

IN THE SUPREME COURT OF THE STATE OF NEVADA

IRWIN GONOR, DECEASED; THE
ESTATE OF IRWIN GONOR; AND
ROBERT WOMBLE, SPECIAL
ADMINISTRATOR,

Appellants,

vs.

RICHARD J. DALE; KELLY
MAYER; RICK'S RESTORATIONS,
INC.; KIKI T'S LLC; MAKING
HISTORY LLC; AND BOOKIN' IT
LLC,

Respondents.

SUPREME COURT NO. 72949

Electronically Filed
Jan 18 2018 09:56 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable William Kephart, District Judge
District Court Case No. A-11-653755-C

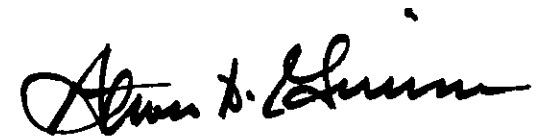
JOINT APPENDIX

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Attorneys for Appellants
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Irwin Gonor; and Robert Womble,
Special Administrator

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Attorney for Respondents

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CLERK OF THE COURT

1 ACOM
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6 Las Vegas, NV 89102
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8 Fax: (702) 822-1133
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.



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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.

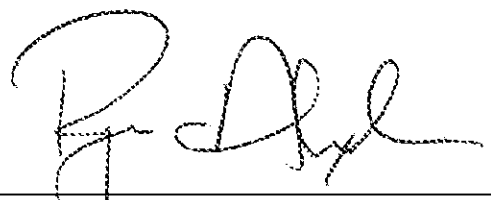
Thank you,
Rick Dale and Kelly Mayer
Ricks Restorations

/s/ Irwin Gonor

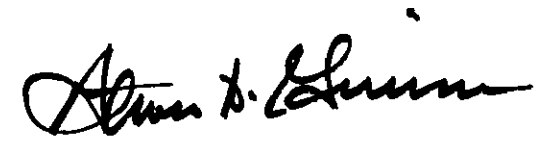
1
2 **CERTIFICATE OF SERVICE**

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.

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


CLERK OF THE COURT

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Nevada Bar No. 010715
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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.

DISTRICT COURT
CLARK COUNTY, NEVADA

IRWIN GONOR,

Plaintiff,

vs.

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 through
100; and ROE CORPORATIONS 1 through
100, inclusive,

Defendants.

CASE NO: A-11-653755-C

DEPT. NO: 19

**SUGGESTION OF DEATH UPON
THE RECORD OF PLAINTIFF
IRWIN GONOR**

Defendants RICHARD J. DALE, KELLY MAYER and RICK'S RESTORATIONS,
INC. by and through their counsel of record, MORRIS, SULLIVAN, LEMKUL & PITEGOFF,
hereby given notice that Plaintiff, Irwin Gonor, has died.

Dated this 26th day of October.

MORRIS, SULLIVAN, LEMKUL & PITEGOFF

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

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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 the foregoing SUGGESTION
OF DEATH UPON THE RECORD OF IRWIN GONOR as follows:

Electronically.

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

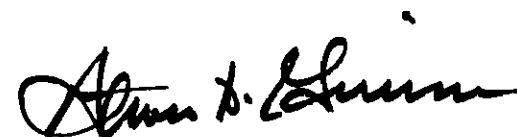
Traditional Manner:

None.

Dated this 26th day of October, 2016.

/s/ Allyson Lodwick

An Employee of MORRIS, SULLIVAN, LEMKUL
& PITEGOFF



CLERK OF THE COURT

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RYAN ALEXANDER
Nevada Bar No. 10845
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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

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

NOTICE OF MOTION

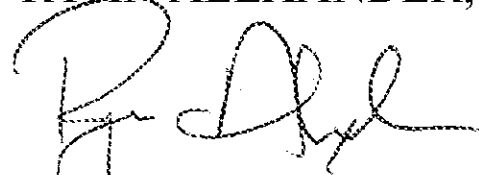
TO: RICHARD DALE; KELLY MAYER; RICK'S RESTORATIONS, INC.

TO: CHRISTOPHER TURTZO, ESQ.

PLEASE TAKE NOTICE that the foregoing MOTION TO AMEND COMPLAINT TO
SUBSTITUTE 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.

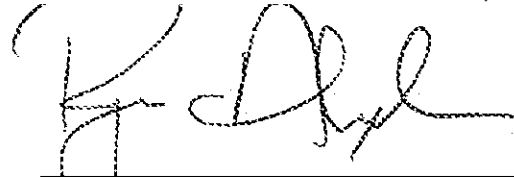
11
12 **III.**

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

CERTIFICATE OF DEATH

CASE FILE NO. 3897307

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 University Medical Center			3e. If Hosp. or Inst. indicate DOA, OP/Emer. Rm. Inpatient(Specify) 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 DAYS		7c. UNDER 1 DAY HOURS MINS		8. DATE OF BIRTH (Mo/Day/Yr) October 08, 1955		
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
12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage)		13. SOCIAL SECURITY NUMBER		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Talent Manager		14b. KIND OF BUSINESS OR INDUSTRY Entertainment
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)		21b. DATE SIGNED (Mo/Day/Yr)		21c. HOUR OF DEATH		21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)
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		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.

VRS-Rev-20120523a



289054

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.

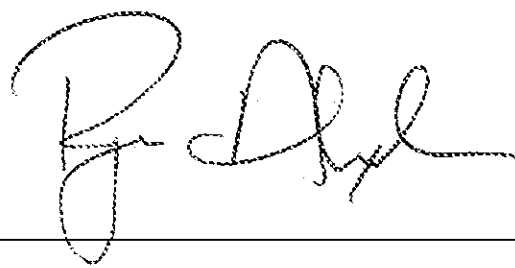
☒ ELECTRONIC SERVICE

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.

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Case Number: A-11-653755-C

1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 6, 2016

2 [Case called at 9:38 a.m.]

3 THE COURT: Irwin Gonor versus Richard Dale. This is
4 A653755.

5 MR. TURTZO: Good morning, Your Honor, Christopher Turtzo
6 for the Defendants. Mr. Alexander is in -- just popped up to another
7 hearing in Judge Walsh's department.

8 THE COURT: Okay.

9 MR. TURTZO: So we can trail --

10 THE COURT: All right. That's fine.

11 [Matter Triled at 9:39 a.m.]

12 [Matter Recalled at 10:11 a.m.]

13 THE COURT: Back on the record in Irwin Gonor versus Richard
14 Dale matter in A653755. I thought this was resolved but I've been
15 told that you haven't resolved it and --

16 MR. TURTZO: It's true.

17 THE COURT: Okay. So what are we going to do? I mean how
18 long is it going to take to execute the stip and order if you're not -- if
19 you aren't going to do it what are you --

20 MR. TURTZO: Well I think a couple things need to happen and
21 as -- I don't know if you Your Honor's has had a chance to read the
22 motion to substitute Plaintiff's yet but --

23 THE COURT: Right.

24

25

1 MR. TURTZO: Mr. Gonor was dead when -- before Mr.
2 Alexander sent the offer of judgment that led to the settlement
3 negotiations that ultimately resulted in the settlement.

4 At no point has anyone, even now, made a motion to
5 substitute the executor or the personal administrator of the estate
6 into the case which is what is required under 41.100 in order for
7 anyone to compromise or otherwise settle a claim.

8 So we have a couple issues. I don't want to put the cart
9 before the horse, but we will be opposing the motion on those
10 grounds despite the fact that Rule 25 has some loose language that
11 says a successor can be appointed.

12 My initial fear is that my clients can't sign an agreement or
13 be parties to an agreement that's not signed by an administrator or
14 an executor of the estate because under the statute it's not going to
15 be valid.

16 So that's step one is getting someone who's properly
17 appointed by the probate court in to either maintain this case or to
18 settle it.

19 Point two is under the law there in fact is no settlement
20 because Mr. Alexander had no authority to make any sort of offer or
21 negotiation representation once his client died until that substitution
22 happened. I'm not saying my clients are going to repute the deal
23 because they had entered into it. Of course they had entered into it
24 under the false pretense that he was in fact alive. And to avoid a
25 trial against an alive guy, not a guy who was dead, we've gone back

1 through and done the research and the briefing, but the first thing
2 that needs to happen is the proper motion of substitute needs to be
3 filed and somebody with authority from the probate court under the
4 statute needs to be appointed such that they could execute a
5 settlement agreement if we're -- if we can even get there.

6 So we'll be opposing the motion on those grounds. I
7 assume Mr. Alexander will be going to probate opening, or someone
8 will be going to probate to get the mother appointed as an executor.
9 But right now my clients would be subject to suit by potential
10 creditors, or others, if they sign this agreement and paid the money
11 to his mother because she's not -- has no authority to bind the
12 estate. And that's my primary concern is that has to be fixed first.

13 Right now we have an unsupported representation that he
14 died intestate and there's no heirs, but my client's need more than
15 that to ensure they're not going to be sued again and that some
16 creditor isn't going to -- of Mr. Gonor's isn't going to come back and
17 pursue them. So that needs to be fixed first and foremost.

18 MR. ALEXANDER: Well, Your Honor, their time to oppose hadn't
19 expired yet. So I --

20 THE COURT: Okay. All right.

21 MR. ALEXANDER: I would say if we could just keep the motion
22 hearing on then and let them file their opposition and then I'll work
23 with --

24 THE COURT: Okay.

25 MR. ALEXANDER: -- Ms. Hoffner to file -- to open the estate in

1 the meantime.

2 THE COURT: All right. Well then just this is a -- I'll be back here
3 on January 5th and we'll address it then.

4 MR. TURTZO: Thank you, Your Honor.

5 LAW CLERK: Judge, that's on the chamber calendar right now.
6 Do you want to put it on the hearing calendar because it's going to
7 be opposed?

8 THE COURT: I'll put it on the hearing calendar. Yeah.

9 MR. TURTZO: Is it going to stay on the same day or do you
10 think it's going to be different?

11 THE COURT: Is that a date?

12 [COLLOQUY BETWEEN THE COURT, LAW CLERK & COURT CLERK]

13 THE COURT: The 10th.

14 MR. TURTZO: That's fine.

15 THE COURT: Okay.

16 LAW CLERK: Just to avoid -- because if they're going to file an
17 opposition or otherwise.

18 THE COURT: Okay. All right.

19 MR. TURTZO: Thank you, Your Honor.

20 [Hearing concluded at 10:14 a.m.]

21 * * * * *

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

24

25

Christine Erickson
Court Recorder/Transcriber

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

REGISTER OF ACTIONS

CASE NO. A-11-653755-C

Irwin Gonor, Plaintiff(s) vs. Richard Dale, Defendant(s)

§
§
§
§
§
§
§

Case Type: **Intentional Misconduct**

Subtype: **Interfere with Contract Rights**

Date Filed: **12/23/2011**

Location: **Department 19**

Cross-Reference Case **A653755**

Number:

Supreme Court No.: **72949**

PARTY INFORMATION

Lead Attorneys

Defendant **Dale, Richard J**

~~Carrie M. Hanlon~~
~~Retained~~
~~702-669-5200(W)~~

Other **Gordon & Rees Llp**

Plaintiff **Gonor, Irwin**

Ryan E Alexander
~~Retained~~
~~702-868-3311(W)~~

EVENTS & ORDERS OF THE COURT

12/06/2016 | **Show Cause Hearing** (9:00 AM) (Judicial Officer Kephart, William D.)

Minutes

12/06/2016 9:00 AM

- Ryan Alexander, Esq., appeared on behalf of Plaintiff
- Christopher Turtzo, Esq., appeared on behalf of Defendant At call of the case, Mr. Turtzo advised Mr. Alexander was in another department and requested that the matter be trailed. COURT SO ORDERED. MATTER RECALLED - Upon inquiry of the Court regarding counsels' estimation as to when they believe they would be able to execute the settlement documents and Stipulation and Order for Dismissal with Prejudice, Mr. Turtzo advised of a forthcoming opposition and of the risk his clients

face if they sign the agreement. Mr. Alexander stated that the Defendants' time to oppose had not expired and suggested to keep the motion hearing on to allow Defendants the opportunity to file their opposition. COURT SO NOTED, and ORDERED the 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 MOVED from January 5, 2017 to January 10, 2017 at 9:00 a.m. CONTINUED TO: 01/10/2017 9:00 A.M.

[Return to Register of Actions](#)


CLERK OF THE COURT

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

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 IRWIN GONOR,

11 Plaintiff,

12 vs.,

CASE NO: A-11-653755-C

DEPT. NO: 19

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

13 RICHARD J. DALE, KELLY MAYER, and
14 RICK'S RESTORATIONS, INC., a Nevada
15 Corporation, KIKI T's, LLC, a Nevada
16 Limited Liability Company; MAKING
17 HISTORY, LLC, a Nevada Limited Liability
18 Company; BOOKIN' IT LLC, a Nevada
19 Limited Liability Company; DOES 1 through
20 100; and ROE CORPORATIONS 1 through
21 100, inclusive, DOES I through 100; and ROE
22 Corporations 1 through 100 inclusively,
23 jointly and severally,

24 Defendants.

Hearing date: 1/10/2017
Hearing time: 9:00 AM

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: (1) Opposition to 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; and (2) Countermotion to Dismiss.

26
27 ///

28 ///

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.

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Electronically.

Traditional Manner:

Dated this 9th day of December, 2016.

039

Exhibit A

Exhibit A

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**

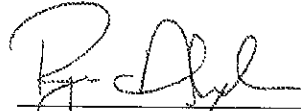
PLEASE TAKE NOTICE that pursuant to Rule 68 of the Nevada Rules of Civil Procedure, and
in accordance with Nevada Revised Statute § 17.115, Plaintiff, IRWIN GONOR (herein referred to
as "Plaintiff"), hereby offers to allow judgment to be taken against Defendants, RICHARD J. DALE,
individually; KELLY 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

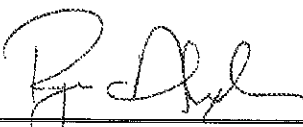
12 Nevada Bar No. 10845

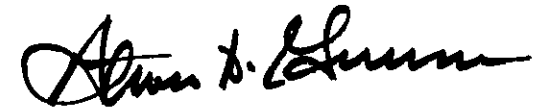
13 *Attorney for Plaintiff*
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CERTIFICATE OF SERVICE

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

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

By: 
Employee of Ryan Alexander, Chtd.



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.

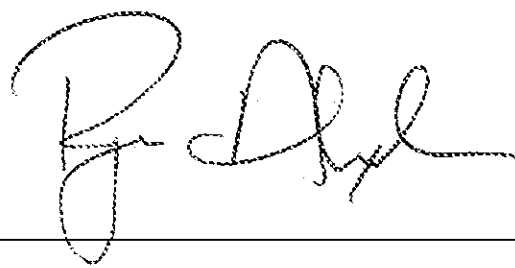
☒ ELECTRONIC SERVICE

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.



1 TRAN

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 IRWIN GONOR,

5 Plaintiff,

6 vs.

7 RICHARD DALE,

8 Defendant.

9 CASE NO. A-11-653755-C

10 DEPT. XIX

11 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

12 TUESDAY, JANUARY 10, 2017

13 **TRANSCRIPT OF PROCEEDINGS**

14 **PLAINTIFF'S MOTION TO AMEND COMPLAINT TO SUBSTITUTE SHIRLEY**
15 **ANN HOFFNER AS PLAINTIFF, OR IN THE ALTERNATIVE TO EXTEND TIME**
16 **AND TO SUBSTITUTE THE ESTATE OF IRWIN GONOR AS PLAINTIFF**
17 **DEFENDANTS' (1) OPPOSITION TO MOTION TO AMEND; AND (2)**
18 **COUNTERMOTION TO DISMISS**

19 **APPEARANCES:**

20 For the Plaintiff:

RYAN E. ALEXANDER, ESQ.

21 For the Defendant:

CHRISTOPHER A. TURTZO, ESQ.

22
23
24 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

25 TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

1 TUESDAY, JANUARY 10, 2017 AT 9:09 A.M.

2
3 THE COURT: On page 1, Irwin Gonor versus Richard Dale. This is
4 A653755. This is Plaintiff's Motion to Amend the Complaint to Substitute Shirley
5 Ann Hoffner as Plaintiff, Or in the Alternative to Extend Time and to Substitute the
6 Estate of Irwin Gonor as Plaintiff.

7 I've read the -- your motion as well as the Opposition in this matter. Do
8 you want to add to it?

9 MR. ALEXANDER: Yeah, I did file a Reply over the weekend, Your Honor,
10 which didn't get docketed until -- Wiznet didn't put it through until --

11 THE COURT: I didn't get it.

12 MR. ALEXANDER: -- later yesterday.

13 THE COURT: Do you want me to look at it? Do the parties have that?

14 MR. TURTZO: I got it yesterday. It's a week late.

15 THE COURT: Yeah. Let me look at it real quick and see.

16 Okay. Do you want to address anything further?

17 MR. ALEXANDER: No, Your Honor, I think that sums it up. There's no -- you
18 know, the Defendants are trying to create their own interpretation of the statute on
19 suggestions of that. It's clearly followed the -- we filed the motion timely once they
20 filed the suggestion of death. They can't point to any case that actually creates the
21 obligation of any party having to file the suggestion of death within a certain amount
22 of time. We still have until the end of this month.

23 We could refile another motion if necessary but you can, under Rule 6
24 extend the time. We can go open the estate if that's the Court's preference. We
25 didn't do it yet because his -- we obviously talked to his mother, she didn't want to

1 do it yet until the Court knew what side -- which way they wanted to go with that.

2 MR. TURTZO: I don't -- with all -- first I guess before I start I wanted to note
3 that the Defendants are present in the courtroom, they wanted to come for the
4 hearing.

5 Just briefly, Your Honor, under 41.100 I don't think we have any choice.
6 Under the statute a personal -- we need a personal representative or the executor of
7 an estate, otherwise the claim dies. We've provided Federal Court case interpreting
8 the statute, reaching directly that result. There's no Nevada State Court case on
9 point I could find.

10 But the reality is under the applicable Nevada statute on a survival
11 action, not the rule of civil procedure which allows for substitution of parties, under
12 the substantive statute in Nevada law that allows this claim to theoretically proceed
13 now that the person who held it has died, we have to have a personal administrator
14 or the executor of an estate, to either compromise the claim or to move forward. If
15 the Court's more than willing to grant the motion, I'm going to file a Motion to
16 Dismiss the Complaint because Ms. Hoffner doesn't have any standing to
17 compromise the claim or to pursue it.

18 Now Mr. Alexander notes we don't have a case that requires -- that says
19 he's required to file a suggestion of death. That's true. We do have an ethical rule
20 and I'll represent to the Court that I called Bar Counsel to see what they would tell
21 me in the event this situation ever happened to me. And the rule that we cited in our
22 papers is the very one they pointed me to. They also said this is the number one
23 question that comes up from lawyers representing Plaintiffs; what do you do when a
24 Plaintiff dies.

25 I'll also represent to the Court based on my conversation with Bar

1 Counsel, which I don't want to go too much farther into, that's why we included that
2 section. Had this been disclosed -- it's our position that this is material information
3 that should have been disclosed during the settlement negotiations. This isn't a
4 case where the settlement had been achieved and we're talking a paperwork
5 situation and then the Plaintiff died. The Plaintiff died. That ended Mr. Alexander's
6 attorney-client relationship. Then he issued an offer of judgment on behalf of no
7 one, without substituting in either the executor or the administrator of an estate
8 that's required under Nevada law to pursue a survival action.

9 Where I'm going with all of this is sure, the Court can determine that
10 he's got until January 25th to file a proper motion. The Court should not extend the
11 time however. Mr. Gonor died on June 2nd, 2016, more than seven months ago.
12 This fact wasn't disclosed to me, to the Court, or to anyone else despite active
13 ongoing trial preparations, calendar call pretrial conference until the end of October
14 when I got a settlement agreement that was signed by his mother.

15 No one has put in an affidavit that he actually died intestate, no one has
16 put in an affidavit that there's no other heirs or potential creditors, and they've had
17 more than enough time to handle this the proper way. They've chosen not to do it.
18 They've concealed what I think is material fact they're required to disclose. So if the
19 Court finds that they're entitled until the 25th to file the motion, that should be it. If
20 they don't file it on time then the case should be dismissed.

21 THE COURT: Anything further?

22 MR. ALEXANDER: No, Your Honor. Obviously we put in the motion that
23 Shirley Hoffner is the only heir, died intestate, no case. She's the mom, she's the
24 one that directed the case from there through her own personal Counsel, who I dealt
25 with. So.

1 THE COURT: Okay. This is the Plaintiff's Motion to Amend the Complaint to
2 Substitute Shirley Ann Hoffner as the Plaintiff, Or in the Alternative to Extend the
3 Time and Substitute the Estate of Irwin Gonor as Plaintiff. I'm going to deny your
4 motion. Your motion I believe is entirely -- you took too long on this. There's a -- I
5 think the statute is clear on the timeframe that you have for purposes of this and so
6 I'm going to deny it.

7 I'm going to ask that the -- that you prepare an order consistent with my
8 decision and --

9 MR. ALEXANDER: Your Honor, if I could ask for a clarification then on your
10 order.

11 THE COURT: I'm not going to let you extend it and I'm denying your Motion
12 to Substitute.

13 MR. ALEXANDER: Okay.

14 THE COURT: That's clear enough, isn't it?

15 MR. ALEXANDER: But, Your Honor, on what basis with -- I filed the motion
16 within three weeks of the suggestion of death, what basis are basing the Motion for
17 Extension?

18 THE COURT: I believe you missed your timeframe.

19 MR. ALEXANDER: When is the Court's belief that the timeframe ended?

20 THE COURT: At what point in time do you do this? I believe that you go from
21 the actual death and you're talking --

22 MR. ALEXANDER: That's not correct, Your Honor. Your Honor, I'm sorry to
23 interrupt you. The -- if you read the rule, NRPC -- NRCP 25 says 90 days from the
24 suggestion of death --

25 THE COURT: Okay.

1 MR. ALEXANDER: -- which was at the end of October. And I filed this
2 motion within three weeks.

3 THE COURT: Yeah, but you knew, you knew prior to that that he was dead.
4 So what are you talking about when you go -- when somebody just says okay,
5 here's a certificate to support that. Is that what you're talking about?

6 MR. ALEXANDER: Correct. In fact the case I cited in the Reply
7 addresses --

8 THE COURT: Okay, well --

9 MR. ALEXANDER: -- this issue directly.

10 THE COURT: -- then you're going to have to appeal my decision because I
11 don't accept that. I believe that there's a know -- actual knowledge amount here.
12 You knew. So when you wait around for somebody else to just throw out some
13 piece of paper that says here we're suggesting that he died on this date. You knew.

14 MR. ALEXANDER: That's what the rule says, Your Honor. And the case in
15 the Reply addresses that.

16 THE COURT: Yeah, but rules don't ask for absurd results. And that's absurd;
17 that you sit around and wait until you get some type of documentation that says
18 okay, you know, even though he died 90 days before or 100 days before, we're
19 setting it to this date. How do you reconcile that?

20 MR. ALEXANDER: Because, Your Honor, I researched this issue.

21 THE COURT: That you knew --

22 MR. ALEXANDER: But --

23 THE COURT: But you knew. How do you reconcile the fact that you had
24 actual versus a suggestion of death? The word in itself suggestion overcomes the
25 fact -- is overcome by the fact you had actual knowledge. So how do you reconcile

1 that?

2 MR. ALEXANDER: There is no case that imposes a duty --

3 THE COURT: Well we have a case now. It's probably this one because I
4 don't understand your argument with that. You actually knew and then you waited
5 around for a suggestion of death when the suggestion is -- in my opinion is
6 overruled by actual knowledge. How do you get around that? You're allowed to sit
7 on your hands and wait just for -- to wait until somebody decides that they want to
8 issue an actual document for it, when you know it?

9 MR. ALEXANDER: But -- yes, actually that is the rule, that's the case. The
10 case law says that the obligation does not begin until a proper suggestion of
11 death -- excuse me -- has been filed. That creates the statute -- or the rule to start
12 running and there is no case that points to an obligation of either party to file that
13 suggestion.

14 THE COURT: So you can just sit around and we just wait even though the
15 parties knew about it and you knew about it.

16 MR. ALEXANDER: Well --

17 THE COURT: You knew about it.

18 MR. ALEXANDER: I knew about it but --

19 THE COURT: So if no one --

20 MR. ALEXANDER: We'd already reached a settlement within three weeks of
21 him dying.

22 THE COURT: I know but you didn't reach a settlement because it's not done,
23 obviously, right?

24 MR. ALEXANDER: Well it's not done now, yeah.

25 THE COURT: Okay. So what -- I don't understand -- I'm having a hard time

1 understanding your argument with that. You're just saying well, we have to wait for
2 this piece of paper, even though we know what happened.

3 MR. ALEXANDER: That's correct.

4 THE COURT: Okay.

5 MR. ALEXANDER: That's what the rules say.

6 THE COURT: Do you want to address that any further? Do you understand
7 my -- am I off here?

8 MR. TURTZO: Well, Your Honor, I think the Court's honed in on what I think
9 is a real problem in the rules and the statutory scheme here. We have -- in this
10 situation we would never know the guy had died.

11 THE COURT: Uh-huh.

12 MR. TURTZO: He knew, right? He could have told me, he could have
13 disclosed it. I believe 3.4 -- Ethical Rule 3.4 required that disclosure. Maybe he
14 didn't have to file a suggestion of death, but he was required to disclose it to me and
15 he was required to disclose it to this Court, okay. Instead they tried to conceal it,
16 negotiate a settlement knowing that it's a personal claim maintained by a personal
17 guy, and they'd have very little chance of prevailing at the time of trial.

18 Had he told me the day he died I would have filed the suggestion of
19 death that day, but yes, I think this stat -- the way that this -- there's a hole in the
20 rule that the Court is properly closing here by requiring a Plaintiff to disclose a death
21 in this situation so therefore the parties can get some finality and that we have the
22 proper parties to either maintain or to settle a claim as required by 41.100 in a
23 survival action.

24 So I think what the court's doing makes perfect sense. No I don't have
25 a case that says that the Plaintiff has an affirmative obligation to file a notice of

1 suggestion of death, but I certainly think it's a great primary rule considering 41.100
2 prohibits anyone besides the administrator or a personal executor of an estate for
3 maintaining an action. They ought to be required to at least disclose it. Had they
4 done it we would have been -- this case would have been over a long time ago or
5 maybe we would have tried it, but at this point we're nine months past the time we
6 would have tried the case the first and I think what the Court's doing makes a lot of
7 sense.

8 THE COURT: Well I think the date that I'm -- you can understand where I'm
9 going with this is my -- the date I'm talking about is if you have actual knowledge of
10 it. I think a suggestion of death is some type of a protection for individuals that
11 wouldn't be able to put a timeframe on it so they get used -- they get that from a
12 different source. So I -- that's where I'm going with this.

13 MR. TURTZO: Makes sense to me, Your Honor.

14 THE COURT: I'm not allowing you to amend this, I believe that you were well
15 beyond the timeframe. I understand the argument with regards to your suggestion
16 of death. I would think that common sense would even show that if you have actual
17 knowledge of it to sit -- just sit on your hands and wait for this, I don't think the
18 statute contemplates that. I don't. So.

19 MR. ALEXANDER: So you're denying this motion, Your Honor.

20 THE COURT: Uh-huh.

21 MR. ALEXANDER: Are you taking a position on whether the Motion to
22 Substitute the Estate would be untimely then at this point?

23 THE COURT: Yes.

24 MR. TURTZO: My understand, the Court's dismissing the case under Rule
25 25.

1 THE COURT: Okay.

2 MR. ALEXANDER: Is that your decision, Your Honor?

3 THE COURT: Well I don't know --

4 MR. ALEXANDER: I would like the rule --

5 THE COURT: I don't know how --

6 MR. ALEXANDER: I want the order to be very clear --

7 THE COURT: -- you're going to proceed. I mean --

8 MR. ALEXANDER: -- that you're making up new law.

9 THE COURT: -- if you nobody to substitute in and you know -- that's where
10 you put the Court in a position where you should have acted earlier and yet they
11 give you some timeframe to do so, it's almost like a statute of limitations type of
12 thing and, you know -- almost. But -- so --

13 MR. ALEXANDER: It is a statute of limitations that begins to run 90 days from
14 the suggestion of death, Your Honor.

15 THE COURT: Okay. Well I'm not interpreting it that way. I'm sorry, I'm just
16 not. I don't -- I can't believe that the -- that you would be making that type -- I
17 understand your argument because you have no other argument, but when you
18 know of what's happening and then you try to lay back on that, I -- I don't know.
19 That's my position. If you're moving to dismiss it under Rule 25 then I mean, then --
20 I mean, that's the alternative.

21 MR. TURTZO: That's where our Opposition -- our Countermotion did
22 precisely that. We filed a --

23 THE COURT: Let me do this. I'm going to do that, I'm going to grant your
24 motion. Give you an opportunity to step back and decide what you want to do
25 alternatively. If you need to appeal my decision or whatever, I mean, that's up to

1 you.

2 MR. ALEXANDER: Well you're putting me in this situation.

3 THE COURT: Well I -- that's your decision. If you want to do that on
4 behalf -- if, you know, Ms. Hoffman or whatever, if she wants to -- Hoffner, if she
5 wants to do this now, that's really up to her. But what I'm saying is that I have to
6 make a decision here and that's the decision I'm making, okay?

7 MR. ALEXANDER: But -- okay, so on the countermotion then, we're hearing
8 the countermotion -- just to be clear, we're hearing the countermotion today, then
9 there's no other --

10 THE COURT: Well --

11 MR. TURTZO: That's what a countermotion is. And the Opposition was due
12 when your Reply was due and you failed to file one. That's exactly what a
13 countermotion is.

14 THE COURT: So the -- wouldn't I be doing that. I mean, it was filed, the
15 countermotion has been -- so I'm granting -- I'm denying the Motion to Amend and
16 I'm granting the Motion to Dismiss.

17 MR. TURTZO: Thank you, Your Honor, I'll prepare the order for Mr.
18 Alexander's review and we'll submit it to the Court.

19 THE COURT: Okay.

20 [Proceeding concluded at 9:24 a.m.]

21 ATTEST: I hereby certify that I have truly and correctly transcribed the
22 audio/visual recording in the above-entitled case.

23 

24 _____
25 Brittany Mangelson
Independent Transcriber

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[Search](#) [Refine Search](#) [Close](#)

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

REGISTER OF ACTIONS

CASE NO. A-11-653755-C

Irwin Gonor, Plaintiff(s) vs. Richard Dale, Defendant(s)

§
§
§
§
§
§
§

Case Type: **Intentional Misconduct**

Subtype: **Interfere with Contract Rights**

Date Filed: **12/23/2011**

Location: **Department 19**

Cross-Reference Case **A653755**

Number:

Supreme Court No.: **72949**

PARTY INFORMATION

Lead Attorneys

Defendant **Dale, Richard J**

~~Carrie M. Hanlon~~
~~Retained~~
~~702-669-5200(W)~~

Other **Gordon & Rees Llp**

Plaintiff **Gonor, Irwin**

Ryan E Alexander
~~Retained~~
~~702-868-3311(W)~~

EVENTS & ORDERS OF THE COURT

01/10/2017 | **All Pending Motions** (9:00 AM) (Judicial Officer Kephart, William D.)

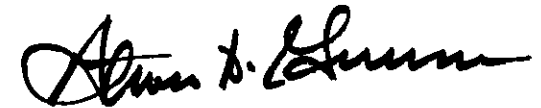
Minutes

01/10/2017 9:00 AM

- 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 ...
 DEFENDANTS' (1) OPPOSITION TO MOTION TO AMEND;
 AND (2) COUNTER MOTION TO DISMISS Following arguments
 by counsel, COURT ORDERED, Plaintiff's motion DENIED and
 Defendant's counter motion to dismiss GRANTED. Mr. Turtzo to
 prepare and submit the appropriate order.

[Parties Present](#)

[Return to Register of Actions](#)



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.

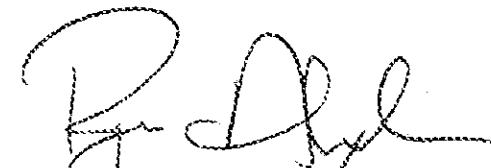
CASE NO.: A653755
DEPT. NO.: 19

**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

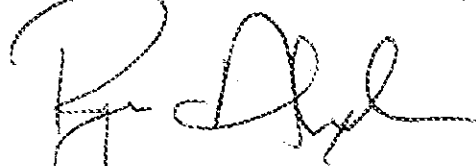
TO: RICHARD DALE; KELLY MAYER; RICK'S RESTORATIONS, INC.

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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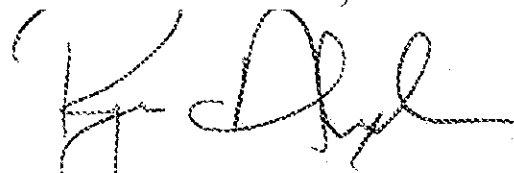
III.

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

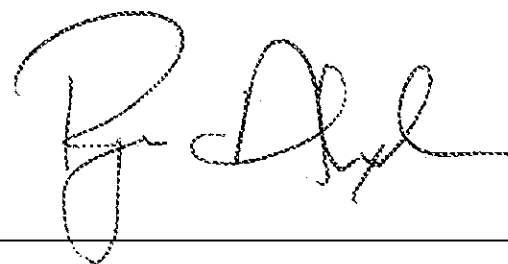
Christopher Turtzo, Esq.
Morrison Sullivan Lemkul Pitegoff
3770 Howard Hughes Parkway, Ste. 170
Las Vegas, NV 89169
Telephone: (702) 405-8100
Fax: (702) 405-8101
Attorney for Defendants

☐ 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.

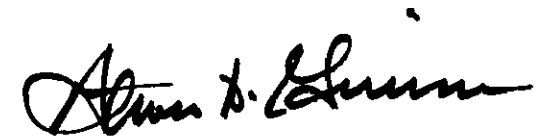
☐ PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

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
Alvin P. Hanson

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

IRWIN GONOR [Deceased],

Plaintiff,

VS.

RICHARD J. DALE, et al.

Defendants.

CASE#: A-11-653755

DEPT. XIX

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
TUESDAY, MARCH 28, 2017

**RECORDER'S TRANSCRIPT OF HEARING:
MOTION TO AMEND COMPLAINT TO SUBSTITUTE THE
ESTATE OF IRWIN GONOR AS PLAINTIFF**

APPEARANCES:

For the Plaintiff:

RYAN ALEXANDER, ESQ.

For the Defendants:

CHRISTOPHER TURTZO, ESQ.
DANIEL CEREGHINO, ESQ.

Also Present:

ROBERT WOMBLE
Special Administrator for the Estate
of Irwin Gonor

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 28, 2017

2
3 [Case called at 9:01 a.m.]

4 THE COURT: Irwin Gonor versus Richard Dale. This is
5 A653755.

6 MR. TURTZO: Good morning, Your Honor, Chris Turtzo and Dan
7 Cereghino for the Defendants. The individual Defendants being here
8 are present with me in the courtroom as well.

9 MR. ALEXANDER: Ryan Alexander for Irwin Gonor. I'm here
10 with Robert Womble, Special Administrator of the Estate of Robert --
11 of Irwin Gonor.

12 THE COURT: Okay. This is on for Plaintiff's motion to amend
13 the complaint and substitute the Estate of Irwin Gonor as Plaintiff in
14 this matter. The Plaintiff -- what has changed? I don't see anything
15 different then what was already addressed in which I denied.

16 MR. ALEXANDER: Well what you denied before, Your Honor,
17 was my motion to put in his mother, the heir, as the Plaintiff or to
18 extend -- the alternative to extend the time required. You denied
19 those motions and in the meantime before my 90 days expired that I
20 had to file a motion to substitute the estate I filed the motion -- I
21 opened the estate.

22 Ultimately, Ms. Hoffner, Irwin's mother, didn't want to be
23 the Special Administrator with the duties that that required. She felt
24 like it was too much of a hassle or a burden for her in her old age.
25 She asked if I could find someone and they ultimately agreed to

1 appoint my new republic, Robert Womble, as Special Administrator,
2 which was ordered by the Court.

3 So the Estate's open now. The administration is ordered
4 and the letters of administration were issued and so we believe we've
5 met the statutory requirements.

6 Now where it gets -- admittedly it gets tricky is that --

7 THE COURT: So your position is is that simply by opening the
8 Estate that that satisfies the statutory requirements that you filed this
9 within a proper time to do so -- to substitute?

10 MR. ALEXANDER: I well -- yes; because I -- not that that's --
11 actually the filing of the Estate is -- the statute itself is pretty silent
12 as to when the Estate itself has to be filed.

13 What the cases say is once the suggestion of death is on
14 the record, October 26th, then there's 90 days to file the motion to
15 substitute the Estate. So even though we had the hearing on
16 January 10th where you denied my motion to extend or to substitute
17 Ms. Hoffner, I still had another couple of weeks to file this motion to
18 substitute the Estate. So it was still timely.

19 Now where it gets tricky is that you granted a
20 counter motion to dismiss before the 90 days lapsed. And,
21 admittedly, since we've filed this motion and we did get the order
22 back in mid-February after this was set for a hearing, I don't know
23 what to do with that. So I do have the signed order that came back.

24 But our position is there's nothing that creates an
25 affirmative duty. And the duty doesn't start -- according to the

1 motion we filed and there's the Casler case from 1985. Nothing is
2 triggered for the substitution motions until the proper suggestion is
3 filed. Barto v. Weishaar; 90 days, I've got 90 days. We had the
4 hearing early. You didn't allow me to extend the time so I went and
5 opened the Estate and filed the motion and here we are.

6 And as far as the argument that, you know, they said the
7 proper party wasn't moving to open it, the statute says anybody can
8 move to open -- anybody can move to substitute, but now we do
9 have a Special Administrator on behalf of the Estate.

10 MR. TURTZO: Nothing's changed, Your Honor. The motion that
11 they filed may as well have been to substitute Mickey Mouse as the
12 plaintiff in the case.

13 As we pointed out in the opposition papers an estate is a
14 legal nullity. And even before we get there, I mean, the last time we
15 were here the Court ruled that the Plaintiff had some affirmative duty
16 to take some steps when Mr. Gonor's death was revealed in June.
17 June 2nd in fact of last year. The fact as we went through last time
18 in our papers, they didn't tell the Court. They didn't tell me. Instead
19 Mr. Alexander sent an offer of judgment on behalf of a dead client
20 and tried to settle the case. And he purportedly did so, I guess, on
21 the authority of Irwin Gonor's mother who now we know won't even
22 serve as the personal administrator. So the motion gets denied the
23 first time because they moved to substitute her as an heir.

24 41.100 makes it absolutely clear that she's not the proper
25 party to an action. And I disagree with what Mr. Alexander says that

1 Rule 25 says that anyone can be substituted. It says the proper
2 party. The first line of Rule 25 says that the court can allow the
3 substitution of a proper party. The proper party is either the Special
4 Administrator or the Executor of the Estate.

5 I have here -- I don't know if the Court wants a copy of it.
6 But I printed the register of actions from this probate action. Mr.
7 Womble wasn't appointed as the Special Administrator until February
8 27 of 2017. That's a month after. Even if we throw out the first
9 hearing completely and give him a redo.

10 On February 27, 2017, 30 days after the 90 days from
11 suggestion of death runs then they get finally letters of
12 administration. In the meantime what they filed was a motion to
13 substitute a legal entity as the Plaintiff. If this motion's granted, I'm
14 going to file a motion to dismiss it because the Estate has no
15 standing to do anything. And then they've got to come back and file
16 another motion. Nothing says you can file a motion to amend to add
17 the Estate of a party and then fix it later after it gets granted to add
18 the real party. Nothing has changed. In fact the case has only
19 gotten better for the Defendants.

20 Now the time period -- the 90 days has unquestionably run
21 even if the Court determines that they had no affirmative duty to do
22 anything upon Mr. Gonor's death and taking aside what I consider to
23 be failure -- material failure to disclose on Mr. Alexander's part. They
24 failed to file a motion to substitute a proper Plaintiff within the 90
25 days.

1 We're sitting here with a motion to amend to add an estate
2 as a Plaintiff. That's not even a thing that can prosecute or defend
3 litigation. If the motion were to be to grant it, he'd have to file a
4 complaint with a different Plaintiff than the one he's got in his
5 motion. I don't know how we can possibly continue to move
6 forward. At best he had his 90 days that's run. We put him on
7 notice. I was here on December 4th when I told him that we were
8 going to object to Ms. Hoffner moving forward on the basis that
9 she's an heir. And they didn't get letters of administration issued
10 until February 27th.

11 So I don't know if the Court wants any more from me or
12 has any questions on this but to answer your initial question, the only
13 thing that's changed is, if anything, the case is better for the
14 Defendants. The Estate cannot be the Plaintiff. They had 90 days at
15 best giving him everything he wants to file a motion to substitute a
16 proper Plaintiff under 41.100 that has to be the Executor or the
17 Special Administrator. That's not the case. One was just appointed
18 in February and we have no information other than the motion that
19 we have before us. So, even if it gets granted, if they file a motion
20 to substitute the Estate as the Plaintiff, it's going to be subject to
21 dismissal, and then by that point, clearly the time has run.

22 So, again, unless you have any further questions, I don't
23 have anything to add, Your Honor.

24 THE COURT: Anything further?

25 MR. ALEXANDER: Judge, we were here two months ago and

1 they were arguing that the State has to be the Plaintiff. So now I'm
2 --

3 MR. TURTZO: That's not true.

4 MR. ALEXANDER: I'm a little confused. Either the Estate's
5 going to be the Plaintiff and the -- it's going to be run by the Special
6 Administrator. I think what we're talking about here is a semantic
7 game of who's going to be on the caption. That would be him as a
8 special -- it'd be Mr. Womble as a Special Administrator of the Estate
9 of Irwin Gonor that takes over all of his claims. It's timely filed.

10 THE COURT: Okay. All right. With respect to your motion here
11 I believe it's -- I truly believe this is nothing more than a motion to
12 reconsider. I've already ruled on this. I made my determination. I'm
13 going to deny your motion.

14 And also with request to the Defendant's request for
15 sanctions, I'm denying that as well. All right?

16 MR. TURTZO: Thank you, Your Honor.

17 THE COURT: I'm going to ask that you prepare an order on this.
18 Okay?

19 MR. TURTZO: Thank you, Your Honor.

20 THE COURT: All right. Thank you.

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MR. ALEXANDER: Thank you, Your Honor.

[Hearing concluded at 9:10 a.m.]

* * * * *

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

Christine Erickson
Court Recorder/Transcriber

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

REGISTER OF ACTIONS

CASE NO. A-11-653755-C

Irwin Gonor, Plaintiff(s) vs. Richard Dale, Defendant(s)

§
§
§
§
§
§
§

Case Type: **Intentional Misconduct**

Subtype: **Interfere with Contract Rights**

Date Filed: **12/23/2011**

Location: **Department 19**

Cross-Reference Case **A653755**

Number:

Supreme Court No.: **72949**

PARTY INFORMATION

Lead Attorneys

Defendant Dale, Richard J

Carrie M. Hanlon
Retained
~~702-669-5200(W)~~

Other Gordon & Rees Llp

Plaintiff Gonor, Irwin

Ryan E Alexander
Retained
702-868-3311(W)

EVENTS & ORDERS OF THE COURT

03/02/2017 **Motion to Amend Complaint** (3:00 AM) (Judicial Officer Kephart, William D.)
03/02/2017, 03/28/2017
Motion to Amend Complaint to Substitute the Estate of Irwin Gonor as Plaintiff

Minutes

03/02/2017 3:00 AM
- COURT ORDERED, Motion to Amend Complaint to Substitute the Estate of Irwin Gonor as Plaintiff is CONTINUED to 3/28/2017 at 9:00 AM. Counsel directed to provide tabbed courtesy copies to Department 19 s Chambers. CLERK'S NOTE: The above minute order has been distributed to: Olaf Muller omuller@finksteinberg.com Stephanie Smith sjsmith@finksteinberg.com Marie Ogella

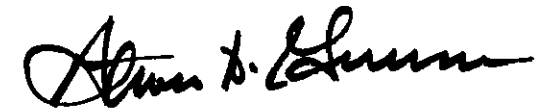
mogella@gordonrees.com Robert Larsen
rlarsen@gordonrees.com Chris Turtzo
turtzo@morrisullivanlaw.com MSLP
wiznet@morrisullivanlaw.com Brian Johnson
brian@ryanalexander.us Monica Alvarez
monica@ryanalexander.us Robert Womble
rob@ryanalexander.us Ryan Alexander ryan@ryanalexander.us

03/28/2017 9:00 AM

- Following arguments by counsel, COURT ORDERED, Motion to Amended Complaint DENIED and Counter Motion for Sanctions DENIED. Mr. Turtzo to prepare and submit the appropriate order.

[Parties Present](#)

[Return to Register of Actions](#)



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 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 //

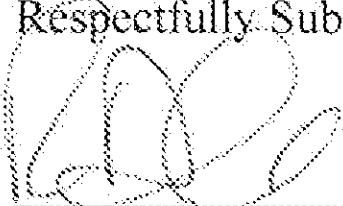
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1
2 **IT IS FURTHER ORDERED** that Defendant's Countermotion to Dismiss is GRANTED;
3 Plaintiff's claims are hereby dismissed, with prejudice.

4 Dated this 9th day of February, 2017.

5
6 
7 DISTRICT COURT JUDGE

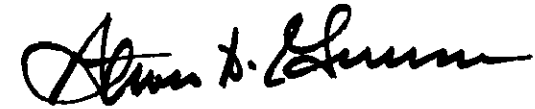
8 Respectfully Submitted by:

9 
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*
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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.



CLERK OF THE COURT

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**

10 IRWIN GONOR [Deceased],
11 Plaintiff,

12 vs.

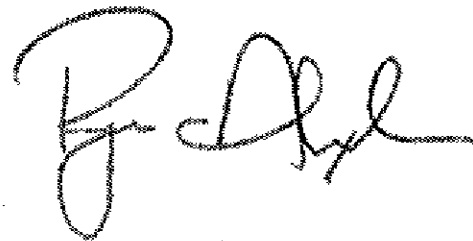
13 RICHARD J. DALE, et al.,
14 Defendants.

CASE NO.: A653755
DEPT. NO.: 19

NOTICE OF ENTRY OF ORDER

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

17 DATED this 29th day of March, 2017.



18 RYAN ALEXANDER, CHTD.
19 Nevada Bar No. 10845
20 3017 West Charleston Blvd. Ste. 58
21 Las Vegas, Nevada 89102
22 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.

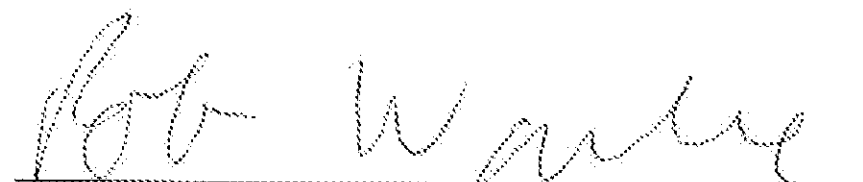
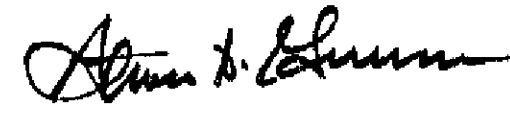

Employee of Ryan Alexander, Chtd.

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"/> Settlement 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.

24 //

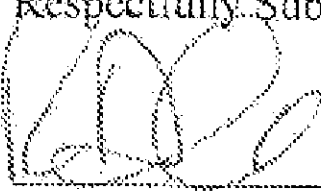
25 //

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:

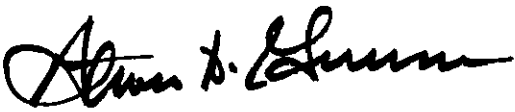
10 
11 Ryan Alexander, Esq.
12 RYAN ALEXANDER, CHTD.
13 3017 West Charleston Blvd., Ste. 58
14 Las Vegas, NV 89102
15 Phone: (702) 868-3311
16 Attorney for Plaintiff
17
18
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CERTIFICATE OF SERVICE

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.


CLERK OF THE COURT

1 NOAS
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.

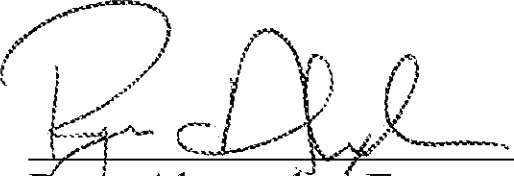
CASE NO.: A653755
DEPT. NO.: 19

NOTICE OF APPEAL

14 Notice is hereby given that IRWIN GONOR, Plaintiff above named, hereby appeals to
15 the Supreme Court of Nevada from the order denying the motion to substitute parties and
16 dismissing this action with prejudice entered in this action on March 28, 2017, and all other
17 subsequent appealable orders.

18
19 Dated this 26th day of April, 2017.

RYAN ALEXANDER, CHTD.

20
21 
22 Ryan Alexander, Esq.
23 Nevada Bar No. 10845
24 *Attorney for Plaintiff*
25
26
27
28

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

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):

NOTICE OF APPEAL

☐ 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 April 26, 2017, at Las Vegas, Nevada.

By: _____

Employee of Ryan Alexander, Chtd.