

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

MAX VARGAS,

Appellant,

v.

J MORALES INC.

Respondent.

No. 82218

Electronically Filed  
Jan 26 2021 05:59 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**OPPOSITION TO RESPONDENT’S MOTION TO DISMISS APPEAL**

Appellant, MAX VARGAS, by and through his attorney of record, Oscar Peralta, Esq., hereby submits this opposition to Respondent’s motion to dismiss the subject appeal. Contrary to Respondent’s assertions, this appeal is proper under NRAP 3A(b)(8) and the relevant caselaw.

**I.**

**FACTUAL AND PROCEDURAL BACKGROUND**

- On February 5, 2018, Appellant Max Vargas (“Appellant”) filed a complaint against two parties, including Respondent J Morales Inc. (“Respondent”). [Exhibit 1]. The Complaint was served on Respondent’s registered agent on record with the Nevada Secretary of State on February 16, 2018. [Exhibit 2].

- By the admission of Respondent's principal corporate officer, Respondent was aware of Appellant's Complaint in the District Court at around the time Respondent was served with process. [Exhibit 3].
- On April 13, 2018, Default was entered against Respondent, and on April 17, 2018, Respondent was served with a copy of the Notice of Entry of Default by mail pursuant to NRCP 5(b). [Exhibit 4].
- On June 18, 2019, a prove-up hearing was held in Department 32, and Default Judgment was entered against Respondent on July 25, 2019. [Exhibit 5]. Respondent was served with a copy of the Notice of Entry of Order of Default Judgment by mail pursuant to NRCP 5(b) on August 6, 2019. [Exhibit 5].
- On October 27, 2020, Respondent J MORALES INC. filed an improper motion to set aside the judgment pursuant to NRCP 60(b)(1) almost 15 months after entry of final judgment, which the District Court erroneously granted by way of an order entered on November 24, 2020. [Exhibit 6].
- On December 1, 2021, Respondent filed a Motion to Dismiss Appellant's Complaint in the District Court, which currently has a hearing date of February 17, 2021. [Exhibit 7].
- On December 11, 2020, Appellant filed a notice of appeal of the District Court's order granting Respondent's NRCP 60(b)(1) motion to set aside the default judgment. [Exhibit 8].

## II.

### LEGAL ARGUMENT

#### **A. The Subject Appeal is Proper**

NRAP 3A(b)(8) provides that "an appeal may be taken from . . . [a] special order entered after final judgment, excluding an order granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment." This Rule necessarily implies that an order granting a motion to set aside a default judgment under NRCP 60(b)(1) filed more than 60 days after entry of the default judgment is appealable. Otherwise, there is no reason or explanation for the exclusionary language in NRAP 3A(b)(8) regarding such motions when made within 60 days after entry of default judgment.

This Court has reiterated that under NRAP 3A(b)(8) "an order setting aside a default judgment is appealable as a special order after judgment if the motion to set aside is made more than sixty days after entry of the judgment." *Lindblom v. Prime Hosp. Corp.*, 120 Nev. 372, 374 n. 1, 90 P.3d 1283, 1284 n.1 (2004). *Lindblom* dealt with an appeal of a District Court's order to set aside a default judgment under NRCP 60(b)(1) where the motion upon which said relief was granted was filed more than 60 days after entry of the default judgment. *See id.* This is the exact situation we have here, and thus this appeal is proper pursuant to NRAP 3A(b)(2) and this Court's holding in *Lindblom*.

In its Motion, Respondent relies entirely on *Estate of Adams By & Through Adams v. Fallini*, 132 Nev. 814, 386 P.3d 621 (2016), where this Court held that an order **granting a new trial** on an NRCP 60(b)(3) motion “**for fraud upon the court** was interlocutory and not appealable.” *Id.* at 818, P.3d at 624 (emphasis added). Respondent argues that *Fallini* applies to all orders for NRCP 60(b) relief and that it effectively overruled *Lindblom*. This argument is unpersuasive for several reasons.

First, NRAP 3A(b)(8) remains in effect. Respondent fails completely to explain its position of how this case is not appealable under NRAP 3A(b)(8). Respondent simply would like for the Court to forget about this Rule. The Court in *Lindblom* did not announce a new legal principle, but merely reiterated the provisions of NRAP 3A(b)(8). Thus, the only way that *Lindblom* could be effectively overruled in this respect is if the Supreme Court were to change its established interpretation of NRAP 3A(b)(8) or to adopt new rules of appellate procedure that eliminate the provisions of NRAP 3A(b)(8). However, this has not happened.

Secondly, *Fallini* has no applicability here. *Fallini* does not posit a different interpretation of NRAP 3A(b)(8). In fact, *Fallini* does not contain a single reference to NRAP 3A(b)(8) or to the *Lindblom* case. This is unsurprising as NRAP 3A(b)(8) was not the basis for appeal in *Fallini*, as it was in *Lindblom* and as it is here. This is because *Lindblom*, like the instant case, dealt with an NRCP 60(b)(1) motion involving a **default judgment**, as here, and not with an NRCP 60(b)(3) motion



involving **summary judgment** where the court ordered a **new trial** as in *Fallini*. This Court has addressed how these differences pertain to the determination whether there was a **final judgment**. See e.g., *Reno Hilton Resort Corp. v. Verderber*, 121 Nev. 1, 4–5, 106 P.3d 134, 135–36 (2005). Such differences, of course, affect the analysis regarding appealability under NRAP 3A(b)(8), as this Rule applies to special orders entered **after final judgment**. Therefore, Respondent’s reliance on *Fallini* is completely misguided, as *Fallini* concerns a fundamentally different type of order from the one being appealed here. Thus, the relevant holding in *Lindblom* remains undisturbed and is the controlling authority here.

Third, *Fallini* is distinguishable here precisely because there are decisive differences between the various types of NRCP 60(b) relief. The very authority cited by this Court in *Fallini* to support the proposition that an order granting an NRCP 60(b)(3) motion for fraud upon the court is not appealable also explicitly provides support for the appealability of the instant case:

An order granting a motion under Rule 60(b) **and ordering a new trial** is purely interlocutory and not appealable, although on appeal from a judgment entered after the new trial the appellate court will review whether it was error to have reopened the first judgment. **There is now also substantial case law support for the proposition that an appeal will lie from the grant of the motion if the contention is that the court lacked power to grant it and not merely that it erred in granting the motion.**

11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2871 (3d ed. 2016) (emphasis added).

The subject appeal contends that the District Court had no jurisdiction to grant Respondent's NRCP 60(b)(1) motion, which was brought well beyond the allowable six-month period following entry of final judgment. Thus, in accordance with both the foregoing authority and the precedent of this Court, the instant appeal is proper.

There are, furthermore, compelling public policy grounds that strongly favor appealability under the relevant fact pattern at issue here. A contrary determination from this Court would deprive of finality any party who properly secures a default judgment, and if the District Court improperly sets aside a default judgment lacking jurisdiction to do so, it would nevertheless force upon that party the obligation to litigate an entire case from the beginning, potentially lasting several additional years.

### III.

#### **CONCLUSION**

Based on the foregoing, the subject appeal is proper, and thus, Appellant respectfully requests that the Court grant this motion to stay proceedings in the District Court pending this appeal.

Dated this 26<sup>th</sup> day of January, 2021.



OSCAR PERALTA, ESQ.

Nevada Bar No. 13559

101 Convention Center Dr., Ste. 340

Las Vegas, NV 89109

702-758-8700

*Attorney for Appellant*

### **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: *None*.

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case or are expected to appear in this court:

*Peralta Law Group*

3. If litigant is using a pseudonym, the litigant's true name: *None*.

DATED: January 26<sup>th</sup>, 2021.

A handwritten signature in blue ink, appearing to read "Oscar Peralta", is written over a horizontal line.

OSCAR PERALTA, ESQ.

Nevada Bar No. 13559

Peralta Law Group

101 Convention Center Dr., Ste. 340

Las Vegas, NV 89109

702-758-8700

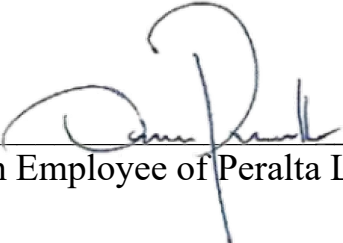
Email: oscar@peraltalawgroup.com

*Attorney for Appellant*

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26<sup>th</sup> day of January, 2021, a true and accurate copy of the above and foregoing document was served on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

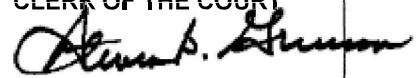
Ogonna M. Brown, Esq.  
Lewis Roca Rothberger Christie LLP  
3993 Howard Hughes Pkwy., Ste. 600  
Las Vegas, NV 89169  
*Attorney for Respondent J Morales  
Inc.*



\_\_\_\_\_  
An Employee of Peralta Law Group

# EXHIBIT 1

# EXHIBIT 1



**COMP**  
**OSCAR PERALTA, ESQ.**  
Nevada Bar No. 13559  
**PERALTA LAW GROUP**  
101 Convention Center Dr., Ste. 340  
Las Vegas, NV 89109  
Tel: (702) 758-8700  
Fax: (702) 758-8704  
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 ///



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 ///



EXHIBIT 2

EXHIBIT 2




**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Time:

**Defendant(s)**

## AFFIDAVIT OF SERVICE

 **NOTARY PUBLIC**  
**STATE OF NEVADA**  
County of Clark  
**LISA ANNE WHARTON**  
Appt. No. 16-2934-1  
My Appt. Expires June 16, 2020

  
Affiant - Robert Joseph Watts # R-096989

**Legal Process Service**      License # 604  
WorkOrderNo **1800959**





Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255



**AFFT**  
Peralta Law Group  
Oscar Peralta  
101 Convention Center Dr., Suite 810  
Las Vegas, NV 89109  
State Bar No.: 13559  
Attorney(s) for: Plaintiff(s)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Dept. No.: **32**

**Max Vargas**

**vs**

**Plaintiff(s)**

**Ortiz Family LLC d/b/a El Sellito Rojo; et al.**

**Defendant(s)**

Date:  
Time:

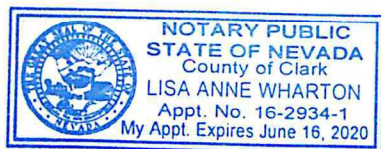
**AFFIDAVIT OF  
ATTEMPTED SERVICE**

I, **Robert Joseph Watts**, being duly sworn deposes and says: That Affiant is and was on the day when he attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action: That the affiant received the within **Summons: Complaint** on the **9th** day of **February, 2018** and attempted to effect service on **J Morales Inc.** at the following address(es):

**#1 - Registered Agent, TM & D Enterprises, 4660 S. Eastern Ave., Ste. 105, Las Vegas, NV 89119**

**#2 - Triana's Professional Services, 4680 S. Eastern Ave., Ste. A, Las Vegas, NV 89119.** Below are listed the date(s) and time(s) of attempted service:

<u>Date</u>	<u>Time</u>	<u>Address</u>	<u>Outcome</u>
2/9/2018	10:02 am	Address #1	Address corresponds to an office in a business complex. Per receptionist, TM & D Enterprises, moved next door to 4680 S Eastern Avenue, Suite A, Las Vegas, NV 89119.
2/9/2018	10:10 am	Address #2	Address corresponds to Triana's Professional Services. Affiant spoke with owner, Lucia Triana, who advised that TM & D Enterprises is no longer in business; however, stated she would take the service. Affiant advised he could not leave service.



**State of Nevada, County of Clark**

SUBSCRIBED AND SWORN to before me on this  
**16<sup>th</sup>** day of **February**, **2018**

Notary Public **Lisa Anne Wharton**

Affiant **Robert Joseph Watts** #: **R-096989**  
**Legal Process Service** License # **604**  
WorkOrderNo **1800959**

**AFFT**

Peralta Law Group  
 Oscar Peralta  
 101 Convention Center Dr., Suite 810  
 Las Vegas, NV 89109  
 State Bar No.: 13559  
 Attorney(s) for: Plaintiff(s)

**DISTRICT COURT  
 CLARK COUNTY, NEVADA**

Case No.: A-18-768988-C

**Max Vargas**

vs

*Plaintiff(s)*

Dept. No.: 32

**Ortiz Family LLC d/b/a El Sellito Rojo; et al.***Defendant(s)***AFFIDAVIT OF DILIGENCE**

Affiant affirms that a diligent effort was made to locate and serve the defendant, J. Morales, Inc., by attempting to locate and serve the last known registered agent, TM&D Enterprises, at 4660 S. Eastern Ave., #105, Las Vegas, NV 89119.

Inquiries with Nevada Secretary of State show that the defendant, J. Morales, Inc., is an "active" Nevada corporation. Jose Morales is listed as the sole corporate officer at 4660 S. Eastern Ave., Suite 105, Las Vegas, NV 89119; however, this address is not valid. Regarding the Registered Agent showing, TM&D Enterprises, Nevada Secretary of State shows this entity to be "dissolved". Officers listed for TM&D Enterprises are President/Treasurer: Lucia Triana, and Secretary/Director: Javier Gomez, both showing at 4660 S Eastern Ave., Ste 105 Las Vegas, NV 89119.

Additional inquiries with the office of Clark County office of business licensing confirms that Lucia Triana (President/Secretary of TM&D Enterprises, last known Registered Agent for J. Morales, Inc., defendant) is currently operating a business, Triana's Professional Services (lic. # 2000594.054-122) at 4680 S. Eastern Ave., Suite A, Las Vegas, NV 89119. Affiant affirms that service on the defendant, J. Morales, Inc., a Nevada corporation was effected c/o Lucia Triana, President/Secretary for the Registered Agent, TM&D Enterprises at her current place of employment, Triana's Professional Services. See Affidavit of Service of Robert Joseph Watts, Process Server.

State of Nevada, County of ClarkSignature: Lisa Anne Wharton R-072919

SUBSCRIBED AND SWORN to before me on this

16th day of February 2018Notary Public **N.P. McMahan**

724 S. Eighth Street  
 Las Vegas, Nevada 89101-7005

WorkOrderNo 1800959



# J MORALES INC.

## Business Entity Information

Status:	Active	File Date:	11/1/2006
Type:	Domestic Corporation	Entity Number:	E0800762006-8
Qualifying State:	NV	List of Officers Due:	11/30/2018
Managed By:		Expiration Date:	
NV Business ID:	NV20061383679	Business License Exp:	11/30/2018

## Additional Information

Central Index Key:	
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## Registered Agent Information

Name:	TM&D ENTERPRISES	Address 1:	4660 S EASTERN AVE STE 105
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89119
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

## Financial Information

No Par Share Count:	0	Capital Amount:	\$ 60,000.00
Par Share Count:	1.00	Par Share Value:	\$ 60,000.00

## ☒ Officers

☐ Include Inactive Officers

### President - JOSE MORALES

Address 1:	4660 S. EASTERN AVE., STE. 105	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89119	Country:	
Status:	Active	Email:	

### Secretary - JOSE MORALES

Address 1:	4660 S. EASTERN AVE., STE. 105	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89119	Country:	
Status:	Active	Email:	

### Treasurer - JOSE MORALES

Address 1:	4660 S. EASTERN AVE., STE. 105	Address 2:	
City:	LAS VEGAS	State:	NV



# TM & D ENTERPRISES

## Business Entity Information

Status:	Dissolved	File Date:	9/19/2003
Type:	Domestic Corporation	Entity Number:	C22878-2003
Qualifying State:	NV	List of Officers Due:	9/30/2014
Managed By:		Expiration Date:	
NV Business ID:	NV20031462339	Business License Exp:	9/30/2014

## Additional Information

Central Index Key:	
--------------------	--

## Registered Agent Information

Name:	TM&D ENTERPRISES	Address 1:	4660 S EASTERN AVE STE 105
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89119
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

## Financial Information

No Par Share Count:	2,500.00	Capital Amount:	\$ 0
---------------------	----------	-----------------	------

No stock records found for this company

## — Officers

☐ Include Inactive Officers

### Secretary - JAVIER GOMEZ

Address 1:	4660 S EASTERN AVENUE STE 105	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89119	Country:	USA
Status:	Active	Email:	

### Director - JAVIER GOMEZ

Address 1:	4660 S EASTERN AVENUE STE 105	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89119	Country:	USA
Status:	Active	Email:	

### President - LUCIA TRIANA

Address 1:	4660 S EASTERN AVENUE STE 105	Address 2:	
City:	LAS VEGAS	State:	NV

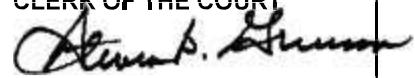
## Business License Detail Information

<b>License Number:</b>	2000597.455
<b>MJBL Number:</b>	
<b>Business:</b>	Triana Insurance Agency Ste# A 4680 S Eastern Ave Las Vegas, NV 89119
<b>Business Telephone:</b>	(702) 371-3235
<b>License Category:</b>	Insurance Agent
<b>Status:</b>	Licensed
<b>Date of License:</b>	06/10/2011
<b>Out of Business Date:</b>	
<b>Business Owner(s)</b>	
Espada Enterprises Inc	

[Return to Previous Page](#)  
[Return to Business License Database Search Options](#)

EXHIBIT 3

EXHIBIT 3



**MSAD**  
Ogonna Brown, Esq.  
Nevada Bar No. 7589  
OBrown@lrrc.com  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel: 702.949.8200  
Fax: 702.949.8398

*Counsel for Defendant J Morales, Inc.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

MAX VARGAS, individually;

Plaintiff,

v.

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

Defendants.

Case No.: A-18-768988-C

Dept. No.: 32

**EMERGENCY MOTION TO SET ASIDE  
JUDGMENT AND STAY EXECUTION  
OF JUDGMENT**

**[EMERGENCY]  
HEARING REQUESTED**

Movant J Morales, Inc. ("JMI"), by and through its counsel, Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie, LLP, hereby submits this *Emergency Motion to Set Aside the Judgment and Stay Execution of the Judgment* ("Motion") pursuant to Rule 7.40 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the Declaration of Jose Morales, owner of JMI, and the Declaration of Ogonna M. Brown, Esq., one of the attorneys for JMI, Memorandum of Points and Authorities, the papers and pleadings on file in this matter, and any oral argument which may be considered by this Court.

DATED this 26th day of October, 2020.

/s/ Ogonna Brown  
Ogonna M. Brown, Esq. (NBN 7589)  
Lewis Roca Rothgerber Christie LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
Tel: 702.949.8200  
Fax: 702.949.8398  
*Attorneys for J Morales, Inc.*

**ORDER SHORTENING TIME**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

IT IS HEREBY ORDERED that the time for hearing on **EMERGENCY MOTION TO SET ASIDE JUDGMENT AND TO STAY EXECUTION OF THE JUDGMENT** is hereby shortened and shall be heard on the 10th day of November, 2020, at 11:00 a.m./~~p.m.~~, in Department 32 in the above-entitled Court.

DATED this 27 day of October, 2020.



DISTRICT COURT JUDGE  
ROB BARE

HGL

Respectfully submitted:

Lewis Roca Rothgerber Christie LLP

By: /s/ Ogonna Brown

Ogonna M. Brown, Esq.

Nevada Bar No. 7589

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

obrown@lrrc.com

*Attorneys for J Morales, Inc.*

3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, NV 89169-5996

**Lewis Roca**  
**ROTHGERBER CHRISTIE**



**DECLARATION OF JOSE R. MORALES IN**  
**SUPPORT OF EMERGENCY MOTION TO SET ASIDE JUDGMENT AND STAY**  
**EXECUTION OF JUDGMENT**

I, Jose R. Morales, under oath and penalty of perjury say:

1. I am over the age of 18 and am competent to testify regarding the matters asserted herein, which are based on my own personal knowledge, unless stated upon information and belief, as to which statements I am informed and believe to be true.

2. I am the manager of record for Defendant J Morales, Inc. ("JMI") in the above-captioned lawsuit.

3. I make this Declaration in support of the concurrently filed Motion to Set Aside the Judgment and Stay Enforcement of the Judgment.

4. Good cause exists to set aside the Judgment.

5. On February 5, 2018, Plaintiff commenced an action against JMI, among others.

6. In his Complaint, Plaintiff claims to have sustained injuries at El Sellito Rojo, the nightclub owned and operated by Defendant, Ortiz Family LLC, d/b/a El Sellito Rojo ("El Sellito Rojo"), on March 22, 2017.

7. 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").

8. JMI was not the owner of the property when the alleged incident occurred.

9. JMI became the owner of the subject property on or about August 28, 2017.

10. On that date – five months after the alleged incident – JMI purchased the Property, as evidenced by the Deed of Trust ("DOT") recorded with the Clark County Recorder's Office as Instrument No. 201708280000339 on August 28, 2017. A true and correct copy of the DOT is attached hereto as **Exhibit "A"**.

11. The Small Business Administration ("SBA") loan documents also reflecting an August 25, 2017 closing date in connection with JMI's acquisition of the Property ("SBA Closing Statement"), which closing occurred after the purported incident as alleged by Plaintiff in the Complaint. A true and correct copy of the SBA Closing Statement is attached hereto as **Exhibit "B"**.

1           12.     On or about November 9, 2017, I purchased a liability insurance policy to insure the  
2 Property on behalf of JMI through JMI's insurance agent Kenneth J. Purdy, LUTCF, Insurance and  
3 Financial Services Agent with Kenneth Purdy Agency (Insurance Professionals of Nevada). A true  
4 and correct copy of the Certificate of Liability Insurance for the Property, dated November 9, 2017,  
5 is attached to the Morales Decl. as **Exhibit "C"**.

6           13.     When I first learned about the lawsuit in 2018, I contacted Mr. Purdy. Based upon  
7 my understanding of our conversation, Mr. Purdy, JMI's insurance agent, advised JMI that, because  
8 of the date JMI purchased the Property, JMI would not be held liable for any of the damages claimed  
9 in Plaintiff's lawsuit, which occurred five (5) months before JMI became the owner of the Property.

10          14.     Based upon advice from JMI's insurance agent that JMI was not a responsible party  
11 to the Plaintiff's claims because JMI did not own the Property at the time of the alleged incident,  
12 JMI did not retain an attorney or participate any further in the case.

13          15.     Between the time I first learned of the above-captioned case in 2018 and late  
14 September, 2020, I did not receive any other information from the Court or the Plaintiff's attorneys  
15 regarding the case.

16          16.     Consequently, I operated under the supposition that JMI was no longer involved in  
17 the case.

18          17.     On or about September 29, 2020, I discovered that JMI's bank account had been  
19 improperly garnished in the amount of \$5,397.96 from JMI's Wells Fargo bank account. A true and  
20 correct copy of JMI's Wells Fargo bank account activity on September 29, 2020, is attached to the  
21 Morales Decl. as **Exhibit "D"**.

22          18.     After inquiring with JMI's bank, I learned that the withdrawal was pursuant to a  
23 Court's order.

24          19.     I subsequently learned that on July 25, 2019, Plaintiff obtained a Judgment against  
25 JMI unbeknownst to JMI ("Judgment").

26          20.     This improper garnishment at this critical economic time has created a financial  
27 hardship for JMI.  
28

21. The funds in JMI's bank account were earmarked to pay for JMI's payroll (\$1,800 per week), rent (\$2,300 per month), utilities (electric \$1,200 per month) and gas (\$350.00).

22. The alleged incident set forth in Plaintiff's Complaint occurred on March 22, 2017.

23. Accordingly, JMI is not the proper party in interest, and the Judgment should be set aside as void.

24. In turn, the garnishment against JMI's bank account is void, and should be reversed immediately.

25. The Motion is not made for delay or another other improper purpose.

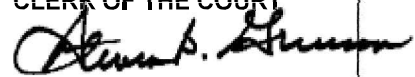
I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED October 26, 2020.

Jose Morales -  
Jose R. Morales  
Manager of J Morales, Inc.

EXHIBIT 4

EXHIBIT 4



NEOJ  
OSCAR PERALTA, ESQ.  
Nevada Bar No. 13559  
PERALTA LAW GROUP  
101 Convention Center Dr., Ste. 340  
Las Vegas, NV 89109  
Tel: (702) 758-8700  
Fax: (702) 758-8704  
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.

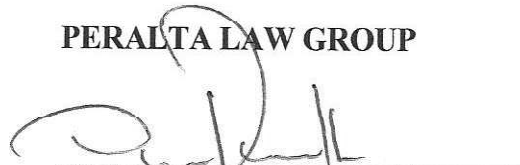
Case No. : A-18-768988-C  
Dept. No.: 32

NOTICE OF ENTRY OF DEFAULT

PLEASE TAKE NOTICE that the Default of Defendant J MORALES INC. was entered  
and filed on April 13, 2018, a copy of which is attached hereto.

Dated this 17<sup>th</sup> day of April, 2018.

PERALTA LAW GROUP



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

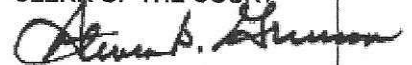
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of a true and correct copy of the above and foregoing **NOTICE**  
3 **OF ENTRY OF DEFAULT** was made on the 17<sup>th</sup> day of April, 2018 by first class mail, postage  
4 prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows:  
5

6 J MORALES INC.  
7 Jose Morales, Corporate Officer  
8 Lucia Triana/Javier Gomez  
9 Triana's Professional Services fka TM & D Enterprises, Registered Agent  
4680 S. Eastern Ave., Ste. A  
Las Vegas, NV 89119

10 J MORALES INC.  
11 Jose Morales, Corporate Officer  
12 Javier Gomez/Lucia Triana  
13 TM & D Enterprises, Registered Agent  
4660 S. Eastern Ave., Ste. 105  
Las Vegas, NV 89119

14  
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18 An employee of PERALTA LAW GROUP  
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1 **DFLT**  
2 **OSCAR PERALTA, ESQ.**  
3 Nevada Bar No. 13559  
4 **PERALTA LAW GROUP**  
5 101 Convention Center Dr., Ste. 340  
6 Las Vegas, NV 89109  
7 Tel: (702) 758-8700  
8 Fax: (702) 758-8704  
9 Email: oscar@peraltalawgroup.com  
10 *Attorney for Plaintiff*

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

14 MAX VARGAS,

15 Plaintiff,

16 v.

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

21 Defendants.

Case No. : A-18-768988-C

Dept. No.: 32

**DEFAULT**

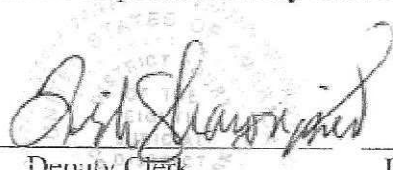
22 It appearing from the files and records in the above entitled action that J MORALES INC.,  
23 Defendant herein, being duly served with a copy of the Summons and Complaint on the 16<sup>th</sup> day of  
24 February; that more than 20 days, exclusive of the day of service, having expired since service upon  
25 the Defendant; that no answer or other appearance having been filed and no further time having

26 ///

27 ///

28 ///

1 been granted, the default of the above-named Defendant for failing to answer or otherwise plead to  
2 Plaintiff's Complaint is hereby entered.

3  
4 By:  - 4/13/2018  
5 Deputy Clerk Date Irish Lapira  
6

7 Submitted by:

8 **PERALTA LAW GROUP**

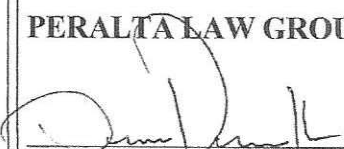
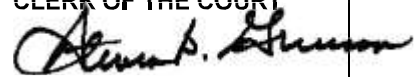
9  
10   
11 OSCAR PERALTA, ESQ.  
12 Nevada Bar No. 13559  
13 101 Convention Center Dr., Ste. 340  
14 Las Vegas, NV 89109  
15 Attorney for Plaintiff  
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EXHIBIT 5

EXHIBIT 5



NEO  
OSCAR PERALTA, ESQ.  
Nevada Bar No. 13559  
PERALTA LAW GROUP  
101 Convention Center Dr., Ste. 340  
Las Vegas, NV 89109  
Tel: (702) 758-8700  
Fax: (702) 758-8704  
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.


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

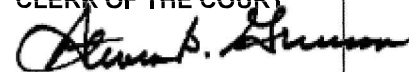


OSCAR PERALTA, ESQ.  
Nevada Bar No. 13559  
101 Convention Center Dr., Ste. 340  
Las Vegas, NV 89109  
*Attorney for Plaintiff*

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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*

/s/ Alexandria Guzman  
An employee of Peralta Law Group



DFJD  
OSCAR PERALTA, ESQ.  
Nevada Bar No. 13559  
PERALTA LAW GROUP  
101 Convention Center Dr., Ste. 340  
Las Vegas, NV 89109  
Tel: (702) 758-8700  
Fax: (702) 758-8704  
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.

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 12 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

- 19           1.     The sum of \$134,152.93 for past medical bills;
- 20           2.     The sum of \$6,340.68 for past lost wages;
- 21           3.     The sum of \$200,000.00 for past pain and suffering;
- 22           4.     The sum of \$200,000.00 for future pain and suffering;
- 23           5.     The sum of \$1,000,000.00 for punitive damages;
- 24           6.     The sum of \$1,298.51 for costs incurred;
- 25
- 26
- 27
- 28

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.

6  
7  
8           

9           DISTRICT COURT JUDGE

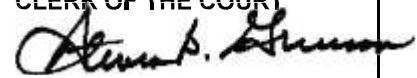
10           ROB BARE  
11           JUDGE, DISTRICT COURT, DEPARTMENT 32

12           Respectfully Submitted By:

13             
14           OSCAR PERALTA, ESQ.  
15           Nevada Bar No. 13559  
16           101 Convention Center Dr., Ste. 340  
17           Las Vegas, NV 89109  
18           Tel: (702) 758-8700  
19           Fax: (702) 758-8704  
20           Email: oscar@peraltalawgroup.com  
21           Attorney for Plaintiff

EXHIBIT 6

EXHIBIT 6



1 **OGM**  
2 Ogonna Brown, Esq.  
3 Nevada Bar No. 7589  
4 obrown@lrrc.com  
5 Adrienne Brantley-Lomeli, Esq.  
6 Nevada Bar No. 14486  
7 abrantley-lomeli@lrrc.com  
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

On November 10, 2020, this matter came on for hearing on shortened time on Defendant J Morales Inc.'s ("JMI") Emergency Motion to Set Aside Judgment and Stay Execution of Judgment ("Motion") in Department XXXII of the Eighth Judicial District Court, Clark County, Nevada, with Hon. Rob Bare presiding. Adrienne Brantley-Lomeli, Esq. of the law firm of Lewis Roca Rothgerber 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  
2 1. This Court refers to and adopts those Findings of Fact and Conclusions of Law as  
3 already set forth in its November 12, 2020, Minute Order: Motion to Set Aside Judgment and Stay  
4 Execution of Judgment, and incorporates them as though fully set forth herein.

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

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

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

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

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

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

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

16 9. Plaintiff then sought default judgment by filing an Application on September 19,  
17 2018.

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

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

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

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

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

27 15. On November 9, 2020, JMI filed its Reply in support of the Motion (“Reply”).  
28

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  
Ogonna Brown, Esq. (NBN 7589)  
Adrienne Brantley-Lomeli, Esq. (NBN 14486)  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
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  
702.474.2622 office  
702.949.8398 fax  
[OBrown@lrrc.com](mailto:OBrown@lrrc.com)

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

---

**Lewis Roca**  
**ROTHGERBER CHRISTIE**

Lewis Roca Rothgerber Christie LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
[lrrc.com](http://lrrc.com)



Because what matters  
to you, matters to us.  
[Read our client service principles](#)

EXHIBIT 7

EXHIBIT 7



**REGISTER OF ACTIONS****CASE NO. A-18-768988-C****Max Vargas, Plaintiff(s) vs. Ortiz Family, LLC, Defendant(s)**§  
§  
§  
§  
§  
§  
§  
§Case Type: **Negligence - Other Negligence**Date Filed: **02/05/2018**Location: **Department 29**Cross-Reference Case Number: **A768988**Supreme Court No.: **82218****PARTY INFORMATION**

<b>Defendant</b>	<b>J. Morales, Inc.</b>	<b>Lead Attorneys</b> <b>Adrienne R. Brantley</b> <i>Retained</i>
<b>Defendant</b>	<b>Ortiz Family, LLC <i>Doing Business As</i> El Sellito Rojo</b>	<b>Adrienne R. Brantley</b> <i>Retained</i>
<b>Plaintiff</b>	<b>Vargas, Max</b>	<b>Oscar Peralta</b> <i>Retained</i> 702-758-8700(W)

**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

07/25/2019	<b>Default Judgment Plus Legal Interest</b> (Judicial Officer: Bare, Rob) Debtors: Ortiz Family, LLC (Defendant) Creditors: Max Vargas (Plaintiff) Judgment: 07/25/2019, Docketed: 07/25/2019 Total Judgment: 1,706,214.75
11/24/2020	<b>Amended Judgment Vacated</b> (Judicial Officer: Bare, Rob) Reason: Vacated Debtors: J. Morales, Inc. (Defendant) Creditors: Max Vargas (Plaintiff) Judgment: 11/24/2020, Docketed: 11/25/2020 Total Judgment: 1,706,214.75  07/25/2019 <b>Judgment Plus Legal Interest</b> (Judicial Officer: Bare, Rob) Debtors: J. Morales, Inc. (Defendant) Creditors: Max Vargas (Plaintiff) Judgment: 07/25/2019, Docketed: 11/25/2020 Total Judgment: 1,706,214.75

**OTHER EVENTS AND HEARINGS**

02/05/2018	<b>Complaint</b> <i>Complaint</i>
02/05/2018	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Ortiz Family LLC d/b/a El Sellito Rojo</i>
02/05/2018	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - J Morales, Inc.</i>
04/03/2018	<b>Affidavit of Service</b> <i>Affidavit of Service</i>
04/03/2018	<b>Affidavit of Service</b> <i>Affidavit of Service</i>
04/13/2018	<b>Default</b> <i>Default</i>
04/13/2018	<b>Default</b> <i>Default</i>
04/17/2018	<b>Notice of Entry of Default</b> <i>Notice of Entry of Default - Ortiz Family LLC d/b/a El Sellito Rojo</i>
04/17/2018	<b>Notice of Entry of Default</b> <i>Notice of Entry of Default - J Morales Inc.</i>
09/19/2018	<b>Memorandum of Costs and Disbursements</b> <i>Memorandum of Costs and Disbursements</i>
09/19/2018	<b>Application for Default Judgment</b> <i>Application for Default Judgment</i>
09/19/2018	<b>Affidavit in Support of Default Judgment</b> <i>Affidavit in Support of Default Judgment</i>
03/22/2019	<b>Order to Statistically Close Case</b> <i>Civil Order to Statistically Close Case</i>
04/16/2019	<b>Minute Order</b> (3:00 AM) (Judicial Officer Bare, Rob) <u>Minutes</u> Result: Minute Order - No Hearing Held

04/24/2019	<b>Minute Order</b> (3:00 AM) (Judicial Officer Bare, Rob) <a href="#">Minutes</a> Result: Minute Order - No Hearing Held
06/18/2019	<b>Prove Up</b> (10:30 AM) (Judicial Officer Bare, Rob) <i>Prove-up Re: Plaintiff's Motion for Default Judgment</i> <a href="#">Parties Present</a> <a href="#">Minutes</a> <i>04/25/2019 Reset by Court to 06/18/2019</i> Result: Default Entered
07/25/2019	<b>Default Judgment</b> <i>Default Judgment</i>
08/06/2019	<b>Notice of Entry</b> <i>Notice of Entry of Order</i>
09/24/2020	<b>Notice of Appearance</b> <i>Notice of Appearance</i>
09/24/2020	<b>Writ Electronically Issued</b> <i>Writ of Execetution Wells Fargo Bank - Bank Accounts and CDs</i>
09/24/2020	<b>Writ Electronically Issued</b> <i>Writ of Execution - Wells Fargo Safe Deposit Boxes</i>
10/27/2020	<b>Motion to Set Aside Default Judgment</b> <i>Emergency Motion to Set Aside Judgment and Stay Execution of Judgment on an Order Shortening Time</i>
11/06/2020	<b>Minute Order</b> (3:00 AM) (Judicial Officer Bare, Rob) <i>Formal Request to Appear Remotely</i> <a href="#">Minutes</a> Result: Minute Order - No Hearing Held
11/06/2020	<b>Opposition</b> <i>Plaintiff's Opposition to Defendant J MORALES INC.'s Motion to Set Aside Judgment</i>
11/09/2020	<b>Reply</b> <i>Reply In Support Of Emergency Motion To Set Aside Judgment And Stay Execution Of Judgment</i>
11/10/2020	<b>Motion to Set Aside</b> (11:00 AM) (Judicial Officer Bare, Rob) <i>Emergency Motion to Set Aside Judgment and Stay Execution of Judgment</i> <a href="#">Parties Present</a> <a href="#">Minutes</a> <i>11/30/2020 Reset by Court to 11/10/2020</i> Result: Motion Granted
11/12/2020	<b>Minute Order</b> (3:00 AM) (Judicial Officer Bare, Rob) <i>Emergency Motion to Set Aside Judgment and Stay Execution of Judgment</i> <a href="#">Minutes</a> Result: Minute Order - No Hearing Held
11/24/2020	<b>Order Granting Motion</b> <i>Order Granting J Morales Inc.'s Emergency Motion to Set Aside Judgment and Stay Execution of Judgment</i>
11/24/2020	<b>Notice of Entry of Order</b> <i>Notice Of Entry Of Order Granting J Morales Inc. s Emergency Motion To Set Aside Judgment And Stay Execution Of Judgment</i>
12/01/2020	<b>Motion to Dismiss</b> <i>Motion to Dismiss</i>
12/02/2020	<b>Clerk's Notice of Hearing</b> <i>Notice of Hearing</i>
12/11/2020	<b>Notice of Appeal</b> <i>Notice of Appeal</i>
12/11/2020	<b>Case Appeal Statement</b> <i>Case Appeal Statement</i>
12/28/2020	<b>Reporters Transcript</b> <i>Request for Transcript of Proceedings</i>
01/04/2021	<b>Case Reassigned to Department 29</b> <i>Judicial Reassignment to Judge David M. Jones</i>
01/06/2021	<b>Notice of Non Opposition</b> <i>Notice Of Non-Opposition To Defendant J Morales Inc. s Motion To Dismiss Plaintiff s Complaint</i>
01/07/2021	<b>Errata</b> <i>Errata To Notice Of Non-Opposition To Defendant J Morales Inc. s Motion To Dismiss Plaintiff s Complaint</i>
01/18/2021	<b>Motion</b> <i>Emergency Motion to Reinstate Hearing on Motion to Dismiss</i>
01/19/2021	<b>CANCELED Motion to Dismiss</b> (9:00 AM) (Judicial Officer Jones, David M) <i>Vacated</i> <i>Motion to Dismiss</i> <i>01/14/2021 Reset by Court to 01/19/2021</i>
01/19/2021	<b>Opposition to Motion</b> <i>Opposition to Defendant J Morales, Inc.'s Emergency Motion to Reinstate Hearing on Defendant J Morales Inc.'s Motion to Dismiss Plaintiff's Complaint</i>
01/20/2021	<b>Motion</b> (9:00 AM) (Judicial Officer Jones, David M) <i>Emergency Motion to Reinstate Hearing on Motion to Dismiss</i> <a href="#">Parties Present</a> Result: Hearing Set
01/20/2021	<b>Reply in Support</b> <i>Reply in Support of Emergency Motion to Reinstate Hearing on Defendant J Morales Inc. s Motion to Dismiss Plaintiff s Complaint</i>
02/17/2021	<b>Argument</b> (9:00 AM) (Judicial Officer Jones, David M) <i>Argument</i>

## FINANCIAL INFORMATION

**Defendant J. Morales, Inc.**

Total Financial Assessment

21.00

Total Payments and Credits

21.00

**Balance Due as of 01/22/2021****0.00**

11/09/2020	Transaction Assessment			3.50
11/09/2020	Efile Payment	Receipt # 2020-63468-CCCLK	J. Morales, Inc.	(3.50)
11/24/2020	Transaction Assessment			3.50
11/24/2020	Efile Payment	Receipt # 2020-66715-CCCLK	J. Morales, Inc.	(3.50)
12/01/2020	Transaction Assessment			3.50
12/01/2020	Efile Payment	Receipt # 2020-67603-CCCLK	J. Morales, Inc.	(3.50)
01/06/2021	Transaction Assessment			3.50
01/06/2021	Efile Payment	Receipt # 2021-00853-CCCLK	J. Morales, Inc.	(3.50)
01/07/2021	Transaction Assessment			3.50
01/07/2021	Efile Payment	Receipt # 2021-00950-CCCLK	J. Morales, Inc.	(3.50)
01/20/2021	Transaction Assessment			3.50
01/20/2021	Efile Payment	Receipt # 2021-03699-CCCLK	J. Morales, Inc.	(3.50)

**Plaintiff Vargas, Max**

Total Financial Assessment

314.00

Total Payments and Credits

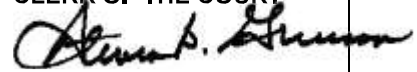
314.00

**Balance Due as of 01/22/2021****0.00**

02/05/2018	Transaction Assessment			270.00
02/05/2018	Efile Payment	Receipt # 2018-08406-CCCLK	Vargas, Max	(270.00)
09/25/2020	Transaction Assessment			10.00
09/25/2020	Efile Payment	Receipt # 2020-53724-CCCLK	Vargas, Max	(10.00)
09/25/2020	Transaction Assessment			10.00
09/25/2020	Efile Payment	Receipt # 2020-53725-CCCLK	Vargas, Max	(10.00)
12/11/2020	Transaction Assessment			24.00
12/11/2020	Efile Payment	Receipt # 2020-70000-CCCLK	Vargas, Max	(24.00)

EXHIBIT 8

EXHIBIT 8



**OSCAR PERALTA, ESQ.**  
Nevada Bar No. 13559  
**PERALTA LAW GROUP**  
101 Convention Center Dr., Ste. 340  
Las Vegas, NV 89109  
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Oscar@peraltalawgroup.com  
*Attorney for Plaintiff*

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

MAX VARGAS,  
  
Plaintiff,

Case No. : A-18-768988-C

Dept. No.: 32

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.

**NOTICE OF APPEAL**

NOTICE is hereby given that Plaintiff, MAX VARGAS, by and through his attorney of record, OSCAR PERALTA, ESQ., of PERALTA LAW GROUP, hereby appeal to the Supreme Court of Nevada from the Order granting Defendant J MORALES INC.'s Motion to Set Aside Judgment entered in this action on the 24<sup>th</sup> day of November, attached hereto as Exhibit "A".

DATED this 11<sup>th</sup> day of December, 2020.

**PERALTA LAW GROUP**



**OSCAR PERALTA, ESQ.**  
101 Convention Center Dr., Ste. 340  
Las Vegas, NV 89109  
*Attorney for Plaintiff*

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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.*


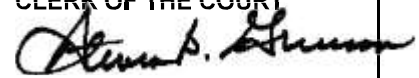
  
An Employee of Peralta Law Group

EXHIBIT A

EXHIBIT A



1 **OGM**  
2 Ogonna Brown, Esq.  
3 Nevada Bar No. 7589  
4 obrown@lrrc.com  
5 Adrienne Brantley-Lomeli, Esq.  
6 Nevada Bar No. 14486  
7 abrantley-lomeli@lrrc.com  
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  
2 1. This Court refers to and adopts those Findings of Fact and Conclusions of Law as  
3 already set forth in its November 12, 2020, Minute Order: Motion to Set Aside Judgment and Stay  
4 Execution of Judgment, and incorporates them as though fully set forth herein.

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

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

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

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

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

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

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

16 9. Plaintiff then sought default judgment by filing an Application on September 19,  
17 2018.

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

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

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

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

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

27 15. On November 9, 2020, JMI filed its Reply in support of the Motion (“Reply”).  
28

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**

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Approved as to form:

**PERALTA LAW GROUP**

By: /s/ Oscar Peralta

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**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]

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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  
702.474.2622 office  
702.949.8398 fax  
[OBrown@lrrc.com](mailto:OBrown@lrrc.com)

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

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