

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

MAX VARGAS,  
Appellant,  
v.  
ORTIZ FAMILY LLC d/b/a EL SELLITO  
ROJO; J MORALES INC.; DOE BOUNCERS  
I-V; DOES VI-X; and ROE CORPORATIONS  
X-XV, inclusive,  
R

No. 82218  
Electronically Filed  
Jan 19 2021 01:20 p.m.  
DOCKETING Elizabeth N. Brown  
CIVIL APPEALS Clerk of Supreme Court

## GENERAL INFORMATION

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

## WARNING

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

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

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

1. Judicial District Eighth Department 32  
County Clark Judge Rob Bare  
District Ct. Case No. A-18-768988-C

**2. Attorney filing this docketing statement:**

Attorney Oscar Peralta Telephone (702) 758-8700  
Firm Peralta Law Group  
Address 101 Convention Center Dr., Suite 340  
Las Vegas, NV 89109

Client(s) MAX VARGAS

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

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

Attorney Ogonna M. Brown Telephone (702) 949-8200  
Firm Lewis Roca Rothgerber Christie LLP  
Address 3993 Howard Hughes Pkwy., Suite 600  
Las Vegas, Nevada 89169

Client(s) J MORALES INC.

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

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

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

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

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

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

None.

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

None.

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

This is a case for personal injuries arising out of the physical attack against Plaintiff by employees of El Sellito Rojo nightclub, operated by Defendant ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO on real property owned in fact or by operation of law by Defendant J MORALES INC. A default judgment was obtained after Defendants failed to make any appearance in the case. Nearly 15 months later, on October 27, 2020, Defendant J MORALES INC. filed a motion to set aside the judgment pursuant to NRCP 60(b), predicated on the allegation of Defendant J MORALES INC.'s manager, Jose Morales, that Defendant mistakenly believed that it did not have to defend the suit or otherwise appear in the action. Plaintiff opposed the motion principally on the grounds that the District Court lacked jurisdiction because more than six months had elapsed since the date of service of written notice of entry of the default judgment. The District Court judge granted Defendant J MORALES INC.'s motion to set aside the judgment.

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

The principal issue on appeal is whether the District Court has jurisdiction to set aside a judgment pursuant to NRCP 60(b)(1) more than six months after entry of final judgment.

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

Plaintiff is not aware of any similar issues currently pending before this Court.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain: Doan v. Wilkerson, 130 Nev. 449, 327 P.3d 498 (2014);

Union Petrochemical Corp. of Nev. v. Scott, 96 Nev. 337, 609 P.2d 323 (1980);

Rodriguez v. Fiesta Palms, LLC, 134 Nev. 654, 428 P.3d 255 (2018).

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

The Nevada Supreme Court should retain this matter because it raises "as a principal issue a question of statewide public importance" regarding the finality of judgments. NRAP 17(a) (12). This is an appeal of a judge's order that contravened well-settled Nevada precedent.

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

Was it a bench or jury trial? \_\_\_\_\_

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

N/A

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** Nov 24, 2020

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

**17. Date written notice of entry of judgment or order was served** Nov 24, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

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

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

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

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** Dec 11, 2020

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

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

NRAP 4(a)

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**SUBSTANTIVE APPEALABILITY**

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

(a)

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                   | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                   | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                   | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order: NRAP 3A(b)(8) provides this Court jurisdiction to review the matter because this is an appeal of a special order entered after final judgment on a motion under NRCP 60(b)(1) that was filed and served more than 60 days after entry of the default judgment.

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

(a) Parties:

Plaintiff/Appellant Max Vargas

Defendant/Respondent J Morales Inc.

Defendant Ortiz Family LLC d/b/a El Sellito Rojo

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

Defendant Ortiz Family LLC d/b/a El Sellito Rojo never made any appearance in the case.

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

Negligence; Negligent Use of Excessive Force; Assault and Battery; Negligence Per Se; Intentional Infliction of Emotional Distress; Vicarious Liability-Respondeat Superior; Negligent Hiring, Retention, Training, and Supervision.

Disposition Date: July 25, 2019

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

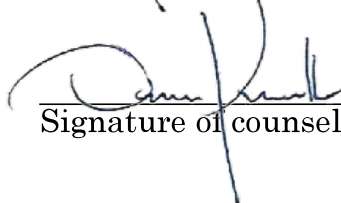
## VERIFICATION

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

Max Vargas  
Name of appellant

Oscar Peralta  
Name of counsel of record

01/19/2021  
Date

  
Signature of counsel of record

Nevada - Clark County  
State and county where signed

## CERTIFICATE OF SERVICE

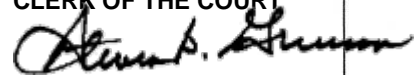
I certify that on the 19th day of January, 2021, I served a copy of this completed docketing statement upon all counsel of record:

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

Ogonna M. Brown, Esq.  
Lewis Roca Rothberger Christie LLP  
3993 Howard Hughes Pkwy., Ste. 600  
Las Vegas, NV 89169  
Attorney for Defendant J Morales Inc.

Dated this 19th day of January, 2021

  
Signature



**COMP**  
**OSCAR PERALTA, ESQ.**  
Nevada Bar No. 13559  
**PERALTA LAW GROUP**  
101 Convention Center Dr., Ste. 340  
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Tel: (702) 758-8700  
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Email: oscar@peraltalawgroup.com  
*Attorney for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MAX VARGAS,

Plaintiff,

v.

ORTIZ FAMILY LLC d/b/a EL SELLITO  
ROJO; J MORALES INC.; DOE BOUNCERS  
I-V; DOES VI-X; and ROE CORPORATIONS  
X-XV, inclusive,

Defendants.

A-18-768988-C

Case No. :

Dept. No.:

Department 32

**COMPLAINT**

COMES NOW, Plaintiff, MAX VARGAS, by and through his attorney of record, Oscar Peralta, Esq. of Peralta Law Group, and for his causes of action against Defendants, and each of them, alleges and complains as follows:

**Jurisdiction**

1. All of the material facts and circumstances that give rise to the subject lawsuit occurred in Clark County, Nevada.
2. Plaintiff, MAX VARGAS, is, and at all times mentioned in this Complaint was, a resident of Clark County, Nevada.

1 3. Defendant, ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO, is a Domestic Limited-  
2 Liability Company, qualified to do business and doing business in the State of Nevada.

3 4. Defendant, J MORALES INC. is a Domestic Corporation, qualified to do business and  
4 doing business in the State of Nevada.

5 5. DOES BOUNCERS I-V were employees of ORTIZ FAMILY LLC d/b/a EL SELLITO  
6 ROJO and were acting within the course and scope of their employment and were, upon  
7 information and belief, residents of Las Vegas, Nevada, County of Clark.

8 6. The true names and capacities, whether individual or corporate, associate, partnership or  
9 otherwise of Defendants herein designated as DOES VI through X and ROE CORPORATIONS X  
10 through XV are unknown to Plaintiff at this time. Therefore, Plaintiff sues these Defendants by such  
11 fictitious names and when their true names and capacities are ascertained, Plaintiffs will amend this  
12 Complaint accordingly. Plaintiffs believe that each of these Defendants designated as a DOE or  
13 ROE CORPORATION is responsible in some manner for the injuries and damages suffered by  
14 Plaintiff.

15  
16  
17  
18 **Specific Allegations**

19 7. At all times herein mentioned, all of the Defendants were agents, servants, and employees of  
20 each and every other Defendant and were working and acting within the course of said employment  
21 and agency.

22 8. At all times pertinent hereto, Defendant ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO  
23 maintained premises, or is the successor in interest of the entity that maintained premises, located at  
24 3977 E. Vegas Valley Drive, Las Vegas, County of Clark, State of Nevada 89121, that operate as a  
25 night club under the name EL SELLITO ROJO, where the public is invited for the purposes of  
26 drinking alcohol, dancing, and listening to music.  
27  
28

1 9. At all times pertinent hereto, Defendant J MORALES INC. owned, or is the successor in  
2 interest of the entity that owned, the premises located at 3977 E. Vegas Valley Drive, Las Vegas,  
3 County of Clark, State of Nevada 89121, that operate as a night club under the name EL SELLITO  
4 ROJO, where the public is invited for the purposes of drinking alcohol, dancing, and listening to  
5 music.  
6

7 10. On or about March 22, 2017, Plaintiff was legally and lawfully upon the aforementioned  
8 premises of Defendant ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO and/or any predecessor in  
9 interest of this Defendant (henceforth referred to collectively as Defendant ORTIZ FAMILY LLC  
10 d/b/a EL SELLITO ROJO) and Defendant J MORALES INC. and/or any predecessor in interest of  
11 this Defendant (henceforth referred to collectively as Defendant J MORALES INC.) as a customer,  
12 guest, and patron of EL SELLITO ROJO night club located in Las Vegas, Nevada.  
13

14 11. Plaintiff and a friend of his, Arturo Mondragon, Jr., settled at a table and ordered drinks.  
15

16 12. Approximately two hours later, Plaintiff and Mr. Mondragon exited the establishment to  
17 purchase food from a taco stand located just outside of the premises.  
18

19 13. Once Plaintiff and Mr. Mondragon finished their food, they attempted to reenter the night  
20 club, at which time they were stopped by a DOE BOUNCER who refused them entry.  
21

22 14. Plaintiff protested, explaining to DOE BOUNCERS that he and Mr. Mondragon had just  
23 been inside the night club and still had drinks at their table.  
24

25 15. DOE BOUNCER became aggressive as Plaintiff attempted to reason with him and punched  
26 Plaintiff in the face with a right fist that knocked Plaintiff unconscious and to the ground.  
27

28 16. When Plaintiff hit the ground, DOE BOUNCER proceeded to kick Plaintiff's prostrate  
body.

1 17. Upon seeing DOE BOUNCER's relentless onslaught against his unconscious friend, Mr.  
2 Mondragon attempted to intervene; however, he was punched in the neck by DOE BOUNCER.

3 18. Other DOE BOUNCERS were present at the scene of the incident and they assisted in, or  
4 ratified, the attack against Plaintiff, or otherwise failed to take reasonable measures to stop the  
5 attack.  
6

7 19. As a result of the attack, Plaintiff MAX VARGAS suffered damages, including bodily  
8 injury, medical specials, and pain and suffering.

9 20. The said acts were done within the course and scope of the employment of Defendants DOE  
10 BOUNCERS I-V and were authorized/ratified by Defendant ORTIZ FAMILY LLC d/b/a EL  
11 SELLITO ROJO and Defendant J MORALES INC.  
12

13 **First Cause of Action – Negligence**

14 21. Plaintiff repeats and restates the allegations set forth in paragraphs 1 through 20, inclusive,  
15 as though fully set forth herein and incorporate the same by reference.

16 22. Defendant ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO and Defendant J MORALES  
17 INC. at all times mentioned herein had a duty toward Plaintiff to maintain their premises in a  
18 reasonably safe condition for the general public and to ensure that their employees/agents do not  
19 assault, batter, or harass their guests.  
20

21 23. Because Defendant ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO and Defendant J  
22 MORALES INC. failed to maintain their premises in a reasonably safe condition for the general  
23 public and failed to ensure that their employees/agents do not assault, batter, or harass their guests,  
24 Defendant ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO and Defendant J MORALES INC.  
25 breached that duty.  
26  
27  
28

1 24. As a proximate result of that breach, Plaintiff's jaw was broken in multiple places and he  
2 sustained traumatic brain injuries, among other bodily injuries; as well as further associated  
3 damages, including, but not limited to, medical specials, pain and suffering, and severe emotional  
4 distress.  
5

6 **Second Cause of Action – Negligent Use of Excessive Force**

7 25. Plaintiff repeats and restates the allegations set forth in paragraphs 1 through 24, inclusive,  
8 as though fully set forth herein and incorporate the same by reference.

9 26. Defendants DOE BOUNCERS I-V had a duty to protect the guests of the premises and to  
10 refrain from using unreasonable or excessive force against any guest.

11 27. The acts and conduct of Defendants DOE BOUNCERS I-V were done with unnecessary  
12 force and violence, not rendered reasonable or justifiable by any act of Plaintiff. These acts by  
13 Defendants DOE BOUNCERS I-V were done with a reckless disregard for Plaintiff's health and  
14 wellbeing and Defendants knew or should have known that their conduct would cause Plaintiff to  
15 sustain the injuries described herein.  
16

17 28. Because Defendants DOE BOUNCERS I-V failed to protect Plaintiff and failed to refrain  
18 from using unreasonable or excessive force against Plaintiff, DOE BOUNCERS I-V breached that  
19 duty.  
20

21 29. As a proximate result of that breach, Plaintiff suffered damages as described in Paragraph  
22 24.  
23

24 **Third Cause of Action – Assault and Battery**

25 30. Plaintiff repeats and restates the allegations set forth in paragraphs 1 through 29, inclusive,  
26 as though fully set forth herein and incorporate the same by reference.  
27  
28

1 31. Defendants DOE BOUNCERS I-V intentionally placed Plaintiff in reasonable apprehension  
2 of immediate bodily harm.

3 32. Defendants DOE BOUNCERS I-V willfully and unlawfully used force and violence upon  
4 the person of Plaintiff.  
5

6 33. Plaintiff did not consent to any physical contact by DOE BOUNCERS I-V or engage in any  
7 conduct or behavior warranting physical contact by DOE BOUNCERS I-V.

8 34. As a result of Defendants DOE BOUNCERS I-V's intentional actions, Plaintiff suffered  
9 damages as described in Paragraph 24.  
10

11 **Fourth Cause of Action – Negligence Per Se**

12 35. Plaintiff repeats and restates the allegations set forth in paragraphs 1 through 34, inclusive,  
13 as though fully set forth herein and incorporate the same by reference.

14 36. Nevada Revised Statutes 200.471 through 200.481 prohibit any person from committing  
15 assault and/or battery against another person.

16 37. These statutes are intended to protect classes of persons like Plaintiff.  
17

18 38. These statutes are intended to, among other things, prevent injuries similar to the injuries  
19 suffered by Plaintiff.

20 39. Because Defendants DOE BOUNCERS I-V intentionally placed Plaintiff in reasonable  
21 apprehension of immediate bodily harm, and willfully and unlawfully used force and violence upon  
22 the person of Plaintiff, Defendants DOE BOUNCERS I-V were negligent per se.

23 40. As a result of Defendants DOE BOUNCERS I-V's negligence per se, Plaintiff suffered  
24 damages as described in paragraph 24.  
25

26 ///

27 ///

28

1                                   **Fifth Cause of Action – Intentional Infliction of Emotional Distress**

2       41.     Plaintiff repeats and restates the allegations set forth in paragraphs 1 through 40, inclusive,  
3       as though fully set forth herein and incorporate the same by reference.

4       42.     Plaintiff was assaulted and battered by Defendants DOE BOUNCERS I-V without  
5       provocation or reasonable basis when Plaintiff had not engaged in any criminal or illegal activity.

6       43.     The acts and conduct of Defendants DOE BOUNCERS I-V were extreme and outrageous.

7       44.     Defendants DOE BOUNCERS I-V intended to cause, or acted with a reckless disregard for  
8       causing, emotional distress to Plaintiff.

9       45.     As a proximate result DOE BOUNCERS I-V's outrageous conduct, Plaintiff suffered severe  
10      emotional distress and other damages as described in paragraph 24.

11                                   **Sixth Cause of Action – Vicarious Liability - Respondeat Superior**

12       46.     Plaintiff repeats and restates the allegations set forth in paragraphs 1 through 45, inclusive,  
13      as though fully set forth herein and incorporate the same by reference.

14       47.     Defendants DOE BOUNCERS I-V were employees of Defendant ORTIZ FAMILY LLC  
15      d/b/a EL SELLITO ROJO at the time of the subject incident and were in the course and scope of  
16      such employment when they attacked Plaintiff and caused him damages as described in paragraph  
17      24.

18       48.     Accordingly, Defendant ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO is vicariously  
19      liable for the negligent, intentional, and wrongful conduct of Defendants DOE BOUNCERS I-V as  
20      alleged in this Complaint.

21                                   **Seventh Cause of Action – Negligent Hiring, Training, Retention, and Supervision**

22       49.     Plaintiff repeats and restates the allegations set forth in paragraphs 1 through 48, inclusive,  
23      as though fully set forth herein and incorporate the same by reference.

1 50. Defendant ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO had a duty to exercise due care  
2 in its dealings with Plaintiff and in the selection, training, supervision, oversight, direction,  
3 retention, and control of its employees and/or agents, retained by it to provide security services.

4 51. Defendants, and each of them, unlawfully caused Plaintiff to be brutally beaten at  
5 Defendants' premises, and such assault and battery was unreasonable under the circumstances.  
6

7 52. Because Defendant ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO failed to exercise due  
8 care in its dealings with Plaintiff and in the selection, training, supervision, oversight, direction,  
9 retention, and control of its employees and/or agents, Defendant ORTIZ FAMILY LLC d/b/a EL  
10 SELLITO ROJO breached that duty.  
11

12 53. As a proximate result of that breach, Plaintiff suffered damages as described in Paragraph  
13 24.

14 **Conclusion**

15 Plaintiff has been required to retain the services of an attorney to prosecute this action.

16 WHEREFORE, Plaintiff, expressly reserving the right to amend this Complaint, prays for  
17 judgment against Defendants as follows:  
18

- 19 1. General damages in excess of \$15,000;
- 20 2. Special damages in excess of \$15,000;
- 21 3. Punitive damages;
- 22 3. Attorney's fees and costs;
- 23 4. Interest at the statutory rate; and  
24

25 ///

26 ///

27 ///

5. For such other and further relief as the Court deems just and proper.

DATED this 5<sup>th</sup> day of February, 2018.

**PERALTA LAW GROUP**

  
OSCAR RODRIGUEZ

OSCAR PERALTÀ, ESQ.

Nevada Bar No. 13559

101 Convention Center Dr., Ste. 340

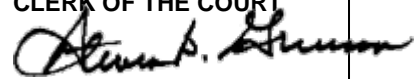
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Attorney for Plaintiff



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*Attorney for Plaintiff*

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

MAX VARGAS,  
  
Plaintiff,

v.

ORTIZ FAMILY LLC d/b/a EL SELLITO  
ROJO; J MORALES INC.; DOE  
BOUNCERS I-V; DOES VI-X; and ROE  
CORPORATIONS X-XV, inclusive,  
  
Defendants.

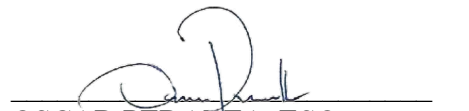
Case No.: A-18-768988-C  
Dept. No.: 32

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that the Default of Defendants ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO and J MORALES INC. was entered and filed on July 25, 2019, a copy of which is attached hereto.

DATED this 6<sup>th</sup> day of August, 2019.

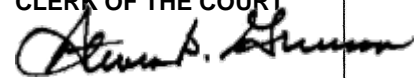
PERALTA LAW GROUP



OSCAR PERALTA, ESQ.  
Nevada Bar No. 13559  
101 Convention Center Dr., Ste. 340  
Las Vegas, NV 89109  
*Attorney for Plaintiff*

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John T. Moran, III, ESQ., P.C. *for*  
ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO  
630 S. Fourth St.  
Las Vegas, NV 89101  
*Registered Agent for Defendant*



DFJD

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Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MAX VARGAS,

Plaintiff,

v.

ORTIZ FAMILY LLC d/b/a EL SELLITO  
ROJO; J MORALES INC.; DOE BOUNCERS  
I-V; DOES VI-X; and ROE CORPORATIONS  
X-XV, inclusive,

Defendants.

Case No. : A-18-768988-C

Dept. No.: 32

Date of Prove-up Hearing: 06/18/19

Time of Hearing: 10:30 a.m.

DEFAULT JUDGMENT

This matter having come for a prove-up hearing at the above date and time before the Hon. Rob Bare, District Court Judge. Plaintiff Max Vargas was present with his counsel, Oscar Peralta. Defendant was not present nor represented by counsel.

The Court, having considered the papers and pleadings on file herein, as well as the testimony of Plaintiff Max Vargas, makes the following findings and orders:

1. That Defendants ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO and J MORALES INC., were served with the Summons and Complaint by personal service on February 8, 2018 and February 16, 2018, respectively.

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

JUL 1 2019

1           2. That Defendants ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO and J MORALES  
2 INC., failed to answer or otherwise respond to Plaintiff's Complaint on file herein and the legal time  
3 for answering expired.

4           3. That the Defaults of Defendants ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO and J  
5 MORALES INC., were duly entered by the Clerk of the Court on April 13, 2018; that said  
6 Defendants are not in the military service of the United States and are not infants or incompetent  
7 persons; and that this Court has jurisdiction over the subject matter and the Court and the parties  
8 being fully advised in the premises,

9           4. That the documents on file herein substantiated the damages for past medical bills and  
10 lost wages and costs.

11           5. That the evidence of Plaintiff's medical damages was consistent with the punitive  
12 damages claim, as the extent of injuries is consistent with the use of excessive force, and there has  
13 been a significant change in Plaintiff's life.

14           NOW THEREFORE, IT IS HEREBY ORDERED that Default Judgment is granted.

15           IT IS FURTHER ORDERED that Plaintiff, MAX VARGAS, shall have and recover from  
16 Defendants ORTIZ FAMILY LLC d/b/a EL SELLITO ROJO and J MORALES INC., the  
17 following amounts:

- 18           1.     The sum of \$134,152.93 for past medical bills;
- 19           2.     The sum of \$6,340.68 for past lost wages;
- 20           3.     The sum of \$200,000.00 for past pain and suffering;
- 21           4.     The sum of \$200,000.00 for future pain and suffering;
- 22           5.     The sum of \$1,000,000.00 for punitive damages;
- 23           6.     The sum of \$1,298.51 for costs incurred;

1           7.       Interest in the amount of \$164,422.63, accrued at the legal rate of 7.50% (prime plus  
2           2%) from the date of service of the Summons and Complaint to the present;

3           IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that the total  
4           amount of the Default Judgment shall be \$1,706,214.75.

5           DATED this 18 day of July, 2019.

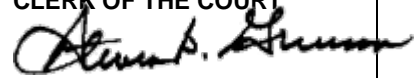
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8           

9           DISTRICT COURT JUDGE

10           ROB BARE  
11           JUDGE, DISTRICT COURT, DEPARTMENT 32

12           Respectfully Submitted By:

13             
14           OSCAR PERALTA, ESQ.  
15           Nevada Bar No. 13559  
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20           Email: oscar@peraltalawgroup.com  
21           Attorney for Plaintiff  
22  
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28



1 **NEOJ**  
2 Ogonna Brown, Esq.  
3 Nevada Bar No. 7589  
4 obrown@lrrc.com  
5 Adrienne Brantley-Lomeli, Esq.  
6 Nevada Bar No. 14486  
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8 LEWIS ROCA ROTHGERBER CHRISTIE LLP  
9 3993 Howard Hughes Parkway, Suite 600  
10 Las Vegas, NV 89169  
11 Tel: 702.949.8200  
12 Fax: 702.949.8398

13 *Counsel for Defendant J Morales Inc.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

14 MAX VARGAS, individually;

15 Plaintiff,

16 v.

17 ORTIZ FAMILY LLC, d/b/a EL SELLITO  
18 ROJO; J MORALES INC.; DOE  
19 BOUNCERS I – V; DOES VI – X; and ROE  
20 CORPORATIONS I through X-XV, inclusive,

21 Defendants.

**Case No.:** A-18-768988-C

**Dept. No.:** 32

**NOTICE OF ENTRY OF ORDER  
GRANTING J MORALES INC.'S  
EMERGENCY MOTION TO SET ASIDE  
JUDGMENT AND STAY EXECUTION  
OF JUDGMENT**

**Date of Hearing:** November 10, 2020

**Time of Hearing:** 11:00 a.m.

**Judge:** Hon. Rob Bare

22 **NOTICE IS HEREBY GIVEN** that the Order Granting J Morales Inc.'s Emergency  
23 Motion To Set Aside Judgment And Stay Execution Of Judgment has been entered on November  
24 24, 2020, in the above-entitled action.

25 A copy of said Order is attached hereto as **Exhibit "1"**.

26 DATED this 24th day of November, 2020.

27 LEWIS ROCA ROTHGERBER CHRISTIE LLP

28 By: /s/ Ogonna M. Brown

Ogonna M. Brown, Esq.

Nevada Bar No. 7589

3993 Howard Hughes Parkway, Suite 600

Las Vegas, NV 89169

*Attorneys for Plaintiff Pacific Premier Bank*

**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on November 24, 2020, I served a copy of **NOTICE OF ENTRY OF ORDER GRANTING J MORALES INC.'S EMERGENCY MOTION TO SET ASIDE JUDGMENT AND STAY EXECUTION OF JUDGMENT** on all parties via the Odyssey Court e-file system:

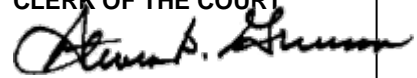
☒ Electronic Service – By serving a copy thereof through the Court's electronic service system; and/or

Oscar Peralta oscar@peraltalawgroup.com  
Alexandria Guzman alex@peraltalawgroup.com  
*Attorneys for Plaintiffs*

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below.

/s/ Kennya Jackson  
An Employee of Lewis Roca Rothgerber Christie LLP

# EXHIBIT “1”



1 **OGM**  
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3 Nevada Bar No. 7589  
4 obrown@lrrc.com  
5 Adrienne Brantley-Lomeli, Esq.  
6 Nevada Bar No. 14486  
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8 LEWIS ROCA ROTHGERBER CHRISTIE LLP  
9 3993 Howard Hughes Parkway, Suite 600  
10 Las Vegas, NV 89169  
11 Tel: 702.949.8200  
12 Fax: 702.949.8398

13 *Counsel for Defendant J Morales Inc.*

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

16 MAX VARGAS, individually;

17 Plaintiff,

18 v.

19 ORTIZ FAMILY LLC, d/b/a EL SELLITO  
20 ROJO; J MORALES INC.; DOE  
21 BOUNCERS I – V; DOES VI – X; and ROE  
22 CORPORATIONS I through X-XV, inclusive,

23 Defendants.

Case No.: A-18-768988-C

Dept. No.: 32

**ORDER GRANTING J MORALES INC.'S  
EMERGENCY MOTION TO SET ASIDE  
JUDGMENT AND STAY EXECUTION  
OF JUDGMENT**

**Date of Hearing:** November 10, 2020

**Time of Hearing:** 11:00 a.m.

**Judge:** Hon. Rob Bare

24 On November 10, 2020, this matter came on for hearing on shortened time on Defendant J  
25 Morales Inc.'s ("JMI") Emergency Motion to Set Aside Judgment and Stay Execution of Judgment  
26 ("Motion") in Department XXXII of the Eighth Judicial District Court, Clark County, Nevada, with  
27 Hon. Rob Bare presiding. Adrienne Brantley-Lomeli, Esq. of the law firm of Lewis Roca Rothgerber  
28 Christie LLP appeared on behalf of JMI, and Oscar Peralta, Esq. of the law office of Peralta Law  
Group appeared on behalf of Plaintiff, Max Vargas ("Plaintiff").<sup>1</sup> The Court having considered the  
Motion and filings related thereto, having heard the arguments presented by the Parties concerning  
the Motion, taking this matter under advisement after entertaining the oral argument of the Parties,  
and good cause appearing therefor, the Court hereby finds and concludes as follows:

...

...

<sup>1</sup> Collectively, the Plaintiff and the Defendants shall be referred to hereinafter as the "Parties".

## FINDINGS OF FACT

1. This Court refers to and adopts those Findings of Fact and Conclusions of Law as already set forth in its November 12, 2020, Minute Order: Motion to Set Aside Judgment and Stay Execution of Judgment, and incorporates them as though fully set forth herein.

2. This case stems from an alleged incident that occurred on March 22, 2017.

3. Plaintiff alleges that he was a customer at the El Sellito Rojo nightclub and he was assaulted by the bouncer at the nightclub, which was owned by Defendants JMI and/or Ortiz Family, LLC (“OFLLC”) (collectively, JMI and OFLLC shall be referred to hereinafter as “Defendants”).

4. El Sellito Rojo’s principal place of business is 3977 E. Vegas Valley Drive, Las Vegas, Nevada, 89121 (APN 161-07-701-002) (the “Property”).

5. Plaintiff filed his Complaint on February 5, 2018.

6. Per Affidavits of Service filed with the Court on April 3, 2018, Defendants were personally served via their registered agents.

7. Defendants failed to file an Answer or otherwise make an appearance.

8. Thus, Default was filed against each Defendant on April 13, 2018.

9. Plaintiff then sought default judgment by filing an Application on September 19, 2018.

10. After a prove-up hearing held on June 18, 2019, the default judgment was entered on July 25, 2019 against both Defendants (“Judgment”).

11. Notice of Entry of Default Judgment was filed on August 6, 2019.

12. Defendant JMI filed the instant Motion on October 27, 2020 after its bank account was garnished sometime in September 2020.

13. In its Motion, JMI requested setting aside the Judgment and allowing the case to be heard on its merits, to stay of execution of the Judgment to prevent any further seizure of JMI’s assets prior to the Court’s final determination on the Motion.

14. On November 6, 2020, Plaintiff filed his Opposition to the Motion (“Opposition”).

15. On November 9, 2020, JMI filed its Reply in support of the Motion (“Reply”).

18. To the extent any of the foregoing Findings of Fact are more properly deemed a Conclusion of Law, they may be so construed.

- a. (1) Prompt application to remove the judgment;
- b. (2) absence of an intent to delay;
- c. (3) lack of knowledge of procedural requirements; and
- d. (4) good faith.

1 *Yochum v. Davis*, 653 P.2d 1215, 98 Nev. 484 (1982). *See also Rodriguez v. Fiesta Palms, LLC*,  
2 134 Nev. 654, 428 P.3d 255, n.2 (2018) (affirming the application for the above-mentioned *Yochum*  
3 factors, but noting that the fifth requirement for tendering a meritorious defense was abrogated.)

4 6. In addition, the Court must also consider the state's underlying basic policy of  
5 deciding a case on the merits whenever possible. *Id.*

6 7. Most recently, in *Willard v. Berry-Hinckley Indus.*, 136 Nev. Adv. Op. 53, 469 P.3d  
7 176 (2020), the Nevada Supreme Court again affirmed the use of *Yochum* factors in determining the  
8 existence of sufficient grounds for NRCP 60(b)(1) relief from either order or judgment.  
9 Furthermore, the District Courts were instructed to "issue explicit and detailed findings with respect  
10 to the four *Yochum* factors to facilitate . . . appellate review of NRCP 60(b)(1) determinations for  
11 an abuse of discretion."

12 8. Under NRCP 62(b), with posting of a security, the court may stay execution of a  
13 judgment pending disposition of NRCP 60 relief from a judgment or order.

14 9. Accordingly, the Court **FINDS** that the default judgment was properly obtained.  
15 Defendant JMI failed to make a formal appearance in the case until October 27, 2020. This was  
16 almost 15 months after the Notice of Entry of Default Judgment was filed on August 6, 2019 even  
17 though both Defendants were validly served with complaint and summons.

18 10. The Court **FINDS** that the correct standard to use for setting aside the judgment for  
19 mistake under NRCP 60(b)(1) is the 4-factor test set forth in *Yochum*, *Rodriguez*, and *Willard*, as  
20 follows:

- 21 (1) Prompt application to remove the judgment;
- 22 (2) absence of an intent to delay;
- 23 (3) lack of knowledge of procedural requirements; and
- 24 (4) good faith.

25 11. Defendant JMI, as the party seeking to set aside the default judgment, has the burden  
26 of proof under preponderance of the evidence standard.

27 12. Although Plaintiff argues that this standard is conjunctive, the standard actually  
28 appears to be a balancing test.

1           13.     Although the word “and” is indeed used, in *Rodriguez*, the Nevada Supreme Court  
2 ruled that the District Court must “balance the preference for resolving cases on the merits with the  
3 importance of enforcing procedural requirements” and it analyzed all four factors in affirming the  
4 order of the District Court that denied motion to set aside the judgment, which it need not do if the  
5 factors were indeed conjunctive.

6           14.     The Court **FINDS** that the balancing of the factors militates in favor of granting the  
7 motion and setting aside the default judgment.

8           15.     The Court **FINDS** that as to the first factor, prompt application to remove the  
9 judgment, this factor does not favor JMI. JMI failed to file its Motion until October 27, 2020, almost  
10 15 months after the Notice of Entry of Default Judgment was filed on August 6, 2019. Thus, under  
11 NRCP 60(c), which requires such motion to be filed within 6 months, the motion is presumptively  
12 untimely.

13           16.     The Court **FINDS** that as to the second factor, absence of an intent to delay, this  
14 factor favors JMI. JMI makes a credible argument that once it became actually aware of the default  
15 judgment due to the Writ of Garnishment executed in September 2020, it immediately retained  
16 counsel and sought to set it aside to protect its financial interests without an intent to delay the  
17 proceedings. Plaintiff does not make any specific argument against this factor.

18           17.     The Court **FINDS** that as to the third factor, lack of knowledge of procedural  
19 requirements, this factor favors JMI. Plaintiff makes an argument that Defendants were owned by  
20 sophisticated businessmen who simply chose to sit on their rights and refused to participate in the  
21 case, but JMI’s actions show otherwise. Instead of consulting with an attorney, JMI simply consulted  
22 with their insurance agent, who is not an attorney, and mistakenly relied on the statement that since  
23 it did not own the nightclub at the time of the incident, that it is not liable.

24           18.     The Court **FINDS** that as to the four factor, good faith, this factor also favors JMI as  
25 Plaintiff does not make any specific argument that JMI's motion was not made in good faith.

26           19.     The Court **FINDS** that as to JMI's argument regarding the meritorious defense, it is  
27 not a factor under *Rodriguez* and *Willard* for NRCP 60(b)(1) analysis. However, it can be considered  
28 under a NRCP 60(b)(6) analysis in considering any other reason that justifies relief. Specifically, if

JMI can prove that it was not the owner of the nightclub and had no role in Plaintiff's injuries, setting aside the default judgment, which awarded Plaintiff in excess of \$1.7 million, is justified.

20. Furthermore, although JMI mistakenly relied on what appears to be legal advice by a non-attorney, such mistaken reliance also justifies relief under 60(b)(6).

21. The Court **FINDS** that the basic policy of deciding a case on the merits also undoubtedly favors JMI.

22. To the extent any of the foregoing Conclusions of Law are more properly deemed a Finding of Fact, they may be so construed.

**ORDER**

Therefore, based upon the foregoing Findings of Fact and Conclusions of Law,

1. **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant JMI's Motion shall be **GRANTED**.

2. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Default against Defendant JMI filed on April 13, 2018 and Default Judgment filed on July 25, 2019 shall be **VACATED** as to Defendant JMI.

3. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant JMI shall file its Answer within 10 days of the filing of this Order.

4. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the dispute over the funds already garnished by Plaintiff from JMI's bank account shall be determined in the future when the case is heard on the merits.

Dated this 24th day of November, 2020.



DISTRICT COURT JUDGE

ROB BARE

HGL

Respectfully Submitted:  
**LEWIS ROCA ROTHGERBER CHRISTIE LLP**

By: /s/ Ogonna Brown  
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Adrienne Brantley-Lomeli, Esq. (NBN 14486)  
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Tel: 702.949.8200  
*Attorneys for Defendant J Morales Inc.*

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Approved as to form:  
**PERALTA LAW GROUP**

By: /s/ Oscar Peralta  
OSCAR PERALTA, ESQ. (NBN 13559)  
101 Convention Center Dr., Suite 340  
Las Vegas, Nevada 89109  
(702) 758-8700  
*Attorneys for Plaintiff*

---

**From:** Oscar Peralta <oscar@peraltalawgroup.com>  
**Sent:** Monday, November 23, 2020 5:28 PM  
**To:** Brown, Ogonna  
**Cc:** Jackson, Kennya; Dale, Margaret  
**Subject:** Re: Order Granting Motion to Set Aside Judgment(112817796.1).docx

[EXTERNAL]

---

Confirmed. Thank you

On Mon, Nov 23, 2020 at 5:09 PM Brown, Ogonna <[OBrown@lrrc.com](mailto:OBrown@lrrc.com)> wrote:

Thanks, Oscar. Please confirm that I may affix your electronic signature. Have a good night.

**Ogonna Brown**

Partner  
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COVID-19 questions?  
Connect to our [Rapid Response Team](#)  
for answers and resources.

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Because what matters  
to you, matters to us.

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