

1 Q I'm going to ask you -- and there are some books
2 behind you. Exhibit books.

3 MR. BAKER: Can I get that for her, Your Honor?

4 THE COURT: Sure.

5 [Counsel and Clerk Confer]

6 BY MR. BAKER:

7 Q As an employee of the Palms Hotel, you're familiar
8 with many of the documents and forms and reporting forms that
9 are generated by the hotel? Is that fair to say?

10 A I'm aware of some of them. I wouldn't say many.

11 Q Could you turn to 58?

12 A Okay.

13 Q Do you recognize that document?

14 A It says it's a security incident report.

15 Q Have you seen a security incident report before?

16 A A couple of times. I've never seen this one.

17 Q Is this a security incident report which was
18 produced to me by the Defendants in this case regarding
19 Enrique Rodriguez incident at the Palms in November of 2004?

20 A That's what it says.

21 MR. BAKER: Move to admit 58, Your Honor.

22 THE COURT: Any objection?

23 MR. WARD: No. No objection, Your Honor.

24 THE COURT: 58 will be admitted.

25 [Plaintiff's Exhibit 58 Received]

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1 BY MR. BAKER:

2 Q And I'd like you to look about one, two, three,
3 four, five, six lines down.

4 A In the narrative?

5 Q In the narrative section.

6 A Okay.

7 Q Mr. Rodriguez stated one bottle was thrown his way
8 and a white female, approximately 45 years old sitting in the
9 chair in front of him, got up and dove to retrieve the bottle,
10 which caused her to injure his left knee with her shoulder.

11 Do you see that?

12 A Yes.

13 Q And is this the type of injury that you were afraid
14 could occur in the event that promotional items were thrown
15 into a crowd?

16 A Yes.

17 Q And this doesn't say that there was a water bottle
18 laying on the ground and somebody went to go for the water
19 bottle. It says that the water bottle was thrown causing the
20 woman to jump and impacting his knee.

21 Is that what I'm saying?

22 MR. WARD: That's argumentative.

23 THE COURT: It is. Sustained. Ask you to rephrase.

24 MR. BAKER: What did I do?

25 THE COURT: I think the nature of the objection was that

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1 it was argumentative, but I think you can rephrase your
2 question if you'd like.

3 BY MR. BAKER:

4 Q It doesn't say on the ground, does it? It said it
5 was thrown? Is that fair to say?

6 A Said it was thrown his way. That's what the
7 document says.

8 Q And that's kind of what you were trying to prevent
9 when you conveyed to your staff that it was foreseeable that
10 somebody could be injured if a bottle was thrown?

11 A Correct.

12 Q Would you turn to 60, please? Are you at 60?

13 A Uh-huh.

14 Q Is that the guest employee voluntary statement?

15 A Yes.

16 Q Is this a statement that was generated on a form by
17 the Palms Hotel?

18 [Pause]

19 Q Is this a Palms' form?

20 A It looks like a Palms' form.

21 Q And these are the type of forms that the Palm
22 maintains and is a custom of running its business?

23 A This is not my department. I don't know that.

24 MR. BAKER: I move to have this admitted as well, Your
25 Honor.

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1 THE COURT: Any objection?

2 MR. WARD: No objection, Your Honor.

3 THE COURT: 60 is admitted.

4 [Plaintiff's Exhibit 60 Received]

5 BY MR. BAKER:

6 Q And this, again, says that,

7 "During commercial breaks the casino Palms'
8 girls were throwing gifts out to us and they threw
9 in the air a water bottle. The guy next to me,
10 standing" -- wait.

11 "The guy next to me standing was thrown one,
12 but he fumbled it. And when it hit his hands there
13 was a lady sitting directly in front of me that got
14 up and ran, and then she dove for the water bottle
15 and her shoulder hit my left knee. She tackled my
16 knee for a water bottle."

17 Do you see that statement?

18 THE COURT: Are you on 60 or some other page?

19 THE WITNESS: I don't -- I'm not following you.

20 MR. BAKER: Oh, I'm sorry, 59. You could have stopped me
21 earlier.

22 THE WITNESS: Well, I was trying to figure out where you
23 were reading from.

24 MR. BAKER: I'm used to getting these looks
25 [demonstrating], so if you feel it necessary, go ahead.

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1 THE WITNESS: Okay.

2 BY MR. BAKER:

3 Q That's a Palms' form, as well?

4 A Yes.

5 MR. BAKER: Move to admit 59, Your Honor.

6 THE COURT: Any objection?

7 MR. WARD: No objection, Your Honor.

8 THE COURT: 59 is admitted.

9 [Plaintiff's Exhibit 59 Received]

10 BY MR. BAKER:

11 Q What I just read you, that was --

12 [Counsel and Clerk Confer]

13 THE COURT: 59 and 60 have both been admitted. And 58

14 was previously admitted, I think.

15 MR. BAKER: Right. Yes.

16 BY MR. BAKER:

17 Q And once again, the type of injury that's now being

18 related by Enrique Rodriguez, that's just the type of thing

19 that you wanted to avoid when you were saying that promotional

20 items into the audience was inappropriate?

21 A Inappropriate. Correct.

22 Q Is that fair to say?

23 A Correct.

24 Q And if you would turn to 60, please? And this is an

25 independent witness, Chris Poe [phonetic throughout], do you

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1 see that?

2 A Uh-huh.

3 Q Is that yes?

4 A Yes.

5 Q And is this on a form generated by the Palms?

6 A Yes.

7 MR. BAKER: Your Honor, move to re-admit 60.

8 THE COURT: It's already in, Mr. Baker. How many times
9 are you going to admit it?

10 MR. BAKER: I like this one.

11 BY MR. BAKER:

12 Q And this independent witness also said,

13 "The MC threw a Palms' water bottle at me and
14 it bounced onto the ground. The woman in front of
15 me, in a green" -- does that say "hat"? "Coat?"
16 -- "and blonde hair jumped out of a chair to get the
17 bottle. I leaned down to grab it, and she ran into
18 the man next to me because she was going for the
19 bottle also. I grabbed it and she kept going for
20 it. This occurred at approximately 7:30 p.m."

21 Despite the fact I can't read most of the
22 handwriting, does that accurately portray what's on that
23 document?

24 A To the best of my reading it, as well, yes.

25 Q And is this consistent with what Mr. Rodriguez

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1 reported, that we just read a half a second ago?

2 MR. WARD: That's speculative

3 MR. BAKER: I'm just asking her if it's consistent. I
4 don't think that's speculative, Your Honor.

5 MR. WARD: That's what I mean. The documents speak for
6 themselves. One says one thing, one says another.

7 THE COURT: They do. Sustain the objection. Ask you to
8 rephrase.

9 BY MR. BAKER:

10 Q Again, this is the type of injury now reported by an
11 independent witness that resulted from the inappropriate
12 behavior of throwing a water bottle into the audience, is that
13 fair to say?

14 A Fair to say.

15 Q The next one I can't even read so I really won't put
16 that one into evidence.

17 Was there a time that a formal policy was
18 implemented that there would be no throwing of water bottles
19 at promotional events?

20 A Not that I'm aware of.

21 Q There's still no memo like that, saying that water
22 bottles should not be thrown or promotional items shouldn't be
23 thrown?

24 A Not that I'm aware of.

25 MR. BAKER: Your Honor, if you give me just one sec, I

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1 might pass the witness.

2 THE COURT: Sure.

3 [Counsel Confer]

4 BY MR. BAKER:

5 Q Oh, you were the marketing director at this point in
6 time, is that right?

7 A Director of marketing.

8 Q Was there also a marketing manager?

9 A Yes.

10 Q Who is that?

11 A It would have been either Denise or Maureen. I
12 think at the time that the incident happened it was Denise.
13 Maureen was gone.

14 Q And is it fair to say you didn't tell your marketing
15 manager to tell the girls not to throw water bottles after you
16 found out water bottles were -- or other promotional items
17 were being thrown in the Key West Room?

18 A I don't recall.

19 Q You don't recall whether you did or did not tell
20 your marketing manager not to permit that type of activity?

21 A I don't remember at all.

22 Q And your marketing manager would likely have greater
23 contact with the promotional girls than you would?

24 A Yes.

25 Q Do you recall the time you took your deposition with

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1 me?

2 A Yes.

3 Q And it's not such a big point, but let me look at
4 something real quick, quick.

5 You had staff meetings with different directors from
6 different departments in the course of your services as
7 marketing director, is that correct?

8 A Uh-huh. Yes.

9 Q And during those staff meetings you would bring up
10 different topics that were important to you, is that correct?

11 A Correct.

12 Q And is it fair to say that you did not bring up the
13 issue that promotional items should not be thrown at a
14 promotional event during any of those staff meetings?

15 A I don't remember.

16 Q Okay.

17 MR. BAKER: Your Honor, I'll pass the witness.

18 THE COURT: Very well. Mr. Ward.

19 MR. WARD: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. WARD:

22 Q Good morning, Ms. Long.

23 A Hi.

24 Q You ever testified before in a court?

25 A No.

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1 Q A little nervous?
2 A A little.
3 Q Wanted to ask you a couple of things. We have the
4 statements in front of us. The number 59 -- Exhibit
5 Number 59. That's the statement from Mr. Rodriguez there,
6 right? Okay.
7 A Yes.
8 Q Now, Number 60 is from Mr. Chris Poe?
9 A Yes.
10 Q Now, Mr. Poe seems to have a problem with his dates,
11 is that right? In the upper right-hand corner?
12 A Yes.
13 Q Mr. Poe thought it was November 21st, but we assume
14 Mr. Poe made a mistake. It's actually November 22nd?
15 A Yes.
16 Q And we have Mr. Poe's address, correct? Up at the
17 top, Chris Poe?
18 A It says --
19 MR. BAKER: You're asking if it is correct, or --?
20 MR. WARD: No, I'm asking do we have his address there?
21 MR. BAKER: Okay.
22 THE WITNESS: It's 1250 Kelly Drive?
23 BY MR. WARD:
24 Q Yeah, I'm not asking for what the address is? I'm
25 just asking do we have the address there?

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1 A It is there.

2 Q Yeah, okay. And his telephone number's there?

3 A Yes.

4 Q And where he's staying at the time is there?

5 A Yes.

6 Q And the next one, which is 61, that's Mr. Josh

7 Gonzales [phonetic throughout]?

8 A Yes.

9 Q And Mr. Gonzales is a little better with the dates

10 than Mr. Poe is?

11 A Yes.

12 Q He's got November 22? And we've got an address for

13 Mr. Gonzales?

14 A Yes.

15 Q And we've got where he's staying?

16 A Yes.

17 Q And we've got a telephone number?

18 A Yes.

19 Q And we have a statement from him?

20 A Yes.

21 Q And he says that his friend had the bottle in his

22 hand and she ran -- the lady ran into him, is that correct?

23 A Yeah, that's what he wrote. Yes.

24 Q Okay. And Chris Poe said the water bottle was

25 bouncing on the ground and the woman ran to -- and ran or dove

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1 to get it, is that right?

2 A Yes.

3 Q Okay. So if someone said we didn't get statements
4 from the people that were there at the incident, that wouldn't
5 be correct, would it?

6 A Correct.

7 Q Now, has -- during the period of time you've been at
8 the Palms, and that's almost since it's been open?

9 A Yes.

10 Q You're going to be celebrating your tenth
11 anniversary sometime in the next 12 months?

12 A Yes.

13 Q Have you ever had a problem like this with people
14 throwing -- has this been a big issue, people throwing things
15 into crowds?

16 A No, it's not been a big issue.

17 Q Okay. Has there been a need to put something
18 specifically in the manual?

19 A No.

20 Q And a comment was made about the room -- what was
21 the first room, the bingo room?

22 A Key West.

23 Q The Key West Room? And somebody threw something
24 once in the Key West Room?

25 A Correct.

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1 Q And they were told not to do it?
2 A Correct.
3 Q Did that ever happen again in the Key West Room?
4 A No. No.
5 Q And -- now, what year was that?
6 A It was either '02 or '03, during football season.
7 Q Okay. So it was either one year or two years before
8 this incident?
9 A Right.
10 Q Have you had any intervening issues?
11 A No.
12 Q Had you ever had a problem with people throwing
13 things in the Sports Bar [sic]?
14 A No.
15 Q Did Brandy Beavers have employment -- was she
16 actually employed by the Palms on November 22, 2004?
17 A No. She was not our employee.
18 Q Thank you.
19 THE COURT: Mr. Baker, any follow-up?
20 MR. BAKER: Yes, just a little bit.
21 REDIRECT EXAMINATION
22 BY MR. BAKER:
23 Q At your hotel when they mop the floor, they put up a
24 warning sign, is that right? Do you know?
25 A I don't know. I've seen it sometimes, but I do not

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1 know the procedures in that department.

2 Q Do you know whether your security manual has a
3 requirement that signs be put up when people are mopping the
4 floor?

5 A I do not know.

6 Q If it does have that requirement, it's probably
7 because it's foreseeable that --

8 MR. WARD: Object. Argumentative.

9 MR. BAKER: Your Honor, I just don't see how that's
10 argumentative.

11 MR. WARD: Well, the question was, "If it does happen,
12 then it's for this reason." That's arguing the case. That's
13 not eliciting testimony.

14 THE COURT: Sustain the objection.

15 BY MR. BAKER:

16 Q Hypothetically, if there is a requirement that
17 warning signs be put up, would you assume it's because it's
18 foreseeable that someone could get hurt if they're not?

19 MR. WARD: It's still arguing his case. He's not asking
20 this witness to testify as to anything that's in her
21 knowledge. He's asking for an opinion about something that
22 she's not even sure if it exists.

23 MR. BAKER: Fine. I think we got my point.

24 THE COURT: I think so.

25 MR. BAKER: Thanks.

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1 THE COURT: Sustain the objection, in any event. Again.

2 MR. BAKER: No further questions, Your Honor.

3 THE COURT: All right. Any follow-up?

4 MR. WARD: No, Your Honor.

5 THE COURT: Thank you, ma'am. You may be excused.

6 THE WITNESS: Thank you.

7 [Designation of record ends at 12:01 p.m.]

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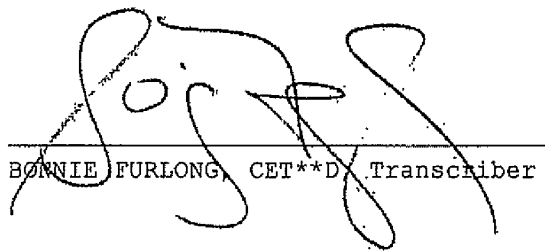
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.



BONNIE FURLONG, CET**D, Transcriber

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EXHIBIT "D"

EXHIBIT "D"



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DISTRICT COURT.
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,)
)
 Plaintiff,)
)
 vs.) CASE NO. 531538
) DEPT. NO. X
 FIESTA PALMS, LLC, A NEVADA)
 LIMITED LIABILITY COMPANY, DBA)
 THE PALMS CASINO RESORT, et al.,)
)
 Defendants.)
)

DEPOSITION OF SHERI LONG
LAS VEGAS, NEVADA
FRIDAY, JANUARY 9, 2009

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809
LS&T JOB # 1-100141C

1 DEPOSITION OF SHERI LONG, taken at 7408 West
2 Sahara Avenue, Las Vegas, Nevada on Friday, January
3 9, 2009 at 12:00 p.m., before Jackie Jennelle,
4 Certified Court Reporter, in and for the State of
5 Nevada.

6
7
8 APPEARANCES:

9 For the Plaintiff:

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22
23
24
25

- 1 Q. You were telling me about the Palace
2 Station?
- 3 A. I went to work there as an admin assistant
4 in 1988.
- 5 Q. Is that while you were in school?
- 6 A. Yes.
- 7 Q. As an admin assistant in what department?
- 8 A. To the casino manager.
- 9 Q. What did you do?
- 10 A. Secretary work.
- 11 Q. Who was the casino manager there?
- 12 A. Dick Favero (phonetic).
- 13 Q. Last name?
- 14 A. Favero.
- 15 Q. How long has Palace Station been open?
- 16 A. 1977 as the casino, and then it switched to
17 Bingo Palace. Then it switched to Palace Station.
18 I was there too long.
- 19 Q. How long did you work as an admin assistant
20 for Dick?
- 21 A. About two years.
- 22 Q. Did your job position change with him
23 during those two years?
- 24 A. No.
- 25 Q. That takes us up through what year?

- 1 A. 1990.
- 2 Q. Where did you go then?
- 3 A. I stayed at Palace Station. I became the
- 4 promotions and advertising manager.
- 5 Q. That's a significant raise. That's a
- 6 significant advancement in the casino industry?
- 7 A. Sure.
- 8 Q. What were your job duties as ad manager and
- 9 promotional manager?
- 10 A. I was in charge of the advertising as well
- 11 as the on-property signage as well as the promotions
- 12 that were run on property for the casino.
- 13 Q. Advertisement in all media for the casino?
- 14 A. Um-hmm, yes.
- 15 Q. And promotions inside the casino?
- 16 A. Correct.
- 17 Q. Contracting with third-party vendors?
- 18 A. Yes.
- 19 Q. And advertising and organizing promotional
- 20 activities?
- 21 A. Correct.
- 22 Q. Did they have a Monday Night Football
- 23 promotion -- what casino is this?
- 24 A. Palace Station.
- 25 Q. At the Palace Station at the time you

1 A. Through the leadership -- I mean, I would
2 imagine.

3 Q. Was there a leadership program which you as
4 somebody now in an executive position were entered
5 into to help prepare you for your job duties at
6 Palace Station?

7 A. No.

8 Q. Was there a, quote, leadership program?

9 A. Yes. It was established after I was
10 already there.

11 Q. Did it have written materials?

12 A. I'm sure it did.

13 Q. Did you maintain any of those written
14 materials?

15 A. No.

16 Q. Do you know if any of those written
17 materials had any specific chapters or direction
18 with respect to patron safety issues?

19 A. I don't recall.

20 Q. How long did you stay as marketing director
21 of the Palace Station?

22 A. About six years.

23 Q. So that takes us what?

24 A. To 2000, September of 2000.

25 Q. What was your position in September of 2000

1 at the Palace Station?

2 A. Vice president of marketing.

3 Q. Who was the president?

4 A. The general manager was Jim Hughes.

5 Q. Jim Hughes?

6 A. Um-hmm.

7 Q. In between say 1993 when you went to Palace
8 Station and 2000, did you ever receive any formal
9 training in patron safety issues?

10 A. Not that I recall.

11 Q. Where did you go after 2000?

12 A. I went to work at Harrah's for about five
13 months.

14 Q. You always hear that about Harrah's.
15 What did you do at Harrah's?

16 A. I was a marketing director.

17 Q. Same type of job duties?

18 A. More limited. I was over direct marketing,
19 the club and entertainment.

20 Q. Directing marketing the club and
21 entertainment. I'm sorry. I interrupted you.

22 Direct marketing means specifically to
23 gamblers?

24 A. It means that the marketing focus is
25 direct, so it's direct mail generally.

1 Q. And you would integrate with the statistics
2 department that was at Harrah's that did statistical
3 analysis to those focal people that you should
4 direct market?
5 A. Correct.
6 Q. When were you there?
7 A. For five months, from 2000 to about March
8 of 2001.
9 Q. And what was your position when you left
10 there?
11 A. Marketing director.
12 Q. Why did you leave Harrah's?
13 A. To take the job at the Palms.
14 Q. And that was opening in October of '01, is
15 that right?
16 A. November.
17 Q. Where did you -- why did you leave Palace
18 Station?
19 A. I got released.
20 Q. Why did you get released?
21 A. I don't know.
22 Q. Were you disciplined there?
23 A. Pardon me?
24 Q. Were you subject to some disciplinary
25 action there or layoffs?

- 1 A. No. Change in personnel.
- 2 Q. Just one of those things.
- 3 A. Didn't see eye to eye with the new guy.
- 4 Q. How were you -- did you approach the Palms,
5 or did they approach you?
- 6 A. They approached me.
- 7 Q. At the time that you were at Harrah's, did
8 you have any safety training for patron safety?
- 9 A. Not that I recall.
- 10 Q. Did they have a formal manual or guideline
11 with respect promotional events at Harrah's?
- 12 A. Not that I recall.
- 13 Q. When you were hired at Palms, what was the
14 position you were hired for?
- 15 A. Director of marketing.
- 16 Q. Who hired you?
- 17 A. George Maloof.
- 18 Q. George who?
- 19 A. George Maloof.
- 20 Q. Himself?
- 21 A. And Jim.
- 22 Q. Jim who?
- 23 A. Jim Hughes.
- 24 Q. Jim went over from Palace to the Palms?
- 25 A. Yes.

1 Q. Who was that?

2 A. The only one that I can recall is Duane
3 Reissner.

4 Q. Did he create a policy or manual with
5 procedures that address the issue of patron safety?

6 A. I wouldn't know.

7 Q. That wouldn't go into the marketing
8 department?

9 A. Not that I --

10 Q. You never saw one?

11 A. No.

12 Q. Were you ever asked to help create any such
13 document?

14 A. Not that I recall.

15 Q. So you interviewed the billionaire owner of
16 the hotel for your job, and you decided that you wer
17 going to take the job.

18 What was your understanding of what your
19 job duties would involve at Palms?

20 A. When we opened, I was in charge of all of
21 the advertising, the club promotions, special
22 events, entertainment, as well as public relations.

23 Q. What does entertainment mean in this
24 context?

25 A. We had a lounge when we opened, and so

1 A. Generally.

2 You submitted your budgets, they get
3 changed, they get pared down, they get massaged.

4 Eventually corporate had to approve it and
5 give it back to you.

6 Q. Okay. And in November of '04, was your
7 entire job duties at Stations having to do with
8 promotions?

9 A. In November of '04 I was at Palms.

10 Q. I'm sorry. At Palms?

11 A. Was it what?

12 Q. Was it all promotional?

13 A. No.

14 Q. What other things were you doing?

15 A. I was still over entertainment at the time.
16 Publics relations now had been added as a
17 department.

18 I was over slot marketing and over the club
19 booth and advertising.

20 Q. Did the promotional department have a
21 manual of policies and procedures that was separate
22 from the general manual made throughout the casino?

23 A. No.

24 Q. Did you have a separate safety policies and
25 guidelines?

1 A. No.

2 Q. Okay. Would your department in '01 through
3 '04 attend any formal training in patron safety
4 issues at the Palms?

5 A. Not that I recall.

6 Q. Did the departments meet together for
7 interdepartmental meetings on any scheduled periodic
8 basis?

9 A. Yes.

10 Q. How often would that occur?

11 A. Staff meeting usually once or twice a
12 month.

13 Q. At staff meetings, did they have an agenda?
14 Did they hand out a written agenda?

15 A. No.

16 Q. Were minutes kept, do you know?

17 A. No.

18 Q. You don't know or know they weren't?

19 A. No, they weren't. Not in my departments.

20 Q. Do you recall any specific staff meetings
21 that addressed the issue of patron safety at the
22 Palms Casino?

23 A. I don't recall any.

24 Q. Okay. With respect to promotional events,
25 did the casino ever come to you and say, here is a

- 1 Was there a custom and practice of bringing
2 pretty girls in to help in the Monday Night Football
3 party as part of the promotion?
4 A. Yes.
5 Q. Was that routine each Monday night football
6 party?
7 A. Yes.
8 Q. Okay. And where did they come from?
9 A. Usually from outside vendors.
10 Q. Third parties?
11 A. Yes.
12 Q. And, of course, the purpose there is just
13 to create a kind party atmosphere, is that right?
14 A. Correct.
15 Q. Were you aware -- do you need that?
16 A. No.
17 Q. Were you of any of these girls throwing
18 promotional items into the crowd while the party was
19 being held in the banquet room?
20 A. In the Key West?
21 Q. In the Key West.
22 A. I believe that it did happen once.
23 Q. In the Key West room?
24 A. Yes.
25 Q. And do you know who was throwing those

1 things?

2 A. No.

3 Q. What was your opinion of that conduct?

4 A. That it wasn't appropriate.

5 Q. Why wasn't it appropriate?

6 A. Because it definitely is a safety issue.

7 Q. And it could foreseeably cause injury to
8 somebody, is that right?

9 A. Absolutely.

10 Q. So while it was happening in the Key West
11 room, was it you that became aware of it or security
12 that became aware of it?

13 Who became aware of that?

14 A. I don't know who became aware of it first.

15 I know once we were made aware of it, that
16 it was an issue, and we put a stop to it with -- our
17 team had the discussion about it, this is not
18 appropriate behavior.

19 Q. Who did you have the discussion with?

20 A. Whoever would have been the team at the
21 time.

22 Q. What team?

23 A. The marketing manager would have been
24 Denise Demunkus (phonetic) -- no. It might have
25 been Maureen Holden. I'm not sure which one.

1 (Thereupon, an off-the-record discussion was had.)

2 BY MR. BAKER:

3 Q. Did you hire Brandy Beavers as an employee
4 of the Palms Casino at any time?

5 A. As an employee of the Palms?

6 Q. Yes.

7 A. No.

8 Q. Do you know what her status was as either
9 an employee or an independent contractor at the
10 Monday Night Football party in November of 2004?

11 A. It would have been independent contractor.

12 Q. Why do you say that?

13 A. Because we didn't hire -- we didn't have
14 models on our staff that actually worked for the
15 Palms.

16 Q. When did you first meet Brandy?

17 A. I don't know.

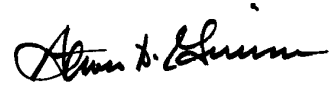
18 Q. Do you recall what the circumstances were?
19 Was it with respect to a promotion?

20 A. I think -- but I'm not positive. I think
21 that she MC'd as an entertainer as a New Year's Eve
22 party and she was brought in by an outside company.

23 Q. Do you know the company?

24 A. I don't recall.

25 Q. I mean, who is she?



CLERK OF THE COURT

1 **MLIM**
 2 **LEW BRANDON, JR., ESQ.**
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 3 **JUSTIN W. SMERBER, ESQ.**
 Nevada Bar No.: 10761
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 9 PALMS CASINO RESORT

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 15 PALMS CASINO RESORT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

17 ENRIQUE RODRIGUEZ, an individual,

18 Plaintiff,

19 v.

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

24 Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

DEFENDANT, FIESTA PALMS, LLC'S
MOTION IN LIMINE NO. 2 TO EXCLUDE
ANY REFERENCE THAT ANY MOTION IN
LIMINE HAS BEEN FILED: THAT THE
COURT HAS RULED, OR MAY RULE ON
ANY PART OF OUTSIDE THE PRESENCE
OF THE JURY; OR SUGGESTING OR
IMPLYING TO POTENTIAL JURORS
DURING VOIR DIRE OR SEATED JURORS
IN ANY MANNER WHATSOEVER THAT
DEFENDANT MOVED TO EXCLUDE
PROOF IN ANY MANNER OR THAT THE
COURT HAS EXCLUDED PROOF OF ANY
MANNER



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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1 COMES NOW, Defendant, FIESTA PALMS, LLC, (“PALMS”) by and through its
2 undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of
3 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
4 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 2 to exclude
5 any reference that any Motion in Limine has been filed: that the Court has ruled, or may rule on
6 any part of outside the presence of the jury; or suggesting or implying to potential jurors during
7 voir dire or seated jurors in any manner whatsoever that Defendant moved to exclude proof in
8 any manner or that the Court has excluded proof of any manner.
9

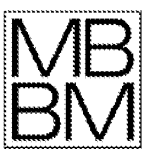
10 This Motion is made and based upon the Points and Authorities attached hereto, along
11 with all papers and pleadings on file herein, and oral arguments at the time of hearing.
12

13 DATED this 7th day of March, 2016.

14 **MORAN BRANDON BENDAVID MORAN**

15
16 /s/ Justin W. Smerber, Esq.
17 **LEW BRANDON, JR., ESQ.**
18 Nevada Bar No. 5880
19 **JUSTIN W. SMERBER, ESQ.**
20 Nevada Bar No.: 10761
21 630 S. Fourth Street
22 Las Vegas, Nevada 89101
23 Attorneys for Defendant,
24 FIESTA PALMS, LLC d/b/a
25 PALMS CASINO RESORT
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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 IN LIMINE NO. 2** has been set for Hearing on the 07 day of
5 **APRIL**, 2016 at the hour of 9:00A
6 _____, 2016 at the hour of ____:____.m., before the Eighth Judicial District Court in
7 Dept. XV.

8 DATED this 7th day of March, 2016.

9 **MORAN BRANDON BENDAVID MORAN**

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

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I.**
22 **INTRODUCTION**

23 Defendant is filing a series of Motions in Limine in compliance with EDCR 2.47. In
24 order to avoid duplicative reading by this court, Defendant directs the Court to its Motion in
25 Limine No. 1 for Defendant's Affidavit required by EDCR 2.47, and its Motion in Limine
26 Standard Section.

27 **II.**
28 **FACTS**

This case arises out of an incident that occurred at the Palms on November 22, 2004.
Plaintiff Enrique Rodriguez and his wife were staying at Harrah's, on Las Vegas Boulevard.



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1 Rodriguez had seen an advertisement for “Monday Night Football Frenzy with Brandy
2 Beavers,” and he decided to attend the event. He drove to the Palms and went to the
3 sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience.
4 When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting
5 their hands in the air, moving, and going wherever items went. He personally observed what he
6 characterized as a “rowdy” environment. Despite his observation of the rowdy environment, he
7 entered the sportsbook and stood near the entrance—a location from which he could have easily
8 left the premises at any time. He watched the cheerleaders and the televised football game for
9 about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He
10 did not believe this activity was dangerous; otherwise, he would have left the premises.
11
12

13 After about an hour of observing the football game and the cheerleaders, a souvenir
14 landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of
15 her chair and attempted to retrieve the souvenir, bumping into Rodriguez’s knee. Rodriguez
16 sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to
17 the audience during the event.
18

19 The case was originally assigned to Judge Walsh, who held a bench trial and entered a
20 judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion
21 reversing and remanding for a new trial, due to several evidentiary errors. FCH1 v. Rodriguez,
22 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).
23

24 III.

25 LEGAL ARGUMENT

26 This Honorable Court should exclude any attempt to seek or request Defendant’s
27 attorney to produce documents, to stipulate to any fact, or to make any agreement in the
28 presence of the jury. Any and all requests should be made outside the presence of the jury.



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1 Should an occasion arise where Plaintiff's counsel requests Defendant's counsel to stipulate to a
2 fact, produce a document, or make an agreement in the presence of the jury, and Defendant's
3 counsel refuse, then the jury may view this in a negative light. The jury may not appreciate
4 Defendant's counsel's reasoning and legal basis for refusing to take such action. The jury may
5 believe that Defendant is attempting to hide information from the jury or otherwise delay the
6 proceedings. Accordingly, all such requests should be made outside of the jury to prevent
7 prejudice to Defendant as a result of the legal actions taken by counsel.
8

9 Any and all such references would be irrelevant to these proceedings under NRS 48.025.
10 Further, any such references would be prejudicial, confusing to a jury and a general waste of
11 time, thus making any such references inadmissible under NRS 48.035.
12

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IV.
CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant’s Motion in Limine No. 2 to exclude any reference that any Motion in Limine has been filed; that the Court has ruled, or may rule on any part of outside the presence of the jury; or suggesting or implying to potential jurors during voir dire or seated jurors in any manner whatsoever that Defendant moved to exclude proof in any manner or that the Court has excluded proof of any manner.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Justin W. Smerber, Esq.
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
JUSTIN W. SMERBER, ESQ.
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Attorneys for Defendant,
FIESTA PALMS, LLC d/b/a
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I hereby certify that on the 7th day of March, 2016, I served the
3 foregoing **DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 2 TO**
4 **EXCLUDE ANY REFERENCE THAT ANY MOTION IN LIMINE HAS BEEN FILED:**
5 **THAT THE COURT HAS RULED, OR MAY RULE ON ANY PART OF OUTSIDE**
6 **THE PRESENCE OF THE JURY; OR SUGGESTING OR IMPLYING TO POTENTIAL**
7 **JURORS DURING VOIR DIRE OR SEATED JURORS IN ANY MANNER**
8 **WHATSOEVER THAT DEFENDANT MOVED TO EXCLUDE PROOF IN ANY**
9 **MANNER OR THAT THE COURT HAS EXCLUDED PROOF OF ANY MANNER** via
10 the Court's electronic filing and service systems ("Wiznet") to all parties on the current service
11 list.
12

13
14 **VIA U.S. MAIL**

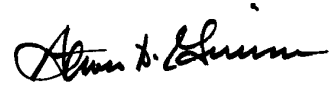
15 **ENRIQUE RODRIGUEZ**
16 6673 YELLOWSTONE DRIVE
17 RIVERSIDE, CALIFORNIA 92506
18 TELEPHONE: 951-751-1440
19 Plaintiff, In Proper Person

20 /s/ Angelina M. Martinez
21 An Employee of Moran Brandon Bendavid Moran
22
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CLERK OF THE COURT

1 **MLIM**
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 3 **JUSTIN W. SMERBER, ESQ.**
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 Attorneys for Defendant,
 14 FIESTA PALMS, LLC d/b/a
 15 PALMS CASINO RESORT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

17 ENRIQUE RODRIGUEZ, an individual,

18 Plaintiff,

19 v.

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

24 Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

**DEFENDANT, FIESTA PALMS, LLC'S
MOTION IN LIMINE NO. 3 TO EXCLUDE
ANY MONETARY DAMAGES OF THE
PLAINTIFF NOT PREVIOUSLY
DISCLOSED OR BASED UPON CLAIMS
NOT PREVIOUSLY ASSERTED**

26 COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
27 undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of
28



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BENDAVID MORAN
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1 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
2 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 3 to exclude
3 any monetary damages of the Plaintiff not previously disclosed or based upon claims not
4 previously asserted.
5

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

8 DATED this 7th day of January, 2016.

9 **MORAN BRANDON BENDAVID MORAN**

10
11 /s/ Justin W. Smerber, Esq.
12 **LEW BRANDON, JR., ESQ.**
13 Nevada Bar No. 5880
14 **JUSTIN W. SMERBER, ESQ.**
15 Nevada Bar No.: 10761
16 630 S. Fourth Street
17 Las Vegas, Nevada 89101
18 Attorneys for Defendant,
19 FIESTA PALMS, LLC d/b/a
20 PALMS CASINO RESORT

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NOTICE OF MOTION

TO: ALL PARTIES;

YOU, AND EACH OF YOU, will please take notice that the foregoing
DEFENDANT’S MOTION IN LIMINE NO. 3 has been set for Hearing on the 07 day of
APRIL _____, 2016 at the hour of 9:00A
_____, before the Eighth Judicial District Court in
Dept. XV.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Justin W. Smerber, Esq.
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
JUSTIN W. SMERBER, ESQ.
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Attorneys for Defendant,
FIESTA PALMS, LLC d/b/a
PALMS CASINO RESORT

MEMORANDUM OF POINTS AND AUTHORITIES

I.
INTRODUCTION

Defendant is filing a series of Motions in Limine in compliance with EDCR 2.47. In
order to avoid duplicative reading by this court, Defendant directs the Court to its Motion in
Limine No. 1 for Defendant’s Affidavit required by EDCR 2.47, and its Motion in Limine
Standard Section.

///
///
///



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II.
FACTS

This case arises out of an incident that occurred at the Palms on November 22, 2004. Plaintiff Enrique Rodriguez and his wife were staying at Harrah's, on Las Vegas Boulevard. Rodriguez had seen an advertisement for "Monday Night Football Frenzy with Brandy Beavers," and he decided to attend the event. He drove to the Palms and went to the sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience. When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting their hands in the air, moving, and going wherever items went. He personally observed what he characterized as a "rowdy" environment. Despite his observation of the rowdy environment, he entered the sportsbook and stood near the entrance—a location from which he could have easily left the premises at any time. He watched the cheerleaders and the televised football game for about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He did not believe this activity was dangerous; otherwise, he would have left the premises.

After about an hour of observing the football game and the cheerleaders, a souvenir landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of her chair and attempted to retrieve the souvenir, bumping into Rodriguez's knee. Rodriguez sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to the audience during the event.

The case was originally assigned to Judge Walsh, who held a bench trial and entered a judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*, 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).

///



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III.

LEGAL ARGUMENT

A Trial court is at liberty to exclude relevant evidence if it determines that the probative value is substantially outweighed by the danger of unfair prejudice; the decision to admit evidence after balancing its prejudice against its probative value is one addressed to the discretion of the Trial Judge. Halbower v. State, 93 Nev. 212, 562 P.2d 485 (1977). Furthermore, “the district judge is given wide latitude in determining the admissibility of evidence under this standard.” United States v. Fagan, 996 F.2d 1009, 1015 (9th Cir. 1993). To merit exclusion, the evidence must unfairly prejudice an opponent, typically by appealing to the emotional and sympathetic tendencies of a jury, rather than the jury’s intellectual ability to evaluate evidence. Krause Inc. v. Little, 117 Nev. 929, 34, P.3d 566 (2001). This rule is designed principally to promote policies of assuring correct factual determinations in individual cases and actual and perceived fairness in judicial process as a whole. U.S. v. Robinson, 544 F. 26 611 (N.Y. 1976).

Pursuant to NRCP 16.1, each party is required to make pre-trial disclosures. Further, pursuant to NRCP 16.1 (e)(3)(B), a Court may prohibit a party from using any document or tangible piece of evidence that was not properly produced pursuant to NRCP 16.1(a). Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. Washoe County Bd. Of School Trustees v. Pirhala, 84 Nev. 1, 6 (Nev. 1968), citing Hickman v. Taylor, 329 U.S. 495, 507 (1947). Discovery in this matter has closed. Defendants seek the exclusion of any new medical providers or medical records which have not been previously disclosed by Plaintiffs. Additionally, any evidence of monetary damages, including economic, lost wages, medical expenses, or any other monetary damages not produced at this time should be properly excluded under NRCP 16.1 (e)(3)(B).



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IV.

CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant's Motion in Limine No. 3 to exclude any monetary damages of the Plaintiff not previously disclosed or based upon claims not previously asserted.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Justin W. Smerber, Esq.
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JUSTIN W. SMERBER, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that on the ____ day of March, 2016, I served the foregoing **DEFENDANT, FIESTA PALMS, LLC’S MOTION IN LIMINE NO. 3 TO EXCLUDE ANY MONETARY DAMAGES OF THE PLAINTIFF NOT PREVIOUSLY DISCLOSED OR BASED UPON CLAIMS NOT PREVIOUSLY ASSERTED** via the Court’s electronic filing and service systems (“Wiznet”) to all parties on the current service list.

VIA U.S. MAIL

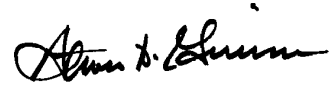
ENRIQUE RODRIGUEZ
6673 YELLOWSTONE DRIVE
RIVERSIDE, CALIFORNIA 92506
TELEPHONE: 951-751-1440
Plaintiff, In Proper Person

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



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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PHONE: (702) 384-8424
FAX: (702) 348-6568



CLERK OF THE COURT

1 **MLIM**
 2 **LEW BRANDON, JR., ESQ.**
 Nevada Bar No.: 5880
 3 **JUSTIN W. SMERBER, ESQ.**
 Nevada Bar No.: 10761
 4 **MORAN BRANDON BENDAVID MORAN**
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 8 FIESTA PALMS, LLC d/b/a
 9 PALMS CASINO RESORT

10 **ROBERT L. EISENBERG, ESQ.**
 Nevada Bar No. 0950
 11 **LEMONS, GRUNDY & EISENBERG**
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 12 Reno, Nevada 89519
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 13 rle@lge.net
 Attorneys for Defendant,
 14 FIESTA PALMS, LLC d/b/a
 15 PALMS CASINO RESORT

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

17 ENRIQUE RODRIGUEZ, an individual,
 18
 Plaintiff,
 19
 v.
 20
 21 FIESTA PALMS, L.L.C., a Nevada
 Limited Liability Company, d/b/a
 22 PALMS CASINO RESORT; BRANDY
 L. BEAVERS, individually, DOES I
 23 through X, and ROE CORPORATIONS
 I through X, inclusive,
 24
 Defendants.

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

**DEFENDANT, FIESTA PALMS, LLC'S
 MOTION IN LIMINE NO. 4 TO EXCLUDE
 ANY REFERENCE TO LIABILITY
 INSURANCE OR SOME OTHER SIMILAR
 CONTRACTOR POLICY RELATED TO
 THE DEFENDANT**

26 COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
 27 undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of
 28



MORAN BRANDON
 BENDAVID MORAN
 ATTORNEYS AT LAW

600 SOUTH 4TH STREET
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 PHONE (702) 384-8424
 FAX: (702) 348-6568

1 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
2 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 4 to exclude
3 any reference to liability insurance or some other similar contractor policy related to the
4 Defendant.

5
6 This Motion is made and based upon the Points and Authorities attached hereto, along
7 with all papers and pleadings on file herein, and oral arguments at the time of hearing.

8 DATED this 7th day of March, 2016.

9 **MORAN BRANDON BENDAVID MORAN**

10
11 /s/ Justin W. Smerber, Esq.
12 **LEW BRANDON, JR., ESQ.**
13 Nevada Bar No. 5880
14 **JUSTIN W. SMERBER, ESQ.**
15 Nevada Bar No.: 10761
16 630 S. Fourth Street
17 Las Vegas, Nevada 89101
18 Attorneys for Defendant,
19 FIESTA PALMS, LLC d/b/a
20 PALMS CASINO RESORT

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II.
FACTS

This case arises out of an incident that occurred at the Palms on November 22, 2004. Plaintiff Enrique Rodriguez and his wife were staying at Harrah's, on Las Vegas Boulevard. Rodriguez had seen an advertisement for "Monday Night Football Frenzy with Brandy Beavers," and he decided to attend the event. He drove to the Palms and went to the sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience. When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting their hands in the air, moving, and going wherever items went. He personally observed what he characterized as a "rowdy" environment. Despite his observation of the rowdy environment, he entered the sportsbook and stood near the entrance—a location from which he could have easily left the premises at any time. He watched the cheerleaders and the televised football game for about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He did not believe this activity was dangerous; otherwise, he would have left the premises.

After about an hour of observing the football game and the cheerleaders, a souvenir landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of her chair and attempted to retrieve the souvenir, bumping into Rodriguez's knee. Rodriguez sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to the audience during the event.

The case was originally assigned to Judge Walsh, who held a bench trial and entered a judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*, 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).

///



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III.

LEGAL ARGUMENT

Pursuant to NRS §48.135, evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. There is absolutely no reason to introduce evidence of Defendant's insurance information in this matter. Any attempt by Plaintiff's counsel to introduce any such materials would be intended to evoke an emotional response from the jury that Defendant is covered by insurance and either (1) can afford to pay Plaintiff undeserved damages; or (2) that Defendant will not be harmed because the insurance will be paying Plaintiff for his underserved damages. In either instance, evidence of, or references to Defendant's liability insurance is inadmissible and should be excluded from this Trial.

IV.
CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant's Motion in Limine No. 4 to exclude any reference to liability insurance or some other similar contractor policy related to the Defendant.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Justin W. Smerber, Esq.
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
JUSTIN W. SMERBER, ESQ.
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Attorneys for Defendant,
FIESTA PALMS, LLC d/b/a
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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that on the 7th day of March, 2016, I served the foregoing **DEFENDANT, FIESTA PALMS, LLC’S MOTION IN LIMINE NO. 4 TO EXCLUDE ANY REFERENCE TO LIABILITY INSURANCE OR SOME OTHER SIMILAR CONTRACTOR POLICY RELATED TO THE DEFENDANT** via the Court’s electronic filing and service systems (“Wiznet”) to all parties on the current service list.

VIA U.S. MAIL

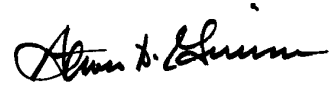
ENRIQUE RODRIGUEZ
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Plaintiff, In Proper Person

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



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CLERK OF THE COURT

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 Attorneys for Defendant,
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 15 PALMS CASINO RESORT

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

17 ENRIQUE RODRIGUEZ, an individual,

18 Plaintiff,

19 v.

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

24 Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

**DEFENDANT, FIESTA PALMS, LLC'S
 MOTION IN LIMINE NO. 5 TO EXCLUDE
 ANY REFERENCE THAT THE "GOLDEN
 RULE" OR THAT THE JURY PANEL OR
 THE JURY SHOULD DO UNTO OTHERS
 AS YOU HAVE THEM DONE UNTO YOU**

26 COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
 27 undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of
 28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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1 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
2 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 5 to exclude
3 any reference that the “golden rule” or that the jury panel or the jury should do unto others as
4 you have them done unto you.
5

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

8 DATED this 7th day of March, 2016.

9 **MORAN BRANDON BENDAVID MORAN**

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

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NOTICE OF MOTION

TO: ALL PARTIES;

YOU, AND EACH OF YOU, will please take notice that the foregoing
DEFENDANT’S MOTION IN LIMINE NO. 5 has been set for Hearing on the 07 day of
APRIL, 2016 at the hour of 9:00A .m., before the Eighth Judicial District Court in
Dept. XV.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.
INTRODUCTION

Defendant is filing a series of Motions in Limine in compliance with EDCR 2.47. In
order to avoid duplicative reading by this court, Defendant directs the Court to its Motion in
Limine No. 1 for Defendant’s Affidavit required by EDCR 2.47, and its Motion in Limine
Standard Section.

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///



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II.
FACTS

This case arises out of an incident that occurred at the Palms on November 22, 2004. Plaintiff Enrique Rodriguez and his wife were staying at Harrah's, on Las Vegas Boulevard. Rodriguez had seen an advertisement for "Monday Night Football Frenzy with Brandy Beavers," and he decided to attend the event. He drove to the Palms and went to the sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience. When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting their hands in the air, moving, and going wherever items went. He personally observed what he characterized as a "rowdy" environment. Despite his observation of the rowdy environment, he entered the sportsbook and stood near the entrance—a location from which he could have easily left the premises at any time. He watched the cheerleaders and the televised football game for about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He did not believe this activity was dangerous; otherwise, he would have left the premises.

After about an hour of observing the football game and the cheerleaders, a souvenir landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of her chair and attempted to retrieve the souvenir, bumping into Rodriguez's knee. Rodriguez sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to the audience during the event.

The case was originally assigned to Judge Walsh, who held a bench trial and entered a judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*, 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).

///



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III.

LEGAL ARGUMENT

An attorney may not make a Golden Rule Argument, which is an argument asking jurors to place themselves in the position of one of the parties. Lioce v. Cohen, 174 P.3d 970, 984 (Nev. 2008). Golden Rule arguments are improper because they infect a jury’s objectivity. The exclusion of the Golden Rule is well established in Nevada and must be adhered to in this matter.

IV.

CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant’s Motion in Limine No. 5 to exclude any reference that the “golden rule” or that the jury panel or the jury should do unto others as you have them done unto you.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Justin W. Smerber, Esq.
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that on the _____ day of March, 2016, I served the foregoing **DEFENDANT, FIESTA PALMS, LLC’S MOTION IN LIMINE NO. 5 TO EXCLUDE ANY REFERENCE THAT THE “GOLDEN RULE” OR THAT THE JURY PANEL OR THE JURY SHOULD DO UNTO OTHERS AS YOU HAVE THEM DONE UNTO YOU** via the Court’s electronic filing and service systems (“Wiznet”) to all parties on the current service list.

VIA U.S. MAIL

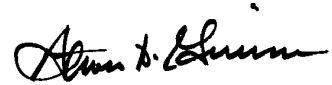
ENRIQUE RODRIGUEZ
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TELEPHONE: 951-751-1440
Plaintiff, In Proper Person

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



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CLERK OF THE COURT

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MLIM
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rle@lge.net
Attorneys for Defendant,
FIESTA PALMS, LLC d/b/a
PALMS CASINO RESORT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

**DEFENDANT, FIESTA PALMS, LLC'S
MOTION IN LIMINE NO. 6 TO EXCLUDE
ALL SIDE BAR COMMENTS MADE BY
COUNSEL DURING DEPOSITIONS THAT
WERE RECORDED ON VIDEOTAPE OR
PRESENT IN DEPOSITION TRANSCRIPTS**

COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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1 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
2 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 6 to exclude
3 all side bar comments made by counsel during depositions that were recorded on videotape or
4 present in deposition transcripts.
5

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

8 DATED this 7th day of March, 2016.

9 **MORAN BRANDON BENDAVID MORAN**

11 /s/ Justin W. Smerber, Esq.
12 **LEW BRANDON, JR., ESQ.**
Nevada Bar No. 5880
13 **JUSTIN W. SMERBER, ESQ.**
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

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NOTICE OF MOTION

TO: ALL PARTIES;

YOU, AND EACH OF YOU, will please take notice that the foregoing
DEFENDANT’S MOTION IN LIMINE NO. 6 has been set for Hearing on the 07 day of
APRIL 9:00A
_____, 2016 at the hour of ____:____ .m., before the Eighth Judicial District Court in
Dept. XV.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Justin W. Smerber, Esq.
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
JUSTIN W. SMERBER, ESQ.
Nevada Bar No. 10761
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Attorneys for Defendant,
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PALMS CASINO RESORT

MEMORANDUM OF POINTS AND AUTHORITIES

I.
INTRODUCTION

Defendant is filing a series of Motions in Limine in compliance with EDCR 2.47. In
order to avoid duplicative reading by this court, Defendant directs the Court to its Motion in
Limine No. 1 for Defendant’s Affidavit required by EDCR 2.47, and its Motion in Limine
Standard Section.

II.
FACTS

This case arises out of an incident that occurred at the Palms on November 22, 2004.
Plaintiff Enrique Rodriguez and his wife were staying at Harrah’s, on Las Vegas Boulevard.



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1 Rodriguez had seen an advertisement for “Monday Night Football Frenzy with Brandy
2 Beavers,” and he decided to attend the event. He drove to the Palms and went to the
3 sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience.
4 When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting
5 their hands in the air, moving, and going wherever items went. He personally observed what he
6 characterized as a “rowdy” environment. Despite his observation of the rowdy environment, he
7 entered the sportsbook and stood near the entrance—a location from which he could have easily
8 left the premises at any time. He watched the cheerleaders and the televised football game for
9 about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He
10 did not believe this activity was dangerous; otherwise, he would have left the premises.
11
12

13 After about an hour of observing the football game and the cheerleaders, a souvenir
14 landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of
15 her chair and attempted to retrieve the souvenir, bumping into Rodriguez’s knee. Rodriguez
16 sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to
17 the audience during the event.
18

19 The case was originally assigned to Judge Walsh, who held a bench trial and entered a
20 judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion
21 reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*,
22 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).
23

24 **III.**

25 **LEGAL ARGUMENT**

26 Any references to sidebar comments made by counsel would be completely irrelevant to
27 the present proceedings under NRS §48.015. NRS §48.015 provides that relevant evidence is
28 evidence “having any tendency to make the existence of any fact that is of consequence to the



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BENAVID MORAN
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1 determination of the action more or less probable than it would without the evidence.”
2 Furthermore, irrelevant evidence is inadmissible pursuant to NRS §48.025. Lastly, NRS
3 §48.035 provides for the exclusion of evidence based upon the danger of unfair prejudice,
4 confusion of the issues, or misleading the jury. Even relevant evidence may be excluded under
5 NRS §48.035 if its probative value is substantially outweighed by the danger of unfair
6 prejudice, waste of time, or danger of misleading the jury. Edwards v. State, 132 P.3d 581, 585
7 (Nev. 2006).
8

9 Sidebar comments are, by their nature, are not intended to be used as evidence.
10 Therefore, any side bar comments should properly be excluded from Trial. If Plaintiff intends to
11 present any deposition testimony, Plaintiff is entitled to do so, however, sidebar comments
12 made by counsel are not evidence. Attorneys to an action cannot create evidence by making
13 statements during depositions. Only relevant evidence can be presented to the jury during a
14 trial. Accordingly, all sidebar comments should be excluded.
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BENAUID MORAN
ATTORNEYS AT LAW

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IV.

CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant's Motion in Limine No. 6 to exclude all side bar comments made by counsel during depositions that were recorded on videotape or present in deposition transcripts.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

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



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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that on the 7th day of March, 2016, I served the foregoing **DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 6 TO EXCLUDE ALL SIDE BAR COMMENTS MADE BY COUNSEL DURING DEPOSITIONS THAT WERE RECORDED ON VIDEOTAPE OR PRESENT IN DEPOSITION TRANSCRIPTS** via the Court's electronic filing and service systems ("Wiznet") to all parties on the current service list.

VIA U.S. MAIL

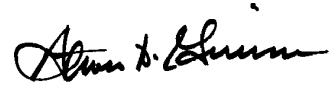
ENRIQUE RODRIGUEZ
6673 YELLOWSTONE DRIVE
RIVERSIDE, CALIFORNIA 92506
TELEPHONE: 951-751-1440
Plaintiff, In Proper Person

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



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CLERK OF THE COURT

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 2 **LEW BRANDON, JR., ESQ.**
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 3 **JUSTIN W. SMERBER, ESQ.**
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 8 FIESTA PALMS, LLC d/b/a
 9 PALMS CASINO RESORT

10 **ROBERT L. EISENBERG, ESQ.**
 Nevada Bar No. 0950
 11 **LEMONS, GRUNDY & EISENBERG**
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 12 Reno, Nevada 89519
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 13 rle@lge.net
 Attorneys for Defendant,
 14 FIESTA PALMS, LLC d/b/a
 15 PALMS CASINO RESORT

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

17 ENRIQUE RODRIGUEZ, an individual,
 18
 Plaintiff,
 19
 v.
 20
 21 FIESTA PALMS, L.L.C., a Nevada
 Limited Liability Company, d/b/a
 22 PALMS CASINO RESORT; BRANDY
 L. BEAVERS, individually, DOES I
 23 through X, and ROE CORPORATIONS
 I through X, inclusive,
 24
 Defendants.

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

DEFENDANT, FIESTA PALMS, LLC'S
MOTION IN LIMINE NO. 7 TO EXCLUDE
ANY REFERENCE THAT THE
ATTORNEYS FOR DEFENDANT
SPECIALIZE IN THE HANDLING OF
INSURANCE CASES

26 COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
 27 undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of
 28



MORAN BRANDON
 BENDAVID MORAN
 ATTORNEYS AT LAW

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 FAX: (702) 348-6568

1 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
2 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 7 to exclude
3 any reference that the attorneys for Defendant specialize in the handling of insurance cases.
4

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

7 DATED this 7th day of March, 2016.

8 **MORAN BRANDON BENDAVID MORAN**

9
10 /s/ Justin W. Smerber, Esq.
11 **LEW BRANDON, JR., ESQ.**
12 Nevada Bar No. 5880
13 **JUSTIN W. SMERBER, ESQ.**
14 Nevada Bar No.: 10761
15 630 S. Fourth Street
16 Las Vegas, Nevada 89101
17 Attorneys for Defendant,
18 FIESTA PALMS, LLC d/b/a
19 PALMS CASINO RESORT

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PHONE: (702) 384-8424
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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 IN LIMINE NO. 7** has been set for Hearing on the 07 day of
5 APRIL, 2016 at the hour of 9:00A
6 _____, 2016 at the hour of _____ .m., before the Eighth Judicial District Court in
7 Dept. XV.

8 DATED this 7th day of March, 2016.

9 **MORAN BRANDON BENDAVID MORAN**

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

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I.**
19 **INTRODUCTION**

20 Defendant is filing a series of Motions in Limine in compliance with EDCR 2.47. In
21 order to avoid duplicative reading by this court, Defendant directs the Court to its Motion in
22 Limine No. 1 for Defendant’s Affidavit required by EDCR 2.47, and its Motion in Limine
23 Standard Section.

24 **II.**
25 **FACTS**

26 This case arises out of an incident that occurred at the Palms on November 22, 2004.
27 Plaintiff Enrique Rodriguez and his wife were staying at Harrah’s, on Las Vegas Boulevard.
28



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1 Rodriguez had seen an advertisement for “Monday Night Football Frenzy with Brandy
2 Beavers,” and he decided to attend the event. He drove to the Palms and went to the
3 sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience.
4 When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting
5 their hands in the air, moving, and going wherever items went. He personally observed what he
6 characterized as a “rowdy” environment. Despite his observation of the rowdy environment, he
7 entered the sportsbook and stood near the entrance—a location from which he could have easily
8 left the premises at any time. He watched the cheerleaders and the televised football game for
9 about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He
10 did not believe this activity was dangerous; otherwise, he would have left the premises.
11
12

13 After about an hour of observing the football game and the cheerleaders, a souvenir
14 landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of
15 her chair and attempted to retrieve the souvenir, bumping into Rodriguez’s knee. Rodriguez
16 sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to
17 the audience during the event.
18

19 The case was originally assigned to Judge Walsh, who held a bench trial and entered a
20 judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion
21 reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*,
22 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).
23

24 **III.**

25 **LEGAL ARGUMENT**

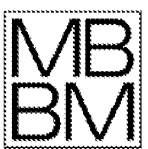
26 This Court should exclude any reference that the attorneys for Defendant specialize in
27 the handling of insurance cases. Any such references would be completely irrelevant to the
28 present proceedings under NRS 48.015. NRS 48.015 provides that relevant evidence is



1 evidence having any tendency to make the existence of any fact that is of consequence to the
2 determination of the action more or less probable than it would be without the evidence.
3 Further, irrelevant evidence is inadmissible per NRS 48.025. Lastly, NRS 48.035 provides for
4 the exclusion of evidence based upon the danger of unfair prejudice, confusion or misleading of
5 the jury. Even relevant evidence may be excluded under NRS 48.035 if the probative value of
6 the evidence is substantially outweighed by unfair prejudice, waste of time, or danger of
7 misleading the jury. Edwards v. State, 132 P.3d 581, 585 (Nev. 2006).

9 Plaintiff's attempt to notify the jury of Defense counsel's insurance defense
10 specialization is not relevant, because it does not make the existence of any fact of consequence
11 to this matter more or less likely. Further, any attempt by Plaintiff's counsel to make such
12 references would have the sole purpose of evoking emotional and prejudicial responses from the
13 jury based upon their choice of representation. Accordingly, Plaintiff should be prevented from
14 making any reference to the fact that Defendant's attorneys specialize in insurance cases.

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IV.

CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant's Motion in Limine No. 7 to exclude any reference that the attorneys for Defendant specialize in the handling of insurance cases.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Justin W. Smerber, Esq.
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
JUSTIN W. SMERBER, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that on the 7th day of March, 2016, I served the foregoing **DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 7 TO EXCLUDE ANY REFERENCE THAT THE ATTORNEYS FOR DEFENDANT SPECIALIZE IN THE HANDLING OF INSURANCE CASES** via the Court's electronic filing and service systems ("Wiznet") to all parties on the current service list.

VIA U.S. MAIL

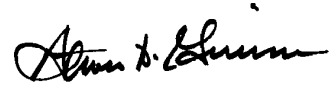
ENRIQUE RODRIGUEZ
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TELEPHONE: 951-751-1440
Plaintiff, In Proper Person

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



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CLERK OF THE COURT

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 13 rle@lge.net
 Attorneys for Defendant,
 14 FIESTA PALMS, LLC d/b/a
 15 PALMS CASINO RESORT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

17 ENRIQUE RODRIGUEZ, an individual,

18 Plaintiff,

19 v.

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

25 Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

**DEFENDANT, FIESTA PALMS, LLC'S
MOTION IN LIMINE NO. 8 TO EXCLUDE
ANY QUESTIONS THAT WOULD INVADE
THE ATTORNEY/CLIENT PRIVILEGE**

26 COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
27 undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of
28



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1 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
2 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 8 to exclude
3 any questions that would invade the attorney/client privilege.

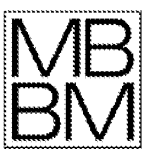
4 This Motion is made and based upon the Points and Authorities attached hereto, along
5 with all papers and pleadings on file herein, and oral arguments at the time of hearing.

6 DATED 7th day of March, 2016.

7
8 **MORAN BRANDON BENDAVID MORAN**

9
10 /s/ Justin W. Smerber, Esq.
11 **LEW BRANDON, JR., ESQ.**
12 Nevada Bar No. 5880
13 **JUSTIN W. SMERBER, ESQ.**
14 Nevada Bar No.: 10761
15 630 S. Fourth Street
16 Las Vegas, Nevada 89101
17 Attorneys for Defendant,
18 FIESTA PALMS, LLC d/b/a
19 PALMS CASINO RESORT

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II.

FACTS

This case arises out of an incident that occurred at the Palms on November 22, 2004. Plaintiff Enrique Rodriguez and his wife were staying at Harrah's, on Las Vegas Boulevard. Rodriguez had seen an advertisement for "Monday Night Football Frenzy with Brandy Beavers," and he decided to attend the event. He drove to the Palms and went to the sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience. When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting their hands in the air, moving, and going wherever items went. He personally observed what he characterized as a "rowdy" environment. Despite his observation of the rowdy environment, he entered the sportsbook and stood near the entrance—a location from which he could have easily left the premises at any time. He watched the cheerleaders and the televised football game for about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He did not believe this activity was dangerous; otherwise, he would have left the premises.

After about an hour of observing the football game and the cheerleaders, a souvenir landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of her chair and attempted to retrieve the souvenir, bumping into Rodriguez's knee. Rodriguez sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to the audience during the event.

The case was originally assigned to Judge Walsh, who held a bench trial and entered a judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*, 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).



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IV.

CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant’s Motion in Limine No. 8 to exclude any questions that would invade the attorney/client privilege.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on the 7th day of March, 2016, I served the foregoing **DEFENDANT, FIESTA PALMS, LLC’S MOTION IN LIMINE NO. 8 TO EXCLUDE ANY QUESTIONS THAT WOULD INVADE THE ATTORNEY/CLIENT PRIVILEGE** via the Court’s electronic filing and service systems (“Wiznet”) to all parties on the current service list.

VIA U.S. MAIL

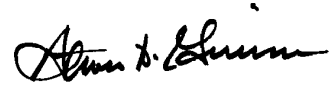
ENRIQUE RODRIGUEZ
6673 YELLOWSTONE DRIVE
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TELEPHONE: 951-751-1440
Plaintiff, In Proper Person

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



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CLERK OF THE COURT

1 **MLIM**
 2 **LEW BRANDON, JR., ESQ.**
 Nevada Bar No.: 5880
 3 **JUSTIN W. SMERBER, ESQ.**
 Nevada Bar No.: 10761
 4 **MORAN BRANDON BENDAVID MORAN**
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10 **ROBERT L. EISENBERG, ESQ.**
 Nevada Bar No. 0950
 11 **LEMONS, GRUNDY & EISENBERG**
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 12 Reno, Nevada 89519
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 13 rle@lge.net
 Attorneys for Defendant,
 14 FIESTA PALMS, LLC d/b/a
 15 PALMS CASINO RESORT

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

17 ENRIQUE RODRIGUEZ, an individual,

18 Plaintiff,

19 v.

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

24 Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

DEFENDANT, FIESTA PALMS, LLC'S
MOTION IN LIMINE NO. 9 TO EXCLUDE
ANY STATEMENT OR IMPLICATION
THAT DEFENDANT SOUGHT TO DELAY
THIS TRIAL

25
 26 COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
 27 undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of
 28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

600 SOUTH 4TH STREET
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1 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
2 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 9 to exclude
3 any statement or implication that Defendant sought to delay this trial.

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

6 DATED this 7th day of March, 2016.

7
8 **MORAN BRANDON BENDAVID MORAN**

9
10 /s/ Justin W. Smerber, Esq.
11 **LEW BRANDON, JR., ESQ.**
12 Nevada Bar No. 5880
13 **JUSTIN W. SMERBER, ESQ.**
14 Nevada Bar No.: 10761
15 630 S. Fourth Street
16 Las Vegas, Nevada 89101
17 Attorneys for Defendant,
18 FIESTA PALMS, LLC d/b/a
19 PALMS CASINO RESORT

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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 IN LIMINE NO. 9** has been set for Hearing on the 07 day of
5 APRIL, 2016 at the hour of 9:00A
6 _____, 2016 at the hour of _____m., before the Eighth Judicial District Court in
7 Dept. XV.

8 DATED this 7th day of March, 2016.

9 **MORAN BRANDON BENDAVID MORAN**

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

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I.**
19 **INTRODUCTION**

20 Defendant is filing a series of Motions in Limine in compliance with EDCR 2.47. In
21 order to avoid duplicative reading by this court, Defendant directs the Court to its Motion in
22 Limine No. 1 for Defendant’s Affidavit required by EDCR 2.47, and its Motion in Limine
23 Standard Section.

24 **II.**
25 **FACTS**

26 This case arises out of an incident that occurred at the Palms on November 22, 2004.
27 Plaintiff Enrique Rodriguez and his wife were staying at Harrah’s, on Las Vegas Boulevard.
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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FAX: (702) 348-6568

1 Rodriguez had seen an advertisement for “Monday Night Football Frenzy with Brandy
2 Beavers,” and he decided to attend the event. He drove to the Palms and went to the
3 sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience.
4 When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting
5 their hands in the air, moving, and going wherever items went. He personally observed what he
6 characterized as a “rowdy” environment. Despite his observation of the rowdy environment, he
7 entered the sportsbook and stood near the entrance—a location from which he could have easily
8 left the premises at any time. He watched the cheerleaders and the televised football game for
9 about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He
10 did not believe this activity was dangerous; otherwise, he would have left the premises.
11
12

13 After about an hour of observing the football game and the cheerleaders, a souvenir
14 landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of
15 her chair and attempted to retrieve the souvenir, bumping into Rodriguez’s knee. Rodriguez
16 sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to
17 the audience during the event.
18

19 The case was originally assigned to Judge Walsh, who held a bench trial and entered a
20 judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion
21 reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*,
22 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).
23

24 **III.**

25 **LEGAL ARGUMENT**

26 This Court should exclude any statement or implication that Defendant sought to delay
27 this Trial. Any such references would be completely irrelevant to the present proceedings under
28 NRS 48.015. NRS 48.015 provides that relevant evidence is evidence having any tendency to



1 make the existence of any fact that is of consequence to the determination of the action more or
2 less probable than it would be without the evidence. Further, irrelevant evidence is inadmissible
3 per NRS 48.025. And lastly, NRS 48.035 provides for the exclusion of evidence based upon the
4 danger of unfair prejudice, confusion or misleading of the jury. Even relevant evidence may be
5 excluded under NRS 48.035 if the probative value of the evidence is substantially outweighed
6 by unfair prejudice, waste of time, or danger of misleading the jury. Edwards v. State, 132 P.3d
7 581, 585 (Nev. 2006).

9 Plaintiff's attempt to inform the jury that the Defense sought to delay this Trial would be
10 untrue, irrelevant and prejudicial. First, the Defense has not attempted to delay this Trial in any
11 way. Second, even if the Defense did attempt to delay this Trial, such a fact would not make the
12 existence of any fact of consequence to the determination of Plaintiff's allegations against
13 Defendant more or less likely. And third, any such comments would be directed at evoking an
14 emotional response from the jury and an attempt to recover damages based upon punishment for
15 the alleged delay; not the underlying merits of this action.

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BENAUID MORAN
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IV.

CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant's Motion in Limine No. 9 to exclude any statement or implication that Defendant sought to delay this trial.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

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



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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I hereby certify that on the 7th day of March, 2016, I served the
3 foregoing **DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 9 TO**
4 **EXCLUDE ANY STATEMENT OR IMPLICATION THAT DEFENDANT SOUGHT TO**
5 **DELAY THIS TRIAL** via the Court's electronic filing and service systems ("Wiznet") to all
6 parties on the current service list.
7

8 **VIA U.S. MAIL**

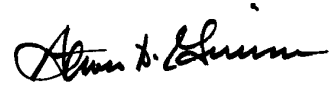
9 **ENRIQUE RODRIGUEZ**
10 6673 YELLOWSTONE DRIVE
11 RIVERSIDE, CALIFORNIA 92506
12 TELEPHONE: 951-751-1440
13 Plaintiff, In Proper Person

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



MORAN BRANDON
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CLERK OF THE COURT

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MLIM
LEW BRANDON, JR., ESQ.
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Attorneys for Defendant,
FIESTA PALMS, LLC d/b/a
PALMS CASINO RESORT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

**DEFENDANT, FIESTA PALMS, LLC'S
MOTION IN LIMINE NO. 10 TO EXCLUDE
ANY COMMENTS REGARDING THE
NUMBER OF ATTORNEYS
REPRESENTING THE DEFENDANT**

COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of



MORAN BRANDON
BENDAVID MORAN
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1 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
2 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 10 to exclude
3 any comments regarding the number of attorneys representing the Defendant.

4 This Motion is made and based upon the Points and Authorities attached hereto, along
5 with all papers and pleadings on file herein, and oral arguments at the time of hearing.
6

7 DATED this 7th day of March, 2016.

8 MORAN BRANDON BENDAVID MORAN

9
10 /s/ Justin W. Smerber, Esq.
11 **LEW BRANDON, JR., ESQ.**
12 Nevada Bar No. 5880
13 **JUSTIN W. SMERBER, ESQ.**
14 Nevada Bar No.: 10761
15 630 S. Fourth Street
16 Las Vegas, Nevada 89101
17 Attorneys for Defendant,
18 FIESTA PALMS, LLC d/b/a
19 PALMS CASINO RESORT

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NOTICE OF MOTION

TO: ALL PARTIES;

YOU, AND EACH OF YOU, will please take notice that the foregoing
DEFENDANT’S MOTION IN LIMINE NO. 10 has been set for Hearing on the 07 day of
APRIL, 2016 at the hour of 9:00A .m., before the Eighth Judicial District Court in
Dept. XV.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.
INTRODUCTION

Defendant is filing a series of Motions in Limine in compliance with EDCR 2.47. In
order to avoid duplicative reading by this court, Defendant directs the Court to its Motion in
Limine No. 1 for Defendant’s Affidavit required by EDCR 2.47, and its Motion in Limine
Standard Section.

II.
FACTS

This case arises out of an incident that occurred at the Palms on November 22, 2004.
Plaintiff Enrique Rodriguez and his wife were staying at Harrah’s, on Las Vegas Boulevard.



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1 Rodriguez had seen an advertisement for “Monday Night Football Frenzy with Brandy
2 Beavers,” and he decided to attend the event. He drove to the Palms and went to the
3 sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience.
4 When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting
5 their hands in the air, moving, and going wherever items went. He personally observed what he
6 characterized as a “rowdy” environment. Despite his observation of the rowdy environment, he
7 entered the sportsbook and stood near the entrance—a location from which he could have easily
8 left the premises at any time. He watched the cheerleaders and the televised football game for
9 about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He
10 did not believe this activity was dangerous; otherwise, he would have left the premises.
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12

13 After about an hour of observing the football game and the cheerleaders, a souvenir
14 landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of
15 her chair and attempted to retrieve the souvenir, bumping into Rodriguez’s knee. Rodriguez
16 sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to
17 the audience during the event.
18

19 The case was originally assigned to Judge Walsh, who held a bench trial and entered a
20 judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion
21 reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*,
22 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).
23

24 III.

25 LEGAL ARGUMENT

26 This Court should exclude any comment regarding the number of attorneys representing
27 Defendants. Any such references would be completely irrelevant to the present proceedings
28 under NRS §48.015. NRS §48.015 provides that relevant evidence is evidence “having any



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1 tendency to make the existence of any fact that is of consequence to the determination of the
2 action more or less probable than it would without the evidence.” Furthermore, irrelevant
3 evidence in inadmissible pursuant to NRS §48.025. Lastly, NRS §48.035 provides for the
4 exclusion of evidence based upon the danger of unfair prejudice, confusion of the issues, or
5 misleading the jury. Event relevant evidence may be excluded under NRS §48.035 if its
6 probative value is substantially outweighed by the danger of unfair prejudice, waste of time, or
7 danger of misleading the jury. Edwards v. State, 132 P.3d 581, 585 (Nev. 2006). The number of
8 attorneys representing Defendant has no evidentiary value and should be excluded accordingly.
9

10
11 **IV.**

12 **CONCLUSION**

13 For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A
14 PALMS CASINO RESORT respectfully requests that this Court grant Defendant’s Motion in
15 Limine No. 10 to exclude any comments regarding the number of attorneys representing the
16 Defendant.
17

18 DATED this 7th day of March, 2016.

19 **MORAN BRANDON BENDAVID MORAN**

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



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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that on the 7th day of March, 2016, I served the foregoing **DEFENDANT, FIESTA PALMS, LLC’S MOTION IN LIMINE NO. 10 TO EXCLUDE ANY COMMENTS REGARDING THE NUMBER OF ATTORNEYS REPRESENTING DEFENDANT** via the Court’s electronic filing and service systems (“Wiznet”) to all parties on the current service list.

VIA U.S. MAIL

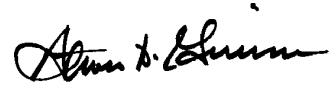
ENRIQUE RODRIGUEZ
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TELEPHONE: 951-751-1440
Plaintiff, In Proper Person

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



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CLERK OF THE COURT

1 **MLIM**
 2 **LEW BRANDON, JR., ESQ.**
 Nevada Bar No.: 5880
 3 **JUSTIN W. SMERBER, ESQ.**
 Nevada Bar No.: 10761
 4 **MORAN BRANDON BENDAVID MORAN**
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10 **ROBERT L. EISENBERG, ESQ.**
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 11 **LEMONS, GRUNDY & EISENBERG**
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 12 Reno, Nevada 89519
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 13 rle@lge.net
 Attorneys for Defendant,
 14 FIESTA PALMS, LLC d/b/a
 15 PALMS CASINO RESORT

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

17 ENRIQUE RODRIGUEZ, an individual,

18 Plaintiff,

19 v.

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

24 Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

DEFENDANT, FIESTA PALMS, LLC'S
MOTION IN LIMINE NO. 11 TO EXCLUDE
ANY TESTIMONY OFFERED BY
WITNESSES WHO HAVE NOT ALREADY
BEEN DISCLOSED AND IDENTIFIED
PRIOR TO THE CLOSE OF DISCOVERY

25
 26 COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
 27 undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of
 28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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1 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
2 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 11 to exclude
3 any testimony offered by witnesses who have not already been disclosed and identified prior to
4 the close of discovery.

5
6 This Motion is made and based upon the Points and Authorities attached hereto, along
7 with all papers and pleadings on file herein, and oral arguments at the time of hearing.

8 DATED this 7th day of March, 2016.

9 **MORAN BRANDON BENDAVID MORAN**

10
11 /s/ Justin W. Smerber, Esq.
12 **LEW BRANDON, JR., ESQ.**
13 Nevada Bar No. 5880
14 **JUSTIN W. SMERBER, ESQ.**
15 Nevada Bar No.: 10761
16 630 S. Fourth Street
17 Las Vegas, Nevada 89101
18 Attorneys for Defendant,
19 FIESTA PALMS, LLC d/b/a
20 PALMS CASINO RESORT

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NOTICE OF MOTION

TO: ALL PARTIES;

YOU, AND EACH OF YOU, will please take notice that the foregoing
DEFENDANT’S MOTION IN LIMINE NO. 11 has been set for Hearing on the 07 day of
APRIL, 2016 at the hour of 9:00A _____, 2016 at the hour of _____:_____.m., before the Eighth Judicial District Court in
Dept. XV.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.
INTRODUCTION

Defendant is filing a series of Motions in Limine in compliance with EDCR 2.47. In order to avoid duplicative reading by this court, Defendant directs the Court to its Motion in Limine No. 1 for Defendant’s Affidavit required by EDCR 2.47, and its Motion in Limine Standard Section.

II.
FACTS

This case arises out of an incident that occurred at the Palms on November 22, 2004. Plaintiff Enrique Rodriguez and his wife were staying at Harrah’s, on Las Vegas Boulevard.



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17 the audience during the event.
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19 The case was originally assigned to Judge Walsh, who held a bench trial and entered a
20 judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion
21 reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*,
22 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).
23

24 **III.**

25 **LEGAL ARGUMENT**

26 Any testimony offered by witnesses who have not already been disclosed and identified
27 prior to the close of discovery should be excluded. Pursuant to Rule 16.1 of the Nevada Rules
28 of Civil Procedure, it is Plaintiffs’ duty to disclose and identify all of their witnesses, potential



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1 or otherwise, and to supplement this list of witnesses as the discovery process unfolds.
2 However, once the discovery process is complete, Plaintiffs do not have the right to then name
3 and/or call new witnesses, and the Court should not allow Plaintiffs to hide the ball during the
4 period allotted for discovery and subsequently surprise Defendants with new evidence shortly
5 before or at Trial. Allowing Plaintiffs to do so would unfairly prejudice Defendants, who would
6 not have an adequate and sufficient opportunity to examine any new witness or testimony prior
7 to Trial, and would constitute judicial authorization of the grave abuse of the discovery process.
8 Furthermore, the introduction of testimony from any witness which Defendants did not have the
9 opportunity to properly examine before Trial would unduly influence the Jury, and its effect
10 would not be magically reversed by an instruction to ignore and disregard such evidence.
11 Consequently, it is imperative that the Jury never hear such unfairly prejudicial evidence in
12 open Court.
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MORAN BRANDON
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IV.

CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant's Motion in Limine No. 11 to exclude any testimony offered by witnesses who have not already been disclosed and identified prior to the close of discovery.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Justin W. Smerber, Esq.
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
JUSTIN W. SMERBER, ESQ.
Nevada Bar No.: 10761
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Attorneys for Defendant,
FIESTA PALMS, LLC d/b/a
PALMS CASINO RESORT



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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that on the 7th day of March, 2016, I served the foregoing **DEFENDANT, FIESTA PALMS, LLC’S MOTION IN LIMINE NO. 11 TO EXCLUDE ANY TESTIMONY OFFERED BY WITNESSES WHO HAVE NOT ALREADY BEEN DISCLOSED AND IDENTIFIED PRIOR TO THE CLOSE OF DISCOVERY** via the Court’s electronic filing and service systems (“Wiznet”) to all parties on the current service list.

VIA U.S. MAIL

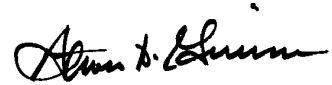
ENRIQUE RODRIGUEZ
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TELEPHONE: 951-751-1440
Plaintiff, In Proper Person

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



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CLERK OF THE COURT

1 **MLIM**
 2 **LEW BRANDON, JR., ESQ.**
 Nevada Bar No.: 5880
 3 **JUSTIN W. SMERBER, ESQ.**
 Nevada Bar No.: 10761
 4 **MORAN BRANDON BENDAVID MORAN**
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 9 PALMS CASINO RESORT

10 **ROBERT L. EISENBERG, ESQ.**
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 13 rle@lge.net
 Attorneys for Defendant,
 14 FIESTA PALMS, LLC d/b/a
 15 PALMS CASINO RESORT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

17 ENRIQUE RODRIGUEZ, an individual,

18 Plaintiff,

19 v.

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

25 Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

DEFENDANT, FIESTA PALMS, LLC'S
MOTION IN LIMINE NO. 12 TO
PRECLUDE ANY LAY PERSON FROM
RENDERING OPINIONS AS TO ANY
MEDICAL ASPECTS OF THE PLAINTIFFS,
SPECIFICALLY DIAGNOSES AND
CLAIMS OF DIAGNOSES FROM ANY
THIRD-PARTIES AS THE EXPERTISE
PROPERLY LIES WITH THE MEDICAL
PROVIDER AND BEYOND THE SCOPE OF
A LAY PERSON'S EXPERIENCE.



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BENDAVID MORAN
ATTORNEYS AT LAW

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1 **DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 12 TO**
 2 **PRECLUDE ANY LAY PERSON FROM RENDERING OPINIONS AS TO ANY**
 3 **MEDICAL ASPECTS OF THE PLAINTIFFS, SPECIFICALLY DIAGNOSES AND**
 4 **CLAIMS OF DIAGNOSES FROM ANY THIRD-PARTIES AS THE EXPERTISE**
 PROPERLY LIES WITH THE MEDICAL PROVIDER AND BEYOND THE SCOPE
 OF A LAY PERSON'S EXPERIENCE

5 COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
 6 undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of
 7 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
 8 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 12 to preclude
 9 any lay person from rendering opinions as to any medical aspects of the Plaintiffs, specifically
 10 diagnoses and claims of diagnoses from any third-parties as the expertise properly lies with the
 11 medical provider and beyond the scope of a lay person's experience.

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

14 DATED this 7th day of March, 2016.

15 **MORAN BRANDON BENDAVID MORAN**

16 /s/ Justin W. Smerber, Esq.
 17 **LEW BRANDON, JR., ESQ.**
 18 Nevada Bar No. 5880
 19 **JUSTIN W. SMERBER, ESQ.**
 20 Nevada Bar No.: 10761
 21 630 S. Fourth Street
 22 Las Vegas, Nevada 89101
 23 Attorneys for Defendant,
 24 FIESTA PALMS, LLC d/b/a
 25 PALMS CASINO RESORT

26 ///

27 ///

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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 IN LIMINE NO. 12** has been set for Hearing on the 07 day of
5 APRIL, 2016 at the hour of 9:00A
6 _____, 2016 at the hour of ____:____ .m., before the Eighth Judicial District Court in
7 Dept. XV.

8 DATED this 7th day of March, 2016.

9 **MORAN BRANDON BENDAVID MORAN**

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

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I.**
19 **INTRODUCTION**

20 Defendant is filing a series of Motions in Limine in compliance with EDCR 2.47. In
21 order to avoid duplicative reading by this court, Defendant directs the Court to its Motion in
22 Limine No. 1 for Defendant’s Affidavit required by EDCR 2.47, and its Motion in Limine
23 Standard Section.

24 **II.**
25 **FACTS**

26 This case arises out of an incident that occurred at the Palms on November 22, 2004.
27 Plaintiff Enrique Rodriguez and his wife were staying at Harrah’s, on Las Vegas Boulevard.
28



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1 Rodriguez had seen an advertisement for “Monday Night Football Frenzy with Brandy
2 Beavers,” and he decided to attend the event. He drove to the Palms and went to the
3 sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience.
4 When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting
5 their hands in the air, moving, and going wherever items went. He personally observed what he
6 characterized as a “rowdy” environment. Despite his observation of the rowdy environment, he
7 entered the sportsbook and stood near the entrance—a location from which he could have easily
8 left the premises at any time. He watched the cheerleaders and the televised football game for
9 about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He
10 did not believe this activity was dangerous; otherwise, he would have left the premises.
11
12

13 After about an hour of observing the football game and the cheerleaders, a souvenir
14 landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of
15 her chair and attempted to retrieve the souvenir, bumping into Rodriguez’s knee. Rodriguez
16 sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to
17 the audience during the event.
18

19 The case was originally assigned to Judge Walsh, who held a bench trial and entered a
20 judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion
21 reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*,
22 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).
23

24 **III.**

25 **LEGAL ARGUMENT**

26 It is evident that testimony regarding Plaintiff’s injuries, or the reasonableness or
27 necessity of Plaintiff’s medical treatment, is reserved for medical experts. Because an injury is
28 a subjective condition, an expert opinion is required to establish a causal connection between



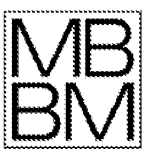
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1 the incident or injury or disability. Grover C. Dils Med. Ctr. v. Menditto, 121 Nev. 278 (Nev.
2 2005). Furthermore, medical testimony must be stated to a reasonable degree of medical
3 probability. Morsicato v. Sav-On Drug Stores, Inc., 121 Nev. 153 (Nev. 2005). Therefore, any
4 testimony regarding Plaintiffs' medical aspects or the aspects of Plaintiff's case should be
5 reserved for medical experts or providers, and lay opinions on such issues should be excluded.
6 Lay witnesses do not have the special knowledge, skill, expertise, training or education
7 sufficient to render an opinion as to causation of injuries. For purposes of this Motion in
8 Limine, Doctors are not considered lay witnesses and are not precluded from testifying
9 regarding causation of injuries, provided sufficient foundation is shown.
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IV.

CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant’s Motion in Limine No. 12 to preclude any lay person from rendering opinions as to any medical aspects of the Plaintiffs, specifically diagnoses and claims of diagnoses from any third-parties as the expertise properly lies with the medical provider and beyond the scope of a lay person’s experience.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Justin W. Smerber, Esq.
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
JUSTIN W. SMERBER, ESQ.
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRC 5(b), I hereby certify that on the 7th day of March, 2016, I served the
3 foregoing **DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 12 TO**
4 **PRECLUDE ANY LAY PERSON FROM RENDERING OPINIONS AS TO ANY**
5 **MEDICAL ASPECTS OF THE PLAINTIFFS, SPECIFICALLY DIAGNOSES AND**
6 **CLAIMS OF DIAGNOSES FROM ANY THIRD-PARTIES AS THE EXPERTISE**
7 **PROPERLY LIES WITH THE MEDICAL PROVIDER AND BEYOND THE SCOPE**
8 **OF A LAY PERSON'S EXPERIENCE** via the Court's electronic filing and service systems
9 ("Wiznet") to all parties on the current service list.
10

11 **VIA U.S. MAIL**

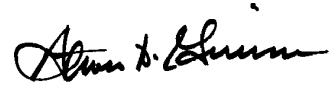
12 **ENRIQUE RODRIGUEZ**
13 6673 YELLOWSTONE DRIVE
14 RIVERSIDE, CALIFORNIA 92506
15 TELEPHONE: 951-751-1440
16 Plaintiff, In Proper Person

17 /s/ Angelina M. Martinez _____
18 An Employee of Moran Brandon Bendavid Moran
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CLERK OF THE COURT

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO.: 06A531538

DEPT. NO.: XV

DEFENDANT, FIESTA PALMS, LLC'S
MOTION IN LIMINE NO. 13 TO EXCLUDE
ANY EVIDENCE OR CLAIMS OF
MENTAL, PSYCHOLOGICAL OR
EMOTIONAL DAMAGES

COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of



MORAN BRANDON
BENDAVID MORAN
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1 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
2 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 13 to exclude
3 any evidence or claims of mental, psychological or emotional damages.

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

6 DATED this 7th day of March, 2016.

7
8 **MORAN BRANDON BENDAVID MORAN**

9
10 /s/ Justin W. Smerber, Esq.
11 **LEW BRANDON, JR., ESQ.**
12 Nevada Bar No. 5880
13 **JUSTIN W. SMERBER, ESQ.**
14 Nevada Bar No.: 10761
15 630 S. Fourth Street
16 Las Vegas, Nevada 89101
17 Attorneys for Defendant,
18 FIESTA PALMS, LLC d/b/a
19 PALMS CASINO RESORT

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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 IN LIMINE NO. 13** has been set for Hearing on the 07 day of
5 APRIL, 2016 at the hour of 9:00A
6 _____, 2016 at the hour of ___:___ .m., before the Eighth Judicial District Court in
7 Dept. XV.

8 DATED this 7th day of March, 2016.

9 **MORAN BRANDON BENDAVID MORAN**

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

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I.**
19 **INTRODUCTION**

20 Defendant is filing a series of Motions in Limine in compliance with EDCR 2.47. In
21 order to avoid duplicative reading by this court, Defendant directs the Court to its Motion in
22 Limine No. 1 for Defendant’s Affidavit required by EDCR 2.47, and its Motion in Limine
23 Standard Section.
24

25 **II.**
26 **FACTS**

27 This case arises out of an incident that occurred at the Palms on November 22, 2004.
28 Plaintiff Enrique Rodriguez and his wife were staying at Harrah’s, on Las Vegas Boulevard.



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1 Rodriguez had seen an advertisement for “Monday Night Football Frenzy with Brandy
2 Beavers,” and he decided to attend the event. He drove to the Palms and went to the
3 sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience.
4 When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting
5 their hands in the air, moving, and going wherever items went. He personally observed what he
6 characterized as a “rowdy” environment. Despite his observation of the rowdy environment, he
7 entered the sportsbook and stood near the entrance—a location from which he could have easily
8 left the premises at any time. He watched the cheerleaders and the televised football game for
9 about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He
10 did not believe this activity was dangerous; otherwise, he would have left the premises.
11
12

13 After about an hour of observing the football game and the cheerleaders, a souvenir
14 landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of
15 her chair and attempted to retrieve the souvenir, bumping into Rodriguez’s knee. Rodriguez
16 sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to
17 the audience during the event.
18

19 The case was originally assigned to Judge Walsh, who held a bench trial and entered a
20 judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion
21 reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*,
22 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).
23

24 III.

25 LEGAL ARGUMENT

26 This Honorable Court should issue an order to preclude Plaintiff from arguing at the
27 time of Trial that he has sustained mental, psychological or emotional damages as a result of the
28 subject incident. Plaintiff is required to disclose all damages pursuant to NRCP 16.1. A failure



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1 to do so warrants sanctions under NRCp 37, including exclusion of evidence not properly
2 disclosed. Further, mutual knowledge of all the relevant facts gathered by both parties is
3 essential to proper litigation. Washoe County Bd. of Sch. Trustees v. Pirhala, 84 Nev. 1, 6 (Nev.
4 1968) citing Hickman v. Taylor, 329 U.S. 495, 507 (1947). A party may not engage in trial by
5 ambush.
6

7 In the present matter, Plaintiff has not alleged or offered any evidenced or proof of any
8 such mental or emotional damages in this matter. In addition to Plaintiff's obligation to disclose
9 said damages pursuant to NRCp 16.1, Defendant has specifically investigated these issues
10 pursuant to NRCp 30 and 33. Based upon Plaintiff's express representation that he would not
11 be making any such claim for damages, Defendant has strategically not retained experts to
12 address same. To allow Plaintiff to deceive the defense and present such damages at the time of
13 trial would be highly prejudicial and unfair to the Defendant.
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IV.

CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant's Motion in Limine No. 13 to exclude any evidence or claims of mental, psychological or emotional damages.

DATED this 7th day of March, 2016.

MORAN BRANDON BENDAVID MORAN

/s/ Justin W. Smerber, Esq.
LEW BRANDON, JR., ESQ.
Nevada Bar No. 5880
JUSTIN W. SMERBER, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on the 7th day of March, 2016, I served the foregoing **DEFENDANT, FIESTA PALMS, LLC’S MOTION IN LIMINE NO. 13 TO EXCLUDE ANY EVIDENCE OR CLAIMS OF MENTAL, PSYCHOLOGICAL OR EMOTIONAL DAMAGES** via the Court’s electronic filing and service systems (“Wiznet”) to all parties on the current service list.

VIA U.S. MAIL

ENRIQUE RODRIGUEZ
6673 YELLOWSTONE DRIVE
RIVERSIDE, CALIFORNIA 92506
TELEPHONE: 951-751-1440
Plaintiff, In Proper Person

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



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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 11:54 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 2, Bates Nos. 236-470)

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Attorneys for Appellant,

Enrique Rodriguez

INDEX TO APPELLANT’S APPENDIX

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

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

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

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

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

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

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

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

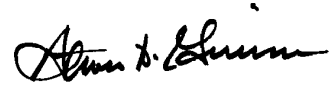
DOCUMENT DESCRIPTION		LOCATION
Defendant, Fiesta Palms, LLC's Motion in Limine No. 16 to Preclude Plaintiff from Arguing that the Violation of Defendant's Internal Policies Constitutes Negligence Per Se (filed 03/07/16)		Volume 4, Bates Nos. 710–717
Exhibit to Defendant, Fiesta Palms, LLC's Motion in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

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

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

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

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



CLERK OF THE COURT

1 **MPSJ**
2 **LEW BRANDON, JR., ESQ.**
Nevada Bar No.: 5880
3 **JUSTIN W. SMERBER, ESQ.**
Nevada Bar No.: 10761
4 **MORAN BRANDON BENDAVID MORAN**
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15 FIESTA PALMS, LLC d/b/a
PALMS CASINO RESORT

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

18 ENRIQUE RODRIGUEZ, an individual,

19 Plaintiff,

20 v.

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

25 Defendants.

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

MOTION FOR PARTIAL
SUMMARY JUDGMENT
REGARDING PUNITIVE DAMAGES



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1 **DEFENDANT, FIESTA PALMS, LLC'S MOTION FOR PARTIAL SUMMARY**
2 **JUDGMENT REGARDING PUNITIVE DAMAGES**

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, and hereby submits the following Motion for Partial Summary Judgment
7 Regarding Punitive Damages.
8

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

11 DATED this 7th day of March, 2016.

12 **MORAN BRANDON BENDAVID MORAN**

13
14 
15 /s/ Justin W. Smerber, Esq.

16 **LEW BRANDON, JR., ESQ.**

17 Nevada Bar No. 5880

18 **JUSTIN W. SMERBER, ESQ.**

19 Nevada Bar No.: 10761

20 630 S. Fourth Street

21 Las Vegas, Nevada 89101

22 Attorneys for Defendant,

23 FIESTA PALMS, LLC d/b/a

24 PALMS CASINO RESORT



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1 **NOTICE OF MOTION**

2 TO: ALL PARTIES;


3 YOU, AND EACH OF YOU, will please take notice that the foregoing

4 **MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING PUNITIVE**

5 **DAMAGES** has been set for Hearing on the 14 day of APRIL, 2016 at the hour of
6 9:00A.m., before the Eighth Judicial District Court in Dept. XV.

7 DATED this 7th day of March, 2016.

8 **MORAN BRANDON BENDAVID MORAN**

9 
10 /s/ Justin W. Smerber, Esq.

11 **LEW BRANDON, JR., ESQ.**

12 Nevada Bar No. 5880

13 **JUSTIN W. SMERBER, ESQ.**

14 Nevada Bar No. 10761

15 630 S. Fourth Street

16 Las Vegas, Nevada 89101

17 Attorneys for Defendant,

18 FIESTA PALMS, LLC d/b/a

19 PALMS CASINO RESORT

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I.**

22 **INTRODUCTION**

23 This matter involves an incident wherein Plaintiff alleges an injury due to a patron
24 diving for a promotional item thrown into the crowd while he was watching a televised football
25 game at the Palms Resort and Casino. Plaintiff then filed a Complaint alleging negligence
26 against Fiesta Palms, LLC as owner of the premises. The Complaint further alleges Punitive
27 Damages against Fiesta Palms, LLC based upon the actions of Brandy Beavers, the individual
28 responsible for throwing the promotional item. However, Defendant is not liable for punitive
damages based on the following:



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1. Under NRS §42.007 and *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 192 P.3d 243 (2008) Defendant cannot be held liable for the actions of Brandy Beaver, an independent contractor responsible for throwing the promotional item; and
2. Plaintiff failed to appeal the District Court’s prior ruling denying punitive damages and Plaintiff is therefore barred from claiming punitive damages in this Trial.

II.
FACTS

This matter involves an alleged incident that occurred at the Palms Casino Resort on November 22, 2004. *See Plaintiff’s Complaint, on filed herein.* Plaintiff’s Complaint alleges negligence on the part of Defendant, FIESTA PALMS, LLC d/b/a PALMS CASINO RESORT (hereinafter “Defendant”) as owner of the premises. *See id.* The Plaintiff was allegedly injured while watching a televised football game at the casino when a “Palms girl” threw a promotional item into the crowd and an unknown patron unexpectedly dove for the item and struck Plaintiff. *See id.* Plaintiff has alleged injuries to his left knee, head, and neck. *See id.*

A. FACTS REGARDING BRANDY BEAVERS’ EMPLOYMENT

Plaintiff’s Complaint alleges that Brandy Beavers was the individual responsible for throwing the promotional item that eventually caused Plaintiff’s injury. *See Id.* Brandy Beavers (hereinafter “Ms. Beavers”) was subsequently deposed in this matter. In her deposition, Ms. Beavers stated that at the time of the incident on November 22, 2004 she was working for the Palms as an independent contractor. *See Deposition of Brandy Beavers, 53 ll. 12-16, attached hereto as Exhibit “A.”* Sheri Long (hereinafter “Ms. Long”) was also deposed as the Director of Marketing for the Palms. *See Deposition of Sheri Long, 22 ll. 13-15, attached hereto as Exhibit “B.”* Ms. Long testified that she believed that Denise, another employee from her Department, had hired Ms. Beavers for the event at issue. *Id. at 67 ll. 4-21.* She also stated the following regarding Ms. Beavers’ employment status:



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Q. Did you hire Brandy Beavers as an employee of the Palms Casino at any time?

A. As an employee of the Palms?

Q. Yes.

A. No.

Q. Do you know what her status was as either an employee or an independent contractor at the Monday Night Football party in November of 2004?

A. It would have been independent contractor.

Q. Why do you say that?

A. Because we didn't hire – we didn't have models on our staff that actually worked for the Palms.

Id. at 60 ll. 3-15. No further evidence was presented surrounding the employment status of Ms. Beavers in this matter. Ms. Beavers also testified as to her responsibilities during the promotional events she worked. She worked with the other Palms girls in distributing “swag” to the crowd and would “work the mic.” *Exhibit “A” at 84 ll. 2-18.*

B. FACTS REGARDING PROCEDURAL HISTORY

A bench trial was held in this matter on October 25, 2010, resulting in a verdict for Plaintiff as to liability. The verdict form was prepared by Plaintiff's former counsel in which the final finding dealt with punitive damages. *See Verdict, attached hereto as Exhibit “C.”* The Court marked “No” to finding stating: “[t]he Court finds that Defendant [Palms] acted with conscious disregard of the rights and safety of others when it was aware of the probable dangerous consequences of its conduct and willfully and deliberately failed to avoid those consequences.” *See id.* Thus the Court denied Plaintiff's claim for punitive damages. The judgment was subsequently amended but the denial of punitive damages was not disturbed at any time by the Court. *See Amended Judgment on the Verdict, attached hereto as Exhibit “D.”* Defendant filed a Notice of Appeal on November 4, 2011 and subsequently a Second Amended or Supplemental Notice of Appeal on March 13, 2012, appealing “all [] orders and judgments



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1 made final and appealable by the foregoing, including, to the extent necessary, the “Judgment
2 on the Verdict” entered on April 12, 2011.” *See Second Amended or Supplemental Notice of*
3 *Appeal, attached hereto as Exhibit “E.”* As such, Defendant appealed from the Judgment on
4 the Verdict “to the extent necessary,” and left the Court’s judgment as to punitive damages
5 undisturbed. The Plaintiff did not file a post-trial motion or a cross-appeal challenging the
6 Court’s factual determination on the punitive damages claim. On appeal, the Supreme Court did
7 not address the issue of punitive damages because it was not appealed by Plaintiff, and the
8 Supreme Court ultimately remanded the case for further proceedings “consistent with this
9 opinion” due to evidentiary issues relating to expert and medical provider testimony. *See*
10 *FCHI, LLC v. Rodriguez*, 326 P.3d 440 (2014).
11
12

13 **III.**
14 **MOTION FOR SUMMARY JUDGMENT**

15 A motion for summary judgment is a procedure that terminates, without a trial, actions
16 in which there is no genuine issue as to any material fact and the moving party is entitled to
17 judgment as a matter of law. Nev. R. Civ. P. 56(c). A material issue of fact is one that affects
18 the outcome of the litigation and requires a trial to resolve the differing versions of the truth.
19 *Tate v. Lau*, 865 F.Supp. 681, 686 (1994).
20

21 The moving party is entitled to summary judgment if the non-moving party, who bears
22 the burden of persuasion at trial, fails to designate “specific facts showing that there is a genuine
23 issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The purpose of summary
24 judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court.
25 *Northwest Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).
26

27 ///
28 ///



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1 The party moving for summary judgment has the initial burden of showing the absence
2 of a genuine issue of material fact. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970). That
3 burden is met by showing an absence of evidence to support the non-moving party's case.
4 *Celotex*, 477 U.S. at 325. All justifiable inferences must be viewed in the light most favorable
5 to the non-moving party. *County of Tuolumne v. Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir.
6 2001). This then shifts the burden to the non-moving party to set forth specific facts
7 demonstrating that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
8 242, 250 (1986). Only where reasonable minds could differ on the material facts at issue should
9 summary judgment not be granted. *Mallard Auto. Group v. Leclair Management Corp.*, 153
10 F.Supp. 2d 1211, 1213 (2001).

13 The party opposing summary judgment must come forth with evidence in the form of
14 affidavits and depositions, etc., which set forth specific facts, and cannot rest on mere pleadings.
15 *Aldabe v. Adams*, 81 Nev. 280, 402 P.2d 34 (1965). Although the parties may submit evidence
16 in an inadmissible form; namely, depositions, admissions, interrogatory answers, and affidavits,
17 only evidence that might be admissible at trial may be considered by a trial court in ruling on a
18 motion for summary judgment. *Beyene v. Coleman Security Services, Inc.*, 854 F.2d 1179, 1181
19 (9th Cir. 1988). Conclusory or speculative testimony is insufficient to raise a genuine issue of
20 fact to defeat summary judgment. *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d
21 337, 345 (9th Cir. 1995). Uncorroborated and self-serving testimony, without more, will not
22 create a genuine issue of material fact, necessary to preclude summary judgment. *Villairimo v.*
23 *Aloha Island Air Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002). Factual disputes, which are
24 irrelevant or unnecessary will not defeat a motion for summary judgment. *Great West Cas. Co.*
25 *v. See*, 185 F.Supp. 2d 1164, 1167 (2002).



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1 Where there is a complete failure of proof concerning an essential element of the
2 nonmoving party’s case, all other facts are rendered immaterial, and the moving party is entitled
3 to judgment as a matter of law. *Id.* Summary judgment shall be entered “against a party who
4 fails to make a showing sufficient to establish the existence of an element essential to that
5 party’s case, and on which that party will bear the burden of proof at trial.” *Raymond v.*
6 *Albertson’s Inc.*, 39 F.Supp. 2d 866, 868 (Nev. 1999) (citing *Celotex*, 477 U.S. at 322). The
7 opposing party is not entitled to have the motion for summary judgment denied on the mere
8 hope that at trial he will be able to discredit movant’s evidence. *Hickman v. Meadow Wood*
9 *Reno*, 96 Nev. 782, 617 P.2d 871 (1980). Most importantly, **SUMMARY JUDGMENT IS**
10 **NOT A DISFAVORED PROCEDURAL SHORTCUT, BUT AN INTEGRAL PART OF**
11 **THE FEDERAL RULES AS A WHOLE.** *See Great West Cas. Co.*, 185 F.Supp.2d at 1167
12 (emphasis added).
13
14

15 Lastly, the Nevada Supreme Court has declared in *Wood v. Safeway, Inc.* that the
16 “slightest doubt” standard is no longer applicable to motions for summary judgment. *Wood v.*
17 *Safeway, Inc.*, 121 P.3d 1026, 1031 (2005). The “slightest doubt” rule precluded summary
18 judgment if there was a slightest doubt as to the operative facts of a case. While the Nevada
19 Supreme Court used the slightest doubt standard for nearly fifty-one (51) years, Courts and
20 commentators criticized it as unduly limiting the use of summary judgment. *Id.* at 1029-1030.
21 However, the Nevada Supreme Court clearly and unambiguously rejected the “slightest doubt”
22 standard in the *Wood v. Safeway* case, stating that the Court now adopts the standards set forth
23 in *Liberty Lobby*, *Celotex*, and *Matsushita* as outlined above. *Id.* at 1031.
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IV.
LEGAL ARGUMENT

Defendant, FIESTA PALMS, LLC d/b/a PALMS CASINO RESORT is entitled to partial Summary Judgment regarding Plaintiff's Punitive Damages claim. First, the evidence clearly shows that Brandy Beaver was not Defendant's employee and was only an independent contractor. Even if considered an employee, however, she could not be considered one with authority to bind the company such that NRS §42.007 would allow for Defendant to be liable for punitive damages. Last, the previous Trial held in this case ruled against Plaintiff on punitive damages and Plaintiff failed to appeal that ruling; the judgment as to punitive damages is therefore final.

A. DEFENDANT IS ENTITLED TO PARTIAL SUMMARY JUDGMENT BECAUSE PLAINTIFF CANNOT SHOW THAT BRANDY BEAVERS WAS AN EMPLOYEE, AND EVEN IF AN EMPLOYEE, SHE WAS NOT A MANAGING AGENT.

Nevada law clearly prevents an employer from being held vicariously liable for punitive damages based upon the actions of an employee unless certain requirements are met. NRS § 42.007, regarding punitive damages and vicariously liability, reads as follows:

1. . . . the employer is not liable for the exemplary or punitive damages unless:

(a) The employer had advance knowledge that the employee was unfit for the purposes of employment and employed the employee with a conscious disregard of the rights or safety of others;

(b) The employer expressly authorized or ratified the wrongful act of the employee for which the damages are awarded; or

(c) The employer is personally guilty of oppression, fraud or malice, express or implied.

Further, the statute provides if the employer is a company, then one of the above must be satisfied by "an officer, director or managing agent of the corporation who was expressly authorized to direct or ratify the employee's conduct on behalf of the corporation." *See NRS*



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1 §42.007. Thus, NRS §42.007 ensures that employers are subject to punitive damages only for
2 their own culpable conduct and not for the misconduct of lower level employees.

3 The Court, in *Countrywide Home Loans, Inc. v. Thitchener*, discussed “managing agent”
4 as found in NRS §47.002 and noted that determining an individual’s managerial capacity
5 depends on “what the individual is authorized to do by the principal and whether the agent has [
6] discretion.” *Countrywide*, 124 Nev. at 747, 192 P.3d at 258; *see also Nittinger v. Holman*, 119
7 Nev. 192, 198, 69 P.3d 688, 692 (2003). Job titles, although considered, should not be
8 dispositive; rather, the primary consideration should be whether the employee has the discretion
9 to create and implement policies of the company. *Id.* at 748, 192 P.3d at 258; *Nittinger*, 119
10 Nev. at 196-97, 69 P.3d at 691-92.

11 In this case, Plaintiff alleged punitive damages arising from the actions of “Palms Girl”
12 Ms. Beavers. Under NRS §42.007 above, punitive damages against the Palms required Ms.
13 Beavers have been a managing agent authorized to direct or ratify conduct on behalf of the
14 company. The testimony from Ms. Beavers establishes that she was only an independent
15 contractor and not even an employee. Ms. Long’s testimony establishes that the models hired
16 for events such as the one at issue were always independent contractors and not employees.
17 There is no evidence to the contrary.

18 Further, even if Ms. Beavers could be considered an employee, there is no evidence to
19 show that Ms. Beavers was in a management position whereby she had the discretion to direct
20 or ratify conduct on behalf of the company. Ms. Beavers’ position as a “Palms Girl” does not
21 support an inference that she was a managing agent with discretion as to creating policy for the
22 company. The responsibilities Ms. Beavers’ had as a “Palms Girl” to distribute “swag” and
23 hype the crowd further show that she was not in a position to make any important decisions for
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1 the company. Therefore, Defendant's motion must be granted dismissing Plaintiff's claim for
2 punitive damages because "Palms Girl" Brandy Beavers was not an employee or managing
3 agent of Defendant.

4
5 **B. PARTIAL SUMMARY JUDGMENT MUST BE GRANTED IN**
6 **DEFENDANT'S FAVOR BECAUSE THE PRIOR JUDGMENT**
7 **REGARDING PUNITIVE DAMAGES WAS NOT APPEALED AND IS**
8 **THEREFORE PRECLUDED FROM RE-LITIGATION UNDER THE**
9 **DOCTRINE OF ISSUE PRECLUSION.**

10 Plaintiff failed to appeal the district court's ruling denying punitive damages and it is
11 therefore barred for the following reasons: (1) the Supreme Court's reversal and remand left the
12 prior ruling intact, and (2) re-litigation of the issue is therefore barred under the doctrine of issue
13 preclusion. In *Barbara Ann Hollier Trust v. Shack*, 131 Nev. ___, 356 P.3d 1085 (2015), the
14 district court ruled in the first trial that the defendant was entitled to a \$100,000 offset to
15 awarded damages; the case was subsequently appealed and remanded for a new trial on other
16 grounds. On remand, the district court determined that the Nevada Supreme Court's reversal
17 had eliminated the \$100,000 offset, and the district court refused to apply the offset. The
18 defendant appealed a second time, challenging the district court's refusal to apply the offset. In
19 the second appeal, the Nevada Supreme Court reversed, holding that "because we never
20 explicitly addressed the \$100,000 offset in this court's [reversal order], the \$100,000 offset
21 remains intact." *Id.* at ___, 356 P.3d at 1091. Thus, according to *Shack*, a portion of a district
22 court judgment not appealed or explicitly addressed by the Supreme Court remains intact on
23 remand.

24 ///

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1 Further, the previous judgment in this case denying Plaintiff's claim for punitive
2 damages precludes Plaintiff from asserting a punitive damages claim in this Trial due to the
3 doctrine of issue preclusion. Issue preclusion prevents parties, or those in privity, from re-
4 litigating "any issue that was *actually and necessarily litigated* in one action . . ." *Five Star*
5 *Capital Corp. v. Ruby*, 124 Nev. 1048, 1052, 194 P.3d 709, 711 (2008) (emphasis original).
6 Issue preclusion requires that four elements be met: "(1) the issue decided in prior litigation
7 must be identical to the issue presented in the current action, (2) the initial ruling must have
8 been on the merits and have become final, and (3) the party against whom the judgment is
9 asserted must have been a party or in privity with a party to the prior litigation,' and (4) the
10 issue was actually and necessarily litigated." *Id.* at 1055, 194 P.3d at 713 (citing *University of*
11 *Nevada v. Tarkanian*, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994)).
12
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14 In this case, the district court's judgment found Defendant liable but denied Plaintiff's
15 claim for punitive damages. Defendant then appealed the district court's judgment finding
16 Defendant liable. Plaintiff did not appeal the portion of the judgment as to punitive damages
17 and the Supreme Court's reversal and remand did not explicitly address this aspect of the
18 district court's ruling. Therefore, similar to the result in *Shack*, the district court's ruling
19 regarding punitive damages remains intact and cannot be re-litigated in the remanded
20 proceedings. Further, the elements for issue preclusion as laid out in *Five Star* have been met:
21 (1) the issue, punitive damages, is identical to the issue in the prior proceedings, (2) the ruling
22 was made after a lengthy trial in which much testimony was heard and evidence presented, (3)
23 the parties are identical, and (4) as already noted, the judgment was rendered after a lengthy trial
24 and the issue of punitive damages was actually and necessarily litigated. Therefore, for the
25 foregoing reasons, Plaintiff's claim for punitive damages must be denied due to the undisturbed
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1 portion of the prior judgment dealing with punitive damages, and the doctrine of issue
2 preclusion.

3
4 **V.**
CONCLUSION

5 Based upon the foregoing, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO
6 RESORT respectfully requests that this Court grant Defendant's Motion for Partial Summary
7 Judgment Regarding Punitive Damages.

8 DATED this 7th day of March, 2016.

9
10 **MORAN BRANDON BENDAVID MORAN**


11 
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
21 PALMS CASINO RESORT

22 **CERTIFICATE OF SERVICE**

23 Pursuant to NRC 5(b), I hereby certify that on the 7th day of March, 2016, I served
24 the foregoing **DEFENDANT, FIESTA PALMS, LLC'S MOTION FOR PARTIAL**
25 **SUMMARY JUDGMENT REGARDING PUNITIVE DAMAGES** via the Court's
26 electronic filing and service systems ("Wiznet") to all parties on the current service list.

27 **VIA U.S. MAIL**

28 **ENRIQUE RODRIGUEZ**
6673 YELLOWSTONE DRIVE
RIVERSIDE, CALIFORNIA 92506
TELEPHONE: 951-751-1440
Plaintiff, In Proper Person


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



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EXHIBIT "A"

EXHIBIT "A"



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DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. A531538
)	
FIESTA PALMS, LLC, A NEVADA)	
LIMITED LIABILITY COMPANY,)	
D/B/A THE PALMS CASINO RESORT,)	
et al.,)	
)	
Defendants.)	

CERTIFIED COPY

DEPOSITION OF BRANDY L. BEAVERS

Taken on Friday, April 17, 2009

At 9:30 a.m.

At the Law Offices of
Benson, Bertoldo, Baker & Carter
7408 West Sahara Avenue
Las Vegas, Nevada

Reported by: KAREN R. BENTLEY, CCR NO. 180

1 forth. There was no intermingling with the crowd at
2 that point.

3 The Palms wanted me to intermingle
4 with the crowd. Definitely.

5 Q For the purpose of increasing beverage
6 sales?

7 A Food and beverage, as well as bets and
8 wagers.

9 Q Okay. So you were telling me that Jesse
10 Estrada introduced you to the Palms?

11 A That is correct.

12 Q At the time that you were performing at
13 the Palms for promotional purposes, and specifically
14 on November 22nd of 2004, what was your employment
15 relationship with the Palms?

16 A I was an independent contractor.

17 I was kind of the first to eliminate
18 the middleman. I had seen the agencies take half of
19 the revenue from the girls at Caesars Palace. So I
20 went directly to the source and said, "Look, I could
21 be hired for this amount."

22 And I just caught on and learned how
23 to print up an invoice. And I did it and I started
24 doing my own invoicing and I became an independent
25 contractor through them.

1 bullhorn? Or how'd you do that?

2 A I had a microphone, a wireless microphone,
3 that I would always warn, just a precautionary
4 thing. "All right. Now's the time, ladies and
5 gentlemen, when we're going to pass out" -- and I
6 called it schwag. It's -- you know, "Are you ready
7 for some Palm schwag?" You know, "Everybody, heads
8 up. Ladies and gentlemen, heads up." I would say
9 that quite often.

10 Q Were you the only one that worked the mic?

11 A Yes.

12 Q How often during one of these promotions
13 would you throw schwag?

14 A We would do it -- spare it out until the
15 end of the game.

16 Q Okay.

17 A On commercial breaks only. Because the
18 men would get very irate if we interrupted the game.

19 Q Okay. Did you see the incident involving
20 my client?

21 A I have a memory of the woman that fell.
22 But that's about it.

23 Q Tell me what happened.

24 A I remember this woman in particular
25 because she was a transient woman that would have a

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EXHIBIT "B"

EXHIBIT "B"



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DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,)
)
 Plaintiff,)
)
 vs.) CASE NO. 531538
) DEPT. NO. X
 FIESTA PALMS, LLC, A NEVADA)
 LIMITED LIABILITY COMPANY, DBA)
 THE PALMS CASINO RESORT, et al.,)
)
 Defendants.)
)

DEPOSITION OF SHERI LONG
LAS VEGAS, NEVADA
FRIDAY, JANUARY 9, 2009

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809
LS&T JOB # 1-100141C

1 A. No. Change in personnel.

2 Q. Just one of those things.

3 A. Didn't see eye to eye with the new guy.

4 Q. How were you -- did you approach the Palms,
5 or did they approach you?

6 A. They approached me.

7 Q. At the time that you were at Harrah's, did
8 you have any safety training for patron safety?

9 A. Not that I recall.

10 Q. Did they have a formal manual or guideline
11 with respect promotional events at Harrah's?

12 A. Not that I recall.

13 Q. When you were hired at Palms, what was the
14 position you were hired for?

15 A. Director of marketing.

16 Q. Who hired you?

17 A. George Maloof.

18 Q. George who?

19 A. George Maloof.

20 Q. Himself?

21 A. And Jim.

22 Q. Jim who?

23 A. Jim Hughes.

24 Q. Jim went over from Palace to the Palms?

25 A. Yes.

1 MR. BAKER: Off the record.

2 (Thereupon, an off-the-record discussion was had.)

3 BY MR. BAKER:

4 Q. Who hired Brandy Beavers in whatever
5 capacity to work at the Monday Night Football
6 parties don't know?

7 A. I'm not positive.

8 Q. Who would you suspect?

9 A. I would -- whoever the marketing manager
10 was at the time, but I don't remember when Brandy
11 started working.

12 Q. That was going to be my next question.

13 A. She didn't always work the parties. She
14 worked, you know, she had another gig. She didn't
15 always work -- so I don't really know.

16 Q. Okay.

17 A. I believe Denise was the one that probably
18 hired her.

19 Q. Your department, Denise, who at that time
20 was your marketing manager?

21 A. Yes.

22 Q. Did you tell me, does she still work at the
23 Palms?

24 A. No. She's the one in Arkansas.

25 Q. Great.

1 (Thereupon, an off-the-record discussion was had.)

2 BY MR. BAKER:

3 Q. Did you hire Brandy Beavers as an employee
4 of the Palms Casino at any time?

5 A. As an employee of the Palms?

6 Q. Yes.

7 A. No.

8 Q. Do you know what her status was as either
9 an employee or an independent contractor at the
10 Monday Night Football party in November of 2004?

11 A. It would have been independent contractor.

12 Q. Why do you say that?

13 A. Because we didn't hire -- we didn't have
14 models on our staff that actually worked for the
15 Palms.

16 Q. When did you first meet Brandy?

17 A. I don't know.

18 Q. Do you recall what the circumstances were?
19 Was it with respect to a promotion?

20 A. I think -- but I'm not positive. I think
21 that she MC'd as an entertainer as a New Year's Eve
22 party and she was brought in by an outside company.

23 Q. Do you know the company?

24 A. I don't recall.

25 Q. I mean, who is she?

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EXHIBIT "C"

EXHIBIT "C"



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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ, an individual,
Plaintiff,

CASE NO: A531538

DEPT NO: 10

vs.

TRIAL DATE: 10/25/10

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

Defendants.

VERDICT

The Honorable Jessie Walsh, presiding judge in the above-entitled action, hereby finds for
Plaintiff ENRIQUE RODRIGUEZ as follows:

1. The Court finds against Defendant FIESTA PALMS, L.L.C.
2. The Court finds against Defendant BRANDY BEAVERS.

Yes/No

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B ENSON
ERIK OLDO
AKER
& CARTER
ATTORNEYS AT LAW

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

Defendant FIESTA PALMS, L.L.C.	<u>60</u> %
Defendant BRANDY BEAVERS	<u>40</u> %

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

Past Medical Expenses	<u>\$ 376,773.18</u>
Future Medical Expenses	<u>\$ 1,854,753.</u>
Past Pain and Suffering	<u>\$ 1,243,390.</u>
Future Pain and Suffering	<u>\$ 1,105,025.</u>
Past Lost Income	<u>\$ 239,111.</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 1st day of April, 2011.

Jessie Walsh
HON. JESSIE WALSH, District Court Judge

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EXHIBIT "D"

EXHIBIT "D"



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Steven M. Baker
CLERK OF THE COURT

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4 7408 W. Sahara Avenue
5 Las Vegas, Nevada 89117
6 Telephone : (702) 228-2600
7 Facsimile : (702) 228-2333
8 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9
10 ENRIQUE RODRIGUEZ, an individual,
11 Plaintiff,

CASE NO: A531538
DEPT NO: 10

12 vs.

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

AMENDED JUDGMENT ON THE VERDICT

17
18 The above-entitled matter having come on for a bench trial on October 25, 2010
19 before the Honorable Jessie Walsh, District Court Judge, presiding. Plaintiff ENRIQUE
20 RODRIGUEZ appeared in person with his counsel of record, STEVEN M. BAKER, ESQ. of
21 the law firm of Benson Bertoldo Baker & Carter. Defendant FIESTA PALMS, L.L.C.
22 appeared by and through its counsel of record, KENNETH C. WARD, ESQ. of the law firm
23 of Archer Norris. Defendant BRANDY BEAVERS is in default and was not in attendance.
24 Testimony was taken, evidence was offered, introduced and admitted. Counsel argued the
25 merits of their cases.
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The Honorable Jessie Walsh rendered a verdict in favor of Plaintiff and against the Defendants FIESTA PALMS, L.L.C. and BRANDY BEAVERS, as to claims concerning negligence arising from premises liability resulting in the injuries to ENRIQUE RODRIGUEZ in the amount of \$376,773.38 for past medical expenses; \$1,854,738.00 for future medical expenses; \$1,243,350.00 for past pain and suffering; \$1,865,025.00 for future pain and suffering; \$289,111.00 for past lost income; \$422,592.00 for future lost income, for a total judgment against Defendants FIESTA PALMS, L.L.C. and BRANDY BEAVERS of \$6,051,589.38.

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

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

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

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

Pre-judgment interest shall accrue on past damages at the legal rate of 5.25% (3.25 prime + 2) on the amount of \$1,909,234.38 pursuant to NRS 17.130, from the date of service of the Summons and Complaint (12/11/2006), such interest in the amount of FOUR HUNDRED TWENTY SEVEN THOUSAND TWENTY SEVEN AND 71/100 DOLLARS (\$427,027.71) as of April 4, 2011. The entire judgment, including pre-judgment interest, shall

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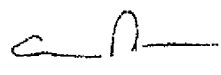
accrue interest at the legal rate from the date of entry of the judgment until the judgment is fully satisfied.

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

DATED this 15 day of Feb, 2012.


HONORABLE JESSIE WALSH
District Court Judge

SUBMITTED BY:



STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for Plaintiff

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EXHIBIT "E"

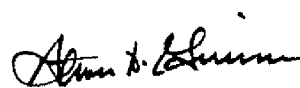
EXHIBIT "E"



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1 ANOT



CLERK OF THE COURT

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5 Reno, Nevada 89519
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6 Attorneys for Defendant FIESTA PALMS, LLC, a
7 Nevada Limited Liability Company, d/b/a/ THE
PALMS CASINO RESORT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

11 ENRIQUE RODRIGUEZ,
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13 Plaintiff's,
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15 v.
16 FIESTA PALMS, LLC, et al.,
17
18 Defendants.

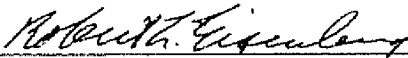
Case No. A531538

**SECOND AMENDED OR
SUPPLEMENTAL NOTICE OF APPEAL**

17 Notice is hereby given that defendant FIESTA PALMS, LLC, appeals to the Nevada
18 Supreme Court from: (1) the "Amended Judgment On The Verdict" entered on February 15,
19 2012 (Exhibit A); (2) the order entered on November 17, 2011, granting plaintiff's motion to
20 reconsider costs, and awarding plaintiff's costs in the amount of \$149,146.18 (Exhibit B); (3)
21 the "Findings of Fact, Conclusions of Law, and Order Denying Defendant's Motion for New
22 Trial," entered on September 29, 2011 (Exhibit C); and (4) the "Findings of Fact and
23 Conclusions of Law in Support of Verdict," entered on April 21, 2011 (Exhibit D). Defendant
24 also appeals from all other orders and judgments made final and appealable by the foregoing,
25
26
27
28

1 including, to the extent necessary, the "Judgment on the Verdict" entered on April 12, 2011
2 (Exhibit E).¹

3
4 DATED: March 13, 2012

5
6 
7 ROBERT L. EISENBERG (Bar No. 0950)
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26 ATTORNEYS FOR DEFENDANT
27 FIESTA PALMS, LLC
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¹ On September 19, 2011, the district court granted a motion to amend the judgment, but the district court did not actually enter the amended judgment until February 15, 2012. Defendant previously filed a protective notice of appeal and a supplemental/amended notice of appeal, due to jurisdictional uncertainty as to whether various orders and judgments were appealable prior to entry of the amended judgment. With entry of the amended judgment, any such jurisdictional uncertainty is now eliminated.

EXHIBIT A

EXHIBIT A

6 App. 1284

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Anna L. Blum
CLERK OF THE COURT

7408 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89127 • (702) 228-2600 • FAX (702) 228-2333

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8 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 ENRIQUE RODRIGUEZ, an individual,
10 Plaintiff,

CASE NO: AS31538
DEPT NO: 10

11 vs.

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

AMENDED JUDGMENT ON THE VERDICT

18 The above-entitled matter having come on for a bench trial on October 25, 2010
19 before the Honorable Jessie Walsh, District Court Judge, presiding. Plaintiff ENRIQUE
20 RODRIGUEZ appeared in person with his counsel of record, STEVEN M. BAKER, ESQ. of
21 the law firm of Benson Bertoldo Baker & Carter. Defendant FIESTA PALMS, L.L.C.
22 appeared by and through its counsel of record, KENNETH C. WARD, ESQ. of the law firm
23 of Archer Norris. Defendant BRANDY BEAVERS is in default and was not in attendance.
24 Testimony was taken, evidence was offered, introduced and admitted. Counsel argued the
25 merits of their cases.
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1 The Honorable Jessie Walsh rendered a verdict in favor of Plaintiff and against the
2 Defendants FIESTA PALMS, L.L.C. and BRANDY BEAVERS, as to claims concerning
3 negligence arising from premises liability resulting in the injuries to ENRIQUE
4 RODRIGUEZ in the amount of \$376,773.38 for past medical expenses; \$1,854,738.00 for
5 future medical expenses; \$1,243,350.00 for past pain and suffering; \$1,865,025.00 for future
6 pain and suffering; \$289,111.00 for past lost income; \$422,592.00 for future lost income, for a
7 total judgment against Defendants FIESTA PALMS, L.L.C. and BRANDY BEAVERS of
8 \$6,051,589.38.
9

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

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

13 NOW, THEREFORE, judgment upon the verdict is hereby entered in favor of the
14 Plaintiff ENRIQUE RODRIGUEZ and against the Defendants FIESTA PALMS, L.L.C. and
15 BRANDY BEAVERS, jointly and severally, as follows:
16

17 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff ENRIQUE
18 RODRIGUEZ, shall have and recover against Defendants FIESTA PALMS, L.L.C. and
19 BRANDY BEAVERS, jointly and severally, the sum of SIX MILLION, FIFTY-ONE
20 THOUSAND, FIVE HUNDRED EIGHTY NINE AND 38/100 DOLLARS (\$6,051,589.38).
21

22 Pre-judgment interest shall accrue on past damages at the legal rate of 5.25% (3.25
23 prime + 2) on the amount of \$1,909,234.38 pursuant to NRS 17.130, from the date of service
24 of the Summons and Complaint (12/11/2006), such interest in the amount of FOUR
25 HUNDRED TWENTY SEVEN THOUSAND TWENTY SEVEN AND 71/100 DOLLARS
26 (\$427,027.71) as of April 4, 2011. The entire judgment, including pre-judgment interest, shall
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accrue interest at the legal rate from the date of entry of the judgment until the judgment is fully satisfied.

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

DATED this 15 day of Feb, 2012.


HONORABLE JESSIE WALSH
District Court Judge

SUBMITTED BY:



STEVEN M. BAKER
Nevada Bar No. 4522
BENSON, BERTOLDO, BAKER & CARTER
7408 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorneys for Plaintiff

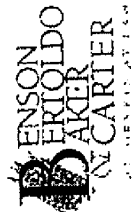
EXHIBIT B

EXHIBIT B

6 App. 1288

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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: 10/4/10

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,

Defendants.

ORDER

CAME ON FOR CONSIDERATION, Plaintiff's Motion to Reconsider Order Granting
Defendant's Motion to Retax Costs. After considering the Motion, Opposition and pleadings
and papers on file, the Court finds the Motion shall be granted.

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration of the Order
Granting Defendant's Motion to Retax Costs is hereby granted.

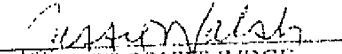
Rodriguez v Fiesta Palms L L C
Order Granting Motion for Reconsideration
Page 1



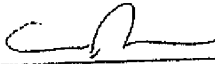
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IT IS FURTHER ORDERED that Plaintiff is awarded costs the amount of \$149,146.18, as previously included in the Judgment on the Verdict.

DATED this 16 day of Nov. 2011.


DISTRICT COURT JUDGE

SUBMITTED BY:



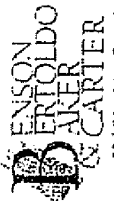
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Rodriguez v. Fiesta Palms, L.L.C
Order Granting Motion for Reconsideration
Page 2

EXHIBIT C

EXHIBIT C

6 App. 1291



[ORIGINAL]

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8 Attorneys for Plaintiff

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Steven M. Baker
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

9	ENRIQUE RODRIGUEZ, an individual,	CASE NO: A531538
10	Plaintiff,	DEPT NO: 10
11	vs.	
12	FIESTA PALMS, L.L.C., a Nevada Limited	
13	Liability Company, d/b/a/a PALMS CASINO	
14	RESORT, BRANDY L. BEAVERS,	
15	individually, DOES 1 through X, inclusive,	
16	and ROE BUSINESS ENTITIES 1 through X,	
	inclusive,	
	Defendants.	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING
DEFENDANT'S MOTION FOR NEW TRIAL

17 THIS MATTER having come on for hearing on July 5, 2011 with respect to
18 Defendant's Motion for New Trial before the Honorable Jessie Walsh, presiding, and the
19 Court having considered the evidence and the arguments of counsel and taken the matter
20 under advisement for further consideration hereby finds,
21
22

FINDINGS OF FACT

23 In seeking a new trial, Defendant offered the following four (4) arguments:

- 24 1. Plaintiff's counsel engaged in misconduct;
- 25 2. The Court erred in allowing testimony of certain providers;
- 26 3. The evidence was insufficient to justify the verdict; and
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4. The Court erred in striking defense experts.

This Court makes the following Findings of Fact with respect to the following Conclusions of Law and Order as set forth herein.

1. Plaintiff's Counsel Did Not Engage In Misconduct

Defense counsel, during Opening Argument, the evidentiary phase of the trial, and Closing Argument, accused Plaintiff's counsel of engaging in a systematic "medical build-up," and manipulation of the medical records.

Post-trial, Defense counsel, in moving for a mistrial, then accused Plaintiff's counsel and this Court of engaging in a systematic *ex parte* conspiracy, rendering the trial unfair and impartial. At no time did this Court engage in unpermitted contact with the Plaintiff, nor did this Court rely on the contents and/or points and authorities contained in any "blind" briefing in support of its findings, conclusions, and/or verdict herein.

Post-judgment, Defense counsel, in moving for a new trial, argued that Plaintiff's counsel engaged in blatant premeditated and reprehensible misconduct.

Defendant argued that Plaintiff's counsel's alleged misconduct constituted an *irregularity in the proceedings*. Defense counsel argued that it was well settled under Nevada law that attorney misconduct constitutes an irregularity in the proceedings; however, they cited no Nevada law, or any authority, for that matter, in support of this position.

Defense counsel pointed to two (2) *examples* (arguments) of misconduct.

1. Plaintiff's counsel withheld evidence in regards to Plaintiff's tax returns; and
2. Plaintiff's counsel withheld evidence relied upon by Dr. Schiffni.



1 This Court finds that Plaintiff's counsel did not withhold evidence in regarding
2 Plaintiff's tax returns.

3 Mr. Dinneen was asked to look at the vocational issues, the types of work that Plaintiff
4 was able to do prior to his accident, to look at what vocational options he may have in the
5 future and then calculate that loss. He was also asked to look at the costs of future medical
6 care and calculate those values, as well.

7
8 Mr. Dinneen met with the Plaintiff, reviewed his medical records, three (3) years of
9 tax returns, and social security materials in forming an opinion that Plaintiff was disabled.

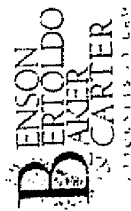
10 Mr. Dinneen testified that Plaintiff was qualified by the Federal Government as being
11 disabled.

12 Mr. Dinneen testified to a reasonable degree of economic and professional probability
13 that Plaintiff's income was *reported*.

14
15 Defense counsel was critical of the fact that Mr. Dinneen, during his testimony at trial,
16 and in response to defense counsel's inquiry as to whether Mr. Dinneen knew if any of
17 Plaintiff's income was reported, indicated that he had received a letter from Plaintiff's tax
18 preparer advising that the subject returns had, in fact been filed.

19 Mr. Dinneen's trial testimony occurred on November 2, 2010. The letter was dated
20 October 20, 2010. Defense counsel did not mark the letter as an exhibit or move to admit the
21 letter.
22

23 The subject letter was not the subject of direct examination, and the information
24 relative to the same was brought out through cross-examination in response to counsel's
25 inquiry as to whether Mr. Dinneen knew if any of Plaintiff's income was in fact reported. Mr.
26 Dinneen was provided the letter from the tax preparer subsequent to his deposition, but
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merely days before his testimony. Defense counsel never moved to admit the document, but did question Mr Dinneen as to the authenticity of the letter.

Equally, this Court finds that Plaintiff's Counsel did not withhold evidence relied upon by Dr. Schifini.

Defense counsel argued that Plaintiff's counsel withheld 100+ documents that Dr. Schifini relied upon in providing expert opinions at trial.

First, defense counsel decided not to depose Dr. Schifini.

Secondly, Dr. Schifini reviewed *all* the medical records in the case.

Third, defense counsel's only objections relative to Dr. Schifini's testimony were foundation and hearsay. Defense counsel did not object to the records relied upon, or the introduction of the documents other than on a *foundation* and *hearsay* basis, which related to Dr. Schifini's ability to provide expert testimony, and not his reliance on the documents.

Fourth, the records that counsel referred to were introduced and admitted into evidence, with the only objections being *foundation* and *hearsay*. Each any every one of these documents had been previously disclosed to the Defendant and were no more than the records of other treating physicians contained in Dr. Schifini's file.

2. The Court Did Not Err In Allowing The Testimony Of Certain Providers

Defense counsel was also critical of the fact that this Court qualified and admitted certain treating providers during trial. Defense counsel's position was that none of the providers were designated as expert witnesses nor provided expert reports. Defense counsel's argument was that they never had notice of the testifying providers' opinions until trial and that they were *prejudiced* as a result.



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This Court finds that defense decided not to depose a single treating physician in a case where the Plaintiff was alleging a constellation of profound injuries.

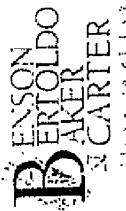
Defense counsel was fully aware of the nature and substance of the claimed injuries and had also been given the medical records generated by all of Plaintiff's physicians. Defense counsel was free to depose the treating physicians. They chose not to do so.

3. The Court Finds Evidence Was Substantial To Justify The Verdict

This Court heard the extensive testimony of Plaintiff's treating physicians, including, but not limited to Dr. Schifini, Dr. Mortillaro, Dr. Kidwell, Dr. Shah, Dr. Shannon, and Dr. Tauber on the issues of injury to the Plaintiff and 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 heard testimony regarding past medical expenses of \$376,773.38 and future medical expenses in the amount of \$1,854,738.00

The Court also heard testimony of said treating physicians, the Plaintiff Enrique Rodriguez, and "before and after" lay witnesses who testified at the time of trial 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, awarded 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.

The Court heard the testimony of Plaintiff's vocational and economic loss expert, Terrence Dinneen, on the issue of Plaintiff's loss of economic opportunity, vocational

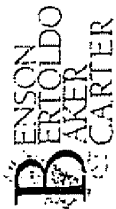


1 disability, and loss of past and future earnings, and heard evidence concerning the significant
2 detrimental impact of Plaintiff's injuries upon his ability to transact in the field of real-estate
3 purchases, refurbishment, was presented with evidence and testimony that sufficient
4 opportunity existed and exists in the repressed real estate market for Plaintiff to continue to
5 profitably purchase, refurbish and sell real-estate absent said physical limitations, was
6 presented with the calculations of Mr. Dinneen with respect to the same and, in this Court's
7 discretion, awarded past lost income in the amount of \$289,111.00 and future lost income in
8 the amount of \$422,593.00.

10 As to the allocation of liability, the Court found liability against Defendant Fiesta Palms,
11 LLC, and found that Defendant Beavers also failed to act in the manner of the average
12 reasonable person under similar circumstances in a manner creating a foreseeable harm to
13 patrons of the Palms by throwing promotional items into a crowded environment and in other
14 and further manners as elucidated at the time of trial. In reaching its verdict, the Court heard
15 and relied upon the testimony of Brandy Beavers with respect to the conduct of both herself
16 and the Palms, and the testimony of Palms' employees regarding the fact the Palms know that
17 promotional items were being thrown into crowds prior to the subject event, had a meeting
18 and set up policies to prohibit said conduct, and then knowingly violated said policies. The
19 Court, in its discretion, therefore apportioned liability at 60% to the Palms and 40% to
20 Beavers, with no finding of comparative fault on the part of the Plaintiff.

23 4. The Court Did Not Err In Striking Defense Experts

24 Defendant presented two (2) non-medical experts in this trial, Dr. Thomas Cargill
25 (Economist) and Forrest Franklin (Liability), neither of whom opined that their opinions were
26 given to a reasonable degree of professional probability as required under Nevada law
27



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

4 Mr. Franklin offered the following opinions:

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

9 None of these opinions, however, were given to a reasonable degree of professional
10 probability.

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

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

15 Neither of these opinions was given to a reasonable degree of professional/scientific
16 probability.

17 CONCLUSIONS OF LAW

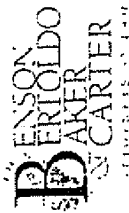
18 1. Plaintiff's Counsel Did Not Engage In Misconduct

19 This Court concludes as follows:

20 As supported by substantial evidence, Plaintiff's counsel did not engage in
21 misconduct.

22 Specifically, Plaintiff's counsel did not withhold evidence in regarding Plaintiff's tax
23 returns. The information relied upon by Mr. Dinneen was of the type contemplated and
24 permitted by NRS 50 275

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28 *Rodriguez v. Fiesta Palms, L.L.C.*
Page 7 of 14



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Equally, this Court concludes that Plaintiff's Counsel did not withhold evidence relied upon by Dr. Schifini.

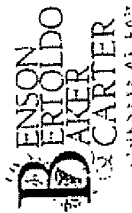
Nevada law makes it clear that a new trial is not warranted on grounds of *surprise* based on testimony which, *with reasonable diligence*, could have been anticipated.

Furthermore, the "surprise" contemplated by Rule 59 (a) must result from some fact, circumstance, or situation in which a party is placed unexpectedly, to his injury, without any default or negligence of his own, and which ordinary prudence could not have guarded against.

Defense counsel did not exercise reasonable diligence and cannot argue *surprise* since they chose not to depose a single treating provider. As a result of this failure, defendant did not discover the entirety of the materials contained in Dr. Schifini's file.

The records about which Defendant complains were introduced and admitted into evidence, with the only objections being *foundation* and *hearsay*. Each and every one of these documents had been previously disclosed to the Defendant and were no more than the records of other treating physicians contained in Dr. Schifini's file. Accordingly, no documents were withheld by the Plaintiff, Defendants were timely provided with all documents serving as the basis of Dr. Schifini's opinion, and no prejudice resulted.

As such, the Court concludes that there was no misconduct on the part of Plaintiff's Counsel.



1 2. The Court Did Not Err in Allowing The Testimony of Certain Providers

2 This Court concludes as follows:

3 Defense counsel cannot argue *surprise* with respect to the testimony of Plaintiff's
4 treating physicians since they chose not to depose a single treating provider and did not
5 exercise reasonable diligence.

6 The scope of a witness' testimony and whether that witness will be permitted to testify
7 as an expert are within the discretion of trial court. *Prabhu v. Levine*, 1996, 930 P.2d 103, 112
8 Nev. 1538, rehearing denied.

9 Once the district court certifies an expert as qualified, the expert may testify to all
10 matters within the expert's experience or training, and the expert is generally given reasonably
11 wide latitude in the opinions and conclusions he or she can state. *Fernandez v. Admirand*, 108
12 Nev. 963, 969, 843 P.2d 354, 358 (1992); *Brown v. Capanna*, 105 Nev. 665, 671, 782 P.2d
13 1299, 1303 (1989) (a proposed medical expert should not be scrutinized by an excessively
14 strict test of qualifications); *Freeman v Davidson*, 105 Nev. 13, 15, 768 P.2d 885, 886 (1989)
15 ("[a]n expert witness need not be licensed to testify as an expert, as long as he or she
16 possesses special knowledge, training and education, or in this case, knowledge of the
17 standard of care"); *Wright v. Las Vegas Hacienda*, 102 Nev. 261, 263, 720 P.2d 696, 697
18 (1986) ("[a] witness need not be licensed to practice in a given field ... to be qualified to
19 testify as an expert").

20 Under Nevada law, treating physicians are not considered retained experts. They
21 should be allowed to testify as to treatment, diagnosis (including causation), and prognosis
22 based upon their treatment of the patient and their medical training. *Id.*



1 Plaintiff's treating providers were not subject to the strict disclosure or reporting
2 requirements under Nevada law. *Id.*

3 Even if this Court were to determine that Plaintiff's counsel failed to comply with the
4 disclosure requirements, which it does not, the decision whether to permit expert witness to
5 testify where there has been failure to comply with disclosure requirements is committed to
6 the trial court's discretion. NRCP 26(b)(4). *Murphy v. Federal Deposit Ins. Corp.*, 1990, 787
7 P.2d 370, 106 Nev. 26.

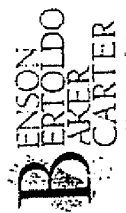
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9 Defense counsel was fully aware of the nature and substance of the claimed injuries
10 and had also been given the medical records generated by all of Plaintiff's physicians.
11 Defense counsel was free to depose the treating physicians. They chose not to do so

12 Plaintiff's treating providers were permitted to rely on the opinions of non-testifying
13 experts as a foundation for their opinions given at trial.

14 As such, the Court concludes that there was no error in allowing the testimony of
15 certain providers.

16
17 **3. The Evidence In The Case Was Substantial And Sufficient To Justify The Verdict.**

18 The Court concludes that the testimony of Plaintiff's treating physicians, including,
19 but not limited to Dr. Schifini, Dr. Mortillaro, Dr. Kidwell, Dr. Shah, Dr. Shannon, and Dr.
20 Tauher to be persuasive and to provide substantial evidence on the issues of Plaintiff's injury
21 and the reasonableness, necessity and causation of past and future medical expenses to
22 include, but not limited to, surgeries to Plaintiff's injured knee, carpal tunnel release, future
23 knee replacement, a spinal cord stimulator and replacement of batteries with respect to the
24 same, future lumbar fusion, cervical modalities, and other and further past and future medical
25 services and expenses as elucidated at trial and, accordingly, and in this Court's discretion,
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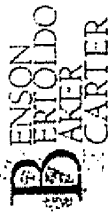


1 awards as past medical expenses the amount of \$376,773.38 and future medical expenses in
2 the amount of \$1,854,738.00.

3 Based upon the testimony of said treating physicians, the Plaintiff Enrique Rodriguez, and
4 "before and after" lay witnesses who testified at the time of trial, the Court concludes that
5 Plaintiff Rodriguez suffered extensive, painful, disabling, and permanent injuries as a result of
6 the subject incident which have detrimentally impacted his daily living and functioning and,
7 consistent with that conclusion, and in this Courts discretion, awards as past pain and
8 suffering the amount of \$1,243,350.00 and future pain and suffering in the amount of
9 \$1,865,025.00.

10
11 The Court concludes the testimony of Plaintiff's vocational and economic expert,
12 Terrence Dineen, was substantial and persuasive on the issue of Plaintiff's loss of economic
13 opportunity, vocational disability, and loss of past and future earnings, and concludes the
14 Plaintiff suffered significant detrimental impact to his ability to transact in the field of real-
15 estate purchases, refurbishment, and sales due to his physical limitations resultant of the
16 subject injury, concludes that sufficient opportunity existed and exists in the repressed real
17 estate market for Plaintiff to continue to profitably purchase, refurbish and sell real-estate
18 absent said physical limitations, and is persuaded by and accepts the calculations of Mr.
19 Dineen with respect to the same and, in this Court's discretion, awarded past lost income in
20 the amount of \$289,111.00 and future lost income in the amount of \$422,593.00

21
22 As to the allocation of liability, the Court concludes that liability lies against Defendant
23 Fiesta Palms, LLC, and concludes that Defendant Beavers also failed to act in the manner of
24 the average reasonable person under similar circumstances in a manner creating a foreseeable
25 harm to patrons of the Palms by throwing promotional items into a crowded environment and
26



1 in other and further manners as elucidated at the time of trial. The Court's conclusion with
2 respect to liability is made and based upon the testimony of Brandy Beavers with respect to
3 the conduct of both herself and the Palms, and the testimony of Palms' employees to the fact
4 the Palms knew that promotional items were being thrown into crowds prior to the subject
5 event, had a meeting and set up policies to prohibit said conduct, and then knowingly violated
6 said policies. The Court, in its discretion, therefore apportions liability at 60% to the Palms
7 and 40% to Beavers, with no finding of comparative fault on the part of the Plaintiff.
8

9 As such, the Court concludes that the evidence in the case was substantial and
10 sufficient to justify the verdict.

11 **4. The Court Did Not Err In Striking Defense Experts**

12 To testify as an expert witness under NRS 50.275, a witness must satisfy the following
13 three requirements: (1) he or she must be qualified in an area of "scientific, technical or other
14 specialized knowledge" (the qualification requirement); (2) his or her specialized knowledge
15 must "assist the trier of fact to understand the evidence or to determine a fact in issue" (the
16 assistance requirement); and (3) his or her testimony must be limited "to matters within the
17 scope of [his or her specialized] knowledge" (the limited scope requirement).
18

19 Dr. Cargill and Mr. Franklin's testimony failed to satisfy the "assistance" requirement
20 of NRS 50.275, in that neither expert provided opinions to a reasonable degree of
21 professional/scientific probability.
22

23 Accordingly, their opinions did not rise to the level of "scientific knowledge" within
24 the meaning of NRS 50 275

25 The opinions of Dr. Cargill and Mr. Franklin offered insufficient foundation for this
26 court to take judicial notice of the scientific basis of those conclusions.
27

DENSON
DEROLDO
DAKER
D. CARTER
ATTORNEYS AT LAW

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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.

Regardless, this Court determined both liability and damages independent of striking the testimony of Defendant's two expert witnesses aforesaid, and determined the same upon the basis and weight of Plaintiff's economics and vocational expert, Mr. Dinecn, Plaintiff's testimony, and the testimony of Defendant's employees called in Plaintiff's case-in-chief.

As such, this Court concludes that there was no error in striking Defense experts.

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ORDER

On the basis of the foregoing, it is hereby Ordered that Defendant's Motion for a New Trial be denied.

Dated this 26 day of Sept, 2011.


DISTRICT COURT JUDGE

Submitted by:

BENSON, BERTOLDO, BAKER & CARTER, CHTD



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Attorneys for Plaintiff

EXHIBIT D

EXHIBIT D

6 App. 1306

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



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Attorneys for Plaintiff

Original

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Alvin D. ...
CLERK OF THE COURT

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/ba/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 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.

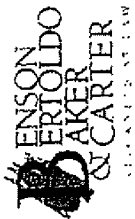


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2) The Court finds the testimony of Plaintiff's treating physicians, including, but not limited to Dr. Shifini, Dr. Mortillaro, Dr. Kidwell, Dr. Shaw, Dr. Shannon, and Dr. Tauber to be persuasive on the issue of the reasonableness, necessity and causation of past and future medical expenses to include, but not limited to, surgeries to Plaintiff's injured knee, carpal tunnel release, future knee replacement, a spinal cord stimulator and replacement of batteries with respect to the same, future lumbar fusion, cervical modalities, and other and further past and future medical services and expenses as elucidated at trial and, accordingly, and in this Court's discretion, awards as past medical expenses the amount of \$376,773.38 and future medical expenses in the amount of \$1,854,738.00.

3) Based upon the testimony of said treating physicians, the Plaintiff Enrique Rodriguez, and "before and after" lay witnesses who testified at the time of trial, the Court finds that Plaintiff Rodriguez suffered extensive, painful, disabling, and permanent injuries as a result of the subject incident which have detrimentally impacted his daily living and functioning and, consistent with that finding, and in this Courts discretion, awards as past pain and suffering the amount of \$1,243,350.00 and future pain and suffering in the amount of \$1,865,025.00.

4) The Court finds the testimony of Plaintiff's economist, Terrence Dineen, persuasive on the issue of Plaintiff's loss of economic opportunity, vocational disability, and loss of past and future earnings, finds and concludes the Plaintiff suffered significant detrimental impact to his ability to transact in the field of real-estate purchases, refurbishment, and sales due to his physical limitations resultant of the subject injury, finds that sufficient opportunity existed and exists in the repressed real estate market for Plaintiff to continue to profitably purchase, refurbish and sell real-estate absent said physical limitations, and is persuaded by and accepts the calculations of Mr. Dincen with respect to the same and, in this Court's discretion, awards



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

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

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

Date: 19 Apr 2011

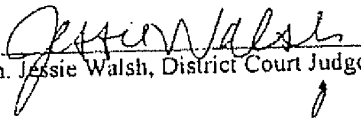

Hon. Jessie Walsh, District Court Judge

EXHIBIT E

EXHIBIT E

6 App. 1310



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JUDG
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Attorneys for Plaintiff

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Alvin D. Johnson
CLERK OF THE COURT

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, DOBS 1 through X, inclusive,
and ROE BUSINESS ENTITIES 1 through X,
inclusive,

Defendants.

JUDGMENT ON THE VERDICT

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



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

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

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

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

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

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



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

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

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

DATED this 11th day of Apr, 2011.

Jessie Walsh
HONORABLE JESSIE WALSH
District Court Judge

SUBMITTED BY:

Steven M. Baker 4/5/11

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Telephone : (702) 228-2600
Facsimile : (702) 228-2333
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

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Pursuant to NRCF 5(b) I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date I deposited for mailing at Reno, Nevada, postage prepaid, a true copy of the attached document addressed to:

Marsha L. Stephenson
STEPHENSON & DICKINSON, P.C.
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Suite 19
Las Vegas, Nevada 89102-1942

Kenneth C. Ward
Keith R. Gillette
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Walnut Creek, California 94596-3728

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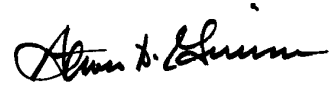
John Naylor
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Jeffery A. Bendavid
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MORAN LAW FIRM
630 S. 4th Street
Las Vegas, Nevada 89101

Michael K. Wall
HUTCHISON & STEFFEN
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

DATED this 13 day of March, 2012.





CLERK OF THE COURT

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

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

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

16 ENRIQUE RODRIGUEZ, an individual,

17 Plaintiff,

18 v.

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

23 Defendants.

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

**DEFENDANT, FIESTA PALMS, LLC'S
 MOTION IN LIMINE NO. 1 TO EXCLUDE
 TESTIMONY REGARDING WITNESSES
 VIKKI KOOINGA AND SHERI LONG**

24
 25 COMES NOW, Defendant, FIESTA PALMS, LLC, ("PALMS") by and through its
 26 undersigned attorneys, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ., of
 27 MORAN BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS,
 28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 GRUNDY & EISENBERG, hereby submit the following Motion in Limine No. 1 to exclude
2 testimony by witnesses Vikki Kooinga and Sheri Long, on the grounds that their testimony is
3 irrelevant and without adequate evidentiary foundations. Additionally, the probative value of
4 their testimony is substantially outweighed by the danger of unfair prejudice, confusion of the
5 issues, misleading the jury and waste of time. If the court allows the witnesses to testify, the
6 Palms requests the court to exclude testimony regarding their personal opinions and any
7 references to an alleged policy of the Palms regarding the activity in question.
8

9 This Motion is made and based upon the Points and Authorities attached hereto, along
10 with all papers and pleadings on file herein, and oral arguments at the time of hearing.
11

12 DATED this 7th day of March, 2016.

13 **MORAN BRANDON BENDAVID MORAN**

14
15 /s/ Justin W. Smerber, Esq.
16 **LEW BRANDON, JR., ESQ.**
17 Nevada Bar No. 5880
18 **JUSTIN W. SMERBER, ESQ.**
19 Nevada Bar No.: 10761
20 630 S. Fourth Street
21 Las Vegas, Nevada 89101
22 Attorneys for Defendant,
23 FIESTA PALMS, LLC d/b/a
24 PALMS CASINO RESORT
25

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1 **AFFIDAVIT IN COMPLIANCE WITH EDCR 2.47**

2 COUNTY OF CLARK)
3) ss:
4 STATE OF NEVADA)

5 I, JUSTIN W. SMERBER, ESQ. declare under penalty of perjury that the matters set
6 forth herein are true to the best of my knowledge.

7 1. I am an attorney duly licensed to practice in the State of Nevada at MORAN
8 BRANDON BENDAVID MORAN, and represents the interests of Defendant, FCH1, LLC in
9 the above captioned matter.

10 2. On December 11, 2015, Affiant provided a written list of Defendant's Motions in
11 Limine to Plaintiff's counsel and requested an EDCR 2.47 conference.

12 3. On or about December 12, 2015, Affiant held a conference with Paul Padda,
13 Esq., counsel for Plaintiff to discuss Defendant's Motions in Limine. At that Conference, Mr.
14 Padda requested that we wait until December 28, 2015 to confirm whether or not the filing of
15 Defendant's Motions in Limine would be necessary.

16 4. On December 28, 2015 Affiant again contacted Plaintiff's counsel, Paul Padda,
17 Esq. for purposes of addressing Defendant's Motions in Limine. Mr. Padda again requested
18 additional time to discuss and confer regarding the motions. Accordingly, Mr. Padda requested
19 that we stipulate to continue the Pre-Trial Motion filing date, which was December 28, 2015.
20 Affiant agreed to the stipulation, contacted the Department XV Clerk and drafted a stipulation
21 to continue the pre-trial motion due date. The stipulation was provided to Plaintiff's counsel
22 on December 29, 2015; however, he has never responded to same.

23 5. That on January 19, 2016 affiant was finally able to discuss Defendant's Pre-
24 Trial Motions in Limine with Plaintiff's counsel, Paul Padda, Esq. Mr. Padda indicated that he
25



26 MORAN BRANDON
27 BENDAUID MORAN
28 ATTORNEYS AT LAW

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1 could not agree to any of Defendant's motions in limine, but would be withdrawing from the
2 case. Mr. Padda subsequently withdrew from the case and an order granting same was entered
3 on February 16, 2016.

4
5 6. On March 7, 2016, Affiant attempted to contact Plaintiff in proper person in
6 order to discuss Defendant's Motions in Limine; however, Affiant was not able to make
7 contact with Plaintiff using the information provided in the order granting Counsel's motion to
8 withdraw.

9 7. The Affiant has attempted in good faith to comply with EDCR 2.47; however,
10 due to the actions of Plaintiff's Counsel, Affiant is forced to file the foregoing Motions in
11 Limine. Accordingly, Defendant now submits these Motions in Limine for consideration to
12 the Court.
13

14 FURTHER YOUR AFFIANT SAYETH NAUGHT.

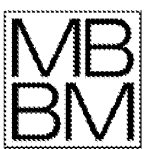
15 DATED this 7^h day of March, 2016.

17
18 JUSTIN W. SMERBER, ESQ.

19 SUBSCRIBED AND SWORN to before me
20 this ____ day of March 2016.

21 _____

22 NOTARY PUBLIC of and for
23 said County and State.



24
25
26
27
28 MORAN BRANDON
BENDAUID MORAN
ATTORNEYS AT LAW

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **FACTS**

4 This case arises out of an incident that occurred at the Palms on November 22, 2004.
5 Plaintiff Enrique Rodriguez and his wife were staying at Harrah's, on Las Vegas Boulevard.
6 Rodriguez had seen an advertisement for "Monday Night Football Frenzy with Brandy
7 Beavers," and he decided to attend the event. He drove to the Palms and went to the
8 sportsbook, where he saw women in cheerleader costumes tossing souvenirs to the audience.
9 When the cheerleaders threw items to the audience, Rodriguez saw people jumping, putting
10 their hands in the air, moving, and going wherever items went. He personally observed what he
11 characterized as a "rowdy" environment. Despite his observation of the rowdy environment, he
12 entered the sportsbook and stood near the entrance—a location from which he could have easily
13 left the premises at any time. He watched the cheerleaders and the televised football game for
14 about an hour, and he saw cheerleaders throw souvenirs to the audience at least six times. He
15 did not believe this activity was dangerous; otherwise, he would have left the premises.

16
17
18 After about an hour of observing the football game and the cheerleaders, a souvenir
19 landed on the floor near where Rodriguez was standing. Another patron suddenly leaped out of
20 her chair and attempted to retrieve the souvenir, bumping into Rodriguez's knee. Rodriguez
21 sued the Palms, contending that the Palms was negligent by allowing souvenirs to be tossed to
22 the audience during the event.

23
24 The case was originally assigned to Judge Walsh, who held a bench trial and entered a
25 judgment in favor of Rodriguez. The Nevada Supreme Court issued a published opinion
26 reversing and remanding for a new trial, due to several evidentiary errors. *FCH1 v. Rodriguez*,
27 130 Nev. Adv. Op. 46, 335 P.3d 183 (2014).
28



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1. Trial Testimony of Vikki Kooinga

One of the witnesses called by Rodriguez’s counsel in the first trial was Vikki Kooinga. A transcript of her entire trial testimony is attached as Exhibit A (with page references cited as VK Tr. 3). She was the risk manager at the Palms, and she described her job duties as overseeing the data base of security incidents and acting as a liaison between lawyers and insurance companies. VK Tr. 3. Her primary background at the Palms was in the food and beverage field. VK Tr. 4. She testified that there was no policy or procedure implemented at the Palms regarding behavior that is allowed at promotional events, and there is no written manual on this subject. VK Tr. 7. Kooinga expressed her own personal opinion that it is “inappropriate” to throw promotional items at a promotional event.

Q. [By Rodriguez’s counsel]
And you, yourself, you think it’s inappropriate to throw promotional items at a promotional event?
A. I do.

VK Tr. 8.

On further examination by Rodriguez’s counsel, Kooinga expressed her own personal opinion that throwing promotional items to people attending a promotional event does not comply with “the standard of care.” VK Tr. 9-10. Kooinga investigated records at the Palms, and she determined that there had never been another injury resulting from an object being tossed into the audience at a promotional event. VK Tr. 11.

Although Rodriguez’s counsel asked questions regarding a so-called “standard of care,” counsel did not provide a definition or explanation of that term for the witness. Thus, when Kooinga testified regarding the “standard of care,” she did not define this term or describe the scope of the term, i.e., whether she was testifying with regard to the standard only at the Palms, or whether she meant the standard for hotels and casinos generally. Additionally, she was never



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1 asked to provide any foundational information as to her view of the standard of care. Although
2 she testified that, in her personal opinion, it is “inappropriate” to toss promotional items to an
3 audience, she was never asked why she had this opinion, and she never described the standard
4 she used in determining that the conduct was “inappropriate.”
5

6 **2. Deposition testimony of Vikki Kooinga**

7 Relevant portions of Kooinga’s deposition transcript are attached as Exhibit B (cited in
8 this motion as VK Dep.11). At her deposition, Kooinga described her duties as risk manager,
9 basically forwarding information regarding claims and acting as a liaison. VK Dep. 11. She
10 worked for the Palms for three years before the incident in question. She started as an
11 administrative assistant, helping with paperwork in the security department. VK Dep. 18. She
12 then became a coordinator, and eventually “just got the title of risk manager.” VK Dep. 11.
13

14 Before working at the Palms, Kooinga worked in the food and beverage department at
15 another hotel. She had no formal training in risk management, and no background in safety.
16 VK Dep. 58. She previously worked as a bank teller and a restaurant hostess. VK Dep. 60-61.
17

18 The Palms had football promotion events approximately once per week in the Fall of
19 2004. VK Dep. 29. Kooinga had no involvement in the organization of the promotions or the
20 conduct of the events. VK Dep. 29. There were no internal policies, manuals, procedures or
21 regulations governing whether promotional souvenirs could be tossed to members of the
22 audience during a promotional event. VK Dep. 30-31.
23

24 Kooinga expressed her personal opinion that she would not allow objects to be thrown
25 into an audience during a promotional event. VK Dep. 31. When asked why not, she answered
26 “you could break the item, depending on what the item is, and common sense.” VK Dep. 31.
27

28



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1 She also indicated that throwing something into a crowd could possibly result in injury, and
2 “it’s not something that I would advise.” VK Dep. 32-33.

3 When asked by Rodriguez’s counsel to express an opinion regarding Brandy Beavers
4 throwing souvenirs to the audience, Kooinga expressed “my personal opinion” as being that the
5 conduct was “not appropriate.” VK Dep. 39. When pressed by counsel regarding whether the
6 activity “was beneath the standard of care for the hotel,” Kooinga testified that “in my opinion”
7 the conduct would have been beneath the standard of care. VK Dep. 40-41. She did not
8 establish a foundation for her personal opinion, and neither she nor Rodriguez’s counsel
9 indicated what standard they were actually using for the so-called “standard of care” for the
10 Palms.
11

12
13 **3. Trial Testimony of Sheri Long**

14 Sheri Long was another trial witness called by Rodriguez’s counsel. Her entire trial
15 testimony transcript is attached as Exhibit C (with references in this motion as SL Tr. ____). She
16 was the marketing director of the Palms. SL Tr. 5. She had never received any training or
17 instructions having to do with safety during promotional events. SL Tr. 5-6. Her marketing
18 department did not have guidelines or policies for procedures during promotional events. SL
19 Tr. 5-6.
20

21 Long had a personal opinion that promotional items should not be thrown to the
22 audience at promotional events. SL Tr. 8. Although she felt that such conduct would be
23 “inappropriate,” she did not believe the conduct would be unreasonable. SL Tr. 8.
24

25 Q. [By Rodriguez’s counsel]
26 And it was unreasonable for people to be throwing items into the audience, is
27 that right?

28 A. I wouldn’t say unreasonable. I just felt that it was inappropriate.

SL Tr. 8.



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1 There were no guidelines or written policies indicating that objects should not be thrown
2 to the audience during a promotional event. SL Tr. 11. The Palms security manual also did not
3 prohibit such conduct. SL Tr. 11.

4 Later in her testimony, Long repeated her personal opinion that throwing promotional
5 items to the audience was “inappropriate.” SL Tr. 16. She also repeated that there was no
6 formal policy at the Palms prohibiting throwing of water bottles at promotional events. SL Tr.
7 18.

8 Long was unaware of any prior problems with people throwing souvenirs at the Palms
9 sportsbar, at least during the year or two before plaintiff’s incident. SL Tr. 23-24.
10

11 **4. Sheri Long Deposition testimony**
12

13 Relevant portions of Long’s deposition transcript are attached as Exhibit C (cited in this
14 motion as SL Dep. __). Long testified at her deposition that her work history included jobs
15 doing secretarial work, promotions and advertising for casinos. SL Dep. 11-12. She was a
16 marketing director at two casinos for several years, and she does not recall receiving any
17 training in patron safety issues. SL Dep. 19-22.
18

19 At the Palms, Long is unaware of any policy or manual dealing with the issue of patron
20 safety relating to marketing. SL Dep. 25, 32-33.

21 The Palms used outside vendors as part of Monday Night Football promotions. SL Dep.
22 48. Brandy Beavers was not an employee of the Palms; she was an independent contractor. SL
23 Dep. 60. Long testified that she had a personal opinion that throwing promotional items into the
24 crowd “wasn’t appropriate.” SL Dep. 48-49.
25

26 ///

27 ///



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II.

MOTION IN LIMINE STANDARD

A Motion in Limine is made to exclude evidence before the evidence is offered at Trial, on grounds that would be sufficient to object to or move to strike the evidence. Brodit v. Cambra, 350 F.3d 985, 1005 (9th Cir. 2003). Granting of a Motion in Limine is in the Court's discretionary power to rule on the admissibility of evidence. State Ex Rel Department of Highways v. Nevada Aggregates and Assault Company, 92 Nev. 370, 376 (1976). The principle purpose of a Motion in Limine is to avoid bringing prejudicial matters before the Jury, and injection into Trial of matters that are **irrelevant, inadmissible, and prejudicial**, which may result in a mis-Trial. Rothblatt & Leroy, The Motion in Limine in Criminal Trials: A Technique for the Pretrial Exclusion of Prejudicial Evidence, 60 KY. L.J. 611, 635 (1972); Davis, The Motion in Limine -- A Neglected Trial Technique, 5 Washburn L. J. 232 (1966); Howell at 447; and BLACKS LAW DICTIONARY, 702 (6th Ed. 1991). Therefore, determinations about the admissibility of evidence are properly "conducted out of the hearing of the jury, to prevent the suggestion of inadmissible evidence." NRS 47.080.

The Trial Court is at liberty to exclude relevant evidence if it determines that its probative value is substantially outweighed by the danger of the unfair prejudice; the decision to admit evidence after balancing its prejudice against its probative value is one addressed to the discretion of the Trial Judge. Halbower v. State, 93 Nev. 212, 562 P.2d 485 (1977). Furthermore, "the district judge is given wide latitude in determining the admissibility of evidence under this standard." United States v. Fagan, 996 F.2d 1009, 1015 (9th Cir. 1993). To merit exclusion, the evidence must unfairly prejudice an opponent, typically by appealing to the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to



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1 evaluate evidence. Krause Inc. v. Little, 117 Nev. 929, 34, P.3d 566 (2001). This rule is
2 designed principally to promote policies of assuring correct factual determinations in individual
3 cases and actual and perceived fairness in judicial process as a whole. U.S. v. Robinson, 544
4 F.2d 611 (N.Y. 1976).

6 III.

7 LEGAL ARGUMENT

8 A. LIABILITY STANDARD

9 As the Nevada Supreme Court recognized in its published opinion in the present case,
10 Rodriguez’s liability theory against the Palms is a hybrid theory of premises liability based upon
11 ordinary negligence. FCH1 v. Rodriguez, 335 P.3d at 185-86 (recognizing that the injury is
12 alleged to have occurred as a result of “negligent conduct”). The Supreme Court also
13 recognized the applicable standard of care in this case: “Generally, a premises owner or
14 operator owes entrants a duty to exercise reasonable care.” Id. at 186 (emphasis added).
15

16 Negligence is the failure to use the care that a reasonable, prudent person would exercise
17 under the same circumstances. Sherburne v. Miller, 94 Nev. 585, 590, 583 P.2d 1090, 1093
18 (1978) (Batjer, C.J., dissenting); Driscoll v. Erreguible, 87 Nev. 97, 101, 482 P.2d 291, 294
19 (1971) (“Negligence is failure to exercise that degree of care in a given situation which a
20 reasonable man in similar circumstances would exercise.”).
21

22 B. EVIDENCE STANDARDS

23 Evidence which is not relevant is not admissible. NRS 48.025(2). Evidence is relevant
24 only if it has a tendency to make the existence of a material fact more or less probable than it
25 would be without the evidence. NRS 48.015.
26

27 Witnesses must testify to the evidentiary facts, and not to their conclusions, opinions or
28 inferences. Mikulich v. Carner, 69 Nev. 50, 55-56, 240 P.2d 873, 875 (1952). This rule “has



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1 been so long and so well recognized by this and all other courts in this country as not to require
2 discussion.” Id. (holding that bus driver’s statement that bright lights caused the accident was
3 inadmissible as a non-expert conclusion).

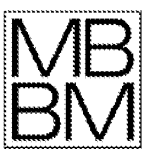
4 An opinion by a lay witness expressed in terms of legal definitions and conclusions,
5 such as “negligent,” ordinarily should be excluded. Lum v. State, 903 S.W.2d 365, 369 (Tex.
6 App. 1995). Such conclusory lay witness opinions involving mixed questions of law and fact
7 should be excluded because they are more likely to mislead than to assist the fact finder. Id.
8 (excluding witness testimony regarding whether party was negligent).
9

10 Moreover, an opinion by a lay witness that conduct is not “appropriate” is inadmissible.
11 In Walters v. S&F Holdings, LLC, 2015 WL 5081689 (U.S. Dist. Ct., D. Colorado 2015), the
12 plaintiff sought testimony from a lay witness regarding “appropriate” steps that can be taken to
13 protect guests at a public park. The court held that such testimony by a witness who is not an
14 expert is inadmissible. Testimony regarding what conduct is “appropriate” or reasonable
15 constitutes expert testimony, and a lay witness cannot provide such testimony.
16

17 Even if the witness is an employee of the defendant company, the witness cannot give a
18 lay opinion that certain conduct was negligent (or inappropriate). For example, in Rayburn
19 Lawn v. Plaster Development Co., 127 Nev.____, 255 P.3d 268 (2011), the plaintiff elicited
20 testimony by the owner of the defendant business, who testified that certain conduct of his
21 employees would be a “mistake.” The court held that such testimony did not constitute a
22 binding admission of liability, even though the witness was the owner of the business.
23

24 Pursuant to NRS 50.265, a witness who is not testifying as an expert is prohibited from
25 giving opinions or inferences which are not rationally based on the perception of the witness
26 and helpful to a clear understanding of the testimony of the witness or the determination of a
27

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1 fact in issue. This statute was applied in *Pandelis Construction v. Jones-Viking Associates*, 103
2 Nev. 129, 130, 734 P.2d 1236, 1237 (1987), which involved a claim for breach of a construction
3 contract. The court held that there was no error by the trial court in refusing to allow a lay
4 witness to testify as to the types of expenditures that would constitute extras under the
5 construction contract. Similarly, in *Peardon v. Peardon*, 65 Nev. 717, 201 P.2d 309 (1948), the
6 court held that testimony of a husband that certain property was assigned to his wife in trust was
7 an inadmissible conclusion.
8

9 Evidence requires a proper foundation. E.g., *McCourt v. J.C. Penny Co.*, 103 Nev. 101,
10 103, 734 P.2d 696, 698 (1987).
11

12 **C. THE KOOINGA AND LONG LAY OPINIONS ARE IRRELEVANT AND**
13 **LACK ADEQUATE FOUNDATIONS**

14 At the first trial in the present case, Kooinga and Long did not express opinions that
15 tossing souvenirs to an audience at a televised sporting event constitutes negligence. They only
16 expressed their own personal opinions that such conduct is “inappropriate.” In fact,
17 Rodriguez’s counsel pressed Long with leading questions suggesting that such conduct was
18 unreasonable. But Long refused to agree, testifying:

19 Q. [By Rodriguez’s counsel] And it was unreasonable for people to be throwing
20 items into the audience, is that right?

21 A. I wouldn’t say unreasonable. I just felt that it was inappropriate.

22 SL Tr. 8 (emphasis added).

23 Similarly, Kooinga expressed her personal opinion that tossing souvenirs to an audience
24 is “inappropriate.” VK Tr. 8.

25 There was no evidentiary foundation establishing that Kooinga and Long were even
26 remotely qualified to testify regarding what conduct is or is not “appropriate,” based upon
27 ordinary negligence standards. Neither witness has training in safety protocols, human factors,
28



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1 or other qualifications for determining whether conduct is or is not negligent. There was no
2 testimony that either witness has knowledge of standards in the casino resort industry for safety
3 protocols at televised sporting events. And neither witness provided any explanation or
4 foundation for the basis of her personal opinion that the conduct was “inappropriate.”
5

6 The liability issue for the jury in this case is not whether tossing souvenirs to an
7 audience at a Monday Night Football Frenzy is “inappropriate.” The liability issue here is
8 whether the conduct was unreasonably dangerous, and whether the Palms failed to use
9 reasonable care by allowing entertainers to engage in such conduct. Testimony by Long and
10 Kooinga—that, in their personal opinions, the conduct of the entertainers was “inappropriate”—
11 does not tend to make the alleged negligence of the Palms any more or less probable than
12 without the evidence. As such, the testimony is irrelevant and inadmissible.
13

14 Additionally, the testimony by Long and Kooinga did not establish any company policy
15 at the Palms regarding distribution of souvenirs at the promotional event (the televised football
16 game with live entertainment). Indeed, as set forth in the testimony described above, both
17 witnesses testified that there was no policy adopted by the Palms, either formally or informally,
18 prohibiting entertainers from tossing souvenirs to the audience at a promotional event.
19

20 **D. THE TESTIMONY IS INADMISSIBLE UNDER NRS 48.035**

21 Pursuant to NRS 48.035, even if testimony is relevant, it is inadmissible if its probative
22 value is substantially outweighed by the danger of unfair prejudice, confusion of issues,
23 misleading the jury, or causing undue delay and waste of time.
24

25 As discussed above, in *Walters v. S&F Holdings*, the court held that lay testimony
26 regarding “appropriate” safety steps was inadmissible. The court also held that the testimony
27

28



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1 had tenuous relevance and probative value, which was substantially outweighed by the dangers
2 of undue delay and waste of time.

3 In the present case, the jury will hear expert testimony from defense witness Forrest
4 Franklin, a highly-qualified expert on safety and crowd control. He will testify that the Palms
5 did not violate applicable safety standards for the promotional event. The Nevada Supreme
6 Court discussed Franklin’s testimony in the opinion in this case at pages 9-10 of Adv. Op. No.
7 46 (335 P.3d at 188-89), reversing Judge Walsh’s exclusion of Franklin’s testimony. The
8 Supreme Court characterized Franklin’s testimony as showing that “the Palms’ conduct was
9 both commonly engaged in and safe, and in turn that the Palms acted reasonably and that
10 Rodriguez’s injury was not foreseeable.” Id. The Supreme Court also held: “Given that
11 Rodriguez did not present any expert testimony to the contrary, such evidence [by Franklin]
12 could reasonably have shifted the district court’s verdict in the Palms’ favor.” Id. The court
13 also held that a new trial was warranted regarding the exclusion of Franklin’s testimony,
14 because “it is probable that but for this erroneous ruling a different result might have been
15 reached on the matter of Palms’ breach.” Id.

16 In light of the expert testimony the jury will hear regarding liability, testimony from
17 Long and Kooinga regarding their personal lay opinions of “appropriate” behavior can only
18 create confusion and misleading of the jury. Franklin will testify to his significant training,
19 education and experience as an expert, and his knowledge of industry standards that he uses in
20 forming and expressing his opinions. Long and Kooinga have no relevant training, education
21 and experience, and they have no industry standards for their personal opinions of what conduct
22 is or is not “appropriate” at a promotional event. The jury will be confused by such testimony.
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1 The testimony will also be misleading, because it will suggest to the jury that some standard
2 other than ordinary negligence might be applicable in the jury's liability determination.

3 Further, if the Court allows the testimony, the Palms will need to spend a significant
4 amount of time presenting additional evidence to show that Long and Kooinga are unqualified
5 to express such opinions, and that they have no foundation for their opinions. This will be a
6 needless, time-consuming exercise, if this court allows Long and Kooinga to express their
7 personal opinions.
8

9 Accordingly, any marginal probative value of the personal opinions of Long and
10 Kooinga is substantially outweighed by the danger of unfair prejudice, confusion of issues,
11 misleading the jury, or causing undue delay and waste of time.
12

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IV.
CONCLUSION

For all of the reasons discussed above, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant's Motion in Limine No. 1 to exclude the testimony of Kooinga and Long. If the Court does allow Rodriguez to call them as witnesses, they should not be allowed to testify as to their personal lay opinions regarding liability of the Palms or regarding whether conduct was appropriate.

DATED this 7th day of March, 2016.

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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that on the 7th day of March, 2016, I served the foregoing **DEFENDANT, FIESTA PALMS, LLC’S MOTION IN LIMINE NO. 1 TO EXCLUDE TESTIMONY REGARDING WITNESSES VIKKI KOONGA AND SHERI LONG** via the Court’s electronic filing and service systems (“Wiznet”) to all parties on the current service list.

VIA U.S. MAIL

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RIVERSIDE, CALIFORNIA 92506
TELEPHONE: 951-751-1440
Plaintiff, In Proper Person

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



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EXHIBIT "A"

EXHIBIT "A"



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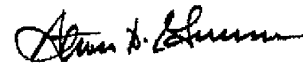
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DISTRICT COURT
CLARK COUNTY, NEVADA



CLERK OF THE COURT

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

CASE NO. A-531538
DEPT. X

BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

MONDAY, OCTOBER 25, 2010

REPORTER'S PARTIAL TRANSCRIPT
BENCH TRIAL
TESTIMONY OF VIKKI KOONGA

APPEARANCES:

For the Plaintiff: STEVEN M. BAKER, ESQ.
ROBERT S. CARDENAS, ESQ.

For the Defendant: KENNETH C. WARD, ESQ.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

RECEIVED

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CLERK OF THE COURT

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TABLE OF CONTENTS

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Page

October 25, 2010

Bench Trial

Plaintiff's Witness(es):

Vikki Kooinga..... 3

Defendant's Witness(es):

None

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Denver (303) 634-2295

1 MONDAY - OCTOBER 25, 2010 - 3:26 P.M.
2 [Designation of record begins at 3:26 p.m.]
3 THE COURT: Come on up to the witness box, please.
4 Remain standing, and raise your right hand.
5 VIKKI KOONGA, PLAINTIFF'S WITNESS, SWORN
6 THE CLERK: State and spell your name for the record.
7 THE WITNESS: Vikki Kooinga. It's V-I-K-K-I
8 K-O-O-I-N-G-A.
9 THE COURT: Mr. Baker, whenever you're ready.
10 DIRECT EXAMINATION
11 BY MR. BAKER:
12 Q Thank you for being here. And again, I told
13 Ms. Long I'm sorry about serving a subpoena, but it's the way
14 for me to preserve the record that I did what I was supposed
15 to do in order to get you here.
16 Is that okay?
17 A Yes.
18 Q You're currently the risk manager at the Palms
19 Hotel?
20 A Correct.
21 Q And what job duties are associated with being risk
22 manager at the Palm Hotel?
23 A I oversee the database of all the security incidents
24 that are reported, act as a liaison between the lawyers and
25 insurance companies.

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1 Q And in fact, you began in the Security Department,
2 is that right?

3 A Actually, I began in food and beverage.

4 Q And then moved into security?

5 A [No Audible Response]

6 Q How long were --

7 A Yes.

8 THE COURT: Excuse me for the interruption, but we need a
9 little more volume.

10 THE WITNESS: Yes.

11 [Court and Witness Confer]

12 THE COURT: Sorry about that, Mr. Baker. We need to make
13 sure we have a good recording.

14 BY MR. BAKER:

15 Q How long were you in the Security Department?

16 A I've been in security since December of '01.

17 Q And were you in security or the risk management
18 department in November '04, at the time of this incident?

19 A Both. Risk --

20 Q Did those departments ever -- interrelate?

21 A Yes.

22 Q Could you explain that to the Court, please?

23 A Risk management is in with security. It -- I work
24 within the Security Department, and my direct manager that I
25 answer to is the security director.

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1 Q In the hierarchy of management in the Security
2 Department, where do you fall and where did you fall in
3 November of 2004?

4 A The director of security?

5 Q No, I'm asking in the hierarchy. I'm assuming
6 there's a director and then somebody under them and somebody
7 under them.

8 A Yes.

9 Q In November of 2004, where did you fall in that
10 hierarchy?

11 A Directly below the director.

12 Q So you're the second head guy?

13 A Yes.

14 Q And you're familiar with the operation of the
15 Security Department, is that right?

16 A Yes.

17 Q I believe you had told me that no security guard was
18 prominently placed or stationed during the promotional events
19 at the Sportsbook, is that correct? In November of 2004?

20 A Yes. Can I clarify something on the last question?

21 Q Yes.

22 A You said that I directly -- what did you state?
23 That I directly supervise security?

24 Q No.

25 A Oh. Okay.

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1 Q I said you were the second guy in charge?

2 A But not of security.

3 Q But you're part of the Security Department?

4 A Yes.

5 Q And familiar with the operation of the Security
6 Department?

7 A Yes.

8 Q Okay. And in fact you've explained to me in the
9 past that there was no security guard directly assigned to the
10 promotional events at the time the promotional events
11 occurred, is that right?

12 A Correct.

13 Q And that, again, there was no security part of your
14 manual of policies and procedures with respect to what should
15 be permitted and what should not be permitted at promotional
16 events, is that right?

17 A Correct.

18 Q And that includes promotional events where
19 promotional items are thrown out into the crowd, is that
20 correct as well?

21 A Rephrase that, please?

22 Q And that includes promotional events when bottles
23 and t-shirts and things are thrown out to the crowd. No
24 security guard is specifically assigned to those types of
25 parties?

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1 A No security officers are assigned to -- specifically
2 to the promotional events at that time.

3 Q That was my question. Thank you for straightening
4 that on out for me. Okay?

5 And it's also true that there is no policy or
6 procedure implemented with respect to the Palms Hotel through
7 security on what behavior should or should not be permitted at
8 the promotional events?

9 A Within security?

10 Q Yes. A written manual.

11 A Correct.

12 Q You expect the security guards to use their reason
13 and their sense, is that right?

14 A In the scope of their job or the promotion?

15 Q In the scope of their job, which would include,
16 wouldn't it, providing security and, in a general sense,
17 preventing injuries and accidents at promotional events?

18 Do you understand my question?

19 A No, I do not.

20 Q You have security guards in the hotel, is that
21 right?

22 A Correct.

23 Q Part of what they do is they try to get people to
24 behave appropriately within the hotel, is that right?

25 A Correct.

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1 Q And part of the reason for that is because you're
2 attempting, in your hotel, to create a safe and reasonable
3 environment for the patrons of your hotel. Is that fair to
4 say?

5 A Correct.

6 Q And the security guards, with respect to the
7 promotional events, are expected to use their reason to permit
8 or not permit certain behaviors? That's fair to say?

9 A That's fair to say, yes.

10 Q And you, yourself, you think it's inappropriate to
11 throw promotional items at a promotional event?

12 A I do.

13 Q Okay. And you've explained, and I'm sure you'll
14 tell the Court now, that's because of the foreseeability that
15 somebody could get hurt?

16 A Correct.

17 Q As well as the foreseeability that any number of
18 events could happen when balls are being thrown and people are
19 scrambling around. Is that fair to say?

20 A Yes.

21 Q And you, as -- well, occupying the position that you
22 have in risk management and security, would expect a security
23 guard to stop someone from throwing promotional items if it
24 was occurring within the Sports Bar [sic]? Is that right?

25 A I would expect that, yes.

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1 Q And you even spoke to me about the fact that you
2 believe that that's the standard of care. That it would be
3 required of them to stop people from throwing promotional
4 event objects into the crowded promotional event, is that
5 right?

6 A I would expect them to stop that, yes.

7 Q And you heard the testimony of Brandy Beavers, where
8 she said there was a security guard in the area during the
9 promotional event, is that right?

10 A In the area, yes.

11 Q And you understand as well that she spoke about the
12 fact that this promotional items throwing was going on
13 throughout the whole Monday Night Football game, is that
14 right?

15 A Correct.

16 Q And you would anticipate, because of the structure,
17 how it's formed, of the Sports Bar to the -- I keep saying
18 Sports Bar. It's the Sportsbook, right?

19 A Correct. It's Sportsbook and Sports Bar [sic].

20 Q But you understand that the incident occurred in the
21 Sportsbook?

22 A Correct.

23 Q And you understand I'm just being dumb by saying
24 Sports Bar? I mean Sportsbook.

25 A I understand that, yes.

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1 Q And your questions that you answered, you took each
2 of them from me to mean the Sportsbook, is that right?

3 A Correct.

4 Q And you would anticipate, because of the structure,
5 how it's open to the casino and because of the route taken by
6 the security guards, that a security guard in that area would
7 have had the opportunity to see promotional items being
8 thrown?

9 A Yes, they could have had that opportunity.

10 Q And yet the promotional items kept getting thrown,
11 is that right?

12 A I'm -- I have no knowledge of it. I wasn't present.

13 Q Okay. If the promotional items were thrown more
14 than one occasion, every commercial break or many commercial
15 breaks during this football game, would you have anticipated
16 that a security guard in the area would have stopped those
17 promotional items from being thrown?

18 A I would expect him to, had he had knowledge, yes.

19 Q And that's because that comports what you understand
20 the standard of care to be, is that right?

21 A Yes.

22 Q And because you don't want people getting injured in
23 that and it's foreseeable that if the promotional items are
24 thrown, exactly what happened in this case could happen in the
25 Sportsbook. Is that fair to say?

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1 A Yes.

2 MR. BAKER: I don't think I have any further questions,
3 Your Honor.

4 THE COURT: Okay. Mr. Ward.

5 CROSS-EXAMINATION

6 BY MR. WARD:

7 Q Ms. Kooinga.

8 A Yes.

9 Q I've been working with you longer than Mr. Baker, so
10 I had to learn how to pronounce your name.

11 A You can pronounce it.

12 Q Did you have any awareness of anyone throwing
13 promotional items at the Palms prior to this incident?

14 A No, I did not.

15 Q Have you had a chance to go back and check whether
16 there have been any other injuries claimed at the Palms as a
17 result of items being thrown into the crowd?

18 A Yes, I have.

19 Q Has that ever occurred at any other time with the
20 Palms?

21 A No.

22 Q This is the only time?

23 A That I know of, yes.

24 Q Thank you.

25 MR. WARD: No questions.

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1 THE COURT: Any follow-up?

2 MR. BAKER: Follow-up, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. BAKER:

5 Q Yes. You've heard Brandy Beavers' testimony where
6 she and Denise Demuckis sat down and actually created where
7 they could have a field goal in the Sportsbook area to throw
8 footballs?

9 A Yes.

10 Q And you heard that testimony, right?

11 A Yes, I did.

12 Q Doesn't that suggest to you that probably if
13 somebody at the Palms knew that footballs were going to be
14 thrown in the Sportsbook, to go out and construct field goals
15 to do it?

16 A I believe that if they had that conversation,
17 someone, yes, would have known.

18 Q Okay. Thank you.

19 THE COURT: Any follow-up, Mr. Ward?

20 MR. WARD: No, Your Honor.

21 THE COURT: Okay. With the thanks of the Court, ma'am,
22 you may step down.

23 THE WITNESS: Thank you.

24 [Designation of record ends at 3:35 p.m.]

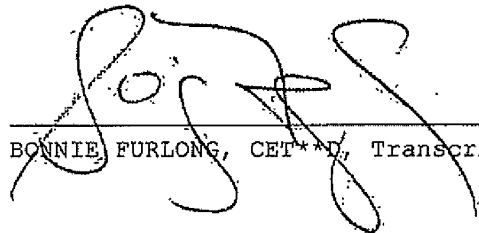
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.



BONNIE FURLONG, CFP**D, Transcriber

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EXHIBIT "B"

EXHIBIT "B"



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DISTRICT COURT
CLARK COUNTY, NEVADA

ENRIQUE RODRIGUEZ,)
)
 Plaintiff,)
)
 vs.) CASE NO. 531538
) DEPT. NO. X
 FIESTA PALMS, LLC, A NEVADA)
 LIMITED LIABILITY COMPANY, DBA)
 THE PALMS CASINO RESORT, et al.,)
)
 Defendants.)
)

DEPOSITION OF VIKKI KOINGA
LAS VEGAS, NEVADA
FRIDAY, JANUARY 9, 2009

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809
LS&T JOB # 1-100141A

1 DEPOSITION OF VIKKI KOOINGA, taken at 7408
2 West Sahara Avenue, Las Vegas, Nevada on Friday,
3 January 9, 2009 at 9:00 a.m., before Jackie
4 Jennelle, Certified Court Reporter, in and for the
5 State of Nevada.

6
7 APPEARANCES:

8 For the Plaintiff:

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14 For the Defendants:

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16 BY: KEITH R. GILLETTE, ESQ.
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20 kgillette@archernorris.com
21
22
23
24
25

1 Q. What are your duties as risk manager?

2 A. Basically, I review the reports, anything
3 before we used to work with the TPA. Now we have a
4 different insurance company, who is its own TPA.

5 I would forward information to the
6 third-party administer, which was International, and
7 I believe International was on this case.

8 Q. Yes. They're in our parking lot.

9 A. Yeah, I noticed that when I will pulled in.
10 I would forward the information to the
11 International.

12 Q. To John?

13 A. John, Pam, Jim.

14 Q. Right.

15 A. And act as a liaison basically.

16 Q. When did you start in your position as risk
17 manager?

18 A. I was risk coordinator for three years. I
19 started at the Palms in October '01 in security.

20 I became risk coordinator in the October of
21 '04 -- is that '04 or '03? -- and then just got the
22 title of risk manager from coordinator to manager
23 last October.

24 Q. Could you differentiate the duties of risk
25 coordinator and risk manager for me?

1 any time after the tattoo parlor was --

2 A. I think that may have had a little bit to
3 do with it because they were offering employee
4 discounts, so I think we were getting a lot of
5 people getting tattoos.

6 Q. Palms trying to get newer and hipper?

7 A. Yes.

8 Q. When you came on in the security department
9 of the Palms, and I understand that's co-joined with
10 the risk management department -- what was your
11 position?

12 A. Security administrative assistant.

13 Q. What are your job duties?

14 A. I assisted -- at the time, they had the
15 position was called a risk manager/safety.

16 Q. And what did you do?

17 A. I assisted him basically with the paperwork
18 for the risk management end of it and safety, and I
19 also was assistant to the security director.

20 Q. Who is the security director?

21 A. At the time of opening?

22 Q. Yes?

23 A. Frank Luizzo.

24 Q. Was there a risk management director as
25 well?

1 A. Not for the security department. There's
2 no separate -- they work from the SOP.

3 There may be for maybe like the marketing
4 department, the one that -- or sales department the
5 ones that set it up, they may have something. I
6 couldn't answer that.

7 Q. What's your understanding of what was
8 occurring in the sportsbook at the time that my
9 client was injured?

10 A. I believe a football promotion.

11 Q. And how often would football promotions
12 take place at the Palms in November of '04?

13 A. I think at the time it was probably once a
14 week.

15 Q. Did you have any involvement in the
16 organization or those football promotions being
17 conducted?

18 A. I did not.

19 Q. Who did?

20 A. That would be Sheri Long.

21 Q. Who is Sheri Long?

22 A. Marketing director.

23 MR. GILLETTE: She's one of the individuals
24 that's going to be produced today, Steve.

25 MR. BAKER: Great.

1 BY MR. BAKER:

2 Q. Do you know whether there is a manual or
3 policies and procedures book which has to do with
4 how promotional events such as the football
5 promotional event that was occurring at the time
6 should be organized and controlled?

7 A. I do not.

8 Q. Sheri would be the best person to know
9 that?

10 A. Correct.

11 Q. Okay. And what's your understanding of
12 what occurred with respect to Enrique Rodriguez?

13 A. That he was injured by another patron who
14 was attempting to get a water bottle, a promotional
15 item.

16 Q. During the football promotion?

17 A. During the event, yes.

18 Q. Was it your understanding that water
19 bottles were being thrown to the people who were
20 present at the event?

21 A. I believe that's what he stated. I don't
22 know if it was thrown or not.

23 Q. Is there any regulation which has to do
24 with throwing of objects during promotional events
25 during the Palms Casino that was in existence in

1 November 2004 that you're aware of?

2 A. I am not aware of.

3 Q. As a risk manager, would you instruct or
4 allow employees of the Palms hotel to throw objects
5 into an audience during a promotional event?

6 A. No.

7 Q. You would not?

8 A. I would not.

9 Q. And why would you not?

10 A. Just for the simple fact that, one, you
11 could break the item, depending on what the item is,
12 and common sense.

13 Q. You try to utilize common sense when you're
14 risk managing, is that right?

15 A. Correct.

16 Q. And part of risk management is to provide
17 for the safety, the reasonable safety of people upon
18 the premises, is that true?

19 A. Correct.

20 Q. And as the risk manager of the Palms
21 hotels, is it fair to say that you agree with me
22 that throwing objects during a promotional event
23 could foreseeably cause injury to someone in the
24 audience?

25 MR. GILLETTE: That calls for a legal

1 conclusion.

2 A. It could foreseeably, yes.

3 Q. And that's one of the reasons why you as
4 the risk manager would instruct employees of the
5 Palms hotel not to throw those objects, is that fair
6 to say?

7 MR. GILLETTE: Well, that calls for
8 speculation, and it also misstates her prior
9 testimony.

10 You can go ahead and answer.

11 BY MR. BAKER:

12 A. Could you repeat it?

13 Q. Sure.

14 As the risk manager, one of the reasons --
15 using your common sense -- that you would tell your
16 employees not to throw something into a crowd is
17 because that could result in an injury to somebody
18 in that crowd?

19 A. Correct.

20 Q. And that wouldn't be reasonable in terms of
21 risk management, is that fair to say?

22 A. It's not something --

23 MR. GILLETTE: That calls for a legal
24 conclusion again.

25 But you can answer that.

1 BY MR. BAKER:

2 A. It's not something that I would advise.

3 Q. Is there a policy or procedure in effect
4 now at the Palms hotel not to throw objects into the
5 audience during a promotional event?

6 A. I don't know if there's a specific policy,
7 a written policy.

8 Q. Today, as risk manager of the Palms hotel,
9 if you walked by the sportsbook and there were
10 people throwing promotional objects out into the
11 crowd, what activities would you do to stop that
12 from taking place?

13 A. I would contact the person that's doing it
14 and also their supervisor and state that they can
15 not do so.

16 Q. Have you ever had the opportunity to do
17 that?

18 A. The situation, incident, whatever you want
19 to call it, has never arisen.

20 Q. Okay. So in your experience, has there
21 been other instances where promotional objects were
22 thrown into the audience during a promotional event
23 at the Palms hotel?

24 A. Not to my personal knowledge.

25 Q. Do you know Brandy Beavers?

1 Q. Do you recall seeing it?

2 A. At a later date I recall the actual
3 incident. At the time before the claim was filed, I
4 do not recall it.

5 Q. But you do have a specific recollection of
6 reading the report at some time after the claim was
7 made?

8 A. And I must have read it prior, too.

9 Q. When you read the report, what did you
10 think?

11 A. That we had a guest that was injured, and
12 after reading the report, my first thought and from
13 a later date rereading it, and my first thought
14 would be what happened to the third party that ran
15 into the guest that was injured.

16 Q. Did you have any thoughts about the
17 appropriateness of Brandy Beavers throwing
18 promotional bottles out into the audience?

19 A. My personal opinion?

20 Q. Yes.

21 A. It is not appropriate.

22 Q. So you think that was wrong?

23 A. Yes.

24 Q. If Brandy Beavers was an employee of the
25 Palms hotel at that time --

1 A. I'm sorry. Can I clarify something?

2 Q. Absolutely.

3 A. Based upon the report, he is stating that
4 she threw it. I do not know if it was actually
5 thrown.

6 Q. But, hypothetically, if it was thrown, in
7 your opinion, that would be wrong?

8 A. Hypothetically, yes.

9 Q. Okay. And if Brandy Beavers was an
10 employee of the Palms hotel at the time she threw
11 that water bottle, she would have done something
12 wrong?

13 A. I don't believe she was employed.

14 Q. Hypothetically?

15 A. Hypothetically, I believe yes.

16 Q. Okay. And something that was beneath the
17 standard of care for the hotel protecting the safety
18 of their patrons upon the premises?

19 MR. GILLETTE: That calls for a legal
20 conclusion.

21 BY MR. BAKER:

22 Q. You can answer.

23 When he makes those objections, later a
24 Judge might read these objections, and the Judge
25 will decide if my question is profoundly stupid or

1 not.

2 MR. BAKER: Would you read the question

3 back, please?

4 (Thereupon, the requested portion was read back.)

5 BY MR. BAKER:

6 A. I think you had asked me in my opinion.

7 Q. Correct?

8 A. Yes, it would be.

9 Q. And I've been provided with a severance

10 agreement FP 5182, which has been provide.

11 Have you ever seen this agreement before?

12 A. I have not.

13 Q. Do you know whether the hotel effectuates

14 severance agreements for individuals who are not

15 employees of the hotel?

16 A. I do not.

17 Q. Okay. And so you wouldn't be able to

18 comment when it says here, it defines Brandy Beavers

19 as an employee.

20 You wouldn't have an opinion based upon

21 whether or not she was an actual employee of the

22 Palms hotel?

23 MR. GILLETTE: Well, it's vague as to the

24 time of the question because there's a factual issue

25 involved.

1 A. Yes.

2 Q. Where did you work before the Palms?

3 A. Mirage.

4 Q. What did you do there?

5 A. Food and beverage.

6 Q. What formal training have you had in risk
7 management?

8 A. No formal training other than, as I said, I
9 just act as a liaison.

10 Q. We spoke about your duties.

11 When you act as a liaison, does that mean
12 that most of your duties are just to forward things
13 over to a TPA?

14 A. Basically, yes.

15 Q. Do you have any background in safety?

16 A. No.

17 Q. Okay. Do you have any background in
18 engineering?

19 A. No.

20 Q. Do you have any background in human
21 factors?

22 A. In what?

23 Q. Okay. I'll take that as a no.

24 All right. Human factors is the study of
25 how individuals react.

1 A. Pecos and Tropicana.

2 Q. That's down where I grew up. Actually,
3 that was my bank.

4 Was that the one on Trop, it had a
5 drive-through with the pneumatic tubes in it?

6 A. Yes.

7 Q. Okay. And after Valley Bank, where did you
8 work?

9 A. Mirage.

10 Q. So you went straight from banking into food
11 and beverage?

12 A. No. I started at the had Mirage as a pit
13 clerk in the casino.

14 Q. As a what?

15 A. A pit clerk.

16 Q. Oh. I thought you said a pickler.

17 A. And then I went into food and beverage as
18 an admin, and then I became a hostess in Kokomo's
19 steak and seafood.

20 Q. Okay. And then over to the Palms in '01,
21 was it?

22 A. In '01 -- in between Mirage and Palms I
23 worked at Purchase Pro.

24 Q. What's that?

25 A. It was a business-to-business computer

1 company.

2 Q. And did you do any risk management work
3 there?

4 A. No. I was diversity.

5 Q. Is it fair to say the first risk management
6 position you held was at the Palms?

7 A. Yes.

8 Q. And I'm sorry for flipping back, when did
9 you begin in that position?

10 A. At the Palms?

11 Q. Yes.

12 A. As risk --

13 Q. In the risk management department.

14 A. Well, in security or in risk management?
15 Because security falls --

16 Q. Either or both?

17 A. In October of '01.

18 Q. And I probably asked you this as well: Who
19 was the head risk manager at the Palms in November
20 of '04?

21 A. In '04 there's no head. I was risk
22 coordinator.

23 Q. Well, if you're the only one, we'll
24 consider you to be the head and the tail.

25 A. Okay.

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EXHIBIT "C"

EXHIBIT "C"



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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

Ann D. Quinn
CLERK OF THE COURT

5 ENRIQUE RODRIGUEZ,)
6 Plaintiff,)
7 v.)
8 FIESTA PALMS, LLC,)
9 Defendant.)

CASE NO. A-531538
DEPT. X

10
11 BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

12 MONDAY, OCTOBER 25, 2010

13 REPORTER'S PARTIAL TRANSCRIPT
14 BENCH TRIAL
TESTIMONY OF SHERI LONG

15 APPEARANCES:

16 For the Plaintiff: STEVEN M. BAKER, ESQ.
17 ROBERT S. CARDENAS, ESQ.

18
19 For the Defendant: KENNETH C. WARD, ESQ.

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22
23
24 RECORDED BY: VICTORIA BOYD, COURT RECORDER
25

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page

October 25, 2010

Bench Trial

Plaintiff's Witness(es):

Sheri Long..... 4

Defendant's Witness(es):

None

1
2
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4
5
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7
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11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

Page

PLAINTIFF'S:

Exhibit 58.....	12
Exhibit 59	16
Exhibit 60	15

DEFENDANT'S:

None

1 MONDAY - OCTOBER 25, 2010 - 11:37

2 [Designation of record begins at 11:37 a.m.]

3 THE COURT: Okay. Mr. Baker?

4 MR. BAKER: Yes, Your Honor.

5 THE COURT: Next witness?

6 MR. BAKER: Yes, Your Honor. I'd like to call Sherri
7 Long, please.

8 THE COURT: Ms. Long, come forward. Is she in the
9 courtroom? Very good.

10 SHERRI LONG, PLAINTIFF'S WITNESS, SWORN

11 THE CLERK: State and spell your name for the record.

12 THE WITNESS: My name is Sheri Long, S-H-E-R-I L-O-N-G.

13 THE COURT: Whenever you're ready, Mr. Baker.

14 MR. BAKER: Thank you.

15 DIRECT EXAMINATION

16 BY MR. BAKER:

17 Q Hi, Sheri.

18 A Hi.

19 Q I remember you from your deposition. How are you?

20 A Good, thanks.

21 Q By the way, I wanted to apologize for serving a
22 subpoena on you. It's just in the event that you weren't here
23 to testify, I needed to be able to show the Judge that I was
24 diligent. Okay?

25 A Okay.

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- 1 Q So, sorry about that.
- 2 Are you the promotional director at the Palms Hotel?
- 3 A No, I'm the vice president of marketing.
- 4 Q And what position did you occupy in November of
5 2004?
- 6 A Director of marketing.
- 7 Q What were your job duties as director of marketing?
- 8 A I was over the special events and promotions,
9 advertising, public relations; oversaw the Club Booth; and
10 entertainment.
- 11 Q And part of entertainment was the Monday night
12 football games in 2004? November?
- 13 A Well, it was part of promotions.
- 14 Q And you went to the Palms when the Palms opened up
15 in October of 2001, is that right?
- 16 A The Palms opened in November of 2001, and I was
17 hired in April of that year.
- 18 Q And were you the marketing director at that time?
- 19 A Right.
- 20 Q And as part of the promotional events that you put
21 on, is it true that the Palms never gave you any specialized
22 instruction in safety issues relating to those promotion
23 events?
- 24 A That's correct.
- 25 Q And is it true that in the marketing -- or, the

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1 promotional department, they never generated a guideline or a
2 policy for safe procedures during promotional events?

3 A That's correct.

4 Q And is it fair to say that neither you or anyone in
5 your staff ever received from the Palms specific training
6 having to do with safety occurring during promotional events?

7 A That's correct.

8 Q Now, the Monday Night Football, it started off in
9 the Key West Room, is that right?

10 A Correct.

11 Q And that's about what, an 8,000 square foot room?

12 A Yes.

13 Q That's a big room, isn't it?

14 A Yes.

15 Q And that room is designed for banquets and affairs
16 with a lot of people?

17 A Yes, it was originally designed to be a bingo room.
18 And we didn't open that way, so.

19 Q And then the open nature of it allowed people to
20 move around and do things pretty much free from the hazard of
21 bumping up or otherwise entangling themselves in the Key West
22 Room?

23 A Depending on how it was set.

24 Q Right. Now, there was a time where the Monday Night
25 Football was moved into the sport betting area?

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1 A Yes.

2 Q And that's an area with a bar, is that correct?

3 A There is a bar outside of the Book.

4 Q And that's an area that's designed differently.

5 It's not designed so that people freely flow through it.

6 There are actually tables for people to sit at?

7 A There are.

8 Q And there was a time when Monday Night Football was
9 being held in the Key West Room that you became aware that
10 certain individuals were throwing promotional items into the
11 audience, is that right?

12 A Yes.

13 Q And that occurred prior to it being moved to the
14 Sportsbook, is that right?

15 A Yes.

16 Q And I believe that I recall that you spoke to me
17 about the fact that you met with some of your staff, including
18 a woman named Denise, is that right, after you became aware
19 that promotional items were being thrown into the audience?

20 A Yes.

21 Q And you told them --

22 A Or Maureen. It might have been Maureen is the one
23 that you're --

24 Q I have a problem pronouncing her last name, but it's

25 De- --

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1 A Demuckis [phonetic throughout].

2 Q Demuckis? Is that Noreen?

3 A Maureen Holden. I had two marketing managers.

4 Maureen opened the property and Denise came after Maureen.

5 Q And Denise was made known that you didn't believe
6 that promotional items should be thrown into the audience, is
7 that right?

8 A Yes.

9 Q And the reason, as the marketing director of the
10 Palms, that you didn't believe that promotional items should
11 be thrown into the audience is because somebody could get
12 hurt?

13 A Correct.

14 Q And it was unreasonable for people to be throwing
15 items into the audience, is that right?

16 A I wouldn't say unreasonable. I just felt that it
17 was inappropriate.

18 Q Okay. Because it's foreseeable that somebody could
19 get injured?

20 A Possibly, yes. It also creates chaos. So.

21 Q So if somebody in your department or at your hotel
22 informed these promotional girls -- and let me lay a
23 foundation for that.

24 As part of Monday Night Football you, either
25 directly or through your department, would bring in

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1 promotional girls, is that right?

2 A Yes.

3 Q And Brandy Beaver was one of the promotional girls?

4 A Yes.

5 Q And basically these promotional girls are supposed
6 to try to just rah rah, get the audience stirred up and
7 involved in the event?

8 A They also have other duties on occasion, like MC'ing
9 and -- MC'ing a drawing or things along that line.

10 Q But generally they're there to create a festive
11 atmosphere, is that fair to say?

12 A Yes.

13 Q And to interact with the crowd, is that correct?

14 A Uh-huh.

15 Q And -- is that right?

16 A Yes.

17 Q And at some time after you found that objects were
18 being thrown in the Key West Room you specifically even spoke
19 with Denise about the fact that that was inappropriate, is
20 that correct?

21 A Yes.

22 Q For the reasons that we mentioned; that somebody
23 could get hurt?

24 A Uh-huh.

25 Q Is that right?

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1 A Uh-huh. Yes.

2 Q And it was foreseeable to you at that time that if
3 promotional items were thrown into the crowd, somebody might
4 be hurt. That's fair to say?

5 A Fair to say.

6 Q And if Denise or someone else in your staff informed
7 Brandy Beavers or any of these promotional girls that it was
8 okay to throw objects in the Sportsbook area during
9 promotional events, that would also be inappropriate, wouldn't
10 it?

11 A I'm -- can you say that again?

12 Q Sure. If Denise or another one of your employees
13 told the promotional girls, after the event that happened in
14 the Key West Room and your talk, that it was okay to throw
15 promotional items into the crowd, that that's part of what
16 they were there to do, you would consider it inappropriate?
17 Is that fair to say?

18 A Correct.

19 Q And again, that's because somebody could foreseeably
20 be injured by these promotional items being thrown, is that
21 right?

22 A Correct.

23 Q And really, that's exactly what happened in this
24 case, isn't that fair to say?

25 MR. WARD: Object. Argumentative.

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1 MR. BAKER: I can ask nicer.

2 THE COURT: Argumentative? Ask you to rephrase it,
3 Mr. Baker.

4 BY MR. BAKER:

5 Q And you're aware that Mr. Rodriguez is alleging that
6 he was injured when promotional objects were thrown during a
7 Monday Night Football and somebody collided and injured his
8 leg, is that fair to say?

9 A I'm aware of --

10 Q You're aware of that allegation on the part of --

11 A Of the allegation. Yes.

12 Q Now, after you spoke with your people regarding
13 throwing objects from the Key West Room did you generate any
14 memo that said objects are not supposed to be thrown during
15 promotional events?

16 A Not that I recall.

17 Q Did you create any guideline or policy that was
18 generated and issued, saying objects are not supposed to be
19 thrown in the promotional events?

20 A Not that I recall.

21 Q Did you make it part of any security manual or
22 procedure guide of the Palms, that promotional items were not
23 supposed to be thrown in the -- during promotions held at the
24 Palms?

25 A I did not.

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