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13 *Attorneys for Appellant,*  
14 *Charles Schueler*

Electronically Filed  
Nov 22 2017 11:30 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

15 **IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

16 CHARLES SCHUELER,  
17  
18 Appellant,  
19  
20 v.

Supreme Court No.: 71882  
Dist. Ct. Case No.: A-15-722391-C

21 MGM GRAND HOTEL, LLC, a  
22 Domestic Limited Liability  
23 Company d/b/a MGM GRAND,  
24  
25 Respondent.

**APPELLANTS AND**  
**RESPONDENTS' JOINT**  
**APPENDIX**

Exhibit No.		Bates Nos.
1.	Plaintiffs' Complaint	001 - 011
2.	Affidavit of Service on MGM Resorts International	012 - 014
3.	Affidavit of Service on MGM Grand Hotel, LLC	015 - 017
4.	Defendant MGM Grand Hotel, LLC's Answer to Plaintiff's Complaint	018 - 023

5.	Affidavit of Service on 3A Composites USA Inc.	024 - 026
6.	Defendant 3A Composites USA Inc.'s Answer to Plaintiff's Complaint	027 - 035
7.	Affidavit of Service on Ad Art, Inc.	036 - 038
8.	Defendant Ad Art, Inc.'s Answer to Plaintiff's Complaint	039 - 046
9.	Defendant MGM Grand's Motion for Judgment on the Pleading	047 - 066
10.	Plaintiff's Opposition to Defendant MGM Grand's Motion for Judgment on the Pleading; Alternative Motion for Additional Discovery Pursuant to NRCP 56(f)	067 - 077
11.	Defendant MGM Grand's Reply in Support of Motion for Judgment on the Pleading	078 - 094
12.	Notice of Entry of Order Regarding MGM Grand's Motion for Judgment on the Pleading (Continued)	095 - 098
13.	March 9, 2016 Court Minutes on Defendant MGM Grand's Motion for Judgment on the Pleading (Deferred)	099
14.	Notice of Entry of Stipulation and Order to Dismiss Defendant MGM Resorts International d/b/a MGM Grand, ONLY, Without Prejudice	100 - 104
15.	March 23, 2016 Court Minutes on Defendant MGM Grand's Motion for Judgment on the Pleading (Deferred)	105 - 107
16.	April 8, 2016 Court Minutes on Defendant MGM Grand's Motion for Judgment on the Pleading	108 - 109
17.	Order denying Defendant MGM Grand's Motion for Judgment on the Pleading	110 - 112
18.	Defendant MGM Grand's Motion for Reconsideration on Motion for Judgment on the Pleadings	113 - 121

19.	Plaintiff's Opposition to MGM Grand's Motion for Reconsideration of its Motion for Judgment on the Pleadings	122 - 126
20.	Reply in Support of Defendant MGM Grand's Motion for Reconsideration on Motion for Judgment on the Pleadings	127 - 133
21.	June 22, 2016 Court Minutes on Defendant MGM Grand's Motion for Reconsideration on Motion for Judgment on the Pleadings (Continued)	134
22.	July 13, 2016 Court Minutes Defendant MGM Grand's Motion for Reconsideration on Motion for Judgment on the Pleadings (Granted)	135 - 136
23.	Order Granting Defendant MGM Grand's Motion for Reconsideration	137 - 140
24.	Notice of Entry of Order Granting Defendant MGM Grand's Motion for Reconsideration on Motion for Judgment on the Pleadings	141 - 146
25.	Defendant MGM Grand Hotel, LLC d/b/a MGM Grand's Motion to Certify Judgment as Final Pursuant to NRCP 54(b)	147 - 153
26.	Plaintiff's Notice of Non-Opposition to Defendant MGM Grand's Motion to Certify Judgment as Final Pursuant to NRCP 54(b)	154 - 156
27.	Notice of Entry of Order on Defendant MGM Grand Hotel, LLC d/b/a MGM Grand's Motion to Certify Judgment as Final Pursuant to NRCP 54(b)	157 - 160
28.	Notice of Appeal	161 - 163
29.	Case Appeal Statement	164 - 168

## DISTRICT COURT CIVIL COVER SHEET

XVII

Clark

County, Nevada

Case No.

File signed by Clerk's Office

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Charles Schaefer

Defendant(s) (name/address/phone):

MGM GRAND HOTEL, LLC, d/b/a MGM GRAND;

MGM RESORTS INTERNATIONAL, d/b/a MGM GRAND; ADART, INC.; and  
SA COMPOSITES USA INC., d/b/a ALUMINUM TECHNOLOGIES CORPORATION

Attorney (name/address/phone):

WILLIAM R. BRENSKE, ESQ.

630 South 3rd Street

Las Vegas, NV 89101

Attorney (name/address/phone):

UNKNOWN

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Torts	Probate	Construction Defect & Contract	Judicial Review/Appeal	
<b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input checked="" type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort	<b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant		<b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters			

Business Court filings should be filed using the Business Court civil coversheet.

July 30, 2015

Date

Signature of initiating party or representative

See other side for family-related case filings.

  
CLERK OF THE COURT

270.00  
7517  
CLERK JANEL WASHINGTON

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 · Fax (702) 385-3823

1 **COMP**  
2 **WILLIAM R. BRENSKE, ESQ.**  
3 **Nevada Bar No. 1806**  
4 **RYAN D. KRAMETBAUER, ESQ.**  
5 **Nevada Bar No. 12800**  
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11 **Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)**  
12 **Attorneys for Plaintiffs**

DISTRICT COURT

CLARK COUNTY, NEVADA

11 **CHARLES SCHUELER,**  
12 **Plaintiff,**

Case No.: A-15-722391-C  
Dept. No.: XVII

13 **v.**

**COMPLAINT**

14 **MGM GRAND HOTEL, LLC, a Domestic**  
15 **Limited Liability Company d/b/a MGM**  
16 **GRAND; MGM RESORTS**  
17 **INTERNATIONAL, A Foreign Corporation**  
18 **d/b/a MGM GRAND; AD ART, INC., A**  
19 **Foreign Corporation; 3A COMPOSITES**  
20 **USA INC., a Foreign Corporation a/k/a**  
21 **ALUCOBOND TECHNOLOGIES**  
22 **CORPORATION; DOES 1 - 25; ROE**  
23 **CORPORATIONS 1 - 25; inclusive,**

Date of Hearing: N/A  
Time of Hearing: N/A

24 **Defendants.**

**JURISDICTIONAL ALLEGATIONS**

1. Plaintiff CHARLES SCHUELER is a resident of Clark County, Nevada.
2. Defendant MGM GRAND HOTEL, LLC d/b/a MGM GRAND is a Nevada Limited Liability Company licensed to do business and actually doing business in Clark County, Nevada at all times relevant to this Complaint.

3. Defendant MGM RESORTS INTERNATIONAL d/b/a MGM GRAND is a Delaware Corporation that was licensed to do business and actually doing business in Clark County, Nevada at all times relevant to this Complaint.

4. Defendant AD ART, INC. is a California Corporation that was licensed to do business and actually doing business in Clark County, Nevada at all times relevant to this Complaint.

5. Defendant 3A COMPOSITES USA INC., is a Missouri Corporation a/k/a ALUCOBOND TECHNOLOGIES CORPORATION that is actually doing business in Clark County, Nevada.

6. Defendant 3A COMPOSITES USA INC is the manufacturer, designer, supplier, and or seller, of a product known commonly as "Alucobond" which was the material used in construction and/or manufacturing of the MGM pylon sign which is the subject of this Complaint.

7. Defendants DOES 1 - 5 and ROE CORPORATIONS 1 - 5 are individuals, associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or partners in association with Defendant MGM GRAND HOTEL, LLC d/b/a MGM GRAND, and may have in some way caused or contributed to Plaintiff's damages as alleged herein. The true names and/or capacities of DOES 1 - 5 and ROE CORPORATIONS 1 - 5 are unknown to Plaintiff. Plaintiff will ask leave of Court to amend this Complaint to insert the true names and capacities of DOES 1 - 5 and/or ROE CORPORATIONS 1 - 5 when they are ascertained.

8. Defendants DOES 6 - 10 and ROE CORPORATIONS 6 - 10 are individuals, associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or partners in association with Defendant MGM RESORTS INTERNATIONAL d/b/a MGM GRAND, and may have in some way caused or contributed to Plaintiff's damages as alleged herein. The true names and/or capacities of DOES 6 - 10 and ROE CORPORATIONS 6 - 10 are

1 unknown to Plaintiff. Plaintiff will ask leave of Court to amend this Complaint to insert the true  
2 names and capacities of DOES 6 – 10 and/or ROE CORPORATIONS 6 – 10 when they are  
3 ascertained.

4 9. Defendants DOES 11 – 15 and ROE CORPORATIONS 11 – 15 are individuals,  
5 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or  
6 partners in association with Defendant AD ART, INC., and may have in some way caused or  
7 contributed to Plaintiff's damages as alleged herein. The true names and/or capacities of DOES 11  
8 – 15 and ROE CORPORATIONS 11 – 15 are unknown to Plaintiff. Plaintiff will ask leave of  
9 Court to amend this Complaint to insert the true names and capacities of DOES 11 – 15 and/or  
10 ROE CORPORATIONS 11 – 15 when they are ascertained.

11 10. Defendants DOES 16 – 20 and ROE CORPORATIONS 16 – 20 are individuals,  
12 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or  
13 partners in association with Defendant 3A COMPOSITES USA INC., and may have in some way  
14 caused or contributed to Plaintiff's damages as alleged herein. The true names and/or capacities of  
15 DOES 16 – 20 and ROE CORPORATIONS 16 – 20 are unknown to Plaintiff. Plaintiff will ask  
16 leave of Court to amend this Complaint to insert the true names and capacities of DOES 16 – 20  
17 and/or ROE CORPORATIONS 16 – 20 when they are ascertained.

18 11. Defendants DOES 21 – 25 and ROE CORPORATIONS 21 – 25 are individuals,  
19 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or  
20 partners that may have in some way caused or contributed to Plaintiff's damages as alleged herein.  
21 The true names and/or capacities of DOES 21 – 25 and ROE CORPORATIONS 21 – 25 are  
22 unknown to Plaintiff. Plaintiff will ask leave of Court to amend this Complaint to insert the true  
23 names and capacities of DOES 21 – 25 and/or ROE CORPORATIONS 21 – 25 when they are  
24 ascertained.

12. Defendants are agents, servants, employees, employers, trade venturers, partners and/or family members of each other. At the time of the incident described in this Complaint, Defendants were acting within the color, purpose and scope of their relationships, and by reason of their relationships, Defendants may be jointly and severally and/or vicariously responsible and liable for the acts and omissions of their co-Defendants.

### GENERAL ALLEGATIONS

13. Plaintiff repeats and realleges paragraphs 1 – 12 of this Complaint as though fully set forth herein.

14. On July 31, 2013, Plaintiff CHARLES SCHUELER was lawfully on the premises of Defendant MGM GRAND HOTEL, LLC and/or MGM RESORTS INTERNATIONAL d/b/a MGM GRAND, located in Clark County, Nevada, to update the MGM pylon sign display adjacent to Las Vegas Boulevard.

15. When attempting to sever the structure connecting the LED cabinet to the main structure, Plaintiff CHARLES SCHUELER went in search for the missed angle iron attachment point to sever the display. At that point, Plaintiff CHARLES SCHUELER, fell approximately 150 feet to the ground below as a result of a piece of "Alucobond" giving way.

### FIRST CAUSE OF ACTION

(Premises Liability- MGM GRAND HOTEL, LLC, MGM RESORTS INTERNATIONAL and AD ART, INC.)

16. Plaintiff repeats and realleges paragraphs 1 – 15 of this Complaint as though fully set forth herein.

17. Defendants MGM GRAND HOTEL, LLC, MGM RESORTS INTERNATIONAL, AD ART, INC., DOES 1 – 25, and/or ROE CORPORATIONS 1 – 25 owned, operated, maintained, controlled, implemented, and/or designed a certain MGM pylon sign located within Clark County, Nevada.

1 18. At all times herein mentioned, MGM GRAND HOTEL, LLC, MGM RESORTS  
2 INTERNATIONAL, AD ART, INC., DOES 1 - 25, and/or ROE CORPORATIONS 1 - 25 had a  
3 duty to provide a safe and defect free environment upon the premises of the MGM pylon sign and  
4 to reasonably and adequately repair or warn of dangerous conditions upon the premises which  
5 were known to them or should have been known.

6  
7 19. Defendants failed to use reasonable care in the design, construction, inspection,  
8 maintenance, upkeep, control, repairing, and/or maintenance of the premises, rendering the  
9 premises unreasonably dangerous.

10 20. The unreasonably dangerous condition, under the exercise of reasonable care should  
11 have been known to Defendants in adequate time for a reasonably prudent person to warn of, or  
12 make safe the condition. Defendants negligently failed and neglected to take any action to warn  
13 Plaintiff CHARLES SCHUELER or to make the condition safe.

14  
15 21. As a direct and proximate cause of the aforementioned negligence of Defendants,  
16 Plaintiff suffered injuries which required and may continue to require medical attention and  
17 services all to his continuing expense and damage in an amount in excess of Ten Thousand Dollars  
18 (\$10,000.00).

19 22. As a further direct and proximate cause of the aforementioned negligence of  
20 Defendants, Plaintiff incurred and may continue to incur pain, suffering, disability and mental  
21 anguish all to his general damage in an amount in excess of ten thousand dollars (\$10,000.00).

22  
23 23. As a further direct and proximate cause of the aforementioned negligence of  
24 Defendants, Plaintiff incurred, and may continue to incur, lost wages and loss of earning capacity,  
25 in an amount in excess of ten thousand dollars (\$10,000.00).

24. As a further direct and proximate cause of the aforementioned negligence of Defendants, and each of them, Plaintiff has been forced to hire counsel to prosecute this action and has incurred attorney's fees and costs in an amount to be proven at time of trial.

**SECOND CAUSE OF ACTION**  
(Product Liability - AD ART, INC.)

25. Plaintiff repeats and realleges paragraphs 1 - 24 of this Complaint as though fully set forth herein.

26. Defendant AD ART, INC., DOES 1 - 25 and/or ROE CORPORATIONS 1 - 25 designed, manufactured, constructed, assembled, sold, and/or distributed the MGM pylon sign wherein Plaintiff CHARLES SCHUELER was working on July 31, 2013.

27. By reason of a defect in its design, manufacture, and/or assembly, the MGM pylon sign was defective, unfit, and/or unreasonably dangerous for its intended use at the time Plaintiff CHARLES SCHULER was working on July 31, 2013 and at the time it left the control of Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25.

28. Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25 knew or should have known the defective condition of the MGM pylon sign could cause injury to users of the product and/or Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25 should have known the MGM pylon sign was not fit for the purpose for which it was ordinarily used.

29. As a direct and proximate cause of Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign, Plaintiff incurred, and continues to incur medical treatment and billing in an amount in excess of Ten Thousand Dollars (\$10,000.00).

30. As a further direct and proximate cause of Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign,

1 Plaintiff incurred, and continues to incur, lost wages and/or loss of earning capacity in an amount  
2 in excess of Ten Thousand Dollars (\$10,000.00).

3 31. As a further direct and proximate cause of Defendant AD ART, DOES 1-25 and/or  
4 ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign,  
5 Plaintiff endured, and continues to endure pain, suffering, disability, and mental anguish in an  
6 amount in excess of Ten Thousand Dollars (\$10,000.00).  
7

8 32. As a further direct and proximate cause of Defendant AD ART, DOES 1-25 and/or  
9 ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign,  
10 Plaintiff incurred, and continues to incur, attorney's fees and court costs in an amount to be proven  
11 at trial.

12 **THIRD CAUSE OF ACTION**  
13 (Product Liability -- 3A COMPOSITES USA INC.)

14 33. Plaintiff repeats and realleges paragraphs 1 - 32 of this Complaint as though fully  
15 set forth herein.

16 34. Defendant 3A COMPOSITES USA INC., DOES 1 - 25 and/or ROE  
17 CORPORATIONS 1 - 25 designed, manufactured, assembled, sold, and/or distributed the material  
18 known commonly as "Alucobond" which was used to manufacture and/or construct the MGM  
19 pylon sign in question.  
20

21 35. By reason of a defect in its design, manufacture, and/or assembly, the Alucobond  
22 material inside and surrounding the MGM pylon sign was defective, unfit, and/or unreasonably  
23 dangerous for its intended use at the time Plaintiff CHARLES SCHULER was working on July 31,  
24 2013 and at the time it left the control of Defendant 3A COMPOSITES USA INC., DOES 1-25  
25 and/or ROE CORPORATIONS 1-25.  
26

27 36. Defendant 3A COMPOSITES USA INC., DOES 1-25 and/or ROE  
28 CORPORATIONS 1-25 knew or should have known the defective condition of the "Alucobond"

1 could cause injury to users of the product and/or Defendant 3A COMPOSITES USA INC., DOES  
2 1-25 and/or ROE CORPORATIONS 1-25 should have known the "Alucobond" was not fit for the  
3 purpose for which it was ordinarily used.

4 37. As a direct and proximate cause of Defendant 3A COMPOSITES USA INC.,  
5 DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the  
6 "Alucobond," Plaintiff incurred, and continues to incur medical treatment and billing in an amount  
7 in excess of Ten Thousand Dollars (\$10,000.00).

8 38. As a further direct and proximate cause of Defendant 3A COMPOSITES USA  
9 INC., DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the  
10 "Alucobond," Plaintiff incurred, and continues to incur, lost wages and/or loss of earning capacity  
11 in an amount in excess of Ten Thousand Dollars (\$10,000.00).

12 39. As a further direct and proximate cause of Defendant 3A COMPOSITES USA  
13 INC., DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the  
14 "Alucobond," Plaintiff endured, and continues to endure pain, suffering, disability, and mental  
15 anguish in an amount in excess of Ten Thousand Dollars (\$10,000.00).

16 40. As a further direct and proximate cause of Defendant 3A COMPOSITES USA  
17 INC., DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the  
18 "Alucobond," Plaintiff incurred, and continues to incur, attorney's fees and court costs in an  
19 amount to be proven at trial.

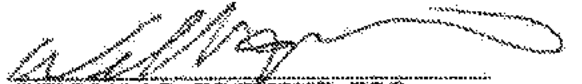
20 WHEREFORE Plaintiffs pray for Judgment for their First, Second, and Third Causes of  
21 Action as follows:

- 22
- 23 1) For special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);
  - 24 2) For general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);
  - 25 3) For attorney's fees and court costs in an amount to be proven at trial;
- 26
- 27
- 28

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 Fax (702) 385-3823

1 4) For such other and further relief as this Court may deem just and proper.

2 DATED this 29 day of July, 2015.

3   
4 WILLIAM R. BRENSKE, ESQ.  
5 Nevada Bar No. 1806  
6 RYAN D. KRAMETBAUER, ESQ.  
7 Nevada Bar No. 12800  
8 LAW OFFICE OF WILLIAM R. BRENSKE  
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14 *Attorneys for Plaintiff Charles Schueler*

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**IAFD**

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Nevada Bar No. 1806  
RYAN D. KRAMETBAUER, ESQ.  
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Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
*Attorney for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHARLES SCHUELER,

Plaintiff,

v.

MGM GRAND HOTEL, LLC, a Domestic Limited  
Liability Company d/b/a MGM GRAND; MGM  
RESORTS INTERNATIONAL, A Foreign  
Corporation d/b/a MGM GRAND; AD ART, INC.,  
A Foreign Corporation; 3A COMPOSITES USA  
INC., a Foreign Corporation a/k/a ALUCOBOND  
TECHNOLOGIES CORPORATION; DOES 1 -  
25; ROE CORPORATIONS 1 - 25; inclusive,

Defendants.

Case No.:

Dept. No.:

**INITIAL APPEARANCE FEE  
DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for  
parties appearing in the above-entitled action as indicated below:

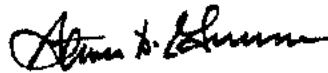
Plaintiff Charles Schueler: \$ 270.00

**TOTAL REMITTED:** \$ 270.00

DATED this 30 day of April 2015.

**LAW OFFICE OF WILLIAM R. BRENSKE**

WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
JENNIFER R. ANDREEVSKI, ESQ.  
Nevada Bar No. 9095  
630 South Third Street  
Las Vegas, Nevada 89101

  
CLERK OF THE COURT

1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
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6 Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
Attorneys for Plaintiff,  
7 Charles Schueler

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,  
11 Plaintiff,  
12 v.

Case No.: A-15-722391-C  
Dept. No.: XVII

13 MGM GRAND HOTEL, LLC, a Domestic Limited  
14 Liability Company d/b/a MGM GRAND; MGM  
15 RESORTS INTERNATIONAL, A Foreign  
16 Corporation d/b/a MGM GRAND; AD ART, INC., A  
17 Foreign Corporation; 3A COMPOSITES USA INC.,  
a Foreign Corporation a/k/a ALUCOBOND  
TECHNOLOGIES CORPORATION; DOES 1 - 25;  
ROE CORPORATIONS 1 - 25; inclusive,

SUMMONS

18 Defendants.

19 TO: MGM RESORTS INTERNATIONAL, A Foreign Corporation d/b/a MGM GRAND  
20

21 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT  
22 YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE  
INFORMATION BELOW.

23 TO THE DEFENDANT: A civil Complaint has been filed by the plaintiffs against you for the relief  
24 set forth in the Complaint.

25 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you  
26 (State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission  
27 members, and legislators, each has 45 days), exclusive of the day of service, you must do the  
28 following:

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 • Fax (702) 385-3823

1 a. File with the Clerk of this Court, whose address is shown below, a formal  
2 written response to the Complaint in accordance with the rules of the Court.


3 b. Serve a copy of your response upon the attorney whose name and address is  
4 shown below.

5 2. Unless you respond, your default will be entered upon application of the plaintiff and  
6 this Court may enter a judgment against you for the relief demanded in the Complaint, which could  
7 result in the taking of money or property or other relief requested in the Complaint.

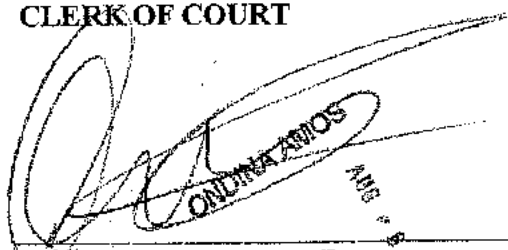
8 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly  
9 so that your response may be filed on time.

10 Issued at direction of:

11 **LAW OFFICE OF  
WILLIAM R. BRENSKE**

12   
13 **WILLIAM R. BRENSKE**  
14 Nevada Bar No. 1806  
15 630 South Third Street  
16 Las Vegas, NV 89101  
17 *Attorneys for Plaintiff*

**CLERK OF COURT**

  
By Deputy Clerk, Date: 8/20/15  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

**AFFIDAVIT OF SERVICE**

State of Nevada

County of Clark

District Court

Case Number: A-15-722391-C

Plaintiff:  
**CHARLES SCHUELER**

vs.

Defendants:  
**MGM GRAND HOTEL, LLC, a Domestic Limited Liability Company d/b/a MGM  
GRAND; MGM RESORTS INTERNATIONAL, A Foreign Corporation d/b/a MGM  
GRAND; AD ART, INC., A Foreign Corporation; et al.**

Received by Bullet Legal Services on the 20th day of August, 2015 at 11:57 am to be served on **MGM RESORTS INTERNATIONAL, A Foreign Corporation d/b/a MGM GRAND, CSC Services of Nevada, Inc. - Registered Agent, 2215-B Renaissance Dr., Las Vegas, NV 89119.**

I, Anthony Spada, being duly sworn, depose and say that on the **24th day of August, 2015 at 2:10 pm, I:**

served the defendant by delivering a true copy of the **SUMMONS and COMPLAINT**, to: **KRIS EPPES, Manager**, pursuant to NRS 14.020 as a person of suitable age and discretion at the address of: **CSC Services of Nevada, Inc. - Registered Agent, 2215-B Renaissance Dr., Las Vegas, NV 89119**, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

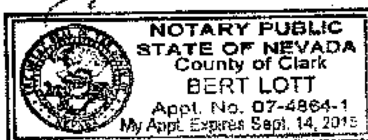
**Description of Person Served:** Age: 50, Sex: F, Race/Skin Color: WHITE, Height: 5'6", Weight: 135, Hair: BLONDE, Glasses: N

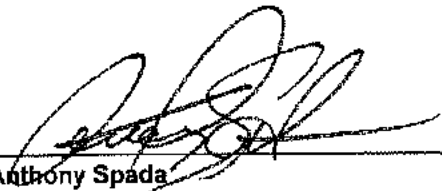
I certify that at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to or interested in the proceeding in which this affidavit is made.

State of Nevada  
County of Clark

Subscribed and Sworn to before me on the 27th  
day of August, 2015 by the affiant  
who is personally known to me.

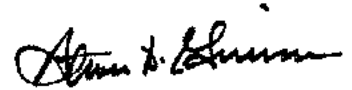
NOTARY PUBLIC



  
Anthony Spada  
R-045877

**Bullet Legal Services  
1930 Village Center Circle, #3-965  
Las Vegas, NV 89134  
(702) 823-1000**

Our Job Serial Number: BRT-2015002748

  
CLERK OF THE COURT

1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
3 LAW OFFICE OF WILLIAM R. BRENSKE  
630 South Third Street  
4 Las Vegas, NV 89101  
Telephone: (702) 385-3300  
5 Facsimile: (702) 385-3823  
6 Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
Attorneys for Plaintiff,  
7 Charles Schueler

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,  
11 Plaintiff,  
12 v.

Case No.: A-15-722391-C  
Dept. No.: XVII

13 MGM GRAND HOTEL, LLC, a Domestic Limited  
Liability Company d/b/a MGM GRAND; MGM  
14 RESORTS INTERNATIONAL, A Foreign  
Corporation d/b/a MGM GRAND; AD ART, INC., A  
15 Foreign Corporation; 3A COMPOSITES USA INC.,  
a Foreign Corporation a/k/a ALUCOBOND  
16 TECHNOLOGIES CORPORATION; DOES 1 - 25;  
17 ROE CORPORATIONS 1 - 25; inclusive,

SUMMONS

18 Defendants.

19 TO: MGM GRAND HOTEL, LLC, a Domestic Limited Liability Company d/b/a MGM  
20 GRAND

21 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT  
22 YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE  
23 INFORMATION BELOW.

24 TO THE DEFENDANT: A civil Complaint has been filed by the plaintiffs against you for the relief  
set forth in the Complaint.

25 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you  
26 (State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission  
members, and legislators, each has 45 days), exclusive of the day of service, you must do the  
27 following:  
28

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 · Fax (702) 385-3823

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 • Fax (702) 385-3823

1 a. File with the Clerk of this Court, whose address is shown below, a formal  
2 written response to the Complaint in accordance with the rules of the Court.


3 b. Serve a copy of your response upon the attorney whose name and address is  
4 shown below.

5 2. Unless you respond, your default will be entered upon application of the plaintiff and  
6 this Court may enter a judgment against you for the relief demanded in the Complaint, which could  
7 result in the taking of money or property or other relief requested in the Complaint.

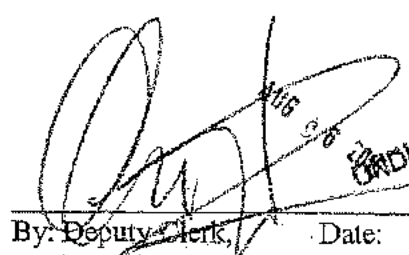
8 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly  
9 so that your response may be filed on time.

10 Issued at direction of:

11 **LAW OFFICE OF  
WILLIAM R. BRENSKE**

12   
13 **WILLIAM R. BRENSKE**  
14 Nevada Bar No. 1806  
15 630 South Third Street  
16 Las Vegas, NV 89101  
17 *Attorneys for Plaintiff*

**CLERK OF COURT**

18   
19 By: Deputy Clerk, Date:  
20 Regional Justice Center  
21 200 Lewis Avenue  
22 Las Vegas, NV 89155  
23  
24  
25  
26  
27  
28

## AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

District Court

Case Number: A-15-722391-C

Plaintiff:

**CHARLES SCHUELER**

vs.

Defendants:

**MGM GRAND HOTEL, LLC, a Domestic Limited Liability Company d/b/a MGM GRAND; MGM RESORTS INTERNATIONAL, A Foreign Corporation d/b/a MGM GRAND; AD ART, INC., A Foreign Corporation; et al.**

Received by Bullet Legal Services on the 20th day of August, 2015 at 11:57 am to be served on **MGM GRAND HOTEL, LLC, a Domestic Limited Liability Company d/b/a MGM GRAND, CSC Services of Nevada, Inc. - Registered Agent, 2215-B Renaissance Dr., Las Vegas, NV 89119.**

I, Anthony Spada, being duly sworn, depose and say that on the **24th day of August, 2015 at 2:10 pm, I:**

served the defendant by delivering a true copy of the **SUMMONS and COMPLAINT**, to: **KRIS EPPES, Manager**, pursuant to NRS 14.020 as a person of suitable age and discretion at the address of: **CSC Services of Nevada, Inc. - Registered Agent, 2215-B Renaissance Dr., Las Vegas, NV 89119**, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

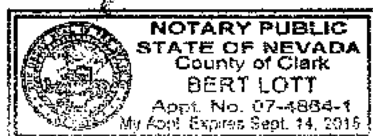
**Description of Person Served:** Age: 50, Sex: F, Race/Skin Color: WHITE, Height: 5'6", Weight: 135, Hair: BLONDE, Glasses: N

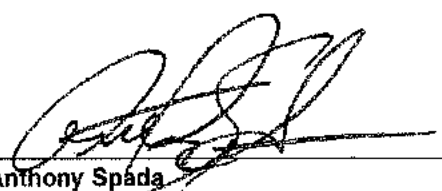
I certify that at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to or interested in the proceeding in which this affidavit is made.

State of Nevada  
County of Clark

Subscribed and Sworn to before me on the 27th  
day of August by the affiant  
who is personally known to me.

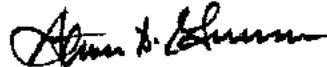
NOTARY PUBLIC



  
Anthony Spada  
R-045877

Bullet Legal Services  
1930 Village Center Circle, #3-965  
Las Vegas, NV 89134  
(702) 823-1000

Our Job Serial Number: BRT-2015002749



CLERK OF THE COURT

1 ANSC  
2 RILEY A. CLAYTON  
3 Nevada Bar No. 005260  
4 [rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)

5 HALL JAFFE & CLAYTON, LLP  
6 7425 PEAK DRIVE  
7 LAS VEGAS, NEVADA 89128  
8 (702) 316-4111  
9 FAX (702)316-4114

10 Attorney for Defendants,  
11 MGM Grand Hotel, LLC, d/b/a MGM Grand and  
12 MGM Resorts International, d/b/a MGM Grand

13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 CHARLES SCHUELER,  
16 Plaintiff,

17 v.

18 MGM GRAND HOTEL, LLC, a Domestic  
19 Limited Liability Company d/b/a MGM  
20 GRAND; MGM RESORTS  
21 INTERNATIONAL, A Foreign Corporation  
22 d/b/a MGM GRAND; AD ART, INC., A  
23 Foreign Corporation; 3A COMPOSITES USA  
24 INC., A Foreign Corporation a/k/a  
25 ALUCOBOND TECHNOLOGIES  
26 CORPORATION; DOES 1-25; ROE  
27 CORPORATION 1-25; inclusive,  
28 Defendants.

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

DEFENDANT MGM GRAND HOTEL, LLC,  
d/b/a MGM GRAND'S ANSWER TO  
PLAINTIFF'S COMPLAINT

22 Defendant, MGM Grand Hotel, LLC, d/b/a MGM Grand ("Defendant"), by and through its  
23 attorneys, Hall Jaffe & Clayton, LLP, and hereby answer Plaintiff's Complaint as follows:

24 1. Answering Paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Complaint, this  
25 Answering Defendant is without sufficient knowledge or information to form a belief as to the truth or  
26 falsity of the allegations contained therein and, accordingly, those allegations are hereby denied.

27 2. Answering Paragraph 2 of the Complaint, this Answering Defendant admits all  
28 allegations contained therein.



1 Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the  
2 allegations contained therein and, accordingly, those allegations are hereby denied.

3 **AFFIRMATIVE DEFENSES**

4 As for their affirmative defenses, Defendant state as follows:

5 1. Defendant alleges that the negligence of the Plaintiff exceeds that of the Defendant, if  
6 any, and that the Plaintiff is thereby barred from any recovery.

7 2. Plaintiff has failed to mitigate his damages and, thus, monetary recovery, if any, should  
8 be reduced accordingly.

9 3. All risks and dangers involved in the factual situation set forth in the Complaint were  
10 open and obvious to the Plaintiff.

11 4. Defendant alleges that the injuries, if any, suffered by the Plaintiff as set forth in the  
12 Plaintiff's Complaint was caused in whole or in part by the negligence of a third party over which  
13 Defendant had no control.

14 5. Plaintiff's injuries and problems, as alleged herein, pre-existed the accident at issue in  
15 this matter, thereby barring or limiting recovery.

16 6. Defendant had no actual or constructive notice of the allegedly dangerous condition of  
17 which Plaintiff complains; therefore, Plaintiff's claims are barred.

18 7. Defendant hereby incorporates by reference those affirmative defenses enumerated in  
19 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. Such defenses are herein  
20 incorporated by reference for the specific purpose of not waiving any such defense. In the event further  
21 investigation or discovery reveals the applicability of any such defenses, Defendant reserve the right to  
22 seek leave of court to amend this answer to specifically assert any such defense.

23 8. Defendant alleges that the allegations contained in the Plaintiff's Complaint failed to state  
24 a cause of action against Defendant upon which relief can be granted.

25 9. Plaintiff's claims are barred pursuant to the doctrine of laches and/or the applicable  
26 statutes of limitation.

27 10. The incident which is the subject matter of this action was unavoidable, wherefore,  
28

1 Plaintiff is barred from any recovery against this Defendant.

2 11. Defendant alleges that the Plaintiff expressly or impliedly assumed whatever risk or  
3 hazard existed at the time of the claimed incident(s) and were therefore responsible for the alleged  
4 injuries suffered and further, that the Plaintiff was guilty of negligence on his own part which caused or  
5 contributed to any injuries suffered by the Plaintiff.

6 12. Plaintiff's injuries and damages were caused by an intervening, superceding cause or  
7 event, which broke the causal connection between Plaintiff's damages and the purported conduct of  
8 Defendant; therefore, Plaintiff's claims are barred.

9 13. Plaintiff was in the course and scope of his employment at the time of the subject  
10 incident, and as such, his claims are barred under Nevada's workers compensation "exclusive remedy"  
11 doctrine.

12 14. Defendant is entitled to introduce evidence of amounts paid or received through workers  
13 compensation consistent with Tri County Equip. v. Klinke, 286 P.3d 593 (Nev. 2012) and NRS  
14 616c.215.

15 **PRAYER FOR RELIEF**

16 Wherefore; Defendant respectfully request that the Court enter judgment in favor of the  
17 Defendant and against Plaintiff as follows:

18 1. That Plaintiff's Complaint be dismissed and that Plaintiff take nothing thereby;

19 2. That Defendant be awarded attorney fees and costs incurred in this case together with  
20 interest at the highest rate permitted by law until paid in full;

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

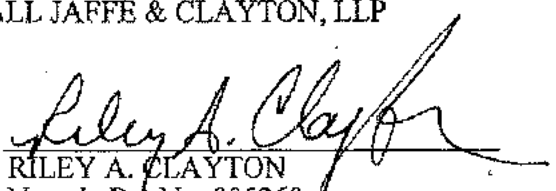
27 ///

1        3.        Such other and further relief as this Court deems just and appropriate under the  
2                    circumstances of this case.

3        DATED this 17<sup>th</sup> day of September, 2015.

4                    HALL JAFFE & CLAYTON, LLP

5  
6        By

  
RILEY A. CLAYTON

Nevada Bar No. 005260

7425 Peak Drive

Las Vegas, Nevada 89128

Attorneys for Defendants,

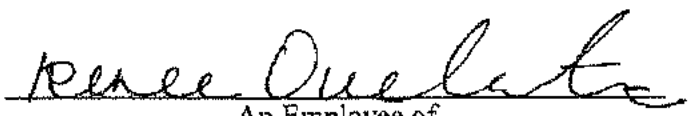
MGM Grand Hotel, LLC, d/b/a MGM Grand;

MGM Resorts International, d/b/a MGM Grand

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 17<sup>th</sup> day of September, 2015, I  
3 served the foregoing **DEFENDANT MGM GRAND HOTEL, LLC, d/b/a MGM GRAND'S**  
4 **ANSWER TO PLAINTIFF'S COMPLAINT** on the following parties by electronic transmission  
5 through the Wiznet system:  
6

7 William R. Brenske, Esq.  
8 Ryan D. Krametbauer, Esq.  
9 LAW OFFICE OF WILLIAM R. BRENSKE  
10 630 S. Third Street  
11 Las Vegas, NV 89101  
12 Tel.: (702) 385-3300  
13 Fax: (702) 385-3823  
14 wbrenske@hotmail.com  
15 *Attorneys for Plaintiff*

16  
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28  
  
An Employee of  
HALL JAFFE & CLAYTON, LLP.

  
CLERK OF THE COURT

1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
3 LAW OFFICE OF WILLIAM R. BRENSKE  
630 South Third Street  
4 Las Vegas, NV 89101  
Telephone: (702) 385-3300  
5 Facsimile: (702) 385-3823  
6 Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
Attorneys for Plaintiff,  
7 Charles Schueler

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,  
11  
12 Plaintiff,  
v.

Case No.: A-15-722391-C  
Dept. No.: XVII

13 MGM GRAND HOTEL, LLC, a Domestic Limited  
Liability Company d/b/a MGM GRAND; MGM  
14 RESORTS INTERNATIONAL, A Foreign  
Corporation d/b/a MGM GRAND; AD ART, INC., A  
15 Foreign Corporation; 3A COMPOSITES USA INC.,  
16 a Foreign Corporation a/k/a ALUCOBOND  
TECHNOLOGIES CORPORATION; DOES 1 - 25;  
17 ROE CORPORATIONS 1 - 25; inclusive,

SUMMONS

18 Defendants.

19 TO: 3A COMPOSITES USA INC., a Foreign Corporation a/k/a ALUCOBOND  
20 TECHNOLOGIES CORPORATION

21 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT  
22 YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE  
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24 TO THE DEFENDANT: A civil Complaint has been filed by the plaintiffs against you for the relief  
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26 (State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission  
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28

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 Fax (702) 385-3823

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 · Fax (702) 385-3823

1 a. File with the Clerk of this Court, whose address is shown below, a formal  
2 written response to the Complaint in accordance with the rules of the Court.

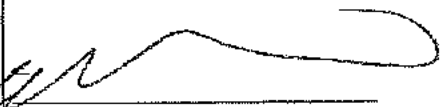
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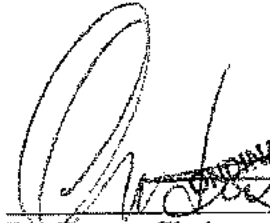

8 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly  
9 so that your response may be filed on time.

10 Issued at direction of:

11 **LAW OFFICE OF  
WILLIAM R. BRENSKE**

12   
13 WILLIAM R. BRENSKE  
14 Nevada Bar No. 1806  
15 630 South Third Street  
16 Las Vegas, NV 89101  
17 Attorneys for Plaintiff

**CLERK OF COURT**

  
By: Deputy Clerk, Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155  
Date: 

# AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

District Court

Case Number: A-15-722391-C

Plaintiff:

CHARLES SCHUELER

vs.

Defendants:

MGM GRAND HOTEL, LLC, a Domestic Limited Liability Company d/b/a MGM  
GRAND; MGM RESORTS INTERNATIONAL, A Foreign Corporation d/b/a MGM  
GRAND; AD ART, INC., A Foreign Corporation; et al.

Received by Bullet Legal Services on the 25th day of August, 2015 at 3:29 pm to be served on 3A COMPOSITES  
USA INC., a Foreign Corporation a/k/a ALUCOBOND TECHNOLOGIES CORPORATION, CSC Lawyers  
Incorporating Service Company - Registered Agent, 221 Bolivar Street, Jefferson City, MO 65101.

Ruth R. Harmon being duly sworn, depose and say that on the 4<sup>th</sup> day of Sept., 20 15  
at 2:30 p.m., executed service by delivering a true copy of the SUMMONS and COMPLAINT in accordance with  
state statutes in the manner marked below:

☒ CORPORATION: By serving Shelley Lewis as  
an agent designated by statute to accept service of process.

☐ RECORDS CUSTODIAN: By serving \_\_\_\_\_ as  
Authorized Agent of CSC an agent designated by statute to accept service of process.

☐ PUBLIC AGENCY: By serving \_\_\_\_\_ as \_\_\_\_\_ of  
the within-named agency.

☐ OTHER SERVICE: As described in the Comment below by serving \_\_\_\_\_ as  
\_\_\_\_\_ who stated they were authorized to accept.

☐ NON SERVICE: For the reasons detailed in the Comments below.

COMMENTS:

Age 40 Sex M Race white Height 5'6" Weight 160 Hair Brown Glasses Y

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in  
which this service was made.

State of Missouri

County of COLE

Subscribed and Sworn to before me on the 17<sup>th</sup>  
day of SEPTEMBER 2015 by the affiant who  
is personally known to me.

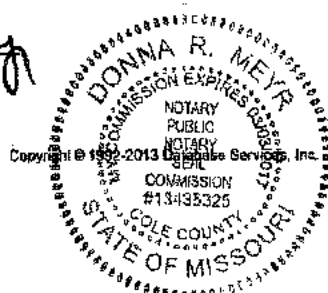
Donna R. Meyer  
NOTARY PUBLIC

Ruth R. Harmon

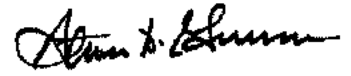
PROCESS SERVER # \_\_\_\_\_  
Appointed in accordance with State Statutes

Bullet Legal Services  
1930 Village Center Circle, #3-965  
Las Vegas, NV 89134  
(702) 823-1000

Our Job Serial Number: 2015002750



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CLERK OF THE COURT

1 ANSC  
2 ALVERSON, TAYLOR,  
3 MORTENSEN & SANDERS  
4 LEANN SANDERS, ESQ.  
5 Nevada Bar No. 000390  
6 EDWARD SILVERMAN, ESQ.  
7 Nevada Bar No.: 13584  
8 7401 W. Charleston Boulevard  
9 Las Vegas, Nevada 89117  
10 (702) 384-7000  
11 (702) 385-7000 (facsimile)  
12 [efile@alversontaylor.com](mailto:efile@alversontaylor.com)  
13 Attorneys for Defendant  
14 3A COMPOSITES USA INC., f/k/a  
15 ALUCOBOND TECHNOLOGIES  
16 CORPORATION

DISTRICT COURT

CLARK COUNTY, NEVADA

>0<

CHARLES SCHUELER,

Plaintiff,

Case No. A-15-722391-C  
Dept No. XVII

vs.

MGM GRAND HOTEL, LLC, a Domestic  
Limited Liability Company d/b/a MGM  
GRAND; MGM RESORTS INTERNATIONAL,  
A Foreign Corporation d/b/a MGM GRAND;  
AD ART, INC., A Foreign Corporation; 3A  
COMPOSITES USA INC., a Foreign  
Corporation f/k/a ALUCOBOND  
TECHNOLOGIES CORPORATION; DOES 1 –  
25; ROE CORPORATIONS 1 – 25; inclusive,

Defendants,

**3A COMPOSITES USA INC., f/k/a ALUCOBOND TECHNOLOGIES  
CORPORATION'S ANSWER TO COMPLAINT**

COMES NOW, Defendant, 3A COMPOSITES USA INC., f/k/a ALUCOBOND  
TECHNOLOGIES CORPORATION, by and through its attorneys of record, ALVERSON,

1 TAYLOR, MORTENSEN & SANDERS, and answers Plaintiff's Complaint on file herein as  
2 follows:

3  
4 **JURISDICTIONAL ALLEGATIONS**

5 1. Answering Paragraphs 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12 of Plaintiff's Complaint, Defendant is  
6 without sufficient knowledge to form a belief as to the truth of the allegations contained in said  
7 paragraphs and therefore denies the same.

8 2. Answering Paragraph 5 of Plaintiff's Complaint, Defendant admits that 3A Composites USA  
9 Inc. is a Missouri Corporation, but denies that 3A Composites USA Inc. is also known as Alucobond  
10 Technologies Corporation, and that Alucobond Technologies Corporation is a Missouri  
11 Corporation. Defendant is without sufficient knowledge to form a belief as to the truth of the  
12 remaining allegations of said paragraph, and therefore denies the same with regard to both 3A  
13 Composites USA Inc. and Alucobond Technologies Corporation.

14 3. Answering Paragraph 6 of Plaintiff's Complaint, Defendant admits that 3A COMPOSITES  
15 USA INC. is the manufacturer and seller of Alucobond®, a trademarked aluminum composite  
16 material. As to the remaining allegations, Defendant is without sufficient knowledge to form a belief  
17 as to the truth of the allegations contained in said paragraph and therefore denies the same.  
18

19  
20 **GENERAL ALLEGATIONS**

21 4. Defendant repeats and realleges its answers to Paragraphs 1 through 12, inclusive, as if  
22 fully set forth herein.

23 5. Answering Paragraphs 14 and 15 of Plaintiff's Complaint, Defendant is without sufficient  
24 knowledge to form a belief as to the truth of the allegations contained in said paragraphs and  
25 therefore denies the same.  
26

27 ///

**FIRST CAUSE OF ACTION**

(Premises Liability – MGM GRAND HOTEL, LLC, MGM RESORTS INTERNATIONAL and AD ART, INC.)

6. Defendant repeats and realleges its answers to Paragraphs 1 through 15, inclusive, as if fully set forth herein.

7. Answering Paragraphs 17, 18, 19, 20, 21, 22, 23 and 24 of Plaintiff's Complaint, Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.

**SECOND CAUSE OF ACTION**

(Product Liability – AD ART, INC.)

8. Defendant repeats and realleges its answers to Paragraphs 1 through 24, inclusive, as if fully set forth herein.

9. Answering Paragraphs 26, 27, 28, 29, 30, 31 and 32 of Plaintiff's Complaint, Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.

**THIRD CAUSE OF ACTION**

(Product Liability – 3A COMPOSITES USA INC.)

11. Defendant repeats and realleges its answers to Paragraphs 1 through 32, inclusive, as if fully set forth herein.

12. Answering Paragraph 34 of Plaintiff's Complaint, Defendant admits that 3A COMPOSITES USA INC. manufactured and sold Alucobond®. As to the remaining allegations, Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraph and therefore denies the same.

13. Answering Paragraphs 35, 36, 37, 38, 39 and 40 of Plaintiff's Complaint, Defendant denies said allegations in said paragraphs.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim on which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's damages, if any, were caused in whole or in part, or were contributed to by reason of the negligence of the Plaintiff.

**THIRD AFFIRMATIVE DEFENSE**

All risks and dangers involved in the factual situation described in the Complaint were open, obvious, and known to the Plaintiff and said Plaintiff voluntarily assumed said risks and dangers.

**FOURTH AFFIRMATIVE DEFENSE**

The incident alleged in the Complaint and the resulting damages, if any, to the Plaintiff was proximately caused or contributed to by Plaintiff's own negligence, and such negligence was greater than the alleged negligence of the Defendant.

**FIFTH AFFIRMATIVE DEFENSE**

The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom were caused by the acts or omissions of a third party over whom Defendant had no control.

**SIXTH AFFIRMATIVE DEFENSE**

The Plaintiff's claims are time-barred by the applicable statute of limitations, and/or statute of repose.

**SEVENTH AFFIRMATIVE DEFENSE**

The Plaintiff's claims are barred by lack of personal jurisdiction on this Defendant.

///

///

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff failed to take reasonable efforts to mitigate his damages, if any, and Plaintiff is therefore barred from recovering any damages from Defendant.

**NINTH AFFIRMATIVE DEFENSE**

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 and Rule 12 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserves the right to seek leave of Court to amend their Answer to specifically assert any such defense(s). Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

**TENTH AFFIRMATIVE DEFENSE**

Pursuant to Rule 11 of the Nevada Rules of Civil Procedure, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry from the filing of Plaintiff's Complaint, and therefore, Defendant reserves the right to amend its Answer to assert additional affirmative defenses in the event discovery indicates that additional affirmative defenses would be appropriate.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendant denies each and every allegation of Plaintiff's Complaint not specifically admitted or otherwise pled to herein.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged injuries were not caused by the negligence of Defendant, but rather were proximately caused by the unforeseeable and/or unintended use(s) and/or misuse(s) of the products in question, and Plaintiff's claims against this Defendant are therefore barred under applicable law.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The products at issue were altered, modified or otherwise rendered to a form not substantially similar to their form when they left the custody or control of this Defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

This Defendant states that the products at issue were not defective in any manner, and that at all pertinent times, were reasonably fit and suited for the purpose for which they were manufactured and intended, and were delivered with such advice and warnings as were consistent with the state of the existing scientific, medical, technological and industrial art.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part by the lack of defect, as any products allegedly manufactured by Defendant was properly manufactured in accordance with the applicable standard of care and in compliance with all applicable federal and state statutes and regulations, if any, existing at the time of design and/or manufacture that prescribed standards for design, inspection, testing, manufacture, labeling, warning or instructions for use of the product or products allegedly designed, manufactured and/or sold by this Defendant.

**SIXTEENTH AFFIRMATIVE DEFENSE**

This Defendant denies that the product in question had any inherent design defect, but if there existed any inherent design defect with respect to the product, such defect being expressly denied, such defect could not have been effectively eliminated without rendering the product incapable of reasonable use.

///

///


///

**PRAYER FOR RELIEF**

This Defendant denies that Plaintiff is entitled to any of the requested relief as contained within Plaintiff's Complaint.

Dated this 23<sup>rd</sup> day of October, 2015.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By  Edward Silverman, 10/23/2015  
ALVERSON, TAYLOR,  
MORTENSEN & SANDERS  
LEANN SANDERS, ESQ.  
Nevada Bar No. 000390  
EDWARD SILVERMAN, ESQ.  
Nevada Bar No.: 13584  
7401 W. Charleston Boulevard  
Las Vegas, Nevada 89117  
(702) 384-7000  
Attorneys for Defendant  
3A COMPOSITES USA, INC., f/k/a  
ALUCOBOND TECHNOLOGIES  
CORPORATION

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, I hereby certify that on this 23<sup>rd</sup> day of October, 2015, I did cause a true and correct copy of the above and foregoing **3A COMPOSITES USA INC., f/k/a ALUCOBOND TECHNOLOGIES CORPORATION'S ANSWER TO COMPLAINT** to be e-filed and e-served through the Eighth Judicial District Court EFP system pursuant to the Electronic Filing and Service Order entered on the Court's docket in the above-referenced matter.

William R. Brenske, Esq.  
Ryan D. Kramerbauer, Esq.  
LAW OFFICE OF WILLIAM R. BRENSKE  
630 South Third Street  
Las Vegas, NV 89101  
*Attorneys for Plaintiffs*

Riley A. Clayton, Esq.  
HALL JAFFE & CLAYTON, LLP  
7425 Peak Drive  
Las Vegas, NV 89128  
*Attorney for Defendants*  
MGM GRAND HOTEL, LLC d/b/a  
MGM GRAND; and MGM RESORTS  
INTERNATIONAL d/b/a MGM GRAND

  
An Employee of ALVERSON, TAYLOR,  
MORTENSEN & SANDERS

ALVERSON, TAYLOR, MORTENSEN & SANDERS  
LAWYERS  
7401 WEST CHARLESTON BOULEVARD  
LAS VEGAS, NEVADA 89117-1401  
(702) 384-7000

**AFFIRMATION**  
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **3A COMPOSITES USA INC., f/k/a ALUCOBOND TECHNOLOGIES CORPORATION'S ANSWER TO COMPLAINT**, filed in District Court Case No.: A-15-722391-C:

X Does not contain the social security number of any person.

**-OR-**

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

**-or-**

B. For the administration of a public program or for an application for a federal or state grant.

Dated this 23<sup>rd</sup> day of October, 2015.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By Edward Silverman 10/23/2015  
ALVERSON, TAYLOR,  
MORTENSEN & SANDERS  
LEANN SANDERS, ESQ.  
Nevada Bar No. 000390  
EDWARD SILVERMAN, ESQ.  
Nevada Bar No.: 13584  
7401 W. Charleston Boulevard  
Las Vegas, Nevada 89117  
(702) 384-7000  
Attorneys for Defendant  
3A COMPOSITES USA INC., f/k/a  
ALUCOBOND TECHNOLOGIES  
CORPORATION

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 - Fax (702) 385-3823

1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
3 LAW OFFICE OF WILLIAM R. BRENSKE  
630 South Third Street  
4 Las Vegas, NV 89101  
Telephone: (702) 385-3300  
5 Facsimile: (702) 385-3823  
6 Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
Attorneys for Plaintiff,  
7 Charles Schueler

Electronically Filed  
11/12/2015 10:35:59 AM



CLERK OF THE COURT

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,

11 Plaintiff,

12 v.

13 MGM GRAND HOTEL, LLC, a Domestic Limited  
14 Liability Company d/b/a MGM GRAND; MGM  
RESORTS INTERNATIONAL, A Foreign  
15 Corporation d/b/a MGM GRAND; AD ART, INC., A  
Foreign Corporation; 3A COMPOSITES USA INC.,  
16 a Foreign Corporation a/k/a ALUCOBOND  
TECHNOLOGIES CORPORATION; DOES 1 - 25;  
17 ROE CORPORATIONS 1 - 25; inclusive,

18 Defendants.

Case No.: A-15-722391-C

Dept. No.: XVII

SUMMONS

19 TO: AD ART, INC., A Foreign Corporation

20  
21 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT  
22 YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE  
INFORMATION BELOW.

23 TO THE DEFENDANT: A civil Complaint has been filed by the plaintiffs against you for the relief  
24 set forth in the Complaint.

25 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you  
26 (State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission  
27 members, and legislators, each has 45 days), exclusive of the day of service, you must do the  
28 following:

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 • Fax (702) 385-3823

1 a. File with the Clerk of this Court, whose address is shown below, a formal  
2 written response to the Complaint in accordance with the rules of the Court.


3 b. Serve a copy of your response upon the attorney whose name and address is  
4 shown below.

5 2. Unless you respond, your default will be entered upon application of the plaintiff and  
6 this Court may enter a judgment against you for the relief demanded in the Complaint, which could  
7 result in the taking of money or property or other relief requested in the Complaint.

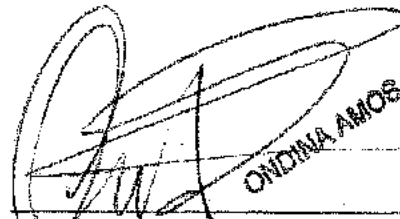
8 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly  
9 so that your response may be filed on time.

10 Issued at direction of:

11 **LAW OFFICE OF  
WILLIAM R. BRENSKE**

12   
13 WILLIAM R. BRENSKE  
14 Nevada Bar No. 1806  
15 630 South Third Street  
16 Las Vegas, NV 89101  
17 Attorneys for Plaintiff

**CLERK OF COURT**

  
ONDINA AMOS

By: Deputy Clerk,  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

Date:

AUG 5 8 2003

**AFFIDAVIT OF SERVICE**

State of Nevada

County of Clark

District Court

Case Number: A-15-722391-C

Plaintiff:

**CHARLES SCHUELER**

vs.

Defendants:

**MGM GRAND HOTEL, LLC, a Domestic Limited Liability Company d/b/a MGM GRAND; MGM RESORTS INTERNATIONAL, A Foreign Corporation d/b/a MGM GRAND; AD ART, INC., A Foreign Corporation; et al.**

Received by Bullet Legal Services on the 29th day of October, 2015 at 3:10 pm to be served on **AD ART, INC., Nevada Secretary of State, 555 E. Washington Avenue, Suite 5200, Las Vegas, NV 89101.**

I, Anthony Spada, being duly sworn, depose and say that on the 2nd day of November, 2015 at 3:47 pm, I:

Served the entity, **AD ART, INC.**, by personally delivering and leaving a copy of the **LETTER, SUMMONS and COMPLAINT** with **ROXANNA (Refused Full Name) as Admin. III** at Nevada Secretary of State, 555 E. Washington Avenue, Suite 5200, Las Vegas, NV 89101. Affiant states that on 11/2/2015, Affiant personally posted one copy of said documents at the **District Court, Clark County, Nevada, Regional Justice Center, 200 Lewis Avenue, Third Floor, Las Vegas, Nevada.**

**Description of Person Served:** Age: 30, Sex: F, Race/Skin Color: HISPANIC, Height: SIT, Weight: SIT, Hair: BROWN, Glasses: N


I certify that at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to or interested in the proceeding in which this affidavit is made.

State of Nevada  
County of Clark

Subscribed and Sworn to before me on the 5th  
day of November, 2015, by the affiant  
who is personally known to me.

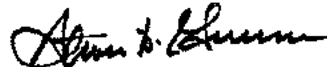
  
NOTARY PUBLIC



  
Anthony Spada  
R-045877

**Bullet Legal Services**  
1930 Village Center Circle, #3-965  
Las Vegas, NV 89134  
(702) 823-1000

Our Job Serial Number: BRT-2015003764



CLERK OF THE COURT

1 ANSC  
TIMOTHY F. HUNTER, ESQ.  
2 Nevada Bar No. 010622  
RAY LEGO & ASSOCIATES  
3 7450 Arroyo Crossing Parkway, Suite 250  
Las Vegas, NV 89113  
4 Tel: (702) 479-4350  
Fax: (702) 270-4602  
5 [tfhunter@travelers.com](mailto:tfhunter@travelers.com)

6 Attorney for Defendant,  
AD ART, INC.

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 CHARLES SCHUELER,

CASE NO.: A-15-722391-C

10 Plaintiff,

DEPT. NO.: XVII

11 vs.

12 MGM GRAND HOTEL, LLC, a Domestic  
13 Limited Liability Company d/b/a MGM  
GRAND; MGM RESORTS  
14 INTERNATIONAL, a Foreign Corporation  
d/b/a MGM GRAND; AD ART, INC., a  
15 Foreign Corporation; 3A COMPOSITES USA  
INC., a Foreign Corporation a/k/a  
16 ALUCOBOND TECHNOLOGIES  
CORPORATION; DOES 1 - 25; ROE  
17 CORPORATIONS 1 - 25; inclusive,

18 Defendants.

19 **DEFENDANT, AD ART, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT**

20 Defendant, AD ART, INC. ("Answering Defendant"), by and through their attorney,  
21 TIMOTHY F. HUNTER, ESQ., of RAY LEGO & ASSOCIATES, hereby answers the  
22 Plaintiff's Complaint as follows:

23 **JURISDICTIONAL ALLEGATIONS**

24 1. Answering Paragraphs 1, 2, 3 and 5 through 12 of Plaintiff's Complaint on file  
25 herein, this answering Defendant lacks knowledge, information and belief as to the truth or  
26 falsity of the allegations set forth therein and therefore DENIES same.

27 2. Answering Paragraph 4 of Plaintiff's Complaint on file herein, this answering  
28

1 Defendant ADMITS it is a California Corporation licensed to do business in Clark County,  
2 Nevada. As to all remaining allegations, Defendant DENIES same as set forth therein.

3 **GENERAL ALLEGATIONS**

4 3. Answering Paragraph 13 of Plaintiff's Complaint on file herein, this answering  
5 Defendant repeats and realleges their responses to Paragraphs 1 through 12 of Plaintiff's  
6 Complaint on file herein as though set forth in detail.

7 4. Answering Paragraphs 14 and 15 of Plaintiff's Complaint on file herein, this  
8 answering Defendant lacks knowledge, information and belief as to the truth or falsity of the  
9 allegations set forth therein and therefore DENIES same.

10 **FIRST CAUSE OF ACTION**

11 **(Premises Liability – MGM GRAND HOTEL, LLC, MGM RESORTS  
INTERNATIONAL and AD ART, INC.)**

12 5. Answering Paragraph 16 of the First Cause of Action of Plaintiff's Complaint on  
13 file herein, this answering Defendant repeats and realleges their responses to Paragraphs 1  
14 through 15 of Plaintiff's Complaint on file herein as though set forth in detail.

15 6. Answering Paragraphs 17 through 24 of Plaintiff's Complaint on file herein, this  
16 answering Defendant DENIES the allegations set forth therein.

17 **SECOND CAUSE OF ACTION**

18 **(Product Liability – AD ART, INC.)**

19 7. Answering Paragraph 25 of the Second Cause of Action of Plaintiff's Complaint  
20 on file herein, this answering Defendant repeats and realleges their responses to Paragraphs 1  
21 through 24 of Plaintiff's Complaint on file herein as though set forth in detail.

22 8. Answering Paragraphs 26 through 32 of Plaintiff's Complaint on file herein, this  
23 answering Defendant DENIES the allegations set forth therein.

24 **THIRD CAUSE OF ACTION**

25 **(Product Liability – 3A COMPOSITES USA INC.)**

26 9. Answering Paragraph 33 of the Third Cause of Action of Plaintiff's Complaint  
27 on file herein, this answering Defendant repeats and realleges their responses to Paragraphs 1  
28 through 32 of Plaintiff's Complaint on file herein as though set forth in detail.

1           10.     Answering Paragraphs 34 through 40 of Plaintiff's Complaint on file herein, this  
2     answering Defendant is unable to answer these paragraphs as there are no allegations set forth  
3     therein. To the extent an answer is required, the defendant DENIES any allegations.

4                     **AFFIRMATIVE DEFENSES**

5                     **FIRST AFFIRMATIVE DEFENSE**

6           Answering Defendant denies the allegations of the Complaint, each cause of action, and  
7     each paragraph in each cause of action, and each and every part thereof, including a denial that  
8     Plaintiff was damaged in the sum or sums alleged, or to be alleged, or any other sum.

9                     **SECOND AFFIRMATIVE DEFENSE**

10          Answering Defendant denies that by reason of any act or omission, fault, conduct or  
11     liability on their part, Plaintiff was injured or damaged in any of the amounts alleged, or in any  
12     other manner or amount whatsoever. Answering Defendant further denies that they were  
13     careless, reckless, wanton, acted unlawfully or are liable, whether in the manner alleged or  
14     otherwise.

15                    **THIRD AFFIRMATIVE DEFENSE**

16          Answering Defendant is informed and believes, and thereon alleges, that the Complaint,  
17     and each and every cause of action stated therein, fails to state facts sufficient to constitute a  
18     cause of action, or any cause of action, as against this Answering Defendant.

19                    **FOURTH AFFIRMATIVE DEFENSE**

20          Answering Defendant is informed and believes, and thereon alleges, that Answering  
21     Defendant is not legally responsible for the acts and/or omissions of those Defendants named by  
22     Plaintiff as fictitious Defendants.

23                    **FIFTH AFFIRMATIVE DEFENSE**

24          Answering Defendant is informed and believes, and thereon alleges, that if Plaintiff  
25     herein suffered or sustained any loss, injury, damage or detriment, the same is directly and  
26     proximately caused and contributed to, in whole or in part, by the conduct, acts, omissions,  
27     activities, and/or intentional misconduct of Plaintiff, thereby completely or partially barring  
28

1 Plaintiff's recovery herein.

2 **SIXTH AFFIRMATIVE DEFENSE**

3 Answering Defendant is informed and believes, and therefore alleges, that it is not  
4 legally responsible in any fashion with respect to the damages and injuries by Plaintiff,  
5 however, if Answering Defendant is subjected to any liability to Plaintiff, it will be due, in  
6 whole or in part, to the conduct, acts, omissions, activities, and/or intentional misconduct of  
7 others; wherefore any recovery obtained by Plaintiff against Answering Defendant should be  
8 reduced in proportion to the respective fault and legal responsibility of all other parties, persons  
9 and entities, their agents, servants and employees who contributed to and/or caused any such  
10 injury and/or damages; consequently, Answering Defendant is informed and believes, and  
11 therefore alleges, that the liability of Answering Defendant, if any, is limited in direct  
12 proportion to the percentage of fault actually attributed to Answering Defendant.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 If Answering Defendant is found responsible in damages to Plaintiff or some other  
15 party, whether as alleged or otherwise, then Answering Defendant is informed and believes, and  
16 therefore alleges, that the liability will be predicated upon the active conduct of Plaintiff, which  
17 unlawful conduct proximately caused the alleged incident and that Plaintiff's action against  
18 Answering Defendant is barred by that active and affirmative conduct.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 Answering Defendant is informed and believe, and therefore allege, that the Complaint,  
21 and each and every cause of action contained therein, is barred by the applicable Statues of  
22 Repose.

23 **NINTH AFFIRMATIVE DEFENSE**

24 Answering Defendant is informed and believes, and therefore alleges, that as to each  
25 alleged cause of action, Plaintiff has failed, refused and neglected to take reasonable steps to  
26 mitigate their alleged damages, if any, thus barring or diminishing Plaintiff's recovery herein.

27 **TENTH AFFIRMATIVE DEFENSE**

1 Answering Defendant is informed and believes, and therefore alleges, that the  
2 Complaint, and each and every cause of action contained therein, is barred by the applicable  
3 Statutes of Limitation.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 Answering Defendant is informed and believes, and therefore alleges, that Plaintiff  
6 unreasonably delayed both the filing of the Complaint and notification of Answering  
7 Defendants of the alleged allegations, which has unduly and severely prejudiced Answering  
8 Defendant in their defense of the action, thereby barring or diminishing Plaintiff's recovery  
9 herein under the Doctrine of Estoppel.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 Answering Defendant is informed and believes, and therefore alleges, that Plaintiff  
12 unreasonably delayed both the filing of the Complaint and notification of Answering Defendant  
13 of the alleged allegations, which has unduly and severely prejudiced Answering Defendant in  
14 their defense of the action, thereby barring or diminishing Plaintiff's recovery herein under the  
15 Doctrine of Waiver.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 Answering Defendant is informed and believes, and therefore alleges, that Plaintiff  
18 unreasonably delayed both the filing of the Complaint and notification of Answering Defendant  
19 of the alleged allegations, which has unduly and severely prejudiced Answering Defendant in  
20 their defense of the action, thereby barring or diminishing Plaintiff's recovery herein under the  
21 Doctrine of Laches.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 Answering Defendant is informed and believes, and therefore allege, that Plaintiff has  
24 failed to join all necessary and indispensable parties to this lawsuit.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 Answering Defendant is informed and believes, and therefore alleges, that the injuries  
27 and damages of which Plaintiff complains were proximately caused by, or contributed to by, the  
28

1 acts of other entities, and that said acts were an intervening and superseding cause of the injuries  
2 and damages, if any, of which Plaintiff complains, thus barring Plaintiff from any recovery  
3 against Answering Defendant.

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 It has been necessary for Answering Defendant to retain the services of an attorney to  
6 defend this action, and Answering Defendant is entitled to a reasonable sum as and for  
7 attorneys' fees.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 Answering Defendant is informed and believes, and therefore allege, that the claims of  
10 Plaintiff are reduced, modified and/or barred by the Doctrine of Unclean Hands.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 Answering Defendant is informed and believes, and therefore alleges, that the claims of  
13 Plaintiff are reduced, modified and/or barred by the Doctrine of Res Judicata.

14 **NINETEENTH AFFIRMATIVE DEFENSE**

15 Answering Defendant is informed and believes, and therefore allege, that the claims of  
16 Plaintiff are reduced, modified and/or barred by the Doctrine of Collateral Estoppel.

17 **TWENTIETH AFFIRMATIVE DEFENSE**

18 Answering Defendant is informed and believes, and therefore allege, that any and all  
19 events, happenings, injuries and damages alleged by Plaintiff were a direct result of an act of  
20 God.

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

22 Answering Defendant is informed and believes, and therefore allege, that at no time  
23 prior to the filing of this action did Plaintiff, or any agent, representative or employee thereof,  
24 notify Answering Defendant of any breach of any duty to Plaintiff; therefore, Plaintiff is barred  
25 from any right of recovery from Answering Defendants.

26 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

27 Pursuant to N.R.C.P. 11, as amended, all possible affirmative defense may not have been  
28

1 alleged herein insofar as sufficient facts were not available for Answering Defendant after  
2 reasonable inquiry, and therefore, Answering Defendant reserves the right to amend this  
3 Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

4 PRAYER

5 WHEREFORE, Defendant, AD ART, INC., by and through his undersigned counsel,  
6 prays this Honorable Court grant the following relief:

7 1. That Plaintiff take nothing by virtue of this action and that the same be dismissed  
8 with prejudice;

9 2. That in the alternative, Plaintiff be awarded only such monies as constitute  
10 reasonable compensation for those injuries and damages proved by admissible evidence to have  
11 been directly and proximately caused by the incident in question, same subject to Plaintiff's  
12 independent duty to mitigate damages;

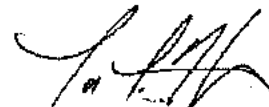
13 3. For attorney's fees and costs incurred in defending this action; and,

14 4. For such other and further relief as the Court may deem just, equitable and  
15 proper.

16 DATED this 16 day of November, 2015.

17 Respectfully submitted,

18 RAY LEGO & ASSOCIATES

19 

20 TIMOTHY F. HUNTER, ESQ.

21 Nevada Bar No. 010622

22 7450 Arroyo Crossing Parkway, Suite 250

23 Las Vegas, NV 89113

24 Attorney for Defendant, AD ART, INC.

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of RAY LEGO & ASSOCIATES and that on the 17<sup>th</sup> day of November, 2015 I caused the foregoing **DEFENDANT, AD ART, INC.'S , ANSWER TO PLAINTIFF'S COMPLAINT** to be served as follows:

X pursuant to N.E.F.C.R. 9 by serving it via electronic service.

To the attorneys listed below:

William R. Brenske, Esq., #1806 Ryan D. Krametbauer, Esq., #12800 LAW OFFICE OF WILLIAM R. BRENSKE 630 S. Third Street Las Vegas, NV 89101	P: 702/385-3300 F: 702/385-3823 <a href="mailto:wbrenske@hotmail.com">wbrenske@hotmail.com</a> Attorneys for Plaintiff, <b>CHARLES SCHUELER</b>
Leann Sanders, Esq., #000390 Edward Silverman, Esq., #13584 ALVERSON, TAYLOR, MORTENSEN & SANDERS 7401 W. Charleston Blvd. Las Vegas, NV 89117	P: 702/384-7000 F: 702/385-7000 <a href="mailto:esilverman@alversontaylor.com">esilverman@alversontaylor.com</a> Attorneys for Defendant, <b>3A COMPOSITES USA INC., f/k/a ALUCOBOND TECHNOLOGIES CORPORATION</b>
Riley A. Clayton, Esq., #005260 HALL JAFFE & CLAYTON 7425 Peak Drive Las Vegas, NV 89128	P: 702/316-4111 F: 702/316-4114 <a href="mailto:rclayton@lawhic.com">rclayton@lawhic.com</a> Attorneys for Defendant, <b>MGM GRAND HOTEL, LLC d/b/a MGM GRAND; MGM RESORTS INTERNATIONAL d/b/a MGM GRAND</b>

  
An employee of RAY LEGO & ASSOCIATES

  
CLERK OF THE COURT

**MJUD**  
**RILEY A. CLAYTON**  
Nevada Bar No. 005260  
[rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)  
**TAYLOR G. SELIM**  
Nevada Bar No. 012091  
[tselim@lawhjc.com](mailto:tselim@lawhjc.com)

**HALL JAFFE & CLAYTON, LLP**  
7425 PEAK DRIVE  
LAS VEGAS, NEVADA 89128  
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FAX (702) 316-4114

Attorney for Defendants,  
MGM Grand Hotel, LLC, d/b/a MGM Grand and  
MGM Resorts International, d/b/a MGM Grand

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

**CHARLES SCHUELER,**  
  
Plaintiff,

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

v.

**MGM GRAND'S MOTION FOR  
JUDGMENT ON THE PLEADING**

**MGM GRAND HOTEL, LLC, a Domestic  
Limited Liability Company d/b/a MGM  
GRAND; MGM RESORTS  
INTERNATIONAL, A Foreign Corporation  
d/b/a MGM GRAND; AD ART, INC., A  
Foreign Corporation; 3A COMPOSITES USA  
INC., A Foreign Corporation a/k/a  
ALUCOBOND TECHNOLOGIES  
CORPORATION; DOES 1-25; ROE  
CORPORATION 1-25; inclusive,**

**Defendants.**

Defendant, MGM Grand Hotel, LLC, d/b/a MGM Grand and MGM Resorts International, d/b/a  
MGM Grand("MGM Grand"), by and through its attorney of record, Hall Jaffe & Clayton, LLP, hereby  
submits this Motion for Judgment on the Pleading. This motion is made and based upon the pleadings

///

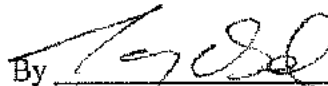
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1 and papers on file herein, the attached memorandum of points and authorities, and any oral argument  
2 that the Court may entertain in the matter.

3 DATED this 11 day of December, 2015.

4 HALL JAFFE & CLAYTON, LLP

5  
6 By   
7 RILEY A. CLAYTON  
8 Nevada Bar No. 005260  
9 TAYLOR G. SELIM  
10 Nevada Bar No. 012091  
11 7425 Peak Drive  
12 Las Vegas, Nevada 89128  
13 Attorneys for Defendants,  
14 MGM Grand Hotel, LLC, d/b/a MGM Grand;  
15 MGM Resorts International, d/b/a MGM Grand

12 **NOTICE OF MOTION**


13 TO: ALL PARTIES; and

14 TO: THEIR ATTORNEYS OF RECORD

15 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing **MGM**  
16 **GRAND'S MOTION FOR JUDGMENT ON THE PLEADING** before the above-entitled Court on  
17 the 13 day of January, 201<sup>6</sup>~~7~~, at the hour of \_\_\_\_\_, ~~am.~~<sup>In Chambers</sup>, or as soon thereafter as  
18 counsel can be heard.

19 DATED this 11 day of December, 2015.

20 HALL JAFFE & CLAYTON, LLP

21  
22 By   
23 RILEY A. CLAYTON  
24 Nevada Bar No. 005260  
25 TAYLOR G. SELIM  
26 Nevada Bar No. 012091  
27 7425 Peak Drive  
28 Las Vegas, Nevada 89128  
Attorneys for Defendants,  
MGM Grand Hotel, LLC, d/b/a MGM Grand;  
MGM Resorts International, d/b/a MGM Grand

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In his complaint, Plaintiff Charles Schueler ("Schueler") has failed to state a legally cognizable  
4 cause of action against defendants MGM Grand Hotel, LLC and MGM Resorts International (collectively  
5 "MGM"). Specifically, Plaintiff has only alleged cause of action "premises liability" against MGM in  
6 this case based upon allegations that Schueler "fell approximately 150 feet to the ground" while  
7 performing repairs/renovations on the marquee sign located in front of MGM. As will be discussed  
8 below, Schueler's complaint as to MGM must be dismissed because MGM owed no duty to Schueler as a  
9 property owner to maintain the area of the marquee sign 150 in the air. The case law in Nevada supports  
10 this conclusion, leaving no legally recognized basis to keep MGM in this case. As such, MGM should be  
11 dismissed with prejudice.

12 **II. RELEVANT ALLEGATIONS FROM THE COMPLAINT**

13 Since this is a motion for judgment on the pleadings, as opposed to a motion for summary  
14 judgment, the allegations in the complaint will be taken as true in evaluating whether Schueler has failed  
15 to assert a legally recognized cause of action against MGM. In pertinent part Schueler has alleged the  
16 following:

17 14. On July 31, 2013, Plaintiff CHARLES SCHUELER was lawfully on the premises of  
18 Defendant GRAND HOTEL, LLC and/or MGM RESORTS INTERNATIONAL d/b/a  
19 MGM GRAND, located in Clark County, Nevada, to update the MGM pylon sign  
display adjacent to Las Vegas Boulevard.

20 15. When attempting to sever the structure connecting the LED cabinet to the main  
21 structure, Plaintiff CHARLES SCHUELER went in search for the missed angle iron  
attachment point to sever the display. At that point Plaintiff CHARLES SCHUELER,  
22 fell approximately 150 feet to the ground below as a result of a piece of "Alucobond"  
giving way

23 **FIRST CAUSE OF ACTION**

24 (Premises Liability- MGM GRAND HOTEL, LLC, MGM RESORTS  
INTERNATIONAL and AD ART, INC.)

25 16. Plaintiff repeats and religious paragraphs 1-15 of this Complaint as though fully set  
forth herein.

26 17. Defendants GRAND HOTEL, LLC, MGM RESORTS INTERNATIONAL d/b/a  
27 MGM GRAND, and AD ART, INC. DOES 1-25, and/or ROE CORPORATIONS 1-  
28 25 owned, operated, maintained, controlled, implemented, and/or designed a certain  
MGM pylon sign located within Clark County, Nevada.

- 1 18. Defendants GRAND HOTEL, LLC, MGM RESORTS INTERNATIONAL d/b/a  
2 MGM GRAND, and AD ART, INC. DOES 1-25, and/or ROE CORPORATIONS 1-  
3 25 had a duty to provide a safe and defect free environment upon the premises of the  
4 MGM pylon sign and to reasonably and adequately repair or warn of dangerous  
5 conditions upon the premises with were know to them or should have been known.
- 6 19. Defendants failed to use reasonable care in the design, construction, inspection,  
7 maintenance, upkeep, control, repairing, and/or maintenance or the premises,  
8 rendering the premises unreasonably dangerous.
- 9 20. The unreasonably dangerous condition, under the exercise of reasonable care should  
10 have been known to Defendants in adequate time for a reasonably prudent person to  
11 warn of, or make safe the condition. Defendants negligently failed and neglected to  
12 take any action to warn Plaintiff CHARLES SCHUELER or to make the condition  
13 safe.
- 14 21. As a direct and proximate cause of the aforementioned negligence of Defendants,  
15 Plaintiff suffered injuries which required and may continue to require medical  
16 attention and service all to his continuing expense and damage in any amount in  
17 excess of Ten Thousand Dollars (\$10,000.00).
- 18 22. As a further direct and proximate cause of the aforementioned negligence of  
19 Defendants, Plaintiff incurred and may continue to incur pain, suffering, disability and  
20 mental anguish all to his general damage in an amount in excess of Ten Thousand  
21 Dollars (\$10,000.00).
- 22 23. As a further direct and proximate cause of the aforementioned negligence of  
23 Defendants, Plaintiff incurred, and may continue to incur, lost wages and loss of  
24 earning capacity, in an amount in excess of Ten Thousand Dollars (\$10,000.00).
- 25 24. As a further direct and proximate cause of the aforementioned negligence of  
26 Defendants, and each of them, Plaintiff has been forced to his counsel to prosecute  
27 this action and had incurred attorneys' fees and costs in an amount to be proven at  
28 time of trial.

(Schueler's complaint at ¶¶ 14-24, attached as Exhibit A)

In other words, it is Schueler's contention that MGM was required, as a land owner, to maintain the area of the marquee sign located 150 feet in the air in a reasonable safe condition. According to Schueler, because MGM failed to maintain the area of the marquee sign located 150 feet in air in a reasonably safe condition, Schueler fell 150 feet and was injured. Again, and as discussed below, the law in Nevada does not recognize that MGM owed any duty to Schuler based upon the allegations as they appear in the complaint, which requires that MGM be dismissed from this case.

///

1 **III. LEGAL ARGUMENT**

2 **A. Standard for a Motion for Judgment on the Pleadings.**

3 Under NRCP 12(c), "any party may move for judgment on the pleadings...." A motion for  
4 judgment on the pleadings "is designed to provide a means of disposing of cases when material facts are  
5 not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings."  
6 *Duff v. Lewis*, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998) (citations omitted). Additionally, NRCP 12(h)  
7 permits that "[a] defense of failure to state a claim upon which relief can be granted ... may be made ... by  
8 motion for judgment on the pleadings." The practical effect of these rules essentially allows a defendant  
9 to make the same substantive arguments that could have been brought in a motion to dismiss under  
10 NRCP 12(b)(5). See *Guise v. BWM Mortg.*, 377 F.3d 795, 798 (7th Cir. 2004) (holding that a motion for  
11 judgment on the pleadings is to be reviewed under the same standard as would be applied to a motion to  
12 dismiss for failure to state a claim).

13 Under the standard for motion to dismiss, a trial court may dismiss a complaint if the pleadings  
14 establish that plaintiff can prove no set of facts which, if accepted by the trier of fact, would entitle the  
15 plaintiff to relief. See *Buzz Stew, LLC v. City of N. Las Vegas*, 181 P.3d 670 (Nev. 2008). Of course, the  
16 allegations in the complaint must be accepted as true and are liberally construed in favor of the plaintiff.  
17 See *Buzz Stew*, 181 P.3d at 672. However, where there is no cognizable claim for relief, the complaint  
18 must be dismissed. See *Morris v. Bank of America*, 110 Nev. 1274, 886 P.2d 454 (1994).<sup>1</sup>

19 Here, Plaintiff's complaint fails to state a claim upon which relief may be granted with respect to  
20 his sole cause of action against MGM for "premises liability." Specifically, MGM owed no duty, under  
21 Nevada law, to Schuler while he worked 150 feet in the air on the marquee sign. Moreover, MGM is  
22 considered a statutory employer for the purposes of workers' compensation, thereby making MGM  
23 immune from Plaintiff's claims.

24 ///

25  
26  
27 <sup>1</sup> NRCP 12(c) also provides that "[i]f, on a motion for judgment on the pleading, matters outside the pleadings are  
28 presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as  
provided in Rule 56....

1           **B. Nevada Law Expressly Places No Duty on MGM to Maintain the Area of the**  
2           **Marquee Sign Located 150 Feet in the Air.**

3           Schueler cannot maintain suit for premises liability against MGM as there is Nevada case law that  
4 is clearly, unequivocally, and directly on point that bars suit against MGM. In *Sierra Pacific Power Co.*  
5 *v. Rinehart*, 99 Nev. 557, 665 P.2d 557 (1983), the Nevada Supreme Court reversed the trial court's  
6 ruling that a landowner owed a duty to a contractor to warn of hazards associated with the work the  
7 contractor was performing on a 50 foot cooling tower for an electricity generating station. In *Rinehart*,  
8 the landowner hired a contractor to design and construct a cold-fire electricity generated station on parcel  
9 of land owned by the landowner. During the course of the construction, an employee of the contractor  
10 sustained fatal injuries as a result of 50 foot fall while working on the construction of the cooling tower.  
11 Although the family of the worker was compensated by workers' compensation, the family brought  
12 claims against the landowner for negligence.

13           At trial, the district court determined that the landowner owed (1) a common law duty to the  
14 contractor's employee to keep the premises in a reasonably safe condition, (2) a statutory duty to provide  
15 employees a safe place to work under NRS 618.395, and (3) a duty to take precautions against peculiar  
16 risk of harm to others. On appeal, the Nevada Supreme Court reversed the trial court on all three bases,  
17 holding that the landowner owed no duty to the contractor's employee. *Id.* at 561, 665 P.2d at 273.

18           The Court determined that because of the purported danger, i.e., the height of the cooling tower,  
19 the danger was obvious to all and the landowner had no duty to warn the contractor's employee of the  
20 danger. *Id.* The Court also determined that "although there is a common law duty to provide a safe place  
21 to work, "the landowner had no duty to protect [the contractor's employee] from risks arising from or  
22 intimately connected with defects or hazards which the [the contractor's employee] has undertaken to  
23 repair which are created by the job contracted." *Id.*

24           The Court also determined that Nevada's OSHA statute under NRS 618.395 did not provide a  
25 private right of action in favor of the contractor's employee. *Id.* Finally, the Nevada Supreme Court  
26 rejected the idea that the landowner had a common law duty to take precautions against the peculiar risk  
27 of harm posed by the water cooling tower. *Id.* Essentially, the Court determined that the contractor's  
28 employee had special skills and experience in constructing cooling towers, which made the contractor's

1 employee more aware of the peculiar risk involved with the construction project, thereby putting the  
2 contractor's employee in a better position to take special precautions to protect against and peculiar  
3 dangers. *Id.*

4 The Court's ruling in *Rinehart* supports was common sense should make readily apparent in this  
5 case. It would be absurd to impose a duty on landowners, in the context of a "premises liability" claim, to  
6 maintain areas of their property that are not intended to be used or walked on by anyone, *i.e.*, the side of a  
7 marquee sign 150 feet in the air. Further, it would be equally absurd to require landowners to protect  
8 contractors hired by the landowner from readily apparent risks (*i.e.*, falling 150 feet from a marquee sign)  
9 when the contractor should be even more aware and capable of dealing with the risk than the landowner.

10 Even without legal authority supporting MGM's motion, this Court should readily conclude that  
11 common sense dictates that a land owner owes no duty to maintain areas of its property that are not  
12 designed to ever have pedestrian foot traffic. Indeed, by allowing Schueler's claim against MGM to  
13 continue, this Court would essentially be required to rule that landowners in Nevada would have to  
14 maintain every inch of their property on the off chance that someone at some point might traverse that  
15 area. This would necessarily require that landowners would be required to inspect and maintain roofs,  
16 ceilings, crawlspaces, and elevated marquee signs for the purpose of identifying and removing potential  
17 trip and fall hazards. It is Schueler's contention that MGM was required, prior to Schueler performing  
18 the work that he had been contracted to perform, to climb up the marquee sign and conduct some sort of  
19 inspection or repair to the marquee sign to prevent the alleged incident. Respectfully, the duty Schueler is  
20 attempting to impose on MGM is absurd even in the absence of clear case law from the Nevada Supreme  
21 Court dealing with this issue.

22 Without delving into any of sort of factual dispute, and taking Schueler's allegation as true on  
23 their face, Schueler's claims fail as a matter of law based upon the holding in *Rinehart* and based upon  
24 common sense. MGM owed no duty to Schueler to do anything with respect to the maintenance of the  
25 marquee sign prior to Schueler's fall. As such, MGM respectfully requests that it be dismissed from this  
26 case with prejudice.

1           **C.     Additionally, MGM is Immune from Schueler's Claims, because MGM is a Statutory**  
2           **Employer under Workers' Compensation.**

3           Independent of the foregoing arguments regarding the fact that MGM owed no duty to Schueler,  
4           MGM is immune from suit in this instance under Nevada's Workers' Compensation statute. As this  
5           Court is well aware, an employer is immune from suit in connection with an industrial accident when the  
6           employee receives Workers' Compensation benefits from his employer for the alleged injuries. *See Sepul*  
7           *v. Lacayo*, 122 Nev. 499, 134 P.3d 733 (2006). In addition to the employee's actual employer, the  
8           Workers' Compensation statute extends that immunity to certain third-parties which are said to be  
9           "statutory employers." *Id.* Indeed, in *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 25 P.3d 206  
10          (2001), the Nevada Supreme Court, after reviewing the rather complicated analysis that generally goes  
11          into determining whether a party is a "statutory employer," issued a bright line rule with respect to  
12          Workers' Compensation immunity applying to landowners. Specifically, the Court held as follows:

13                 We conclude, however, that broad application of the *Meers* test is not mandated by the NIIA  
14                 in construction cases—despite the fact that NRS 616B.603(3) does not expressly exempt  
15                 landowners that retain licensed principal contractors. We therefore modify *Tucker* to clarify  
16                 that if the defendant in a construction case is a landowner that has contracted with a  
17                 licensed principal contractor, the landowner is immune from suit as a matter of law for  
18                 industrial injuries sustained during performance of the construction contract.

19                 Strong policy considerations support this conclusion. First, workers' compensation coverage  
20                 "should equally protect the property owner who, in hiring the contractor, is indirectly paying  
21                 for the cost of such coverage, which the contractor presumably has calculated into the contract  
22                 price." Since the principal contractor is required by the NIIA to ensure that all the  
23                 construction workers have workers' compensation coverage, requiring the property owner to  
24                 duplicate that coverage or risk suit in case of injuries is unnecessary as well as unreasonably  
25                 costly. Further, failure to immunize property owners from suits by workers injured while  
26                 constructing property improvements places commercial property owners at greater monetary  
27                 risk than if their own employees performed the tasks. Finally, property owners without  
28                 construction expertise should be encouraged to retain qualified general contractors who are  
29                 "in a better position to reduce the risks of injury" because they have "more knowledge and  
30                 expertise... with respect to the dangers that normally arise during the course of the contractor's  
31                 normal work routine."

32           Although determining whether an entity may be immune from suit under the Workers' Compensation  
33           statute can be a difficult undertaking when applying the *Meers* test, the holding from *Harris* makes the  
34           analysis rather simple: landowners are immune from suit brought by the employees of contractors  
35           hired by the landowner.

36           Here, Schueler has alleged that he was performing repairs/renovations on the marquee sign at the  
37           time of the incident. Those allegations, on their face, are sufficient to allow this Court to rule as a matter

1 of law that MGM is immune from suit under the Workers' Compensation statute. Although Schueler  
2 does not explain in his complaint that he was an employee of YESCO, a local contractor and construction  
3 company, or the fact that he collected Workers' Compensation through YESCO, this Court should not be  
4 persuaded by arguments that additional discovery needs to be completed in order to determine if the  
5 holding in *Harris* applies in this case. Immunity in Workers' Compensation provides an independent  
6 basis that allows this Court to dismiss MGM with prejudice from this case.

7 **IV. CONCLUSION**

8 Based on the foregoing reasons, MGM Grand respectfully requests that it be dismissed from this  
9 case with prejudice as Schueler has failed to state a legally recognized cause of action for premise liability  
10 against MGM. Moreover, based on the allegations in the complaint, Schueler's claims against MGM are  
11 barred, as MGM is a statutory employer under the Workers' Compensation statute.

12 DATED this 11 day of December, 2015.

13 HALL JAFFE & CLAYTON, LLP

14  
15 By 

RILEY A. CLAYTON

Nevada Bar No. 005260

TAYLOR G. SELIM

Nevada Bar No. 012091

7425 Peak Drive

Las Vegas, Nevada 89128

Attorneys for Defendants,

MGM Grand Hotel, LLC, d/b/a MGM Grand;

MGM Resorts International, d/b/a MGM Grand


**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 11 day of December, 2015, I served the foregoing **MGM GRAND'S MOTION FOR JUDGMENT ON THE PLEADING** on the following parties by electronic transmission through the Wiznet system:

William R. Brenske, Esq.  
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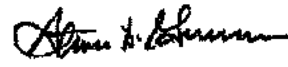
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*Ad Art, Inc.*

  
An Employee of  
**HALL JAFFE & CLAYTON, LLP.**

# **EXHIBIT “A”**

# **EXHIBIT “A”**

  
CLERK OF THE COURT

270.00  
CHECK  
CLERK JANEL WASHINGTON

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12 **Attorneys for Plaintiffs**

13  
14  
15 **DISTRICT COURT**  
16  
17 **CLARK COUNTY, NEVADA**

18 **CHARLES SCHUELER,**  
19  
20 **Plaintiff,**

Case No.: A-15-722391-C  
Dept. No.: XVII

21 **COMPLAINT**

22  
23 **MGM GRAND HOTEL, LLC, a Domestic**  
24 **Limited Liability Company d/b/a MGM**  
25 **GRAND; MGM RESORTS**  
26 **INTERNATIONAL, A Foreign Corporation**  
27 **d/b/a MGM GRAND; AD ART, INC., A**  
28 **Foreign Corporation; 3A COMPOSITES**  
**USA INC., a Foreign Corporation a/k/a**  
**ALUCOBOND TECHNOLOGIES**  
**CORPORATION; DOES 1 - 25; ROE**  
**CORPORATIONS 1 - 25; inclusive.**

Date of Hearing: N/A  
Time of Hearing: N/A

29 **Defendants.**

30 **JURISDICTIONAL ALLEGATIONS**

- 31 1. Plaintiff CHARLES SCHUELER is a resident of Clark County, Nevada.
- 32 2. Defendant MGM GRAND HOTEL, LLC d/b/a MGM GRAND is a Nevada
- 33 Limited Liability Company licensed to do business and actually doing business in Clark County,
- 34 Nevada at all times relevant to this Complaint.

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1           3. Defendant MGM RESORTS INTERNATIONAL d/b/a MGM GRAND is a  
2 Delaware Corporation that was licensed to do business and actually doing business in Clark  
3 County, Nevada at all times relevant to this Complaint.

4           4. Defendant AD ART, INC. is a California Corporation that was licensed to do  
5 business and actually doing business in Clark County, Nevada at all times relevant to this  
6 Complaint.  
7

8           5. Defendant 3A COMPOSITES USA INC., is a Missouri Corporation a/k/a  
9 ALUCOBOND TECHNOLOGIES CORPORATION that is actually doing business in Clark  
10 County, Nevada.

11           6. Defendant 3A COMPOSITES USA INC is the manufacturer, designer, supplier,  
12 and or seller, of a product known commonly as "Alucobond" which was the material used in  
13 construction and/or manufacturing of the MGM pylon sign which is the subject of this Complaint.  
14

15           7. Defendants DOES 1 - 5 and ROE CORPORATIONS 1 - 5 are individuals,  
16 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or  
17 partners in association with Defendant MGM GRAND HOTEL, LLC d/b/a MGM GRAND, and  
18 may have in some way caused or contributed to Plaintiff's damages as alleged herein. The true  
19 names and/or capacities of DOES 1 - 5 and ROE CORPORATIONS 1 - 5 are unknown to  
20 Plaintiff. Plaintiff will ask leave of Court to amend this Complaint to insert the true names and  
21 capacities of DOES 1 - 5 and/or ROE CORPORATIONS 1 - 5 when they are ascertained.  
22

23           8. Defendants DOES 6 - 10 and ROE CORPORATIONS 6 - 10 are individuals,  
24 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or  
25 partners in association with Defendant MGM RESORTS INTERNATIONAL d/b/a MGM  
26 GRAND, and may have in some way caused or contributed to Plaintiff's damages as alleged  
27 herein. The true names and/or capacities of DOES 6 - 10 and ROE CORPORATIONS 6 - 10 are  
28

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1 unknown to Plaintiff. Plaintiff will ask leave of Court to amend this Complaint to insert the true  
2 names and capacities of DOES 6 -- 10 and/or ROE CORPORATIONS 6 -- 10 when they are  
3 ascertained.

4 9. Defendants DOES 11 -- 15 and ROE CORPORATIONS 11 -- 15 are individuals,  
5 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or  
6 partners in association with Defendant AD ART, INC., and may have in some way caused or  
7 contributed to Plaintiff's damages as alleged herein. The true names and/or capacities of DOES 11  
8 -- 15 and ROE CORPORATIONS 11 -- 15 are unknown to Plaintiff. Plaintiff will ask leave of  
9 Court to amend this Complaint to insert the true names and capacities of DOES 11 -- 15 and/or  
10 ROE CORPORATIONS 11 -- 15 when they are ascertained.

11 10. Defendants DOES 16 -- 20 and ROE CORPORATIONS 16 -- 20 are individuals,  
12 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or  
13 partners in association with Defendant 3A. COMPOSITES USA, INC., and may have in some way  
14 caused or contributed to Plaintiff's damages as alleged herein. The true names and/or capacities of  
15 DOES 16 -- 20 and ROE CORPORATIONS 16 -- 20 are unknown to Plaintiff. Plaintiff will ask  
16 leave of Court to amend this Complaint to insert the true names and capacities of DOES 16 -- 20  
17 and/or ROE CORPORATIONS 16 -- 20 when they are ascertained.

18 11. Defendants DOES 21 -- 25 and ROE CORPORATIONS 21 -- 25 are individuals,  
19 associations, corporations, partnerships, and/or other entities that are owners, controllers, and/or  
20 partners that may have in some way caused or contributed to Plaintiff's damages as alleged herein.  
21 The true names and/or capacities of DOES 21 -- 25 and ROE CORPORATIONS 21 -- 25 are  
22 unknown to Plaintiff. Plaintiff will ask leave of Court to amend this Complaint to insert the true  
23 names and capacities of DOES 21 -- 25 and/or ROE CORPORATIONS 21 -- 25 when they are  
24 ascertained.

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12. Defendants are agents, servants, employees, employers, trade venturers, partners and/or family members of each other. At the time of the incident described in this Complaint, Defendants were acting within the color, purpose and scope of their relationships, and by reason of their relationships, Defendants may be jointly and severally and/or vicariously responsible and liable for the acts and omissions of their co-Defendants.

### GENERAL ALLEGATIONS

13. Plaintiff repeats and realleges paragraphs 1 - 12 of this Complaint as though fully set forth herein.

14. On July 31, 2013, Plaintiff CHARLES SCHUELER was lawfully on the premises of Defendant MGM GRAND HOTEL, LLC and/or MGM RESORTS INTERNATIONAL d/b/a MGM GRAND, located in Clark County, Nevada, to update the MGM pylon sign display adjacent to Las Vegas Boulevard.

15. When attempting to sever the structure connecting the LED cabinet to the main structure, Plaintiff CHARLES SCHUELER went in search for the missed angle iron attachment point to sever the display. At that point, Plaintiff CHARLES SCHUELER fell approximately 150 feet to the ground below as a result of a piece of "Alucobond" giving way.

### FIRST CAUSE OF ACTION

(Premises Liability- MGM GRAND HOTEL, LLC, MGM RESORTS INTERNATIONAL and AD ART, INC.)

16. Plaintiff repeats and realleges paragraphs 1 - 15 of this Complaint as though fully set forth herein.

17. Defendants MGM GRAND HOTEL, LLC, MGM RESORTS INTERNATIONAL, AD ART, INC., DOES 1 - 25, and/or ROE CORPORATIONS 1 - 25 owned, operated, maintained, controlled, implemented, and/or designed a certain MGM pylon sign located within Clark County, Nevada.

1 18. At all times herein mentioned, MGM GRAND HOTEL, LLC, MGM RESORTS  
2 INTERNATIONAL, AD ART, INC., DOES 1 - 25, and/or ROE CORPORATIONS 1 - 25 had a  
3 duty to provide a safe and defect free environment upon the premises of the MGM pylon sign and  
4 to reasonably and adequately repair or warn of dangerous conditions upon the premises which  
5 were known to them or should have been known.  
6

7 19. Defendants failed to use reasonable care in the design, construction, inspection,  
8 maintenance, upkeep, control, repairing, and/or maintenance of the premises, rendering the  
9 premises unreasonably dangerous.

10 20. The unreasonably dangerous condition, under the exercise of reasonable care should  
11 have been known to Defendants in adequate time for a reasonably prudent person to warn of, or  
12 make safe the condition. Defendants negligently failed and neglected to take any action to warn  
13 Plaintiff CHARLES SCHUELER or to make the condition safe.  
14

15 21. As a direct and proximate cause of the aforementioned negligence of Defendants,  
16 Plaintiff suffered injuries which required and may continue to require medical attention and  
17 services all to his continuing expense and damage in an amount in excess of Ten Thousand Dollars  
18 (\$10,000.00).

19 22. As a further direct and proximate cause of the aforementioned negligence of  
20 Defendants, Plaintiff incurred and may continue to incur pain, suffering, disability and mental  
21 anguish all to his general damage in an amount in excess of ten thousand dollars (\$10,000.00).  
22

23 23. As a further direct and proximate cause of the aforementioned negligence of  
24 Defendants, Plaintiff incurred, and may continue to incur, lost wages and loss of earning capacity,  
25 in an amount in excess of ten thousand dollars (\$10,000.00).  
26  
27  
28

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William R. Brenske  
650 South Third Street  
Las Vegas, Nevada 89101  
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1 24. As a further direct and proximate cause of the aforementioned negligence of  
2 Defendants, and each of them, Plaintiff has been forced to hire counsel to prosecute this action and  
3 has incurred attorney's fees and costs in an amount to be proven at time of trial.

4  
5 **SECOND CAUSE OF ACTION**  
(Product Liability - AD ART, INC.)

6 25. Plaintiff repeats and realleges paragraphs 1 - 24 of this Complaint as though fully  
7 set forth herein.

8 26. Defendant AD ART, INC., DOES 1 - 25 and/or ROE CORPORATIONS 1 - 25  
9 designed, manufactured, constructed, assembled, sold, and/or distributed the MGM pylon sign  
10 wherein Plaintiff CHARLES SCHUELER was working on July 31, 2013.

11 27. By reason of a defect in its design, manufacture, and/or assembly, the MGM pylon  
12 sign was defective, unfit, and/or unreasonably dangerous for its intended use at the time Plaintiff  
13 CHARLES SCHUELER was working on July 31, 2013 and at the time it left the control of  
14 Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25.

15 28. Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25 knew or  
16 should have known the defective condition of the MGM pylon sign could cause injury to users of  
17 the product and/or Defendant AD ART, DOES 1-25 and/or ROE CORPORATIONS 1-25 should  
18 have known the MGM pylon sign was not fit for the purpose for which it was ordinarily used.  
19

20 29. As a direct and proximate cause of Defendant AD ART, DOES 1-25 and/or ROE  
21 CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign, Plaintiff  
22 incurred, and continues to incur medical treatment and billing in an amount in excess of Ten  
23 Thousand Dollars (\$10,000.00).  
24

25 30. As a further direct and proximate cause of Defendant AD ART, DOES 1-25 and/or  
26 ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign,  
27  
28

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(702) 385-3300 - Fax (702) 385-5523

1 Plaintiff incurred, and continues to incur, lost wages and/or loss of earning capacity in an amount  
2 in excess of Ten Thousand Dollars (\$10,000.00).

3 31. As a further direct and proximate cause of Defendant AD ART, DOES 1-25 and/or  
4 ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign,  
5 Plaintiff endured, and continues to endure pain, suffering, disability, and mental anguish in an  
6 amount in excess of Ten Thousand Dollars (\$10,000.00).

7 32. As a further direct and proximate cause of Defendant AD ART, DOES 1-25 and/or  
8 ROE CORPORATIONS 1-25 defective manufacture and/or design of the MGM pylon sign,  
9 Plaintiff incurred, and continues to incur, attorney's fees and court costs in an amount to be proven  
10 at trial.

11  
12 **THIRD CAUSE OF ACTION**  
13 (Product Liability - 3A COMPOSITES USA INC.).

14 33. Plaintiff repeats and realleges paragraphs 1 - 32 of this Complaint as though fully  
15 set forth herein.

16 34. Defendant 3A COMPOSITES USA INC., DOES 1 - 25 and/or ROE  
17 CORPORATIONS 1 - 25 designed, manufactured, assembled, sold, and/or distributed the material  
18 known commonly as "Alucobond" which was used to manufacture and/or construct the MGM  
19 pylon sign in question.

20 35. By reason of a defect in its design, manufacture, and/or assembly, the Alucobond  
21 material inside and surrounding the MGM pylon sign was defective, unfit, and/or unreasonably  
22 dangerous for its intended use at the time Plaintiff CHARLES SCHULER was working on July 31,  
23 2013 and at the time it left the control of Defendant 3A COMPOSITES USA INC., DOES 1-25  
24 and/or ROE CORPORATIONS 1-25.

25 36. Defendant 3A COMPOSITES USA INC., DOES 1-25 and/or ROE  
26 CORPORATIONS 1-25 knew or should have known the defective condition of the "Alucobond"

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1 could cause injury to users of the product and/or Defendant 3A COMPOSITES USA INC., DOES  
2 1-25 and/or ROE CORPORATIONS 1-25 should have known the "Alucobond" was not fit for the  
3 purpose for which it was ordinarily used.

4 37. As a direct and proximate cause of Defendant 3A COMPOSITES USA INC.,  
5 DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the  
6 "Alucobond," Plaintiff incurred, and continues to incur medical treatment and billing in an amount  
7 in excess of Ten Thousand Dollars (\$10,000.00).  
8

9 38. As a further direct and proximate cause of Defendant 3A COMPOSITES USA  
10 INC., DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the  
11 "Alucobond," Plaintiff incurred, and continues to incur, lost wages and/or loss of earning capacity  
12 in an amount in excess of Ten Thousand Dollars (\$10,000.00).  
13

14 39. As a further direct and proximate cause of Defendant 3A COMPOSITES USA  
15 INC., DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the  
16 "Alucobond," Plaintiff endured, and continues to endure pain, suffering, disability, and mental  
17 anguish in an amount in excess of Ten Thousand Dollars (\$10,000.00).  
18


19 40. As a further direct and proximate cause of Defendant 3A COMPOSITES USA  
20 INC., DOES 1-25 and/or ROE CORPORATIONS 1-25 defective manufacture and/or design of the  
21 "Alucobond," Plaintiff incurred, and continues to incur, attorney's fees and court costs in an  
22 amount to be proven at trial.

23 WHEREFORE Plaintiffs pray for Judgment for their First, Second, and Third Causes of  
24 Action as follows:

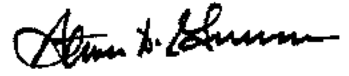
- 25 1) For special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);  
26 2) For general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);  
27 3) For attorney's fees and court costs in an amount to be proven at trial;  
28

1 4) For such other and further relief as this Court may deem just and proper.

2 DATED this 24<sup>th</sup> day of July, 2015.

3  
4   
5 WILLIAM R. BRENSKE, ESQ.  
6 Nevada Bar No. 1506  
7 RYAN D. KRAMETBAUER, ESQ.  
8 Nevada Bar No. 12800  
9 LAW OFFICE OF WILLIAM R. BRENSKE  
10 630 South Third Street  
11 Las Vegas, NV 89101  
12 Telephone: (702) 385-3300  
13 Facsimile: (702) 385-3823  
14 Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
15 Attorneys for Plaintiff Charles Schuster

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CLERK OF THE COURT

1 WILLIAM R. BRENSKE, ESQ.  
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2 RYAN D. KRAMETBAUER, ESQ.  
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6 Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
Attorneys for Plaintiff,  
7 Charles Schueler

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,  
11 Plaintiff,  
12 v.

13 MGM GRAND HOTEL, LLC, a Domestic Limited  
Liability Company d/b/a MGM GRAND; MGM  
14 RESORTS INTERNATIONAL, A Foreign  
Corporation d/b/a MGM GRAND; AD ART, INC., A  
15 Foreign Corporation; 3A COMPOSITES USA INC.,  
16 a Foreign Corporation a/k/a ALUCOBOND  
TECHNOLOGIES CORPORATION; DOES 1 - 25;  
17 ROE CORPORATIONS 1 - 25; inclusive,  
18 Defendants.

Case No.: A-15-722391-C  
Dept. No.: XVII

**PLAINTIFF CHARLES  
SCHUELER'S OPPOSITION TO  
MGM GRAND'S MOTION FOR  
JUDGMENT ON THE  
PLEADING; ALTERNATIVE  
MOTION FOR ADDITIONAL  
DISCOVERY PURSUANT TO  
NRCP 56(f)**

Date of Hearing:  
Time of Hearing:

19  
20  
21 Plaintiff, Charles Schueler, by and through his attorneys of record, the Law Office of  
22 William R. Brenske, hereby opposes Defendant MGM Grand's Motion for Judgment on the  
23 Pleading. Alternatively, Plaintiff moves this Court for an opportunity to conduct additional  
24 discovery pursuant to NRCP 56(f).

25 ///

26 ///

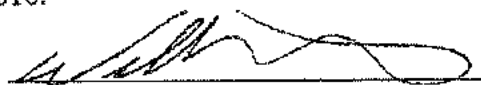
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1 This opposition and alternative motion is based on the pleadings and papers on file herein,  
2 the attached memorandum of points and authorities, and any oral argument this Court may wish to  
3 entertain.

4 DATED this 8<sup>th</sup> day of February, 2016.

5 

6 WILLIAM R. BRENSKE, ESQ.

7 Nevada Bar No. 1806

JENNIFER R. ANDREEVSKI, ESQ.

8 Nevada Bar No. 9095

LAW OFFICE OF WILLIAM R. BRENSKE

9 630 South Third Street

10 Las Vegas, NV 89101

Attorneys for Plaintiff,

11 Charles Schueler

## 12 MEMORANDUM OF POINTS AND AUTHORITIES

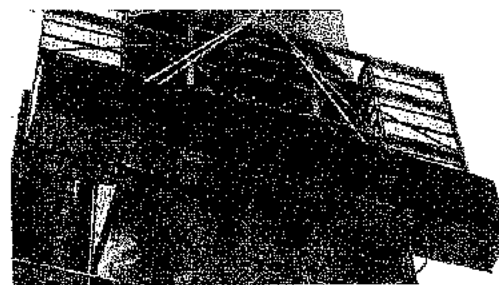
### 13 I. INTRODUCTION

14 On July 31, 2013, Plaintiff, Charles Schueler, was working with two co-workers on the  
15 MGM Grand sign in Las Vegas, Nevada. He was tasked with cutting electrical wiring and conduit  
16 inside the LED cabinet on the marquee sign so it could be removed and replaced with a new HD  
17 display. As Mr. Schueler was walking on the floor of the sign, a triangular panel on the floor  
18 suddenly broke loose, causing him to fall 150 feet to the ground. Mr. Schueler survived, but  
19 suffered debilitating injuries. The LED cabinet Mr. Schueler was helping to sever is shown in  
20 Photo 1 below. The area where the panel had been before it gave way is circled in Photo 2 below.  
21

22 Photo 1

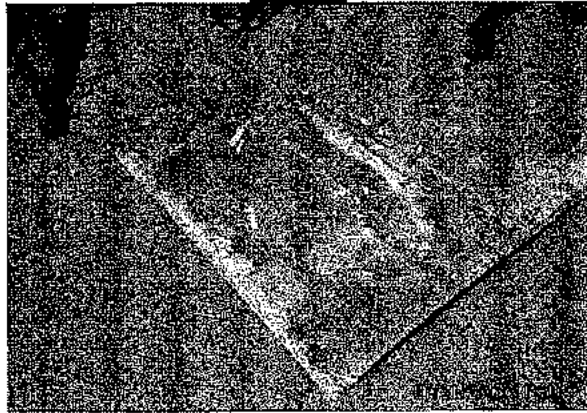


Photo 2

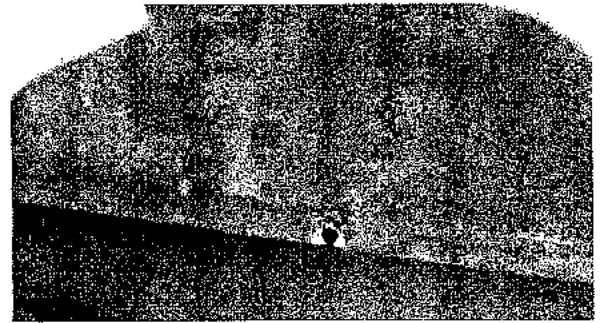


1 A photo of the panel after the fall is pictured in Photo 3 and a close up of one example of the  
2 broken mounts for the panel is pictured in Photo 4.

3 **Photo 3**



4 **Photo 4**



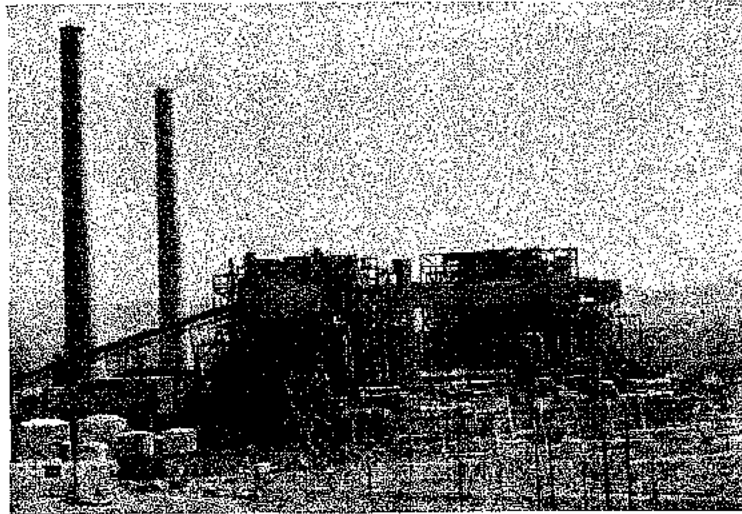
5  
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7  
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10  
11 Defendant, MGM Grand, owned the marquee sign that had been erected by Defendant Ad  
12 Art, Inc. The defective panel was made of Alucobond that had been manufactured by Defendant  
13 3A Composites USA, Inc. At the time of the incident, Mr. Schueler was employed by Yesco, LLC  
14 as a sheet metal worker but was "on loan" to the signage department.

15  
16 Defendant MGM argues it should be dismissed on the pleadings because it allegedly owed  
17 no duty to Mr. Schueler and is allegedly Mr. Schueler's statutory employer under Worker's  
18 Compensation statutes. As discussed below, each of Defendant's arguments fail and Defendant's  
19 motion should be dismissed. Alternatively, Plaintiff moves this Court for leave to conduct  
20 additional discovery pursuant to Nevada Rules of Civil Procedure 56(f).

21 **II. LEGAL ARGUMENT**

22  
23 Defendant MGM first argues it cannot be held liable for Mr. Schueler's injuries because it  
24 allegedly had no duty to Mr. Schueler while he worked 150 feet in the air on its sign. Defendant  
25 cites Sierra Pacific Power Co. v. Rinehart, 99 Nev. 557 (1983) in support of its argument arguing a  
26 landowner does not have a duty to protect invitees from obvious dangers. Id. at 563. Sierra Pacific  
27 can be distinguished from the one at hand.  
28

1 In Sierra Pacific, an independent contractor fell off of a cooling tower at the Valmy power  
2 plant as he was helping to build the cooling tower. The 50 foot fall killed the worker in question.  
3 A photo of the Valmy power plant taken from a brochure published by Nevada Energy at:  
4 [https://www.nvenergy.com/company/energytopics/images/Valmy\\_Fact\\_Sheet.pdf](https://www.nvenergy.com/company/energytopics/images/Valmy_Fact_Sheet.pdf), is set forth  
5 below:  
6



7  
8  
9  
10  
11  
12 The cooling towers are the tall, cylindrical shaped structures on the left side of the photo pictured  
13 above.  
14  
15

16  
17  
18 Although working 50 feet above the ground on a tall, open, cylindrical cooling tower for a  
19 coal-fired electricity plant *is* an open and obvious danger, walking on the floor of an enclosed sign  
20 elevated above the ground *is not* an open and obvious danger. Mr. Schueler had no way of  
21 knowing the floor underneath him would suddenly gave way and cause him to fall. He expected  
22 the floor of the sign to hold his weight and had no fear of falling because he was walking within an  
23 enclosed structure. The only reason Mr. Schueler fell was the floor of MGM's sign gave way  
24 beneath him.  
25

26 In this regard, in the Sierra Pacific case, the Nevada Supreme Court specifically held a  
27 landowner "is under a duty to warn an invitee of hidden dangers." Id. at 558. The fact that the  
28 floor panel to the MGM sign was unable to hold Mr. Schueler's weight constituted a hidden

1 danger. People simply do not expect the floors they stand on to suddenly give way underneath  
2 their body weight. If a floor is in danger of giving way from a person's body weight, a property  
3 owner has a duty to warn of such danger.

4 Plaintiff recognizes this duty is not absolute, however, the exception does not apply in this  
5 case. Specifically, the Sierra Pacific court indicated a property owner does not have a duty to  
6 "protect the employees of an independent contractor from risks arising from or intimately  
7 connected with defects or hazards which the contractor has undertaken to repair or which are  
8 created by the job contracted." Id. at 560-61. Here, Mr. Schueler was responsible for severing the  
9 LED cabinet from MGM's marquee sign. It may be argued that electrocution, falling from the  
10 exterior of the sign, cuts and bruises, etc. are risks associated with the work Mr. Schueler was  
11 performing. Falling through the floor, however, is not. As an analogy, if MGM hired an  
12 electrician to replace a light fixture on the 2nd floor of a building and the electrician fell from his  
13 ladder, that would be considered a risk connected with the job. If, on the other hand, that  
14 electrician fell through the floor of the building due to a defect on the floor, that would not be a  
15 risk inherent to the job. Unless warned to the contrary, people expect floors to hold their weight.  
16 Falling through the floor is not a risk inherent to most jobs - including the job Mr. Schueler was  
17 performing.

18 As the Court analyzes these arguments, it must be remembered Defendant has filed a  
19 motion for judgment on the pleadings. To prevail, Defendant must prove Plaintiff has no way of  
20 winning at the time of trial based on the language contained within the Complaint. As noted  
21 above, the jury may find in Plaintiff's favor. It is quite possible the jury will find falling through  
22 the floor *was not* a risk inherent to Mr. Schueler's job, thus giving MGM a duty to warn Mr.  
23 Schueler of the hazard or to make the floor safe. As such, Defendant's motion should be denied.  
24  
25  
26  
27  
28

1 Defendant's alternative argument is that it was Mr. Schueler's statutory employer, therefore  
2 his sole remedy rests with Worker's Compensation. This argument also fails. In the Harris v. Rio  
3 Hotel & Casino, 117 Nev. 482 (2001) case cited by Defendant, the Nevada Supreme Court  
4 discussed when a general contractor on a construction site can be deemed the statutory employer of  
5 a subcontractor for purposes of Worker's Compensation. It then indicated property owners stand in  
6 the shoes of general contractors. This case is inapposite to the case at hand, however, because the  
7 work Mr. Schueler was performing at the time of his fall was not construction. He was not  
8 building anything. His company was not building anything. In fact, no construction was occurring  
9 on the MGM Grand sign at all. Mr. Schueler was simply helping to remove one LED screen on  
10 MGM's sign so it could be replaced with a different LED screen. While Plaintiff submits this is  
11 clearly not a construction case, at a minimum, whether Mr. Schueler was engaged in construction  
12 at the time of the incident is a question of fact for the jury to decide.

13  
14  
15 In non-construction cases, the appropriate test to apply to determine if a property owner can  
16 be deemed the statutory employer is the *Meers* test. Harris v. Rio Hotel & Casino, 117 Nev. 482,  
17 491 (2001). Under the *Meers* test, activities that are conducted by independent contractors *outside*  
18 the normal work of the contracting business are not protected from liability from the Nevada  
19 Industrial Insurance Act. Meers v. Haughton Elevator, 101 Nev. 283, 285 (1985). In the *Meers*  
20 case, a supervisor at a telephone company was injured when the elevator in her office building  
21 malfunctioned. The Nevada Supreme Court found that maintenance of an elevator is not part of  
22 the normal work of the phone company. As a result, the elevator company could not be considered  
23 the statutory employee of the phone company and none of the phone company employees could be  
24 deemed the co-workers of the elevator company.

25  
26 Similarly, replacing LED cabinets from signs is not part of the normal work activities of  
27 MGM Grand. MGM Grand contracts this work out to independent contractors, such as Mr.  
28

1 Schueler's employer, Yesco. Given the two companies have independent purposes, none of their  
2 employees are statutory co-workers of one another. As a result, Mr. Schueler is not covered under  
3 MGM Grand's industrial insurance policy. His sole source of recompense from MGM Grand is  
4 through his negligence/premises liability claim that has been asserted herein.

### 5 6 **III. CONCLUSION**

7 The risk of the floor falling out underneath Mr. Schueler was not an open and obvious risk.  
8 As such, MGM had a duty to warn him of this possibility or make the area safe. Since MGM  
9 failed to do either, it can be held liable for Mr. Schueler's injuries and should not be dismissed on  
10 the pleadings. In addition, given Mr. Schueler was not performing construction at the time of the  
11 incident, an replacing LED signs is not part of the normal work of MGM Grand, Mr. Schueler  
12 cannot recover under MGM Grand's industrial insurance policy. In fact, he did not make a claim  
13 under MGM's Worker's Compensation policy. It therefore follows that MGM's Worker's  
14 Compensation policy is not the exclusive remedy for Mr. Schueler. To the contrary, the present  
15 claim is his only source of compensation from MGM for his injuries. As such, Mr. Schueler's  
16 claims cannot be dismissed on the pleadings on this ground either. Based on the foregoing,  
17 Plaintiff respectfully requests this Court deny Defendant MGM's Motion to Dismiss on the  
18 Pleadings.  
19

### 20 **ALTERNATIVE COUNTERMOTION TO CONDUCT** 21 **ADDITIONAL DISCOVERY PURSUANT TO NRCP 56(f)**

22 Should this Court be inclined to grant Defendant's motion, Plaintiff hereby asserts the  
23 foregoing alternative motion to conduct additional discovery pursuant to NRCP 56(f).  
24 Specifically, Plaintiff seeks to conduct discovery to determine: (1) whether falling through the  
25 floor of the sign was a risk inherent to the job of replacing the LED cabinet; and (2) whether Mr.  
26 Schueler was engaged in construction at the time of the incident in question.  
27

28 NRCP 56 allows the Court to deny or continue the motion to permit discovery to be conducted.

1 NRCP 56(f) states:

2 Should it appear from the affidavits of a party opposing the motion that he cannot for  
3 reasons stated present by affidavit facts essential to justify his opposition, the court may  
4 refuse the application for judgment or may order a continuance to permit affidavits to be  
5 obtained or depositions to be taken or discovery to be had or may make such other order as  
6 is just.

7 Denial of a request for additional time under NRCP 56(f) to conduct discovery in a lawsuit in its  
8 infant stages constitutes abuse of discretion. *Summerfield v. Coca Cola Bottling Co. of the*  
9 *Southwest*, 113 Nev. 1291, 1294, 948 P.2d 704,705 (1997), citing to *Harrison v. Falcon Products*,  
10 103 Nev. 558, 560, 746 P.2d 642, 642-643 (1987).

11 The Complaint in this matter was filed on July 30, 2015, and the Early Case Conference was  
12 held on November 12, 2015. Since then, the parties have only conducted minimal discovery. As of  
13 today, no depositions have been taken, nor are any scheduled to go forward. In essence, the  
14 discovery process has just begun. This case is still in its infancy stages.

15 Although Plaintiffs firmly believe the evidence currently in the file already demonstrates  
16 MGM Grand's Motion to Dismiss on the Pleadings should be denied, it is obvious much discovery  
17 must still be conducted. There are several avenues of discovery which would provide valuable  
18 information on the issues in this case, such as depositions and designations of experts, depositions  
19 of the parties, and depositions and discovery of any percipient witnesses, if any. Should this Court  
20 be inclined to grant Defendants' motion, given the relative newness of this case, additional time  
21 should be granted in which to conduct discovery. Plaintiff therefore makes an alternative request  
22 for additional time to conduct discovery. See Affidavit of Counsel, below:

23 **AFFIDAVIT OF COUNSEL**

24  
25 State of Nevada, )  
26 )  
27 County of Clark. )

28 I, William R. Brenske, after being duly sworn, depose and say as follows:

Law Office of  
William R. Brenske  
630 South Third Street  
Las Vegas, Nevada 89101  
(702) 385-3300 · Fax (702) 385-3823

1 I am counsel of record for Plaintiff above-named, and unless otherwise stated, have  
2 personal knowledge of the facts contained within this affidavit.

3 2. Plaintiff filed his Complaint on July 30, 2015 and the Early Case Conference was  
4 conducted on November 12, 2015. No written discovery responses have been served to date. No  
5 depositions have been noticed to date. Only NRCP 16.1 productions have been exchanged to date.  
6

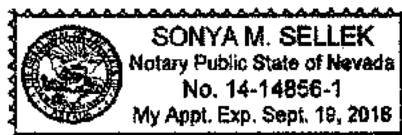
7 3. Given the infancy of this matter, it is necessary for Plaintiff to conduct additional  
8 discovery to be able to fully respond to the motion presently before the Court. Specifically,  
9 Plaintiff wishes to conduct written discovery and oral depositions and hire experts to ascertain:

10 A) Whether the floor falling out underneath Mr. Schueler constituted a risk  
11 inherent with the job and/or an open and obvious danger; and,

12 B) Whether Mr. Schueler was performing "construction" at the time of incident  
13 and whether MGM Grand qualifies as his statutory employer.  
14

15 4. Based on the foregoing, Plaintiff respectfully requests this Court for leave to  
16 conduct additional discovery pursuant to NRCP 56(f) and to deny Defendant's motion without  
17 prejudice.

18 DATED this 15 day of February, 2016.

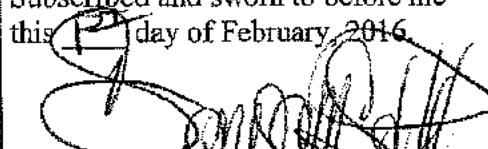


22  
23  
24  
25

  
WILLIAM R. BRENSKE

26  
27  
28

Subscribed and sworn to before me  
this 12 day of February, 2016.

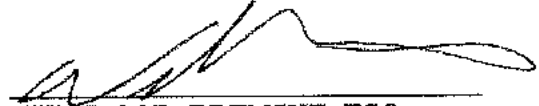


NOTARY PUBLIC, in and for County  
of Clark, State of Nevada.

Law Office of  
William R. Brenske  
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Based on the pleadings and papers on file herein and the attached affidavit of counsel, Plaintiff alternatively requests this Court for leave to conduct additional discovery pursuant to NRCP 56(f). Plaintiff further requests this Court to deny Defendant's motion without prejudice while the parties conduct the requested discovery.

DATED this 1st day of February, 2016.

  
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**CERTIFICATE OF SERVICE**

I am employed with the Law Office of William R. Brenske. I am over the age of 18 and not a party to the within action; my business address is 630 South Third Street, Las Vegas, Nevada 89101. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under its practice mail is to be deposited with the U. S. Postal Service on that same day as stated below, with postage thereon fully prepaid.

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**OPPOSITION TO MGM GRAND'S MOTION FOR JUDGMENT ON THE PLEADING;**  
**ALTERNATIVE MOTION FOR ADDITIONAL DISCOVERY PURSUANT TO NRCP**  
**56(f)**" on this 1st day of February, 2016, to all interested parties as follows:

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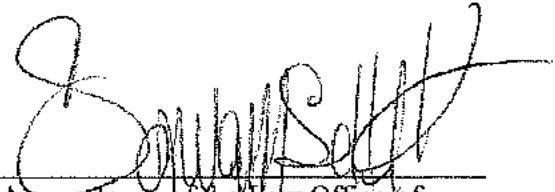
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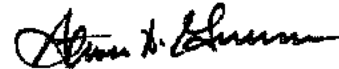
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15 MGM Resorts International, d/b/a MGM Grand

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

18 CHARLES SCHUELER,  
19 Plaintiff,

20 v.

21 MGM GRAND HOTEL, LLC, a Domestic  
22 Limited Liability Company d/b/a MGM  
23 GRAND; MGM RESORTS  
24 INTERNATIONAL, A Foreign Corporation  
25 d/b/a MGM GRAND; AD ART, INC., A  
26 Foreign Corporation; 3A COMPOSITES USA  
27 INC., A Foreign Corporation a/k/a  
28 ALUCOBOND TECHNOLOGIES  
CORPORATION; DOES 1-25; ROE  
CORPORATION 1-25; inclusive,

Defendants.

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

**MGM GRAND'S REPLY IN SUPPORT OF  
MOTION FOR JUDGMENT ON THE  
PLEADING**

Defendant, MGM Grand Hotel, LLC, d/b/a MGM Grand and MGM Resorts International, d/b/a MGM Grand("MGM Grand"), by and through its attorney of record, Hall Jaffe & Clayton, LLP, hereby submits this Reply in Support of MGM's Motion for Judgment on the Pleading. This reply is made and based upon the pleadings and papers on file herein, the attached memorandum of points and authorities, and any oral argument that the Court may entertain in the matter.

1   **I.     INTRODUCTION**

2         In his complaint, Plaintiff Charles Schueler ("Plaintiff") has failed to state a legally cognizable  
3     cause of action against defendants MGM Grand Hotel, LLC and MGM Resorts International  
4     (collectively "MGM"). Specifically, Plaintiff has only alleged cause of action "premises liability"  
5     against MGM in this case based upon allegations that Plaintiff "fell approximately 150 feet to the  
6     ground" while performing repairs/renovations on the marquee sign located in front of MGM.  
7     Essentially, it is Plaintiff's contention that MGM was required, as a land owner, to maintain the area of  
8     the marquee sign located 150 feet in the air in a reasonable safe condition. According to Plaintiff,  
9     because MGM failed to maintain the area of the marquee sign located 150 feet in air in a reasonably safe  
10    condition, Plaintiff fell 150 feet and was injured. (MGM's Mot., Exhibit "A," at ¶¶ 14-24.) As will be  
11    discussed below, Plaintiff's complaint as to MGM must be dismissed because MGM owed no duty to  
12    Plaintiff as a property owner to maintain the area of the marquee sign 150 in the air. The case law in  
13    Nevada supports this conclusion, leaving no legally recognized basis to keep MGM in this case.  
14    Moreover, Nevada law also extends worker's compensation immunity to MGM from the claims Plaintiff  
15    has asserted. As such, MGM should be dismissed with prejudice.

16   **II.    LEGAL ARGUMENT**

17         Plaintiff's opposition fails to address the legal deficiencies with his claims against MGM.  
18     Instead, Plaintiff attempts to oppose the instant motion by inserting unsupported factual arguments that  
19     have nothing to do with the purely legal issues at the heart of this motion. Presumably, Plaintiff is  
20     hoping that by mudding the waters with unsupported factual allegations, the Court will grant Plaintiff a  
21     brief reprieve to conduct some initial discovery. However, as conceded by MGM in its motion, MGM is  
22     arguing that, even taking all of Plaintiff's factual allegations as true, MGM still must be dismissed from  
23     this case due to the absence of any cognizable legal basis to support Plaintiff's claims. For the purposes  
24     of this motion, MGM would extend that standard to even the unsupported factual allegations in  
25     Plaintiff's opposition because the additional unsupported allegations change nothing to alter the clear  
26     case law in Nevada that bars suit against MGM as a matter of law.

1           **A. Nevada Law Expressly Bars Suit For Premises Liability Against MGM Within The**  
2           **Context Of Plaintiff's Claims**

3           Plaintiff does not dispute the analysis of the *Rhinehart* case provided in MGM's motion, but,  
4           instead, attempts to distinguish *Rhinehart* by making the following argument:

5           Although working 50 feet above ground on a tall, open, cylindrical cooling tower for a coal-  
6           fired electricity plant *is* an open and obvious danger, walking on the floor of an enclosed sign  
7           elevated above the ground *is not* an open and obvious danger. Mr. Schueler had no way of  
8           knowing the floor underneath him would suddenly give way and cause him to fall. He  
9           expected the floor of the sign to hold his weight and had no fear of falling because he was  
10          walking within an enclosed structure. The only reason Mr. Schueler fell was the floor of  
11          MGM's sign gave way beneath him.

12         (Plaintiff's Opps., at p. 4.) The remainder of Plaintiff's discussion of this issue attempts to support the  
13         above-quoted conclusion. However, Plaintiff's unsupported arguments do nothing to distinguish  
14         *Rhinehart*. The plaintiff in *Rhinehart* also probably was not expecting to fall 50 feet to his death while  
15         he performed the work he was contracted to perform. He also probably would have said that he had no  
16         way of knowing that he would suddenly fall. Regardless, the expectations of the plaintiff in *Rhinehart*  
17         and Plaintiff here are irrelevant. The Nevada Supreme Court in *Rhinehart* spent virtually no time  
18         describing how or why the plaintiff fell, other than generally stating that he fell 50 feet while performing  
19         his work. The reason the Court in *Rhinehart* gave no attention to how the accident actually happened is  
20         because it was irrelevant to the purely legal issue of whether the landowner owed a duty at all under any  
21         set of circumstances related to that incident.

22         What *Rhinehart* recognizes, and what common sense should make readily apparent, is that the  
23         law cannot and should not impose a duty on landowners to protect contractors from potential hazards  
24         emanating from the portion of the property that the contractor has been hired to work on. If this were not  
25         the case, then, respectfully, what would MGM have been required to do to satisfy its purported duty in  
26         this case? MGM does not allow its employees or guests to climb 150 feet up the marquee sign, and  
27         Plaintiff does not allege this. Indeed, even the photos included in Plaintiff's opposition show that the  
28         only way to access the area of the marquee sign 150 feet in the air is by using temporary suspended  
29         scaffolding (*i.e.*, the elevator-like scaffolding used by window washers to scale the side of tall  
30         buildings). MGM protects its guests and employees from the harm of falling 150 from the marquee sign  
31         by not giving guests and employees access to climb it. By so limiting access to the marquee sign, MGM

1 eliminates any duty it may have owed to its guest and employees to maintain the walking surfaces of the  
2 sign located 150 feet in the air. If guests and employees were given regular access to climb up the side  
3 of the marquee sign, then, arguably, MGM would have had a duty to maintain the marquee sign in a  
4 reasonably safe condition for the purposes of premises liability. Nevertheless, *Rhinehart* stands for the  
5 proposition that, in Nevada, contractors hired to repair/work on a cooling tower or a marquee sign are  
6 better situated than the landowner to assess the potential open and obvious fall risks associated with  
7 performing the contracted work on the tower/sign, which is why a landowner can never owe a duty to the  
8 contractor's employee in these types of cases.

9 Taking Plaintiff's allegations as true, MGM hired Plaintiff's employer to do some work on the  
10 sign. With that understood, the question then becomes what duty, if any, did MGM owe to before  
11 Plaintiff commenced his work on the sign? Prior to the work being performed by Plaintiff and his  
12 employer, was MGM required to hire a separate contractor to climb up the sign to make sure that the  
13 potential walking surfaces located 150 feet in the air were in a reasonably safe condition? If so, would  
14 MGM have owed a similar duty to that contractor to hire another contractor to inspect the marquee sign  
15 and/or repair any potential hazardous conditions? If that is the case, then MGM's liability would have  
16 no limits, as it would be impossible for MGM to ever satisfy this legally unsupported and absurd duty. If  
17 Plaintiff's position is taken to its logical conclusion, then MGM would be required to hire an never-  
18 ending series of contractors/experts/employees to inspect the marquee sign 150 feet in the air to  
19 determine if it was "safe" for the preceding contractor/expert/employee.

20 The Court in *Rhinehart* addressed all potential theories of premises liability potentially  
21 applicable regarding an incident nearly identical to the alleged incident in this case, and the Court  
22 rejected, as a matter of law, each of the proffered theories. Again, the Court rejected arguments that the  
23 landowner owed (1) a common law duty to the contractor's employee to keep the premises in a  
24 reasonably safe condition, (2) a statutory duty to provide employees a safe place to work under NRS  
25 618.395, and (3) a duty to take precautions against peculiar risk of harm to others. *Id.* at 561, 665 P.2d  
26 at 273. Plaintiff has offered no other potential duty that was not rejected by the Court in *Rhinehart*.

27 As stated in MGM's motion, it would be absurd to impose a duty on landowners, in the context  
28 of a "premises liability" claim, to maintain areas of their property that are not intended to be used or

1 walked on by anyone, *i.e.*, the side of a marquee sign 150 feet in the air. Further, it would be equally  
2 absurd to require landowners to protect contractors hired by the landowner from readily apparent risks  
3 (*i.e.*, falling 150 feet from a marquee sign) when the contractor should be even more aware and capable  
4 of dealing with the risk than the landowner. By allowing Plaintiff's claim against MGM to continue, this  
5 Court would essentially be required to rule that landowners in Nevada would have to maintain every  
6 inch of their property on the off chance that someone at some point might traverse that area. This would  
7 necessarily require that landowners would be required to inspect and maintain roofs, ceilings,  
8 crawlspaces, and elevated marquee signs for the purpose of identifying and removing potential trip and  
9 fall hazards. In Nevada, landowners are not insurers of the safety of their guests. The duty owed by  
10 landowners is to simply maintain their premises in a reasonably safe condition. As a matter of law,  
11 according to *Rinehart*, this basic duty does not extend to areas like the side of a marquee sign 150 feet  
12 in the air. It is Plaintiff's contention that MGM was required, prior to Plaintiff performing the work that  
13 he had been contracted to perform, to climb up the marquee sign and conduct some sort of inspection or  
14 repair to the marquee sign to prevent the alleged incident. Respectfully, the duty Plaintiff is attempting  
15 to impose on MGM is absurd even in the absence of clear case law from the Nevada Supreme Court  
16 dealing with this issue.

17 Without delving into any of sort of factual dispute, and taking Plaintiff's allegation as true on  
18 their face, Plaintiff's claims fail as a matter of law based upon the holding in *Rinehart* and based upon  
19 common sense. MGM owed no duty to Plaintiff to do anything with respect to the maintenance of the  
20 marquee sign prior to Plaintiff's fall. As such, MGM respectfully requests that it be dismissed from this  
21 case with prejudice.

22 **B. Additionally, MGM is Immune from Plaintiff's Claims, because MGM is a**  
23 **Statutory Employer under Workers' Compensation.**

24 Plaintiff's opposition confirms the applicability of workers' compensation immunity to MGM.  
25 Plaintiff does not dispute the legal authority cited by MGM in its motion and confirms that Plaintiff was  
26 employed by YESCO, a licensed contractor under NRS 624 in Nevada, who was contracted by MGM to  
27 preform some repairs/renovations/improvements to the marquee sign. Plaintiff agrees that in  
28 "construction cases" workers' compensation immunity applies to the landowner in connection with

1 personal injury claims brought by an employee of a contractor who was injured while on the job. *Harris*  
2 v. *Rio Hotel & Casino, Inc.*, 117 Nev. 482, 25 P.3d 206 (2001). Plaintiff argues, however, that the rule  
3 of law stated in *Harris* does not apply here because this is not a “construction” case. Alternatively,  
4 Plaintiff requests relief under NRCP 56(f) to conduct some discovery on whether this is a “construction”  
5 case. In so arguing, Plaintiff states that whether this is a “construction” case, which would invoke the  
6 workers’ compensation immunity under *Harris*, is a question for the jury to decide. Plaintiff’s  
7 contention in this regard is wrong and entirely unsupported by Nevada law, as the Nevada Supreme  
8 Court has rejected any so-called “construction” versus “non-construction” distinction with respect to  
9 workers’ compensation immunity.

10 In *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 148 P.3d 684 (2006), the  
11 Nevada Supreme Court addressed the question left open by the *Harris* opinion: how are courts supposed  
12 to distinguish “construction” versus “non-construction” cases for the purpose of determining whether  
13 workers’ compensation immunity under *Harris* applies to a landowner. Contrary to Plaintiff’s  
14 contentions, the Court did not hold that it was a question that the jury should resolve. Rather, the Court  
15 articulated a fairly simple solution to answer this purely legal question:

16 ... *Tucker*’s immunity analysis largely depends on whether the matter is a “construction”  
17 case. In *Tucker*, we did not further explain what types of matters will be considered  
18 construction cases and what types of matters will be considered nonconstruction cases. As  
19 that analysis suggests, however, since cases involving nonlicensed contractors and those  
20 involving nonconstruction are treated the same, but cases involving work performed under  
21 an NRS Chapter 624 license are treated differently, *Tucker*’s initial inquiry, whether the  
case is construction or nonconstruction, is inaccurate. The question to resolve is not  
whether a project constitutes “construction,” but rather, whether the work, during the  
performance of which the injury is incurred, is carried out under an NRS Chapter 624  
license. If so, the matter is a case in which NIIA immunity generally automatically applies  
to any contractor on the project.

22 [...]

23 [W]e retreat from the “construction versus nonconstruction” analysis.... Instead, NIIA  
24 immunity determinations in these types of matters must be made under NRS 616B.603 and  
25 *Meers*, under which authority the initial inquiry looks at whether the injured employee  
and other parties were, when the injury occurred, carrying out work under some  
principal contractor’s NRS Chapter 624 license. Contractors working, ultimately, under  
26 an NRS Chapter 624 license are entitled to NIIA immunity for claims arising from employee  
injuries incurred in the scope of that work. Correspondingly, under *Harris*, property  
owners who hire NRS Chapter 624–licensed contractors are, similarly, entitled to NIIA  
immunity from suits concerning industrial injuries. But the property owner’s immunity,  
27 which stems from the fact that it hired a licensed principal contractor to complete work,  
28 applies to bar claims arising out of risks associated with that licensed work—that is, the

1 project for which the property owner hired a contractor licensed under NRS Chapter 624.  
2 *Id.* at 1220-21, 1224-25, 148 P.3d at 689, 691-92. In other words, the “construction” versus “non-  
3 construction” analysis relied upon by Plaintiff has been rejected by the Nevada Supreme Court. The  
4 analysis for applying workers’ compensation immunity to landowners is simple and turns on answering  
5 two basic questions: (1) Did the landowner hire a contractor licensed under NRS 624?; and (2) Was the  
6 employee of the contractor injured in connection with performing the contracted work? If the answer to  
7 both of those questions is “yes,” then the landowner is immune from suit.

8 Here, taking Plaintiff’s allegations as true, Plaintiff confirms that he was injured while working  
9 on the job that his employer, YESCO, had been hired by MGM to perform, *i.e.*, repairing/renovating the  
10 marquee sign. Plaintiff does not admit or deny whether YESCO is a licensed contractor under NRS 624,  
11 but this Court can take judicial notice of that fact. *See* NRS 47.130 (“A judicially noticed fact must be ...  
12 [c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be  
13 questioned, so that the fact is not subject to reasonable dispute.”) Indeed, a simple search of the Nevada  
14 State Contractors Board website reveals that, pursuant to NRS 624, YESCO hold three different  
15 contractors licenses in Nevada that are active. (Printout from Nevada Contractors’ Board Website,  
16 attached as Reply Exhibit “A.”) There can be no dispute that the holdings from *Richards* and *Harris*  
17 apply to this case, extending workers’ compensation immunity to MGM. Plaintiff’s reliance on the  
18 purported “construction” versus “non-construction” distinction is misplaced and MGM must be  
19 dismissed.

20 **C. Plaintiff’s Request For Discovery Under NRCP 56(f) Is Not Proper And, Otherwise,**  
21 **Futile As No Amount Of Discovery Will Change The Dispositive Legal Authority**  
**That Bars Plaintiff’s Claims Against MGM**

22 As an alternative basis for opposing MGM’s motion, Plaintiff requests that this Court allow  
23 Plaintiff to conduct discovery on (1) whether falling through the floor of the sign was a risk inherent to  
24 the job of replacing the LED cabinet; and (2) whether Plaintiff was engaged in construction at the time  
25 of the incident. (Plaintiff’s Opps., at p. 7.) As set forth above, the legal authority in Nevada under the  
26 *Rhinehart*, *Richards*, and *Harris* opinions deems these inquiries entirely irrelevant and, thus, no amount  
27 of discovery on these issues would change anything. As a threshold matter, however, Plaintiff’s request  
28 for discovery under NRCP 56(f) has no place here. MGM has not filed a motion for summary judgment

1 pursuant to Rule 56. MGM's motion is a motion for judgment on the pleadings under Rule 12(c). A  
2 motion for judgment on the pleadings, by definition, succeeds or fails solely based upon the  
3 determination of whether the allegations in Plaintiff's complaint, when taken as true, provide enough for  
4 Plaintiff to pursue a claim against MGM that is cognizable under Nevada law. Indeed, MGM is  
5 requesting for the purposes of the motion that the Court assume that all of Plaintiff's allegation are true.  
6 Thus, there is no need to allow Plaintiff to conduct any discovery because the Court is permitted to take  
7 everything Plaintiff has alleged as true, even the unsupported factual allegations made in Plaintiff's  
8 opposition. The problem with Plaintiff's position is that, even taking all of those allegations as true,  
9 Plaintiff's claims fail as a matter of law. Further, Plaintiff has cited to no legal authority that allows for  
10 Rule 56(f) relief to be provided in response to a motion for judgment on the pleadings. Plaintiff's  
11 request in this regard is procedurally improper and should be denied.

12 More importantly, however, no additional amount of discovery will change the inescapable  
13 conclusion that Plaintiff's claims against MGM are not permitted by Nevada law. All of the discovery in  
14 the world will not change the controlling, case-dispositive case law cited herein. Plaintiff's argument that  
15 MGM's motion is premature should be readily rejected. While it is true that requests for a continuance  
16 under Rule 56(f) may be granted when little to no discovery had been conducted, the non-movant's  
17 "mere hope" that further discovery may develop evidence in support of her case falls far short of the  
18 showing necessary under the Rule. See *Land Am. Lawyers Title v. Metro. Land Dev., LLC*, 2006 WL  
19 2385385 (D. Nev. 2006) (quoting *Neely v. St. Paul Fire & Mar. Ins. Co.*, 584 F.2d 341, 344 (9th Cir.  
20 1978)). "[A] motion for a continuance under NRCP 56(f) is appropriate only when the movant  
21 expresses how further discovery will lead to the creation of a genuine issue of material fact." *Aviation*  
22 *Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110 P.3d 59, 62 (2005). The party opposing  
23 summary judgment has the burden of affirmatively demonstrating by good faith affidavit: (1) the specific  
24 facts that further discovery would reveal; (2) the specific reason why such evidence is presently  
25 unavailable; and (3) how those facts would preclude summary judgment. See *Tatum v. City & County of*  
26 *San Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006) (interpreting the federal counterpart to NRCP  
27 56(f)).

28 Again, no amount of discovery is going to change the Nevada Supreme Court's holding that

1 landowners owe no duty to the employees of contractors hired, for example, to do repairs/renovations to  
2 a marquee sign 150 feet in the air. Moreover, no amount of discovery is going to alter the Nevada  
3 Supreme Court's clear holding that landowners, like MGM, are immune from suit in connection with  
4 injuries sustained by the employee of a NRS 624 contractor injured while performing the contracted  
5 work. The problem with Plaintiff's claims is not a lack of facts or evidence (because Rule 12(c) requires  
6 the Court to take Plaintiff's allegations as true), but, rather, Plaintiff's problem is a lack of any legal  
7 support for his claims against MGM. Thus, there is no amount of discovery that could even potentially  
8 uncover any set of facts capable of curing Plaintiff's legally deficient complaint. Plaintiff's request for  
9 discovery under NRCP 56 (f) should be denied, and Plaintiff's complaint against MGM should be  
10 dismissed.

11 **IV. CONCLUSION**

12 Based on the foregoing reasons, MGM Grand respectfully requests that it be dismissed from this  
13 case with prejudice as Plaintiff has failed to state a legally recognized cause of action for premise  
14 liability against MGM. Moreover, based on the allegations in the complaint, Plaintiff's claims against  
15 MGM are barred, as MGM is a statutory employer under the Workers' Compensation statute.

16 DATED this 5 day of ~~December~~, 2015.

*February 2016*

HALL JAFFE & CLAYTON, LLP

19 By 

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MGM Resorts International, d/b/a MGM Grand

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 5<sup>th</sup> day of February, 2016, I served the foregoing **MGM GRAND'S REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADING** on the following parties by electronic transmission through the Wiznet system:

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**License Number: 0075739**

**Current Date: 02/05/2016 04:03 PM (mm/dd/yyyy)**

**Business Primary Name:**

**YESCO LLC**

**License Monetary Limit:** **Unlimited**

**Business Address:**

**2401 FOOTHILL DRIVE  
SALT LAKE CITY, UT 84109**

**Phone Number:**

**(801)464-4600**

**Status:**

**Active**

**Status Date:**

**02/03/2015 (mm/dd/yyyy)**

**Origin Date:**

**02/23/2011 (mm/dd/yyyy)**

**Expiration Date:**

**02/28/2017 (mm/dd/yyyy)**

**Business Type:**

**Limited Liability Company**

**Classification(s):**

**C14 - STEEL REINFORCING & ERECTION**

**Principal Name**

**JONES, STEPHEN ELROY**

**Relation Description**

**President**

**YOUNG, PAUL CLIFTON**  
**YOUNG ELECTRIC SIGN COMPANY**  
**LESTER JR, JOHN CHARLES**

**Vice President Qualified Individual**  
**Managing Member**  
**Employee Qualified Individual**

**Indemnitor Name**  
**YOUNG ELECTRIC SIGN COMPANY**

**Effective Date of Indemnification** (mm/dd/yyyy) **Date Indemnification Removed** (mm/dd/yyyy)  
**11/15/2010**

#### **Bonds**

**Bond Type:** Surety Bond  
**Bond Number:** 175101428  
**Bond Agent:** WALTER, PHILIP SCOTT  
**Surety Company:** LIBERTY MUTUAL INSURANCE COMPANY  
**Bond Amount:** \$50,000.00  
**Effective Date:** 12/27/2010 (mm/dd/yyyy)

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2016-02-05 4:03:45 PM



**Measure up...use licensed contractors.**

## License Search Details

Press "Previous Record" to view the previous record in the list.  
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 Press "Search Results" to return to the search results list screen.  
 Press "New Search Criteria" to revise your existing search criteria or enter new search criteria.  
 Press "New Search" to select a different search.

**License Number: 0074290**

**Business Primary Name:**

**YESCO LLC**

**Current Date: 02/05/2016 04:03 PM (mm/dd/yyyy)**

**License Monetary Limit: Unlimited**

**Business Address:**

**Phone Number:**

**2401 FOOTHILL DRIVE  
 SALT LAKE CITY, UT 84109  
 (801)464-4600**

**Status:**

**Active**

**Status Date:**

**12/22/2015 (mm/dd/yyyy)**

**Origin Date:**

**12/18/2009 (mm/dd/yyyy)**

**Expiration Date:**

**12/31/2017 (mm/dd/yyyy)**

**Business Type:**

**Limited Liability Company**

**Classification(s):**

**C-6 - ERECTING SIGNS**

**Principal Name**

**JONES, STEPHEN ELROY**

**Relation Description**

**President**

**YOUNG, PAUL CLIFTON**  
**YOUNG ELECTRIC SIGN COMPANY**

**Vice President Qualified Individual**  
**Managing Member**

**Indemnitor Name**  
**YOUNG ELECTRIC SIGN COMPANY**

**Effective Date of Indemnification (mm/dd/yyyy)**  
**09/09/2009**

**Date Indemnification Removed (mm/dd/yyyy)**

### Bonds

<b>Bond Type:</b>	<b>Surety Bond</b>
<b>Bond Number:</b>	<b>965010639</b>
<b>Bond Agent:</b>	<b>WALTER, PHILIP SCOTT</b>
<b>Surety Company:</b>	<b>LIBERTY MUTUAL INSURANCE COMPANY</b>
<b>Bond Amount:</b>	<b>\$50,000.00</b>
<b>Effective Date:</b>	<b>11/30/2009 (mm/dd/yyyy)</b>

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## License Search Details

Press "Previous Record" to view the previous record in the list.  
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 Press "Search Results" to return to the search results list screen.  
 Press "New Search Criteria" to revise your existing search criteria or enter new search criteria.  
 Press "New Search" to select a different search.

**License Number: 0074289**

**Business Primary Name:**

**YESCO LLC**

**Current Date: 02/05/2016 04:04 PM (mm/dd/yyyy)**

**License Monetary Limit:** **Unlimited**

**Business Address:**

**Phone Number:**

**2401 FOOTHILL DRIVE  
 SALT LAKE CITY, UT 84109  
 (801)464-4600**

**Status:**

**Active**

**Status Date:**

**12/22/2015 (mm/dd/yyyy)**

**Origin Date:**

**12/18/2009 (mm/dd/yyyy)**

**Expiration Date:**

**12/31/2017 (mm/dd/yyyy)**

**Business Type:**

**Limited Liability Company**

**Classification(s):**

**C-2 - ELECTRICAL CONTRACTING**

**Principal Name**

**JONES, STEPHEN ELROY**

**Relation Description**

**President**

**YOUNG, PAUL CLIFTON**  
**YOUNG ELECTRIC SIGN COMPANY**  
**FABBI, PETER KENT**  
**HODUM, BRUCE MICHAEL**

**Vice President Qualified Individual**  
**Managing Member**  
**Employee Qualified Individual**  
**Employee Qualified Individual**

**Indemnitor Name**  
**YOUNG ELECTRIC SIGN COMPANY**

**Effective Date of Indemnification (mm/dd/yyyy)**  
**09/09/2009**

**Date Indemnification Removed (mm/dd/yyyy)**

### Bonds

**Bond Type:**  
**Bond Number:**  
**Bond Agent:**  
**Surety Company:**  
**Bond Amount:**  
**Effective Date:**

**Surety Bond**  
**965010638**  
**WALTER, PHILIP SCOTT**  
**LIBERTY MUTUAL INSURANCE COMPANY**  
**\$50,000.00**  
**11/30/2009 (mm/dd/yyyy)**

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2016-02-05 4:04:06 PM

1 **NEOJ**

2 **RILEY A. CLAYTON**  
3 Nevada Bar No. 005260  
4 [rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)

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03/02/2016 04:25:10 PM

5 **HALL JAFFE & CLAYTON, LLP**  
6 7425 PEAK DRIVE  
7 LAS VEGAS, NEVADA 89128  
8 (702) 316-4111  
9 FAX (702)316-4114

  
CLERK OF THE COURT

10 Attorney for Defendant,  
11 MGM Grand Hotel, LLC, d/b/a MGM Grand

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

14 **CHARLES SCHUELER,**  
15 **Plaintiff,**

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

16 v.

**NOTICE OF ENTRY OF ORDER  
REGARDING MGM GRAND'S MOTION  
FOR JUDGMENT ON THE PLEADING**

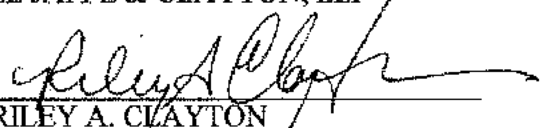
17 **MGM GRAND HOTEL, LLC, a Domestic**  
18 **Limited Liability Company d/b/a MGM**  
19 **GRAND; MGM RESORTS**  
20 **INTERNATIONAL, A Foreign Corporation**  
21 **d/b/a MGM GRAND; AD ART, INC., A**  
22 **Foreign Corproation; 3A COMPOSITES USA**  
23 **INC., A Foreign Corporation a/k/a**  
24 **ALUCOBOND TECHNOLOGIES**  
25 **CORPORATION; DOES 1-25; ROE**  
26 **CORPORATION 1-25; inclusive,**

27 **Defendants.**

28 NOTICE IS HEREBY GIVEN that an Order Regarding MGM Grand's Motion for Judgment on  
the Pleading was entered in this matter on the 2<sup>nd</sup> day of March, 2016, a copy of which is attached hereto.

DATED this 2<sup>nd</sup> day of March, 2016.

HALL JAFFE & CLAYTON, LLP

By   
**RILEY A. CLAYTON**  
Nevada Bar No. 005260  
7425 Peak Drive  
Las Vegas, Nevada 89128  
Attorneys for Defendant  
MGM Grand Hotel, LLC, d/b/a MGM Grand

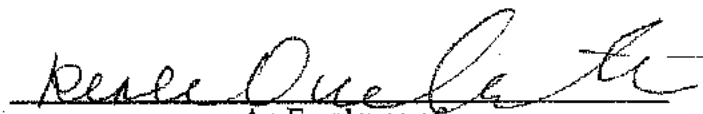
**CERTIFICATE OF SERVICE**

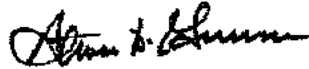
Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 2<sup>nd</sup> day of March, 2016, I served the foregoing **NOTICE OF ENTRY OF ORDER REGARDING MGM GRAND'S MOTION FOR JUDGMENT ON THE PLEADING** on the following parties by electronic transmission through the Wiznet system:

William R. Brenske, Esq.  
Ryan D. Krametbauer, Esq.  
**LAW OFFICE OF WILLIAM R. BRENSKE**  
630 S. Third Street  
Las Vegas, NV 89101  
Tel.: (702) 385-3300  
Fax: (702) 385-3823  
[wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
*Attorneys for Plaintiff*

Leann Sanders, Esq.  
Edward Silverman, Esq.  
**ALVERSON, TAYLOR, MORTENSEN & SANDERS**  
7401 W. Charleston Boulevard  
Las Vegas, NV 89117  
Tel.: (702) 384-7000  
Fax: (702) 385-7000  
[efile@alversontaylor.com](mailto:efile@alversontaylor.com)  
*Attorneys for Defendant,*  
*3A Composites USA Inc., f/k/a*  
*Alucobond Technologies Corporation*

Timothy F. Hunter, Esq.  
**RAY LEGO & ASSOCIATES**  
7450 Arroyo Crossing Pkwy., Suite 250  
Las Vegas, NV 89113  
Tel.: (702) 479-4350  
Fax: (702) 270-4602  
Direct: (702) 479-4371  
[tfhunter@travelers.com](mailto:tfhunter@travelers.com)  
*Attorney for Defendant,*  
*Ad Art, Inc.*

  
An Employee of  
**HALL JAFFE & CLAYTON, LLP.**



CLERK OF THE COURT

1 **ORDR**  
2 **RILEY A. CLAYTON**  
3 Nevada Bar No. 005260  
4 [rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)

5 **HALL JAFFE & CLAYTON, LLP**  
6 7425 PEAK DRIVE  
7 LAS VEGAS, NEVADA 89128  
8 (702) 316-4111  
9 FAX (702) 316-4114

10 Attorney for Defendant,  
11 MGM Grand Hotel, LLC, d/b/a MGM Grand

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

14 **CHARLES SCHUELER,**  
15 **Plaintiff,**

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

16 v.

17 **MGM GRAND HOTEL, LLC, a Domestic**  
18 **Limited Liability Company d/b/a MGM**  
19 **GRAND; MGM RESORTS**  
20 **INTERNATIONAL, A Foreign Corporation**  
21 **d/b/a MGM GRAND; AD ART, INC., A**  
22 **Foreign Corproation; 3A COMPOSITES USA**  
23 **INC., A Foreign Corporation a/k/a**  
24 **ALUCOBOND TECHNOLOGIES**  
25 **CORPORATION; DOES 1-25; ROE**  
26 **CORPORATION 1-25; inclusive,**

27 **Defendants.**

**ORDER REGARDING MGM GRAND'S**  
**MOTION FOR JUDGMENT ON THE**  
**PLEADING**

28 On December 11, 2015, Defendant, MGM Grand Hotel, LLC, d/b/a MGM Grand ("MGM"),  
29 filed its Motion for Judgment on the Pleading. Plaintiff filed his Opposition; and Alternative Motion for  
30 Additional Discovery Pursuant to NRCP 56(f) on February 1, 2016. MGM filed its Reply in Support of  
31 its Motion on February 5, 2016.

32 MGM's Motion for Judgment on the Pleading came before this Court on the February 10, 2016,  
33 Chamber Calendar. MGM's Motion is essentially a motion to dismiss, and it is this Court's policy to  
34 place dispositive motions on the oral calendar for argument. Therefore, COURT ORDERED, that

35 RECEIVED BY  
36 DEPT 17 ON  
37 FEB 26 2016

1 MGM's Motion for Judgment on the Pleading is CONTINUED for an oral argument hearing on March  
2 9, 2016, at 8:30 a.m.

3 Dated this 1 of March, 2016.


4 

5 DISTRICT COURT JUDGE BV  
6

7 Submitted by:

8 HALL JAFFE & CLAYTON, LLP

9

10 By 

RILEY A. CLAYTON

11 Nevada Bar No. 005260

7425 Peak Drive

12 Las Vegas, Nevada 89128

Attorneys for Defendant,

13 MGM Grand Hotel, LLC, d/b/a MGM Grand

14

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

March 09, 2016

A-15-722391-C

Charles Schueler, Plaintiff(s)

vs.

MGM Grand Hotel, LLC, Defendant(s)

March 09, 2016

8:30 AM

All Pending Motions

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

**PARTIES****PRESENT:**

Brenske, William R.

Attorney

Clayton, Riley A

Attorney

Silverman, Edward

Attorney

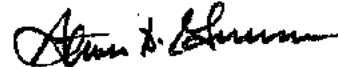
**JOURNAL ENTRIES**

- DEFENDANT 3A COMPOSITES USA INC.'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION . . . MGM GRAND'S MOTION FOR JUDGMENT ON THE PLEADING

This is the time set for hearing on the above-named Motions.

Motion to Dismiss for Lack of Personal Jurisdiction: the Court has reviewed the Defendant's Motion to Dismiss for Lack of Personal Jurisdiction, the Plaintiff Charles Schueler's Opposition and Alternative Request to Conduct Additional Jurisdictional Discovery Pursuant to NRCP 56(f) and the Defendant's Reply in Support of Motion to Dismiss for Lack of Personal Jurisdiction. After hearing arguments of counsel COURT ORDERED, decision DEFERRED a written decision will be prepared.

Motion for Judgment on the Pleading: the Court has reviewed the Motion for Judgment on the Pleadings, the Plaintiff Charles Schueler's Opposition and Alternative Motion for Additional Discovery Pursuant to NRCP 56(f), and the Defendant's Reply in support of Motion for Judgment on the Pleading. After hearing arguments of counsel COURT ORDERED, decision DEFERRED a written decision will be prepared.



CLERK OF THE COURT

1 NTSO  
2 RILEY A. CLAYTON  
3 Nevada Bar No. 005260  
4 [rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)

5 HALL JAFFE & CLAYTON, LLP  
6 7425 PEAK DRIVE  
7 LAS VEGAS, NEVADA 89128  
8 (702) 316-4111  
9 FAX (702)316-4114

10 Attorney for Defendant,  
11 MGM Grand Hotel, LLC, d/b/a MGM Grand

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 CHARLES SCHUELER,  
15 Plaintiff,

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

16 v.

17 MGM GRAND HOTEL, LLC, a Domestic  
18 Limited Liability Company d/b/a MGM  
19 GRAND; MGM RESORTS  
20 INTERNATIONAL, A Foreign Corporation  
21 d/b/a MGM GRAND; AD ART, INC., A  
22 Foreign Corproation; 3A COMPOSITES USA  
23 INC., A Foreign Corporation a/k/a  
24 ALUCOBOND TECHNOLOGIES  
25 CORPORATION; DOES 1-25; ROE  
26 CORPORATION 1-25; inclusive,

27 Defendants.

NOTICE OF ENTRY OF STIPULATION  
AND ORDER TO DISMISS DEFENDANT  
MGM RESORTS INTERNATIONAL dba  
MGM GRAND, ONLY, WITHOUT  
PREJUDICE

28 NOTICE IS HEREBY GIVEN that a Stipulation and Order to Dismiss Defendant MGM Resorts  
International dba MGM Grand, Only, Without Prejudice was entered in this matter on the 16<sup>th</sup> day of

///

///

///

///


///

1 March, 2016, a copy of which is attached hereto.

2 DATED this 19 day of March, 2016.

3 HALL JAFFE & CLAYTON, LLP

4  
5 By

  
RILEY A. CLAYTON

6 Nevada Bar No. 005260

7 7425 Peak Drive

8 Las Vegas, Nevada 89128

9 Attorneys for Defendant,

10 MGM Grand Hotel, LLC, d/b/a MGM Grand

**CERTIFICATE OF SERVICE**

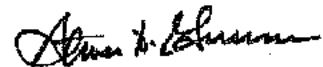
Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 21<sup>st</sup> day of March, 2016, I served the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS DEFENDANT MGM RESORTS INTERNATIONAL dba MGM GRAND, ONLY, WITHOUT PREJUDICE** on the following parties by electronic transmission through the Wiznet system:

William R. Brenske, Esq.  
BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, NV 89169  
Tel.: (702) 385-3300  
Fax: (702) 385-3823  
wbrenske@hotmail.com  
*Attorneys for Plaintiff*

Leann Sanders, Esq.  
Edward Silverman, Esq.  
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7401 W. Charleston Boulevard  
Las Vegas, NV 89117  
Tel.: (702) 384-7000  
Fax: (702) 385-7000  
efile@alversontaylor.com  
*Attorneys for Defendant,*  
*3A Composites USA Inc., f/k/a*  
*Alucobond Technologies Corporation*

Timothy F. Hunter, Esq.  
RAY LEGO & ASSOCIATES  
7450 Arroyo Crossing Pkwy., Suite 250  
Las Vegas, NV 89113  
Tel.: (702) 479-4350  
Fax: (702) 270-4602  
Direct: (702) 479-4371  
tfhunter@travelers.com  
*Attorney for Defendant,*  
*Ad Art, Inc.*

  
An Employee of  
HALL JAFFE & CLAYTON, LLP.



CLERK OF THE COURT

1 SAO  
RILEY A. CLAYTON  
2 Nevada Bar No. 005260  
[rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)  
3 TAYLOR G. SELIM  
Nevada Bar No. 012091  
4 [tselim@lawhjc.com](mailto:tselim@lawhjc.com)

5 HALL JAFFE & CLAYTON, LLP  
7425 PEAK DRIVE  
6 LAS VEGAS, NEVADA 89128  
(702) 316-4111  
7 FAX (702) 316-4114

8 Attorney for Defendants,  
MGM Grand Hotel, LLC, d/b/a MGM Grand and  
9 MGM Resorts International, d/b/a MGM Grand

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12 CHARLES SCHUELER,  
13 Plaintiff,

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

14 v.

15 MGM GRAND HOTEL, LLC, a Domestic  
Limited Liability Company d/b/a MGM  
16 GRAND; MGM RESORTS  
INTERNATIONAL, A Foreign Corporation  
17 d/b/a MGM GRAND; AD ART, INC., A  
Foreign Corporation; 3A COMPOSITES USA  
18 INC., A Foreign Corporation a/k/a  
ALUCOBOND TECHNOLOGIES  
19 CORPORATION; DOES 1-25; ROE  
20 CORPORATION 1-25; inclusive,

21 Defendants.

STIPULATION AND ORDER TO DISMISS  
DEFENDANT MGM RESORTS  
INTERNATIONAL dba MGM GRAND,  
ONLY, WITHOUT PREJUDICE

22  
23  
24 Defendant, MGM Grand Hotel, LLC, d/b/a MGM Grand ("MGM Grand") and MGM Resorts  
25 International, d/b/a MGM Grand ("MGM International"), and Plaintiff, Charles Schueler ("Plaintiff") by  
26 and through their respective counsel of record hereby submits this stipulation to DISMISS MGM

27 ///

28  
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DEPT 17 ON  
MAR 10 2016

1 International, only, WITHOUT PREJUDICE, with MGM Grand remaining as a defendant in this action.

2 DATED this 29 day of February, 2016.

DATED this 9 day of <sup>March</sup> February, 2016.

3 LAW OFFICE OF WILLIAM R. BRENSKE

HALL JAFFE & CLAYTON, LLP

4 By [Signature]  
5 William R. Brenske, Esq.  
6 Nevada Bar No. 001806  
7 630 South Third Street  
8 Las Vegas, NV 89101  
9 Attorney for Plaintiff

By [Signature]  
Riley A. Clayton, Esq.  
Nevada Bar No. 005260  
Taylor G. Selim  
Nevada Bar No. 012091  
7425 Peak Drive  
Las Vegas, NV 89128  
Attorney for Defendant

10 ORDER

11 IT IS SO ORDERED.

12 Dated this 15 day of March, 2016.

13 [Signature]  
14 DISTRICT COURT JUDGE 7d

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Other Negligence****COURT MINUTES****March 23, 2016**

A-15-722391-C

Charles Schueler, Plaintiff(s)

vs.

MGM Grand Hotel, LLC, Defendant(s)

**March 23, 2016****2:00 PM****Decision****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Carol Donahoo**RECORDER:** Michelle Ramsey**REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Defendant 3A Composite USA Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction and MGM Grand's Motion for Judgment on the Pleading came before the Court on the March 9, 2016, Oral Calendar. The Court DEFERRED its decision and both Motions and now rules as follows on the Motion to Dismiss for Lack of Personal Jurisdiction:

Defendant 3A Composite USA Inc. ("3A") seeks to dismiss Plaintiff's Complaint for lack of both general jurisdiction and specific jurisdiction. At the outset, the Court recognizes that 3A is a Missouri Corporation with its principle place of business in North Carolina. On or around April 6, 1998, 3A sold the product at issue in this case ("Alucobond") to a California company named Interstate Electric Co. ("Interstate"). Interstate obtained the Alucobond in Kentucky, and part of Interstate's order was first shipped to Montana before ultimately arriving in Nevada.

First, a district court has general jurisdiction over a non-resident defendant when the defendant's affiliations with the forum state are so constant and pervasive "as to render [it] essentially at home in the forum state." *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014) (quoting *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 131 S.Ct. 2846 (2011)). Goodyear made clear that a limited set of affiliations within a forum state would render a defendant amenable to general jurisdiction. *Id.* For a corporation, the

PRINT DATE: 04/11/2016

Page 1 of 3

Minutes Date: March 23, 2016

state of incorporation and principal place of business are the primary considerations for general jurisdiction. *Id.* "Mere business transactions, even if occurring at regular intervals" are not enough to warrant a court's assertion of general jurisdiction over a non-resident corporation in a cause of action unrelated to those transactions. *Id.* The placement of a product into the stream of commerce may bolster a claim for specific jurisdiction, but these contacts do not warrant a finding of general jurisdiction. *Id.*

Additionally, a district court has general jurisdiction over a non-resident defendant when the defendant's activities in the forum state are "substantial" or "continuous and systematic" such that the assertion of personal jurisdiction over the non-resident defendant is constitutionally fair even where the claims are unrelated to those contacts. *Trump v. Eighth Judicial Dist. Ct.*, 109 Nev. 687 (1993). The United States Supreme Court recently held in *Daimler AG v. Bauman*, that when a foreign corporation has its principal place of business in another state, even proof of a "substantial, continuous, and systematic course of business" in the forum is not enough to assert general jurisdiction over it, but its affiliations with the state must be "so continuous and systematic" as to render it essentially at home in the forum state.

Lastly, a district court has specific jurisdiction over a non-resident defendant when the defendant purposefully enters the forum state's market or establishes contacts in the forum state, affirmatively directs conduct there, and the claims must also arise from that purposeful conduct. *Viega v. Eighth Judicial Dist. Ct.*, 130 Nev. Adv. Op. 40 (2014). The claims must have a "specific and direct relationship or be intimately related to the forum contacts." *Munley v. Second Dist. Ct.*, 104 Nev. 492 (1988). To exercise specific personal jurisdiction over a non-resident defendant, the plaintiff must demonstrate that (1) the defendant purposefully avails himself of the privilege of serving the forum state or enjoys the protection of the laws of the forum state, or that the defendant purposefully established contacts with and affirmatively directed conduct towards the forum state; and (2) the cause of action arises from that purposeful contact with the forum state. *Trump v. Eighth Judicial District Ct.*, 109 Nev. 687 (1993). The court must also consider whether it is reasonable for the defendant to defend the suit there. *Baker v. Eighth Judicial Dist. Ct.*, 116 Nev. 527 (2000).

The COURT FINDS that 3A's affiliations with Nevada are not so continuous and systematic as to render 3A essentially at home in Nevada. 3A is a Missouri Corporation with its principal place of business in North Carolina. The COURT FURTHER FINDS that 3A's contacts with Nevada do not rise to the level of purposeful contact or that 3A was affirmatively directing commerce to Nevada. The sale's invoice for the transaction consummated in 1998 was part of a larger transaction whose final destination could be changed at the whim of Interstate. 3A had no knowledge that its Alucobond would purposefully end up in Nevada. 3A's other contacts also do not rise to the level of purposeful contact or that 3A was affirmatively directing commerce to Nevada.

Therefore, COURT ORDERED Defendant 3A Composite USA Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED. Counsel for Defendant 3A Composite USA Inc. is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder of Edward Silverman, Esq., (Alverson, Taylor, Mortensen & Sanders).

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

April 08, 2016

A-15-722391-C

Charles Schueler, Plaintiff(s)

vs.

MGM Grand Hotel, LLC, Defendant(s)

April 08, 2016

9:30 AM

Decision:

Defendant MGM Grand's Motion for  
Judgment on the Pleading

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER:

REPORTER:

PARTIES

PRESENT:

**JOURNAL ENTRIES**

- Defendant MGM Grand's Motion for Judgment on the Pleading and Defendant 3A Composite USA Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction came before this Court on the March 9, 2016, Oral Calendar. This COURT DEFERRED its decision on Defendant MGM Grand's Motion for Judgment on the Pleading and Defendant 3A Composite USA Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction. The Court ruled on Defendant 3A Composite USA Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction on March 23, 2016, and now rules on Defendant MGM Grand's Motion for Judgment on the Pleading as follows:

MGM Grand brings the present motion under NRCP 12(c). As such, a motion for judgment on the pleading is to be determined similarly to a motion to dismiss for failure to state a claim pursuant to NRCP 12(b)(5). See *Guise v. GWM Mortgage, LLC*, 377 F.3d 795 (7th Cir. 2004). In ruling upon a motion to dismiss, the court recognizes all factual allegations in the complaint as true and draws all inferences in its favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224 (2008). The complaint should be dismissed under NRCP 12(b)(5) only if it appears beyond a doubt that a party could prove no set of facts, which, if true, would entitle the party to relief. *Id.* Allegations within the complaint must be taken at face value and construed favorably in the nonmoving party's behalf. *Edgar v.*

PRINT DATE: 04/11/2016

Page 1 of 2

Minutes Date: April 08, 2016

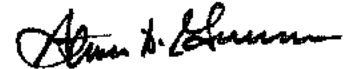
Wagner, 101 Nev. 226 (1985).

Plaintiff alleges that MGM owned, operated, maintained, controlled, implemented and/or designed a sign. Plaintiff further alleges that MGM had a duty to provide a safe and defect free environment with the sign and reasonably and adequately repair or warn of dangerous conditions with the sign. MGM argues that Schueler's fall from the sign was an open and obvious danger and MGM had no duty to warn Schueler of the danger. In *Sierra Pacific Power Co. v. Rinehard*, 99 Nev. 557 (1983), the Nevada Supreme Court found that the plaintiff's fall from a cooling tower was an open and obvious danger. In the present case, Schueler did not fall by merely working on the sign. Schueler fell when a walkway or platform collapsed under his weight within the sign. The COURT FINDS that falling from within the MGM sign from a collapsed walkway or platform is not an open and obvious danger.

In the alternative, MGM Grand argues that MGM is a statutory employer of Schueler and is immune from suit. See NRS 616.560; NRS 618.395. The Court must look at the type of work performed to determine whether or not MGM is a statutory employer of Schueler. The COURT FINDS that the work performed by Schueler was not the kind of work normally conducted by employees of MGM Grand. *Meers v. Haughton Elevator*, 101 Nev. 283 (1985). The specialized work performed by Schueler required skill and expertise that the employees of MGM do not possess. Accordingly, at this stage of the proceedings, the Court cannot state as a matter of law that MGM Grand is a statutory employer to warrant granting a motion for judgment on the pleading.

Therefore, COURT ORDERED Defendant MGM Grand's Motion for Judgment on the Pleading is DENIED. Counsel for Plaintiff is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder of William R. Brenske, Esq., (Law Offices of William R. Brenske).



CLERK OF THE COURT

1 **ORDR**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 **CHARLES SCHUELER,**

7 **Plaintiff,**

8 **v.**

**Case No. A722391**

**Dept. No. XVII**

9 **MGM GRANT HOTEL, LLC, a Domestic**  
10 **Limited Liability Company d/b/a MGM**  
11 **GRAND; MGM RESORTS**  
12 **INTERNATIONAL, A Foreign Corporation**  
13 **d/b/a MGM GRAND; AD ART, INC., A**  
14 **Foreign Corporation; 3A COMPOSITES USA**  
15 **INC., A Foreign Corporation a/k/a**  
16 **ALUCOBOND TECHNOLOGIES**  
17 **CORPORATION; DOES 1 – 25; ROE**  
18 **CORPORATIONS 1 – 26; inclusive,**

19 **Defendant.**

20  
21 **ORDER DENYING DEFENDANT MGM GRAND'S**  
22 **MOTION FOR JUDGMENT ON THE PLEADING**

23  
24 On April 8, 2016, Defendant MGM Grand's Motion for Judgment on the Pleading in the  
25 above-captioned matter came before this Court. Riley A. Clayton of Hall Jaffe & Clayton, LLP  
26 appeared on behalf of Defendant MGM Grand Hotel, LLC and MGM Resorts International.  
27 Timothy Hunter of Ray Lego & Associations appeared on behalf of AD Art, Inc. Edward Silverman  
28 of Alverson Taylor Mortensen & Sanders appeared on behalf of 3A Composites USA Inc. William  
R. Brenske of Brenske & Andreevski appeared on behalf of Plaintiff, Charles Schuler.

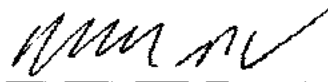
MGM Grand brings the present motion under NRCP 12(c). As such, a motion for judgment  
on the pleading is to be determined similarly to a motion to dismiss for failure to state a claim  
pursuant to NRCP 12(b)(5). See Guise v. GWM Mortgage, LLC, 377 F.3d 795 (7th Cir. 2004). In

1 ruling upon a motion to dismiss, the court recognizes all factual allegations in the complaint as true  
2 and draws all inferences in its favor. Buzz Stew, LLC v. City of N. Las Vegas, 131 Nev. Adv. Op. 1,  
3 341 P.3d 646 (2015). The complaint should be dismissed under NRCP 12(b)(5) only if it appears  
4 beyond a doubt that a party could prove no set of facts, which, if true, would entitle the party to  
5 relief. Id. Allegations within the complaint must be taken at face value and construed favorably in  
6 the nonmoving party's behalf. Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

7  
8 Upon recognizing all factual allegations in Plaintiff's complaint as true and drawing all  
9 inferences in favor of the non-moving party, the COURT FINDS that Plaintiff's allegations could  
10 entitle Plaintiff to relief. If true, there are circumstances where falling from within the MGM sign  
11 from a collapsed walkway or platform is not an open and obvious danger. See Sierra Pacific Power  
12 Co. v. Rinehard, 99 Nev. 557, 665 P.2d 270 (1983). The COURT ALSO FINDS that the work  
13 performed by Plaintiff is not the type of work normally conducted by employees of MGM Grand.  
14 Therefore, at this state of the proceedings, this Court is unable to state as a matter of law that MGM  
15 Grand was Plaintiff's statutory employer. Meers v. Haughton Elevator, 101 Nev. 283, 701 P.2d 1006  
16 (1985).  
17

18 IT IS HERBY ORDERED that the Defendant MGM Grand's Motion for Judgment on the  
19 Pleading is DENIED.

20 DATED this 6 day of May, 2016.

21  
22 


23  
24 MICHAEL P. VILLANI, DISTRICT COURT JUDGE  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this ORDER was electronically served and/or placed in the attorney's folder maintained by the Clerk of the Court as follows:

William R. Brenske, Esq.  
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*Charles Schueler*

Riley A. Clayton  
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Hall Jaffe & Clayton, LLP  
7425 Peak Drive  
Las Vegas, Nevada 89128  
*Attorney for Defendant*  
*MGM Grand Hotel, LLC d/b/a MGM Grand*

  
Cindy DeGree, Judicial Executive Assistant

  
CLERK OF THE COURT

MRCN  
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RYAN M. VENCI  
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Attorney for Defendant,  
MGM Grand Hotel, LLC, d/b/a MGM Grand

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHARLES SCHUELER,  
Plaintiff,

v.

MGM GRAND HOTEL, LLC, a Domestic  
Limited Liability Company d/b/a MGM  
GRAND; MGM RESORTS  
INTERNATIONAL, A Foreign Corporation  
d/b/a MGM GRAND; AD ART, INC., A  
Foreign Corporation; 3A COMPOSITES USA  
INC., A Foreign Corporation a/k/a  
ALUCOBOND TECHNOLOGIES  
CORPORATION; DOES 1-25; ROE  
CORPORATION 1-25; inclusive,

Defendants.

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

MGM GRAND'S MOTION FOR  
RECONSIDERATION ON MOTION FOR  
JUDGMENT ON THE PLEADINGS

Hearing Date: \_\_\_\_\_

Hearing Time: \_\_\_\_\_


Defendant, MGM Grand Hotel, LLC, d/b/a MGM Grand ("MGM"), by and through its attorney of record, Hall Jaffe & Clayton, LLP, hereby submits this Motion for Reconsideration on its Motion for Judgment on the Pleading. The key issue presented in this motion is whether the Court duly considered the Nevada Supreme Court case, *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 25 P.3d 206 (2001) and *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 148 P. 684 (2006), which cases were not specifically addressed or cited to in this Court's May 6, 2016, Order denying MGM's motion.

1 Respectfully, the MGM submits that the *Harris* case is controlling precedent, which if applied, would  
2 prompt this Court to reconsider the issue of whether the motion for judgment on the pleadings should  
3 have been granted in MGM's favor, as opposed to being denied.

4 This motion is made and based upon the pleadings and papers on file herein, the attached  
5 memorandum of points and authorities, and any oral argument that the Court may entertain in the matter.

6 DATED this 16<sup>th</sup> day of May, 2016.

7 HALL JAFFE & CLAYTON, LLP

8 By   
9 RILEY A. CLAYTON  
10 Nevada Bar No. 005260  
11 RYAN M. VENCI  
12 Nevada Bar No. 007547  
13 7425 Peak Drive  
14 Las Vegas, Nevada 89128  
15 Attorneys for Defendant,  
16 MGM Grand Hotel, LLC, d/b/a MGM Grand

14 **NOTICE OF MOTION**

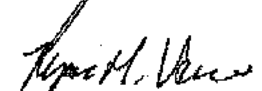
15 TO: ALL PARTIES; and

16 TO: THEIR ATTORNEYS OF RECORD

17 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing MGM  
18 GRAND'S MOTION FOR RECONSIDERATION ON MOTION FOR JUDGMENT ON THE  
19 PLEADING before the above-entitled Court on the 22 day of June, 2016, at the hour of  
20 In Chambers  
~~XXXXXXXXXX~~, or as soon thereafter as counsel can be heard.

21 DATED this 16<sup>th</sup> day of May, 2016.

22 HALL JAFFE & CLAYTON, LLP

23 By   
24 RILEY A. CLAYTON  
25 Nevada Bar No. 005260  
26 RYAN M. VENCI  
27 Nevada Bar No. 007547  
28 7425 Peak Drive  
Las Vegas, Nevada 89128  
Attorneys for Defendant,  
MGM Grand Hotel, LLC, d/b/a MGM Grand

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## I INTRODUCTION

It is always difficult for a litigant to ask a Court to "reconsider" a prior ruling, which motion may be perceived by the Court as a suggestion that the Court overlooked a specific issue or failed to address a cited case, and/or otherwise left critical issues unresolved. However, the MGM submits that the instant motion for reconsideration will provide this Court with a full opportunity to re-review the record, and allow the Court to clarify any perceived errors and/or otherwise provide sufficient reasoning and insight regarding why the Court ruled in the way it did, as opposed to having this issue addressed immediately on appeal, and if it recognizes that a specific issue was overlooked, the Court can duly correct the record.

In this case, the MGM is specifically seeking reconsideration of the Court's apparent failure to cite to or refer to *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 25 P.3d 206 (2001) and *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 148 P. 684 (2006) in its Order denying the MGM's motion for judgment on the pleadings, which case, the MGM believes, supports its position and warrants a different outcome than the one the Court reached previously.

As the Court will recall, Plaintiff Charles Schueler ("Schueler") has only alleged a cause of action "premises liability" against th MGM. Specifically, Plaintiff has alleged a cause of action of "premises liability" against MGM based upon allegations that Schueler "fell approximately 150 feet to the ground" while performing repairs/renovations on the marquee sign located in front of MGM.

MGM filed a Motion for Judgment on the Pleadings on December 11, 2015 arguing that Plaintiff failed to state a cognizable cause of action against MGM because: (1) MGM had no duty to maintain the area where Plaintiff fell as it was an open and obvious condition; and/or (2) Plaintiff's claims against MGM are subject to the exclusive remedy of worker's compensation as MGM was a "statutory employer" of Plaintiff. Plaintiff opposed the Motion on February 1, 2016 and MGM filed its Reply in Support of the Motion on February 5, 2016.

The Court held a hearing on the Motion on March 9, 2016, but deferred a ruling on the Motion at that time. On April 8, 2016, the Court, taking the allegations in the complaint as true and drawing all inferences in favor of Plaintiff, issued a Minute Order denying the Motion finding, in essence: (1) that falling from a collapsed walkway or platform is not an open and obvious condition; and (2) the work

1 performed by Plaintiff was not the kind normally conducted by MGM employees and, pursuant to *Meers*  
2 *v. Haughton Elevator*, 101 Nev. 283 (1985). The Minute Order did not address the *Harris* decision.  
3 However, the Minute Order also directed Plaintiff's counsel to submit an Order denying the Motion  
4 within ten (10) days; however, the parties were unable to agree on the language of the Order and Plaintiff  
5 and MGM submitted competing Orders to the Court for consideration. Instead of signing one of the  
6 proposed/competing orders,, the Court issued its own Order dated May 6, 2016. Importantly, the Court's  
7 Order dated May 6, 2016, does not cite to or address *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482,  
8 25 P.3d 206 (2001), which identifies the criteria to be used by the trial court in determining whether the  
9 MGM is Schueler's statutory employer under Nevada law.

## 10 **II. LEGAL ARGUMENT**

### 11 **A. Standard For A Motion To Reconsider**

12 Under EDCR 2.24, "a district court may reconsider a previously decided issue if substantially  
13 different evidence is introduced or the decision is clearly erroneous." *Masonry & Tile Contractors v.*  
14 *Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). A court has the inherent authority to  
15 reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975). Moreover, under NRC  
16 54(b), "the district court may at any time before the entry of a final judgment, revise orders. . ." *Barry v.*  
17 *Lindner*, 119 Nev. 661, 670, 81 P.3d 537, 543 (2003).

18 In seeking reconsideration, the MGM respectfully submits that the Court applied the incorrect  
19 legal test in determining whether the MGM is a "statutory employer" of Plaintiff. As demonstrated  
20 herein, it appears that the Court applied the standard to contractors who are not licensed under *Meers*, as  
21 opposed to the correct legal test under *Harris* for contractors, like Schueler, who are licensed under  
22 Nevada law.

### 23 **B. MGM Is Immune from Schueler's Claims Because MGM Is A Statutory Employer** 24 **Under Nevada's Workers Compensation Law Because The MGM Hired A Licensed** **Contractor.**

25 Ultimately, the Court's analysis comes down to the status of the contractor hired to perform the  
26 work. In a case where a property owner hires a licensed contractor to perform work on its  
27 property, the property owner is entitled to the exclusive remedy of worker's compensation. The  
28 Court held in as follows:

1 We conclude, however, that broad application of the *Meers* test is not mandated by the NIIA  
2 in construction cases—despite the fact that NRS 616B.603(3) does not expressly exempt  
3 landowners that retain licensed principal contractors. We therefore modify *Tucker* to clarify  
4 that if the defendant in a construction case is a landowner that has contracted with a  
5 licensed principal contractor, the landowner is immune from suit as a matter of law for  
6 industrial injuries sustained during performance of the construction contract.

7 Strong policy considerations support this conclusion. First, workers' compensation coverage  
8 "should equally protect the property owner who, in hiring the contractor, is indirectly paying  
9 for the cost of such coverage, which the contractor presumably has calculated into the contract  
10 price." Since the principal contractor is required by the NIIA to ensure that all the  
11 construction workers have workers' compensation coverage, requiring the property owner to  
12 duplicate that coverage or risk suit in case of injuries is unnecessary as well as unreasonably  
13 costly. Further, failure to immunize property owners from suits by workers injured while  
14 constructing property improvements places commercial property owners at greater monetary  
15 risk than if their own employees performed the tasks. Finally, property owners without  
16 construction expertise should be encouraged to retain qualified general contractors who are  
17 "in a better position to reduce the risks of injury" because they have "more knowledge and  
18 expertise... with respect to the dangers that normally arise during the course of the contractor's  
19 normal work routine."

20 *Id.* As demonstrated by the foregoing excerpt, the Nevada Supreme Court has made a "bright line" rule  
21 of immunity for property owners that hire licensed contractors to perform work – the property owner is  
22 immune from liability as a matter of law. *Id.* Respectfully, this rule and its attendant rationale make  
23 sense in that it acknowledges that the property owner is indirectly paying for the worker's compensation  
24 coverage, and that landowners are encouraged to hire a licensed contractors to perform work to ensure the  
25 safety of everyone involved, including the employees of the licensed contractor. *Id.*

26 The Court further reiterated its "bright line" position with respect to licensed contractors in  
27 *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 148 P. 684 (2006). Specifically, the  
28 Nevada Supreme Court held: "Thus, in making NIIA immunity determinations in these types of matters,  
courts must generally look, initially, at whether the injured employee and other parties were, when the  
injury occurred, carrying out work under some principal contractor's NRS 624 license." *Id.* at 1215.  
The court went on to hold that Republic Silver State was a statutory employer of Richards because  
he was injured while installing a swamp cooler that his employer, Commercial Consulting (a  
licensed contractor under NRS 624) was hired by Republic to install. *Id.*

Here, there is no dispute the Schueler's employer, YESCO, is a licensed contractor pursuant to  
NRS 624 under Nevada law. That very fact, which Plaintiff cannot refute, necessarily entitles the MGM  
to the protections that come with hiring a licensed contractor, as a matter of law under *Harris, supra*,

1 should one of YESCO's employees be injured while performing the work the contractor was hired to  
2 perform.

3 On the other hand, if a property owner hired a non-licensed contractor, the landowner may not  
4 automatically entitled to the protection of exclusivity of worker's compensation. If an unlicensed  
5 contractor is hired and its worker is injured, whether the property owner is a statutory employee will turn  
6 on an evaluation of the test set for in *Meers v. Haughton Elevator*, 101 Nev. 283 (1985). The *Meers* test  
7 was the one that this Court referenced in the Minute Order and its ultimate filed Order.

8 The following cases illustrate the critical difference between hiring a licensed contractor and a  
9 non-licensed contractor.<sup>1</sup> For example, in *Coultas v. Summerlin Hospital Medical Center, LLC*, 124  
10 Nev. 1459 (2008), Summerlin Hospital was sued when Coultas was injured while repairing a refrigeration  
11 unit for the hospital. Coultas was on-site to perform maintenance for air conditioning coolers under a  
12 contractor between the hospital and his employer, DP Air. After finishing the air conditioning  
13 maintenance work, Coultas was asked to check on a problem with the walk-in refrigeration unit and,  
14 while doing so, he fell and was injured. Coultas sued the hospital which, in turn, file a Motion for  
15 Summary Judgment based on immunity from suit under the NIIA. The Motion was granted and Coultas  
16 appealed.

17 In concluding that summary judgment was proper, the Nevada Supreme Court stated: "In  
18 Richards, we held that a property owner was entitled to immunity under NIIA if the property  
19 owner hired a principal contractor licensed under NRS Chapter 624, to carry out the work under  
20 that license and the injury resulted from risks related to that work." *Id.* The Nevada Supreme Court  
21 went on to find the hospital was entitled to immunity because: (1) Coultas was conducting repair work  
22 that DP Air billed which was performed under DP Air's NRS Chapter 624 license; and (2) the injury that  
23 resulted was the result of risks related to the repair. *Id.*

24 In contrast, in *Colony Resorts LVH Acquisitions v. Eighth Jud. Dist. Ct.*, 2011 WL 6916498  
25 (2011)(unpublished), Colony/LVH hired non-party Encore Productions to perform rigging work on

---

26  
27 <sup>1</sup>MGM recognizes these decisions are unpublished and, therefore, offer no precedential value, they are presented to  
28 the Court because they provide clear illustrations of the distinction before the Court. MGM in no way seeks to violate any  
Court rules in presenting these cases to the Court and is not advocating that the Court must decide the instant motion because  
these cases mandate as such.

1 Colony's premises. Encore Productions then hired Che Alvarado to perform that rigging work and, while  
2 doing so, Alvarado suffered a work-related injury. Alvarado obtained worker's compensation benefits  
3 through Encore and filed suit against Colony/LVH seeking additional damages. Colony/LVH moved for  
4 summary judgment on the basis that it hired Encore who hired Alvarado making Colony/LVH a  
5 "statutory employer" of Alvarado which entitled it to the protections of NIIA. The district court denied  
6 summary judgment and Colony appealed.

7 In its decision, the Nevada Supreme Court stated "LVH acknowledges that Alvarado's direct  
8 employer, Encore, is not licensed contractor for purposes of the NIIA. Thus, in order for LVH to  
9 be deemed Alvarado's statutory employer, and thereby obtain NIIA immunity, it must satisfy the  
10 'Meers test.'" The Nevada Supreme Court the cited the *Richards* case, which "explained that a premises  
11 owner can obtain NIIA immunity either by hiring a licensed contractor or by satisfying the test set  
12 forth in *Meers v. Haughton Elevator...*" *Id.* The court, while utilizing the *Meers* test because Alvarado's  
13 employer was not a licensed contractor, determined that a factual question existed as to how much rigging  
14 work Colony/LVH did. *Id.*

15 MGM, respectfully, believes these two scenarios lay out the current state of Nevada law on the  
16 issue of a property owners status as a "statutory employee". Specifically, if a property owner hired an  
17 NRS Chapter 624 contractor and the contractor's worker is injured while performing the work the  
18 contractor was hired by the property owner to perform, then the property owner is entitled to NIIA  
19 protection as a matter of law. That is exactly what occurred in this case. MGM hired NRS Chapter 624  
20 licensed contractor, YESCO, to make repair/alterations to a sign and, while Schueler was performing that  
21 contracted-for work, he suffered his fall. Here, then, the outcome dispositive factor in *Richards, supra*,  
22 has been satisfied because YESCO was licensed and its employee, Schueler, was injured while  
23 performing the work the contractor was hired to do.

24 The Court, in making its decision, seems to have only applied the *Meers* test which MGM,  
25 respectfully, submits is the incorrect legal standard as that test only applies to a property owner who hires  
26 a contractor that is not licensed under NRS Chapter 624. The MGM respectfully submits that as soon as  
27 the MGM hires an NRS Chapter 624 licensed contractor, the *Meers* test is no longer applicable to any  
28 evaluation of whether the MGM is a "statutory employer" of Plaintiff. In fact, the *Richards* test makes it

1 clear that even if the MGM employees ordinarily performed work on the sign or any other work that  
2 Plaintiff was doing at the time of the subject incident, the MGM would still be entitled to protection  
3 under the NIIA. *Id.* Under this scenario, there is simply no set of facts under which Plaintiff could ever  
4 recover against MGM – even if it was determined that no MGM employee ever performed duties similar  
5 to those Schueler performed when he was injured. Therefore, it is the MGM's position that the Motion  
6 for Judgment on the Pleadings should have been granted and, as such, the MGM respectfully requests the  
7 Court reconsider its ruling in light of the distinction between the status of hiring a licensed contractor vs.  
8 an unlicensed contractor.


9 **III. CONCLUSION**

10 The MGM respectfully requests this Court to reconsider its ruling in light of the distinction  
11 between the hiring of licensed vs. non-licensed contractors. That factor, which forms the basis for the  
12 holdings in *Richards*, *Harris*, and *Coultas*, *supra*, was not addressed in this Court's prior Order, and as  
13 such, the MGM has sought to have this Court re-visit its prior ruling. Upon doing so, the Court should  
14 recognize that the controlling case law is *Richards*, *Harris*, and *Coultas*, and as a result, grant the motion  
15 for reconsideration and dismiss the MGM from this Case.

16 DATED this 16<sup>th</sup> day of May, 2016.

17 HALL JAEFF & CLAYTON, LLP

18 By



19 RILEY A. CLAYTON  
Nevada Bar No. 005260

20 RYAN M. VENCI  
Nevada Bar No. 007547

21 7425 Peak Drive  
Las Vegas, Nevada 89128


22 Attorneys for Defendant,  
23 MGM Grand Hotel, LLC, d/b/a MGM Grand  
24  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 16 day of May, 2016, I served  
3 the foregoing MGM GRAND'S MOTION FOR RECONSIDERATION ON MOTION FOR  
4 JUDGMENT ON THE PLEADING on the following parties by electronic transmission through the  
5 Wiznet system:

6 William R. Brenske, Esq.  
7 BRENSKE & ANDREEVSKI  
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9 Las Vegas, NV 89169  
10 *Attorneys for Plaintiff*

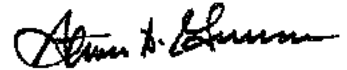
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6 Attorneys for Plaintiff,  
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7

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CLERK OF THE COURT

8 DISTRICT COURT  
9  
10 CLARK COUNTY, NEVADA

11 CHARLES SCHUELER,

12 Plaintiff,

13 v.

14 MGM GRAND HOTEL, LLC, a Domestic Limited  
Liability Company d/b/a MGM GRAND; MGM  
15 RESORTS INTERNATIONAL, A Foreign  
Corporation d/b/a MGM GRAND; AD ART, INC., A  
16 Foreign Corporation; 3A COMPOSITES USA INC.,  
a Foreign Corporation a/k/a ALUCOBOND  
17 TECHNOLOGIES CORPORATION; DOES 1 - 25;  
ROE CORPORATIONS 1 - 25; inclusive,

18 Defendants.

Case No.: A-15-722391-C

Dept. No.: XVII

**PLAINTIFF CHARLES  
SCHUELER'S OPPOSITION TO  
MGM GRAND'S MOTION FOR  
RECONSIDERATION OF ITS  
MOTION FOR JUDGMENT ON  
THE PLEADING**

Date of Hearing:

Time of Hearing:

19 Plaintiff, Charles Schueler, by and through his attorneys of record, the Law Office of  
20 William R. Brenske, hereby opposes Defendant MGM Grand's Motion for Reconsideration of its  
21 Motion for Judgment on the Pleading.  
22


23 ///

24 ///

25 ///

1 This opposition and alternative motion is based on the pleadings and papers on file herein,  
2 the attached memorandum of points and authorities, and any oral argument this Court may wish to  
3 entertain.

4 DATED this 3<sup>rd</sup> day of June, 2016.

5   
6 WILLIAM R. BRENSKE, ESQ.  
7 Nevada Bar No. 1806  
8 JENNIFER R. ANDREEVSKI, ESQ.  
9 Nevada Bar No. 9095  
10 BRENSKE & ANDREEVSKI  
11 3800 Howard Hughes Parkway, Suite 500  
12 Las Vegas, NV 89169  
13 Attorneys for Plaintiff,  
14 Charles Schueler

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. INTRODUCTION

17 On July 31, 2013, Plaintiff, Charles Schueler, was working with two co-workers on the  
18 MGM Grand sign in Las Vegas, Nevada. He was tasked with replacing the LED lighting on the  
19 marquee sign. As Mr. Schueler was walking on the floor of the sign, a triangular panel on the floor  
20 suddenly broke loose, causing him to fall 150 feet to the ground. Mr. Schueler survived, but  
21 suffered debilitating injuries.

22 II. LEGAL ARGUMENT

23 Defendant MGM has reiterated the exact same statutory employer argument as it set forth  
24 in its initial motion to dismiss. Both parties cited the Harris decision relied upon by Defendant in  
25 its present motion and fully discussed its holding. In Plaintiff's brief, Plaintiff argued the Harris  
26 case did not apply but the Meers case did. To the contrary, Defendant asked this Court to apply the  
27 holding from the Harris case. Ultimately, this Court applied the test set forth in the Meers case and  
28 denied Defendant's motion based on that test. To reiterate the exact same arguments Defendant set  
forth in its initial motion is inappropriate. This matter has been fully briefed and entertained by the

1 Court upon hearing oral argument. Defendant adds nothing new to the present motion. Its attempt  
2 to get a second bite at the same apple should be denied.

3 In Defendant's motion, it argues the Court needs a "full opportunity to re-review the record"  
4 since the Court did not cite Harris v. Rio Hotel & Casino, 117 Nev. 482 (2001) in its Order  
5 denying Defendant's Motion to Dismiss. The fact this Court did not cite Harris does not mean the  
6 Court did not consider the case. As noted above, the case was discussed in *both* Plaintiff's brief  
7 and Defendant's briefs and the case does not apply. The Meers case applies in this action -  
8 especially when reviewing the facts in a light most favorable to the non-moving party (as required  
9 under Defendant's motion to dismiss).

10  
11 Contrary to Defendant's assertions in the present pleading, the issue at hand is not a simple  
12 matter of "did the property owner hire a licensed contractor or not?" Harris only applies to  
13 *construction* contracts. In fact, as the Nevada Supreme Court explicitly noted, the purpose of the  
14 Harris case was to "provide a definitive statement of the rule of workplace immunity under the  
15 NIIA in cases arising from the performance of construction contracts. Harris v. Rio Hotel &  
16 Casino, 117 Nev. 482, 485 (2001) (emphasis added). Upon examining the facts and the law  
17 applicable to that case, the Nevada Supreme Court held "if the defendant in a construction case is  
18 a landowner that has contracted with a licensed principal contractor, the landowner is immune  
19 from suit as a matter of law for industrial injuries sustained during performance of the  
20 construction contract." Id. at 493 (emphasis added). The Nevada Supreme Court also added: "The  
21 relationship of one independent enterprise with another that contracts to perform specialty work is  
22 different from the relationship of a property owner with a general contractor that contracts to  
23 construct property improvements." Id. at 494. As such, the Harris case only applies to construction  
24 contracts and the Meers case applies to non-construction contracts - such as the one at issue.  
25  
26  
27  
28

Brenske & Andreevski  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 385-3300 - Fax (702) 385-3823

Here, Mr. Schueler was helping to replace LED lighting in a sign. He was not building a sign. He was not constructing pylon that held the sign. He was not constructing property improvements. Mr. Schueler was helping to replace an LED display. Replacing an oversized TV is not construction - especially when viewed in a light most favorable to the non-moving party. Given Mr. Schueler was not working on a construction project and based on a plain reading of the Harris decision, the Harris test does not apply. The Meers test applies. And as the Court correctly indicated in its initial ruling, MGM cannot be deemed the statutory employer of Mr. Schueler under the Meers test.

### III. CONCLUSION

The Harris case is inapplicable to the case at hand. As this Court correctly noted in its Order, under the appropriate Meers case, MGM cannot be deemed the statutory employer of Mr. Schueler in this matter. Given the Meers test is the appropriate test in the given matter, there is nothing to reconsider. This Court already considered all of the arguments set forth in Defendant's Motion for Reconsideration when it entertained Defendant's initial motion. Upon a thorough review of the arguments, this Court denied Defendant's motion. Given there is nothing new in Defendant's present motion, Defendant's present motion should likewise be denied.

DATED this 3rd day of June, 2016.



WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
JENNIFER R. ANDREEVSKI, ESQ.  
Nevada Bar No. 9095  
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Charles Schueler*

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## CERTIFICATE OF SERVICE

I am employed with the Brenske & Andreevski. I am over the age of 18 and not a party to the within action; my business address is 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under its practice mail is to be deposited with the U. S. Postal Service on that same day as stated below, with postage thereon fully prepaid.

I served the foregoing document described as "PLAINTIFF CHARLES SCHUELER'S  
OPPOSITION TO MGM GRAND'S MOTION FOR RECONSIDERATION OF ITS  
MOTION FOR JUDGMENT ON THE PLEADING" on this 3<sup>rd</sup> day of June, 2016, to all

interested parties as follows:

☐ BY MAIL: Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

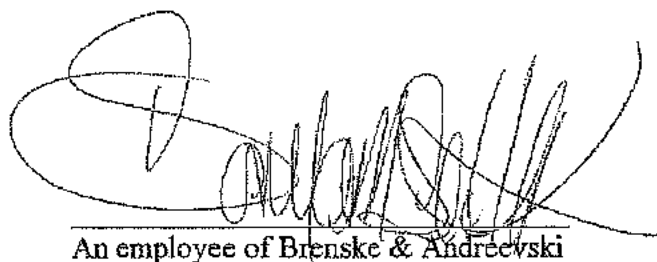
☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

☒ BY ELECTRONIC SERVICE: by electronically filing and serving the foregoing document with the Eighth Judicial District Court's WizNet system:

Riley A. Clayton  
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d/b/a MGM Grand*  
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An employee of Brenske & Andreevski

  
CLERK OF THE COURT

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13 Attorney for Defendant,  
14 MGM Grand Hotel, LLC, d/b/a MGM Grand

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

17 **CHARLES SCHUELER,**  
18 **Plaintiff,**

19 **v.**

20 **MGM GRAND HOTEL, LLC, a Domestic**  
21 **Limited Liability Company d/b/a MGM**  
22 **GRAND; MGM RESORTS**  
23 **INTERNATIONAL, A Foreign Corporation**  
24 **d/b/a MGM GRAND; AD ART, INC., A**  
25 **Foreign Corporation; 3A COMPOSITES USA**  
26 **INC., A Foreign Corporation a/k/a**  
27 **ALUCOBOND TECHNOLOGIES**  
28 **CORPORATION; DOES 1-25; ROE**  
**CORPORATION 1-25; inclusive,**

**Defendants.**

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

**REPLY IN SUPPORT OF MGM GRAND'S**  
**MOTION FOR RECONSIDERATION ON**  
**MOTION FOR JUDGMENT ON THE**  
**PLEADINGS**

Hearing Date: June 22, 2016

Hearing Time: In Chambers

23 Defendant, MGM Grand Hotel, LLC, (the MGM) by and through its counsel of record, Hall Jaffe  
24 & Clayton, LLP, hereby submits this reply to Plaintiff's Opposition to MGM's Motion for  
25 Reconsideration. As set forth below, Plaintiff's Opposition does nothing to change the fact that this  
26 Court's prior order denying the MGM's motion to dismiss bypassed the controlling and outcome  
27 dispositive case law, which establish that the MGM should be dismissed from the case because Plaintiff  
28 was performing work as an employee of YESCO, a licensed contractor under Nevada's statutes, which

1 now makes the MGM a "statutory employee," and immunizes it from suit under Nevada's "exclusive  
2 remedy"/workers compensation doctrine. Therefore, this Court should grant the MGM's motion for  
3 reconsideration and dismiss the MGM from the case.

4 This Reply is made and based upon the pleadings and papers on file herein, the memorandum of  
5 points and authorities submitted herewith, and any oral argument that the Court may entertain in this  
6 matter.

7 Dated this 17<sup>th</sup> of June, 2016.

8 HALL JAFFE & CLAYTON, LLP

9  
10 By Riley A. Clayton

RILEY A. CLAYTON

Nevada Bar No. 005260

RYAN M. VENCI

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7425 Peak Drive

Las Vegas, Nevada 89128

Attorneys for Defendant,

MGM Grand Hotel, LLC, d/b/a MGM Grand

11  
12  
13  
14  
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **1. LEGAL ARGUMENT**

17 Plaintiff's Opposition, once again, takes the erroneous position of contesting whether YESCO  
18 and its employee, Charles Schueler, were involved in a "construction" or a "non-construction" project at  
19 the time of the subject incident. The problem with Plaintiff's position is that it misunderstands the  
20 nature of the MGM's argument and the controlling case law that governs the outcome of this case, and  
21 which does NOT focus on whether Schuler was performing construction or non-construction work.  
22 Rather, the true focus of the MGM's motion is that it attempts to point out to the Court that an analysis  
23 of whether Schuler was performing construction or non-construction is no longer the relevant inquiry  
24 under Nevada law. Instead, the only question the Court needs to resolve is whether Schueler was  
25 working for a Nevada licensed contractor – which Schueler was as he was employed by YESCO – a  
26 licensed Nevada contractor! Thus, even if the Court looks at all of the facts and evidence in the light  
27 most favorable to Plaintiff, Schueler cannot escape the controlling and dispositive fact that MGM is his  
28

1 statutory employer and is entitled to protection under the exclusive remedy of the Nevada Industrial  
2 Insurance Act (NIIA).

3 Even the most cursory review of the Nevada Supreme Court's decisions in *Trucker v. Action*  
4 *Equip. and Scaffold Co.*, 113 Nev. 1349, 951 P.2d 1027 (1997), *Harris v. Rio Hotel & Casino, Inc.*, 117  
5 Nev. 482, 25 P.3d 206 (2001) and *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 148  
6 P.3d 684 (2006) to see that Plaintiff's construction vs. non-construction argument in nothing more than a  
7 red herring.

8 In *Tucker*, it is true that the Nevada Supreme Court noted the distinction between construction  
9 and non construction cases by stating: "In order to determine whether a defendant is immune from suit  
10 under NIAA, we now set forth the following required inquiry. First, construction cases must be  
11 differentiated from non-construction cases." *Tucker* at 1356. However, the court has since changed its  
12 analysis over time, thereby making *Tucker* readily distinguishable, and the focus on whether the injury  
13 results from a "construction" vs. "non-construction" scenario is no longer the relevant inquiry where suit  
14 is brought against the landowner, like the MGM here.

15 The controlling test in determining whether a landowner, like the MGM, is a statutory employer  
16 is outlined in *Harris*. In that case, Billy Harris ("Harris") was injured during construction of an addition  
17 to the Rio Hotel and Casino ("Rio"). Harris recovered benefits under worker's compensation from his  
18 employer and filed a lawsuit against Rio for his injuries. Rio moved to dismiss the claims as barred by  
19 the exclusivity of the worker's compensation statute. The district court granted the motion and Harris  
20 appealed.

21 On appeal, the Nevada Supreme Court went on to modify *Tucker* to explain that if the defendant  
22 is a "landowner who has contracted with a license principal contractor, the landowner is immune from  
23 suit as a matter of law for industrial accident sustained during performance of the construction contract."  
24 *Id.* at 493. Thus, the key in *Harris* was that the court was beginning to focus on the fact that the  
25 landowner had hired a Nevada licensed contractor and, as such, it was immune from liability. However,  
26 Harris is still not the Court's last word on this issue.

27 In 2006, five years after *Harris*, the Nevada Supreme Court issued its decision in *Richards*.  
28 Lawrence Richards ("Richards") was injured while descending from a roof after connecting newly

1 installed swamp coolers when he fell resulting in injury. After collecting worker's compensation  
2 benefits from his employer, he sued Republic Silver State Disposal ("Republic") for negligence.  
3 Republic moved for summary judgment and the district court granted the motion finding that under  
4 *Harris* that Richards' claim involved a construction case and that his employer was a licensed contractor  
5 which entitled Republic to NIIA immunity. The district court went on, however, to state that even if it  
6 were a non-construction case then Republic would technically not be entitled to protection because it is  
7 in a different line of work than Richards' employer. *Richards* at 1216. Nevertheless, the district court  
8 also concluded, based on the language of *Harris*, that NIIA immunity should protect property owners  
9 who indirectly pay for worker's compensation coverage because that coverage is calculated into the  
10 contract price forced the court to conclude that Silver State was entitled to immunity. *Id.*

11 On appeal, Richards argued (1) his case was a non-construction case and (2) even if it was a  
12 construction case, Republic is not a licensed principal contractor and, thus, not entitled to immunity. *Id.*  
13 1216-1217. Thus, *Richards* raises the exact same issues that the MGM is presenting to this Court for  
14 reconsideration. Let's now consider how the Nevada Supreme Court ruled on these controlling issues.  
15 Specifically, the court then made the following, critical holding:

16 Thus, *Tucker's* immunity analysis largely depended on whether or not the matter is a 'construction'  
17 case. In *Tucker*, we did not further explain what types of matters will be considered  
18 construction cases and what types of matters will be considered non-construction cases. As  
19 that analysis suggests, however, since cases involving nonlicensed contractors and those involving  
20 nonconstruction are treated the same, but cases involving work performed under NRS 624 license  
21 are treated differently, *Tucker's* initial inquiry, whether the case is construction or  
22 nonconstruction, is inaccurate. The question to resolve is not related to whether a project  
23 constitutes 'construction,' but rather, whether the work, during the performance of which the  
24 injury is incurred, is carried out under an NRS Chapter 624 license. If so, the matter is a case  
25 in which NIIA immunity generally automatically applies to any contractor on the project  
26 (emphasis added). *Id.* at 1220-1221.

27 Even more critically, the Court went on to say:

28 When the above provisions and cases are considered in light of the purpose behind employer  
immunity, it becomes clear that the 'construction versus construction' analysis is irrelevant  
29 under NRS 616B.603. Accordingly, we overrule the 'construction versus non-construction'  
30 analysis of *Tucker* and we emphasize that these types of NIIA immunity determinations must  
31 be resolved under NRS 616B.603. Under that statute, extended immunity generally  
32 automatically applies to matters involving a project executed within the scope of an NRS  
33 Chapter 624-licensed contractor's license. All other matters must be further analyzed under NRS  
34 616B.603 and *Meers* (emphasis added). *Id.* at 1221-1222.

1 The Court went on to uphold the district court's decision finding Richards was working on a  
2 project within the scope of his employer's NRS Chapter 624 license when he was injured, and that his  
3 injuries arose out of risks inherent to the work being performed under the license, namely falling while  
4 descending a ladder from a roof where he was performing work on the swamp cooler. Therefore, the  
5 court concluded that the property owner, Silver State, like the MGM here, was entitled to immunity  
6 under the Court's decision in *Harris*. *Id.*

7 The Nevada Supreme Court could not have been more clear and, in doing so, the foregoing rules  
8 of law eliminate Plaintiff's sole position in its Opposition. Indeed, under *Richards* the construction vs.  
9 non-construction analysis stemming from *Meers* is irrelevant and has been overruled, and the only  
10 question the Court must resolve, and which has been resolved here, was that Schueler was working for a  
11 Nevada licensed contractor, YESCO, at the time of the accident. With all due respect, the Court has the  
12 instant opportunity to carefully review the applicable case law and, upon doing so, should reconsider its  
13 decision in light of the Nevada Supreme Court's clear and unambiguous language in *Richards*, which  
14 supports the MGM's position here. Therefore, the MGM's motion for reconsideration should be  
15 granted..

16 Frankly, once this Court rightfully gets past Plaintiff's repeated misdirected argument concerning  
17 the "construction" vs. "non-construction" nature of the project, there is no question, and in fact, Scheuler  
18 does not even dispute, that his employer, YESCO, is a licensed Chapter 624 contractor and that he was  
19 injured in a risk inherent with the work her was performing. In fact, it is hard to think of any risk more  
20 inherent in performing work 150 above the ground than falling. As such, the instant case is "on all  
21 fours" with *Richards*, and the Court should reconsider its position. A landowner (Republic in *Richards*  
22 and MGM in this matter) hired a Chapter 624-licensed contractor (Commercial Consulting in *Richards*  
23 and YESCO in this matter) whose employee (Richards in *Richards* and Schueler in this matter) was  
24 injured while performing tasks related to his job (descending a ladder in *Richards* and falling from the  
25 sign he was working on in this matter). In *Richards*, the Court found the landowner, Republic, was  
26 entitled to immunity under *Harris* because it hired a Chapter 624 contractor and the injury occurred as  
27 part of the work under that license. The same is true of MGM. Respectfully, there should be no basis  
28 for any different outcome here. The Court's protection of landowners who hire Chapter 624 contractors

1 as expressed in *Harris* and *Richards* is applicable to MGM which, as a matter of law, is entitled to  
2 NIIA's protections and, thereby, barring Plaintiff's lawsuit against MGM.

3 **II. CONCLUSION**

4 The Court, in making its decision, seems to have only applied the *Meers* test which the MGM  
5 respectfully submits is the incorrect legal standard. Instead, the MGM encourages the Court to consider  
6 the controlling test announced in *Richards*, which holds that if the injured worker is working for a  
7 licensed contractor at the time of the accident, the landowner (i.e., the MGM) is immune from suit.  
8 Therefore, it is the MGM's position that the Motion for Judgment on the Pleadings should have been  
9 granted and, as such, the MGM respectfully requests the Court reconsider its ruling in light of the  
10 distinction between the status of hiring a licensed contractor vs. an unlicensed contractor rather than any  
11 distinction between a construction vs. nonconstruction project.

12 DATED this 14<sup>th</sup> day of June, 2016.

13 HALL JAFFE & CLAYTON, LLP

14  
15 By Riley A. Clayton

16 RILEY A. CLAYTON

17 Nevada Bar No. 005260

18 RYAN M. VENCI

19 Nevada Bar No. 007547

20 7425 Peak Drive

21 Las Vegas, Nevada 89128

22 Attorneys for Defendant,

23 MGM Grand Hotel, LLC, d/b/a MGM Grand  
24  
25  
26  
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28

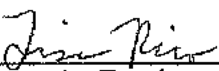
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 14 day of June, 2016, I served  
3 the foregoing **REPLY IN SUPPORT OF MGM GRAND'S MOTION FOR RECONSIDERATION**  
4 **ON MOTION FOR JUDGMENT ON THE PLEADINGS** on the following parties by electronic  
5 transmission through the Wiznet system:

6 William R. Brenske, Esq.  
7 BRENSKE & ANDREEVSKI  
8 3800 Howard Hughes Parkway, Suite 500  
9 Las Vegas, NV 89169  
10 *Attorneys for Plaintiff*

11 Timothy F. Hunter, Esq.  
12 RAY LEGO & ASSOCIATES  
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14 Las Vegas, NV 89113  
15 *Attorney for Defendant,*  
16 *Ad Art, Inc.*

17 Lee Ann Sanders, Esq.  
18 Edward Silverman, Esq.  
19 ALVERSON TAYLOR MORTENSON & SANDERS  
20 7401 W. Charleston  
21 Las Vegas, Nevada 89117  
22 *Attorney for Defendant 3A Composite*

23   
24 \_\_\_\_\_  
25 An Employee of  
26 HALL JAFFE & CLAYTON, LLP.  
27  
28

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Other Negligence**

**COURT MINUTES**

**June 22, 2016**

A-15-722391-C

Charles Schueler, Plaintiff(s)

vs.

MGM Grand Hotel, LLC, Defendant(s)

**June 22, 2016**

**3:00 AM**

**MGM Grand's Motion for Reconsideration on Motion  
for Judgment on the Pleadings**

**HEARD BY:** Vega, Valorie J.

**COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Carol Donahoo

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- MGM Grand's Motion for Reconsideration of Motion for Judgment on the Pleadings came before this Court on the June 22, 2016, Chamber Calendar. COURT ORDERED Motion for Reconsideration of Motion for Judgment on the Pleadings CONTINUED for Judge Villani's consideration.

CONTINUED TO: 08/13/16 CHAMBER CALENDAR

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Other Negligence****COURT MINUTES****July 13, 2016**

A-15-722391-C

Charles Schueler, Plaintiff(s)

vs.

MGM Grand Hotel, LLC, Defendant(s)

**July 13, 2016****3:00 AM****MGM Grand's Motion for Reconsideration on Motion  
for Judgment on the Pleadings****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Carol Donahoo**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Defendant MGM Grand's Motion for Reconsideration on Motion for Judgment on the Pleadings came before this Court on the July 13, 2016, Chamber Calendar.

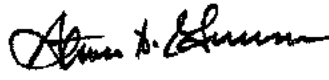
On April 8, 2016, this Court issued a Minute Order denying Defendant's Motion for Judgment on the Pleadings. Defendant now requests this Court reconsider its previous ruling. Schueler was an employee of YESCO and injured when he fell from a platform on the premises of the MGM Grand while he replaced LED lights for a marquee sign. It is undisputed that YESCO is a licensed contractor. Schueler filed suit against MGM for premises liability.

In *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 148 P.3d 684 (2006), Richards brought suit against Republic for an injury Richards sustained when he fell from a ladder while descending from the rooftop of Republic. Richards was installing a swamp cooler, which Republic contracted Richard's employer to complete. The facts in Richards are strikingly similar to those in the present matter.

Here, MGM Grand contracted YESCO, a licensed contractor, to perform the replacement of the LED lights in the marquee sign. Schueler alleges that his injuries resulted from his fall from the marquee sign, but this fall resulted from a risk directly associated with working on the sign. Upon further review of these facts and applicable law regarding statutory immunity, the COURT FINDS that Schueler's claim is related to a risk arising out of his duties with YESCO and that YESCO was a licensed contractor hired by MGM. Therefore, MGM is a statutory employer immune from suit. *Id.*; see also *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 25 P.3d 206 (2001).

Therefore, COURT ORDERED MGM Grand's Motion for Reconsideration on Motion for Judgment on the Pleadings is GRANTED. Counsel for MGM Grand is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder of Riley Clayton, Esq., (Hall Jaffe & Clayton, LLP).



CLERK OF THE COURT

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3 Nevada Bar No. 005260  
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10 Attorney for Defendant,  
11 MGM Grand Hotel, LLC, d/b/a MGM Grand

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

14 **CHARLES SCHUELER,**  
15 **Plaintiff,**

16 v.

17 **MGM GRAND HOTEL, LLC, a Domestic**  
18 **Limited Liability Company d/b/a MGM**  
19 **GRAND; MGM RESORTS**  
20 **INTERNATIONAL, A Foreign Corporation**  
21 **d/b/a MGM GRAND; AD ART, INC., A**  
22 **Foreign Corporation; 3A COMPOSITES USA**  
23 **INC., A Foreign Corporation a/k/a**  
24 **ALUCOBOND TECHNOLOGIES**  
25 **CORPORATION; DOES 1-25; ROE**  
26 **CORPORATION 1-25; inclusive,**  
27 **Defendants.**

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

**ORDER GRANTING MGM GRAND'S**  
**MOTION FOR RECONSIDERATION ON**  
**MOTION FOR JUDGMENT ON THE**  
**PLEADINGS**

21 On May 16, 2016, Defendant, MGM Grand Hotel, LLC, d/b/a MGM Grand ("MGM"), filed its  
22 Motion for Reconsideration on Motion for Judgment on the Pleadings. On June 3, 2016, Plaintiff filed  
23 his Opposition. On June 14, 2016, MGM filed its Reply in Support of its Motion for Reconsideration.

24 In lieu of oral argument, this Honorable Court, Judge Michael Villani presiding, set the motion  
25 for resolution on its Chambers Calendar. After considered the moving, opposing, and reply briefs, and  
26 the case authority cited therein and finding good cause, the Court issued a minute order on August 16,  
27 2016 with its ruling on the pending motion for reconsideration, and now hereby submits its Findings of

RECEIVED BY  
DEPT 17 ON  
AUG 18 2016

1 **I. FINDINGS OF FACT**

2 1. This is a motion for reconsideration following a prior decision on a motion for judgment  
3 on the pleadings filed by the MGM. As such, the allegations of Plaintiff's complaint generally contain  
4 the operative facts that govern the outcome of this matter. The essence of these allegations can be  
5 summarized as follows.

6 2. On July 13, 2013, the plaintiff, Charles Schueler ("Schueler"), was an employee of  
7 Young Electric Sign Co. ("YESCO"). The MGM hired YESCO, a licensed contractor under NRS 624,  
8 to perform repair work/installing LED lights on the marquee sign in front of the MGM Grand Hotel.

9 3. When attempting to perform his repair work on the sign, Schueler lost his balance and fell  
10 approximately 150 feet to the ground below. As a result of the fall, Shueler sustained injuries.

11 4. Schueler alleges, generally, that the MGM was required, as a land owner, to maintain the  
12 area of the marquee sign in a reasonably safe condition and to warn of potential hazards. According to  
13 Schueler because the MGM allegedly failed to safely maintain the area of the marquee sign, Schueler fell  
14 150 feet and was injured.

15 5. The risk of falling from the sign is directly associated with working on the sign, and is  
16 related to a risk arising out of his duties with YESCO.

17 **II. CONCLUSIONS OF LAW**

18 1. Under EDCR 2.24, "a district court may reconsider a previously decided issue if  
19 substantially different evidence is introduced or the decision is clearly erroneous." *Masonry & Tile*  
20 *Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). A court has the  
21 inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975).  
22 Moreover, under NRCP 54(b), "the district court may at any time before the entry of a final judgment,  
23 revise orders. . . ." *Barry v. Lindner*, 119 Nev. 661, 670, 81 P.3d 537, 543 (2003).

24 2. The Nevada Supreme Court has provided guidance regarding whether a landowner  
25 qualifies for immunity from suit under Nevada's workers compensation law when the landowner hires a  
26 licensed contractor to perform work on its property. *See, Richards v. Republic Silver State Disposal,*  
27 *Inc.*, 122 Nev. 1213, 148 P. 684 (2006). In *Richards*, an injured employee, Richards, brought suit

1 against Republic for an injury Richards sustained when he fell from a ladder while descending from the  
2 rooftop of Republic. Richards was installing a swamp cooler, which Republic contracted Richard's  
3 employer to complete. In concluding that Republic was immune from suit under Nevada's workers  
4 compensation law, the *Richards* court held: "Thus, in making NIA immunity determinations in these  
5 types of matters, courts must generally look, initially, at whether the injured employee and other parties  
6 were, when the injury occurred, carrying out work under some principal contractor's NRS 624 license."  
7 *Id.* at 1215. The court went on to hold that Republic Silver State was a statutory employer of the injured  
8 worker because he was injured while installing a swamp cooler that his employer, Commercial  
9 Consulting (a licensed contractor under NRS 624) was hired by Republic to install. *Id.* See also, *Harris*  
10 *v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 25 P.3d 206 (2001).

11 3. The facts in *Richards* are strikingly similar to those in the present matter. Schueler was  
12 an employee of YESCO and injured when he fell from a platform on the premises of the MGM Grand  
13 while he replaced LED lights for a marquee sign. It is undisputed that YESCO is a licensed contractor.  
14 Schueler filed suit against MGM for premises liability. The MGM Grand contracted YESCO to perform  
15 the replacement of the LED lights in the marquee sign. Schueler alleges that his injuries resulted from  
16 his fall from the marquee sign, but this fall resulted from a risk directly associated with working on the  
17 sign.

18 4. Upon further review of these facts and applicable law regarding statutory immunity, the  
19 Court finds that Schueler's claim is related to a risk arising out of his duties with YESCO and that  
20 YESCO was a licensed contractor hired by MGM. Therefore, the MGM is a statutory employer immune  
21 from suit. *Republic, supra*; see also *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 25 P.3d 206  
22 (2001).

### 23 III. ORDER

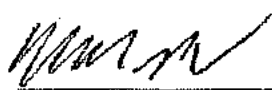
24 IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

- 25 1. The MGM's Motion for Reconsideration on the Judgment on the Pleadings is  
26 GRANTED;
- 27 2. The MGM is a "statutory employer" under Nevada's workers compensation law and is,  
28

1 therefore, immune from suit by Schueler.

2 3. Schueler's complaint as against the MGM is hereby DISMISSED.


3 Dated this 22 of Aug, 2016.

4  
5 

DISTRICT COURT JUDGE 

6 Submitted by:

7 HALL JAFFE & CLAYTON, LLP

8  
9 By   
10 RILEY A. CLAYTON  
11 Nevada Bar No. 005260  
12 7425 Peak Drive  
13 Las Vegas, Nevada 89128  
14 Attorneys for Defendant,  
15 MGM Grand Hotel, LLC, d/b/a MGM Grand  
16  
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CLERK OF THE COURT

1 NEOJ  
2 RILEY A. CLAYTON  
3 Nevada Bar No. 005260  
4 [rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)

5 HALL JAFFE & CLAYTON, LLP  
6 7425 PEAK DRIVE  
7 LAS VEGAS, NEVADA 89128  
8 (702) 316-4111  
9 FAX (702) 316-4114

10 Attorney for Defendant,  
11 MGM Grand Hotel, LLC, d/b/a MGM Grand

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 CHARLES SCHUELER,  
15 Plaintiff,

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

16 v.

17 MGM GRAND HOTEL, LLC, a Domestic  
18 Limited Liability Company d/b/a MGM  
19 GRAND; MGM RESORTS  
20 INTERNATIONAL, A Foreign Corporation  
21 d/b/a MGM GRAND; AD ART, INC., A  
22 Foreign Corporation; 3A COMPOSITES USA  
23 INC., A Foreign Corporation a/k/a  
24 ALUCOBOND TECHNOLOGIES  
25 CORPORATION; DOES 1-25; ROE  
26 CORPORATION 1-25; inclusive,

27 Defendants.

NOTICE OF ENTRY OF ORDER  
GRANTING MGM GRAND'S MOTION  
FOR RECONSIDERATION ON MOTION  
FOR JUDGMENT ON THE PLEADINGS

28 NOTICE IS HEREBY GIVEN that an Order Granting MGM Grand's Motion for  
Reconsideration on Motion for Judgment on the Pleadings was entered in this matter on the 23<sup>rd</sup> day of

///

///

///

1 August, 2016, a copy of which is attached hereto.

2 DATED this 24<sup>th</sup> day of August, 2016.

3 HALL JAFFE & CLAYTON, LLP

4  
5 By 

6 RILEY A. CLAYTON

7 Nevada Bar No. 005260

8 7425 Peak Drive

9 Las Vegas, Nevada 89128

10 Attorneys for Defendant,

11 MGM Grand Hotel, LLC, d/b/a MGM Grand

12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCF 5(b) and EDCR 7.26, I certify that on the 24<sup>th</sup> day of August 2016, I  
14 served the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MGM GRAND'S MOTION**  
15 **FOR RECONSIDERATION ON MOTION FOR JUDGMENT ON THE PLEADINGS** on the  
16 following parties by electronic transmission through the Wiznet system:

17 William R. Brenske, Esq.

18 Ryan D. Krametbauer, Esq.

19 BRENSKE & ANDREEVSKI

20 3800 Howard Hughes Parkway, Suite 500

21 Las Vegas, NV 89169

22 Tel.: (702) 385-3300

23 Fax: (702) 385-3823

24 [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)

25 Attorneys for Plaintiff

26 Timothy F. Hunter, Esq.

27 RAY LEGO & ASSOCIATES

28 7450 Arroyo Crossing Pkwy., Suite 250

Las Vegas, NV 89113

Tel.: (702) 479-4350

Fax: (702) 270-4602

Direct: (702) 479-4371

[tfhunter@travelers.com](mailto:tfhunter@travelers.com)

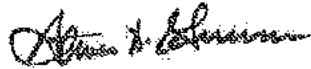
Attorney for Defendant,

Ad Art, Inc.



An Employee of

HALL JAFFE & CLAYTON, LLP



CLERK OF THE COURT

1 OGM  
2 RILEY A. CLAYTON  
3 Nevada Bar No. 005260  
4 [rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)

5 HALL JAFFE & CLAYTON, LLP  
6 7425 PEAK DRIVE  
7 LAS VEGAS, NEVADA 89128  
8 (702) 316-4111  
9 FAX (702) 316-4114

10 Attorney for Defendant,  
11 MGM Grand Hotel, LLC, d/b/a MGM Grand

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 CHARLES SCHUEFLER,  
15 Plaintiff,

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

16 v.

17 MGM GRAND HOTEL, LLC, a Domestic  
18 Limited Liability Company d/b/a MGM  
19 GRAND; MGM RESORTS  
20 INTERNATIONAL, A Foreign Corporation  
21 d/b/a MGM GRAND; AD ART, INC., A  
22 Foreign Corporation; 3A COMPOSITES USA  
23 INC., A Foreign Corporation a/k/a  
24 ALUCOBOND TECHNOLOGIES  
25 CORPORATION; DOES 1-25; ROE  
26 CORPORATION 1-25; inclusive,

27 Defendants.

ORDER GRANTING MGM GRAND'S  
MOTION FOR RECONSIDERATION ON  
MOTION FOR JUDGMENT ON THE  
PLEADINGS

21 On May 16, 2016, Defendant, MGM Grand Hotel, LLC, d/b/a MGM Grand ("MGM"), filed its  
22 Motion for Reconsideration on Motion for Judgment on the Pleadings. On June 3, 2016, Plaintiff filed  
23 his Opposition. On June 14, 2016, MGM filed its Reply in Support of its Motion for Reconsideration.

24 In lieu of oral argument, this Honorable Court, Judge Michael Villani presiding, set the motion  
25 for resolution on its Chambers Calendar. After considered the moving, opposing, and reply briefs, and  
26 the case authority cited therein and finding good cause, the Court issued a minute order on August 16,  
27 2016 with its ruling on the pending motion for reconsideration, and now hereby submits its Findings of

RECEIVED BY  
DEPT 17 ON  
AUG 18 2016

1     **I.     FINDINGS OF FACT**

2             1.     This is a motion for reconsideration following a prior decision on a motion for judgment  
3     on the pleadings filed by the MGM. As such, the allegations of Plaintiff's complaint generally contain  
4     the operative facts that govern the outcome of this matter. The essence of these allegations can be  
5     summarized as follows.

6             2.     On July 13, 2013, the plaintiff, Charles Schueler ("Schueler"), was an employee of  
7     Young Electric Sign Co. ("YESCO"). The MGM hired YESCO, a licensed contractor under NRS 624,  
8     to perform repair work/installing LED lights on the marquee sign in front of the MGM Grand Hotel.

9             3.     When attempting to perform his repair work on the sign, Schueler lost his balance and fell  
10    approximately 150 feet to the ground below. As a result of the fall, Shueler sustained injuries.

11            4.     Schueler alleges, generally, that the MGM was required, as a land owner, to maintain the  
12    area of the marquee sign in a reasonably safe condition and to warn of potential hazards. According to  
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15            5.     The risk of falling from the sign is directly associated with working on the sign, and is  
16    related to a risk arising out of his duties with YESCO.

17     **II.    CONCLUSIONS OF LAW**

18            1.     Under EDCR 2.24, "a district court may reconsider a previously decided issue if  
19    substantially different evidence is introduced or the decision is clearly erroneous." *Masonry & Tile*  
20    *Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). A court has the  
21    inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975).  
22    Moreover, under NRCP 54(b), "the district court may at any time before the entry of a final judgment,  
23    revise orders. . ." *Barry v. Lindner*, 119 Nev. 661, 670, 81 P.3d 537, 543 (2003).

24            2.     The Nevada Supreme Court has provided guidance regarding whether a landowner  
25    qualifies for immunity from suit under Nevada's workers compensation law when the landowner hires a  
26    licensed contractor to perform work on its property. *See, Richards v. Republic Silver State Disposal,*  
27    *Inc.*, 122 Nev. 1213, 148 P. 684 (2006). In *Richards*, an injured employee, Richards, brought suit  
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14 Schueler filed suit against MOM for premises liability. The MGM Grand contracted YESCO to perform  
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17 sign.

18 4. Upon further review of these facts and applicable law regarding statutory immunity, the  
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21 from suit. *Republic, supra*; see also *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 25 P.3d 206  
22 (2001).

### 23 III. ORDER

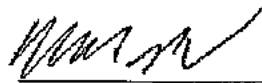
24 IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

- 25 1. The MGM's Motion for Reconsideration on the Judgment on the Pleadings is  
26 GRANTED;  
27 2. The MGM is a "statutory employer" under Nevada's workers compensation law and is,  
28

1 therefore, immune from suit by Schueler.

2 3. Schueler's complaint as against the MGM is hereby DISMISSED.


3 Dated this 22 of Aug, 2016.

4 

5 DISTRICT COURT JUDGE 

6 Submitted by:

7 HALL JAFFE & CLAYTON, LLP

8  
9 By   
10 RILEY A. CLAYTON  
11 Nevada Bar No. 005260  
12 7425 Peak Drive  
13 Las Vegas, Nevada 89128  
14 Attorneys for Defendant,  
15 MGM Grand Hotel, LLC, d/b/a MGM Grand  
16  
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1 **MOT**

2 **RILEY A. CLAYTON**

3 Nevada Bar No. 005260

4 [rclayton@lawhic.com](mailto:rclayton@lawhic.com)

5 **RYAN M. VENCI**

6 Nevada Bar No. 007547

7 [rvenci@lawhic.com](mailto:rvenci@lawhic.com)

8 **HALL JAFFE & CLAYTON, LLP**

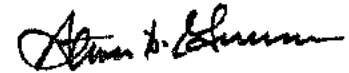
9 7425 PEAK DRIVE

10 LAS VEGAS, NEVADA 89128

11 (702) 316-4111

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09/14/2016 10:50:19 AM



CLERK OF THE COURT

13 Attorney for Defendant,  
14 MGM Grand Hotel, LLC, d/b/a MGM Grand

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

17 **CHARLES SCHUELER,**

18 Plaintiff,

19 v.

20 MGM GRAND HOTEL, LLC, a Domestic  
21 Limited Liability Company d/b/a MGM  
22 GRAND; MGM RESORTS  
23 INTERNATIONAL, A Foreign Corporation  
24 d/b/a MGM GRAND; AD ART, INC., A  
25 Foreign Corporation; 3A COMPOSITES USA  
26 INC., A Foreign Corporation a/k/a  
27 ALUCOBOND TECHNOLOGIES  
28 CORPORATION; DOES 1-25; ROE  
CORPORATION 1-25; inclusive,

Defendants.

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

**DEFENDANT MGM GRAND HOTEL, LLC  
D/B/A MGM GRAND'S MOTION TO  
CERTIFY JUDGMENT AS FINAL  
PURSUANT TO NRCP 54(b)**

Hearing Date: \_\_\_\_\_

Hearing Time: \_\_\_\_\_

23 Defendant MGM Grand Hotel, LLC d/b/a ("MGM"), by and through its attorneys, Hall Jaffe &  
24 Clayton, LLP, hereby move this Court for an Order certifying the Court's order granting it judgment on  
25 the pleadings pursuant to NRCP 12(c) as final pursuant to NRCP 54(b). As the order granting judgment  
26 resolves all the claim against MGM and there being no just reason for delay, MGM requests this Court  
27 expressly direct that the order granting summary judgment is final.

28 ...

1 This Motion is made and based upon the papers and pleadings on file herein, the following  
2 Memorandum of Points and Authorities, NRCP 54(b), and any oral argument the Court may entertain at  
3 the time of the hearing.

4 DATED this 14<sup>th</sup> day of September, 2016.

5 HALL JAFFE & CLAYTON, LLP

6 By Ryan H. Venci

7 RILEY A. CLAYTON  
8 Nevada Bar No. 005260  
9 RYAN M. VENCI  
10 Nevada Bar No. 007547  
11 7425 Peak Drive  
12 Las Vegas, Nevada 89128  
13 Attorneys for Defendant,  
14 MGM Grand Hotel, LLC, d/b/a MGM Grand

12 NOTICE OF MOTION

13 TO: ALL PARTIES; and

14 TO: THEIR ATTORNEYS OF RECORD

15 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing DEFENDANT  
16 MGM GRAND HOTEL, LLC D/B/A/ MGM GRAND'S MOTION TO CERTIFY JUDGMENT AS  
17 FINAL PURSUANT TO NRCP 54(b) before the above-entitled Court on the 19 day of  
18 Oct., 2016, at the hour of In Chambers, a.m., or as soon thereafter as counsel can be heard.

19 DATED this 14<sup>th</sup> day of September, 2016.

20 HALL JAFFE & CLAYTON, LLP

21 By Ryan H. Venci

22 RILEY A. CLAYTON  
23 Nevada Bar No. 005260  
24 RYAN M. VENCI  
25 Nevada Bar No. 007547  
26 7425 Peak Drive  
27 Las Vegas, Nevada 89128  
28 Attorneys for Defendant,  
MGM Grand Hotel, LLC, d/b/a MGM Grand

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.     INTRODUCTION**

3           Plaintiff has alleged a cause of action of "premises liability" against MGM based upon the fact  
4 that Schueler "fell approximately 150 feet to the ground" while performing repairs/renovations on the  
5 marquee sign located in front of MGM.

6           MGM filed a Motion for Judgment on the Pleadings on December 11, 2015, arguing that Plaintiff  
7 failed to state a cognizable cause of action against MGM because: (1) MGM had no duty to maintain the  
8 area where Plaintiff fell as it was an open and obvious condition; and/or (2) Plaintiff's claims against  
9 MGM are subject to the exclusive remedy of worker's compensation as MGM was a "statutory employer"  
10 of Plaintiff. Plaintiff opposed the Motion on February 1, 2016 and MGM filed its Reply in Support of the  
11 Motion on February 5, 2016.

12           The Court held a hearing on the Motion on March 9, 2016, but deferred a ruling on the Motion at  
13 that time. On April 8, 2016, the Court, taking the allegations in the complaint as true and drawing all  
14 inferences in favor of Plaintiff, issued a Minute Order denying the Motion finding, in essence: (1) that  
15 falling from a collapsed walkway or platform is not an open and obvious condition; and (2) the work  
16 performed by Plaintiff was not the kind normally conducted by MGM employees and, pursuant to *Meers*  
17 *v. Haughton Elevator*, 101 Nev. 283 (1985). The Court issued its written Order on May 6, 2016.

18           MGM filed a Motion for Reconsideration of the Court's decision on its Motion for Judgment on  
19 the Pleadings on May 16, 2016, requesting the Court reconsider its Order denying the Motion based on  
20 Nevada Supreme Court's holdings in *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 25 P.3d 206  
21 (2001) and *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 148 P. 684 (2006). After  
22 considering the moving and opposing briefs, on July 13, 2016, the Court issued a Minute Order granting  
23 the Motion for Reconsideration and a formal Order was signed by the Court on August 22, 2016. The  
24 Court ruled that MGM was a statutory employee of Mr. Schueler pursuant to the Court's decision in  
25 *Harris* and *Richards* and, therefore, the MGM is entitled to the statutory protections of the exclusive  
26 remedy of worker's compensation as it relates to Mr. Schueler's claim.

27 ...

28 ...

1 MGM now files the instant motion so that the Court can certify the judgment as final pursuant to  
2 NRCP 54(b). Such a certification would allow an appeal to be taken from the Court's decision within 30  
3 days of a notice of an order pursuant to NRCP 54(b), and would avoid the parties having to wait until the  
4 Court resolves any and all remaining issues between Plaintiff and the remaining Defendants. As the  
5 Court's order dismissing MGM is a complete and final resolution of all Plaintiff's claims against MGM,  
6 and there is no just reason for delay, certification under NRCP 54(b) is appropriate and the Motion should  
7 be granted.

## 8 **II. LEGAL ARGUMENT**

### 9 **A. The Rules of Civil Procedure And Case Law Allow This Court To Certify The** 10 **Judgment In Favor Of The Moving Defendants As Final.**

11 NRCP 54(b) provides:

12 When multiple parties are involved, the court may direct the entry of a final judgment as to one or more but  
13 fewer than all of the parties only upon an express determination that there is no just reason for delay and  
14 upon express direction for entry of judgment. In the absence of such determination and direction, any order  
15 or other form of decision, however designated, which adjudicates the rights and liabilities of fewer than all  
16 the parties shall not terminate the action as to any of the parties, and the order or other form of decision is  
17 subject to revision at any time before the entry of judgment adjudicating the rights and liabilities of all the  
18 parties.

19 In interpreting this Rule, the Nevada Supreme Court has stated: "Under NRCP 54(b), the district  
20 court is required only to make 'an express determination that there is not just reason for delay' and 'an  
21 express direction for the entry of judgment.'" *Mallin v. Farmers Inc. Exchange*, 106 Nev. 606, 609-610,  
22 797 P.2d 978, 981 (1990). Obviously, MGM did not seek Rule 54(b) certification at the time the subject  
23 motion was decided. Indeed, Plaintiff still has viable claims against the other Defendants for those other  
24 defendants' alleged wrongdoing with respect to the subject sign and Plaintiff's alleged injuries. Thus,  
25 not all claims against all parties have been resolved by MGM's motion for judgment on the pleadings.  
26 As such, MGM now files the instant motion seeking that this Court certify the judgment pursuant to  
27 Rule 54(b).

### 28 **B. There Is No Just Reason for Delay And The Only Party That Will Be Prejudiced Is** **Moving Defendant If The Court Does Not Certify The Judgment As Final.**

In *Mallin*, the Nevada Supreme Court identified certain considerations that the trial court should  
use in deciding whether to certify a judgment as final. Specifically, the trial court should consider the

1 prejudice to the party in being forced to wait to bring its appeal and the prejudice to the party remaining  
2 below. *Id.* at 611. Indeed, the Nevada Supreme Court stated: "The district court should weigh the  
3 prejudice to the various parties and should certify a judgment as final in a "parties' case if the prejudice  
4 to the eliminated party would be greater than the prejudice to the parties remaining below." *Id.*

5 In this case, there is absolutely no prejudice to the Plaintiff or the remaining defendants if the  
6 judgment is certified under Rule 54(b). The issues of liability as related to MGM are different from that  
7 of the other Defendants as MGM is the property owner and, thus, subject to separate and distinct  
8 considerations that are not applicable to the other Defendants. Specifically, as MGM pointed out in its  
9 Motion, and with which the Court ultimately agreed, MGM is entitled to the statutory protection of the  
10 worker's compensation system for any claims of injury by Plaintiff. As the property owner who hired an  
11 NRS Chapter 624 licensed contractor and that contractor's employee was injured performing a task that  
12 was part of the work the licensed contractor was hired to perform, Nevada law protects MGM from a  
13 suit such as the one filed by Plaintiff. Such protection, however, is not available to any of the other  
14 Defendants as they are not the "property owner" nor did they hire the licensed contractor through whom  
15 the exclusivity of worker's compensation protection runs. Thus, the decision on that issue does not  
16 affect any of the issues to be litigated between Plaintiff and the remaining Defendants.

17 Likewise, the issue as to the remaining Defendants, related to the product liability, do not  
18 implicate MGM and do not require MGM as a party to fully litigate those issues. They can continue on  
19 with their litigation based on the acts or failure to act on the part of Plaintiff and the remaining  
20 Defendants. All of the facts and evidence surrounding those issues are independent of the claims,  
21 actions and/or inactions alleged against MGM. In other words, Plaintiff will be allowed to have his day  
22 in court and both sides will have this matter decided on its merits as it relates to those parties. Therefore,  
23 because the facts and liability for this incident revolve solely around the Plaintiff and the remaining  
24 defendants, there would be no prejudice to them because the case would move forward just like it should  
25 have in the first place.

26 On the other hand, the prejudice to MGM is significant. Respectfully, MGM has been seeking to  
27 be extricated from this case since the very outset, noting that Nevada law is clear regarding the lack of  
28 liability that they might have in a situation such as the one presented in Plaintiff's Complaint. For that

1 reason, MGM has made legitimate attempts to extricate itself from this case and now that its has  
2 obtained a judgment on the pleadings in its favor, it wants to close this chapter and move on – not be  
3 stuck in “limbo” for the next two or three years awaiting an outcome in the remaining lawsuit. Indeed,  
4 MGM has expended significant time and effort seeking to extricate itself and, respectfully, MGM now  
5 should rightfully be allowed to know where they stand by having the judgment certified, and have the  
6 appeal clock commence now as opposed to three years from now. *See e.g., Bowyer v. Davidson*, 94  
7 Nev. 718, 584 P.2d 686 (1978)(appealing from summary judgment following final judgment was proper,  
8 in light of the fact that the summary judgment did not contain certification, and, thus, had been  
9 interlocutory in nature, and not immediately appealable). Therefore, because MGM would be the only  
10 one to suffer any prejudice, there truly is no just reason for delay in having this Court certify the  
11 judgment as final under NRCP 54(b).

### 12 III. CONCLUSION

13 For the foregoing reasons, MGM respectfully requests that this Court make an express  
14 determination that there is no just reason for delay and an express direction for the entry of a final  
15 judgment and grant the instant Motion.

16 DATED this 14<sup>th</sup> day of September, 2016.

17 HALL JAFFE & CLAYTON, LLP

18 By

  
19 RILEY A. CLAYTON

20 Nevada Bar No. 005260

21 RYAN M. VENCI

22 Nevada Bar No. 007547

23 7425 Peak Drive

24 Las Vegas, Nevada 89128

25 Attorneys for Defendant,


26 MGM Grand Hotel, LLC, d/b/a MGM Grand  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 14 day of September, 2016, I  
3 served the foregoing **DEFENDANT MGM GRAND HOTEL, LLC D/B/A MGM GRAND'S**  
4 **MOTION TO CERTIFY JUDGMENT AS FINAL PURSUANT TO NRCP 54(b)** on the following  
5 parties by electronic transmission through the Wiznet system:

6 William R. Brenske, Esq.  
7 Ryan D. Krametbauer, Esq.  
8 **BRÉNSKE & ANDREEVSKI**  
9 3800 Howard Hughes Parkway, Suite 500  
Las Vegas, NV 89169  
*Attorneys for Plaintiff*

10 Timothy F. Hunter, Esq.  
11 **RAY LEGO & ASSOCIATES**  
12 7450 Arroyo Crossing Pkwy., Suite 250  
Las Vegas, NV 89113  
*Attorney for Defendant,*  
13 *Ad Art, Inc.*

14   
15 \_\_\_\_\_  
An Employee of  
16 **HALL JAFFE & CLAYTON, LLP.**  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
CLERK OF THE COURT

1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
3 BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, Suite 500  
4 Las Vegas, Nevada 89169  
Telephone: (702) 385-3300  
5 Facsimile: (702) 385-3823  
Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
6 Attorneys for Plaintiff,  
Charles Schueler  
7

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,

11 Plaintiff,

12 v.

13 MGM GRAND HOTEL, LLC, a Domestic Limited  
Liability Company d/b/a MGM GRAND; AD ART,  
14 INC., A Foreign Corporation; 3A COMPOSITES  
USA INC., a Foreign Corporation a/k/a  
15 ALUCOBOND TECHNOLOGIES  
CORPORATION; DOES 1 - 25; ROE  
16 CORPORATIONS 1 - 25; inclusive,

17 Defendants.  
18

Case No.: A-15-722391-C  
Dept. No.: XVII

**PLAINTIFF CHARLES  
SCHUELER'S NOTICE OF NO  
OPPOSITION TO DEFENDANT  
MGM GRAND HOTEL, LLC  
D/B/A MGM GRAND'S  
MOTION TO CERTIFY  
JUDGMENT AS FINAL  
PURSUANT TO NRCP 54(b)**

Date of Hearing: 10/19/16  
Time of Hearing: In Chambers

19 Plaintiff, Charles Schueler, by and through his attorneys of record, Brenske & Andreevski,  
20 hereby gives notice he has no opposition to Defendant MGM Grand Hotel, LLC d/b/a MGM  
21 Grand's Motion to Certify Judgment as Final Pursuant to NRCP 54(b).

22 ///

23 ///

24 ///

25 ///

26 ///

27

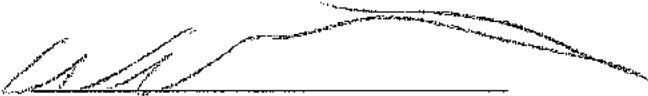
28

Brenske & Andreevski  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 385-3300 · Fax (702) 385-3823

1 Although Plaintiff does not agree with Defendant's arguments as to why it was dismissed as a  
2 Defendant from the lawsuit, Plaintiff has no opposition to Defendant's request to certify the  
3 judgment as final pursuant to NRCP 54(b).

4 DATED this 21<sup>st</sup> day of September, 2016.

5 **BRENSKE & ANDREEVSKI**

6  
7   
8 WILLIAM R. BRENSKE, ESQ.  
9 Nevada Bar No. 1806  
10 RYAN D. KRAMETBAUER, ESQ.  
11 Nevada Bar No. 12800  
12 3800 Howard Hughes Parkway, Suite 500  
13 Las Vegas, Nevada 89169  
14 *Attorneys for Plaintiff,*  
15 *Charles Schueler*

16 **CERTIFICATE OF SERVICE**

17 I am employed with the law office of Brenske & Andreevski. I am over the age of 18 and  
18 not a party to the within action; my business address is 3800 Howard Hughes Parkway, Suite 500,  
19 Las Vegas, Nevada 89169. I am "readily familiar" with the firm's practice of collection and  
20 processing correspondence for mailing. Under its practice mail is to be deposited with the U. S.  
21 Postal Service on that same day as stated below, with postage thereon fully prepaid.

22 I served the foregoing document described as "PLAINTIFF CHARLES SCHUELER'S  
23 NOTICE OF NO OPPOSITION TO DEFENDANT MGM GRAND HOTEL, LLC D/B/A  
24 MGM GRAND'S MOTION TO CERTIFY JUDGMENT AS FINAL PURSUANT TO NRCP

25 54(b)" on this 21<sup>st</sup> day of September, 2016, to all interested parties as follows:

26 ☐ BY MAIL: Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed  
27 envelope addressed as follows:  
28

Brenske & Andreevski  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 385-3360 • Fax (702) 385-3823


☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document  
this date via telecopier to the facsimile number shown below:

☒ BY ELECTRONIC SERVICE: by electronically filing and serving the foregoing document  
with the Eighth Judicial District Court's WizNet system:


Timothy F. Hunter  
RAY LEGO & ASSOCIATES  
7450 Arroya Crossing Party, Suite 250  
Las Vegas, Nevada 89113  
*Attorney For Defendant,*  
*Ad Art, Inc.*  
**Facsimile No.: 702-270-4602**

LeAnn Sanders  
Edward Silverman  
ALVERSON, TAYLOR,  
MORTENSEN & SANDERS  
7401 West Charleston Blvd.  
Las Vegas, Nevada 89117  
*Attorneys for Defendant,*  
*3A Composites USA Inc., a/k/a*  
*Alucobond Technologies Corporation*  
**Facsimile No.: 702-385-7000**

Riley A. Clayton  
HALL JAFFE & CLAYTON, LLP  
7425 Peak Drive  
Las Vegas, Nevada 89128  
*Attorneys for Defendant,*  
*MGM Grand Hotel, LLC,*  
*d/b/a MGM Grand*  
**Facsimile No.: 702-316-4114**



An employee of the law office of  
Brenske & Andreevski



CLERK OF THE COURT

1 **NEOJ**

2 **RILEY A. CLAYTON**

3 Nevada Bar No. 005260

4 [rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)

5 **RYAN M. VENCI**

6 Nevada Bar No. 007547

7 [rvenci@lawhjc.com](mailto:rvenci@lawhjc.com)

8 **HALL JAFFE & CLAYTON, LLP**

9 7425 PEAK DRIVE

10 LAS VEGAS, NEVADA 89128

11 (702) 316-4111

12 FAX (702)316-4114

13 Attorney for Defendant,

14 MGM Grand Hotel, LLC, d/b/a MGM Grand

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **CHARLES SCHUELER,**

18 Plaintiff,

19 v.

20 MGM GRAND HOTEL, LLC, a Domestic  
21 Limited Liability Company d/b/a MGM  
22 GRAND; MGM RESORTS  
23 INTERNATIONAL, A Foreign Corporation  
24 d/b/a MGM GRAND; AD ART, INC., A  
25 Foreign Corporation; 3A COMPOSITES USA  
26 INC., A Foreign Corporation a/k/a  
27 ALUCOBOND TECHNOLOGIES  
28 CORPORATION; DOES 1-25; ROE  
CORPORATION 1-25; inclusive,

Defendants.

CASE NO.: A-15-722391-C

DEPT NO.: XVII

**NOTICE OF ENTRY OF ORDER ON  
DEFENDANT MGM GRAND HOTEL, LLC  
D/B/A MGM GRAND'S MOTION TO  
CERTIFY JUDGMENT AS FINAL  
PURSUANT TO NRCP 54(b)**

23 TO: ALL PARTIES ABOVE-NAMED; and

24 TO: THEIR RESPECTIVE ATTORNEYS OF RECORD.

25 PLEASE TAKE NOTICE that an Order on Defendant MGM Grand Hotel, LLC d/b/a MGM

26 ///

27 ///

28 ///

Grand's Motion to Certify Judgment as Final Pursuant to NRCP 54(b) has been entered on November 3, 2016, a copy of which is attached hereto.

DATED this 7<sup>th</sup> day of November, 2016.

HALL JAFFE & CLAYTON, LLP

By Riley A. Clayton

RILEY A. CLAYTON

Nevada Bar No. 005260

RYAN M. VENCI

Nevada Bar No. 007547

7425 Peak Drive

Las Vegas, Nevada 89128

Attorneys for Defendant,

MGM Grand Hotel, LLC, d/b/a MGM Grand

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 7 day of November, 2016, I served the foregoing NOTICE OF ENTRY OF ORDER ON DEFENDANT MGM GRAND HOTEL, LLC D/B/A MGM GRAND'S MOTION TO CERTIFY JUDGMENT AS FINAL PURSUANT TO NRCP 54(b) on the following parties by electronic transmission through the Wiznet system:

William R. Brenske, Esq.

Ryan D. Krametbauer, Esq.

BRENSKE & ANDREEVSKI

3800 Howard Hughes Parkway, Suite 500

Las Vegas, NV 89169

*Attorneys for Plaintiff*

Timothy F. Hunter, Esq.

RAY LEGO & ASSOCIATES

7450 Arroyo Crossing Pkwy., Suite 250

Las Vegas, NV 89113

*Attorney for Defendant,*

*Ad Art, Inc.*

Leann Sanders, Esq.

Edward Silverman, Esq.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

7401 W. Charleston Boulevard

Las Vegas, NV 89117

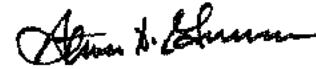
*Attorneys for Defendant,*

*3A Composites USA Inc., f/k/a*

*Alucobond Technologies Corporation*

James R. Jaffe  
An Employee of HALL JAFFE & CLAYTON, LLP

1 **ORDG**  
2 **RILEY A. CLAYTON**  
3 Nevada Bar No. 005260  
4 [rclayton@lawhjc.com](mailto:rclayton@lawhjc.com)  
5 **RYAN M. VENCI**  
6 Nevada Bar No. 007547  
7 [rvenci@lawhjc.com](mailto:rvenci@lawhjc.com)



CLERK OF THE COURT

8 **HALL JAFFE & CLAYTON, LLP**  
9 7425 PEAK DRIVE  
10 LAS VEGAS, NEVADA 89128  
11 (702) 316-4111  
12 FAX (702) 316-4114

13 Attorney for Defendant,  
14 MGM Grand Hotel, LLC, d/b/a MGM Grand

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

17 **CHARLES SCHUELER,**  
18 **Plaintiff,**

CASE NO.: A-15-722391-C  
DEPT NO.: XVII

19 v.

**ORDER ON DEFENDANT MGM GRAND  
HOTEL, LLC D/B/A MGM GRAND'S  
MOTION TO CERTIFY JUDGMENT AS  
FINAL PURSUANT TO NRCP 54(b)**

20 **MGM GRAND HOTEL, LLC, a Domestic  
Limited Liability Company d/b/a MGM  
GRAND; MGM RESORTS  
INTERNATIONAL, A Foreign Corporation  
d/b/a MGM GRAND; AD ART, INC., A  
Foreign Corporation; 3A COMPOSITES USA  
INC., A Foreign Corporation a/k/a  
ALUCOBOND TECHNOLOGIES  
CORPORATION; DOES 1-25; ROE  
CORPORATION 1-25; inclusive,**

21 **Defendants.**

22  
23 The Court having reviewed Defendant MGM Grand Hotel, LLC d/b/a MGM Grand's Motion to  
24 Certify Judgment as Final Pursuant to NRCP 54(b), there being no opposition thereto and good cause  
25 appearing thereof;

26 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Certify  
27 Judgment as Final Pursuant to NRCP 54(b) is GRANTED; and

28 **RECEIVED BY**  
... **DEPT 17 ON**  
**NOV - 1 2016**

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is no just reason for  
2 delay of the entry of such final judgment in favor of Defendant MGM Grand Hotel, LLC d/b/a MGM  
3 Grand.

4 IT IS SO ORDERED this 3 day of November, 2016.

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6 

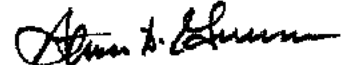
7  
8 DISTRICT COURT JUDGE *JB*  
MICHAEL P. VILLANI

9 Prepared and Submitted by:

10 HALL JAFFE & CLAYTON, LLP

11  
12  
13 By: 

RILEY A. CLAYTON, ESQ.  
Nevada Bar No. 005260  
RYAN M. VENCI, ESQ.  
Nevada Bar No. 007547  
7425 Peak Drive  
Las Vegas, Nevada 89128  
Attorneys for Defendant MGM Grand, LLC  
d/b/a MGM Grand



CLERK OF THE COURT

1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 JENNIFER R. ANDREEVSKI, ESQ.  
Nevada Bar No. 9095  
3 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
4 BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, Suite 500  
5 Las Vegas, Nevada 89169  
Telephone: (702) 385-3300  
6 Facsimile: (702) 385-3823  
Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
7 *Attorneys for Plaintiff,*  
8 *Charles Schueler*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 CHARLES SCHUELER,

12 Plaintiff,

13 v.

14 MGM GRAND HOTEL, LLC, a Domestic Limited  
15 Liability Company d/b/a MGM GRAND; AD ART,  
16 INC., A Foreign Corporation; 3A COMPOSITES  
17 USA INC., a Foreign Corporation a/k/a  
ALUCOBOND TECHNOLOGIES  
18 CORPORATION; DOES 1 – 25; ROE  
CORPORATIONS 1 - 25; inclusive,

19 Defendants.

Case No.: A-15-722391-C

Dept. No.: XVII

NOTICE OF APPEAL

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21 ///

22 ///

23 ///

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26 ///

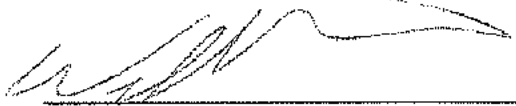
27 ///

28 ///

1 Notice is hereby given that Plaintiff Charles Schueler hereby appeals to the Supreme Court  
2 of Nevada from the Order Granting MGM Grand's Motion for Reconsideration on Motion for  
3 Judgment on the Pleadings entered August 23, 2016 and certified as final pursuant to Nevada Rule  
4 of Civil Procedure 54(b) on November 4, 2016 - notice of which was served on November 7, 2016.

5 DATED this 29<sup>th</sup> day of November, 2016.

6  
7 **BRENSKE & ANDREEVSKI**

8  
9   
10 **WILLIAM R. BRENSKE, ESQ.**

Nevada Bar No. 1806

**JENNIFER R. ANDREEVSKI, ESQ.**

Nevada Bar No. 9095

3800 Howard Hughes Parkway

Las Vegas, Nevada 89169

*Attorneys for Plaintiffs,*

*Ricky and Judy Busick*

11  
12  
13  
14  
15 **CERTIFICATE OF SERVICE**

16 I am employed with the law office of Brenske & Andreevski. I am over the age of 18 and  
17 not a party to the within action; my business address is 3800 Howard Hughes Parkway, Suite 500,  
18 Las Vegas, Nevada 89169. I am "readily familiar" with the firm's practice of collection and  
19 processing correspondence for mailing. Under its practice mail is to be deposited with the U. S.  
20 Postal Service on that same day as stated below, with postage thereon fully prepaid.

21  
22 I served the foregoing document described as "**NOTICE OF APPEAL**" on this 30<sup>th</sup> day of  
23 November, 2016, to all interested parties as follows:

24 ☐ BY MAIL: Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed  
25 envelope addressed as follows:

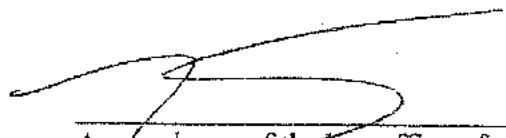
26 ☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document  
27 this date via telecopier to the facsimile number shown below:  
28

1 ☒ BY ELECTRONIC SERVICE: by electronically filing and serving the foregoing document  
2 with the Eighth Judicial District Court's WizNet system:

3 Timothy F. Hunter  
4 RAY LEGO & ASSOCIATES  
5 7450 Arroya Crossing Party, Suite 250  
6 Las Vegas, Nevada 89113  
7 *Attorney For Defendant,*  
8 *Ad Art, Inc.*  
9 *Facsimile No.: 702-270-4602*

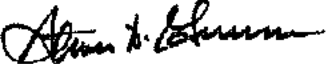
LeAnn Sanders  
Edward Silverman  
ALVERSON, TAYLOR,  
MORTENSEN & SANDERS  
7401 West Charleston Blvd.  
Las Vegas, Nevada 89117  
*Attorneys for Defendant,*  
*3A Composites USA Inc., a/k/a*  
*Alucobond Technologies Corporation*  
*Facsimile No.: 702-385-7000*

10 Riley A. Clayton  
11 HALL JAFFE & CLAYTON, LLP  
12 7425 Peak Drive  
13 Las Vegas, Nevada 89128  
14 *Attorneys for Defendant,*  
15 *MGM Grand Hotel, LLC,*  
16 *d/b/a MGM Grand*  
17 *Facsimile No.: 702-316-4114*

  
An employee of the law office of  
Brenske & Andreevski

Brenske & Andreevski  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 385-3300 • Fax (702) 385-3823

1 WILLIAM R. BRENSKE, ESQ.  
Nevada Bar No. 1806  
2 RYAN D. KRAMETBAUER, ESQ.  
Nevada Bar No. 12800  
3 BRENSKE & ANDREEVSKI  
3800 Howard Hughes Parkway, Suite 500  
4 Las Vegas, Nevada 89169  
Telephone: (702) 385-3300  
5 Facsimile: (702) 385-3823  
6 Email: [wbrenske@hotmail.com](mailto:wbrenske@hotmail.com)  
Attorneys for Plaintiff,  
7 Charles Schueler

  
CLERK OF THE COURT

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 CHARLES SCHUELER,

Case No.: A-15-722391-C

Dept. No.: XVII

11 Plaintiff,

12 v.

13 MGM GRAND HOTEL, LLC, a Domestic Limited  
Liability Company d/b/a MGM GRAND; AD ART,  
14 INC., A Foreign Corporation; 3A COMPOSITES  
USA INC., a Foreign Corporation a/k/a  
15 ALUCOBOND TECHNOLOGIES  
CORPORATION; DOES 1 - 25; ROE  
16 CORPORATIONS 1 - 25; inclusive,

17 Defendants.  
18

CASE APPEAL STATEMENT

19 1. Name of appellant filing this case appeal statement: Charles Schueler.

20 2. Identify the judge issuing the decision, judgment, or order appealed from: Hon.  
21 Michael P. Villani, District Court Judge, Eighth Judicial District Court for Clark County, Nevada.

22 3. Identify each appellant and the name and address of counsel for each appellant:  
23 Charles Schuler, Appellant, is represented by William R. Brenske, Jennifer R. Andreevski, and  
24 Ryan D. Krametbauer of Brenske & Andreevski, 3800 Howard Hughes Parkway, Suite 500, Las  
25 Vegas, Nevada, 89169.  
26

27 4. Identify each respondent and the name and address of appellate counsel, if known,  
28 for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much

1 and provide the name and address of that respondent's trial counsel): MGM Grand Hotel, LLC d/b/a  
2 MGM Grand, Respondent, was represented by Riley A. Clayton and Ryan M. Venci of Hall Jaffe &  
3 Clayton, LLP, 7425 Peak Drive, Las Vegas, Nevada 89128, during the proceedings before the  
4 Eighth Judicial District Court for Clark County, Nevada. It is unknown if the above-named counsel  
5 will continue to represent Respondent during the appellate process.  
6

7 5. Indicate whether any attorney identified above in response to question 3 or 4 is not  
8 licensed to practice law in Nevada and, if so, whether the district court granted that attorney  
9 permissions to appear under SCR 42 (attach a copy of any district court order granting such  
10 permission): All attorneys listed in questions 3 and 4 above are licensed to practice law in Nevada.

11 6. Indicate whether appellant was represented by appointed or retained counsel in the  
12 district court: Appellant was represented by retained counsel in the district court.  
13

14 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:  
15 Appellant is represented by retained counsel on appeal.

16 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the  
17 date of entry of the district court order granting such leave: Appellant neither applied for, nor was  
18 granted, leave to proceed in forma pauperis.

19 9. Indicate the date the proceedings commenced in the district court (e.g., date  
20 complaint, indictment, information, or petition was filed): The Complaint was filed in the Eighth  
21 Judicial District Court for Clark County, Nevada on July 30, 2015.  
22

23 10. Provide a brief description of the nature of the action and result in the district court,  
24 including the type of judgment or order being appealed and the relief granted by the district court:  
25 Charles Schueler sued MGM Grand, LLC for premises liability, after he fell through the floor of the  
26 marquee sign while replacing the LED screen. He also sued Ad Art, Inc. and 3A Composites USA,  
27 Inc. for product liability. MGM Grand, LLC filed a motion for judgment on the pleadings arguing  
28

1 it had no duty to protect Mr. Schuler from what it called an obvious danger, or in the alternative, it  
2 was Mr. Schueler's statutory employer and therefore not liable for any harms he may have suffered.  
3 Initially, the District Court denied MGM Grand, LLC's motion indicating the collapse of the floor  
4 of the sign was not an open and obvious danger, and that Mr. Schueler was not performing work  
5 normally performed by MGM employees and therefore MGM was not his statutory employer.  
6 Without citing any new evidence or legal authority, MGM Grand, LLC filed a Motion for  
7 Reconsideration. The Court granted that motion and ruled MGM Grand, LLC was Mr. Schueler's  
8 statutory employer and should be dismissed. The Court certified that judgment as final pursuant to  
9 a motion filed by MGM and unopposed by all parties.  
10

11 11. Indicate whether the case has previously been the subject of an appeal to or original  
12 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of  
13 the prior proceeding: This case was not previously the subject of an appeal or an original writ  
14 proceeding.  
15

16 12. Indicate whether this appeal involves child custody or visitation: This appeal does  
17 not involve child custody or visitation.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

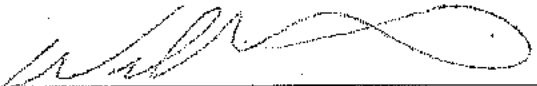
28

Brenske & Andreevski  
3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
(702) 385-3300 · Fax (702) 385-3823

1 13. If this is a civil case, indicate whether this appeal involves the possibility of  
2 settlement: Given Respondent was dismissed on the pleadings, it is Appellant's belief that it is  
3 highly unlikely this appeal may settle.

4 DATED this 25th day of November, 2016.

5 BRENSKE & ANDREEVSKI

6  
7 

8 WILLIAM R. BRENSKE, ESQ.  
9 Nevada Bar No. 1806  
JENNIFER R. ANDREEVSKI, ESQ.  
10 Nevada Bar No. 9095  
3800 Howard Hughes Parkway  
Las Vegas, Nevada 89169  
*Attorneys for Plaintiffs,*  
*Ricky and Judy Busick*

11  
12  
13  
14 **CERTIFICATE OF SERVICE**

15 I am employed with the law office of Brenske & Andreevski. I am over the age of 18 and  
16 not a party to the within action; my business address is 3800 Howard Hughes Parkway, Suite 500,  
17 Las Vegas, Nevada 89169. I am "readily familiar" with the firm's practice of collection and  
18 processing correspondence for mailing. Under its practice mail is to be deposited with the U. S.  
19 Postal Service on that same day as stated below, with postage thereon fully prepaid.

20  
21 I served the foregoing document described as "**CASE APPEAL STATEMENT**" on this  
22 25th day of November, 2016 to all interested parties as follows:

23 ☐ BY MAIL: Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed  
24 envelope addressed as follows:

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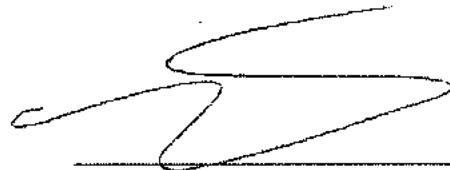
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