25 This case arises from a premises liability action on November 22, 2004 wherein Plaintiff
26 ENRIQUE RODRIGUEZ was injured at the Palms Casino. The Complaint in this matter was
27 filed November 15, 2006. Extensive discovery has been conducted, including an Independent
28 Medical Examination. The Amended Summons and Amended Complaint were published for




1 service upon Brandy Beavers by Nevada Legal News weekly from December 14, 2009
 2 through January 11, 2010. The Amended Summons and Amended Complaint were further
 3 posted for service upon Ms. Beavers at the Clark County Regional Justice Center on January
 4 13, 2010. No appearance having been made, a Default was issued against Brandy Beavers on
 5 February 19, 2010 and filed with this Honorable Court on February 25, 2010.
 6

7 This case is docketed for a bench trial and requires approximately 7 court days.

8 DATED this 2nd day of March, 2010.

9 BENSON, BERTOLDO, BAKER & CARTER

10
 11 BY: 
 12 STEVEN M. BAKER, ESQ.
 13 Nevada Bar No.4522
 14 7408 West Sahara Avenue
 15 Las Vegas, Nevada 89117
 16 Attorneys for Plaintiff
 17



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th 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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DISTRICT COURT
CLARK COUNTY, NEVADA

Allen D. Benson
CLERK OF THE COURT

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.

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BENSON
BERTOLDO
AKER
& CARTER
ATTORNEYS AT LAW

MC

CLERK OF THE COURT

MAY 10 2010

RECEIVED

CLERK OF THE COURT

MAY 11 2010

RECEIVED

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

**BENSON
BERTOLDO
BAKER
& CARTER**
ATTORNEYS AT LAW

1 H. Orders shortening time will not be signed except in extreme emergencies.

2 **AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY**

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

8 Counsel must advise the Court immediately when the case settles or is otherwise
9 resolved prior to trial. A stipulation which terminates a case by dismissal shall indicate whether
10 a Scheduling Order has been filed and, if a date has been set, the date of that trial.
11

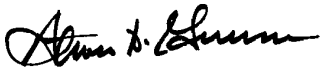
12 DATE: May 7, 2010

13 Jessie Walsh
JESSIE WALSH, District Judge

14
15
16 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:

17
18 Steven M. Baker, Esq. (Benson, Bertoldo, Baker & Carter, Chtd.)
Marsha Stephenson, Esq. (Stephenson & Dickinson)
Keith Gillette, Esq. (Archer, Norris)

19 Jeri Winter
20 JERI WINTER, Judicial Assistant
21
22
23
24
25
26
27
28



CLERK OF THE COURT

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,	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 10th
day of March, 2011. A copy of said Order is attached hereto.

Date: 3/14/11

BENSON, BERTOLDO, BAKER & CARTER



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



CERTIFICATE OF SERVICE

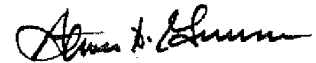
I HEREBY CERTIFY that on the 14th day of March, 2011, a true and correct copy of the above referenced document was served via 1st Class, U.S. Mail, postage thereon fully prepaid to the following interested parties:

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



CLERK OF THE COURT

FFCL
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.

BENCH TRIAL DATE: 10/25/10

HEARING DATE: 1/31/11

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.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

THIS MATTER having come on for hearing on January 31, 2011 with respect to Defendant's Motion for Mistrial, or in the Alternative, Motion to Strike Plaintiff's Confidential 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, this Court finds and concludes as follows:

FINDINGS OF FACT

Subsequent to the close of evidence, Defendant filed a Motion for Mistrial, or in the Alternative, Motion to Strike Plaintiff's Confidential Brief.

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BENSON, BERTOLDO, BAKER & CARTER
ATTORNEYS AT LAW

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.
28

1
2 Counsel for Plaintiff filed with their Opposition to Motion for Mistrial affidavits
3 stating under oath that no Supplemental Confidential Trial Briefs were submitted by them after
4 the commencement of trial and that no *ex parte* communication with this Honorable occurred.
5 This Court also finds that no Supplemental Confidential Trial Briefs were submitted or filed
6 by the Plaintiff and that no *ex parte* communication with the Plaintiff occurred. At the hearing
7 on Defendant's Motion for Mistrial, Counsel for Plaintiff requested an evidentiary hearing on
8 the issue of *ex parte* communication should said contention not be abandoned by the
9 Defendant. Counsel for Defendant, at that time, stated that Defendant was satisfied that no *ex*
10 *parte* communication occurred.
11

12 CONCLUSIONS OF LAW

13
14 Plaintiff provided the Court with one, and only one, Confidential Trial Brief before the
15 commencement of trial, which was served on Defendant on December 14, 2010, in accordance
16 with EDCR 7.27.

17 Plaintiff provided the Court with **no** supplements thereto at any time during trial.

18 Plaintiff and his counsel did not engage in *ex parte* communication with the Court.

19
20 As no *ex parte* communication occurred between the Court and the Plaintiff, the Court
21 was under no obligation to divulge the same.

22 As no *ex parte* communication occurred between the Court and the Plaintiff, no
23 irregularities occurred with respect to said issue and Defendant's Due Process rights were not
24 impacted.

25 Plaintiff's permissive Confidential Brief was submitted to the Court prior to the
26 commencement of trial on October 25, 2010.

27
28 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 7th 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

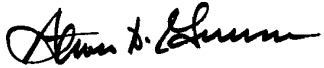
ORDER

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

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,	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 granting Plaintiff's Motion on the Issue of
Liability was filed on the 10th day of March, 2011. A copy of said Order is attached hereto.

Date: 3/14/11

BENSON, BERTOLDO, BAKER & CARTER


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




CERTIFICATE OF SERVICE

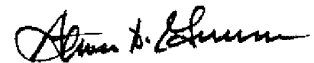
I HEREBY CERTIFY that on the 14th day of March, 2011, a true and correct copy of the above referenced document was served via 1st Class, U.S. Mail, postage thereon fully prepaid to the following interested parties:

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



CLERK OF THE COURT

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,
14 Plaintiff,

CASE NO: A531538
DEPT NO: 10

15 vs.

BENCH TRIAL DATE: 10/25/10

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,

HEARING DATE: 1/31/11

22 Defendants.

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

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

BENSON, BERTOLDO, BAKER & CARTER
ATTORNEYS AT LAW

1 premises; that Defendant knew this behavior was inappropriate because it was a safety issue
2 and could foreseeably cause injury to an individual; that prior to the incident at bar, Defendant
3 conducted a staff meeting where staff was instructed not to cause promotional items to be
4 thrown into crowds because of said safety concerns; and that Defendant, despite this
5 knowledge and awareness, constructed a "field goal" within the sports book for purposes of
6 throwing promotional items at sporting events.
7

8 Sheri Long, the Director of Marketing at The Palms, testified that she was aware that
9 promotional items were thrown into crowds before the subject incident; this witness
10 acknowledged this behavior was inappropriate because it constituted a safety issue which
11 could foreseeably cause injury to an individual.
12

13 In her testimony, Ms. Long specifically recalled holding a meeting, before the subject
14 incident, and instructing her staff that items should not be thrown into crowds during
15 promotional events.

16 Ms. Long acknowledged that the injuries suffered by Plaintiff were exactly of the type
17 she was concerned would occur if promotional items were thrown into crowds at promotional
18 events.
19

20 Ms. Long further testified that what occurred in this case is what she was trying to
21 prevent when she conveyed to her staff that promotional items were not to be thrown into a
22 crowd at an event.

23 Vikki Kooinga, Risk Manager at The Palms, also testified that throwing items into a
24 crowd could foreseeably cause injury to someone in the audience.

25 Ms. Kooinga acknowledged that throwing promotional items into the crowd was
26 inappropriate, wrong and beneath the standard of care for the hotel in protecting the safety of
27 their patrons upon the premises.
28

1
2 Lastly, Ms. Kooinga testified that she would have expected hotel Security to stop
3 anyone from throwing items into the crowd.
4

5 Plaintiff was then injured when promotional items were thrown into the crowd at a
6 promotional event.
7

8 CONCLUSIONS OF LAW

9 NRCP 52(c) states in pertinent part as follows:
10

11 If during a trial without a jury a party has been fully heard on an
12 issue and the court finds against the party on that issue, the court
13 may enter judgment as a matter of law against that party with
14 respect to a claim or defense that cannot under the controlling
15 law be maintained or defeated without a favorable finding on
16 that issue, or the court may decline to render any judgment until
17 the close of all the evidence.

18 Liability has been conclusively established by the Plaintiff in this matter. The
19 unequivocal testimony and undisputed facts establish liability and are as follows:
20

- 21 1. Defendant was aware promotional items were being thrown into crowds at events
22 before the incident at bar;
23
- 24 2. Defendant conducted a staff meeting prior to the incident at bar where staff was
25 instructed not to cause or permit promotional items to be thrown into crowds at events;
26
- 27 3. Defendant acknowledged that throwing promotional items into crowds was
28 inappropriate;
29
- 30 4. Defendant acknowledged that throwing promotional items into crowds was a safety
31 concern as it could foreseeably cause injury to an individual;
32
- 33 5. Defendant acknowledged that said foreseeable risk of injury was known by them prior
34 to the incident at bar;
35
- 36 6. Despite this awareness, after said staff meeting, and with knowledge of said
37 foreseeable risk of harm, Defendant constructed a goal post in the sports book for
38 purposes of promotional items to be thrown;
39
- 40 7. Plaintiff was then injured as a direct and proximate result of throwing promotional
41 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.

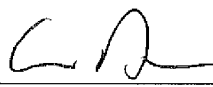
The known safety procedure was admissible as relevant to the issue of liability.

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 7th 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



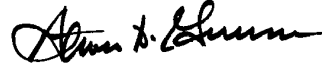
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ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's 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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

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


Defendants.

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 10th day of March, 2011.
A copy of said Order is attached hereto.

Date: 3/14/11

BENSON, BERTOLDO, BAKER & CARTER



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




CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of March, 2011, a true and correct copy of the above referenced document was served via 1st 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

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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

Clerk

Steven M. Baker

CLERK OF THE COURT

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BENSON
BERTOLDO
BAKER
& CARTER
ATTORNEYS AT LAW

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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
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 1 through X,
inclusive;

HEARING DATE: 1/31/11

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

18 THIS MATTER having come on for hearing on January 31, 2011 with respect to
19 Plaintiff's Motion to Strike Defendant's Experts before the Honorable Jessic Walsh, presiding,
20 and the Court having considered the evidence and the arguments of counsel and taken the
21 matter under advisement for further consideration, this Honorable Court finds and concludes
22 as follows:
23
24

FINDINGS OF FACT

25 Defendant presented two (2) experts in this trial, Dr. Thomas Cargill (Economist) and
26 Forrest Franklin (Liability), neither of whom opined that their opinions were given to a
27
28

1 reasonable degree of professional probability as required under Nevada law.

2 Forrest Franklin, Defendant's liability expert, was retained to develop and render an
3 opinion with respect to the standard of care as it relates to throwing objects, memorabilia, and
4 promotional articles into crowds.

5 Mr. Franklin offered the following opinions:

- 6
- 7 1. Throwing memorabilia as a promotional effort
8 into crowds is not a substandard protocol;
 - 9 2. It is not unsafe to throw things into
10 crowds; and
 - 11 3. It is not below the standard of care to throw items into a crowd.

12 None of these opinions, however, were given to a reasonable degree of professional
13 probability.

14 Dr. Cargill offered the following two (2) opinions at trial:

- 15
- 16 1. Plaintiff could not have made as much in the current financial market as he could
17 have back in 2004 because the bubble burst in the housing market; and
 - 18 2. Mr. Dineen's discount rates were inappropriate.

19 Neither of these opinions was given to a reasonable degree of professional probability.

20 **CONCLUSIONS OF LAW**

21 To testify as an expert witness under NRS 50.275, the witness must satisfy the
22 following three requirements: (1) he or she must be qualified in an area of "scientific, technical
23 or other specialized knowledge" (the qualification requirement); (2) his or her specialized
24 knowledge must "assist the trier of fact to understand the evidence or to determine a fact in
25 issue" (the assistance requirement); and (3) his or her testimony must be limited "to matters
26 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.

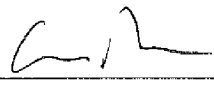
The opinions of Dr. Cargill and Mr. Franklin offered insufficient foundation for this court to take judicial notice of the scientific basis of those conclusions.

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 7th day of ^{February} ~~January~~, 2011.

BENSON, BERTOLDO, BAKER & CARTER

BY: 
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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


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,	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 granting Plaintiff's Motion to Strike Defendant's Post Trial Brief was filed on the 10th 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



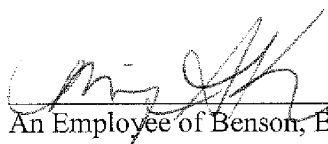
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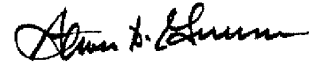
I HEREBY CERTIFY that on the 17th day of March, 2011, a true and correct copy of the above referenced document was served via 1st Class, U.S. Mail, postage thereon fully prepaid to the following interested parties:

KC Ward, Esq.
Archer Norris
2033 North Main Street, Suite 800
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Walnut Creek, California 94596
Co-counsel for Fiesta Palms

Jeffery A. Bendavid, Esq.
Moran & Associates
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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


CLERK OF THE COURT

FFCL
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Telephone : (702) 228-2600
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

BENCH TRIAL DATE: 10/25/10

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,

HEARING DATE: 1/31/11

Defendants.

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 7th day of February, 2011.

BENSON, BERTOLDO, BAKER & CARTER

BY: 
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702-228-2600
Attorneys for Plaintiff



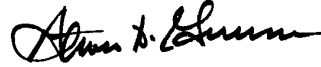
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ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Strike Defendant's Post-Trial Brief is granted.

Date: 3/2/11


DISTRICT COURT JUDGE



CLERK OF THE COURT

STEVEN M. BAKER
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Telephone : (702) 228-2600
Facsimile : (702) 228-2333
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/baa/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 VERDICT




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PLEASE TAKE NOTICE that a Verdict was entered in the above-captioned matter on the 14th day of March, 2011. A copy of said Verdict is attached hereto.

DATED this 16th day of March, 2011.

BENSON BERTOLDO, BAKER & CARTER, CHTD.

By: 

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monique@bensonlawyers.com
Attorneys for Plaintiff



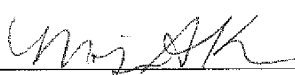
CERTIFICATE OF SERVICE

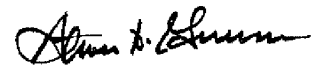
I hereby certify that on the ~~7th~~^{17th} day of March, 2011, I served a copy of the foregoing NOTICE OF ENTRY OF VERDICT via 1st Class, U.S. Mail, postage thereon fully prepaid to the following:

10676-05 Co-Counsel for Fiesta Palms
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An employee of Benson, Bertoldo, Baker & Carter, Chtd.



CLERK OF THE COURT

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 I 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. 60 %

Defendant BRANDY BEAVERS 40 %

4. The total amount of the plaintiff's damages is divided as follows:

Past Medical Expenses \$ 376,773.38

Future Medical Expenses \$ 1,854,938.

Past Pain and Suffering \$ 1,243,350.

Future Pain and Suffering \$ 1,865,025.

Past Lost Income \$ 289,111.

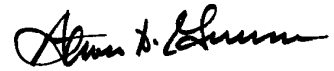
Future Lost Income \$ 422,592.

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 7th day of Mar, 2011.

Jessie Walsh
HON. JESSIE WALSH, District Court Judge



CLERK OF THE COURT

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 I through X,
inclusive,

Defendants.

NOTICE OF ENTRY OF JUDGMENT




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

DATED this 15th day of April, 2011.

BENSON BERTOLDO, BAKER & CARTER, CHTD.

By: 
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monique@bensonlawyers.com
Attorneys for Plaintiff



CERTIFICATE OF SERVICE

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

10676-05 Co-Counsel for Fiesta Palms
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An employee of Benson, Bertoldo, Baker & Carter, Chtd.



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CLERK OF THE COURT

JUDGE
STEVEN M. BAKER
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Telephone : (702) 228-2600
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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.

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



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

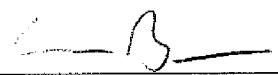
3 Post-Judgment Interest shall accrue at the legal rate on future damages in the amount
4 of \$4,142,355.00, until fully satisfied.

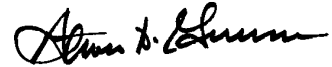
5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is entitled
6 to his costs of \$149,146.¹⁸ as the prevailing party under NRS 18.020 and
7 NRS 18.010.
8

9 DATED this 11th day of Apr, 2011.

10
11 
12 HONORABLE JESSIE WALSH
13 District Court Judge
14

15 SUBMITTED BY:

16
17  4/5/11
18 STEVEN M. BAKER
19 Nevada Bar No. 4522
20 BENSON, BERTOLDO, BAKER & CARTER
21 7408 W. Sahara Avenue
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25 Attorneys for Plaintiff
26
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CLERK OF THE COURT

STEVEN M. BAKER
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Facsimile : (702) 228-2333
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/baa/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 FINDINGS OF FACT AND CONCLUSIONS OF LAW IN
SUPPORT OF VERDICT



1 PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law in
2 Support of Verdict was entered in the above-captioned matter on the 21st day of April, 2011.
3 A copy of said Findings of Fact and Conclusions of Law in Support of Verdict is attached
4 hereto.
5

6 DATED this 27th day of April, 2011.
7

8 **BENSON BERTOLDO, BAKER & CARTER, CHTD.**
9

10 By: 

11 STEVEN M. BAKER, ESQ.
12 Nevada Bar No. 4522
13 7408 W. Sahara Avenue
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15 (702) 228-2600 Telephone
16 (702) 228-2333 Facsimile
17 monique@bensonlawyers.com
18 *Attorneys for Plaintiff*
19
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21
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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of April, 2011, I served a copy of the Findings of Fact and Conclusions of Law in Support of Verdict via 1st Class, U.S. Mail, postage thereon fully prepaid to the following:

10676-05 Co-Counsel for Fiesta Palms
Kenneth C. Ward, Esq.
Archer Norris
2033 North Main Street, Suite 800
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An employee of Benson, Bertoldo, Baker & Carter, Chtd.



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FFCL
STEVEN M. BAKER
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Telephone : (702) 228-2600
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Attorneys for Plaintiff

Original

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CLERK OF THE COURT

**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/a PALMS CASINO RESORT, BRANDY L. BEAVERS, individually, DOES I through X, inclusive, and ROE BUSINESS ENTITIES I through X, inclusive,	
Defendants.	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN SUPPORT OF VERDICT**

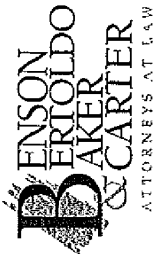
THIS MATTER HAVING COME ON FOR TRIAL before the bench, commencing
on October 25, 2011, and a verdict being entered on March 14, 2011, this Honorable Court
Finds and Concludes as follows:

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.

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

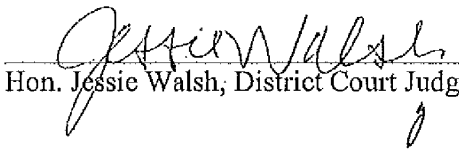


1 past lost income in the amount of \$289,111.00 and future lost income in the amount of
2 \$422,593.00.

3
4 5) As to the allocation of liability the Court finds liability against Defendant Fiesta
5 Palms, LLC, as set forth in Finding and Conclusion #1, above, but finds that Defendant
6 Beavers also failed to act in the manner of the average reasonable person under similar
7 circumstances in a manner creating a foreseeable harm to patrons of the Palms by throwing
8 promotional items into a crowded environment and in other and further manners as elucidated
9 at the time of trial. The Court, in its discretion, therefore apportions liability at 60% to the
10 Palms and 40% to Beavers, with no finding of comparative fault on the part of the Plaintiff.

11
12 WHEREFORE, this Court finds and concludes that a verdict be entered in said amounts as
13 set forth on the stipulated Verdict form attached hereto as Exhibit #1.

14
15 Date: 19 Apr 2011

16 
Hon. Jessie Walsh, District Court Judge

Alvin D. Schuman
CLERK OF THE COURT

0. AL

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 I
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> %

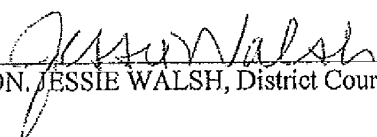
4. The total amount of the plaintiff's damages is divided as follows:

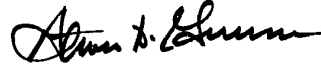
Past Medical Expenses	\$ <u>376,773.38</u>
Future Medical Expenses	\$ <u>1,854,738.</u>
Past Pain and Suffering	\$ <u>1,243,350.</u>
Future Pain and Suffering	\$ <u>1,865,025.</u>
Past Lost Income	\$ <u>289,111.</u>
Future Lost Income	\$ <u>422,592.</u>

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 7th day of Mar-February, 2011.


HON. JESSIE WALSH, District Court Judge



CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/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



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PLEASE TAKE NOTICE that an Amended Judgment on the Verdict was entered in the above-captioned matter on the 15th day of February, 2012. A copy of said Amended Judgment is attached hereto.

DATED this 9th 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




CERTIFICATE OF SERVICE

I hereby certify that on the 09th day of February, 2012, I served a copy of the foregoing NOTICE OF ENTRY OF AMENDED JUDGMENT ON THE VERDICT via 1st Class, U.S. Mail, postage thereon fully prepaid to the following:

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

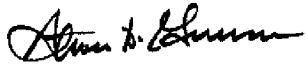
10676-05 Attorneys for Fiesta Palms
Jeffery A. Bendavid, Esq.
Moran & Associates
630 South Fourth Street
Las Vegas, Nevada 89101
702-384-8424 Telephone
702-284-6568 Facsimile

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


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

[ORIGINAL]

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CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

FIESTA PALMS, L.L.C., a Nevada Limited
Liability Company, d/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.



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




1 accrue interest at the legal rate from the date of entry of the judgment until the judgment is
2 fully satisfied.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is entitled
4 to his costs of \$149,146.18 as the prevailing party under NRS 18.020 and NRS 18.010.
5

6 DATED this 15th day of Feb, 2012.

7
8 
9 HONORABLE JESSIE WALSH
10 District Court Judge

11
12 SUBMITTED BY:

13 
14 STEVEN M. BAKER
15 Nevada Bar No. 4522
16 BENSON, BERTOLDO, BAKER & CARTER
17 7408 W. Sahara Avenue
18 Las Vegas, Nevada 89117
19 Attorneys for Plaintiff
20
21
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FILED
AUG 19 2014

Ann Thomson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ

Case No.: 06A531538

VS

DEPARTMENT 16

FIESTA PALMS LLC

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

06A531538
NODR
Notice of Department Reassignment
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CERTIFICATE OF MAILING

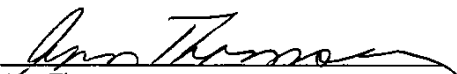
I hereby certify that: 8/19/2014

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

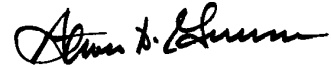
☒ I placed a copy of the foregoing Clerk of the Court Notice of Department Reassignment in the appropriate attorney folder located in the Clerk of the Court's Office:

JOHN WEBER

Jon Randall Jones


Ann Thomson
Deputy Clerk of the Court

NOTC



CLERK OF THE COURT

**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

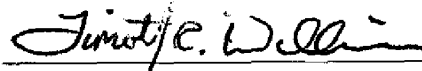
Dept No. XVI

**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 13th day of October, 2014.



TIMOTHY C. WILLIAMS
District Court Judge, Dept. XVI

TIMOTHY C. WILLIAMS
DISTRICT JUDGE
DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

OCT 13 2014

CERTIFICATE OF SERVICE

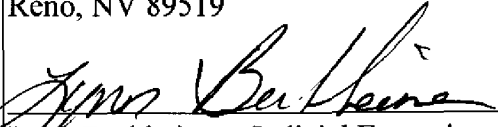
I hereby certify that on or about the date signed, a copy of this Order was electronically served and/or placed in the attorney's folders maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

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)
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 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.
22

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")¹, by and through its counsel of
25

26 ¹ On December 7, 2011, Defendant Palms filed an amendment to its articles of organization with the
27 Nevada Secretary of State, and changed its name to FCH1 LLC. This occurred while the appeal was
28 pending. On July 16, 2012, the Nevada Supreme Court ordered the caption of the appeal docket changed

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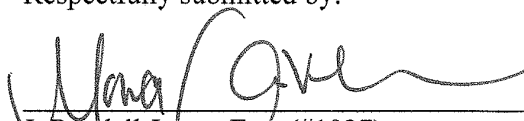
CLERK OF THE COURT

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.² 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

3800 Howard Hughes Parkway

Seventeenth Floor

Las Vegas, Nevada 89169

11 Robert L. Eisenberg, Esq. (#950)

12 LEMONS, GRUNDY & EISENBERG

13 6005 Plumas Street, Suite 300

14 Reno, Nevada 89519

15 Telephone: (775) 786-6868

16 Facsimile: (775) 786-9716

17 *Attorneys for Defendant Fiesta Palms, LLC*

18 *d/b/a The Palms Casino Resort*

19
20
21
22
23 to reflect Defendant's name change. Subsequent to that Order, FP Holdings, L.P., became the owner and
24 operator of Palms. Therefore, the caption of this district court case should be changed to reflect
25 Defendant's name as: "FP Holdings, L.P. d/b/a Palms Casino Resort." If the Court deems it necessary,
Defendant will file a separate Motion to Change Case Caption.

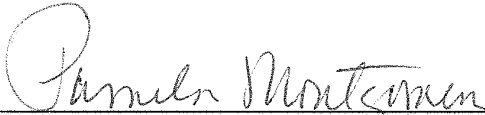
26 ² Concurrently with this peremptory challenge, Defendant Palms has also filed a motion to, *inter alia*,
27 vacate the reassignment of Judge Williams. The motion is based upon the ground that the reassignment
28 to Judge Williams took place at a time when the district court lacked jurisdiction. This peremptory
challenge is therefore intended to only apply if the motion is denied and if the case is deemed to have

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

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.

38

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

ENRIQUE RODRIGUEZ
VS
FIESTA PALMS LLC

CASE NO: 06A531538

2014 OCT 23 P 2:43

Steven D. Grierson
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: *Diana Matson*
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

Diana Matson
Diana Matson, Deputy Clerk of the Court

06A531538
NODR
Notice of Department Reassignment
4385293



CLERK OF THE COURT

RECEIVED
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

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

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
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.¹ 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

¹Whether 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,² *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.

²Though, 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