

Rodriguez acted in good faith, and had good reason to do so, Six Million reasons. He did all he could to protect all his rights, but simply could not obtain an attorney. This factor weighs in favor of granting Plaintiff's motion for relief.

5. UNDERLYING PUBLIC POLICY OF THE STATE OF NEVADA OF RESOLVING CASES ON THE MERITS, WHEREVER POSSIBLE: Wherever possible, with due regard to the requirements of attorneys and parties to comply with court rules, the public policy of the State of Nevada is to resolve matters on their merits, not on technicalities, procedural rules, loopholes, or on the inability of a party to get an attorney within a short time period after ten years, right before trial.

Henry Rodriguez obtained a just and reasonable judgment of six million dollars. Based on an error of the Trial Judge, defendant's safety expert was not allowed to testify. Should justice be denied to this man, in these circumstances, after all the years he went through, simply because of attorneys dropping the ball and that he could not find an attorney in just a few month time period? No. Plaintiff submits justice would best be served to set aside the dismissal and the rulings on the motions in limine, and such other orders to allow Plaintiff to properly and fully submit his case to a Jury.

With the failure of Padda to put the trial dates, or other dates, in his motion to withdraw, in the Notice of Entry of Order; with the failure to Padda to *ever* give the new trial dates to Plaintiff, even though Padda was emailed the dates when he was still counsel for Plaintiff; with Plaintiffs attempts at finding counsel, Plaintiff's neglect is excusable, and his excusable neglect warrants vacating the dismissal and motions in limines order.

**THE LAW FAVORS RESOLUTION ON THE MERTIS
JUSTICE CALLS FOR ANOTHER CHANCE**

The policy of the State of Nevada, and the judicial system in general, favors that justice be done after a full and fair hearing. This gives rise to the public policy and judicial

1 preference that matters should be decided on their merits. *Howe v. Coldren* (1868) 4 Nev.
2 171; *Hotel Last Frontier v. Frontier Properties* (1963) 79 Nev. 150, 380 P.2d 293; *Fink v.*
3 *Markowitz (In re Estate of Black)*, (2016) 367 P.3d 416, 132 Nev. Adv. Op. 7. Of course, it
4 is not absolute, relief is not to be granted in each situation, and the Court has the power to
5 enforce the rules of the Court.
6

7 There are certainly reasons, in the case at bar, to deny this motion for relief, Plaintiff
8 did not comply with the rules as to what is required for trial and pre-trial dates (but he was
9 not properly served the order setting the trial). Plaintiff did not file an opposition to the
10 Motion to Dismiss (his attorney withdrew on February 16, 2016, and, although he thought he
11 had an attorney to handle the case, he was wrong, and could not hire an attorney to oppose the
12 motion to dismiss). And the Court already has a large case load. But, all things considered,
13 (the long time that Plaintiff did have counsel compared to the short few months he could not
14 get counsel, and the technical failure to not be properly given the trial dates) this is the
15 perfect case to allow a pro per some extra leeway, find that the trial dates were not served on
16 him, and or that discretionary relief should be given on the motions in limine and motion to
17 dismiss.
18
19
20

21 CONCLUSION

22 Plaintiff received a six million dollar verdict. The Supreme Court sent the case back
23 to the trial court to be tried again. Failure to grant Plaintiff's motion for relief, will allows a
24 tortfeasor to escape liability for a very severely injured man (six million dollars worth), and
25 not give Enrique Henry Rodriguez to have his day in Court.
26
27
28

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Joel Selik, Nevada State Bar No: 482
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Las Vegas, NV 89145
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1 Plaintiff, with hat in hand, requests the Court to either provide NRCP 60(b) relief, and
2 set aside the order dismissing the case, and the order on the motions in limine, or to rule that
3 Plaintiff did not properly receive notice of the trial dates, and thus all motions flowing or
4 based on that date were improper, and, on that basis, set aside the orders dismissing the case
5 and granting the motions in limine. Further, it is requested the Court place this case back in
6 active civil status, set trial, trial related and discovery dates.
7
8

9
10 Respectfully Submitted,

11 Dated: October 14, 2016

12 
13 _____
14 JOEL SELIK
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DECLARATION OF MARIA PEREZ

I, Maria Perez, declare under penalty of perjury, under the laws of the State of California, the following is true, and known of my own personal knowledge, except as to matters state to be true, and as to those matters, I believe them to be true.

1. I have been appointed by State of California, Health & Human Services Agency, Department of Social Services, as Enrique Rodriguez' caregiver, and Henry Rogriguez is my boyfriend. See the State of California Certification papers, attached as Exhibit 10.
2. I have known Henry since 1982 years, and since he was injured at the Palms Fiesta Casino I have had to take care of him.
3. Henry seems fine, from the outside, in conversation, but he has many limitations in caring for himself and managing his life.
4. He is often in so much pain, or so depressed, he cannot get out of bed.
5. I have been Henry's caregiver since the date Henry was injured at the Palms Fiesta, November 22, 2004. I have been appointed Henry-Enrique Rodriguez caregiver by the State of California, Health and Human Services Agency, Department of Social Services, and have been acting in that capactiy since 2014 (we were not aware this could be done prior to this time).
6. Exhibit 10 are the Certification papers, showing my appointment as Enrique Rodriguez' Caregiver by the State of California.
7. My understanding is that Henry has been diagnosed with a number of injuries and disabilities, including CRPS, Complex Regional Pain Syndrome.

1 8. Exhibit 10 shows the needs that Henry Rodriguez needs a Caregiver, these
2 include:

- 3 a. Bowel & Bladder Care,
4
5 b. Feeding;
6
7 c. Routine bed Baths,
8
9 d. Dressing,
10
11 e. Ambulation,
12
13 f. Bathing, Oral Hygiene and Grooming
14
15 g. And most other activities of daily, living, including meals, laundry,
16 shopping, and medical appointments.

17 9. Also a part of Exhibit 10 is the State of California's Certification by Dr. Vidhya
18 V. Koka, MD, 1695 S San Jacinto Ave A, San Jacinto, CA 92583, who has seen
19 Mr. Rodriguez since April 2008.

20 10. This State of California Certification by V. Koka, MD, certifies that Henry needs
21 nursing care and assistance with daily activities. Exhibit 10.

22 11. After the injury at Fiesta Palms on xxx, Henry when through major changes.

23 12. PHYSICAL CHANGES: Since the Fiesta Palms injury Henry is limited in what
24 he can do physically. He is often unable to stand, or even sit for extended periods
25 of time.

26 13. MENTAL & EMOTIONAL CHANGES: depression, anxiety, nervousness,
27 inability to concentrate, difficulty keeping track of matters. Henry is a completely
28

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1 changed man, from someone who participated and enjoyed life, helping in raise
2 over 100 foster children. How he often sits in bed, crying. He is often withdrawn,
3 and unable to engage in activities of daily living. He is unable to concetrate, and
4 has no energy from pain and depression.
5

6 I declare under penalty of perjury, under the laws of the State of Nevada, the
7 foregoing is true and correct, and known of my own personal knowledge, escept as to those
8 matters stated on information and belief, and to those matters I believe them to be true.
9

10
11 Dated: October 14, 2016

12 
13 MARIA PEREZ
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DECLARATION OF ENRIQUE "HENRY" RODRIGUEZ

1. I Enrique Rodriguez, am the Plaintiff in this case, I go by the name of Henry.
2. Steve Baker of Benson Bertoldo Baker and Carter was my attorney in this case,
and was my attorney for ten years. After the appeal in this case, Mr. Baker filed a
motion to withdraw in this case.
3. I searched for and found an attorney who would be willing to pick up my case and
take it to trial, Paul Padda.
4. Mr. Padda and another trial attorney indicated to me that they would take my case
to trial.
5. After the defendant's motion for this case to be tried to a jury, Mr. Padda
withdrew from my case.
6. Immediately upon Mr. Padda withdrawing from my case, I started my search for
another Attorney.
7. I found April Bonifatto, who told me that she and another attorney would be
taking my case to trial if it could not be resolved. I later found out that she was
only willing to go forward with the case if it could be settled. April Bonifatto sent
me an email withdrawing from representing me.
8. Since her withdrawal I have attempted to get another attorney, speaking to more
than 20 attorneys/law offices in total.

- 1 9. At one point, an attorney arranged for an attorney to appear for me at a hearing in
2 April, 2016. I also appeared, but the attorney did not show up, and I never learned
3 why he did not appear.
4
5 10. I tried over and over to find an attorney to take on the case or to assist me in
6 complying with the Court's rules and requirements without success.
7
8 11. After dismissal, I immediately began my search for an attorney to assist me in
9 overturning the dismissal and motions in limine. I had no success for many
10 months. I also spent time raising funds so that this motion could go forward.
11
12 12. This motion is not brought for any purpose of delay, and there is no reason other
13 than my inability to hire an attorney that it was not brought sooner.
14
15 13. I had no reason to delay bringing this motion. In fact, I am anxious to get this
16 matter back to trial as soon as possible so I may seek compensation for the injuries
17 I suffered due to the fault of Fiesta Palms Casino.
18
19 14. I have no knowledge of legal matters, and very little experience in civil matters. I
20 do not know or understand the court rules. I did my very best to obtain an
21 attorney from the time that Padda and Bonifatto withdrew to take on my case.
22
23 15. I never received notice of the May 2, 2016 trial date or the dates related to that
24 trial date.
25
26 16. I was never advised by my attorney Paul Padda or anyone else, as to the trial date
27 or what any of the requirements were. If I had been aware of any Court dates, I
28 would have appeared for each and every one of them.

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Email: SelikLaw@aol.com

1 17. I knew I needed an attorney to help me with the requirements of this case, and
2 tried, dilligently, telephoning over 20 law firms and lawyers to try to have
3 someone take on my case. Some of the attorneys

4
5 18. I live approximately 500 miles from Las Vegas, and this hampered my ability to
6 find attorneys.

7 19. During this entire period, I have been in horrible pain and have suffered fatigue
8 and debilitating depresssion.

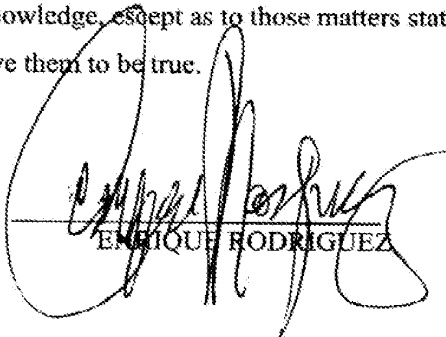
9
10 20. I had an attorney for the 12 years the case was going on, and it was not until after
11 Padda withdrew that I did not have an attorney for this case.

12 21. I sincerely request the court set aside the dismissal and orders on the motions in
13 limine and allow me to present my case to a jury, and I thank Your Honor for
14 considering my motion for relief.
15

16 I declare under penalty of perjury, under the laws of the State of Nevada, the foregoing is
17 true and correct, and known of my own personal knowledge, except as to those matters stated on
18 information and belief, and to those matters I believe them to be true.

19 Dated: October 14, 2016

20
21 ///


ENRIQUE RODRIGUEZ

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 Joel Selik, Nevada State Bar No: 402
 10191 Park Run Drive Suite 110
 Las Vegas, NV 89145
 (702) 243-1930; Fax: 760-479-0081
 Email: SelikLaw@aol.com

CERTIFICATE OF SERVICE BY COURT SERVICE
CASE NUMBER: DISTRICT COURT, COUNTY OF CLARK A531538

I hereby certify (and declare under penalty of perjury under the laws of the State of Nevada) that I am an employee or agent of JOEL G. SELIK, ESQ, and that on the I caused to be SERVED BY USE OF THE COURT'S SERVICE SYSTEM, a true and correct copy of the accompanying PLAINTIFF ENRIQUE RODRIGUEZ MOTION FOR RELIEF UNDER NRCP 60 VACATING THE DISMISSAL AND SETTING ASIDE THE RULINGS ON MOTIONS IN LIMINE, AND OTHER ORDERS RELATED THERETO, DECLARATION OF MARIA PEREZ, DECLARATION OF ENRIQUE "HENRY" RODRIGUEZ; NOTICE OF MOTION, MEMORANDUM POINTS & AUTHORITIES to the following:

LEW BRANDON, JR., ESQ. Nevada Bar No. 5880 JUSTIN W. SMERBER, ESQ. Nevada Bar No. 10761 MORAN BRANDON BENDAVID MORAN 630 S. Fourth Street Las Vegas, Nevada 89101 l.brandon@moranlawfirm.com Attorneys for Defendant, FIESTA PALMS, LLC d/b/a PALMS CASINO RESORT	
ROBERT L. EISENBERG, ESQ. Nevada Bar No. 0950 LEMONS, GRUNDY & EISENBERG 6005 Plumas Street, Third Floor Reno, Nevada 89519 Telephone: (775) 786-6868 / Facsimile: (775) 786-9716 rle@lge.net Attorneys for Defendant, FIESTA PALMS, LLC d/b/a PALMS CASINO RESORT	

October 14, 2016



 Employee of JOEL SELIK, ESQ.

SELIK LAW OFFICES
 Joel Selik, Nevada State Bar No: 402
 10191 Park Run Drive Suite 110
 Las Vegas, NV 89145
 (702) 243-1930; Fax: 760-479-0081
 Email: SelikLaw@aol.com

EXHIBIT LIST

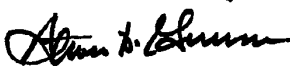
EXHIBIT NUMBER	DESCRIPTION	Bates Number(s)	DATE
1	Notice of Order-Padda Withdrawal	67-71	2-16-2016
2	Sixth Amended Trial Setting Order	63-65	2-4-2016
3	Minute Order Setting Trial Date	62	2-1-2016
4	Motion to Withdraw	47-61	1-20-2016
5	Minute Order Granting Withdraw	66	2-9-2016
6	Motion to Dismiss	72-79	3-7-2016
7	Order on Motions In Limine	587-591	4-13-2016
8	Proof of Service on Motion In Limine	561	3-8-2016
9	Order Dismissing Case	594-600	4-15-2016
10	by State of California, Health & Human Services Agency, Department of Social Services	n/a	6-1-2015

EXHIBIT LIST

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1	Notice of Order-Padda Withdrawal	67-71	2-16-2016
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3	Minute Order Setting Trial Date	62	2-1-2016
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5	Minute Order Granting Withdraw	66	2-9-2016
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7	Order on Motions In Limine	587-591	4-13-2016
8	Proof of Service on Motion In Limine	561	3-8-2016
9	Order Dismissing Case	594-600	4-15-2016
10	by State of California, Health & Human Services Agency, Department of Social Services	n/a	6-1-2015

EXHIBIT 1

CASE NO. A531538 Rodriguez v Fiesta Pajms
MOTION FOR NRCP 60 RELIEF


CLERK OF THE COURT

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

6 Attorney for Plaintiff

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

9 **ENRIQUE RODRIGUEZ,**

10 **Plaintiff,**

Case No. A-06-531538-C

11 **v.**

Dept. No. XV (15)

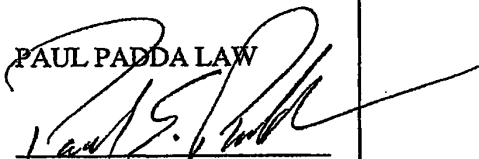
12 **FIESTA PALMS, LLC, et. al.,**

13 **Defendants.**

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

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

19 **PAUL PADDA LAW**

20 
21 Paul S. Padda, Esq.

22 Counsel for Plaintiff

23 Dated: February 16, 2016
24
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CERTIFICATE OF SERVICE

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

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

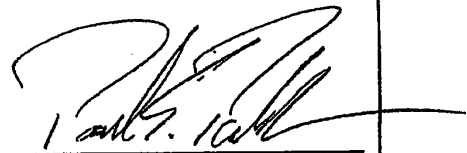

Paul S. Padda, Esq.

EXHIBIT A

EXHIBIT A

Court File Copied 614 Pages:
From June 1, 2015 to August 2016Page 69

1 **ORD**

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

3 Email: psp@paulpaddalaw.com

4 PAUL PADDA LAW, PLLC

5 4240 West Flamingo Road, Suite 220

6 Las Vegas, Nevada 89103

7 Tel: (702) 366-1888

8 Fax: (702) 366-1940

9 www.paulpaddalaw.com

10 Attorney for Plaintiff

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

13 **ENRIQUE RODRIGUEZ,**

14 **Plaintiff,**

15 **v.**

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

17 **Defendants.**

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

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

20 **ORDER**

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

27 Address: Enrique Rodriguez
28 6673 Yellowstone Drive
29 Riverside, California 92506

30 Telephone: (951) 751-1440

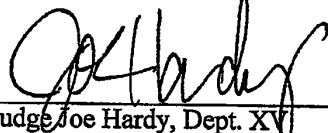
31 Email: bernieofcalif@aol.com

32 **FEB 10 2016**

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From June 1, 2015 to August 2016 Page 70

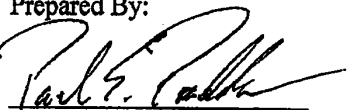
1 Upon receipt of an executed copy of this Order, Plaintiff's counsel is directed to file notice of
2 this Order and serve a copy upon Plaintiff at the address above.

3 IT IS SO ORDERED:

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

Dated: February 12, 2016

8 Prepared By:

9 

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

EXHIBIT 2

CASE NO. A531538 Rodriguez v Fiesta Palms
MOTION FOR NRCP 60 RELIEF



CLERK OF THE COURT

1 OSCJ

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 ENRIQUE RODRIGUEZ,

7 Plaintiff(s),

8 v.

9 FIESTA PALMS LLC, et al.,

10 Defendant(s),
11

) CASE NO.: A531538

) DEPT NO.: XV

) **SIXTH AMENDED ORDER**
) **SETTING CIVIL JURY TRIAL,**
) **PRE-TRIAL CONFERENCE AND**
) **CALENDAR CALL**
12

13 IT IS HEREBY ORDERED that:

14 A. The above entitled case is set to be tried to a jury on a five week stack to begin
15 Monday, May 2, 2016, at 10:30 a.m.

16 B. A Pre-Trial Conference with the designated trial attorney and/or parties in proper
17 person will be held on Monday, April 11, 2016, at 8:30 a.m.

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

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

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

Hon. Joe Hardy
District Court
Department XV

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

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

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

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

17 DATED: February 3, 2016

18 
19 _____
20 JOE HARDY, DISTRICT JUDGE

CERTIFICATE OF SERVICE

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

Paul Padda, Esq.
psp@paulpadda.com

Enrique Rodriguez
6673 Yellowstone Dr.
Riverside, CA 92506

Lewis Brandon, Jr. Esq.
lbrandon@moranlawfirm.com



Judicial Executive Assistant

EXHIBIT 3

CASE NO A531538 Rodriguez v Fiesta Palms
MOTION FOR NRCP 60 RELIEF

06A531538

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

February 01, 2016

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

February 01, 2016 8:30 AM Pre Trial Conference

HEARD BY: Hardy, Joe

COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

PARTIES

PRESENT: Smerber, Justin W. Attorney for Defendant

JOURNAL ENTRIES

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

4/11/16 8:30 AM PRE TRIAL CONFERENCE

4/27/16 8:30 AM CALENDAR CALL

5/2/16 10:30 AM JURY TRIAL

PRINT DATE: 02/01/2016

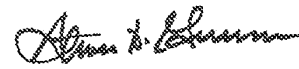
Page 1 of 1

Minutes Date: February 01, 2016

Court File Copied 614 Pages:
From June 1, 2015 to August 2016Page 62

EXHIBIT 4

CASE NO. A531538 Rodriguez v Fiesta Paine
MOTION FOR NRCP 60 RELIEF



CLERK OF THE COURT

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

6 Attorney for Plaintiff

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

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

Case No. A-06-531538-C
Dept. No. XV (15)

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

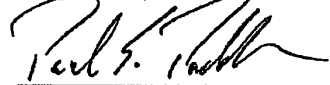
16 Pursuant to Eighth Judicial District Rule ("EDCR") 7.40(b)(2), undersigned counsel and
17 his law firm hereby respectfully request permission to withdraw as counsel of record for Plaintiff
18 Enrique Rodriguez. In support of this request, undersigned counsel relies upon the memorandum
19 of points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

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22 . . .
23 . . .
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JAN 19 2016

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

3 Respectfully submitted,

4 

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

12 Attorney for Plaintiff

13 Dated: January 19, 2015

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

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

19 Date: 2-9-16

20 Time: in chambers

21 

22 Judge Joe Hardy
23 Clark County District Court

24 Dated: January 19th, 2016

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

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


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

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

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

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

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

18 
19 Paul S. Padda, Esq.

20 Dated: January 19, 2016

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **ARGUMENT**

3 **I. Legal Standard**

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

11 **II. "Good Cause" Exists To Permit Counsel's Withdrawal From This Case**

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

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

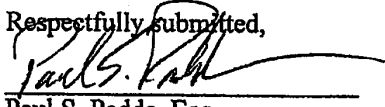
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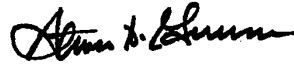
CONCLUSION

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

Respectfully submitted,

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

Attorney for Plaintiff

Dated: January 19, 2016



CLERK OF THE COURT

1 **NOTC**

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

3 Email: psp@paulpadda.com

4 PAUL PADDA LAW

5 4240 West Flamingo Road, Suite 220

6 Las Vegas, Nevada 89103

7 Tel: (702) 366-1888

8 Fax: (702) 366-1940

9 www.paulpadda.com

10 Attorney for Plaintiff

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

13 **ENRIQUE RODRIGUEZ,**

14 **Plaintiff,**

Case No. A-06-531538-C

15 **v.**

Dept. No. XV (15)


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

17 **Defendants.**

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

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

23 PAUL PADDA LAW



24 Paul S. Padda, Esq.

25 Counsel for Plaintiff

26 Dated: January 20, 2016

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CERTIFICATE OF SERVICE

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

Enrique Rodriguez
6673 Yellowstone Drive
Riverside, California 92506

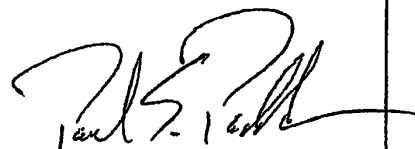
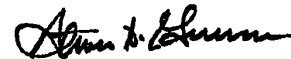

Paul S. Padda, Esq.

EXHIBIT A

EXHIBIT A

Court File Copied 614 Pages:
From June 1, 2015 to August 2016Page 55


CLERK OF THE COURT

MWCN
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Tel: (702) 366-1888
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Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ,

Plaintiff,

v.

FIESTA PALMS, LLC, et. al.,

Defendants.

Case No. A-06-531538-C

Dept. No. XV (15)

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

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

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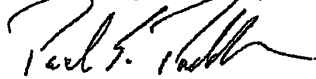
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JAN 19 2016

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

3 Respectfully submitted,

4 

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

12 Attorney for Plaintiff

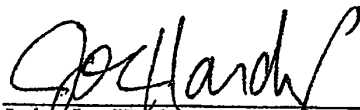
13 Dated: January 19, 2015

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

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

19 Date: 2-9-16

20 Time: in chambers

21 

22 Judge Joe Hardy
23 Clark County District Court

24 Dated: January 19th, 2016

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

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

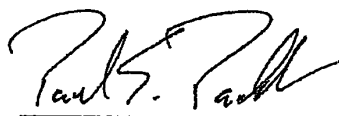
4 Enrique Rodriguez
5 6673 Yellowstone Drive
6 Riverside, California 92506

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

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

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

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

18 
19 Paul S. Padda, Esq.

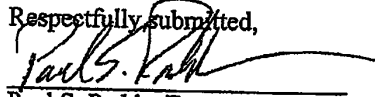
20 Dated: January 19, 2016

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CONCLUSION

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

Respectfully submitted,



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

Attorney for Plaintiff

Dated: January 19, 2016

EXHIBIT 5

CASE NO. A531538 Rodriguez v Fiesta Palms
MOTION FOR NRCP 60 RELIEF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

February 09, 2016

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

February 09, 2016 Chambers Minute Order: Paula s. Padda, Esq.'s Motion to
 Withdraw as Counsel of Record for Plaintiff on
 Order Shortening Time

HEARD BY: Hardy, Joe

COURTROOM: Chambers

COURT CLERK: Kristin Duncan

JOURNAL ENTRIES

- COURT ORDERED, pursuant to EDCR 7.40(b)(2)(i) and EDCR 2.20(e) (no opposition having been filed), the COURT hereby GRANTS Paul S. Padda, Esq. s Motion to Withdraw as Counsel of Record for Plaintiff Enrique Rodriguez. Movants are directed to prepare a written order that includes Plaintiff Enrique Rodriguez' address and phone number and submit it to this Court's chambers within 10 days pursuant to EDCR 7.21.

CLERK'S NOTE: A copy of this minute order e-mailed to: Paul S. Padda, Esq.
[ppadda@caplawyers.com] and Lewis W. Brandon, Jr. [l.brandon@moranlawfirm.com]. (KD 2/9/16)

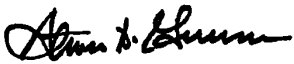
PRINT DATE: 02/09/2016

Page 1 of 1

Minutes Date: February 09, 2016

EXHIBIT 6

CASE NO. A531538 Rodriguez v. Fiesta Pairs
MOTION FOR NRCP 60 RELIEF


CLERK OF THE COURT

1 MDSM

LEW BRANDON, JR., ESQ.

Nevada Bar No.: 5880

2 JUSTIN W. SMERBER, ESQ.

Nevada Bar No.: 10761

3 MORAN BRANDON BENDAVID MORAN

630 S. Fourth Street

4 Las Vegas, Nevada 89101

(702) 384-8424

(702) 384-6568 - facsimile

5 l.brandon@moranlawfirm.com

Attorneys for Defendant,

6 FIESTA PALMS, LLC d/b/a

PALMS CASINO RESORT

7 ROBERT L. EISENBERG, ESQ.

Nevada Bar No. 0950

8 LEMONS, GRUNDY & EISENBERG

6005 Plumas Street, Third Floor

9 Reno, Nevada 89519

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

10 rle@lge.net

Attorneys for Defendant,

11 FIESTA PALMS, LLC d/b/a

PALMS CASINO RESORT

DISTRICT COURT
CLARK COUNTY, NEVADA

13 ENRIQUE RODRIGUEZ, an individual,

14 Plaintiff,

15 v.

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

18 Defendants.

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

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



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 384-8424
FAX: (702) 348-6566

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

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

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

10 DATED this 7th day of March, 2016.

11 MORAN BRANDON BENDAVID MORAN

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

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BENDAVID MORAN
ATTORNEYS AT LAW
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NOTICE OF MOTION

TO: ALL PARTIES;

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

DATED this 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

FACTS AND PROCEDURAL HISTORY

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



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

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

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

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

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

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

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



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20
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LAS VEGAS, NEVADA 89101
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FAX (702) 348-8566

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

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

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

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

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



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

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

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

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

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

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

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

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



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

4 Unless otherwise directed by the court, these disclosures must be made at least
5 30 days before trial. Within 14 days thereafter, unless a different time is
6 specified by the court, a party may serve a list disclosing (i) any objections to
7 the use under Rule 32(a) of a deposition designated by another party under
8 subparagraph (B), and (ii) any objection, together with the grounds therefor, that
9 may be made to the admissibility of materials identified under subparagraph
10 (C). Objections not so disclosed, other than objections under NRS 48.025 and
11 48.035, shall be deemed waived unless excused by the court for good cause
12 shown.

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

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

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

21 (B) An order prohibiting the use of any witness, document or tangible thing
22 which should have been disclosed, produced, exhibited, or exchanged pursuant
23 to Rule 16.1(a).

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

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



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32 BENDAVID MORAN
33 ATTORNEYS AT LAW
34 636 SOUTH 4TH STREET
35 LAS VEGAS, NEVADA 89101
36 PHONE (702) 334-8424
37 FAX (702) 348-8588

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

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

6 Based upon the foregoing, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO
7 RESORT respectfully requests that this Court Dismiss Plaintiff's Complaint pursuant to EDCR
8 2.67, EDCR 2.68, NRCP 16 and NRCP 16.1.

9 DATED this 7th day of March, 2016.

10 **MORAN BRANDON BENDAVID MORAN**

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**

21 **CERTIFICATE OF SERVICE**

22 Pursuant to NRCP 5(b), I hereby certify that on the 7TH day of March, 2016, I served the
23 foregoing **DEFENDANT, FIESTA PALMS, LLC'S MOTION TO DISMISS** via the Court's
24 electronic filing and service systems ("Wiznet") to all parties on the current service list.

25 **VIA U.S. MAIL**

26 **ENRIQUE RODRIGUEZ**
27 6673 YELLOWSTONE DRIVE
28 RIVERSIDE, CALIFORNIA 92506
29 TELEPHONE: 951-751-1440
30 Plaintiff, In Proper Person

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



33 **MORAN BRANDON**
34 **BENDAVID MORAN**
35 **ATTORNEYS AT LAW**
36 630 SOUTH 4TH STREET
37 LAS VEGAS, NEVADA 89101
38 PHONE: (702) 384-8424
39 FAX: (702) 348-8566

EXHIBIT 7

CASE NO. A531538 Rodriguez v. Fiesta Palms
MOTION FOR NRCP 60 RELIEF

Alvin L. Shuman
CLERK OF THE COURT

ORIGINAL

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ENRIQUE RODRIGUEZ, an individual,

Plaintiff,

v.

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

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

Defendants

**ORDER GRANTING DEFENDANT, FIESTA PALMS, LLC'S MOTIONS IN LIMINE
NO. 1-16**

Defendant, FIESTA PALMS, LLC's Motions in Limine No. 1-16 having come before
this Honorable Court on April 7, 2016 at 9:00 a.m., JUSTIN W. SMERBER, ESQ. of MORAN
BRANDON BENDAVID MORAN having appeared on behalf of FIESTA PALMS, LLC, and
ENRIQUE RODRIGUEZ having appeared in Proper Person, the Court having reviewed the



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 Motions, the papers and pleadings on file herein, and for good cause appearing orders as
2 follows:

3 **IT IS ORDERED THAT:** Defendant's Motion in Limine No. 1 to exclude testimony
4 by witnesses Vikki Kooinga and Sheri Long is GRANTED as unopposed pursuant to EDCR
5 2.20(e).

6 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 2 to exclude
7 any reference that any Motion in Limine has been filed: that the Court has ruled, or may rule on
8 any part of outside the presence of the jury; or suggesting or implying to potential jurors during
9 *voir dire* or seated jurors in any manner whatsoever that Defendant moved to exclude proof in
10 any manner or that the Court has excluded proof of any manner is GRANTED as unopposed
11 pursuant to EDCR 2.20(e).

12 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 3 to exclude
13 any monetary damages of the Plaintiff not previously disclosed or based upon claims not
14 previously asserted is GRANTED as unopposed pursuant to EDCR 2.20(e).

15 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 4 to exclude
16 any reference to liability insurance or some other similar contractor policy related to the
17 Defendant, including any sums previously paid to Plaintiff from same, is GRANTED as
18 unopposed pursuant to EDCR 2.20(e).

19 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 5 to exclude
20 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 is GRANTED as unopposed pursuant to EDCR 2.20(e).



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 6 to exclude
2 all side bar comments made by counsel during depositions that were recorded on videotape or
3 present in deposition transcripts is GRANTED as unopposed pursuant to EDCR 2.20(e).

4 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 7 to exclude
5 any reference that the attorneys for Defendant specialize in the handling of insurance cases is
6 GRANTED as unopposed pursuant to EDCR 2.20(e).

7 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 8 to exclude
8 any questions that would invade the attorney/client privilege is GRANTED as unopposed
9 pursuant to EDCR 2.20(e).

10 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 9 to exclude
11 any statement or implication that Defendant sought to delay this trial is GRANTED as
12 unopposed pursuant to EDCR 2.20(e).

13 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 10 to exclude
14 any comments regarding the number of attorneys representing the Defendant is GRANTED as
15 unopposed pursuant to EDCR 2.20(e).

16 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 11 to exclude
17 any testimony offered by witnesses who have not already been disclosed and identified prior to
18 the close of discovery is GRANTED as unopposed pursuant to EDCR 2.20(e).

19 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 12 to preclude
20 any lay person from rendering opinions as to any medical aspects of the Plaintiff, 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 is GRANTED as
unopposed pursuant to EDCR 2.20(e).



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BENDAVID MORAN
ATTORNEYS AT LAW

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

1 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 13 to exclude
2 any evidence or claims of mental, psychological or emotional damages is GRANTED as
3 unopposed pursuant to EDCR 2.20(e).

4 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 14 to Preclude
5 Plaintiff's Treating Physicians and Medical Expert from Testifying at Trial is GRANTED as
6 unopposed pursuant to EDCR 2.20(e).

7 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 15 to Preclude
8 Plaintiff From Claiming Medical Specials Exceeding Amounts Disclosed by Plaintiff pursuant
9 to NRCP 16.1 is GRANTED as unopposed pursuant to EDCR 2.20(e).

10 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 16 to Preclude
11 Plaintiff from Arguing that the Violation of Defendant's Internal Policies Constitutes
12 Negligence Per Se is GRANTED as unopposed pursuant to EDCR 2.20(e).

13 ///

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22 ///



MORAN BRANDON
BENDAUID MORAN
ATTORNEYS AT LAW

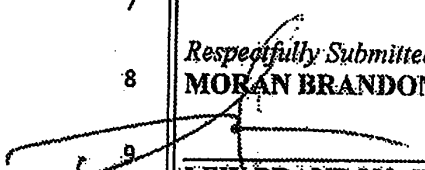
630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8568

1 IT IS FURTHER FOUND BY THE COURT: That Certificate of Mailing for
2 Defendant's Motions in Limine No. 1-16 was filed with the Court on March 8, 2016 showing
3 that these Motions were mailed to Plaintiff at his last known address. Further, the Court notes
4 that Plaintiff's presence in Court on April 7, 2016 at 9:00 a.m. confirms Plaintiff's knowledge
5 and receipt of said Motions.

6 IT IS SO ORDERED this 13th day of April, 2016.

7 
DISTRICT COURT JUDGE

8 Respectfully Submitted by:
MORAN BRANDON BENDAVID MORAN

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



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

830 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6569

EXHIBIT 8

CASE NO. A531538 Rodriguez v Fiesta Pains
MOTION FOR NRCP 60 RELIEF

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. 16 TO**
4 **PRECLUDE PLAINTIFF FROM ARGUING THAT THE VIOLATION OF**
5 **DEFENDANT'S INTERNAL POLICIES CONSTITUTES NEGLIGENCE PER SE** via
6 the Court's electronic filing and service systems ("Wiznet") to all parties on the current service
7 list.
8

9 **VIA U.S. MAIL**

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

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



**MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW**

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

EXHIBIT 9

CASE NO. A531536 Rodriguez v Fiesta Palms
MOTION FOR NRCP 60 RELIEF


CLERK OF THE COURT

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

19 **ENRIQUE RODRIGUEZ, an individual,**

20 **Plaintiff,**

21 **v.**

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

28 **Defendants.**

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

NOTICE OF ENTRY OF ORDER



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

NOTICE OF ENTRY OF ORDER

YOU, AND EACH OF YOU, will please take notice that on April 14, 2016, an Order to Granting Defendant, Fiesta Palms, LLC's Motions in Limine Nos. 1-16 was entered in the above-entitled matter by the Honorable Joe Hardy.

A filed copy is attached hereto.

DATED this 15 day of April, 2016,

MORAN BRANDON BENDAVID MORAN

LEW BRANDON, JR., ESQ.

Nevada Bar No. 5880

JUSTIN W. SMERBER, ESQ.

Nevada Bar No.: 10761

630 S. Fourth Street

Las Vegas, Nevada 89101

Attorneys for Defendant,

FIESTA PALMS, LLC d/b/a

PALMS CASINO RESORT

CERTIFICATE OF MAILING

I hereby certify that on the 15 day of April, 2016, I served the foregoing **NOTICE OF ENTRY OF ORDER** upon each of the parties to this action by depositing copies in the United

States mail, pre-paid, addressed to them as follows:

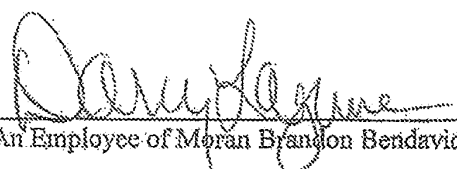
ENRIQUE RODRIGUEZ

6673 YELLOWSTONE DRIVE

RIVERSIDE, CALIFORNIA 92506

TELEPHONE: 951-751-1440

Plaintiff, In Proper Person


An Employee of Moran Brandon Bendavid Moran



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

830 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8425

ORIGINAL

1 **ORDG**
2 **LEW BRANDON, JR., ESQ.**
3 **JUSTIN W. SMERBER, ESQ.**
4 **MORAN BRANDON BENDAVID MORAN**
5 **630 S. Fourth Street**
6 **Las Vegas, Nevada 89101**
7 **(702) 384-8424**
8 **(702) 384-6568 - facsimile**
9 **lbrandon@moranlawfirm.com**
10 **Attorneys for Defendant,**
11 **FIESTA PALMS, LLC d/b/a**
12 **PALMS CASINO RESORT**

Alvin D. L...

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

8 **ENRIQUE RODRIGUEZ, an individual,**

9 **Plaintiff,**

CASE NO.: 06A531538

DEPT. NO.: XV

10 **v.**

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

16 **Defendants**

ORDER GRANTING DEFENDANT, FIESTA PALMS, LLC'S MOTIONS IN LIMINE
NO. 1-16

17 Defendant, FIESTA PALMS, LLC's Motions in Limine No. 1-16 having come before
18 this Honorable Court on April 7, 2016 at 9:00 a.m., JUSTIN W. SMERBER, ESQ. of MORAN
19 BRANDON BENDAVID MORAN having appeared on behalf of FIESTA PALMS, LLC, and
20 ENRIQUE RODRIGUEZ having appeared in Proper Person, the Court having reviewed the



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 Motions, the papers and pleadings on file herein, and for good cause appearing orders as
2 follows:

3 **IT IS ORDERED THAT:** Defendant's Motion in Limine No. 1 to exclude testimony
4 by witnesses Vikki Kooinga and Sheri Long is GRANTED as unopposed pursuant to EDCR
5 2.20(e).

6 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 2 to exclude
7 any reference that any Motion in Limine has been filed: that the Court has ruled, or may rule on
8 any part of outside the presence of the jury; or suggesting or implying to potential jurors during
9 *voir dire* or seated jurors in any manner whatsoever that Defendant moved to exclude proof in
10 any manner or that the Court has excluded proof of any manner is GRANTED as unopposed
11 pursuant to EDCR 2.20(e).

12 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 3 to exclude
13 any monetary damages of the Plaintiff not previously disclosed or based upon claims not
14 previously asserted is GRANTED as unopposed pursuant to EDCR 2.20(e).

15 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 4 to exclude
16 any reference to liability insurance or some other similar contractor policy related to the
17 Defendant, including any sums previously paid to Plaintiff from same, is GRANTED as
18 unopposed pursuant to EDCR 2.20(e).

19 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 5 to exclude
20 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 is GRANTED as unopposed pursuant to EDCR 2.20(e).



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 6 to exclude
2 all side bar comments made by counsel during depositions that were recorded on videotape or
3 present in deposition transcripts is GRANTED as unopposed pursuant to EDCR 2.20(e).

4 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 7 to exclude
5 any reference that the attorneys for Defendant specialize in the handling of insurance cases is
6 GRANTED as unopposed pursuant to EDCR 2.20(e).

7 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 8 to exclude
8 any questions that would invade the attorney/client privilege is GRANTED as unopposed
9 pursuant to EDCR 2.20(e).

10 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 9 to exclude
11 any statement or implication that Defendant sought to delay this trial is GRANTED as
12 unopposed pursuant to EDCR 2.20(e).

13 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 10 to exclude
14 any comments regarding the number of attorneys representing the Defendant is GRANTED as
15 unopposed pursuant to EDCR 2.20(e).

16 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 11 to exclude
17 any testimony offered by witnesses who have not already been disclosed and identified prior to
18 the close of discovery is GRANTED as unopposed pursuant to EDCR 2.20(e).

19 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 12 to preclude
20 any lay person from rendering opinions as to any medical aspects of the Plaintiff, 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 is GRANTED as
unopposed pursuant to EDCR 2.20(e).



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

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

1 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 13 to exclude
2 any evidence or claims of mental, psychological or emotional damages is GRANTED as
3 unopposed pursuant to EDCR 2.20(e).

4 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 14 to Preclude
5 Plaintiff's Treating Physicians and Medical Expert from Testifying at Trial is GRANTED as
6 unopposed pursuant to EDCR 2.20(e).

7 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 15 to Preclude
8 Plaintiff From Claiming Medical Specials Exceeding Amounts Disclosed by Plaintiff pursuant
9 to NRCP 16.1 is GRANTED as unopposed pursuant to EDCR 2.20(e).

10 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 16 to Preclude
11 Plaintiff from Arguing that the Violation of Defendant's Internal Policies Constitutes
12 Negligence Per Se is GRANTED as unopposed pursuant to EDCR 2.20(e).

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 IT IS FURTHER FOUND BY THE COURT: That Certificate of Mailing for
2 Defendant's Motions in Limine No. 1-16 was filed with the Court on March 8, 2016 showing
3 that these Motions were mailed to Plaintiff at his last known address. Further, the Court notes
4 that Plaintiff's presence in Court on April 7, 2016 at 9:00 a.m. confirms Plaintiff's knowledge
and receipt of said Motions.

5 IT IS SO ORDERED this 13th day of April, 2016.

6
7 
DISTRICT COURT JUDGE

8 Respectfully Submitted by:
MORAN BRANDON BENDAVID MORAN

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



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

EXHIBIT 10

CASE NO. A531538 Rodriguez v Fiesta Palms
MOTION FOR NRCP 60 RELIEF

**IN-HOME SUPPORTIVE SERVICES
PROVIDER NOTIFICATION**

Riverside DPSS/IHSS
3950 Reynolds RD
Riverside, CA 92503

Provider Number:

002101369

Effective Date:

06/01/2015

MARIA PEREZ
6673 Yellowstone DR
Riverside CA 92506-3030

- You are receiving this information because you are a provider of IHSS for:
ENRIQUE RODRIGUEZ
- Below are the monthly services authorized for the IHSS Recipient named above. The hours you can claim on your timesheet will be reduced if you start or stop work in the middle of a month.
- These are the services that are authorized by the IHSS Program. It is the responsibility of the Recipient to set a schedule within authorized monthly hours.
- If the Recipient has more than one provider, it is the responsibility of the Recipient to set a schedule for each provider so that the total hours worked by all providers does not exceed monthly authorized.
- If more than the authorized hours are worked, it will be the responsibility of the Recipient to provide payment for those hours.
- Contact your County IHSS Office if the Recipient is hospitalized. You cannot claim hours for periods when the Recipient is hospitalized or after the date-of-death.
- It is the responsibility of the Recipient to make payment of any share of cost deducted from the provider's paycheck.
- Social Security taxes and State Disability insurance will be deducted from your check automatically if you qualify. To have State and Federal withholding deducted you must fill out a W-4 and/or DE-4 and submit it to your County IHSS Office.
- If the recipient you are working for is your parent, spouse or minor child, you may not be eligible for withholding social security or medicare taxes.
- If you are injured while providing IHSS services contact your County IHSS Office immediately.

Auth	Service Types
X	Domestic Services
X	Meal Preparation
X	Meal Clean-Up
X	Routine Laundry
X	Shopping for Food
X	Other Shopping and Errands
X	Respiration
X	Bowel and/or Bladder Care
X	Feeding
X	Routine Bed Baths
X	Dressing
X	Menstrual Care
X	Ambulation

Auth	Service Types
X	Transfer
X	Bathing, Oral Hygiene and Grooming
X	Rubbing Skin and Repositioning
X	Care and assistance w/prosthetics
X	Accompaniment to Medical Appointments
	Accompaniment to Alternative Resources
	Heavy Cleaning
	Yard Hazard Abatement
	Removal of Ice and Snow
	Protective Supervision
	Teaching and Demonstration
	Paramedical Services

*X = Authorized services you can be paid for

Should you have any questions regarding the above information or are no longer a provider, please contact your County IHSS Office at 951-358-6400.

IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM HEALTH CARE CERTIFICATION FORM

Applicant/Recipient Name:

IHSS Case #:

C. HEALTH CARE INFORMATION (To be completed by a Licensed Health Care Professional Only)

NOTE: ITEMS #1 & 2 (AND 3 & 4, IF APPLICABLE) MUST BE COMPLETED AS A CONDITION OF IHSS ELIGIBILITY.

1. Is this individual <u>unable</u> to independently perform one or more activities of daily living (e.g., eating, bathing, dressing, using the toilet, walking, etc.) or instrumental activities of daily living (e.g., housekeeping, preparing meals, shopping for food, etc.)?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
2. In your opinion, is one or more IHSS service recommended in order to prevent the need for out-of-home care (See description of IHSS services on Page 1)?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<p>If you answered "NO" to either Question #1 OR #2, skip Questions #3 and #4 below, and complete the rest of the form including the certification in PART D at the bottom of the form.</p> <p>If you answered "YES" to both Question #1 AND #2, respond to Questions #3 and #4 below, and complete the certification in PART D at the bottom of the form.</p>	
<p>3. Provide a description of any physical and/or mental condition or functional limitation that has resulted in or contributed to this individual's need for assistance from the IHSS program:</p> <p><i>Compression injury of spinal cord in neck</i> <i>s/p spinal cord surgery</i> <i>Anxiety. Asthma. Lt knee pain. Chronic</i></p>	
4. Is the individual's condition(s) or functional limitation(s) expected to last at least 12 consecutive months?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

Please complete Items # 5 - 8, to the extent you are able, to further assist the IHSS worker in determining this individual's eligibility.

5. Describe the nature of the services you provide to this individual (e.g., medical treatment, nursing care, discharge planning, etc.):	<i>nursing care and daily activities</i>
6. How long have you provided service(s) to this individual?	<i>4/2006</i>
7. Describe the frequency of contact with this individual (e.g., monthly, yearly, etc.):	<i>monthly</i>
8. Indicate the date you last provided services to this individual:	<i>6/3/14</i>

NOTE: THE IHSS WORKER MAY CONTACT YOU FOR ADDITIONAL INFORMATION OR TO CLARIFY THE RESPONSES YOU PROVIDED ABOVE.

D. LICENSED HEALTH CARE PROFESSIONAL CERTIFICATION

By signing this form, I certify that I am licensed in the State of California and/or certified as a Medi-Cal provider, and all information provided above is correct.

Name:	<i>Kim, Mi La</i>	Title:	<i>Dr Kim</i>
Address:	<i>11093 S San Jacinto #A San Jacinto CA 92543</i>		
Phone #:	<i>951-665-1107</i>	Fax #:	<i>951-665-2590</i>
Signature:	<i>[Signature]</i>		Date:
Professional License Number:	<i>CA 19524</i>	Licensing Authority:	<i>HE0821</i>

SOC 673 (11/11)

PLEASE RETURN THIS FORM TO THE IHSS WORKER LISTED ON PAGE 1.

RECEIVED
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 COUNTY OF RIVERSIDE
 DPSS

- Meal Preparation: Planning menus, preparing foods, cooking and serving meals. MPP 30-757.131
- Meal Clean-up: Cleaning up the cooking area and washing, drying and putting away cookware, dishes and utensils. MPP 30-757.132
- Routine Laundry: Washing, drying, folding and putting away clothes and household linens. MPP 30-757.134
- Shopping for Food: Making a grocery list, traveling to/from the store, shopping, loading, unloading, and storing food purchased. MPP 30-757.135(b)
- Other Shopping/Errands/Reading Services: Includes: 1) Shopping for other necessary supplies; 2) Performing small and necessary errands, e.g., picking up a prescription, and 3) Reading important documents such as, medication instructions, food labels, utility bills, or rental agreements. MPP 30-757.135(c)

NON-MEDICAL PERSONAL SERVICES:

- Respiration Assistance: Assisting recipient with nonmedical breathing related services such as self-administration of oxygen and cleaning breathing machines. MPP 30-757.14(b)
- Bowel and/or Bladder Care: Assisting the recipient with using the toilet (including getting on/off), bedpan/bedside commode or urinal; emptying and cleaning ostomy, enema and/or catheter receptacles; applying diapers; disposable undergarments and disposable barrier pads; wiping and cleaning recipient; and washing/drying recipient's hands. MPP 30-757.14(a)
- Feeding: Assisting the recipient to eat meals, including cleaning his/her face and hands before and after meals. MPP 30-757.14(c)
- Routine Bed Bath: Giving a recipient who is confined to bed a routine sponge bath. MPP 30-757.14(d)
- Dressing: Assisting the recipient to put on and take off his/her clothes as necessary throughout the day. MPP 30-757.14(f)
- Menstrual Care: Assistance with the external placement of sanitary napkins and barrier pads. MPP 30-757.14(j)
- Ambulation and Getting In/Out of Vehicles: Assisting the recipient with walking or moving about the home, including to/from the bathroom, and to/from and into/out of the car for transporting to medical appointments and/or alternative resources. MPP 30-757.14(k)
- Transfer (Moving In/Out of Bed and/or On/Off Seats): Assisting recipient from standing, sitting, or prone position to another position and/or from one piece of furniture or equipment to another. MPP 30-757.14(h)
- Bathing, Oral Hygiene and/or Grooming: Assisting the recipient with: bathing or showering; brushing teeth, flossing; and cleaning dentures; shampooing, drying, and combing/brushing hair; shaving; and applying lotion, powder, deodorant. MPP 30-757.14(e)
- Rubbing Skin and Repositioning: Rubbing skin to promote circulation and/or prevent skin breakdown; turning in bed and other types of repositioning; and supervising range of motion exercises. MPP 30-757.14(g)
- Care of/Assistance with Prosthesis and Help Setting Up Medications: Taking off/putting on and maintaining and cleaning prosthetic devices, including vision/hearing aids; reminding the recipient to take prescribed and/or over-the-counter medications, and setting up Medi-sets. MPP 30-757.14(i)

TRANSPORTATION SERVICES: Transporting recipient to and from: 1) Appointments with physicians, dentists and other health practitioners; or 2) Sites necessary for fitting health related appliances/devices and special clothing, when transportation for these purposes is not provided under Medi-Cal. This also includes transporting the recipient to sites where alternative resources provide in-home supportive services to recipient in place of IHSS. MPP 30-757.15

HEAVY CLEANING: Thorough cleaning of the home to remove hazardous debris or dirt. Authorized one time only and only under certain circumstances. MPP 30-757.12

YARD HAZARD ABATEMENT: Light work in the yard to: 1) Remove high grass or weeds, and rubbish when these materials pose a fire hazard (authorized one time only); or 2) Remove ice, snow or other hazardous substances from entrances and essential walkways when these materials make access to the home hazardous. MPP 30-757.16

PROTECTIVE SUPERVISION: Observing the behavior of a non-self-directing, confused, mentally impaired or mentally ill recipient and assisting as appropriate to guard recipient against injury, hazard or accident. Certain limitations apply. MPP 30-757.17

TEACHING AND DEMONSTRATION SERVICES: Teaching and demonstrating those services provided by IHSS providers so the recipient can perform services which are currently performed by IHSS providers by himself/herself. Certain limitations apply. MPP 30-757.18

PARAMEDICAL SERVICES: Services meeting the following conditions: 1) Activities which recipients would normally perform themselves if they did not have functional limitations; 2) Activities which, due to the recipient's physical or mental condition, are necessary to maintain the recipient's health; and 3) Activities which include the administration of medications, puncturing the skin, or inserting a medical device into a body orifice, activities requiring sterile procedures, or requiring a judgment based on training given by a licensed health care professional. Special limitations apply. MPP 30-757.19

IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM INDIVIDUALIZED BACK-UP PLAN AND RISK ASSESSMENT

SECTION 1 - RECIPIENT'S INFORMATION

RECIPIENT'S NAME: Rodriguez Enrique CASE NUMBER: 1168405

INDIVIDUALIZED BACK-UP PLAN

SECTION 2 - SUPPORT CONTACTS

If you need non-emergency assistance, and/or your IHSS care provider has not arrived as scheduled, call:

	Name	Phone
Family Member:	<u>Maria Perez</u>	<u>951 751-1512</u>
Friend/Neighbor:		
County Social Services Worker:	<u>Labiola Miranda</u>	951-413-5050
County IHSS Social Services Office:	<u>23119 COTTONWOOD AVE #A100</u>	MORENO VALLEY, CA 92553
Public Authority:	<u>1-888-470-4477</u>	
Other:		

Other important numbers available to you, if needed:

Doctor's Office:	<u>Dr. Koka</u>	<u>(951) 665-1111</u>
Advocacy Group(s):		
Police Department:	MORENO VALLEY PD	951-486-6700
Fire Department:	MORENO VALLEY FD	951-242-3101
Other:	RIVERSIDE COUNTY INFORMATION LINE	211

If you need to report abuse, fraud and/or neglect, call:

Adult Protective Services:	(800) 491-7123
Child Protective Services:	(800) 441-4918
Deaf or Hard of Hearing Resource Hotline:	(916) 558-5670
Fraud & Elder Abuse Hotline:	(800) 722-0432
Medi-Cal Fraud Hotline:	(800) 822-6222
Social Security Administration Fraud Hotline:	(800) 269-0271

If you have an emergency, call: 911
An emergency is an immediate threat to your health, welfare and/or safety.

Distribution:

Original/Case File
Page 1 of 4

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SDC 864 (3/11)

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 11:57 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 4, Bates Nos. 710–871)

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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

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Notice of Department Reassignment (filed 08/19/14)	Volume 1, Bates Nos. 90–91
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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

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Minutes of January 9, 2015 and February 13, 2015 Status Check Hearings	Volume 1, Bates No. 135
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Transcript of February 13, 2015 Status Check Hearing (filed 02/24/17)	Volume 1, Bates Nos. 142–148
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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
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Transcript of June 15, 2015 Hearing on All Pending Motions (filed 02/21/17)	Volume 1, Bates Nos. 164–177

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Defendant, Fiesta Palms, LLC's Motion to Dismiss Pursuant to NRCP 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
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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
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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
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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
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DOCUMENT DESCRIPTION		LOCATION
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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 NRCP 16.1 (filed 03/07/16)		Volume 3, Bates Nos. 496–502
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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

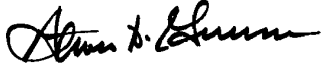
DOCUMENT DESCRIPTION		LOCATION
Defendant, Fiesta Palms, LLC's Motion in Limine No. 16 to Preclude Plaintiff from Arguing that the Violation of Defendant's Internal Policies Constitutes Negligence Per Se (filed 03/07/16)		Volume 4, Bates Nos. 710–717
Exhibit to Defendant, Fiesta Palms, LLC's Motion in 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
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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
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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 **MLIM**

2 **LEW BRANDON, JR., ESQ.**

3 Nevada Bar No.: 5880

4 **JUSTIN W. SMERBER, ESQ.**

5 Nevada Bar No.: 10761

6 **MORAN BRANDON BENDAVID MORAN**

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12 Attorneys for Defendant,

13 FIESTA PALMS, LLC d/b/a

14 PALMS CASINO RESORT

15 **ROBERT L. EISENBERG, ESQ.**

16 Nevada Bar No. 0950

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19 Reno, Nevada 89519

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21 rle@lge.net

22 Attorneys for Defendant,

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24 PALMS CASINO RESORT

25 **DISTRICT COURT**
26 **CLARK COUNTY, NEVADA**

27 ENRIQUE RODRIGUEZ, an individual,

28 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.: V

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

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



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 BRANDON BENDAVID MORAN, and ROBERT L. EISENBERG of LEMONS, GRUNDY &
2 EISENBERG, hereby submit the following Motion in Limine No. 16 to Preclude Plaintiff from
3 Arguing that the Violation of Defendant's Internal Policies Constitutes Negligence Per Se.

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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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. 16** has been set for Hearing on the 07 day of
5 APRIL, 2015 at the hour of 9:00A
6 _____, 2015 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
Attorneys for Defendant,
FIESTA PALMS, LLC d/b/a
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 matter involves negligence claims stemming from an incident on November 22,
28 2004. *See Plaintiff's Complaint, on file herein.* On that date Plaintiff, ENRIQUE



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1 RODRIGUEZ (hereinafter "Plaintiff") was watching football at Palms Resort and during half
2 time a "Palms girl" threw a promotional item into the crowd. Id. An unknown patron dove for
3 the item and struck Plaintiff; Plaintiff has since alleged injuries to his left knee, head, and neck.
4 Id. Plaintiff filed suit against Defendant, FIESTA PALMS, LLC d/b/a PALMS CASINO
5 RESORT (hereinafter "Defendant") as owner of the resort.
6

7 During discovery, Plaintiff deposed Palms Director of Marketing, Ms. Sheri Long
8 (hereinafter "Ms. Long"). Ms. Long testified that she had previously been made aware of
9 promotional models throwing items during events. See Deposition of Sheri Long p. 49 attached
10 as Exhibit "A." Further, she testified that after learning of this behavior she had met with Palms
11 employees and "put a stop to it." See Id. Ms. Long stated that she felt that throwing
12 promotional items was inappropriate and a safety issue. See Id. at 48 ll. 17-25, 49 ll. 1-6,
13 attached hereto as Exhibit "A."
14

15 It is anticipated that Plaintiff will attempt to use Ms. Long's testimony at the time of trial
16 in the context of a Negligence Per Se argument. However, a purported policy of Ms. Long not
17 to throw items does not establish a legal duty, or the standard of care to be followed by the
18 Palms under the law. Accordingly, the Palms now moves for an order precluding Plaintiff from
19 arguing that a violation of Palms internal policy not to throw items constitutes negligence per se.
20

21 **III.**
22 **LEGAL ARGUMENT**

23 Plaintiff should be precluded from arguing that a breach of Defendant's internal policies
24 constitutes negligence per se. The internal policies created by Palms for the safety of its
25 premises do not create a legal standard. Accordingly, a breach of these policies should not
26 constitute negligence per se. To find otherwise would operate to penalize the Palms for creating
27 safety policies to protect its patrons.
28



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1 Nevada has not addressed this issue in relation to negligence, but did discuss the issue
2 in K-Mart Corp. v. Washington, a case involving intentional torts. See K-Mart Corp., 109 Nev.
3 1180, 866 P.2d 274 (1993). In that case the Court discussed the admissibility of internal
4 policies and manuals in relation to determining whether the defendants' actions were
5 reasonable. Id. at 1188, 866 P.2d at 280. The Court noted that at least two states have held
6 internal policies and manuals as inadmissible and require that the merchant's liability depend on
7 the minimum legal standards established by statute. Id. (citing Alvarado v. City of Dodge City,
8 238 Kan. 48, 708 P.2d 174 (1985) and Jones v. Montgomery Ward, 49 Ore. App. 231, 619 P.2d
9 907, 910 (Or. Ct. App. 1980)). However, the Court deemed the better rule to be that followed
10 by courts in Georgia and South Carolina in which the internal policies and manuals were
11 admissible to show the reasonableness of the actions taken. Id. at 1189, 866 P.2d at 280 (citing
12 Luckie v. Piggly-Wiggly Southern, Inc., 173 Ga. App. 177, 325 S.E.2d 844 (Ga. Ct. App. 1984)
13 and Caldwell v. K-Mart, 306 S.C. 27, 410 S.E.2d 21 (S.C. Ct. App. 1991)).

14
15
16 The Court in K-Mart Corp. v. Washington further mentions that internal policies and
17 guidelines are often admissible as relevant to the element of "breach" in negligence cases. Id.
18 (citing K Mart v. Ponsock, 103 Nev. 60, 675 P.2d 394 (1984). Thus, although the Court has not
19 addressed this issue directly, it appears that the Court would determine that internal manuals and
20 policies are admissible to determine the reasonableness of defendants' actions but not to create
21 an independent duty or negligence per se.
22

23
24 Further, persuasive authority from other jurisdictions shows that internal manuals and
25 policies are only admissible as possible evidence of negligence and should not operate to create
26 a negligence per se case. In Gingeleskie v. Westin Hotel Co., an Arizona Federal District Court
27 held that internal policies and manuals do not create liability or alter the standard of care owed
28



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1 to Plaintiffs. Gingeleskie, 961 F.Supp. 1310, 1320, 1997 U.S. Dist. LEXIS 6085, 28 (reversed
2 on other grounds).¹ Further, in Hall v. Toreros, II, Inc. the Court of Appeals of North Carolina
3 concluded that policies and manuals are admissible as evidence of a reasonably prudent
4 standard of care but they do not establish a per se standard of due care. Hall, 176 N.C.App.
5 309, 316, 626 S.E.2d 861, 866 (2006). The reasoning for limiting the effect of internal policies
6 and manuals was to avoid discouraging and penalizing voluntary assumption of safety standards
7 by “commercial enterprises, thereby increasing the risk of danger to their customers and the
8 public.” Id. at 317, 626 S.E.2d 867. These cases show that the prevailing persuasive authority
9 on this issue supports the use of internal policies as evidence of the reasonableness of the
10 actions taken; however, prevents using these materials to establish negligence or negligence per
11 se.
12

13
14 In the instant case, Defendant’s Director of Marketing, Sheri Long stated that the action
15 of throwing items at promotional events was prohibited and inappropriate. However, the
16 testimony does not and should not establish negligence on the part of Defendant. As noted in
17 the Gingeleskie and Hall cases, commercial enterprises such as Defendant establish internal
18 policies and procedures above and beyond the standard of care legally required as a means to
19 provide excellent customer service and attract business. Public policy dictates that these
20 internal policies and procedures not be used to establish negligence, or negligence per se, as this
21 would dissuade businesses from establishing safety guidelines and policies that would protect
22 customers. At most, the policies and guidelines may be used to show the reasonableness of
23 Defendant’s actions.
24

25
26 ///



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28 ¹ See also Newsome v. Cservak, 130 A.D.2d 637, 515 N.Y.S.2d 564 (N.Y. App. 1987), Robinson v. Missouri Pacific Railroad Co., 16 F.3d 1083, 1091 (10th Cir. 1994).

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IV.
CONCLUSION

Based upon the foregoing, Defendant, FIESTA PALMS, LLC D/B/A PALMS CASINO RESORT respectfully requests that this Court grant Defendant's Motion in Limine No. 16 and issue an order precluding Plaintiff from arguing that breach of Defendant's internal policies establishes negligence per se.

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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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. 16 TO**
4 **PRECLUDE PLAINTIFF FROM ARGUING THAT THE VIOLATION OF**
5 **DEFENDANT'S INTERNAL POLICIES CONSTITUTES NEGLIGENCE PER SE** via
6 the Court's electronic filing and service systems ("Wiznet") to all parties on the current service
7 list.
8

9 **VIA U.S. MAIL**

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

14 /s/ Angelina M. Martinez
15 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. 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 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.

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REGISTER OF ACTIONS

CASE No. 06A531538

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

Lead Attorneys

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

EVENTS & ORDERS OF THE COURT

04/07/2016 **All Pending Motions** (9:00 AM) (Judicial Officer Hardy, Joe)

Minutes

04/07/2016 9:00 AM

- DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 1 TO EXCLUDE TESTIMONY REGARDING WITNESSES VIKKI KOOINGA AND SHERI LONG...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...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...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...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...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...DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 8 TO EXCLUDE ANY QUESTIONS THAT WOULD INVADE THE

ATTORNEY/CLIENT PRIVILEGE...DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 9 TO EXCLUDE ANY STATEMENT OR IMPLICATION THAT DEFENDANT SOUGHT TO DELAY THIS TRIAL...DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 10 TO EXCLUDE ANY COMMENTS REGARDING THE NUMBER OF ATTORNEYS REPRESENTING THE DEFENDANT...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...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...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...DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 13 TO EXCLUDE ANY EVIDENCE OF CLAIMS OF MENTAL, PSYCHOLOGICAL OR EMOTIONAL DAMAGES...DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 14 TO PRECLUDE PLAINTIFF'S TREATING PHYSICIANS AND MEDICAL EXPERT FROM TESTIFYING AT TRIAL...DEFENDANT, FIESTA PALMS, LLC'S MOTION IN LIMINE NO. 15 TO PRECLUDE PLAINTIFF FROM CLAIMING MEDICAL SPECIALS EXCEEDING AMOUNTS DISCLOSED BY PLAINTIFF PURSUANT TO NRCP 16.1...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 Court noted that Oppositions had not been filed for any of the instant Motions. Mr. Smerber indicated he had received no Oppositions to any of the Motions, and requested they be granted pursuant to EDCR 2.20(e). Mr. Rodriguez requested a six month extension in order to seek new counsel, noting that Mr. Padda withdrew as his counsel in February. COURT ORDERED Mr. Rodriguez's request for an extension was hereby DENIED, FINDING that, although Plaintiff was proceeding in Proper Person, that did not excuse him from properly following the rules of civil procedure. COURT FURTHER ORDERED, ALL Motions in Limine GRANTED as unopposed, pursuant to EDCR 2.20(e), FINDING that all of the Motions were properly served on the Plaintiff at his last known address. Mr. Smerber to prepare one Order for all of the Motions in Limine and submit it directly to the Court. The Court advised Plaintiff to properly pursue the case if he wished to move forward, and to review the pending Motion for Summary Judgment and determine whether he wished to file an Opposition.

[Parties Present](#)

[Return to Register of Actions](#)

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

ENRIQUE RODRIGUEZ,
Plaintiff,
vs.
FIESTA PALMS, LLC,
Defendant.

)
) CASE NO. 06-A-531538
)
)
) DEPT. NO. XV
)
)
) **Transcript of Proceedings**
)

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

THURSDAY, APRIL 7, 2016

APPEARANCES:

For the Plaintiff: PRO PER

For the Defendant: JUSTIN W. SMERBER, ESQ.

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

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

1 THURSDAY, APRIL 7, 2016 AT 9:24 A.M.

2

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

5 MR. SMERBER: Good morning, Your Honor. Justin
6 Smerber of Moran, Brandon, Bendavid, Moran on behalf of
7 defendant. Well, only defendant Fiesta Palms, actually.

8 THE COURT: I'm looking at the wrong set of --

9 MR. RODRIGUEZ: Good morning, Your Honor. My
10 name's Enrique Rodriguez and I'm the plaintiff and pro per.

11 THE COURT: Morning.

12 MR. RODRIGUEZ: Good morning.

13 THE COURT: So, we have numerous Motions in Limine
14 on for today but I have not seen anything filed in
15 opposition. Have you, Mr. Smerber?

16 MR. SMERBER: I have not, Your Honor. We received
17 no opposition and we'd request, based upon that that, the
18 Motions be granted, pursuant to EDCR 2.20.

19 THE COURT: So, Mr. Rodriguez, --

20 MR. RODRIGUEZ: Yes.

21 THE COURT: -- they filed and served on you,
22 because you don't have an attorney, numerous motions asking
23 me to do --

24 MR. RODRIGUEZ: Correct.

25 THE COURT: -- various things, make various

1 rulings.

2 MR. RODRIGUEZ: Yes. And at this moment, my
3 attorney and I are not together. So, he withdrew at the
4 end of February, which was something that just came to me.
5 So, it's February so, March -- so, I've known since March
6 and I've been diligently looking for counsel. The problem
7 that I'm having right now is since my case is very complex,
8 they need time and an extension because, as it sits right
9 now, the trial is set for May and it is very difficult that
10 a law firm wants to come and get involved on a case that
11 has, I believe, over 70,000 pages.

12 Now, I have contacted this Court and I've spoken
13 with the JEA and I was also informed that I didn't have to
14 come here today and we could have made a telephonic
15 conference. But this is very important to me. I come from
16 California. So, it was very important for me to come here
17 in-person to let you know the status of where I am right
18 now.

19 THE COURT: So, here's a couple issues that I see.
20 I mean, this is -- might be my oldest case, filed back in
21 2006.

22 MR. RODRIGUEZ: Yes.

23 THE COURT: I know it's been up to the Supreme
24 Court.

25 MR. RODRIGUEZ: You are correct.

1 THE COURT: But now is -- well, now. Despite you
2 not having an attorney, you still need to pursue your case.

3 MR. RODRIGUEZ: Correct.

4 THE COURT: And part of that includes, you know,
5 if the other side files motions and serves you with them,
6 like they have, you need to either file something in
7 opposition or, --

8 MR. RODRIGUEZ: Okay.

9 THE COURT: -- you know, or you're consenting to
10 what they've asked me to do.

11 MR. RODRIGUEZ: Okay. Yeah. Absolutely. I
12 wouldn't want it to go that way. The predicament that I'm
13 in is, like I said, what I'm requesting is a six-month
14 extension on the trial to postpone --

15 THE COURT: That's not going to happen.

16 MR. RODRIGUEZ: Okay. Now, one of the reasons is
17 because last year, the defendants requested an extension on
18 the trial and I had no opposition. We granted it. And
19 their words were basically: If we can get an extension for
20 Mr. Rodriguez any time a trial in 2016. So, Paul Padda, at
21 that time, was representing me. I had no problem with
22 mutually accepting in good faith and fair dealing for
23 whatever reason they had. And they specifically said: If
24 we can have a trial anytime in 2016. I believe it was back
25 in September when they requested an extension.

1 So, I think, in all fairness, I'm asking for
2 something very simple because of the position I'm in, the
3 complexity of this case, the health and everything that how
4 it's affected my life and my family. So, I am just
5 requesting to get granted the same way that I had no
6 problem accepting and granting them to extend it for
7 anytime in 2016.

8 THE COURT: Mr. Smerber, any response?

9 MR. SMERBER: Sure, Your Honor. And I apologize
10 for looking at my phone, Your Honor.

11 THE COURT: That's okay.

12 MR. SMERBER: I'm pulling up --

13 THE COURT: It's okay. No. None taken.

14 MR. SMERBER: -- Odyssey.

15 You know, Your Honor, my office has been on this
16 case for about 16 months. I represented the defendants
17 throughout the time that Mr. Padda was on the case. We
18 didn't request any continuance. I think what plaintiff is
19 referring to is we filed a Motion for a Jury Trial and
20 requested a jury trial setting. At no point have we
21 requested a continuance. Mr. Padda requested a continuance
22 and I agreed to that. In fact, I was the only one that
23 showed up at the hearing last time on that and I said: I
24 don't have an opposition to that. And the Court continued
25 the trial, per the plaintiff's request. Excuse me. But I

1 did say on the record that I didn't want to waive any
2 terms, anything in terms of the Three-Year Rule or anything
3 like that.

4 So, I think that -- and I appreciate Mr. Rodriguez
5 as in proper person. I think he's just misunderstanding
6 the procedural formalities here. So, I would oppose any
7 request to continue at this point. As the Court's aware,
8 we've been very patient -- you know, when we came on the
9 case at the end of 2014, we were in the same position we're
10 in right now. Mr. Rodriguez was in proper person. He was
11 saying he needed time to get counsel. He did that. We
12 continued. We're a year later -- over a year later and now
13 he wants to continue the trial another six months. I just
14 think, at this point, we're not agreeable to anymore
15 extensions, Your Honor.

16 THE COURT: Understood. Anything further, Mr.
17 Rodriguez?

18 MR. RODRIGUEZ: Yes, Your Honor. As he says back
19 a year ago, Paul Padda was my attorney. Paul Padda told me
20 that he would take this to trial. It wasn't until the last
21 -- of the year that his decision changed. I don't know if
22 he wasn't prepared for it, but he has been my attorney.
23 And if there's been any hearings that I haven't been to,
24 this is -- you know, I'm in pro per right now and if
25 there's been something that I missed a month ago, I was

1 still under the guidance of Paul Padda.

2 THE COURT: Well, that was over a month ago.

3 Right?

4 MR. RODRIGUEZ: Yeah.

5 THE COURT: That was a few months ago when -- and,
6 as Mr. Smerber has jogged my memory, what he's saying is
7 what we did is a continuance that was requested on your
8 side by your former attorney. Mr. Smerber said, you know:
9 That's okay but I'm not waiving anything else. And, so, we
10 did continue it. Is that fair, Mr. Smerber?

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

12 THE COURT: And, so, you know, as I pointed out
13 again, the case is filed --

14 MR. RODRIGUEZ: May I --

15 THE COURT: -- 10 years ago, I guess, now.

16 MR. RODRIGUEZ: Yeah. Well, you know what, it went
17 to appeals. I had nothing to do if the Appellate came back
18 with the decision that said my attorneys made error and
19 there was an abuse of discretion by the judge. I had
20 nothing to do with that. My case was good and that's what
21 put this into the Supreme Court and the appeals. That was
22 their decision. I had no power over the judge abusing her
23 discretion. I had no power over my attorneys making
24 errors. I'm the one that's been hurt since 2004. This
25 goes back to 2004 when I got hurt at the Palms Casino.

1 When I've had two knee surgeries. When I have spinal cord
2 damage. When I --

3 THE COURT: So, tell me -- we're not hearing your
4 case today. But you need to tell me anything else
5 involving why shouldn't I rule on motions that were
6 properly served on you?

7 MR. RODRIGUEZ: Because of the fact that he
8 mentions that Paul Padda requested a continuance or
9 extension last year. But, at the end of last year, their
10 law firm requested, at the end of last year, to change the
11 trial to anytime in 2016.

12 So, if you look at the facts, that will show and
13 that will clarify it. It's their law firm, at the end of
14 the year, that requested it. Paul Padda told me about it
15 and he mentioned something about the attorney's father was
16 passing away or was sick. So, I accommodated it. And
17 their whole thing was: Please give us an extension to
18 anytime in 2016. That's the last I remember that Paul
19 Padda told me. And if their father or somebody was sick in
20 the family, I had compassion and I had no problem with
21 that.

22 THE COURT: And we continued it, and we continued
23 it again.

24 MR. SMERBER: And, Your Honor --

25 THE COURT: Right.

1 MR. SMERBER: -- as he speaks, what we came to a
2 pretrial conference and Mr. Padda and I had discussed
3 continuing the trial. I did mention to Mr. Padda that I
4 would like to bump it to the next stack because I did have
5 a family member who ultimately did pass at the beginning of
6 this year. But that was at a calendar call. We were on a
7 stack. We didn't have a firm trial setting.

8 It still doesn't negate the issue that we have
9 motions that have been served. The rule requires the
10 motions to be responded to. If you don't respond to the
11 motions under EDCR 2.20, they're deemed to have merit and
12 should be granted.

13 You know, whether the case has been continued or
14 not continued, I mean, the trial setting is not really the
15 issue. The issue before the Court is obviously the
16 Motions.

17 THE COURT: So --

18 MR. RODRIGUEZ: One more thing, Your Honor. Now,
19 if Paul Padda --

20 THE COURT: Briefly.

21 MR. RODRIGUEZ: Now, if Paul Padda was my attorney
22 still at that time and he didn't respond, I shouldn't be
23 the one to become victimized because Paul Padda didn't
24 respond.

25 THE COURT: No. That's not what we're dealing

1 with here, though. Because --

2 MR. RODRIGUEZ: So --

3 THE COURT: Hold on.

4 MR. RODRIGUEZ: Yeah.

5 THE COURT: When I speak you need to listen.

6 Okay?

7 So, here, we're dealing with motions filed on
8 March 7 which is after -- you know, Mr. Padda presumably
9 filed a Motion to Withdraw as your attorney. There was no,
10 I'm assuming, likely no opposition. If there was,
11 regardless, I granted.

12 When did we file the Order granting the withdrawl
13 of Mr. Padda?

14 THE CLERK: February 12th.

15 THE COURT: When was the Notice of Entry?

16 THE CLERK: It was on February 16th.

17 THE COURT: Yeah. So, according to the docket,
18 Mr. Padda withdrew pursuant to my Order, based on his
19 Motion to Withdraw, mid-February. And these are motions
20 we're dealing with that were filed on March 7th, when you
21 were -- when Mr. Padda was already out of the case. So,
22 filed, you know, and served --

23 MR. SMERBER: They were served, Your Honor, to the
24 last address provided in the Notice of Entry Order granting
25 the Motion to Withdraw. And, then, on March 7th, before

1 they were filed in accordance with EDCR 2.47, I attempted
2 to contact Mr. Rodriguez at the telephone number that was
3 provided in the Order granting the Motion to Withdraw, as
4 well.

5 THE COURT: So, here, you have to --

6 MR. RODRIGUEZ: Yes. I understand.

7 THE COURT: -- respond.

8 MR. RODRIGUEZ: Okay.

9 THE COURT: And you didn't. So --

10 MR. RODRIGUEZ: Let me --

11 THE COURT: No. Hold on.

12 THE MARSHAL: Let the Judge speak.

13 THE COURT: Remember what I said two minutes ago?

14 MR. RODRIGUEZ: Yes.

15 THE COURT: When I speak, you need to listen.

16 Okay?

17 The Motions are granted due to failure to file an
18 opposition pursuant to EDCR 2.20(e). No opposition was
19 filed. They were properly served on Mr. Rodriguez at his
20 last known address as Mr. Smerber has represented. A
21 telephone call was also made, not responded to. And,
22 therefore, the Motions are granted as lack of Opposition
23 being filed.

24 Mr. Smerber, please prepare -- you can just do one
25 Order as to all the Motions in Limine. Submit it directly

1 to us.

2 Mr. Rodriguez, if you want to pursue this case,
3 you have to do something. This does not -- these do not
4 fully resolve your case, I don't believe, but there is a
5 pending hearing I see on April 14. That's, what? Next
6 week, for a partial summary judgment or a Motion to
7 Dismiss. So, you may want to look at that. Your deadline
8 to respond may have passed already but the hearing hasn't
9 happened so no order has been entered on that issue. If
10 you can't find an attorney, you have to do it yourself.
11 It's your claim. You are the plaintiff. If you want to
12 pursue it, you have to follow the rules like anyone else.

13 MR. RODRIGUEZ: Can I speak now?

14 THE COURT: No. You're done. But thank you.

15 MR. SMERBER: Thank you, Your Honor. I'll prepare
16 that order.

17 MR. RODRIGUEZ: I never received anything in the
18 mail, Your Honor. There was nothing for me to respond to.
19 I never received anything in the mail. So, that right
20 there is not fair and just to me.

21 THE COURT: Okay.

22 MR. RODRIGUEZ: I'm here finding out clarity right
23 now that he -- I never signed anything through the mail
24 saying that I received anything. How can I respond to
25 something that he filed and he sent to my home if I never

1 received it?

2 THE COURT: There are issues that you can pursue.

3 MR. RODRIGUEZ: Okay. So, that's how I'll leave
4 it at that.

5 THE COURT: Okay.

6 MR. RODRIGUEZ: But, like I said, I wanted this to
7 be fair and just, in good faith, and I cannot respond to
8 something that I never received. And he might have
9 certification but he doesn't have any proof that I signed
10 anything or anything was signed at my house receiving that.
11 If I did, then I would have handled this different and I
12 would have came here --

13 THE COURT: You don't need to sign.

14 MR. RODRIGUEZ: Pardon me?

15 THE COURT: You don't need to sign.

16 MR. RODRIGUEZ: Nothing was received at my home
17 and I find that very preposterous that I'm in this position
18 now. Because all I was asking was for an extension.
19 That's it. I'm in pro per.

20 THE COURT: Of course, that begs the question how
21 are you here today? So --

22 MR. RODRIGUEZ: How am I here today? I traveled.

23 THE COURT: Anyway. We're done for today.

24 MR. RODRIGUEZ: Yeah.

25 MR. SMERBER: Thank you, Your Honor. I'll prepare

1 and submit it.

2 THE COURT: Please note that last fact.

3 MR. SMERBER: I will, Your Honor.

4

5 PROCEEDING CONCLUDED AT 9:40 A.M.

6 * * * * *

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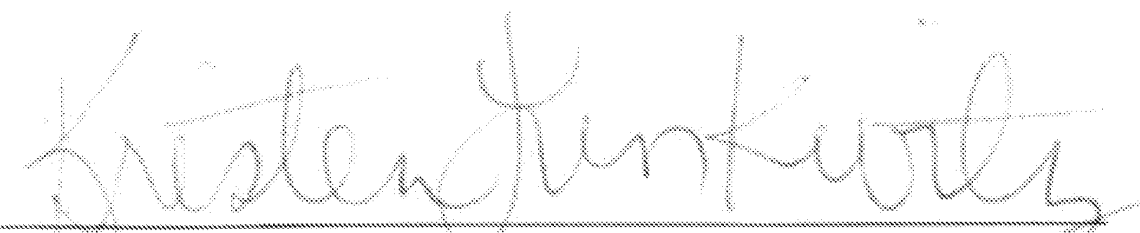
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CERTIFICATION

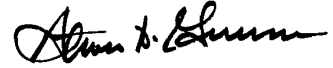
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

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

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

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

1 **IPMEM**
2 **LEW BRANDON, JR., ESQ.**
Nevada Bar No.: 5880
3 **JUSTIN W. SMERBER, ESQ.**
Nevada Bar No.: 10761
4 **MORAN BRANDON BENDAVID MORAN**
630 S. Fourth Street
5 Las Vegas, Nevada 89101
6 (702) 384-8424
(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
13 Telephone: (775) 786-6868
Facsimile: (775) 786-9716
14 *rle@lge.net*
Attorneys for Defendant,
15 FIESTA PALMS, LLC d/b/a
16 PALMS CASINO RESORT

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

19 ENRIQUE RODRIGUEZ, an individual,
20 Plaintiff,
21 v.

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

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

DEFENDANT, FIESTA PALMS, LLC'S
INDIVIDUAL PRE-TRIAL MEMORANDUM

27 *///*
28



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**DEFENDANT, FIESTA PALMS, LLC'S INDIVIDUAL
PRE-TRIAL MEMORANDUM**

I. STATEMENT OF FACTS

This matter involves an alleged incident which occurred at the Sports Book/Sports Bar of the Palms Resort and Casino on November 22, 2004. *See Amended Complaint on file herein* Plaintiff filed a Complaint alleging negligence against FIESTA PALMS, LLC as owner of the premises. *See Id.* Plaintiff alleges that while he was a guest and watching a televised football game at the Sports Book/Sports Bar of the Palms Resort and Casino he was injured by a patron diving for a promotional item thrown into the crowd by BRANDY L. BEAVERS. *See Id.* Plaintiff's Complaint alleges negligence against BRANDY L. BEAVERS. *See Id.* Further, the Complaint makes a claim of negligence and a claim for punitive damages against FIESTA PALMS, LLC.

II. BRIEF DESCRIPTION OF THE CLAIMS FOR RELIEF

Plaintiff has filed suit against FIESTA PALMS, LLC and BRANDY L. BEAVERS. Both Defendants are parties to this action and have been served with Plaintiff's Amended Complaint.

A. Plaintiff, ENRIQUE RODRIGUEZ'S Claims Against Defendant, BRANDY L. BEAVERS:

1. Negligence.

B. Plaintiff, ENRIQUE RODRIGUEZ'S Claims Against Defendant, FIESTA PALMS, LLC:

2. Negligence;
3. Negligent Employee Hiring, Retention and Supervision;
4. Punitive Damages.

///

///



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1 **III. PLAINTIFF'S DAMAGES**

2 Plaintiff is alleging the following damages:

- 3 1. Past Medical Specials: \$543,633.00
- 4 2. Future Medical Expenses: \$2,000,000.00
- 5 3. Past Loss of Earnings: \$290,000.00
- 6 4. Future Loss of Earning: \$968,000.00
- 7 5. Pain and Suffering: TBD
- 8 6. Punitive Damages (only asserted against Defendant, FIESTA PALMS, LLC).

9 **IV. FIESTA PALMS, LLC'S AFFIRMATIVE DEFENSES**

10 **A. *Affirmative Defenses Asserted by FIESTA PALMS, LLC:***

- 11 1. Plaintiff's Amended Complaint fails to state a claim against FIESTA PALMS, LLC on
- 12 which relief can be granted.
- 13 2. Plaintiff is estopped from pursuing any claim against Defendant, FIESTA PALMS,
- 14 LLC.
- 15 3. Any claims of the Plaintiff are barred by the doctrine of laches.
- 16 4. Plaintiff has not suffered any injury by reason of any act, or omission, by this Defendant,
- 17 FIESTA PALMS, LLC; therefore, Plaintiff does not have any right or standing to assert
- 18 the claims at issue.
- 19 5. Plaintiff failed to mitigate his damages received, if any, and therefore, any recovery
- 20 awarded to the Plaintiff against the Defendant, FIESTA PALMS, LLC should be
- 21 reduced by that amount not mitigated.
- 22 6. Plaintiff is barred by the doctrine of unclean hands.
- 23 7. By virtue of acts, deeds, conduct and/or the failure or omission to act under the
- 24 circumstances, the Plaintiff has waived his rights, if any existed, to assert the claims
- 25 against the Defendant, FIESTA PALMS, LLC.
- 26 8. The damages which are alleged to have been incurred by the Plaintiff, if any in fact were
- 27 suffered by Plaintiff were the direct result in whole or in part, of the Plaintiff's own
- 28 intentional, willful, and/or negligent acts and deeds.



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- 1 9. The claims of the Plaintiff as alleged in the Complaint, and the loss of damage, if any in
2 fact exist, are the direct and proximate result of the acts, deeds, omissions or failure to
3 act, or the conduct of third parties, over whom the Defendant, FIESTA PALMS, LLC
4 had no control, nor the right, duty or obligation to control.
5
6 10. The Plaintiff lacks standing to bring the claims asserted in this lawsuit against this
7 Defendant, FIESTA PALMS, LLC.
8
9 11. Defendant, FIESTA PALMS, LLC denies the allegations of Plaintiff's Complaint and
10 demand strict proof thereof.
11
12 12. Plaintiff's claims are barred because any alleged injuries to Plaintiff were the result of
13 superseding or intervening causes.
14
15 13. Plaintiff's claims are barred because Plaintiff's alleged injuries were not caused by any
16 improper unwarranted action by Defendant, FIESTA PALMS, LLC.
17
18 14. It has been necessary for the Defendant, FIESTA PALMS, LLC to employ the services
19 of an attorney to defend this action and a reasonable sum should be allowed to
20 Defendant, FIESTA PALMS, LLC for any attorney's fees together with costs incurred
21 herein.

22 **V. PROPOSED AMENDMENTS TO PLEADINGS**

- 23 1. None.

24 **VI. DEFENDANT, FIESTA PALMS, LLC'S LIST OF WITNESSES**

25 *A. Defendants Anticipate Calling:*

- 26 1. Enrique Rodriguez, 6673 Yellowstone Drive, Riverside, California, 92506, Telephone
27 951-751-1440.
28 2. Maria Perez.
3. Joaquin Mendoza employee of Fiesta Palms, LLC, dba Palms Casino Resort, c/o
MORAN BRANDON BENDAVID MORAN 630 S. Fourth St., Las Vegas, NV 89101.
4. Ron Merkerson employee of Fiesta Palms, LLC, dba Palms Casino Resort, c/o MORAN
BRANDON BENDAVID MORAN 630 S. Fourth St., Las Vegas, NV 89101.
5. Vikki Kooinga, employee of Fiesta Palms, LLC, dba Palms Casino Resort, c/o MORAN
BRANDON BENDAVID MORAN 630 S. Fourth St., Las Vegas, NV 89101.
6. Sherri Long, employee of Fiesta Palms, LLC, dba Palms Casino Resort, c/o MORAN
BRANDON BENDAVID MORAN 630 S. Fourth St., Las Vegas, NV 89101.



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7. Frank Schiula, employee of Fiesta Palms, LLC, dba Palms Casino Resort, c/o MORAN BRANDON BENDAVID MORAN 630 S. Fourth St., Las Vegas, NV 89101.
8. Brandy Beavers, contracted worker for Fiesta Palms, LLC, dba Palms Casino Resort, 6524 Yarmouth Drive, Las Vegas, Nevada 89108.
9. Steve Ferrero, former employee of Fiesta Palms, LLC, dba Palms Casino Resort, 1909 Desert Falls Court, Las Vegas, Nevada 89123.
10. Maureen Holden, former employee of Fiesta Palms, LLC, dba Palms Casino Resort, 771 North Pine Island Road #302, Plantation, Florida 33324.
11. Chris Poe, 1250 Kelly Drive, Prescott, Arizona 86305, Telephone: 503-547-5765.
12. Josh Gonzalez, 1400 South Elm Street #86, Canbury, Oregon, 97013, Telephone: 503-266-5509.
13. Terrence Lee Dzvonich, 4612 North Kenny Way, North Las Vegas, Nevada.
14. Linda Delgado, 4982 Shirley Street, Las Vegas, Nevada 89119.
15. Roberta Tucker, 4982 Shirley Street, Las Vegas, Nevada 89119.
16. George E. Becker, M.D., Orthopedic Surgery and Psychiatry, 1375 Sutter Street, Suite 304, San Francisco, California 94109, Telephone 415-563-7383.
17. Randall Smith, PhD., 1375 Sutter Street, Suite 304, San Francisco, California, 94109, Telephone: 415-563-3190.
18. Carol Hyland, M.A., M.S., C.D.M.S., C.L.C.P., Rehabilitation Consultant, 4120 Canyon Road, Lafayette, California, 94549, Telephone: 925-283-6702.
19. Thomas F. Cargill, 65 Bennington Court, Reno, Nevada 89511, Telephone: 775-849-1588.
20. Forrest P. Franklin, 1455 Galindo Street, Suite 2244, Concord, California, 94520, Telephone: 775-720-1525.
21. Govind Koka, D.O. 9975 South Eastern Avenue #110, Las Vegas, Nevada 89183.
22. Craig Jorenson, M.D., 9975 South Eastern Avenue #110, Las Vegas, Nevada 89183.
23. Firooz Mashood, M.D., 734 East Sahara Avenue, Las Vegas, Nevada 89104.
24. Joseph Schifini, M.D., 526 South Tonopah Drive, Suite 160, Las Vegas, Nevada 89106, Telephone: 702-870-0011.



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- 1 25. Mary Ann Shannon, M.D. Las Vegas Neurosurgery, Orthopaedics & Rehabilitation, 600
2 South Rancho Drive Suite 107, Las Vegas, Nevada 89106.
- 3 26. Russell Shah, M.D., 2628 West Charleston Boulevard, Las Vegas, Nevada 89102.
- 4 27. Michael Crovetti, D.O., The Bone & Joint Institute, 880 Seven Hills Drive, Suite 140,
5 Henderson, Nevada 89052.
- 6 28. Terrance Dinneen, M.S., C.R.C., C.R.E., Devinney & Dinneen, 445 Apple Street, Suite
7 102, Reno, Nevada 89502, Telephone: 775-825-5558.
- 8 29. Kathleen Hartmann, R.N. B.S.N. C.C.M., Devinney & Dinneen 445 Apple Street, Suite
9 102, Reno, Nevada 89502, Telephone: 775-825-5558.
- 10 30. Steven T. Baker, C.P.P., P.S.P., P.C.I., VTI Associates, Post Office Box 60536, Boulder
11 City, Nevada 89001, Telephone: 702-647-5372.
- 12 31. Nick Tavaglione, 6868 Frances Street, Riverside, California, 92506, Telephone: 951-
13 314-2989, Office Telephone: 951-789-2904.
- 14 32. Rich Ramirez, 15060 Washington, Riverside, California, 92506, Telephone: 951-880-
15 8970.
- 16 33. Dell Roberts, 4567 Sedgwick Avenue, Riverside, California, 92507, Telephone: 951-
17 213-5583.
- 18 34. Reynaldo Aparicio, Rey's Accounting And Tax Serv., 1020 East 6th Street, Corona,
19 California 92879-1613.
- 20 35. Nathan Heaps, M.D., 620 Shadow Lane, Las Vegas, Nevada 89106, Telephone 702-388-
21 4500.
- 22 36. John G. Nork, M.D. 6700 Indiana Avenue, Suite 145, Riverside, County of Riverside,
23 California.
- 24 37. F. Michael Ferante, 1245 16th Street, Suite 225, Santa Monica, California 90404.
- 25 38. G. Michael Elkanich M.D., 2680 Crimson Canyon Drive, Las Vegas, Nevada 89128.
- 26 39. Dr. John Thalgott, M.D., Center for Diseases and Surgery of the Spine, 600 South
27 Rancho Drive, Suite #107, Las Vegas, Nevada 89106, Telephone: 702-878-9396.
- 28 40. Michael Lebanowski, M.D., Nevada Sleep Diagnostics, 62 North Pecos Road Suite B,
Henderson, Nevada 89074.
41. Daniel Kim, D.O., Nevada ENT Center, 1815 East Lake Mead Boulevard #307, Las
Vegas, Nevada 89030.



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- 1 42. Amman Strehlow, M.D., Strehlow Radiology, 3742 East Tropicana Avenue Suite 1, Las
2 Vegas, Nevada 89121.
- 3 43. Dr. Teresa Charniga, and Joseph R. Nicola, D.C., Integrated Healthcare of Nevada,
4 4517 West Sahara Avenue, Las Vegas, Nevada 89120.
- 5 44. Adam Attoun, D.O., Open MRI of Inland Valley, 44274 George Cushman #108,
6 Temecula, California 92592.
- 7 45. Eric Campbell, D.C., Wellness Group, 34740 Via Carnaghi, Wildomar, California
8 92595.
- 9 46. William Simpson, M.D., 32395 Clinton Keith Road #104, Wildomar, California 92595.
10 Lawrence R. Miller, M.D., 8641 Wilshire Boulevard Suite 200, Beverly Hills, California
11 90211.
- 12 47. Walter Kidwell, M.D., Pain Institute of Nevada, 600 South Rancho Drive Suite 113, Las
13 Vegas, Nevada, 89106.
- 14 48. Douglas S. Stacey, D.P.M., Foot and Ankle Surgical Group, 10001 South Eastern
15 Avenue Suite 401, Las Vegas, Nevada, 89052.
- 16 49. Louis Mortillaro, Ph.D., 501 South Rancho Drive, Suite F37, Las Vegas, Nevada 89106.
- 17 50. Robert Gutierrez, M.D., 5380 South Rainbow, Suite 100, Las Vegas, Nevada 89118.
- 18 51. Jacob E. Tauber, M.D., 9033 Wilshire Boulevard Suite 401, Beverly Hills, California
19 90211, Telephone: 323-655-2968.
- 20 52. Yakov Treyzon, M.D., 5901 West Olympic Boulevard #100, Los Angeles, California
21 90036, Telephone 323-930-1331.
- 22 53. Thomas Vater, D.O., 7200 Cathedral Rock, Suite 200, Henderson, Nevada 89052
23 Telephone 702-932-8361.
- 24 54. Stephen L. Weiner, D.C., D.A.C.B.R., Vision Radiology, 2600 Associated Road #A 50,
25 Fullerton, California, 92835.
- 26 55. Melinda Hunter, VQ Orthocare, 18011 Mitchell South, Irvine, California, 92614.

27 *B. Defendant May Call the Following Witnesses if the Need Arises:*

- 28 1. All of Plaintiff's medical providers, listed in Plaintiff's List of Witnesses, including
doctors, nurses, technicians, custodian of records, or their relevant personnel whose
names and addresses appear on the documents attached to Plaintiff's List of



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1 Documents, and/or are listed under the document section of Plaintiff's List of
2 Documents.

- 3 2. Defendant also reserves the right to call any rebuttal witnesses as a result of any
4 exhibits or witnesses listed or presented by Plaintiff.

5 **VII. DEFENDANTS LIST OF EXHIBITS**

6 *The exhibits that may be offered at Trial by Defendants are:*

- 7 1. Complaint, Bates stamped as numbers FP0001 through FP0010;
8 2. Defendant's Answer to Complaint, Bates stamped as numbers FP0011 through FP0019;
9 3. Palms Casino Resort security incident report, Bates stamped as numbers FP0118
10 through FP0120;
11 4. Palms Casino Resort Guest/Employee Voluntary Statement by Enrique Rodriguez, Bates
12 stamped as number FP0121;
13 5. Palms Casino Resort Guest/Employee Voluntary Statement by Chris Poe, Bates stamped
14 as number FP0122;
15 6. Palms Casino Resort Guest/Employee Voluntary Statement by Josh Gonzales, Bates
16 stamped as number FP0123;
17 7. Waiver of Medical Treatment, Bates stamped as number FP0124;
18 8. Palms Security Manual Bates stamped as numbers FP5007-5174;
19 9. Security Interview Questions Bates stamped as numbers FP5175-5178;
20 10. Standard Operating Procedures until 3-2006;
21 11. Plaintiff's ECC Initial Disclosure and Supplemental Disclosures 1 through 26;
22 12. Defendant's ECC Initial Disclosure and Supplemental Disclosures 1 through 14;
23 13. All documents listed in Plaintiffs' list of documents;
24 14. All discovery responses by any party to these proceedings;
25 15. All deposition exhibits;
26 16. All videotapes/DVDs of depositions;
27 17. All documents used by deponents to refresh their recollection during depositions;
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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PHONE: (702) 384-8424
FAX: (702) 384-8550

1 18. All expert file materials;

2 *The following exhibits may be offered at Trial by Defendant for impeachment/rebuttal purposes:*

3 19. Medical records received from North Valley Medical Supply regarding Enrique
4 Rodriquez, Bates stamped as numbers FP0125 through FP0130;

5 20. Medical records received from Russell J. Shah, M.D. regarding Enrique Rodriquez,
6 Bates stamped as numbers FPO131 through FP0212;

7 21. Medical records received from Lawrence R. Miller, M.D., Bates stamped as numbers
8 FP0213 through FP0234;

9 22. Medical records received from Russell Shah, M.D., Bates stamped as numbers FP0235
10 through FP0243;

11 23. Medical records received from Nevada Ear, Nose, and Throat Center, Bates stamped as
12 numbers FP0244 through FP0297;

13 24. Medical records received from Wilshire Surgicenter, Inc., Bates stamped as numbers
14 FP0298 through FP0300;

15 25. Medical records received from Foot and Ankle Surgical Group, Bates stamped as
16 numbers FP0301 through FP0314;

17 26. Medical records received from Eric E. Campbell, D.C., Bates stamped as numbers
18 FP0315 through FP0348;

19 27. Records received from Louis Mortillaro, M.D., Bates stamped as numbers FP0349
20 through FP0485;

21 28. Medical records received from Nevada Sleep Diagnostics, Bates stamped as numbers
22 FP0486 through FP0546;

23 29. records received from Pain Institute of Nevada, Bates stamped as numbers FP0547
24 through FP0566;

25 30. Medical records received from Medical District Surgery Center, Bates stamped as
26 numbers FP0567 through FP0666;

27 31. Medical records received from Robert Gutierrez, M.D., Bates stamped as numbers
28 FP0667 through FP0735;

32. Medical records received from Insight Mountain Diagnostics, Bates stamped as numbers
FP0736 through FP0759;



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- 1 33. Medical records received from Med-Care Solutions, Bates stamped as numbers FP0760
2 through FP0853;
- 3 34. Medical records received from Olympic Anesthesia Partnership, Bates stamped as
4 numbers FP0854 through FP0865;
- 5 35. Medical records received from Nevada Imaging Centers, Bates stamped as numbers
6 FP0866 through FP0875;
- 7 36. Medical records received from Las Vegas Neurosurgery, Orthopedics and Rehab, Bates
8 stamped as numbers FP0876 through FP0911;
- 9 37. Medical records received from Center for Diseases and Surgery of the Spine, Bates
10 stamped as numbers FP0912 through FPI292;
- 11 38. Medical records received from MRI of Inland Valley, Bates stamped as numbers FPI293
12 through FPI294;
- 13 39. Medical records received from Louis F. Mortillaro, PH.D., Bates stamped as numbers
14 FPI295 through FPI298;
- 15 40. Medical records received from Integrated Healthcare of Nevada, Bates stamped as
16 numbers FPI299 through FP1365;
- 17 41. Medical records received from IV League Pharmacy, Bates stamped as numbers FP1366
18 through FP1384;
- 19 42. Medical records received from William Simpson, M.D., Bates stamped as numbers
20 FP1385 through FP1402;
- 21 43. Medical records received from Jacob Tauber, M.D., Bates stamped as numbers FP1403
22 through FP1488;
- 23 44. Medical records received from Quality Respiratory Solutions regarding Enrique
24 Rodriquez, Bates stamped as numbers FP1489 through FPI518;
- 25 45. Medical, Films Records from Las Vegas Neurosurgery (00001-00028);
- 26 46. Medical Records from Kidwell, Walter, M.D. (00001-00031);
- 27 47. Medical Records from Med-Care Solutions LLC (00001-00079);
- 28 48. Medical Records from Medical District Surgery Center (00001-00103);
49. Medical Records from Mortillaro, Louis, PhD (00001-00190);
50. Medical Records from Thalgott, John S. M.D. (00001-00390);



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- 1 51. Medical Records from Shah, Russell, M.D. (00001-00098);
- 2 52. Medical, Films Records from Valley Hospital Medical Center (00001-00055);
- 3 53. Medical records from Riverside Community Hospital (00001-00275);
- 4 54. Medical Records from Magnolia Medical Clinic (00001-00034);
- 5 55. Medical, Films Records from Tauber, Jacob, M.D. (00001-00030);
- 6 56. Paramedic Records from American Medical Response, Inc. (00001-00007);
- 7 57. Medical Records from Medical Associates of Southern Nevada (00001-0089);
- 8 58. Medical Records from Matt Smith Physical Therapy (00001-00275);
- 9 59. Medical Records from California Hand Surgery and Orthopedics (00001-00044);
- 10 60. Medical Records from Canyon Medical Billing (00001-00004);
- 11 61. Medical Records from Foot and Ankle Surgical Group (00001-00008);
- 12 62. Medical Records from Gutierrez, Robert, M.D. (00001-00074);
- 13 63. Medical Records from Integrated Healthcare of Nevada (00001-00082);
- 14 64. Medical Records from Nevada Ear, Nose and Throat Center (00001-00014);
- 15 65. Medical, Films on CD Records from Nevada Imaging Center/Lake Mead Radiologist
16 (00001-00018);
- 17 66. Medical Records from Nevada Sleep Diagnostics (00001-00062);
- 18 67. Medical Records from North Valley Medical Supply (00001-00017);
- 19 68. Medical Records from Olympic Anesthesia Partnership (00001-00030);
- 20 69. Medical Records from Pain Institute of Nevada (00001-00014);
- 21 70. Medical Records from Quality Respiratory Solutions (00001-00038);
- 22 71. Medical and Films on CD from Spring Valley Hospital Medical Center (00001- 00013);
- 23 72. Medical Records from Schifini, Joseph, MD (00001-00021);
- 24 73. Medical Records from Strehlow Radiology Consulting (00001-00004);



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- 1 74. Medical Records from The Wellness Group (00001-00031);
2 75. Medical Records from Wilshire Surgicenter, Inc. (00001-00083);
3 76. Medical Records from Elkanich, George, M.D. (00001-00023);
4 77. Medical Records from Centennial Upright MRI Center (00001-00014);
5 78. Medical Records from Marianne Tahl, M.D. (00001-81);
6 79. Social Security Administration Documents (00001 - 0288);
7 80. 1999 Federal Tax Returns of Enrique Rodriquez;
8 81. 2001 Federal Tax Returns of Enrique Rodriquez; and
9 82. 2004 Federal Tax Returns of Enrique Rodriquez.
10
11

12 **VIII. DEMONSTRATIVE EVIDENCE**

- 13 1. Defendants may offer at Trial demonstrative evidence at trial, to include PowerPoint
14 presentations prepared by counsel.

15 **IX. FACTS ADMITTED BY PARTIES**

16 The following facts have been previously admitted to by the parties, pursuant to NRCP
17 36.

18 *A. Facts Admitted to by Plaintiff's Responses to Requests for Admission:*

- 19 1. None.
20

21 **X. STIPULATIONS REACHED BY THE PARTIES PURSAUNT TO EDCR 2.47**

- 22 1. The parties have not reached any stipulations regarding this matter.

23 **XI. OBJECTIONS TO TRIAL EXHIBITS**

24 Defendant, FIESTA PALMS, LLC has not been provided with Plaintiff's trial exhibits.
25 Accordingly, Defendant cannot at this time make specific objections to Plaintiff's trial exhibits.
26 However, Defendant continues to object to the genuineness, authenticity and foundation of
27 Plaintiff's disclosed medical records and billing. Defendant further reserves the right to make
28



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1 objections to Plaintiff's trial exhibits once produced and does not waive any potential
2 objections.

3 **XII. CONTESTED ISSUES OF FACT AND LAW**

4 The following issues are to be determined:

- 5
- 6 1. Whether or not throwing promotional objects during a promotional event is safe and
7 within the industry standard of care and that FIESTA PALMS, LLC was not negligent
8 with regard to any duty it may have owed Plaintiff.
- 9 2. Whether or not FIESTA PALMS, LLC properly hires, trains and supervises its
10 employees;
- 11 3. Whether or not BRANDY L. BEAVERS was an employee of FIESTA PALMS, LLC at
12 the time of the subject accident;
- 13 4. Whether Defendant, FIESTA PALMS, LLC can be held liable for punitive damages;
- 14 5. Whether or not Plaintiff's injury, was foreseeable. FIESTA PALMS, LLC maintains that
15 it was not.
- 16 6. Whether Plaintiff was comparatively at fault for this incident. FIESTA PALMS, LLC
17 maintains that he was at fault.
- 18 7. Whether Plaintiffs failed to mitigate their damages;
- 19 8. Whether or not Plaintiff over treated for his injuries;
- 20 9. Whether Plaintiff's medical treatment is reasonable, customary and related to the subject
21 incident
- 22 10. Whether or not Defendant breached any duty owed to Plaintiff;
- 23 11. The amount of damages Plaintiff suffered as a result of the subject incident, including
24 medical specials, past medical specials, past pain and suffering, future medical specials,
25 and future pain and suffering;
- 26 12. The amount of lost earnings, if any.

27 ///

28 ///

///



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

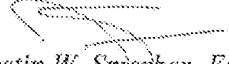
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FAX: (702) 348-6568

1 **XIII. ESTIMATE OF TIME REQUIRED FOR TRIAL**

2 It is anticipated that the Trial of this matter will require five (5) to seven (7) days to
3 complete.

4 DATED this 5th day of April, 2016.

6 **MORAN BRANDON BENDAVID MORAN**

7 
8 /s/ Justin W. Smerber, Esq.

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

10 Nevada Bar No. 5880

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

12 Nevada Bar No.: 10761

13 630 S. Fourth Street

14 Las Vegas, Nevada 89101

15 Attorneys for Defendant,

16 FIESTA PALMS, LLC d/b/a

17 PALMS CASINO RESORT

18 **CERTIFICATE OF MAILING**

19 I hereby certify that on the 8 day of April, 2016, I served the foregoing

20 **DEFENDANT, FIESTA PALMS, LLC'S INDIVIDUAL PRE-TRIAL MEMORANDUM**

21 upon each of the parties to this action by depositing copies in the United States mail, pre-paid,

22 addressed to them as follows:

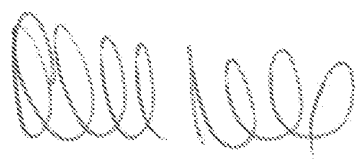
23 **ENRIQUE RODRIGUEZ**

24 6673 YELLOWSTONE DRIVE

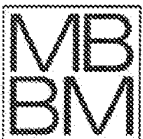
25 RIVERSIDE, CALIFORNIA 92506

26 TELEPHONE: 951-751-1440

27 Plaintiff, In Proper Person

28 
/s/ Angelina M. Martinez

An Employee of Moran Brandon Bendavid Moran



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REGISTER OF ACTIONS

CASE No. 06A531538

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

§
§
§
§
§
§
§

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

PARTY INFORMATION

Lead Attorneys

Defendant **Fiesta Palms LLC**

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

Doing **Palms Casino Resort**
Business As

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

Plaintiff **Rodriguez, Enrique**

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

EVENTS & ORDERS OF THE COURT

04/11/2016 **Pre Trial Conference** (8:30 AM) (Judicial Officer Hardy, Joe)

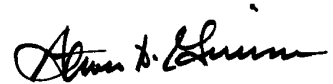
Minutes

04/11/2016 8:30 AM

- Mr. Smerber moved orally for dismissal of the Plaintiff's complaint for failure to participate, pursuant to EDCR 2.67, arguing that he had received no response from Plaintiff when attempting to schedule an early case conference. Additionally, Mr. Smerber noted that Defendant had filed a Joint Pre-Trial Memorandum, as well as a Motion to Dismiss, and the Plaintiff was placed on notice of both the filings. Court noted for the record that the Plaintiff was not present at the instant hearing; however, due to Plaintiff's Pro Per status, the Court would not advance the decision on the Motion to Dismiss.

[Parties Present](#)

[Return to Register of Actions](#)



CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

ENRIQUE RODRIGUEZ,

Plaintiff,

vs.

FIESTA PALMS, LLC,

Defendant.

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CASE NO. 06-A-531538

DEPT. NO. XV

Transcript of Proceedings

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

PRETRIAL CONFERENCE

MONDAY, APRIL 11, 2016

APPEARANCES:

For the Plaintiff: NO APPEARANCES

For the Defendant: JUSTIN W. SMERBER, ESQ.

RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT

TRANSCRIBED BY: KRISTEN LUNKWITZ

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

1 MONDAY, APRIL 11, 2016 AT 8:33 A.M.

2

3 MR. SMERBER: Good morning, Your Honor. Justin
4 Smerber of Moran, Brandon, Bendavid, Moran on behalf of the
5 Palms.

6 THE COURT: Good morning. What did we do the
7 other day?

8 MR. SMERBER: Well, Your Honor, last week on
9 Thursday we had our Motions in Limine.

10 THE COURT: Okay.

11 MR. SMERBER: Which were unopposed. And you
12 granted those. Today we're here for the pretrial
13 conference and, at this point, Your Honor, we'd request a
14 dismissal of the case.

15 And if I could give you a little bit of history,
16 we have a Motion to Dismiss based upon the plaintiff's
17 failure to participate in accordance with EDCR 2.67. I
18 tried to contact plaintiff, even though I didn't have an
19 obligation to do it, to schedule a 2.67 conference. I got
20 no response. We prepared and filed our own joint pre --
21 or, excuse me. Individual pretrial memorandum and filed
22 that.

23 And, also, Your Honor, I filed a Motion to Dismiss
24 about 30 days ago, placing him on notice saying: Your case
25 is going to be dismissed if you don't participate. So,

1 he's known for quite a long time.

2 THE COURT: Okay. Well, let's -- your hearing's
3 on --

4 MR. SMERBER: Thursday, Your Honor.

5 THE COURT: -- Thursday. For better or worse, I
6 think we'll have you come back on Thursday on your pending
7 motion. I assume there's been no Opposition?

8 MR. SMERBER: No Opposition, Your Honor.

9 THE COURT: Okay. Normally, I would accelerate
10 and grant, but when we're dealing with a self-represented
11 litigants, I tend to do the hearing to see if they show up
12 or not. So, we'll see you back on Thursday.

13 Likely, would -- in whatever order gets entered,
14 we will include the fact that, and remind me, that
15 plaintiff did not appear today, despite having been ordered
16 to do so at the -- today's pretrial conference.

17 MR. SMERBER: Very good. Thank you, Your Honor.

18 THE COURT: Thank you.

19

20 PROCEEDING CONCLUDED AT 8:38 A.M.

21 * * * * *

22

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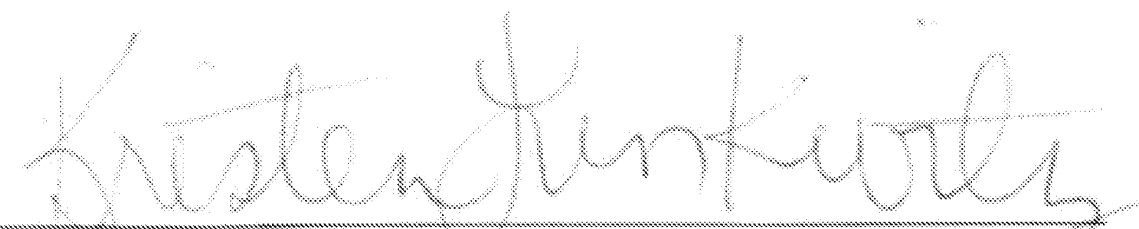
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CERTIFICATION

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

AFFIRMATION

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

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

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

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REGISTER OF ACTIONS

CASE No. 06A531538

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

PARTY INFORMATION

Lead Attorneys

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

EVENTS & ORDERS OF THE COURT

04/14/2016 **All Pending Motions** (9:00 AM) (Judicial Officer Hardy, Joe)

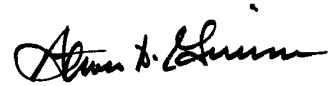
Minutes

04/14/2016 9:00 AM

- DEFENDANT, FIESTA PALMS, LLC'S MOTION TO DISMISS PURSUANT TO NRCP 16.1 AND EDCR 2.67...DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING PUNITIVE DAMAGES Mr. J. Smerber, Esq., appearing on behalf of Fiesta Palms, LLC. Court noted no opposition or response had been filed. Pltf. requested a continuance, stating he had spoken with local counsel whom were to appear today. Mr. Smerber stated he had no contact with any attorney pertaining to this matter and there being no opposition requested the motion be granted. Court stated its findings and ORDERED, Deft.'s Motion to Dismiss GRANTED; Deft.'s Motion for Partial Summary Judgment DENIED WITHOUT PREJUDICE due to the Motion to Dismiss being granted. Mr. Smerber stated due to the facts discussed Pltf. is self-represented since notice of withdraw and the motions needed to be responded to and service was clearly made, the issue with counsel are insufficient in this action to preclude action in the rules. Mr. Smerber to submit an order to the Court.

[Parties Present](#)

[Return to Register of Actions](#)



CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

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

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

**DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRCP 16.1 AND
EDCR 2.67; DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT
REGARDING PUNITIVE DAMAGES**

THURSDAY, APRIL 14, 2016

APPEARANCES:

For the Plaintiff: PRO PER

For the Defendant: JUSTIN W. SMERBER, ESQ.

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

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

1 THURSDAY, APRIL 14, 2016 AT 9:41 A.M.

2

3 THE CLERK: *Enrique Rodriguez versus Fiesta Palms.*

4 MR. SMERBER: Good morning, Your Honor. Justin
5 Smerber of Moran, Brandon, Bendavid, Moran on behalf of
6 defendant, Fiesta Palms.

7 MR. RODRIGUEZ: Good morning, Your Honor. Enrique
8 Rodriguez, plaintiff.

9 THE COURT: Good morning. Good morning, both.

10 So, I have not seen -- we have set for today
11 Defendant's Motion to Dismiss Pursuant to NRCP 16.1 and
12 EDCR 2.67. We also have Defendant's Motion for Partial
13 Summary Judgment Regarding Punitive Damages. I've seen
14 those Motions but have not seen any response or Opposition
15 by Mr. Rodriguez. Has one been filed?

16 MR. RODRIGUEZ: Your Honor, as of this week and as
17 of yesterday, I spoke to a local counsel, Richard Johnson
18 and -- attorney Jared Johnson. And there was -- Mr. Jared
19 was supposed to appear here for me today with me today. I
20 spoke with him telephonically and it appears that he
21 couldn't make it. So, I will now have to meet with him
22 later on today and find out the reason why this was a last-
23 minute thing that came up to me.

24 So, basically, what I'm requesting is just a
25 simple postponement of maybe a week so that I could confirm

1 that next week they can appear with me. But when I left
2 Riverside yesterday at 3:30, I spoke to attorney Jared and
3 he confirmed that he was going to be here this morning.

4 THE COURT: Mr. Smerber, anything?

5 MR. SMERBER: Well, Your Honor, I mean, I haven't
6 -- you know, obviously, I'm the attorney of record. I
7 haven't received any contact from counsel. And, quite
8 frankly, I don't think it makes any difference at this
9 point anyways. The Motions have not been opposed.
10 Pursuant to EDCR 2.20(e), I would request that they be
11 granted as unopposed.

12 Also, I'll remind the Court that we had our EDCR
13 2.68 conference on Monday, which plaintiff did not appear
14 at either. You know, this is a Motion that was filed in
15 March, March 7th. It was served on the plaintiff. He was
16 made aware of it. And, in fact, last week when -- on the
17 7th when we had the Motions in Limine, Your Honor was kind
18 enough to, again, remind Mr. Rodriguez that there were
19 pending Motions for this week, that if he wanted to pursue
20 his case, he needed to take action with regards to those
21 Motions and pursuing his case in general and he hasn't done
22 anything. So, I don't think even if he was to get counsel
23 to show up next week, it would make any difference. I
24 think that the case is ripe for disposal at this time.

25 THE COURT: Thank you. Mr. Rodriguez, anything

1 further?

2 MR. RODRIGUEZ: Yes. Last week when I was here, I
3 spoke about me having an attorney that was supposed to
4 respond to the Motion, and Reply, and Opposition. I
5 misspoke when I said Mr. Paul Padda. It was actually a
6 local attorney by the name of April N. Bonifatto. And I
7 have a contractual agreement with her as my attorney and a
8 retainer with her. So, I did have a counsel at that time
9 that didn't reply to that. And, under the contractual
10 agreement that we both signed, she was my attorney and she
11 is my attorney. So, once again, like I said --

12 THE COURT: So, where is she, then?

13 MR. RODRIGUEZ: Pardon me?

14 THE COURT: Where is she, then, if she's your
15 attorney?

16 MR. RODRIGUEZ: That's exactly what I went through
17 this week when I got back to her and I asked her,
18 basically, why didn't she show up according to our
19 agreement and our contract. You're representing me.

20 So, like I said, I misspoke when I said Mr. Padda.
21 Right after Mr. Padda, on February 10th, I signed an
22 agreement here with Ms. Bonifatto in her office on February
23 10th. And when I said that I wasn't aware of all this and I
24 had an attorney, I do have a contract with her on there as
25 my attorney and I expected her to have responded.

1 So, when your people here were kind enough to look
2 in the computer and see the time frame with Mr. Padda,
3 right after Mr. Padda's withdraw on January 10 -- I mean,
4 on February 10th of this year, I signed a retainer with
5 April Bonifatto. So, I communicated with her through e-
6 mail and calling her, and texting. And I'm waiting to hear
7 exactly what's going on but I have the contractual
8 agreement. And it's very disappointing on my behalf to
9 have that agreement and her not have responded. So, it is
10 a very sad situation that I got put in. So, with that
11 said, then, I contacted Richard Johnson and Mr. Jared and
12 they -- Jared promised me yesterday at 3 p.m. -- 3:30, that
13 he would be here for me.

14 So, you know, I'm just kind of put in a dilemma
15 even though I'm doing all my due diligence. And all I'm
16 requesting is just for me to have an attorney representing
17 me because this is all foreign to me. So, that's why I'm
18 asking for postponement of a week so that either Ms.
19 Bonifatto follows with the agreement and the letter of the
20 law because it appears that she never terminated me and she
21 never withdrew. So, that's a position I'm in. And it's
22 been very difficult but I can only communicate with you the
23 truth of what I'm going through.

24 THE COURT: Thank you. Mr. Smerber, anything in
25 rebuttal?

1 MR. SMERBER: Well, Your Honor, I would just note
2 -- and I'm sure the Court's aware of this, there's been no
3 appearance by, I think he said, Ms. Bonifatto. Obviously,
4 my client is not privy to the contractual relationship
5 between, you know, Mr. Rodriguez and whoever he may or may
6 not have retained. I don't think that his personal, you
7 know, trials and tribulations with his counsel really
8 govern the situation before the Court.

9 And, you know, this is not a situation where we're
10 trying to pull a fast one on Mr. Rodriguez. In fact, you
11 know, when I -- because of the Court's scheduling order
12 requiring pretrial motions to be filed on March 8th, I
13 actually had to show my hand with regards to this Motion.
14 I filed a Motion to Dismiss on March 8th clearly notifying
15 Mr. Rodriguez that he had obligations under 2.67 and 16.1
16 to make his disclosures, to have a conference, to file a
17 pretrial memorandum. And, even in the face of having that
18 information for the last 40 days, he still has not done
19 anything.

20 So, again, I -- irrespective of the issues he's
21 obviously having and I'm not calling in question his
22 representation to the Court with regards to whatever of
23 communications he's had with counsel, but what I am saying
24 is it would be prejudicial of my client hold us, you know,
25 captive or responsible for the, you know, communications or

1 miscommunications Mr. Rodriguez is having with his counsel.
2 And, unless the Court would like me to comment on anything
3 else further, I will submit on that.

4 THE COURT: No. Thank you very much. So, Mr.
5 Rodriguez, I sympathize greatly with your position and your
6 struggles with the various attorneys. Having said that,
7 however, as pointed out, we're dealing with two Motions
8 that were filed and served on you back on March 7, 2016.
9 The Motion to Dismiss, in particular, the grounds for it
10 could have been addressed subsequent to the filing of the
11 Motion. And, yet, whether due to you or your attorney's
12 actions or inactions, were not addressed in the subsequent
13 over a month since the Motions were filed.

14 So, as much as I sympathize, at the same time as
15 noted by defendant, you as the plaintiff, Mr. Rodriguez,
16 have the burden to prosecute your case and move forward in
17 a timely fashion. And while we are to accord some
18 accommodations and deference to self-represented litigants,
19 you still have to follow the rules, as well. And, as I
20 noted, and Mr. Smerber pointed out, you know, this was --
21 this issue of needing to respond to motions was raised when
22 you were in front of me before, recently. And, despite
23 that issue being raised by myself, there still was no
24 response.

25 And, so, the Motion to Dismiss pursuant to NRCF

1 16.1 and EDCR 2.67 is granted. The dismissal is without
2 prejudice. Mr. Smerber, you will prepare the Order. The
3 Motion for Partial Summary Judgment Regarding Punitive
4 Damages is denied without prejudice as moot given the
5 dismissal pursuant to EDC -- or NRCP 16.1 and EDCR 2.67.

6 Please note in the Order, Mr. Smerber, the facts
7 that we've discussed already today, including that Mr.
8 Rodriguez has been self-represented since the Notice of
9 Withdrawal Order that, I believe, was back in February.
10 Please include in there the fact that you are in front of
11 me recently and I pointed out that motions need to be
12 responded to. And, despite that, they were not.

13 Service was clearly made, as appropriate, given
14 the fact that Mr. Rodriguez is present. The issues with
15 counsel that he may have are insufficient in this action to
16 preclude dismissal under the rules. And, Mr. Smerber, you
17 can submit that Order directly to the Court.

18 MR. SMERBER: Understood. Thank you, Your Honor.

19 THE COURT: Thank you, both.

20 MR. RODRIGUEZ: All right. Your Honor, in
21 closing, Mr. Smerber is very -- can confirm that he had
22 spoken several times to attorney April Bonifatto. So,
23 there is the issue there that he is aware that they had
24 communication and that she was my attorney back in
25 February. So, this is part of the situation of mine. So -

1 -

2 THE COURT: See, and that type of thing, Mr.
3 Rodriguez, should have been --

4 MR. RODRIGUEZ: Yeah. So, I just want to put that
5 for the record.

6 THE COURT: Sure. To note, if that was, indeed,
7 the case, that should have been raised in some type of
8 filing or briefing before me in response to the Motion and
9 was not. So, thank you.

10 MR. SMERBER: Thank you, Your Honor.

11 MR. RODRIGUEZ: That's the reason why I've been
12 requesting time to get an attorney.

13

14 PROCEEDING CONCLUDED AT 9:55 A.M.

15 * * * * *

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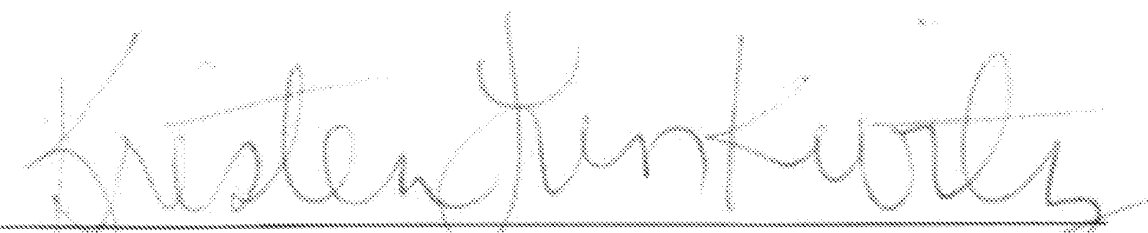
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CERTIFICATION

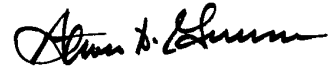
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

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

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

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

26 ENRIQUE RODRIGUEZ, an individual,

27 Plaintiff,

28 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

NOTICE OF ENTRY OF ORDER



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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LAS VEGAS, NEVADA 89101
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FAX: (702) 384-6568

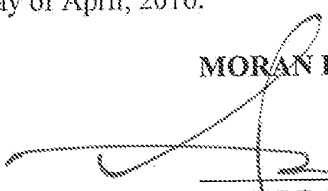
1 NOTICE OF ENTRY OF ORDER

2 YOU, AND EACH OF YOU, will please take notice that on April 14, 2016, an Order to
3 Granting Defendant, Fiesta Palms, LLC's Motions in Limine Nos. 1-16 was entered in the
4 above-entitled matter by the Honorable Joe Hardy.
5

6 A filed copy is attached hereto.

7 DATED this 15 day of April, 2016.

8 MORAN BRANDON BENDAVID MORAN

9
10 
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,

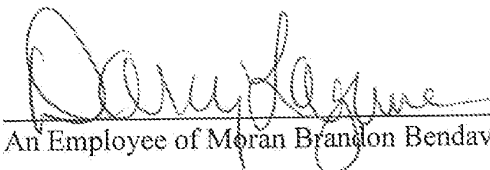
18 FIESTA PALMS, LLC d/b/a

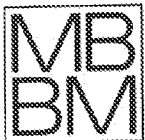
19 PALMS CASINO RESORT

20 CERTIFICATE OF MAILING

21 I hereby certify that on the 15 day of April, 2016, I served the foregoing NOTICE OF
22 ENTRY OF ORDER upon each of the parties to this action by depositing copies in the United
23 States mail, pre-paid, addressed to them as follows:

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

29 
30 An Employee of Moran Brandon Bendavid Moran



MORAN BRANDON
BENDAVID MORAN
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PHONE: (702) 384-8424
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ORIGINAL

Alvin P. L...

CLERK OF THE COURT

1 **ORDG**
2 **LEW BRANDON, JR., ESQ.**
Nevada Bar No. 5880
3 **JUSTIN W. SMERBER, ESQ.**
Nevada Bar No. 10761
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5 lbrandon@moranlawfirm.com
Attorneys for Defendant,
6 **FIESTA PALMS, LLC d/b/a**
PALMS CASINO RESORT

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

9 **ENRIQUE RODRIGUEZ, an individual,**

10 **Plaintiff,**

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

11 **v.**

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

14 **Defendants**

15 **ORDER GRANTING DEFENDANT, FIESTA PALMS, LLC'S MOTIONS IN LIMINE**
16 **NO. 1-16**

17 Defendant, FIESTA PALMS, LLC's Motions in Limine No. 1-16 having come before
18 this Honorable Court on April 7, 2016 at 9:00 a.m., JUSTIN W. SMERBER, ESQ. of MORAN
19 BRANDON BENDAVID MORAN having appeared on behalf of FIESTA PALMS, LLC, and
20 ENRIQUE RODRIGUEZ having appeared in Proper Person, the Court having reviewed the



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1 Motions, the papers and pleadings on file herein, and for good cause appearing orders as
2 follows:

3 **IT IS ORDERED THAT:** Defendant's Motion in Limine No. 1 to exclude testimony
4 by witnesses Vikki Kooinga and Sheri Long is GRANTED as unopposed pursuant to EDCR
5 2.20(e).

6 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 2 to exclude
7 any reference that any Motion in Limine has been filed: that the Court has ruled, or may rule on
8 any part of outside the presence of the jury; or suggesting or implying to potential jurors during
9 *voir dire* or seated jurors in any manner whatsoever that Defendant moved to exclude proof in
10 any manner or that the Court has excluded proof of any manner is GRANTED as unopposed
11 pursuant to EDCR 2.20(e).

12 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 3 to exclude
13 any monetary damages of the Plaintiff not previously disclosed or based upon claims not
14 previously asserted is GRANTED as unopposed pursuant to EDCR 2.20(e).

15 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 4 to exclude
16 any reference to liability insurance or some other similar contractor policy related to the
17 Defendant, including any sums previously paid to Plaintiff from same, is GRANTED as
18 unopposed pursuant to EDCR 2.20(e).

19 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 5 to exclude
20 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 is GRANTED as unopposed pursuant to EDCR 2.20(e).



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1 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 6 to exclude
2 all side bar comments made by counsel during depositions that were recorded on videotape or
3 present in deposition transcripts is GRANTED as unopposed pursuant to EDCR 2.20(e).

4 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 7 to exclude
5 any reference that the attorneys for Defendant specialize in the handling of insurance cases is
6 GRANTED as unopposed pursuant to EDCR 2.20(e).

7 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 8 to exclude
8 any questions that would invade the attorney/client privilege is GRANTED as unopposed
9 pursuant to EDCR 2.20(e).

10 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 9 to exclude
11 any statement or implication that Defendant sought to delay this trial is GRANTED as
12 unopposed pursuant to EDCR 2.20(e).

13 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 10 to exclude
14 any comments regarding the number of attorneys representing the Defendant is GRANTED as
15 unopposed pursuant to EDCR 2.20(e).

16 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 11 to exclude
17 any testimony offered by witnesses who have not already been disclosed and identified prior to
18 the close of discovery is GRANTED as unopposed pursuant to EDCR 2.20(e).

19 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 12 to preclude
20 any lay person from rendering opinions as to any medical aspects of the Plaintiff, 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 is GRANTED as
unopposed pursuant to EDCR 2.20(e).



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ATTORNEYS AT LAW

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1 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 13 to exclude
2 any evidence or claims of mental, psychological or emotional damages is GRANTED as
3 unopposed pursuant to EDCR 2.20(e).

4 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 14 to Preclude
5 Plaintiff's Treating Physicians and Medical Expert from Testifying at Trial is GRANTED as
6 unopposed pursuant to EDCR 2.20(e).

7 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 15 to Preclude
8 Plaintiff From Claiming Medical Specials Exceeding Amounts Disclosed by Plaintiff pursuant
9 to NRCP 16.1 is GRANTED as unopposed pursuant to EDCR 2.20(e).

10 **IT IS FURTHER ORDERD THAT:** Defendant's Motion in Limine No. 16 to Preclude
11 Plaintiff from Arguing that the Violation of Defendant's Internal Policies Constitutes
12 Negligence Per Se is GRANTED as unopposed pursuant to EDCR 2.20(e).

13 ///

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20 ///




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1 **IT IS FURTHER FOUND BY THE COURT:** That Certificate of Mailing for
2 Defendant's Motions in Limine No. 1-16 was filed with the Court on March 8, 2016 showing
3 that these Motions were mailed to Plaintiff at his last known address. Further, the Court notes
4 that Plaintiff's presence in Court on April 7, 2016 at 9:00 a.m. confirms Plaintiff's knowledge
and receipt of said Motions.

5 **IT IS SO ORDERED** this 13th day of April, 2016.

6
7 
DISTRICT COURT JUDGE

8 *Respectfully Submitted by:*
MORAN BRANDON BENDAVID MORAN

9 
LEW BRANDON, JR., ESQ.

Nevada Bar No. 5880

10 **JUSTIN W. SMERBER, ESQ.**

Nevada Bar No. 10761

11 630 S. Fourth Street

Las Vegas, Nevada 89101

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lbrandon@moranlawfirm.com

13 Attorneys for Defendant,

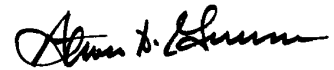
FIESTA PALMS, LLC d/b/a

14 PALMS CASINO RESORT



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FAX: (702) 384-6568



CLERK OF THE COURT

1 **NEOJ**
2 **LEW BRANDON, JR., ESQ.**
3 Nevada Bar No.: 5880
4 **JUSTIN W. SMERBER, ESQ.**
5 Nevada Bar No.: 10761
6 **MORAN BRANDON BENDAVID MORAN**
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Attorneys for Defendant,
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10 **ROBERT L. EISENBERG, ESQ.**
11 Nevada Bar No. 0950
12 **LEMONS, GRUNDY & EISENBERG**
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14 Reno, Nevada 89519
15 Telephone: (775) 786-6868
16 Facsimile: (775) 786-9716
17 *rle@lge.net*
18 Attorneys for Defendant,
19 FIESTA PALMS, LLC d/b/a
20 PALMS CASINO RESORT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

21 ENRIQUE RODRIGUEZ, an individual,
22 Plaintiff,

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

23 v.

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

NOTICE OF ENTRY OF ORDER



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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

1 **NOTICE OF ENTRY OF ORDER**

2 YOU, AND EACH OF YOU, will please take notice that on April 20, 2016, an Order
3 Denying Defendant, Fiesta Palms, LLC's Motion for Partial Summary Judgement on Punitive
4 Damages as Moot was entered in the above-entitled matter by the Honorable Joe Hardy.
5

6 A filed copy is attached hereto.

7 DATED this 21 day of April, 2016.

8 **MORAN BRANDON BENDAVID MORAN**

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

11 Nevada Bar No. 5880

12 **JUSTIN W. SMERBER, ESQ.**

13 Nevada Bar No.: 10761

14 630 S. Fourth Street

15 Las Vegas, Nevada 89101

16 Attorneys for Defendant,

17 FIESTA PALMS, LLC d/b/a

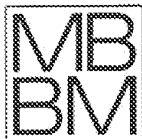
18 PALMS CASINO RESORT

19 **CERTIFICATE OF MAILING**

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

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

28 
An Employee of Moran Brandon Bendavid Moran



MORAN BRANDON
BENDAVID MORAN
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PHONE: (702) 384-8424
FAX: (702) 384-8589

ORIGINAL

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Alvin L. Quinn

CLERK OF THE COURT

1 **ORDD**
2 **LEW BRANDON, JR., ESQ.**
Nevada Bar No. 5880
3 **JUSTIN W. SMERBER, ESQ.**
Nevada Bar No. 10761
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5 lbrandon@moranlawfirm.com
Attorneys for Defendant,
6 **FIESTA PALMS, LLC d/b/a**
PALMS CASINO RESORT

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

9 **ENRIQUE RODRIGUEZ, an individual,**

10 **Plaintiff,**

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

11 **v.**

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

14 **Defendants**

15 **ORDER DENYING DEFENDANT, FIESTA PALMS, LLC'S MOTION FOR PARTIAL**
16 **SUMMARY JUDGMENT ON PUNITIVE DAMAGES AS MOOT**

17 Defendant, FIESTA PALMS, LLC's Motion for Partial Summary Judgment on Punitive
18 Damages having come before this Honorable Court on April 14, 2016 at 9:00 a.m., JUSTIN W.
19 SMERBER, ESQ. of MORAN BRANDON BENDAVID MORAN having appeared on behalf
20 of FIESTA PALMS, LLC, and ENRIQUE RODRIGUEZ having appeared in Proper Person, the



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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APR 14 2016

1 Court having reviewed the Motion, the papers and pleadings on file herein, and for good cause
2 appearing orders as follows:

3 **IT IS ORDERED THAT DEFENDANT'S MOTION FOR PARTIAL SUMMARY**
4 **JUDGMENT ON PUNITIVE DAMAGES IS DENIED WITHOUT PREJUDICE AS**
5 **MOOT BECAUSE THE COURT DISMISSED PLAINTIFF'S COMPLAINT.**

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

7 
8 **DISTRICT COURT JUDGE**
9 

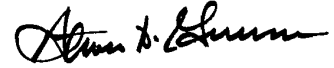
10 *Respectfully Submitted by:*
11 **MORAN BRANDON BENDAUID MORAN**

12 **LEW BRANDON, JR., ESQ.**
13 Nevada Bar No. 5880
14 **JUSTIN W. SMERBER, ESQ.**
15 Nevada Bar No. 10761
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20 lbrandon@moranlawfirm.com
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CLERK OF THE COURT

1 **NEOJ**
2 **LEW BRANDON, JR., ESQ.**
Nevada Bar No.: 5880
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7 *l.brandon@moranlawfirm.com*
Attorneys for Defendant,
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9 PALMS CASINO RESORT

10 **ROBERT L. EISENBERG, ESQ.**
Nevada Bar No. 0950
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12 Reno, Nevada 89519
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Facsimile: (775) 786-9716
14 *rle@lge.net*
Attorneys for Defendant,
15 FIESTA PALMS, LLC d/b/a
16 PALMS CASINO RESORT

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

19 ENRIQUE RODRIGUEZ, an individual,

20 Plaintiff,

21 v.

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

26 Defendants.

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

NOTICE OF ENTRY OF ORDER



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BENDAVID MORAN
ATTORNEYS AT LAW

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LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 **NOTICE OF ENTRY OF ORDER**

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

6 A filed copy is attached hereto.

7 DATED this 21 day of April, 2016.

8 MORAN BRANDON BENDAVID MORAN

9
10 
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,

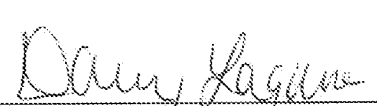
18 FIESTA PALMS, LLC d/b/a

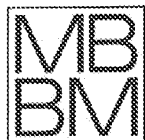
19 PALMS CASINO RESORT

20 **CERTIFICATE OF MAILING**

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

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

29 
30 An Employee of Moran Brandon Bendavid Moran



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CLERK OF THE COURT

1 **ORDG**
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 lbrandon@moranlawfirm.com
Attorneys for Defendant,
6 **FIESTA PALMS, LLC d/b/a**
PALMS CASINO RESORT

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

9 **ENRIQUE RODRIGUEZ, an individual,**

10 **Plaintiff,**

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

11 **v.**

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

14 **Defendants**

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

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

☐ Summary Judgment
☐ Disputed Judgment
☐ Default Judgment
☐ Judgment of Adjudication
☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☒ Motion to Dismiss by Defendant



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BENDAVID MORAN
ATTORNEYS AT LAW

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APR 14 2016

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

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

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IT IS FURTHER ORDERED that the following dates be vacated:

- 1. Calendar Call – April 27, 2016 at 8:30 a.m.; and
- 2. Trial – May 2, 2016 at 10:30 a.m.

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

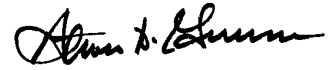

DISTRICT COURT JUDGE

Respectfully Submitted by:
MORAN BRANDON BENDAVID MORAN

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Nevada Bar No. 5880
JUSTIN W. SMERBER, ESQ.
Nevada Bar No. 10761
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CLERK OF THE COURT

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10191 Park Run Drive Suite 110
Las Vegas, NV 89145
Tel: (702) 243-1930
Fax: (760) 479-0081
SelikLaw@aol.com
Attorney for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Enrique Rodriguez
Plaintiff,

CASE NO. A531538
DEPT. NO. 15

v.

PLAINTIFF'S SUBSTITUTION OF
ATTORNEY

Fiesta Palms LLC
Defendants.

DATE:
TIME:
LOCATION:
DATE CASE FILED: 11/15/2006
Supreme Court No.: 59630
Remand: 11/04/2014

PLAINTIFF'S SUBSTITUTION OF ATTORNEY

Plaintiff, Enrique Rodriguez, hereby substitutes Joel Selik, as his attorney, for the purposes of
a Motion to Set Aside Dismissal and other order, only.

I authorize this limited substitution of Joel Selik as my attorney for this one matter.

Dated: October 12, 2016

See Signature on following page

By _____
ENRIQUE RODRIGUEZ

I consent to to act as attorney for Plaintiff in this limited matter.

Dated: October 12, 2016


JOEL SELIK

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6 SelikLaw@aol.com
7 Attorney for Plaintiff

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Enrique Rodriguez
Plaintiff,

v.

Fiesta Palms LLC
Defendants.

CASE NO. A531538
DEPT. NO. 15

PLAINTIFF'S SUBSTITUTION OF ATTORNEY

DATE:
TIME:
LOCATION:
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Supreme Court No.: 59630
Remand: 11/04/2014

PLAINTIFF'S SUBSTITUTION OF ATTORNEY

Plaintiff, Enrique Rodriguez, hereby substitutes Joel Selik, as his attorney, for the purposes of a Motion to Set Aside Dismissal and other order, only.

I authorize this limited substitution of Joel Selik as my attorney for this one matter.

Dated: October 11, 2016

By 
ENRIQUE RODRIGUEZ

I consent to to act as attorney for Plaintiff in this limited matter.

Dated: October 11, 2016

JOEL SELIK

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CERTIFICATE OF SERVICE BY COURT SERVICE
CASE NUMBER: DISTRICT COURT, COUNTY OF CLARK A531538

I hereby certify that I am an employee/agent of JOEL G. SELIK, ESQ, and that on the October 14, 2016 I caused to be SERVED BY USE OF THE COURT'S SERVICE SYSTEM, a true and correct copy of the accompanying LIMITED SUBSTITUTION OF ATTORNEY OF JOEL SELIK IN PLACE OF PRO PER PLAINTIFF, ENRIQUE RODRIGUEZ, to the following:

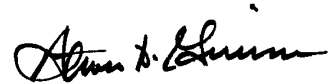
LEW BRANDON, JR., ESQ.
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PALMS CASINO RESORT
Attorneys for Defendant,
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Attorneys for Defendant,
FIESTA PALMS, LLC d/b/a
PALMS CASINO RESORT

October 14, 2016



Employee of JOEL SELIK, ESQ.



CLERK OF THE COURT

0001
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Joel@SelikLaw.com
Attorney for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Enrique Rodriguez
Plaintiff,

v.

Fiesta Palms LLC
Defendants.

CASE NO. A531538
DEPT. NO. 15

MOTION FOR RELIEF-NRCP 60

DATE:
TIME:

DATE CASE FILED: 11/15/2006
Supreme Court No.: 59630
Remand: 11/04/2014

MOTION FOR RELIEF – NRCP 60

Plaintiff, Enrique Rodriguez, requests the Court issue an Order providing relief from Plaintiff's excusable neglect, mistake and or inadvertence, and other grounds of NRCP 60, and in particular NRCP 60(b), setting aside the dismissal in this matter and the order on motions in limine, placing the case back on the civil active list, providing discovery cutoff, pre-trial and trial dates, based on NRCP 60, the files in this matter, the below memorandum of points & authorities, the declaration(s) filed herewith, and such argument as the Court may accept on any hearing, and any other evidence the Court deems proper.

///

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Email: SelikLaw@aol.com

1 REQUEST FOR JUDICIAL NOTICE: Plaintiff requests all the pleadings and papers in the
2 Court's file be judicially noticed, and, specifically, portions of the record, attached hereto as
3 Exhibits. [Plaintiff had the entire Court file from June 15, 2016 to the end, copied, and then Bates-
4 stamped this case. The bates-stamped page numbers are used for clarity. This document is 614
5 pages, and will be provided to the department and to defendant and can be accessed via Dropbox at
6 this link (to an ocr version and original version):

7 <https://www.dropbox.com/sh/4lcac1it5k3b595/AAAXJwsG9ZoW0qD0siJNddJJa?dl=0>

8 The Exhibit list is on the last page of this brief.

9 Dated: October 14, 2016

10 
11 _____
12 JOEL SELIK

13 **NOTICE OF MOTION**

14 TO: Defendants, and any other interested parties;

15 TAKE NOTICE: Please take notice that the hearing on Plaintiff's **MOTION FOR**

16 **RELIEF UNDER NRCP 60**, will be heard as follows:

17 _____ 15th _____ day of _____ November _____, 2016, At the hour of _____ 9:00 _____ A . M,

18
19 Before the Eighth Judicial District Court in Department XV, or such other time as the Court
20 determines.

21 Dated: October 14, 2016

22 
23 _____
24 JOEL SELIK

25 ///

SELIK LAW OFFICES
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1 MEMORANDUM OF POINTS & AUTHORITIES
2 IN SUPPORT OF PLAINTIFF'S MOTION FOR RELIEF

3 SUMMARY OF MOTION

4 Plaintiff, Enrique (Henry) Rodrigreuz, was awarded a judgment over \$6,000,000 in a
5 bench trial, that was overturned on appeal on the grounds that defendant's expert on safety
6 issues was not allowed to testify.
7

8 Plaintiff's original trial and appeal attorneys withdrew from representing him, and the
9 several other attorneys he hired, (including Paul Padda, April Bonnafatto, and others) did
10 quite limited work.
11

12 This ended up in Motions in Limine being granted that eviscerated Mr. Rodgrigez
13 case. And further ended up in Plaintiff not being advised of the trial date, and Plaintiff failing
14 to appear for several dates, which cumlinated in the granting of defendant's motion to
15 dismiss.
16

17 Plaintiff, here, requests the Court to grant NRCP 60 relief, vacating the dismissal and
18 setting aside the granting of the motions in limine as Plaintiff's inactions, and failure to
19 understand are excusable negect, inadvertence, and mistake of Plaintiff, under NRCP 60.
20 Further, the record does not show that Mr. Rodriguez was given notice of the trial setting,
21 and related dates, so that he could not comply with those requirements, and the Motion to
22 Withdraw by his last attorney, Paul Padda, failed to have any dates whatsoever, advising Mr.
23 Rodriguez, and Padda failed to notify Mr. Rodriguez of the trial dates.
24

25 Plaintiff is seeking relief, not for anything defendants did, but for his own excusable
26 neglect or mistake (and that of Plaintiff's attorneys). It should be said at the outset, that
27
28

1 defendants have not done anything wrong in regards to this matter, and this request is an
2 imposition on them, but that fairness to the judicial system, and supporting the general policy
3 of cases being determined on their merits, allow this Court to grant this relief.
4

5 6 **INTRODUCTION**

7 In support of Plaintiff's request for relief from his (and his attorneys' errors), Plaintiff
8 submits the following facts that weigh in favor of vacating the dismissal of the trial date.

9 PADDA REMAINED PLAINTIFF'S COUNSEL UNTIL AFTER FEBRUARY 16, 2016:
10 Exhibit 1, Padda's Notice of Filing Order Granting Withdrawal of Plaintiff's Counsel was served on
11 Mr. Rodriguez on February 16, 2016 by way of mail. Exhibit 1, pages 67-68. Therefore, Padda
12 continued to be counsel for Rodriguez until at least February 16, 2016 (plus 3 days).

13 NOTICE OF TRIAL SETTING: On February 9, 2016, the Court set the the trial and related
14 dates; the Clerk's certificate of service states it was emailed to Padda and defendant's counsel, and
15 mailed to Mr. Rodriguez. Exhibit 2, Order. Exhibit 3, Minute order. This trial setting notice was
16 mailed at that time, Mr. Rodriguez was still represented by Padda, and notice to the Plaintiff directly
17 is ineffective. As long as Padda was still attorney of record for Rodriguez, Rodriguez was to obtain
18 dates and information from his attorney only; the Court's mailing is a nullity. And Padda never
19 informed Rodriguez of the trial dates.

20 MOTION TO WITHDRAW: In Padda's motion to withdraw, no dates, deadlines or
21 requirements were provided to Rodriguez. See Exhibit 4, Motion to Withdraw. There is no
22 evidence that Padda ever gave the trial dates, and, as shown in Mr. Rodriguez' declaration, he had
23 no notice of the trial and trial related dates, or he would have at least appeared.

24 MOTION TO DISMISS: Exhibit 6, pages 72-79. Defendant moved to dismiss the case on
25 March 7, 2016 (hearing date April 14, 2016) on the grounds "Specifically, Plaintiff has failed to
26 comply with EDCR 2.67, EDCR 2.68, NRCP 16 and NRCP 16.1." Motion, p.4 14-15, see also, p.2
27 5-6). Defendant pointed out that Plaintiff did not 1. Initiate a pre-trial memorandum meeting in
28

1 advance of the May 3, 2016 trial date (Motion Dismiss p.3-4); failure to attend the pre-trial
2 conference, of February 1, 2016 set by the Trial Setting Notice (Motion Dismiss p.4-5) or the April
3 11, 2016 continued pre-trial conference, and failure to make pre-trial disclosures, (Motion Dismiss
4 p.5-8). Each of these dates was tied to, and initiated, by the Court's Sixth Amended Order Setting
5 Civil Jury Trial for May 2, 2016, which was served by the Court at a time when Padda was still
6 counsel of record. At no time did Padda give notice of these dates or requirements to Plaintiff; no
7 dates appeared, whatsoever, in Padda's motion to withdraw, as would have been prudent, if not
8 actually required. [EDCR 7.40 does not specifically require this be in the motion, but the attorney
9 has a duty to provide the dates to the client]. The only indication that Plaintiff was given notice of
10 the trial and trial related dates is the proof of service by the Court clerk, which as done at a time
11 when Plaintiff was still represented by Padda. Exhibits 2 & 3, see also Notice of Order to Plaintiff of
12 Padda withdrawal, Exhibit 1, p. 67-71, February 16, 2016. Therefore, technically, Plaintiff was
13 never given proper notice of the trial dates, and, thus could not comply with the requirements of
14 those trial dates.¹

15 STATEMENT OF THE CASE/TIMELINE²

16 Plaintiff suffered serious injuries when he was watching a sporting event (and not drinking)
17 at a casino-bar when the bar's entertainers threw t-shirts into the middle of a crowd, and a patron,
18 diving for the t-shirt and ran into Plaintiff, causing severe injuries.
19

20 On a bench trial, the court found that defendant owed a duty to Plaintiff and rendered a
21 decision in favor of Plaintiff for over \$6,000,000 of damages. The case was appealed, and on June
22

23
24
25 ¹ Plaintiff admits that the notice issue may be a technicality (although an important technicality), in light of Plaintiff's
26 limitations and mistakes/inadvertence, excusable neglect, it is requested the Court provide the discretionary relief
27 requested).

28 ² This is not meant to be an exhaustive recitation of the history of this case, and all plethora of motions, but a general
background and history relevant to this motion.

1 5, 2014 the Nevada Supreme Court granted a new trial due to evidentiary error of not allowing
2 defendant's safety expert to testify.

3 After remand from the Supreme Court, Plaintiff's trial counsel filed a motion to withdraw,
4 which was granted December 9, 2015. Plaintiff hired new counsel, Paul Padda. Defendants were
5 granted an Order to allow a trial by jury.

6 On June 23, 2015 the Court set this matter for trial for December 14, 2015. On September
7 28, 2015, this trial date was continued to February 22, 2016 on the request of defendant.

8 On January 20, 2016, Plaintiff's attorney Paul Padda filed a motion to withdraw, on short
9 notice. The reason for his withdrawal, per his declaration, that he could not afford to take this matter
10 to trial, thus abandoning Plaintiff (see also Court's minute order of 2/1/16, showing abandonment by
11 Padda prior to the granting of the motion to withdraw). The motion to withdraw was granted on
12 February 9, 2016 (the Court's minute order states the clerk is to email the minute order to Attorney
13 Padda and the attorney for defendant, Plaintiff was not served with the minute order). The Order
14 granting the Motion to Withdraw was not served until it was mailed to Plaintiff on February 16,
15 2016.

16 On February 1, 2016, a pre-trial conference was held, which Plaintiff's attorney Padda failed
17 to appear. The Court set a new trial date for May 2, 2016. The clerk's proof of service shows that
18 the Order on the new trial dates was emailed to Padda (who was still Plaintiff's attorney), to
19 defendant's attorney, and mailed to Plaintiff (at the time this was to have been mailed, Plaintiff was
20 represented by attorney Padda). Exhibit 2.

21 On February 16, 2016, Padda gave notice of the order granting his withdrawal as counsel.
22 Exhibit 1. This Notice, as well as the Motion to Withdraw, Exhibit 4, does not state the trial dates,
23 and there is no evidence that Padda ever advised Rodriguez of the trial dates. There is no evidence
24 that anyone ever advised Rodriguez of the trial dates after the order granting Padda's withdrawal.

25 Defendant then filed the Motion to Dismiss for failure to attend to the requirements of the
26 trial date and related dates on March 7, 2016. Exhibit 6.

1 April 7, 2016, defendant's motions in limine were granted as unopposed. Order, Exhibit 7.
2 The motions were served on Plaintiff by mail on March 7, 2016, per the proofs of service (e.g. p.
3 561). Exhibit 8. The Notice of Entry of Order was served, by mail, on April 15, 2016 (p. 594-600),
4 Exhibit 7.

5 On April 14, 2016, Mr. Rodriguez appeared and requested a continuance, and stated he was
6 under the understanding an attorney would appear with him. The Court granted the Motion to in
7 Limine (p.587-591). Notice of Entry of Order. Exhibit 7. This motion is filed, on, or before, 6
8 months from that notice.

9 On April 21, 2016, defendant served Plaintiff, by Mail, the Notice of Entry of the Order
10 dismissing the case. Exhibit 9. This motion is filed on, or before, 6 months from that notice.

11 **STANDARDS & BURDENS**

12 "District Judges are afforded broad discretion in ruling on NRCP 60(b) Motions." *Kahn v*
13 *Orme* (1992) 835 P.2d 790, 792 108 Nev. 510, 513; *Stoecklein v. Johnson Elec, Inc.* (1993) 109
14 Nev. 268, 271, 849 P.2d 305, 307.

15 The District Court is to consider "several factors as provided in *Yochum v. Davis*, 98 Nev.
16 484, 653 P.2d 1215 (1982)." *Kahn v Orme* (1992) 835 P.2d 790, 792 108 Nev. 510, 513. These
17 factors include:

- 18 (1) a prompt application to remove the judgment;
- 19 (2) the absence of an intent to delay the proceedings;
- 20 (3) a lack of knowledge of procedural requirements; and
- 21 (4) good faith.

22 (5) "'the court must give due consideration to the state's underlying basic policy of resolving
23 cases on their merits whenever possible.'" *Yochum*, 98 Nev. at 487, 653 P.2d at 1217.'" *Kahn v*
24 *Orme* at 792-293.

25 As shown in the remainder of this brief, all of the considerations weigh in favor of granting Henry
26 Rodriguez' Motion for Relief.

1 The burden lies with the party making the application for NRCP 60 relief, by a preponderance
2 of the evidence. .” *Kahn v Orme* at 793.

3 The Court has wide discretion in determining what is excusable or inexcusable neglect . *Id* at
4 794. However, this legal discretion cannot be sustained where there is no competent evidence to
5 justify the court's action. *Stoecklein v. Johnson Electric, Inc.*, 849 P.2d at 307.

6 On appeal, the appellate court uses the “abuse of discretion” standard of review. *Britz v.*
7 *Consol. Casinos Corp.*, (1971) 87 Nev. 441, 445, 488 P.2d 911, 914-15.

8 “[T]he general observation may be made that an appellate court is more likely to affirm a
9 lower court ruling setting aside a default judgment than it is to affirm a refusal to do so. In the
10 former case a trial upon the merits is assured, whereas in the latter it is denied forever. *Hotel Last*
11 *Frontier Corp. v. Frontier Properties, Inc.*, (1963) 79 Nev. 150, 155-156, 380 P.2d 293, 294.
12 evidence of Plaintiff being given legal notice of the trial date, the order dismissing the case based on
13 those dates is void or voidable. [The only evidence of notice being given to Plaintiff, is the clerk’s
14 mailing of the order setting the trial dates, but this was done at a time Rodriguez was represented by
15 Padda, and, therefore, such notice is a nullity].

16 SUMMARY OF ARGUMENT

17 Plaintiff requests that he be given relief from his mistake or excusable neglect in not getting
18 an attorney who would represent him at the trial related hearings, and fulfill the trial related
19 requirements. The neglect is excusable because 1. As a non-attorney, he simply could not
20 understand what was required of him, 2. He obtained new attorneys, but they withdrew, 3. He
21 attempted, over and over, to obtain a new attorney but could not find one to take on the case with
22 an immediate trial date, and, then, with major motions pending, 4. He was not properly served or
23 provided the trial related dates, 5. His attorneys failed to advise him of the trial related dates, and 5.
24 Justice calls that the matter be determined on its merits.

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**NEVADA RULE OF CIVIL PROCEDURE 60 RECOGNIZES
THE JUST AND HUMANE IDEA OF PROVIDING RELIEF
FOR EXCUSABLE NEGLIGENCE MISTAKES AND INADVERTENCE**

NRCP allows a party relief from their own mistakes, inadvertence, surprise, excusable neglect and other reasons. NRCP 60 provides in relevant part:

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(b) **Mistakes; Inadvertence; Excusable Neglect;** Newly Discovered Evidence; Fraud, **Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served., and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. [Emphasis added].

**PLAINTIFF HAD AN ATTORNEY FOR 12 YEARS ON THIS CASE,
HIRED ANOTHER ATTORNEY WHEN THE FIRST ATTORNEY
WAS WITHDRAWING, AND HIRED OTHER ATTORNEYS WHEN
THAT ATTORNEY WAS TO WITHDRAW, AND WAS ONLY NEGLECTFUL
FOR A SHORT PERIOD OF THIS DECADES LONG CASE,
THEREFORE THESE FACTS AND THE FACTORS FOR A NRCP 60(b) MOTION
WEIGH IN FAVOR OF THE COURT GRANTING RELIEF & SETTING ASIDE
THE DISMISSAL AND GRANTING OF MOTIONS IN LIMINE**

Hiring an attorney is often hard. To many it may seem, there are many attorneys, and if you have a good case, then getting an attorney, and getting an attorney quickly, is easy. That is, simply, not always the case. When a case goes through litigation, or was already handled (and possibly screwed up) by the prior attorney, let alone several prior attorneys,³ new attorneys are very wary of taking on the case. For a Plaintiff who must, very quickly, hire an attorney, it is not at all simple.

³ None of the prior attorneys withdrew having anything to do with Mr. Rodriguez, but withdrew for reasons of their own.

1 In the case at bar, Plaintiff had Benson, Bertolda, Baker & Carter, Steve Baker had been
2 attorneys on this case for over ten years. When Mr. Baker suddenly left the case, Mr. Rodriguez had
3 to very quickly get another attorney.

4 Rodriguez was able to secure the services of attorney Paul Padda, who was to take this case
5 to trial (with the assistance of a well known Las Vegas Trial Attorney). When, suddenly, Padda
6 decided he could not settle the case and could not afford to take this case to trial, Rodriguez
7 immediately began the the search for another attorney. He secured the services of Las Vegas
8 attorney, April Bonifatto. Apparently, Mr. Rodriguez misunderstood the nature of Ms. Bonifatto's
9 representation. Mr. Rodriguez thought that Ms. Bonifatto and another attorney (possibly her partner
10 and or husband) would be taking the case to trial. When Ms. Bonifatto could not settle the case, she
11 withdrew from representing Mr. Rodriguez, and did so with no notice. Again, immediately, Mr.
12 Rodriguez began the search for another attorney. He spoke to many attorneys, but, as you can
13 imagine, with a case that has gone through three attorneys already, and two just in the past few
14 months, a looming trial date, it was very difficult to get another attorney. No attorney would take on
15 a big case, with a trial date in just a few months. And then, when there were huge Motions in
16 Limine, and then added a Motion to Dismiss, Mr. Rodriguez found it impossible to find an attorney
17 to handle the case.

18 THE STANDARDS: As cited in the Standards and Burdens section, above, the following
19 elements are to be considered in applying NRCP 60(b):

- 20 (1) a prompt application to remove the judgment;
21 (2) the absence of an intent to delay the proceedings;
22 (3) a lack of knowledge of procedural requirements; and
23 (4) good faith.
24 (5) "the court must give due consideration to the state's underlying basic policy
25 of resolving cases on their merits whenever possible." [Citations omitted].
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1 **1. PROMPT APPLICATION TO REMOVE THE JUDGMENT:**

2 Henry Rodriguez files this motion for relief on the cusp of the six-month time limitation. In
3 *Estate of Herrmann*, (1984) 677 P.2d 594, 100 Nev. 1, the Court indications that the six month time
4 period is time allotted by NRCP 60, and thus, the party has that full six months:

5 Perhaps most important, our court rules expressly allowed Herrmann six full months
6 in which to file a motion to vacate Waters' order, if indeed he believed it had been
7 entered through "mistake, inadvertence, surprise or excusable neglect. *Estate of*
8 *Herrmann*, 677 P.2d at 611.

9 Other cases discuss the 6-month period as the extreme limits of reasonableness. *Union*
10 *Petrochemical Corp. of Nev. v. Scott*, (1980) 96 Nev. 337, 339, 609 P.2d 323, 324 (quoting *Murphy*
11 *v. Bocchio*, 338 A.2d 519, 523 (R.I. 1975). In any event, the time period in which Henry files this
12 motion for relief is reasonable and timely.

13 Just as it was difficult for Henry to obtain counsel to take over his case after he was dropped
14 by, first Padda, and then Bonifatto, it was even more difficult to find an attorney who was willing to
15 come in and try to get Orders already entered overturned. Additionally, it took time for Rodriguez
16 to gather the funds, get the Court case filed, have an attorney go through the file, attempt to obtain
17 other documentation, and to prepare this motion.

18 Additionally, defendants cannot point to any reasonable prejudice to defendants. This case
19 has been going on for ten years, defendants were prepared to face a trial just earlier this year. In the
20 scheme of this case, 6 months out of 120 months of this case proceedings, is a short period of time.

21 Plaintiff has acted as promptly as any average person could have. This factor weighs in
22 favor of granting Plaintiff's motion for relief.

23 **2. ABSENCE OF INTENT TO DELAY THE PROCEEDINGS:** Rodriguez has
24 absolutely no reason to make this matter last any longer. The faster the orders are vacated, the faster
25 he can get to a trial and attempt to get a judgment, once again.

26 **3. LACK OF KNOWLEDGE OF PROCEDURE REQUIREMENTS:** Not only does
27 Rodriguez, a non-lawyer, have no knowledge of procedural requirements, he has trouble handling
28

1 his day to day matters, bathing, bowel and bladder care, appointments, take medicines. See the
2 declarations of Maria Perez, and Enrique Rodriguez, filed as part of this motion.

3 Henry Rodriguez did the best he could to find a lawyer to handle this matter. He obtained
4 Paul Padda, and then, after Padda filed the motion to withdraw, he hired April Bonifatta. He knew
5 he needed a lawyer to help him figure out dates, requirements and various filing requirements.

6 Although the Court advised him that there were procedural requirements, there was nothing
7 he could have done differently than he did—he attempted to find an attorney as he had no way to do
8 any of the requirements himself. If he had several more months, he could have found an attorney, for
9 example, Selik, to take on this case, get it ready for trial, attempt to overcome the problems created
10 by prior counsel, and pick up the balls dropped by prior counsel.

11 Henry Rodriguez was unable to find an attorney to take over for Padda and Bonifatto. He
12 was unable to file an attorney who would be able to oppose motions in limine, bring a motion for
13 additinoal time to fix discovery and expert problems, or to oppose the motion to dismiss. Perhaps if
14 he was a man of finnacial means he could have hired an attorney, and paid \$50,000-\$100,000 for an
15 attorney to drop everything and immediately devote the attorney’s entire practice to this one matter.
16 Unfortunately, Mr. Rodriguez simply did not have such means.

17 This factor, lack of procedural requiremens weigh in favor of granting Plaintiff’s motion for
18 relief.

19 **4. GOOD FAITH:** On this point, Rodriguez actions are clear. He has no reason for delay,
20 he has no reason that he would not have obtained an attorney if he could have in the small window
21 of a few months. The case had been going on ten years (even more from the time of incident);
22 Rodriguez had attorneys the entire time. It was only during “crunch time” when his attorneys
23 abandoned him, and he could not find an attorney to take on this case, that he was unable to comply
24 with the requirements. For ten years Plaintiff complied, but only in the last couple of months, when
25 he needed an attorney to take on the case about to go to trial that he did not have and could not get
26 counsel.