

CLERK OF THE COURT

1 ACOM
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3 Nevada Bar No. 10845
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9 *Attorney for Plaintiff*

**DISTRICT COURT
CLARK COUNTY NEVADA**

10 IRWIN GONOR,
11 Plaintiff,
12 vs.

CASE NO.: A653755
DEPT. NO.: 19

THIRD AMENDED COMPLAINT

13 RICHARD J. DALE, individually; KELLY MAYER,
14 individually; RICK'S RESTORATIONS, INC., a
15 Nevada Corporation; KIKI T's LLC, a Nevada
16 Limited Liability Company; MAKING HISTORY
17 LLC, a Nevada Limited Liability Company;
18 BOOKIN' IT LLC, a Nevada Limited Liability
19 Company; DOES 1-100; and ROE CORPORATIONS
20 1-100,
21 Defendants.

22 NOW COMES Plaintiff IRWIN GONOR, and for his Third Amended Complaint against
23 Defendants, pleads as follows:

THE PARTIES

- 24 1. Plaintiff is a resident of the Clark County, Nevada.
- 25 2. Defendant, Richard J. Dale ("Dale") is a resident of the County of Clark, State of Nevada.
- 26 3. Upon information and belief, Defendant Dale operates a restoration business in Las Vegas and stars in
27 a reality television program airing on the History Channel entitled "American Restoration."
- 28 4. Defendant, Kelly Mayer ("Mayer"), is a resident of the County of Clark, State of Nevada. Mayer has
married Richard Dale and her legal name is now Kelly Dale.
5. Defendant, Rick's Restorations, Inc. ("Restorations") is a Nevada Corporation with its principal place
of business in Clark County, Nevada.
6. Defendant, Kiki T's LLC ("KIKI T'S") is a Nevada Limited Liability Company with its principal place
of business in Clark County, Nevada.

1 7. Defendant, MAKING HISTORY LLC (“MAKING HISTORY”) is a Nevada Limited Liability
2 Company with its principal place of business in Clark County, Nevada.

3 8. Defendant, BOOKIN’ IT LLC (“BOOKIN’ IT”) is a Nevada Limited Liability Company with its
4 principal place of business in Clark County, Nevada.

5 9. Upon information and belief, Dale, Mayer, Restorations, Kiki T’s, Making History and Bookin’ It are
6 responsible for the conduct of one another.

7 10. Upon information and belief, dale, Mayer, Restorations, Kiki T’s, Making History and Bookin’ It are
8 agents and representatives of one another with respect to their dealings with Plaintiff.

9 11. Upon information and belief, Plaintiff alleges that at all relevant times, Defendants Dale and Mayer
10 were employees and officers of Defendants Restorations, Kiki T’s, Making History and Bookin’ It.

11 12. Upon information and belief, Plaintiff further alleges that all acts committed by Defendants Dale and
12 Mayer as alleged in this Third Amended Complaint were committed within the scope of their employment
13 with Restorations and while under the control of Defendant Restorations, Kiki T’s, Making History and
14 Bookin’ It.

15 13. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants
16 herein designated as DOES I through V, inclusive, are unknown to Plaintiff at this time, who therefore sues
17 said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of
18 said Defendants are responsible in some manner for the events and happenings and proximately caused the
19 injuries and damages herein alleged. Plaintiff will seek leave to amend this Complaint to allege their true
20 names and capacities as they are ascertained.

21 14. Plaintiff may seek leave of this Court to Amend this Amended Complaint to insert the true names and
22 capacities of said fictitiously named Defendants DOE 1 through DOE 100, inclusive, and/or ROE
23 CORPORATION 1 through ROE CORPORATIONS 100, inclusive, when same have been ascertained by
24 Plaintiff, together with the appropriate charging allegations, to join such Defendants in this action.

25 15. Plaintiff is informed and believes, and thereby alleges, that at all relevant times to this action, each
26 Defendant was the agent, partner, representative, employee, and/or joint venturer of the remaining
27 Defendants, and at all relevant times mentioned herein was, acting within the course and scope of such
28 agency, partnership, representation, employment and/or joint venture. Plaintiff is further informed and

1 believes, and thereby alleges, that the acts and conduct alleged herein concerning each of the Defendants
2 was known to, authorized by, and/or ratified by the other Defendants, and each of them.

3 **JURISDICTION AND VENUE**

4 16. The events giving rise to Plaintiff's Amended Complaint occurred in Clark County, Nevada.

5 17. The damages suffered were in Clark County, Nevada.

6 18. Defendants' actions were directed at Clark County, Nevada.

7 19. This Court also has jurisdiction in this matter because, as set forth more fully herein, and at all times
8 relevant hereto, Defendants, and each of them, were doing business in Clark County Nevada or purposefully
9 availing themselves to Clark County, Nevada.

10 20. The amount in controversy is in excess of \$10,000.00.
11

12 **FACTUAL ALLEGATIONS**

13 21. Plaintiff is in show business. He has successfully undertaken various services for his clients such as:
14 consulting, managing, advising, producing, counseling, handling the day-to-day business and marketing, as
15 well as discussing options for long-term plans and career paths that would affect Defendant Dale's career,
16 and promoting. Among others, Plaintiff has produced successful shows on the Las Vegas Strip and in
17 Downtown Las Vegas.

18 22. Defendant Dale achieved celebrity status through appearances on the noted reality series known as
19 Pawn Stars, and is now featured in the television production of American Restoration shown on the History
20 Channel internationally. American Restoration is currently in its 5th season. Both shows referenced are
21 based in Las Vegas.

22 23. Plaintiff was first introduced to Defendants Dale and Mayer, via representatives from Leftfield
23 Pictures, in conjunction with their work with another reality television show, Pawn Stars.

24 24. Plaintiff was approached about getting involved in American Restorations and if Plaintiff had any
25 clients to feature items on the show.

26 25. After speaking with Defendant Dale, Defendant Dale asked if Plaintiff would be willing to assist
27 Defendant Dale and Defendant Mayer with issues they were having with the show and requested that
28 Plaintiff meet with Defendant Mayer.

1 26. Plaintiff met with Defendant Mayer, and she expressed her desire to have a “hands on” manager that
2 would be an active part of the business to allow Defendant Dale to run Defendant Restorations.

3 27. Defendants Dale, Mayer, and Restorations made oral representations to Plaintiff regarding his
4 management services, including specific commissions for services rendered. These representations
5 constituted an oral agreement for management services for commissions to be paid on a percentage basis.

6 28. Plaintiff began rendering management services to Defendants Dale and Mayer immediately pursuant to
7 the oral agreement between the parties. These services included consulting, managing, advising, producing,
8 promoting, and providing clerical staff to Defendants.

9 29. In furtherance of their oral agreement for management services, Plaintiff entered into a written agency
10 agreement with Defendants Dale and Mayer (acting in partnership) and Defendant Restorations to be
11 Defendant Dale’s manager as well as undertake responsibilities for Defendant Restorations. This written
12 agreement confirms the oral representations made by the Defendants. A true and accurate copy of this
13 agreement is attached hereto as Exhibit “1.” Under this agreement, and pursuant to common industry
14 standards and practices, the parties agreed that Plaintiff would provide management services to Defendants
15 Dale and Mayer in consideration for the following:

- 16 “1. 15% commission for any appearance booked for Rick.
17 2. In regards to the Contract with History (A&E), we agree to pay you a mutually agreed
18 amount for Season 3 if involved in the negotiations
19 3. We agree to pay you 5% for the customers that you bring that purchases a machine at
20 list price
21 4. We agree to pay you 10% commission of Merchandise sales (t-shirts, hats, magnets,
22 key chains, glassware, flashlights) on a weekly basis for generating revenue”

23 30. In return, the Dale Defendants asked that Plaintiff:

- 24 1. Have daily discussions with Defendants Dale and Mayer;
25 2. Respect the Dale defendants and not bring anyone to the office without an appointment;
26 3. Check with Defendants’ Dale and Mayer’s schedules before committing to any
27 appearances;
28 4. Allow for all business decisions to be executed by Defendant Mayer;

1 5. Handle all issues with Leftfield Pictures and Rick's Restorations.

2 31. Following execution and delivery of the Agreement, Plaintiff continued working consistent with the
3 terms of the agreement and entertainment industry standards, even receiving some partial payment for
4 services performed under the agreement and pursuant to the agreement. These services included
5 consulting, managing, advising, producing, promoting, and supplying clerical staff to Defendants.

6 32. Upon information and belief, Defendants Dale, Mayer and Restorations understood and agreed that
7 the Agreement would be governed by the customs and practices of the entertainment industry, including
8 those customs and practices concerning Defendants Dale, Mayer and Restorations obligation to
9 compensate Plaintiff.

10 33. In 2010 and 2011, Defendants Dale and Restorations were previously represented by United Talent
11 Agency ("UTA"). Dale and Restorations continued to pay post-termination commissions on their
12 applicable revenue – approximately \$183,000 through 2013.

13 34. Although performance was undertaken by the parties, the parties were working on a more formal
14 agreement. This was not to vary the agreement or otherwise supplant the agreement.

15 35. Defendants informed Plaintiff and, in reliance upon these statements, Plaintiff believed that
16 Defendant Dale's attorney was drafting the formalized embodiment of the extant agreement between
17 Plaintiff and Defendants Dale, Mayer and Restorations when in fact, they knew their attorney was not
18 drafting such an agreement.

19 36. On September 27, 2011, Mayer wrote out a list of proposed modifications that she wanted to
20 Plaintiff's agreement.

21 37. While plaintiff was working under the oral representations and agency agreement, Dale, Mayer and
22 Restorations were harboring a secret intent to never provide Plaintiff the compensation benefits enumerated
23 in the oral agreement and further corroborated in the e-mailed agency agreement.

24 38. In fact, Defendants Dale, Mayer, and Restorations secretly determined not to hire Plaintiff, but did
25 not advise Plaintiff of this, and they continued to direct Plaintiff's actions and request he act on their behalf.

26 39. Prior to termination, the Dale Defendants began soliciting WME to be the agent for Dale, Mayer and
27 Restorations and perform the same or similar management duties as previously negotiated with Plaintiff.
28

1 40. The WME agreement would conflict with the agreement between plaintiff and Dale, Mayer and
2 Restorations.

3 41. During the performance by plaintiff of the Agreement, the Dale Defendants' requested WME call
4 anyone that had an existing agreement with Dale, as arranged by Plaintiff, and in which Plaintiff held a
5 commission interest, in an attempt to upset those agreements.

6 42. Eventually, Dale, Mayer, and Restorations terminated Plaintiff without fairly compensating Plaintiff
7 for the value of his services.

8 43. Dale and Mayer incorporated Kiki T's, Making History and Bookin' It and re-directed certain
9 revenue and intellectual property held by Rick's Restoration to those entities.

10 44. Rick's Restorations Inc. now receives various income including the TV show income; Kiki T's LLC
11 now receives the income for the branded merchandise the defendants sell at their store; Bookin' It LLC for
12 publishing a children's book; Making History LLC receives tour income and re-allocated TV show
13 income.

14 45. There is a complex web of income transfers and loans made back and forth between the Defendants.

15 46. Kiki T's, Making History and Bookin' It did not pay any money for the rights to the revenue or
16 intellectual property transferred from Rick's Restoration.

17 47. Defendants owe Plaintiff monies for his work for them.

18 ***

19 **FIRST CAUSE OF ACTION-BREACH OF TEMPORARY AGENCY AGREEMENT**

20 (Against All Defendants)

21 48. Plaintiff repeats and alleges each and every previous paragraph, as though fully set forth herein.

22 49. Plaintiff had a Temporary Agency Agreement with Defendants Dale and Mayer whereby Plaintiff
23 was to act as Defendants' Dale and Mayer's Manager.

24 50. In further consideration of the promises made by Defendants, Plaintiff commenced providing the
25 services required of him pursuant to the Agreement.

26 51. Plaintiff, on his part, duly performed all the terms and conditions of the Agreement by him to be
27 performed prior to the sudden and abrupt termination.

28 52. Dale and Mayer have terminated plaintiff in violation, of the agreement between them.

1 53. Pursuant to the terms of the Agreement and well-established customs and practices in the
2 entertainment industry, Plaintiff was to continue to receive the commissions owed on merchandising, even
3 in the event Plaintiff was terminated by Defendants Dale, Mayer, and Restorations, so long as the
4 merchandising revenue did not decline during or after Plaintiff was still providing management services to
5 Defendants Dale, Mayer, and Restorations.

6 54. The agreement is a binding, valid and enforceable agreement.

7 55. Among other things, Plaintiff provided career counseling and personal management services to
8 Defendants Dale, Mayer, and Restorations, helping him to achieve fame and becoming a prominent and
9 successful reality television personality.

10 56. Defendants have failed and refused to perform pursuant to the Agreement in that they refuse to pay
11 Plaintiff for the services rendered and future commissions earned pursuant to the terms of the Agreement.

12 57. Plaintiff is informed and believes and thereupon alleges that he detrimentally relied on the promises
13 of Dale, Mayer and Restorations.

14 58. Defendants Dale, Mayer, and Restorations could reasonably foresee that Plaintiff would expect that
15 Defendants Dale, Mayer, and Restorations would pay for the services they had agreed to under the terms of
16 the Agreement. The services provided by Plaintiff benefitted Defendants Dale, Mayer, and Restorations.

17 59. Plaintiff is informed and believes and thereupon alleges that Defendants Dale, Mayer, and
18 Restorations intended to induce action on the part of Plaintiff.

19 60. Defendants Kiki T's, Making History and Bookin' It have received revenue and intellectual property
20 which would have been owned by or paid to Rick's Restoration, received and are in possession of monies
21 owed to Plaintiff.

22 61. By reason of the breach by Defendants, Plaintiff has sustained damages in excess of Ten Thousand
23 Dollars (\$10,000.00).

24 62. It has been necessary to retain the services of legal counsel to prosecute this action, and Plaintiff is
25 entitled to recover its reasonable attorneys' fees and costs of suit incurred herein.

26 **SECOND CAUSE OF ACTION- BREACH OF ORAL AGREEMENT**

27 (Against All Defendants)

28 63. Plaintiff repeats and alleges each and every previous paragraph, as though fully set forth herein.

1 64. Plaintiff had an oral agreement with Defendants Dale and Mayer whereby Plaintiff was to act as
2 Defendants' Dale and Mayer's Manager.

3 65. In further consideration of the oral promises made by Defendants, Plaintiff commenced providing the
4 services required of him pursuant to the oral agreement.

5 66. Plaintiff, on his part, duly performed all the terms and conditions of the oral agreement by him to be
6 performed prior to the sudden and abrupt termination.

7 67. Dale and Mayer have terminated plaintiff in violation of the oral agreement between them.

8 68. Plaintiff is informed and believes and thereupon alleges that he detrimentally relied on the promises
9 of Dale, Mayer and Restorations.

10 69. Defendants Dale, Mayer, and Restorations could reasonably foresee that Plaintiff would expect that
11 Defendants Dale, Mayer, and Restorations would pay for the services they had agreed to under the terms of
12 the oral agreement. The services provided by Plaintiff benefitted Defendants Dale, Mayer, and
13 Restorations.

14 70. Plaintiff is informed and believes and thereupon alleges that Defendants Dale, Mayer, and
15 Restorations intended to induce action on the part of Plaintiff.

16 71. By reason of the breach by Defendants, Plaintiff has sustained damages in excess of Ten Thousand
17 Dollars (\$10,000.00).

18 72. Defendants Kiki T's, Making History and Bookin' It have received revenue and intellectual property
19 which would have been owned by or paid to Rick's Restoration, received and are in possession of monies
20 owed to Plaintiff.

21 73. It has been necessary to retain the services of legal counsel to prosecute this action, and Plaintiff is
22 entitled to recover its reasonable attorneys' fees and costs of suit incurred herein.

23 **THIRD CAUSE OF ACTION- FRAUDULENT/INTENTIONAL MISREPRESENTATION**

24 (Against All Defendants)

25 74. Plaintiff repeats and alleges each and every previous paragraph, as though fully set forth herein.

26 75. Defendants Dale, Mayer, and Restorations made false representations to Plaintiff about his
27 commissions and compensation as represented in oral agreements and the temporary agreement, attached
28 to this Third Amended Complaint at Exhibit "1."

1 76. Defendants Dale, Mayer, and Restorations knew or believed that their representations to pay Plaintiff
2 for commissions, appearances, merchandise, and additional terms of the agreement were false, as explained
3 above.

4 77. With these false misrepresentations, Defendants Dale, Mayer and Restorations intended to induce
5 Plaintiff to act and perform as their manager, pursuant to both oral agreement and the temporary agreement,
6 acting upon these misrepresentations.

7 78. Plaintiff justifiably relied upon Defendant Dale, Mayer and Restoration's representations to his
8 detriment.

9 79. Each Defendant was aware of the acts done by the others as alleged in paragraphs 31 et. seq. And
10 they have accepted the benefits of such wrongful conduct and have, by their acts, ratified that wrongful
11 conduct.

12 80. Defendants Kiki T's, Making History and Bookin' It have received revenue and intellectual property
13 which would have been owned by or paid to Rick's Restoration, received and are in possession of monies
14 owed to Plaintiff.

15 81. As a direct and proximate result of the Defendants' actions in receiving benefit from the services of
16 Plaintiff based upon Defendants' fraudulent misrepresentations, Plaintiff has suffered Damages in an
17 amount in excess of Ten Thousand Dollars (\$10,000.00).

18 82. Defendants are further liable for punitive damages for their fraudulent misrepresentations.

19 83. It has been necessary to retain the services of legal counsel to prosecute this action, and Plaintiff is
20 entitled to recover its reasonable attorneys' fees and costs of suit incurred herein.

21 **FOURTH CAUSE OF ACTION- FRAUDULENT TRANSFER**

22 (Against Defendants Dale, Mayer, and Rick's Restorations)

23 84. Plaintiff repeats and alleges each and every previous paragraph, as though fully set forth herein.

24 85. Plaintiff and Defendants Dale, Mayer, and Restorations were parties to an agreement, oral or
25 otherwise.

26 86. The aforementioned agreement between the parties included a commission payment based on
27 revenues received as described in ¶29.
28

1 87. After Plaintiff filed suit, Dale, Mayer and Restorations transferred certain rights and property of
2 Restorations to Defendants Kiki T's, Making History and Bookin' It.

3 88. Upon information and belief, no reasonably equivalent value was exchanged for these transfers
4 intellectual property and revenue rights.

5 89. These transfers of intellectual property and revenue rights were not recorded in the corporate minutes
6 of Rick's Restorations.

7 90. The transfers intellectual property and revenue rights were done with actual intent to hinder, delay or
8 defraud Plaintiff by hiding substantial revenues from him.

9 91. The transfers left Restorations with insufficient assets to pay the claims of Plaintiff.

10 92. The transfers were executed by the Defendants to entities owned and controlled by the Defendants.

11 93. Dale and Mayer retained possession and control of the intellectual property and revenue rights.

12 94. The transfer of intellectual property and revenue rights was performed after Plaintiff had filed suit
13 against Dale, Mayer and Restorations.

14 95. Restorations removed or concealed assets, and kept the transfer hidden for approximately two years.

15 96. Defendants Kiki T's, Making History and Bookin' It have received revenue and intellectual property
16 which would have been owned by or paid to Rick's Restoration, received and are in possession of monies
17 owed to Plaintiff.

18 97. Defendants Kiki T's, Making History and Bookin' It must be made to pay the damages incurred by
19 the other Defendants attributable to their revenue and property.

20 98. As a direct and proximate result of the Defendants' actions, Plaintiff has suffered Damages in an
21 amount in excess of Ten Thousand Dollars (\$10,000.00).

22 99. The transfer must be avoided to the extent necessary to satisfy Plaintiff's claims.

23 ***

24 WHEREFORE, Plaintiff is entitled to judgment in their favor and against Defendants, jointly and severally,
25 as follows:

26 1. For judgment in an amount in excess of \$10,000.00;

27 2. For all costs and all attorneys' fees incurred and accrued in these proceedings;

28 3. For interest thereon at the legal rate until paid in full;

- 1 4. For avoidance of transfers between the Defendants to the extent necessary to satisfy Plaintiff's claims;
- 2 5. For punitive damages in an amount to be determined by this court for fraudulent misrepresentation
- 3 and fraudulent transfer; and
- 4 6. For such other and further relief as the Court may deem just and proper.

5
6 Dated this 27th of January, 2016.

RYAN ALEXANDER, CHTD.


7 
8 RYAN ALEXANDER
9 Nevada Bar No. 10845
10 *Attorney for Plaintiff*
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EXHIBIT 1

From: Kelly and Rick Dale <kelly@ricksrestorations.com>

To: "Gonor, Irwin" <fremontinfo@yahoo.com>

Cc:

Sent: Tuesday, August 23, 2011 4:15 PM

Subject: Agreement Irwin

Irwin,

Rick and I would really like for you to be his Manager but we really need to be clear in our expectations.

We agree to pay you 15% commission for any appearances you book for Rick.

In regards to the contract with History (A & E), we agree to pay you a mutually agreed amount for Season 3 if involved with the negotiations.

We agree to pay you 5% commission for the customer that you bring that purchases a machine at list price.

We agree to pay you 10% commission of Merchandise sales (T-shirts, hats, magnets, key chains, glassware, flashlights) on a weekly basis for generating revenue.

These commissions and the right to be Rick Dale's Manager can be terminated for lack of performance and/or decrease in revenue.

Under these guidelines we would ask that you respect the following:

1. Have daily discussions
2. Please do not bring anyone to our office to meet us unless there is an appt established. If you want to bring someone by the shop to show them around without speaking to Rick and I, thats fine.
3. Please check with our schedule first before committing to any appearances.
4. All business decisions are to be executed by Kelly.
5. Handle all issues dealing with Leftfield Pictures and Ricks Restorations.

The terms of this agreement to begin 8/26/11.

This is a simple contract so we are all on the same page.

Please sign and give us a copy.

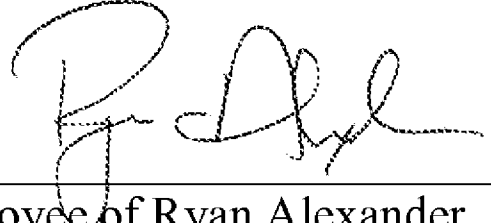
Thank you,
Rick Dale and Kelly Mayer
Ricks Restorations

/s/ Irwin Gonor

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on this 27th day of January 2016, pursuant to NRCP 5(b), I served via the
4 Eighth Judicial District Court electronic service system the above **THIRD AMENDED**
5 **COMPLAINT** to the following parties via ELECTRONIC SERVICE:
6

7 Carrie McCrea Hanlon
8 Morris, Sullivan, Lemkul & Pitegoff
9 3770 Howard Hughes Parkway, Suite 170
10 Las Vegas, NV 89169
11 Telephone: (702) 405-8100
12 Telecopier: (702) 405-8101
13 *Attorney for Defendants*

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By: 
Employee of Ryan Alexander, Chtd.

MOT
RYAN ALEXANDER
Nevada Bar No. 10845
RYAN ALEXANDER, CHTD.
3017 West Charleston Blvd., Ste. 58
Las Vegas, NV 89102
Phone: (702) 868-3311
Fax: (702) 822-1133
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY NEVADA**

IRWIN GONOR [Deceased],
Plaintiff,

vs.

RICHARD J. DALE, et al.,
Defendants.

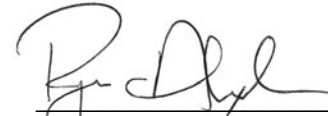
CASE NO.: A653755
DEPT. NO.: 19

**MOTION TO AMEND COMPLAINT TO
SUBSTITUTE SHIRLEY ANN HOFFNER
AS PLAINTIFF, OR IN THE
ALTERNATIVE TO EXTEND TIME
AND TO SUBSTITUTE THE ESTATE OF
IRWIN GONOR AS PLAINTIFF**

COMES NOW, Plaintiff IRWIN GONOR ("Gonor" or "Plaintiff"), by and through his attorney of record, Ryan Alexander, Esq., of Ryan Alexander, Chtd., and submits herein this Motion To Amend Complaint To Substitute Shirley Ann Hoffner As Plaintiff, Or In The Alternative To Extend Time And To Substitute The Estate Of Irwin Gonor As Plaintiff (hereinafter "Motion"). This Motion respectfully seeks substitution of the deceased Plaintiff by his direct heir Shirley Hoffner pursuant to NRCP 25. This Motion is based on the papers and pleadings on file in this matter, the attached memorandum of points and authorities, and the arguments of counsel at time set for hearing on this matter.

Dated this 19th of November, 2016.

RYAN ALEXANDER, CHTD.



RYAN ALEXANDER
Nevada Bar No. 10845
Attorney for Plaintiff

NOTICE OF MOTION

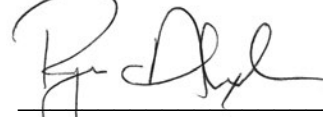
TO: RICHARD DALE; KELLY MAYER; RICK'S RESTORATIONS, INC.

TO: CHRISTOPHER TURTZO, ESQ.

PLEASE TAKE NOTICE that the foregoing MOTION TO AMEND COMPLAINT TO
SUBSTITUTE SHIRLEY ANN HOFFNER AS PLAINTIFF will be brought for hearing
before the the Hon. Bill Kephart in Department 19 on the ____ day of _____,
2016 at the hour of ____ a.m./p.m.

Dated this 19th of November, 2016.

RYAN ALEXANDER, CHTD.



RYAN ALEXANDER
Nevada Bar No. 10845
Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff GONOR (“Plaintiff”) was a talent manager with experience in stage shows and television. On or about August 26, 2011, Plaintiff entered into an agreement with Defendants to be Defendant Dale’s “manager” as well as undertake responsibilities for Defendant Restorations. Defendants terminated GONOR as their manager and owed him money, although the amount was in dispute. *Dale Depo.* 34:7; *Mayer Depo.* 27:22, 28:4. After nearly five years of contentious litigation, GONOR died suddenly on June 2, 2016. *See Certificate of Death*, Ex. 1. GONOR died intestate, had never married and had no children. On June 6, 2016, Counsel met personally with SHIRLEY ANN HOFFNER (nee Silverman), GONOR’s mother and next-of-kin. As GONOR’s sole heir, HOFFNER directed Counsel to resolve this case. Counsel contacted Defendants through their counsel and negotiated a settlement by June 20, 2016; after review of the terms with HOFFNER and her own personal counsel, Defendants’ settlement offer was accepted without conditions by Counsel by email in the early hours of June 21, 2016. Counsel informed this Court that day that the matter had settled.

Defendants prepared the settlement documents and provided them by e-mail on September 9, 2016. HOFFNER executed the settlement documents that were returned on October 25, 2016. Defendants filed a Suggestion of Death on October 26, 2016. Defendants began to perform according to the settlement agreement.

As such, Plaintiff seeks to amend his Complaint to substitute the sole heir in SHIRLEY ANN HOFFNER for Plaintiff IRWIN GONOR. Alternately, Plaintiff could be substituted by an Estate, and would pray for this Court to grant Plaintiff sufficient time to open the Special Administration so that the substitution can occur.

II. THE COURT MAY SUBSTITUTE A PARTY FOR THE DECEASED PLAINTIFF

The Nevada Rules of Civil Procedure allow a successor or representative to be substituted in for a deceased litigant in order to ensure that the causes of action survive an

individual's death. *Lummis v. Eighth Judicial Dist. Court ex rel. County of Clark*, 94 Nev. 114, 576 P.2d 272 (1978). This is codified in Nevada Rule of Civil Procedure 25:

Nev. R. Civ. P. 25. Substitution of parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

The relation back effect of Nev. R. Civ. P. 15(c) applies to the addition or substitution of parties pursuant to Nev. R. Civ. P. 25. *Costello v. Casler*, 127 Nev. Adv. Rev. 36, 254 P.3d 631 (2011). This Court can extend the substitution period pursuant to Nev. R. Civ. P. 6(b). *Moseley v. Eighth Judicial Dist. Court of Nev.*, 124 Nev. 654, 188 P.3d 1136 (2008).

Plaintiff IRWIN GONOR has passed away. The claims against Defendants have not been extinguished in this case. As allowed under Nev. R. Civ. P. 25(a)(1), Plaintiff seeks to substitute IRWIN GONOR with his successor in interest, SHIRLEY ANN HOFFNER.

Plaintiff's need to secure this substitution in a timely manner is evident. NRCP 25 clearly states that a motion to substitute must be made within 90 days of service of the suggestion of death. As mentioned previously, Defendants' counsel filed IRWIN GONOR's Suggestion of Death on October 26, 2016. Including days for service, Plaintiffs were required to file this motion requesting substitution no later than January 27, 2017.

Substitution of the Sole Heir Shirley Ann Hoffner Is Most Efficient Solution, Although Opening an Estate and Substitution to the Estate is Possible

To date no estate has been opened for the decedent IRWIN GONOR. As noted above, he

1 died intestate, had never married and never had children. There are no significant assets to
2 administer other than the proceeds of this settlement. The most cost and time efficient successor
3 would be GONOR's mother. She will directly inherit all of GONOR's claims and assets. She
4 authorized and then executed the settlement agreement, which the Defendants began to perform
5 under as early as September 2016.

6 If the Court prefers, Plaintiff can retain outside counsel and file to open an estate in the
7 probate department, and then file an amended complaint with the Estate of Irwin Gonor as
8 plaintiff. Should this be the Court's decision, Plaintiff humbly requests that the Court grant
9 Plaintiff an additional 120 days under Nev. R. Civ. P. 6(b) to open the Estate of Irwin Gonor in
10 the appropriate court department.

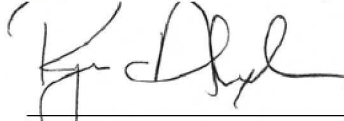
11
12 **III.**

13 **CONCLUSION**

14 Plaintiff, GONOR, respectfully requests this Court grant his motion to Substitute in
15 SHIRLEY ANN HOFFNER in the stead of IRWIN GONOR. Alternately, Plaintiff moves to
16 allow 120 additional days to open THE ESTATE OF IRWIN GONOR.

17
18 Dated this 19th day of November, 2016.

RYAN ALEXANDER, CHTD.

19
20 

21 Ryan Alexander, Esq.
22 Nevada Bar No. 10845
23 200 E. Charleston Blvd.
24 Las Vegas, NV 89104
25 Tel: 702-222-3476
26 Fax: 702-252-3476
27 *Attorney for Plaintiffs*
28

EXHIBIT 1

STATE OF NEVADA

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF PUBLIC AND BEHAVIORAL HEALTH VITAL STATISTICS

CASE FILE NO. 3897307

CERTIFICATE OF DEATH

2016012036
STATE FILE NUMBER

TYPE OR
PRINT IN
PERMANENT
BLACK INK

DECEDENT

IF DEATH
OCCURRED IN
INSTITUTION SEE
HANDBOOK
REGARDING
COMPLETION OF
RESIDENCE
ITEMS

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF
DEATH

CONDITIONS IF
ANY WHICH
GAVE RISE TO
IMMEDIATE
CAUSE
STATING THE
UNDERLYING
CAUSE LAST

1a. DECEASED-NAME (FIRST,MIDDLE, LAST,SUFFIX) Irwin Mark GONOR		2. DATE OF DEATH (Mo/Day/Year) June 02, 2016		3a. COUNTY OF DEATH Clark	
3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas		3c. HOSPITAL OR OTHER INSTITUTION -Name (If not either, give street and apt. If Hosp. or Inst. indicate DOA, SP/Emer. Rm. Inpatient (Specify) University Medical Center Emergency Room / Outpatient		4. SEX Male	
5. RACE (Specify) White		6. Hispanic Origin? Specify No - Non-Hispanic		7a. AGE-Last Birthday (Years) 60	
7b. UNDER 1 YEAR MOS		7c. UNDER 1 DAY HOURS		7d. UNDER 1 DAY MIN	
8. DATE OF BIRTH (Mo/Day/Yr) October 08, 1955		9. STATE OF BIRTH (If not US/CA, name country) California			
9b. CITIZEN OF WHAT COUNTRY United States		10. EDUCATION 12		11. MARITAL STATUS (Specify) Never Married	
12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage) Shirley Ann SILVERMAN		13. SOCIAL SECURITY NUMBER		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Talent Manager	
14b. KIND OF BUSINESS OR INDUSTRY Entertainment		15. Ever in US Armed Forces? No			
15a. RESIDENCE - STATE Nevada		15b. COUNTY Clark		15c. CITY, TOWN OR LOCATION Las Vegas	
15d. STREET AND NUMBER		15e. INSIDE CITY LIMITS (Specify Yes or No)			
16. FATHER/PARENT -NAME (First Middle Last Suffix) Leonard GONOR			17. MOTHER/PARENT - NAME (First Middle Last Suffix) Shirley Ann SILVERMAN		
18a. INFORMANT- NAME (Type or Print) Shirley Ann HOFFNER			18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip)		
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Burial		19b. CEMETERY OR CREMATORY - NAME King David Memorial Cemetery		19c. LOCATION City or Town State Las Vegas Nevada 89120	
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) JAY H POSTER SIGNATURE AUTHENTICATED		20b. FUNERAL DIRECTOR LICENSE NUMBER 619		20c. NAME AND ADDRESS OF FACILITY King David Memorial Chapel 2697 E Eldorado Ln Las Vegas NV 89120	
TRADE CALL - NAME AND ADDRESS Bunker's Mortuary 925 N Las Vegas Blvd Las Vegas NV 89101					
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) LARY SIMMS DO, MPH SIGNATURE AUTHENTICATED			22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) LARY SIMMS DO, MPH SIGNATURE AUTHENTICATED		
21b. DATE SIGNED (Mo/Day/Yr) July 08, 2016		21c. HOUR OF DEATH 12:26		22b. DATE SIGNED (Mo/Day/Yr) July 08, 2016	
22c. HOUR OF DEATH 12:26		22d. PRONOUNCED DEAD (Mo/Day/Yr) June 02, 2016		22e. PRONOUNCED DEAD AT (Hour) 12:26	
23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Lary Simms DO, MPH 1704 Pinto Lane Las Vegas, NV 89106			23b. LICENSE NUMBER 880		
24a. REGISTRAR (Signature) NANCY BARRY SIGNATURE AUTHENTICATED			24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) July 08, 2016		

LOCAL REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents authorized by state Board of Health pursuant to NRS 440.175.

VR5-Rev-20120523a



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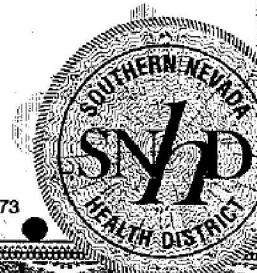
DATE ISSUED: **JUL 14 2016**

Registrar of Vital Statistics

By: *Nancy Barry*

This copy not valid unless prepared on watermarked security paper displaying date, seal and signature of Registrar.
SOUTHERN NEVADA HEALTH DISTRICT • P.O. Box 3902 • Las Vegas, NV 89127 • 702-759-1010 • Tax ID # 88-0151573

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE



PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3017 W. Charleston Blvd. Ste. 58, Las Vegas, Nevada 89102. I served the within document(s):

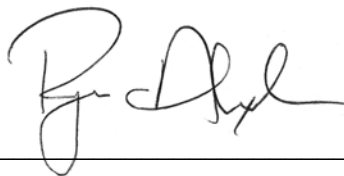
☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.

☒ ELECTRONIC SERVICE
Christopher Turtzo, Esq.
Morrison Sullivan Lemkul Pitegoff
3770 Howard Hughes Parkway, Ste. 170
Las Vegas, NV 89169
Telephone: (702) 405-8100
Fax: (702) 405-8101
Attorney for Defendants

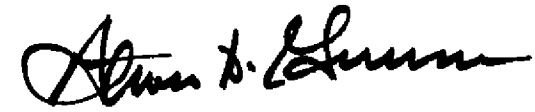
☐ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

☐ PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct. Executed on November 19, 2016, at Las Vegas, Nevada.

By: 

Employee of Ryan Alexander, Chtd.



CLERK OF THE COURT

MOT
RYAN ALEXANDER
Nevada Bar No. 10845
RYAN ALEXANDER, CHTD.
3017 West Charleston Blvd., Ste. 58
Las Vegas, NV 89102
Phone: (702) 868-3311
Fax: (702) 822-1133
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY NEVADA**

IRWIN GONOR [Deceased],
Plaintiff,

vs.

RICHARD J. DALE, et al.,
Defendants.

CASE NO.: A653755
DEPT. NO.: 19

**MOTION TO AMEND COMPLAINT TO
SUBSTITUTE SHIRLEY ANN HOFFNER
AS PLAINTIFF, OR IN THE
ALTERNATIVE TO EXTEND TIME
AND TO SUBSTITUTE THE ESTATE OF
IRWIN GONOR AS PLAINTIFF**

COMES NOW, Plaintiff IRWIN GONOR ("Gonor" or "Plaintiff"), by and through his attorney of record, Ryan Alexander, Esq., of Ryan Alexander, Chtd., and submits herein this Motion To Amend Complaint To Substitute Shirley Ann Hoffner As Plaintiff, Or In The Alternative To Extend Time And To Substitute The Estate Of Irwin Gonor As Plaintiff (hereinafter "Motion"). This Motion respectfully seeks substitution of the deceased Plaintiff by his direct heir Shirley Hoffner pursuant to NRCp 25. This Motion is based on the papers and pleadings on file in this matter, the attached memorandum of points and authorities, and the arguments of counsel at time set for hearing on this matter.

Dated this 19th of November, 2016.

RYAN ALEXANDER, CHTD.



RYAN ALEXANDER
Nevada Bar No. 10845
Attorney for Plaintiff

NOTICE OF MOTION

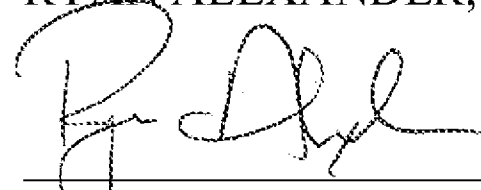
TO: RICHARD DALE; KELLY MAYER; RICK'S RESTORATIONS, INC.

TO: CHRISTOPHER TURTZO, ESQ.

PLEASE TAKE NOTICE that the foregoing MOTION TO AMEND COMPLAINT TO
SUBSTITUTE SHIRLEY ANN HOFFNER AS PLAINTIFF will be brought for hearing
before the the Hon. Bill Kephart in Department 19 on the 05 day of January,
2017 In Chambers
~~2016~~ at the hour of _____ a.m./p.m.

Dated this 19th of November, 2016.

RYAN ALEXANDER, CHTD.



RYAN ALEXANDER
Nevada Bar No. 10845
Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff GONOR (“Plaintiff”) was a talent manager with experience in stage shows and television. On or about August 26, 2011, Plaintiff entered into an agreement with Defendants to be Defendant Dale’s “manager” as well as undertake responsibilities for Defendant Restorations. Defendants terminated GONOR as their manager and owed him money, although the amount was in dispute. *Dale Depo.* 34:7; *Mayer Depo.* 27:22, 28:4. After nearly five years of contentious litigation, GONOR died suddenly on June 2, 2016. *See Certificate of Death*, Ex. 1. GONOR died intestate, had never married and had no children. On June 6, 2016, Counsel met personally with SHIRLEY ANN HOFFNER (nee Silverman), GONOR’s mother and next-of-kin. As GONOR’s sole heir, HOFFNER directed Counsel to resolve this case. Counsel contacted Defendants through their counsel and negotiated a settlement by June 20, 2016; after review of the terms with HOFFNER and her own personal counsel, Defendants’ settlement offer was accepted without conditions by Counsel by email in the early hours of June 21, 2016. Counsel informed this Court that day that the matter had settled.

Defendants prepared the settlement documents and provided them by e-mail on September 9, 2016. HOFFNER executed the settlement documents that were returned on October 25, 2016. Defendants filed a Suggestion of Death on October 26, 2016. Defendants began to perform according to the settlement agreement.

As such, Plaintiff seeks to amend his Complaint to substitute the sole heir in SHIRLEY ANN HOFFNER for Plaintiff IRWIN GONOR. Alternately, Plaintiff could be substituted by an Estate, and would pray for this Court to grant Plaintiff sufficient time to open the Special Administration so that the substitution can occur.

II. THE COURT MAY SUBSTITUTE A PARTY FOR THE DECEASED PLAINTIFF

The Nevada Rules of Civil Procedure allow a successor or representative to be substituted in for a deceased litigant in order to ensure that the causes of action survive an

individual's death. *Lummis v. Eighth Judicial Dist. Court ex rel. County of Clark*, 94 Nev. 114, 576 P.2d 272 (1978). This is codified in Nevada Rule of Civil Procedure 25:

Nev. R. Civ. P. 25. Substitution of parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

The relation back effect of Nev. R. Civ. P. 15(c) applies to the addition or substitution of parties pursuant to Nev. R. Civ. P. 25. *Costello v. Casler*, 127 Nev. Adv. Rev. 36, 254 P.3d 631 (2011). This Court can extend the substitution period pursuant to Nev. R. Civ. P. 6(b). *Moseley v. Eighth Judicial Dist. Court of Nev.*, 124 Nev. 654, 188 P.3d 1136 (2008).

Plaintiff IRWIN GONOR has passed away. The claims against Defendants have not been extinguished in this case. As allowed under Nev. R. Civ. P. 25(a)(1), Plaintiff seeks to substitute IRWIN GONOR with his successor in interest, SHIRLEY ANN HOFFNER.

Plaintiff's need to secure this substitution in a timely manner is evident. NRCP 25 clearly states that a motion to substitute must be made within 90 days of service of the suggestion of death. As mentioned previously, Defendants' counsel filed IRWIN GONOR's Suggestion of Death on October 26, 2016. Including days for service, Plaintiffs were required to file this motion requesting substitution no later than January 27, 2017.

Substitution of the Sole Heir Shirley Ann Hoffner Is Most Efficient Solution, Although Opening an Estate and Substitution to the Estate is Possible

To date no estate has been opened for the decedent IRWIN GONOR. As noted above, he

1 died intestate, had never married and never had children. There are no significant assets to
2 administer other than the proceeds of this settlement. The most cost and time efficient successor
3 would be GONOR's mother. She will directly inherit all of GONOR's claims and assets. She
4 authorized and then executed the settlement agreement, which the Defendants began to perform
5 under as early as September 2016.

6 If the Court prefers, Plaintiff can retain outside counsel and file to open an estate in the
7 probate department, and then file an amended complaint with the Estate of Irwin Gonor as
8 plaintiff. Should this be the Court's decision, Plaintiff humbly requests that the Court grant
9 Plaintiff an additional 120 days under Nev. R. Civ. P. 6(b) to open the Estate of Irwin Gonor in
10 the appropriate court department.

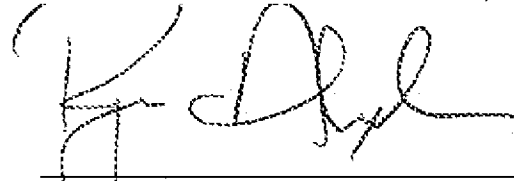
11
12 **III.**

13 **CONCLUSION**

14 Plaintiff, GONOR, respectfully requests this Court grant his motion to Substitute in
15 SHIRLEY ANN HOFFNER in the stead of IRWIN GONOR. Alternately, Plaintiff moves to
16 allow 120 additional days to open THE ESTATE OF IRWIN GONOR.

17
18 Dated this 19th day of November, 2016.

RYAN ALEXANDER, CHTD.

19
20 

21 Ryan Alexander, Esq.
22 Nevada Bar No. 10845
23 200 E. Charleston Blvd.
24 Las Vegas, NV 89104
25 Tel: 702-222-3476
26 Fax: 702-252-3476
27 *Attorney for Plaintiffs*
28

EXHIBIT 1

STATE OF NEVADA

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF PUBLIC AND BEHAVIORAL HEALTH VITAL STATISTICS

CASE FILE NO. 3897307

CERTIFICATE OF DEATH

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REGISTRAR

CAUSE OF
DEATH

CONDITIONS IF
ANY WHICH
GAVE RISE TO
IMMEDIATE
CAUSE
STATING THE
UNDERLYING
CAUSE LAST

1a. DECEASED-NAME (FIRST,MIDDLE,LAST,SUFFIX) Irwin Mark GONOR			2. DATE OF DEATH (Mo/Day/Year) June 02, 2016		3a. COUNTY OF DEATH Clark			
3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas		3c. HOSPITAL OR OTHER INSTITUTION -Name(If not either, give street and University Medical Center			3e. If Hosp. or Inst. indicate DOA/OP/Emer. Rm. Inpatient (Specify) Emergency Room / Outpatient			
5. RACE (Specify) White		6. Hispanic Origin? Specify No <input checked="" type="checkbox"/> Non-Hispanic		7a. AGE-Last birthday (Years) 60		7b. UNDER 1 YEAR MOS <input type="checkbox"/> DAYS <input type="checkbox"/> HOURS <input type="checkbox"/> MINS		
9a. STATE OF BIRTH (If not US/CA, name country) California		9b. CITIZEN OF WHAT COUNTRY United States		10. EDUCATION 12		11. MARITAL STATUS (Specify) Never Married		
13. SOCIAL SECURITY NUMBER		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of			14b. KIND OF BUSINESS OR INDUSTRY		15. DATE OF BIRTH (Mo/Day/Yr) October 08, 1955	
15a. RESIDENCE - STATE Nevada		15b. COUNTY Clark		15c. CITY, TOWN OR LOCATION Las Vegas		15d. STREET AND NUMBER		
16. FATHER/PARENT - NAME (First Middle Last Suffix) Leonard GONOR				17. MOTHER/PARENT - NAME (First Middle Last Suffix) Shirley Ann SILVERMAN				
18a. INFORMANT- NAME (Type or Print) Shirley Ann HOFFNER				18b. MAILING ADDRESS (Street or R.F.D. No., City or Town, State, Zip)				
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Burial		19b. CEMETERY OR CREMATORY - NAME King David Memorial Cemetery			19c. LOCATION City or Town State Las Vegas Nevada 89120			
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) JAY H POSTER SIGNATURE AUTHENTICATED			20b. FUNERAL DIRECTOR LICENSE NUMBER 619		20c. NAME AND ADDRESS OF FACILITY King David Memorial Chapel 2697 E Eldorado Ln Las Vegas NV 89120			
TRADE CALL - NAME AND ADDRESS Bunker's Mortuary 925 N Las Vegas Blvd Las Vegas NV 89101								
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) LARY SIMMS DO, MPH SIGNATURE AUTHENTICATED				22a. On the basis of examination and/or investigation, in my opinion, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) LARY SIMMS DO, MPH SIGNATURE AUTHENTICATED				
21b. DATE SIGNED (Mo/Day/Yr) July 08, 2016		21c. HOUR OF DEATH 12:26		22b. DATE SIGNED (Mo/Day/Yr) July 08, 2016		22c. HOUR OF DEATH 12:26		
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)				22d. PRONOUNCED DEAD (Mo/Day/Yr) June 02, 2016		22e. PRONOUNCED DEAD AT (Hour) 12:26		
23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Lary Simms DO, MPH 1704 Pinto Lane Las Vegas, NV 89106						23b. LICENSE NUMBER 880		
24a. REGISTRAR (Signature) NANCY BARRY SIGNATURE AUTHENTICATED				24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) July 08, 2016				

LOCAL REGISTRAR

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VRS-Rev-20120523a



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DATE ISSUED:

JUL 14 2016

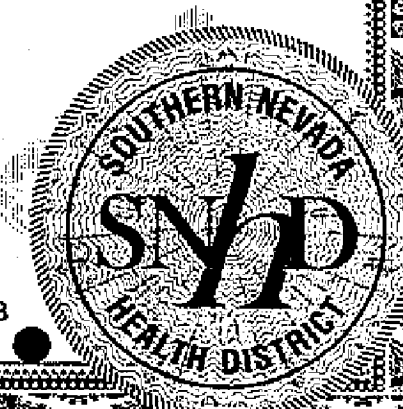
Registrar of Vital Statistics

By:

Nancy Barry

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SOUTHERN NEVADA HEALTH DISTRICT • P.O. Box 3902 • Las Vegas, NV 89127 • 702-759-1010 • Tax ID # 88-0151573

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE



PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3017 W. Charleston Blvd. Ste. 58, Las Vegas, Nevada 89102. I served the within document(s):

☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.

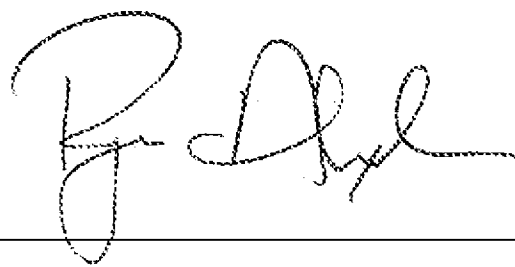
☒ ELECTRONIC SERVICE

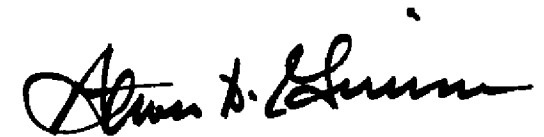
Christopher Turtzo, Esq.
Morrison Sullivan Lemkul Pitegoff
3770 Howard Hughes Parkway, Ste. 170
Las Vegas, NV 89169
Telephone: (702) 405-8100
Fax: (702) 405-8101
Attorney for Defendants

☐ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

☐ PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct. Executed on November 19, 2016, at Las Vegas, Nevada.

By: 
Employee of Ryan Alexander, Chtd.



CLERK OF THE COURT

OPPS
JEFFREY I. PITEGOFF, ESQ.
Nevada Bar No.
CHRISTOPHER A. TURTZO, ESQ.
Nevada Bar No. 010253
MORRIS, SULLIVAN, LEMKUL & PITEGOFF
3770 Howard Hughes Parkway, Suite 170
Las Vegas, Nevada 89169
Telephone No.: (702) 405-8100
Fax No.: (702) 405-8101
Attorney for Defendants
RICHARD J. DALE, KELLY MAYER
and RICK'S RESTORATIONS, INC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

IRWIN GONOR,

Plaintiff,

vs.,

RICHARD J. DALE, KELLY MAYER, and
RICK'S RESTORATIONS, INC., a Nevada
Corporation, KIKI T's, LLC, a Nevada
Limited Liability Company; MAKING
HISTORY, LLC, a Nevada Limited Liability
Company; BOOKIN' IT LLC, a Nevada
Limited Liability Company; DOES 1 through
100; and ROE CORPORATIONS 1 through
100, inclusive, DOES I through 100; and ROE
Corporations 1 through 100 inclusively,
jointly and severally,

Defendants.

CASE NO: A-11-653755-C

DEPT. NO: 19

**DEFENDANTS' (1) OPPOSITION
TO MOTION TO AMEND; and
(2) COUNTERMOTION TO
DISMISS**

Hearing date: 1/10/2017

Hearing time: 9:00 AM

Defendants Richard J. Dale, Kelly Mayer Dale, and Rick's Restorations, Inc.
(collectively, "Defendants"), by and through their counsel of record, the law firm of Morris,
Sullivan, Lemkul & Pitegoff, hereby file their: (1) Opposition to Plaintiff's Motion to Amend
Complaint to Substitute Shirley Ann Hoffner as Plaintiff, or in the alternative, to Extend Time
and to Substitute the Estate of Irwin Gonor as Plaintiff; and (2) Countermotion to Dismiss.

///

///

1 This Opposition and Countermotion are made and based on the papers and pleadings on
2 file herein, the points and authorities attached hereto, and such oral argument as may be allowed
3 at the hearing of this matter.

4 DATED this 9th day of December 2016.

5 MORRIS, SULLIVAN, LEMKUL & PITEGOFF

6 By: /s/ Christopher Turtzo
7 JEFFREY I. PITEGOFF, ESQ. / NBN 05458
8 CHRISTOPHER A. TURTZO, ESQ. / NBN 10253
9 3770 Howard Hughes Parkway, Suite 170
Las Vegas, Nevada 89169

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **INTRODUCTION**

12 Plaintiff, Irwin Gonor, died on June 2, 2016. While concealing that material fact, his
13 former lawyer subsequently negotiated a tentative settlement with the Defendants. The rubber
14 finally met the road on October 25, when Mr. Alexander produced a settlement agreement signed
15 by Ms. Hoffner, the proposed substituted plaintiff, instead of Mr. Gonor. The Defendants
16 immediately filed a notice of suggestion of death and requested more information regarding the
17 timing of Mr. Gonor's unfortunate demise. Mr. Alexander did respond. Instead, on November
18 19, he filed the pending motion to substitute Ms. Hoffner as the Plaintiff under Nev. R. Civ.
19 Proc. 25.

20 The motion should be denied for at least two independent reasons. As a threshold matter,
21 it is grossly late. Plaintiff waited 170 days from Mr. Gonor's death to file the motion, which is
22 nearly twice as long as the 90-day period deadline imposed by NRCP 25. Moreover, the motion
23 is substantively defective and, therefore, pointless. This is because a survival action can only be
24 maintained by duly-appointed personal representative or executor. *See* NRS 41.100 Ms. Hoffner
25 is neither. She lacks the standing required to compromise or litigate this case. Substituting her as
26 the Plaintiff accomplishes nothing.

27 For these reasons, Defendants request the motion be denied, with prejudice, and that the
28 Court dismiss the case.

1
2 Even if the Court chooses to deny Plaintiff's defective motion *without* prejudice, it
3 should not extend the deadline for Plaintiff to file a proper Rule 25 motion. Mr. Gonor died more
4 than six months ago. During that time, neither his lawyer nor his supposed successor took a
5 single step towards the substitution of proper Plaintiff. Instead, they concealed Mr. Gonor's
6 death and attempted to negotiate a quick settlement. They cannot demonstrate the "excusable
7 neglect" required under the rules to extend the 90-day deadline imposed by NRCP 25.

8 **CRITICAL FACTS**

9 The critical facts are as follows:

- 10 • ***Irwin Gonor, the sole Plaintiff, died on June 2, 2016;***
- 11 • Plaintiff's counsel served an offer of judgment to Defendants on June 4, 2016 (*see*
12 Offer, a true and correct copy of which is attached hereto as **Exhibit "A"**);
- 13 • In reliance on the service of this apparently valid offer of judgment, Defendants
14 make a counter-offer to settle on June 20, 2016;
- 15 • Plaintiff's counsel obviously never discussed the counter-offer with Plaintiff (*see*
16 Motion to Amend, at 3:9-15);
- 17 • Plaintiff's mother, and not Plaintiff himself, purportedly accepted the counter-
18 offer (*see id.*)
- 19 • Without disclosing his client's death, Plaintiff's counsel purports to accept
20 Defendants' counter-offer on June 21, 2016;
- 21 • On September 9, 2016, Defendants forwarded a settlement release agreement to
22 Plaintiff's counsel;
- 23 • Between September 9 and October 25, 2016, Plaintiff's counsel communicated
24 with Defendants' counsel numerous times, all without ever mentioning Plaintiff's
25 death;
- 26 • On October 25, 2016, approximately 140 days after Plaintiff's death, Plaintiff
27 produced a settlement release executed by Plaintiff's mother, and not executed by
28 Plaintiff, which prompted Defendants' counsel to inquire as to why;

- Also on October 25, 2016, Defendants' counsel inquired as to when Plaintiff died, to which he received no response;
- The next day, on October 26, 2016, Defendants' counsel filed a Suggestion of Death;
- On November 19, 2016, the Motion to Amend was filed;
- Through that November 19, 2016 filing date, approximately 170 days after Plaintiff's death, no effort had been made to open probate or otherwise have an appropriate person appointed by a court of competent jurisdiction for the authority to maintain this action (approximately 170 days after Plaintiff's death (*see* Motion to Amend, at 4:28)).

ARGUMENT

1. The Motion should be denied because it is untimely, and the Court should dismiss the case under NRCP 25(a).

NRCP 25 governs the method and time for substituting in place of a deceased party and provides in pertinent part:

(a)(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party[.] Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record ..., the action shall be dismissed as to the deceased party.

While the rule does not expressly impose an affirmative obligation by the decedent's counsel to file the required Suggestion of Death within a specified period, the applicable ethical rules certainly required Mr. Alexander to disclose Mr. Gonor's death to the Defendants.

NRPC 3.4 provides in pertinent part:

Rule 3.4. Fairness to Opposing Party and Counsel. A lawyer shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value[.]

...

///

1 In this case, the active settlement negotiations, in which Plaintiff's mother directly
2 participated, should have prompted some form of notice to Defendants regarding Plaintiff's
3 death. *See id.* Defendants have demonstrated that they would have immediately filed the
4 suggestion of death triggering the 90 day period because they later actually did file the day after
5 finally being advised in October 2016. But for the unreasonable and improper withholding of
6 material information, the NRCP 25(a) clock would have begun months ago, in June 2016. That
7 clock would have expired in early September 2016, more than two months before the required
8 Motion to Amend was actually filed.¹ *See Morrison v. Quest Diagnostics Inc.*, 139 F. Supp. 3d
9 1182, 1185–87 (D. Nev. 2015).

10 Plaintiff's motion is inexcusably late. It should be denied, with prejudice, and the Court
11 should dismiss the case under NRCP 25(a).

12 **2. The motion is defective because Ms. Hoffner lacks standing to serve as a Plaintiff.**

13 Ms. Hoffner (and/or the non-existent potential estate of Plaintiff) is requesting to
14 substitute in place of Plaintiff for purposes of the survival of his causes of action. *See generally*,
15 Motion to Amend. NRS 41.100, however, governs the survival of claims on a party's death and
16 provides in pertinent part: "1. Except as otherwise provided in this section ..., no cause of
17 action is lost by reason of the death of any person, but may be maintained by or against the
18 person's executor or administrator."

19 Only a properly appointed executor or administrator may continue the action, otherwise
20 the action dies along with the party. *Id.*; *see also Morrison*, 139 F.Supp.3d at 1186 (interpreting
21 NRS 41.100 and defining both "executor" and "administrator" as persons properly appointed by
22 a court). Merely being next of kin is inadequate and does not comply with NRS41.100. *See*
23 *Morrison*, 139 F.Supp.3d at 1186.

24
25
26
27 ¹ Even giving an unreasonably generous date by which the Motion to Amend should have been filed, such as thirty
28 days after death (July 2, 2016), the Motion would still be untimely. (To be clear, Defendants submit that only a
handful of days delay in either filing the Suggestion or otherwise notifying Defendants could possibly be considered
reasonable.) Using July 2, 2016, the NRCP 25(a) 90 day dismissal deadline would be September 30, 2016, more
than seven (7) weeks before the Motion was actually filed. The Motion would still be untimely under that analysis.

1 In this case, Ms. Hoffner is not the executor or administrator of Plaintiff's estate. *See*
2 Motion to Amend, at 4:28. As such, the Motion should be denied, with prejudice, and the case
3 should be dismissed.

4 **3. Even if the Court declines to dismiss the case now, it should not extend the deadline**
5 **to file a proper motion.**

6 Ostensibly realizing that Ms. Hoffner is not a proper Plaintiff, the motion alternatively
7 seeks an extension of the 90-day deadline imposed by NRCP 25 to institute probate proceedings.
8 This request must be denied because Plaintiff fails to demonstrate the excusable neglect required
9 under the Rules to obtain an extension.

10 Applicable case authorities have sought to avoid overly harsh results in applying NRS
11 41.100 and NRCP 25(a). *See Moseley v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 124
12 Nev. 654, 665–68, 188 P.3d 1136, 1144–46 (2008); *Zollo v. Terrible Herbst, Inc.*, No. 60313,
13 2014 WL 859166, at *4, n.5 (Nev. Feb. 28, 2014)(unpublished). They have done so by making
14 the 90 day period in NRCP 25(a) flexible to reflect the reality that the death of a litigating party
15 may result in parallel proceedings: one to obtain executor or administrator status in the probate
16 court, and another in district court for substitution. *See id.* But these cases make equally clear
17 that the flexibility via enlargement of time should only be given where the party seeking the
18 extra time can demonstrate “excusable” neglect. *See id.*

19 In this case, however, there has been *inexcusable* neglect, if not intentional misconduct.
20 Plaintiff's counsel and mother have known about Plaintiff's death since, at the very latest, June
21 6, 2016, when they met to strategize the case going forward without him. *See* Motion to Amend,
22 at 3-9-11. Thereafter, instead of either: (1) undertaking the appropriate proceedings in the
23 probate court; (2) filing the appropriate Suggestion of Death in this Court based on their actual
24 knowledge; or (3) giving some other form of notice to Defendants' counsel so he could file the
25 required Suggestion of Death, Plaintiff's counsel and Ms. Hoffner unreasonably withheld this
26 information and, instead, actively engaged in settlement discussions in an effort to extract money
27 from the unwitting Defendants. This conduct cannot not be condoned. No additional time
28 should be granted.

1 **CONCLUSION**

2 Mr. Gonor's former counsel waited nearly six months after learning that his client died to
3 file a motion to substitute Mr. Gonor's mother, who is neither Mr. Gonor's personal
4 administrator nor the executor of his will, as the Plaintiff in this case. The motion is grossly late
5 and facially defective. Even if she were substituted as the Plaintiff, Ms. Hoffner lacks legal the
6 standing required by NRS 41.100 to maintain (or settle) this claim. The motion should be denied,
7 with prejudice, and the Court should dismiss the case.

8 Even if the Court chooses not to dismiss the case now, it should not extend the deadline
9 to file a motion to substitute a proper Plaintiff. In the six months since his death, neither Mr.
10 Alexander nor Mr. Gonor's mother took a single step towards substituting a proper Plaintiff into
11 this case; instead, they concealed Mr. Gonor's death and attempted to quickly settle the case. The
12 significant ethical questions arising from this plan can be reserved for another day. What matters
13 now is that Plaintiff cannot demonstrate the "excusable neglect" required to obtain an extension
14 of the 90-day deadline to file a proper motion to substitute. If Plaintiff fails to file a proper
15 motion by January 26, 2017, this case must be dismissed.

16
17 Dated this 9th day of December, 2016.

18 MORRIS, SULLIVAN, LEMKUL & PITEGOFF
19

20 By: /s/ Christopher Turtzo
21 JEFFREY I. PITEGOFF, ESQ. / NBN 05458
22 CHRISTOPHER A. TURTZO, ESQ. / NBN 10253
23 3770 Howard Hughes Parkway, Suite 170
24 Las Vegas, Nevada 89169
25
26
27
28

1 **CERTIFICATE OF SERVICE (E.D.C.R 8.05 (f))**

2 I certify that the following parties are to be served the foregoing **DEFENDANTS' (1)**
3 **OPPOSITION TO MOTION TO AMEND; and (2) COUNTERMOTION TO DISMISS**
4 as follows:

5 **Electronically.**

6
7 Ryan Alexander, Esq.
8 3017 W. Charleston Blvd. #58
9 Las Vegas, NV 89102
10 Attorney for Plaintiff

11 **Traditional Manner:**

12 None.

13 Dated this 9th day of December, 2016.

14
15 /s/ Allyson Lodwick
16 An Employee of MORRIS, SULLIVAN, LEMKUL & PITEGOFF
17
18
19
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27
28

Exhibit A

Exhibit A

RYAN ALEXANDER CHTD.
3017 WEST CHARLESTON BOULEVARD SUITE 58, LAS VEGAS, NEVADA 89102

OJ
RYAN ALEXANDER
Nevada Bar No. 10845
RYAN ALEXANDER, CHTD.
3017 West Charleston Blvd., Ste. 58
Las Vegas, NV 89102
Phone: (702) 868-3311
Fax: (702) 822-1133
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY NEVADA**

IRWIN GONOR,
Plaintiff,
vs.

CASE NO.: A653755
DEPT. NO.: 19

OFFER OF JUDGMENT

RICHARD J. DALE, individually; KELLY
MAYER, individually; RICK'S RESTORATIONS,
INC., a Nevada Corporation; KIKI T's LLC, a
Nevada Limited Liability Company; MAKING
HISTORY LLC, a Nevada Limited Liability
Company; BOOKIN' IT LLC, a Nevada Limited
Liability Company; DOES 1-100; and ROE
CORPORATIONS 1-100,
Defendants.

**TO: RICHARD J. DALE, KELLY MAYER, RICK'S RESTORATIONS, INC., KIKI T's
LLC, MAKING HISTORY LLC, BOOKIN' IT LLC**

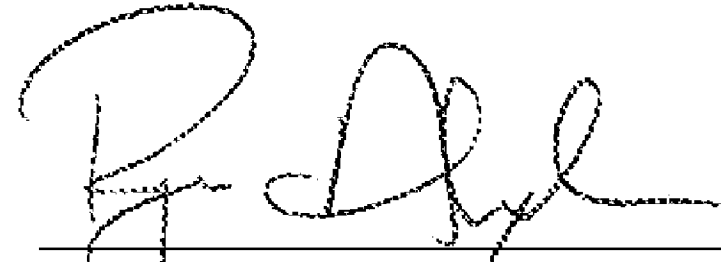
PLEASE TAKE NOTICE that pursuant to Rule 68 of the Nevada Rules of Civil Procedure, and
in accordance with Nevada Revised Statute § 17.115, Plaintiff, IRWIN GONOR (herein referred to
as "Plaintiff"), hereby offers to allow judgment to be taken against Defendants, RICHARD J. DALE,
individually; KELLY MAYER, individually; RICK'S RESTORATIONS, INC., a Nevada
Corporation; KIKI T's LLC, a Nevada Limited Liability Company; MAKING HISTORY LLC, a
Nevada Limited Liability Company; BOOKIN' IT LLC, a Nevada Limited Liability Company;
(herein referred to as "Defendants") and in favor of Plaintiff in the total sum of **Eighty-Six
Thousand Five Hundred Dollars (\$86,500.00)**, including all claims for interest, attorneys' fees,
and costs. In accordance with this offer, each side will bear all of its own fees and costs. Further,

1 both parties agree that this offer of judgment is strictly made for the purposes specified in NRCP 68
2 and NRS § 17.115 and is not to be construed as an admission of any kind.

3
4 This offer of judgment expires, if not accepted in writing, within ten (10) days. Defendant
5 should send original written acceptance to either of Plaintiff's attorney of record RYAN
6 ALEXANDER, CHTD.

7 Dated this 4th of June, 2016.

8 RYAN ALEXANDER, CHTD.

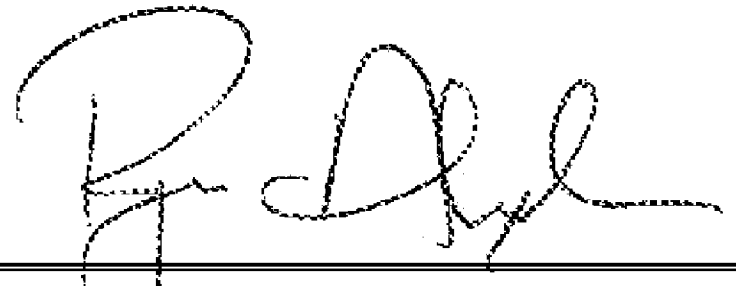
9
10 

11 RYAN ALEXANDER
12 Nevada Bar No. 10845
13 *Attorney for Plaintiff*
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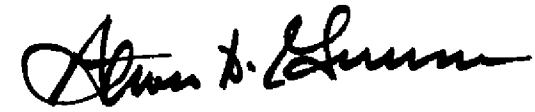
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 4th day of June, 2016, pursuant to NRCP 5(b), I served via the Eighth
3 Judicial District Court electronic service system the above **OFFER OF JUDGMENT** to the
4 following parties via ELECTRONIC SERVICE:

5
6 Christopher Turtzo, Esq.
7 Morrison Sullivan Lemkul Pitegoff
8 3770 Howard Hughes Parkway, Suite 170
9 Las Vegas, NV 89169
10 Telephone: (702) 405-8100
11 Fax: (702) 405-8101
12 *Attorney for Defendants*

13 By: 
14 Employee of Ryan Alexander, Chtd.

RYAN ALEXANDER CHTD.
3017 WEST CHARLESTON BOULEVARD SUITE 58, LAS VEGAS, NEVADA 89102



CLERK OF THE COURT

RPLY
RYAN ALEXANDER
Nevada Bar No. 10845
RYAN ALEXANDER, CHTD.
3017 West Charleston Blvd., Ste. 58
Las Vegas, NV 89102
Phone: (702) 868-3311
Fax: (702) 822-1133
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY NEVADA**

IRWIN GONOR [Deceased],
Plaintiff,

vs.

RICHARD J. DALE, et al.,
Defendants.

CASE NO.: A653755
DEPT. NO.: 19

**REPLY TO MOTION TO AMEND
COMPLAINT AND OPPOSITION TO
COUNTERMOTION**

COMES NOW, Plaintiff IRWIN GONOR (“Gonor” or “Plaintiff”), by and through his attorney of record, Ryan Alexander, Esq., of Ryan Alexander, Chtd., and submits herein this Reply to Motion To Amend Complaint To Substitute Shirley Ann Hoffner As Plaintiff, Or In The Alternative To Extend Time And To Substitute The Estate Of Irwin Gonor As Plaintiff (“Motion”), and an Opposition to the Countermotion to Dismiss (the “Countermotion”).

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE COURT MAY SUBSTITUTE A PARTY FOR THE DECEASED PLAINTIFF

NRCP 25 clearly states that a motion to substitute must be made within 90 days of service of the **suggestion of death**. Not the actual death, as Defendants are trying to argue. As mentioned previously, Defendants’ counsel filed IRWIN GONOR’s Suggestion of Death on October 26, 2016 and this Motion was filed within weeks. Defendants cannot point to any case that puts the obligation to file a suggestion of death on the party – indeed suggestions and the subsequent deadline is largely used as a defense tactic to try and frustrate heirs or plaintiffs.

The Nevada Rules of Civil Procedure allow a successor or representative to be substituted in for a deceased litigant in order to ensure that the causes of action survive an

RYAN ALEXANDER CHTD.
3017 WEST CHARLESTON BOULEVARD SUITE 58, LAS VEGAS, NEVADA 89102

individual's death. *Lummis v. Eighth Judicial Dist. Court ex rel. County of Clark*, 94 Nev. 114, 576 P.2d 272 (1978). This is codified in Nevada Rule of Civil Procedure 25:

Nev. R. Civ. P. 25. Substitution of parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

The relation back effect of Nev. R. Civ. P. 15(c) applies to the addition or substitution of parties pursuant to Nev. R. Civ. P. 25. *Costello v. Casler*, 127 Nev. Adv. Rev. 36, 254 P.3d 631 (2011). This Court can extend the substitution period pursuant to Nev. R. Civ. P. 6(b). *Moseley v. Eighth Judicial Dist. Court of Nev.*, 124 Nev. 654, 188 P.3d 1136 (2008). The claims against Defendants have not been extinguished in this case. Any person interested in the judgment or property can be added as parties by the district court upon proper showing. *Twaddle v. Winters*, 29 Nev. 88, 89 P. 289 (1907) Citing the prior version of the rule, the court summarized:

"Supreme Court Rule 9 provides that upon the death or disability of a party pending an appeal, his representative shall be substituted. Comp. Laws, 3111, provides that an action shall not abate by the death or other disability of a party or the transfer of any interest therein, if the cause of action survive or continue, but may be continued by or against his representative or successor in interest; and, in case of any other transfer of interest, the action may continue in the name of the original party or in the name of the person to whom the transfer is made. Held, that the rule is not in conflict with the statute, the two agreeing in allowing the substitution of the representative of a deceased litigant, but the statute going further, and directing that the action may be continued by or against his successor in interest or the person to whom he has transferred his interest."

Id. As allowed under Nev. R. Civ. P. 25(a)(1), Plaintiff seeks to substitute IRWIN GONOR with his successor in interest, SHIRLEY ANN HOFFNER. GONOR died intestate, had never married and never had children. There are no significant assets to administer other than the proceeds of this settlement. The most cost and time efficient successor would be GONOR's mother HOFFNER. She will directly inherit all of GONOR's claims and assets. She authorized and then executed the settlement agreement.

Defendants have created their own novel interpretation of NRCP 25 to make their argument that the measurement should be 90 days from the death of the party and not 90 days from the filing of the Suggestion of Death. No case citing NRCP 25 creates an affirmative duty for any party to litigation to file the Suggestion of Death. All of the annotated cases only deal with what happens after a suggestion is filed. And nothing is triggered for substitution motions until a proper suggestion is filed. *Barto v. Weishaar*, 101 Nev. 27, 692 P.2d 498 (1985).

This is not a discovery dispute. NRPC 3.4 is regarding the willful destruction or concealment of evidence. There was already over 4 years of discovery in this case, which closed in early 2015, all documents in possession were produced by GONOR, his experts disclosed and his deposition already taken by the Defendants. They had already had an extensive mediation in early 2016. The proverbial cards were already on the table. Defendants had already admitted in their depositions that they owed GONOR money¹ – this entire litigation process was then to nail down what amount could get this case resolved. Otherwise, each side puts up their dollar amount and the jury finds some point between them. Defendants started paying out on the settlement as of September 2016, so they obviously thought that the number *that was offered by them* was an acceptable settlement for the value of the case. This Opposition and Countermotion is because Defendants now feel that they could be overpaying, that maybe they could have done better against HOFFNER, a picture of GONOR and a bouquet at the Plaintiff's table. Maybe they would not. All civil [and criminal] cases proceed through negotiation and trial with some imbalance of information – whether one side knows which witnesses listed will actually appear for trial, or whether there is knowledge held by a witness that was not asked about in discovery. This Court should not forget as well that these Defendants had to be compelled by the discovery commissioner to actually produce responsive discovery requests after years of obstruction, and had improperly drafted orders stricken on reconsideration twice within a year. And they still want to cause problems in the case that has been unbelievably, unnecessarily complicated and contentious.

//

¹ *Dale Depo.* 34:7; *Mayer Depo.* 27:22, 28:4.

As noted above, *Moseley* explicitly acknowledges the Court's authority to grant extensions under Nev. R. Civ. P. 6(b), and even allows extension motions to be filed after the 90-day period when excusable neglect exists. *Moseley v. Eighth Judicial Dist. Court of Nev.*, 124 Nev. 654, at 661 (2008). Defendants misstate *Moseley*: excusable neglect is not required to move for the extension of the deadline, it is to move if the 90 days has already expired prior to the motion. Here, the motion for extension was timely filed, so excusable neglect is unnecessary. HOFFNER has not paid outside counsel for an estate to be opened yet, pending this Court's decision. If the Court prefers an Estate, Plaintiff will retain outside counsel and file to open an estate in the probate department, and then file an amended complaint with the ESTATE OF IRWIN GONOR as plaintiff. Should this be the Court's decision, Plaintiff humbly requests that the Court grant Plaintiff an additional 120 days under Nev. R. Civ. P. 6(b) to open the Estate of Irwin Gonor in the appropriate court department.

Plaintiff, GONOR, respectfully requests this Court grant his motion to Substitute in SHIRLEY ANN HOFFNER in the stead of IRWIN GONOR. Alternately, Plaintiff moves to allow 120 additional days for HOFFNER to open THE ESTATE OF IRWIN GONOR.

RYAN ALEXANDER, CHTD.

4

PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3017 W. Charleston Blvd. Ste. 58, Las Vegas, Nevada 89102. I served the within document(s):

☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.

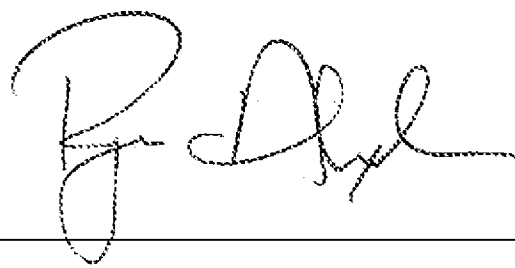
☒ ELECTRONIC SERVICE

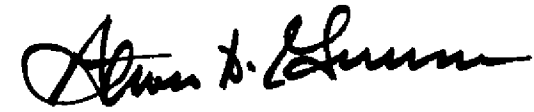
Christopher Turtzo, Esq.
Morrison Sullivan Lemkul Pitegoff
3770 Howard Hughes Parkway, Ste. 170
Las Vegas, NV 89169
Telephone: (702) 405-8100
Fax: (702) 405-8101
Attorney for Defendants

☐ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

☐ PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct. Executed on December 8, 2016, at Las Vegas, Nevada.

By: 
Employee of Ryan Alexander, Chtd.



CLERK OF THE COURT

MOT
RYAN ALEXANDER
Nevada Bar No. 10845
RYAN ALEXANDER, CHTD.
3017 West Charleston Blvd., Ste. 58
Las Vegas, NV 89102
Phone: (702) 868-3311
Fax: (702) 822-1133
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY NEVADA**

IRWIN GONOR [Deceased],
Plaintiff,

vs.

RICHARD J. DALE, et al.,
Defendants.

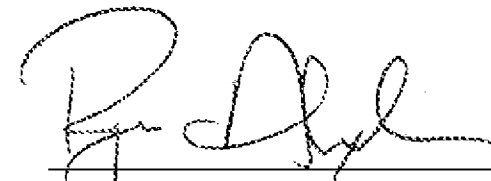
CASE NO.: A653755
DEPT. NO.: 19

**MOTION TO AMEND COMPLAINT TO
SUBSTITUTE THE ESTATE OF IRWIN
GONOR AS PLAINTIFF**

COMES NOW, Plaintiff IRWIN GONOR ("Gonor" or "Plaintiff"), by and through his attorney of record, Ryan Alexander, Esq., of Ryan Alexander, Chtd., and submits herein this Motion To Amend Complaint To Substitute The Estate Of Irwin Gonor As Plaintiff (hereinafter "Motion"). This Motion respectfully seeks substitution of the deceased Plaintiff by his Estate pursuant to NRCp 25. This Motion is based on the papers and pleadings on file in this matter, the attached memorandum of points and authorities, and the arguments of counsel at time set for hearing on this matter.

Dated this 24th of January, 2017.

RYAN ALEXANDER, CHTD.



RYAN ALEXANDER
Nevada Bar No. 10845
Attorney for Plaintiff

RYAN ALEXANDER CHTD.
3017 WEST CHARLESTON BOULEVARD SUITE 58, LAS VEGAS, NEVADA 89102

NOTICE OF MOTION

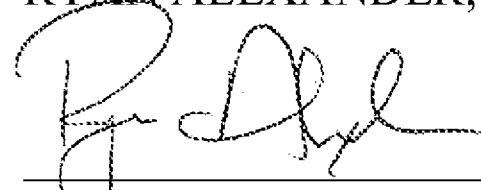
TO: RICHARD DALE; KELLY MAYER; RICK'S RESTORATIONS, INC.

TO: CHRISTOPHER TURTZO, ESQ.

PLEASE TAKE NOTICE that the foregoing MOTION TO AMEND COMPLAINT TO
SUBSTITUTE ESTATE OF IRWIN GONOR AS PLAINTIFF will be brought for hearing
before the the Hon. Bill Kephart in Department 19 on the 02 day of MARCH,
2017 at the hour of CHAMBERS a.m./p.m.

Dated this 24th of January, 2017.

RYAN ALEXANDER, CHTD.



RYAN ALEXANDER
Nevada Bar No. 10845
Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff GONOR (“Plaintiff”) was a talent manager with experience in stage shows and television. On or about August 26, 2011, Plaintiff entered into an agreement with Defendants to be Defendant Dale’s “manager” as well as undertake responsibilities for Defendant Restorations. Defendants terminated GONOR as their manager and owed him money, although the amount was in dispute. *Dale Depo.* 34:7; *Mayer Depo.* 27:22, 28:4. After nearly five years of contentious litigation, GONOR died suddenly on June 2, 2016. *See Certificate of Death*, Ex. 1. GONOR died intestate, had never married and had no children. Defendants filed a Suggestion of Death on October 26, 2016. As such, Plaintiff seeks to amend his Complaint to substitute the ESTATE OF IRWIN GONOR for Plaintiff IRWIN GONOR.

II. THE COURT MAY SUBSTITUTE A PARTY FOR THE DECEASED PLAINTIFF

The Nevada Rules of Civil Procedure allow a successor or representative to be substituted in for a deceased litigant in order to ensure that the causes of action survive an individual’s death. *Lummis v. Eighth Judicial Dist. Court ex rel. County of Clark*, 94 Nev. 114, 576 P.2d 272 (1978). This is codified in Nevada Rule of Civil Procedure 25:

Nev. R. Civ. P. 25. Substitution of parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action

1 does not abate. The death shall be suggested upon the record and the action shall
2 proceed in favor of or against the surviving parties.

3 The relation back effect of Nev. R. Civ. P. 15(c) applies to the addition or substitution of
4 parties pursuant to Nev. R. Civ. P. 25. *Costello v. Casler*, 127 Nev. Adv. Rev. 36, 254 P.3d 631
5 (2011). This Court can extend the substitution period pursuant to Nev. R. Civ. P. 6(b). *Moseley*
6 *v. Eighth Judicial Dist. Court of Nev.*, 124 Nev. 654, 188 P.3d 1136 (2008). The claims against
7 Defendants have not been extinguished in this case. Any person interested in the judgment or
8 property can be added as parties by the district court upon proper showing. *Twaddle v. Winters*,
9 29 Nev. 88, 89 P. 289 (1907) Citing the prior version of the rule, the court summarized:

10 “Supreme Court Rule 9 provides that upon the death or disability of a party pending an
11 appeal, his representative shall be substituted. Comp. Laws, 3111, provides that an
12 action shall not abate by the death or other disability of a party or the transfer of any
13 interest therein, if the cause of action survive or continue, but may be continued by or
14 against his representative or successor in interest; and, in case of any other transfer of
15 interest, the action may continue in the name of the original party or in the name of the
16 person to whom the transfer is made. Held, that the rule is not in conflict with the
17 statute, the two agreeing in allowing the substitution of the representative of a deceased
18 litigant, but the statute going further, and directing that the action may be continued by
19 or against his successor in interest or the person to whom he has transferred his interest.”

20 *Id.* No case citing NRCP 25 creates an affirmative duty for any party to litigation to file the
21 Suggestion of Death. All of the annotated cases only deal with what happens after a suggestion
22 is filed. Nothing is triggered for substitution motions until a proper suggestion is filed. *Barto v.*
23 *Weishaar*, 101 Nev. 27, 692 P.2d 498 (1985).

24 Plaintiff IRWIN GONOR has passed away. The claims against Defendants have not
25 been extinguished in this case. As allowed under Nev. R. Civ. P. 25(a)(1), Plaintiff seeks to
26 substitute IRWIN GONOR with his ESTATE.

27 Plaintiff’s need to secure this substitution in a timely manner is evident. NRCP 25
28 clearly states that a motion to substitute must be made within 90 days of service of the
suggestion of death. As mentioned previously, Defendants’ counsel filed IRWIN GONOR’s
Suggestion of Death on October 26, 2016. Including days for service, Plaintiffs were required to
file this motion requesting substitution no later than January 27, 2017.

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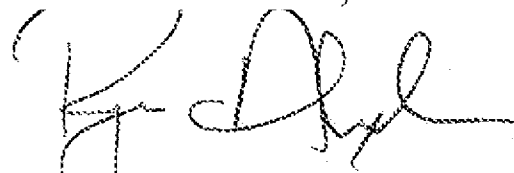
III.

CONCLUSION

Plaintiff, GONOR, respectfully requests this Court grant his motion to Substitute in ESTATE OF IRWIN GONOR in the stead of IRWIN GONOR.

Dated this 24th day of January 2017.

RYAN ALEXANDER, CHTD.



Ryan Alexander, Esq.
Nevada Bar No. 10845
200 E. Charleston Blvd.
Las Vegas, NV 89104
Tel: 702-222-3476
Fax: 702-252-3476
Attorney for Plaintiff

PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3017 W. Charleston Blvd. Ste. 58, Las Vegas, Nevada 89102. I served the within document(s):

MOTION TO AMEND COMPLAINT

☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.

☒ ELECTRONIC SERVICE

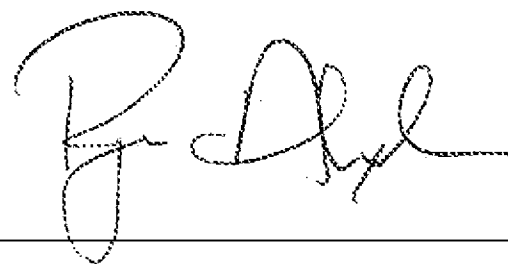
Christopher Turtzo, Esq.
Morrison Sullivan Lemkul Pitegoff
3770 Howard Hughes Parkway, Ste. 170
Las Vegas, NV 89169
Telephone: (702) 405-8100
Fax: (702) 405-8101
Attorney for Defendants

☐ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

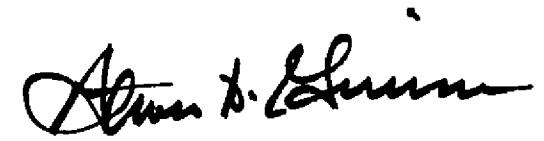
☐ PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct. Executed on January 24, 2017, at Las Vegas, Nevada.

By: _____



Employee of Ryan Alexander, Chtd.


CLERK OF THE COURT

1 **OPPS**
JEFFREY I. PITEGOFF, ESQ.
2 Nevada Bar No.
CHRISTOPHER A. TURTZO, ESQ.
3 Nevada Bar No. 010253
MORRIS, SULLIVAN, LEMKUL & PITEGOFF
4 3770 Howard Hughes Parkway, Suite 170
Las Vegas, Nevada 89169
5 Telephone No.: (702) 405-8100
Fax No.: (702) 405-8101
6 Attorney for Defendants
RICHARD J. DALE, KELLY MAYER
7 *and RICK'S RESTORATIONS, INC.*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 IRWIN GONOR,

11 Plaintiff,

12 vs.,

13 RICHARD J. DALE, KELLY MAYER, and
RICK'S RESTORATIONS, INC., a Nevada
14 Corporation, KIKI T's, LLC, a Nevada
Limited Liability Company; MAKING
15 HISTORY, LLC, a Nevada Limited Liability
Company; BOOKIN' IT LLC, a Nevada
16 Limited Liability Company; DOES 1 through
100; and ROE CORPORATIONS 1 through
17 100, inclusive; DOES I through 100; and ROE
Corporations 1 through 100 inclusively,
18 jointly and severally,

19 Defendants.

CASE NO: A-11-653755-C

DEPT. NO: 19

**DEFENDANTS' OPPOSITION
TO 2nd MOTION TO AMEND**

Hearing date: 3/2/2017
Hearing time: Chambers
(Defendants request oral
argument)

20
21 Defendants Richard J. Dale, Kelly Mayer Dale, and Rick's Restorations, Inc.
22 (collectively, "Defendants"), by and through their counsel of record, the law firm of Morris,
23 Sullivan, Lemkul & Pitegoff, hereby file their Opposition to Amend Complaint to Substitute the
24 Estate of Irwin Gonor as Plaintiff.

25
26 ///

27 ///

28

1 This Opposition is made and based on the papers and pleadings on file herein, the points
2 and authorities attached hereto, and such oral argument as may be allowed at the hearing of this
3 matter.

4 DATED this 10th day of February 2017.

5 MORRIS, SULLIVAN, LEMKUL & PITEGOFF

6 By: /s/ Christopher Turtzo
7 JEFFREY I. PITEGOFF, ESQ. / NBN 05458
8 CHRISTOPHER A. TURTZO, ESQ. / NBN 10253
9 3770 Howard Hughes Parkway, Suite 170
10 Las Vegas, Nevada 89169
11 Attorney for Defendants
12 RICHARD J. DALE, KELLY MAYER
13 and RICK'S RESTORATIONS, INC

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 The current Motion is a rogue pleading. There is no case left. The Complaint was
16 dismissed in its entirety and with prejudice. See Minutes, January 10, 2017 Hearing;
17 Defendants' Opposition and Countermotion, on file with Court, at 2:27 ("... request the motion
18 be denied, with prejudice, and the case be dismissed"). There is nothing to amend, nor even any
19 right to attempt to do so. Moreover, there is no reasonable basis in law or fact to waste the time
20 and resources of Defendants and this Court with the instant Motion.

21 Even setting that issue aside, the current Motion is also **still** not brought by a proper
22 party. NRCP 25 only permits substitution of "the proper parties." Id. As previously briefed and
23 actually argued at the January hearing, a survival action can only be maintained by a duly-
24 appointed personal representative or executor. See NRS 41.100. The Motion is apparently
25 brought by "the Estate of Irwin Gonor," but nowhere in the Motion is there even any
26 representation that **either**: (1) an estate even exists; or (2) that Ms. Hoffner (or any other person
27 for that matter) is the "executor or administrator" of such estate. See generally, 2nd Motion to
28 Amend, on file with this Court.

In short: Nevada law does not authorize a survival action by an 'estate;' the action must
be maintained, if at all, by the decedent's personal administrator or executor. The instant attempt

1 to substitute the “Estate of Irwin Gonor” as the plaintiff is a legal nullity. See e.g. *Idoux v. Estate*
2 *of Helou*, 279 Va. 548, 553, 691 S.E.2d 773, 776 (2010)(recognizing, under analogous Virginia
3 statutes, that a [complaint] against an ‘estate’ is a nullity and cannot toll the statute of
4 limitations.”)

5 Moving past these glaring, fatal (and unreasonably overlooked) defects, this 2nd Motion is
6 virtually identical to the previously and already denied motion to amend, down to the purported
7 entity seeking substitution (“the Estate of Irwin Gonor”) and arguments (including Rule 25 and
8 relation back). Therefore, it is nothing more than an improper Motion for Reconsideration that is
9 doubly improper for failing to offer any appropriate basis for reconsideration. See EDCR
10 2.20(c); EDCR 2.24(a), (b).¹

11 This Court already squarely and repeatedly rejected every argument raised in this 2nd
12 Motion. This included lengthy discussion of Ms. Hoffner’s and counsel’s **inexcusable** neglect –
13 in fact, downright lack of candor – in waiting for months to advise of the true claimant’s death.

14 In short, without excusable neglect, there is no relation back. See *Morrison v. Quest*
15 *Diagnostics Inc.*, 139 F. Supp. 3d 1182, 1185–87 (D. Nev. 2015); *Moseley v. Eighth Judicial*
16 *Dist. Court ex rel. Cty. of Clark*, 124 Nev. 654, 665–68, 188 P.3d 1136, 1144–46 (2008); *Zollo v.*
17 *Terrible Herbst, Inc.*, No. 60313, 2014 WL 859166, at *4, n.5 (Nev. Feb. 28,
18 2014)(unpublished). Without relation back, there is no proper party to bring this 2nd Motion
19 (even if there was still a case pending, which there is not). See *id.*²

20 Given these obvious defects, this Court should, therefore, exercise its authority under
21 NRCP 11(c)(1)(B) and impose sanctions on the movant – again, there is no “Plaintiff” in this
22 case – and counsel for unreasonably pursuing this motion. Counsel and the movant cavalierly
23 disregard the fact that their first attempt at this relief, via “Plaintiff’s Motion to Amend
24 Complaint to Substitute Shirley Ann Hoffner as Plaintiff, or in the alternative, **to Extend Time**
25 **and to Substitute the Estate of Irwin Gonor as Plaintiff**,” was denied with prejudice. If an
26 extension of time to substitute has already been denied with prejudice, there simply cannot be a
27

28 ¹ Neither NRCP 50(b), 52, 59, nor 60 afford a basis for a post-decision motion in this case.

1 good faith basis for thereafter filing this Motion to actually substitute, especially where it relates
2 to an improper party. See NRCP 11(b)(1), (2), and (3). This Court should impose sanctions in
3 the form of recompense for all attorney's fees incurred arising out of or relating to this 2nd
4 Motion. See NRCP 11(c)(1)(B); *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 330-
5 31, 130 P.3d 1280, 1288 (2006); *Masi v. Jessop*, 2013 WL 485838, **2 (2013) (unpublished).

6
7 Dated this 10th day of February, 2017.

8 MORRIS, SULLIVAN, LEMKUL & PITEGOFF
9

10 By: /s/ Christopher Turtzo
11 JEFFREY I. PITEGOFF, ESQ. / NBN 05458
12 CHRISTOPHER A. TURTZO, ESQ. / NBN 10253
13 3770 Howard Hughes Parkway, Suite 170
14 Las Vegas, Nevada 89169
15 Attorney for Defendants
16 RICHARD J. DALE, KELLY MAYER
17 and RICK'S RESTORATIONS, INC
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28 ² Defendants also incorporate their arguments in their Opposition to the 1st Motion to Amend and Countermotion to Dismiss as though more fully stated herein.

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CERTIFICATE OF SERVICE (E.D.C.R 8.05 (f))

I hereby certify that the following parties are to be served **DEFENDANTS'**
OPPOSITION TO 2nd MOTION TO AMEND as follows:

Electronically:

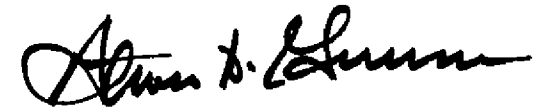
Ryan Alexander, Esq.
3017 W. Charleston Blvd. #58
Las Vegas, NV 89102
Attorney for Plaintiff

Traditional Manner:

None.

Dated this 10th day of February, 2017.

/s/ Allyson Lodwick
An Employee of MORRIS, SULLIVAN, LEMKUL
& PITEGOFF



CLERK OF THE COURT

RPLY
RYAN ALEXANDER
Nevada Bar No. 10845
RYAN ALEXANDER, CHTD.
3017 West Charleston Blvd., Ste. 58
Las Vegas, NV 89102
Phone: (702) 868-3311
Fax: (702) 822-1133
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY NEVADA**

IRWIN GONOR [Deceased],
Plaintiff,

vs.

RICHARD J. DALE, et al.,
Defendants.

CASE NO.: A653755
DEPT. NO.: 19

**REPLY TO MOTION TO AMEND
COMPLAINT TO SUBSTITUTE THE
ESTATE OF IRWIN GONOR AS
PLAINTIFF**

COMES NOW, Plaintiff IRWIN GONOR ("Gonor" or "Plaintiff"), by and through his attorney of record, Ryan Alexander, Esq., of Ryan Alexander, Chtd., and submits herein this Reply Motion To Amend Complaint To Substitute The Estate Of Irwin Gonor As Plaintiff (hereinafter "Motion").

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE COURT MAY SUBSTITUTE THE ESTATE FOR THE DECEASED PLAINTIFF

The probate of Irwin Gonor's estate was opened on January 25, 2017 as Eighth Judicial District Court – Probate Division case P-17-090652-E. Even though Gonor's mother Shirley Ann Hoffner was willing to serve as a successor plaintiff, after reviewing the responsibilities of the executrix or special administrator, being elderly and a resident of California she nominated Nevada notary public Robert Womble to serve as the Special Administrator of the Estate of Irwin Gonor rather than perform those functions herself.

NRCP 25 states that a motion to substitute must be made within 90 days of service of the

RYAN ALEXANDER CHTD.
3017 WEST CHARLESTON BOULEVARD SUITE 58, LAS VEGAS, NEVADA 89102

suggestion of death.¹ Further, the motion may be made “by any party or by the successors or representatives of the deceased party.” *Id.* Defendants’ counsel filed IRWIN GONOR’s Suggestion of Death on October 26, 2016 and this Motion was filed on January 24, 2017.² The Court declined to extend the motion deadline under NRCP 6(b) at the January 10, 2017 hearing; this Motion was still timely filed.

The Nevada Rules of Civil Procedure allow a successor or representative to be substituted in for a deceased litigant in order to ensure that the causes of action survive an individual’s death. *Lummis v. Eighth Judicial Dist. Court ex rel. County of Clark*, 94 Nev. 114, 576 P.2d 272 (1978). The relation back effect of Nev. R. Civ. P. 15(c) applies to the addition or substitution of parties pursuant to Nev. R. Civ. P. 25. *Costello v. Casler*, 127 Nev. Adv. Rev. 36, 254 P.3d 631 (2011). Any person interested in the judgment or property can be added as parties by the district court upon proper showing. *Twaddle v. Winters*, 29 Nev. 88, 89 P. 289 (1907) Citing the prior version of the rule, the court summarized:

“Supreme Court Rule 9 provides that upon the death or disability of a party pending an appeal, his representative shall be substituted. Comp. Laws, 3111, provides that an action shall not abate by the death or other disability of a party or the transfer of any interest therein, if the cause of action survive or continue, but may be continued by or against his representative or successor in interest; and, in case of any other transfer of interest, the action may continue in the name of the original party or in the name of the person to whom the transfer is made. Held, that the rule is not in conflict with the statute, the two agreeing in allowing the substitution of the representative of a deceased litigant, but the statute going further, and directing that the action may be continued by or against his successor in interest or the person to whom he has transferred his interest.”

Id. As allowed under Nev. R. Civ. P. 25(a)(1), Plaintiff seeks to substitute IRWIN GONOR with his successor in interest, the ESTATE OF IRWIN GONOR. GONOR died intestate, had never

¹ Nev. R. Civ. P. 25. Substitution of parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

² Defendants calculated the deadline to file this motion as January 26, 2017 in their Opposition to Motion to Amend.

1 married and never had children. There are no significant assets to administer other than the
2 proceeds of this settlement.

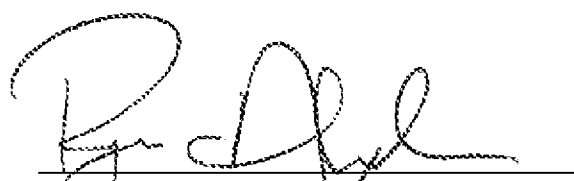
3 **III.**

4 **CONCLUSION**

5 Plaintiff, GONOR, respectfully requests this Court grant his motion to Substitute in the
6 ESTATE OF IRWIN GONOR in the stead of IRWIN GONOR.

7
8 Dated this 25th day of February, 2017.

RYAN ALEXANDER, CHTD.

9
10 
11 Ryan Alexander, Esq.
12 Nevada Bar No. 10845
13 *Attorney for Plaintiff*
14
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PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3017 W. Charleston Blvd. Ste. 58, Las Vegas, Nevada 89102. I served the within document(s):

REPLY

☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.

☒ ELECTRONIC SERVICE

Christopher Turtzo, Esq.
Morrison Sullivan Lemkul Pitegoff
3770 Howard Hughes Parkway, Ste. 170
Las Vegas, NV 89169
Telephone: (702) 405-8100
Fax: (702) 405-8101
Attorney for Defendants

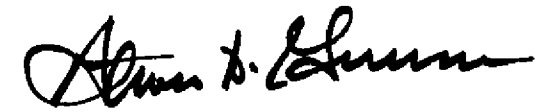
☐ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

☐ PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct. Executed on February 25, 2017, at Las Vegas, Nevada.

By: _____

Employee of Ryan Alexander, Chtd.



CLERK OF THE COURT

ORD
RYAN ALEXANDER
Nevada Bar No. 10845
RYAN ALEXANDER, CHTD.
3017 West Charleston Blvd., Ste. 58
Las Vegas, NV 89102
Phone: (702) 868-3311
Fax: (702) 822-1133
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY NEVADA**

IRWIN GONOR,
Plaintiff,
vs.
RICHARD J. DALE, et al.,
Defendants.

CASE NO.: A653755
DEPT. NO.: 19

**ORDER DENYING MOTION TO AMEND
COMPLAINT TO SUBSTITUTE
SHIRLEY ANN HOFFNER AS
PLAINTIFF OR IN THE ALTERNATIVE
TO EXTEND TIME AND TO
SUBSTITUTE THE ESTATE OF IRWIN
GONOR AS PLAINTIFF AND
ORDER GRANTING DEFENDANTS'
COUNTERMOTION TO DISMISS CASE
WITH PREJUDICE**

COMES NOW, IRWIN GONOR having filed a Motion to Amend Complaint to Substitute Shirley Ann Hoffner as Plaintiff or in the Alternative to Extend Time and to Substitute the Estate of Irwin Gonor as Plaintiff and Defendant's Countermotion to Dismiss Case with Prejudice; defendants RICHARD J. DALE, KELLY MAYER, and RICK'S RESTORATIONS, INC. having appeared through their attorney Christopher A. Turtzo, Esq.; the Court having considered the pleadings and papers on file in this matter, the representations and arguments of counsel on January 10, 2017, and otherwise finding good cause, the court finds and rules as follows:

1. IRWIN GONOR filed his original Complaint in this case on December 23, 2011;
2. According to the Certificate of Death on file with the Court, GONOR died on June 2, 2016;
3. GONOR's mother, Shirley Ann Hoffner (*nee* Silverman), is listed as the Informant to the Certificate of Death.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Defendant(s)	<input type="checkbox"/> Judgment of Arbitration

1 4. Mrs. Hoffner thereafter directed settlement negotiations on behalf of GONOR;

2 5. On October 25, 2016, Mrs. Hoffner provided her signature to a proposed settlement agreement
3 drafted by Defendants;

4 6. On October 26, 2016, Defendants filed a Notice of Suggestion of Death;

5 7. On November 19, 2016, counsel filed a Motion to Substitute Ms. Hoffner as the successor
6 Plaintiff in this case pursuant to Nev. R. Civ. Proc. 25, or in the alternative, to extend the 120 day
7 deadline imposed by Nev. R. Civ. Proc. 25 to file a Motion for Substitution;

8 8. On December 9, 2016, Defendants filed an Opposition to the Motion to Amend and also filed a
9 Countermotion to Dismiss;

10 9. On January 8, 2017, Plaintiff filed a Reply and Opposition.

11 10. The actual knowledge of Mr. Gonor's death by next-of-kin, Mrs. Hoffner, imposed obligations
12 on her to undertake efforts to preserve the viability of GONOR's claims at issue in this case;

13 11. Ms. Hoffner inexcusably delayed the filing of the Motion to Substitute;

14 12. Ms. Hoffner is not GONOR's appointed personal administrator, nor executor of his estate.

15 13. This court concludes that such inexcusable delay is a proper basis for denying the Motion to
16 Amend and for denying the Motion to Extend Time.

17 14. This Court concludes that Ms. Hoffner has failed to demonstrate that the deadline to file a
18 proper motion under Nev. R. Civ. Proc. 25 should be extended.

19
20 **ORDER**

21 **IT IS HEREBY ORDERED** that the Motion to Amend Complaint to Substitute Shirley Ann
22 Heffner as Plaintiff, or in the Alternative, to Extend Time and to Substitute the Estate of Irwin Gonor
23 as Plaintiff is DENIED.

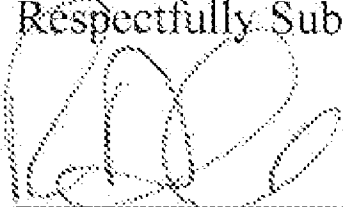
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1
2 **IT IS FURTHER ORDERED** that Defendant's Countermotion to Dismiss is GRANTED;
3 Plaintiff's claims are hereby dismissed, with prejudice.

4 Dated this 9th day of February, 2017.
5

6
7 
8 DISTRICT COURT JUDGE

9 Respectfully Submitted by:
10 

11 Ryan Alexander, Esq.
12 RYAN ALEXANDER, CHTD.
13 3017 West Charleston Blvd., Ste. 58
14 Las Vegas, NV 89102
15 Phone: (702) 868-3311
16 *Attorney for Plaintiff*
17
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 1st day of February, 2017, pursuant to NRCP 5(b), I served via the
3 Eighth Judicial District Court electronic service system the above **[COMPETING] ORDER**
4 **DENYING MOTION TO AMEND COMPLAINT TO SUBSTITUTE SHIRLEY ANN**
5 **HOFFNER AS PLAINTIFF OR IN THE ALTERNATIVE TO EXTEND TIME AND TO**
6 **SUBSTITUTE THE ESTATE OF IRWIN GONOR AS PLAINTIFF; ORDER GRANTING**
7 **DEFENDANTS' COUNTERMOTION TO DISMISS CASE WITH PREJUDICE** to the
8 following parties:
9

10 CHRISTOPHER A. TURTZO, ESQ.
11 MORRIS, SULLIVAN, LEMK U L & PITEGOFF
12 3770 Howard Hughes Parkway, Suite 170
13 Las Vegas, Nevada 89169
14 *Attorney for Defendants*

15 By: /s/Robert Womble
16 Employee of Ryan Alexander, Chtd.
17
18
19
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1 NEOJ
2 RYAN ALEXANDER
3 Nevada Bar No. 10845
4 RYAN ALEXANDER, CHTD.
5 3017 West Charleston Blvd., Ste. 58
6 Las Vegas, NV 89102
7 Phone: (702) 868-3311
8 Fax: (702) 822-1133
9 *Attorney for Plaintiff*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

8 IRWIN GONOR [Deceased],
9 Plaintiff,

10 vs.

11 RICHARD J. DALE, et al.,
12 Defendants.

CASE NO.: A653755
DEPT. NO.: 19

NOTICE OF ENTRY OF ORDER

14 YOU WILL PLEASE TAKE NOTICE that on the 28th day of March, 2017, an Order was entered
15 in the above-entitled action, a copy of which is attached hereto.

16 DATED this 29th day of March, 2017.

17 

20 RYAN ALEXANDER, CHTD.
21 Nevada Bar No. 10845
22 3017 West Charleston Blvd. Ste. 58
23 Las Vegas, Nevada 89102
24 Attorney for Plaintiff

CERTIFICATE OF MAILING


I declare that I am a resident of the County of Clark, Nevada. I am over the age of eighteen (18) years and not a party to the within entitled action. I am readily familiar with the practice for collection and processing of documents for delivery, and did process the documents identified herein by consigning such copy in a sealed envelope, First Class postage fully prepaid, in the United States Postal Service for collection and mailing to those identified below:

NOTICE OF ENTRY OF ORDER

In the manner identified above on the person(s) listed below:

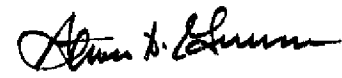
Christopher Turtzo, Esq.
Morrison Sullivan Lemkul Pitegoff
3770 Howard Hughes Parkway, Ste. 170
Las Vegas, NV 89169
Telephone: (702) 405-8100
Fax: (702) 405-8101
Attorney for Defendants

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 29th day of March, 2017, at Las Vegas, Nevada.


Employee of Ryan Alexander, Chtd.

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EXHIBIT 1


CLERK OF THE COURT

ORD
RYAN ALEXANDER
Nevada Bar No. 10845
RYAN ALEXANDER, CHTD.
3017 West Charleston Blvd., Ste. 58
Las Vegas, NV 89102
Phone: (702) 868-3311
Fax: (702) 822-1133
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY NEVADA**

IRWIN GONOR,
Plaintiff,
vs.

RICHARD J. DALE, et al.,
Defendants.

CASE NO.: A653755
DEPT. NO.: 19

**ORDER DENYING MOTION TO AMEND
COMPLAINT TO SUBSTITUTE
SHIRLEY ANN HOFFNER AS
PLAINTIFF OR IN THE ALTERNATIVE
TO EXTEND TIME AND TO
SUBSTITUTE THE ESTATE OF IRWIN
GONOR AS PLAINTIFF AND
ORDER GRANTING DEFENDANTS'
COUNTERMOTION TO DISMISS CASE
WITH PREJUDICE**

COMES NOW, IRWIN GONOR having filed a Motion to Amend Complaint to Substitute Shirley Ann Hoffner as Plaintiff or in the Alternative to Extend Time and to Substitute the Estate of Irwin Gonor as Plaintiff and Defendant's Countermotion to Dismiss Case with Prejudice; defendants RICHARD J. DALE, KELLY MAYER, and RICK'S RESTORATIONS, INC. having appeared through their attorney Christopher A. Turtzo, Esq.; the Court having considered the pleadings and papers on file in this matter, the representations and arguments of counsel on January 10, 2017, and otherwise finding good cause, the court finds and rules as follows:

1. IRWIN GONOR filed his original Complaint in this case on December 23, 2011;
2. According to the Certificate of Death on file with the Court, GONOR died on June 2, 2016;
3. GONOR's mother, Shirley Ann Hoffner (*nee* Silverman), is listed as the Informant to the Certificate of Death.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Disputed Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 4. Mrs. Hoffner thereafter directed settlement negotiations on behalf of GONOR;

2 5. On October 25, 2016, Mrs. Hoffner provided her signature to a proposed settlement agreement
3 drafted by Defendants;

4 6. On October 26, 2016, Defendants filed a Notice of Suggestion of Death;

5 7. On November 19, 2016, counsel filed a Motion to Substitute Ms. Hoffner as the successor
6 Plaintiff in this case pursuant to Nev. R. Civ. Proc. 25, or in the alternative, to extend the 120 day
7 deadline imposed by Nev. R. Civ. Proc. 25 to file a Motion for Substitution;

8 8. On December 9, 2016, Defendants filed an Opposition to the Motion to Amend and also filed a
9 Countermotion to Dismiss;

10 9. On January 8, 2017, Plaintiff filed a Reply and Opposition.

11 10. The actual knowledge of Mr. Gonor's death by next-of-kin, Mrs. Hoffner, imposed obligations
12 on her to undertake efforts to preserve the viability of GONOR's claims at issue in this case;

13 11. Ms. Hoffner inexcusably delayed the filing of the Motion to Substitute;

14 12. Ms. Hoffner is not GONOR's appointed personal administrator, nor executor of his estate.

15 13. This court concludes that such inexcusable delay is a proper basis for denying the Motion to
16 Amend and for denying the Motion to Extend Time.

17 14. This Court concludes that Ms. Hoffner has failed to demonstrate that the deadline to file a
18 proper motion under Nev. R. Civ. Proc. 25 should be extended.

19
20 **ORDER**

21 **IT IS HEREBY ORDERED** that the Motion to Amend Complaint to Substitute Shirley Ann
22 Heffner as Plaintiff, or in the Alternative, to Extend Time and to Substitute the Estate of Irwin Gonor
23 as Plaintiff is DENIED.

24 //

25 //

1
2 **IT IS FURTHER ORDERED** that Defendant's Countermotion to Dismiss is GRANTED;
3 Plaintiff's claims are hereby dismissed, with prejudice.

4
5 Dated this 9th day of February, 2017,

6
7 
8 DISTRICT COURT JUDGE

9 Respectfully Submitted by:

10 

11 Ryan Alexander, Esq.
12 RYAN ALEXANDER, CHTD.
13 3017 West Charleston Blvd., Ste. 58
14 Las Vegas, NV 89102
15 Phone: (702) 868-3311
16 *Attorney for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2017, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system the above **[COMPETING] ORDER DENYING MOTION TO AMEND COMPLAINT TO SUBSTITUTE SHIRLEY ANN HOFFNER AS PLAINTIFF OR IN THE ALTERNATIVE TO EXTEND TIME AND TO SUBSTITUTE THE ESTATE OF IRWIN GONOR AS PLAINTIFF; ORDER GRANTING DEFENDANTS' COUNTERMOTION TO DISMISS CASE WITH PREJUDICE** to the following parties:

CHRISTOPHER A. TURTZO, ESQ.
MORRIS, SULLIVAN, LEMK U L & PITEGOFF
3770 Howard Hughes Parkway, Suite 170
Las Vegas, Nevada 89169
Attorney for Defendants

By: /s/Robert Womble
Employee of Ryan Alexander, Chtd.

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

IRWIN GONOR [deceased], Appellant.
vs.
RICHARD J. DALE, KELLY MAYER,
RICK'S RESTORATIONS, INC., KIKI T's
LLC, MAKING HISTORY LLC, BOOKIN' IT
LLC, DOES 1-100;
Respondents.

No. 72949

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
Jun 06 2017 01:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

1. Judicial District Eighth Department 19
County Clark Judge William "Bill" Kephart
District Ct. Case No. A653755

2. Attorney filing this docketing statement:

Attorney Ryan Alexander Telephone 702-868-3311
Firm Ryan Alexander, Chtd.
Address 3017 West Charleston Blvd. Ste. 58
Las Vegas NV 89102

Client(s) Irwin Gonor, the Estate of Irwin Gonor, Robert Womble, Special Administrator

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Christopher Turtzo Telephone 702-405-8100
Firm Morris Sullivan Lemkul Pitegoff
Address 3770 Howard Hughes Parkway, Suite 170
Las Vegas, NV 89169

Client(s) RICHARD J. DALE, KELLY MAYER, RICK'S RESTORATIONS, INC., et al.

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>Substitution of party denied</u> |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

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

None.

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

Eighth Judicial District Court, Family Division P-17-090652-E, In the Matter of IRWIN GONOR, Deceased. Filed 1/25/2017. (Appointment of Special Administrator Robert Womble)

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

An action for breach of contract, unjust enrichment, quantum meruit, misrepresentation and fraudulent transfer regarding unpaid talent management fees and commissions on talent revenue. Plaintiff died on June 2, 2016, after close of discovery but prior to trial, and Suggestion of Death was docketed on October 26, 2016.

Timely motion to substitute Plaintiff's sole heir as party plaintiff or to extend time for substitution of estate was denied and Defendants' countermotion to dismiss with prejudice granted as summary judgment, before expiration of 90-days' motion deadline following Suggestion of Death. Court stated at the hearing its basis that the 90 days to file a substitution should run from plaintiff's death, not the Suggestion of Death. Timely motion to substitute Estate as plaintiff filed within 90 days of Suggestion of Death was subsequently denied, the Court explaining that it would treat the motion as a "reconsideration" of the motion to substitute the sole heir.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

There was no legal basis to dismiss this case prior to 90 days after the suggestion of death. NRCP 25 allows a successor or representative to be substituted in for a deceased litigant in order to ensure that the causes of action survive an individual's death. *Lummis v. Eighth Judicial Dist. Court ex rel. County of Clark*. Any person interested in the judgment or property can be added as parties by the district court upon proper showing. *Twaddle v. Winters*, 29 Nev. 88, 89 P. 289 (1907).

NRCP 25 states that a motion to substitute a party must be made within 90 days of service of the suggestion of death, not 90 days from the actual death of a party. No deadline is triggered for substitution motions until a proper suggestion is filed. *Barto v. Weishaar*, 101 Nev. 27, 692 P.2d 498 (1985). No case under NRCP 25 creates an affirmative duty for any party to litigation to file the suggestion of death. Plaintiff's motion to substitute the heir was filed within 21 days of completed service of the suggestion of death (24, less mailing days) and the subsequent motion to substitute estate was filed at 89 days.

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

None.

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

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain: No deadline is triggered for substitution of party motions until a proper suggestion of death is filed. *Barto v. Weishaar*, 101 Nev. 27, 692 P.2d 498 (1985).

NRCP 25 allows a successor or representative to be substituted in for a deceased litigant in order to ensure that the causes of action survive an individual's death. *Lummis v. Eighth Judicial Dist. Court*, 94 Nev. 114, 576 P.2d 272, 1978 Nev. LEXIS 495 (Nev. 1978).

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

Not presumptively retained to the Supreme Court pursuant to NRAP 17(a). May fall under the jurisdiction of NRAP 17(b)(2) given the judgment dismissing tort claims.

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

Was it a bench or jury trial? N/A

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

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 3/18/2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 3/29/2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Apr 26, 2017

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

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

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☒ Other (specify) NRAP 3A(b)(8) - Order after final judgment.

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

NRAP 3A(b)(1) - this appeal is in regards to an order dismissing Plaintiff's case on a countermotion to Plaintiff's motion to substitute party after the death of the Plaintiff.

NRAP 3A(b)(8) - after entry of the order dismissing the case, an order was pending denying Plaintiff's estate's timely motion to be substituted as plaintiff.

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

(a) Parties:

IRWIN GONOR [deceased], RICHARD J. DALE, KELLY MAYER, RICK'S RESTORATIONS, INC., KIKI T's LLC, MAKING HISTORY LLC, BOOKIN' IT LLC, GOLD & SILVER PAWN SHOP, INC., RICHARD KEVIN HARRISON, RICHARD COREY HARRISON, WILLIAM MORRIS ENDEAVOR LLC, SEAN PERRY, AMIR SHAKHALILI

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

Parties that were dismissed with prejudice prior to the motions and orders at issue: GOLD & SILVER PAWN SHOP, INC. (7/24/2014), RICHARD KEVIN HARRISON (7/24/2014), RICHARD COREY HARRISON (7/24/2014), WILLIAM MORRIS ENDEAVOR LLC (11/11/2014), SEAN PERRY (11/11/2014), AMIR SHAKHALILI (11/11/2014)

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

GONOR, as to all remaining Defendants: breach of contract, unjust enrichment, quantum meruit, misrepresentation and fraudulent transfer regarding unpaid talent management fees and commissions.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☒ Yes

☐ No

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

☐ Yes

☒ No

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

The Court marked the box indicating that it was granting "Summary Judgment" to Defendants by granting their countermotion to dismiss.

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

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

VERIFICATION

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

IRWIN GONOR

Name of appellant

Ryan Alexander

Name of counsel of record

Jun 5, 2017

Date

/s/Ryan Alexander

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 5th day of June, 2017, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Christopher Turtzo, Esq.
Morris, Sullivan, Lemkul & Pitegoff
3770 Howard Hughes Parkway, Suite 170
Las Vegas, NV 89169 Telephone: (702) 405-8100
Attorney for Defendants

Dated this 5th day of June, 2017

/s/Ryan Alexander

Signature