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Attorneys for Dave & Buster's of Nevada, Inc.

Electronically Filed
Mar 03 2021 10:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

Damaso S. Puente, individually and on behalf of the
Estate of Damaso I. Puente; Maria Puente; Daniel
Malone; and Diane Malone, individually and on
behalf of the Estate of Christa Puente,

Plaintiffs,

vs.

Henry Biderman Aparicio; Morgan Hurley; Dave &
Buster's of Nevada, Inc. dba Dave & Buster's; Dave
& Buster's, Inc.; MAT-Summerlin, LLC dba Casa
del Matador Summerlin; Matador Investments, LLC;
Opper Melang 5410, LLC; Mel-Opp & Griff, LLC;
Opp Mel & Griff, Inc.; Mocore, LLC; Does I-V, and
Roe Corporations I-V, Roe Manufacturer I-V; Roe
Wholesaler I-V; Roe Retailer I-V,

Defendants.

Case No.: A-20-813787-C
Dept. No.: 18

**Dave & Buster's of Nevada, Inc.'s
Notice of Cross-Appeal**

Dave & Buster's of Nevada, Inc. ("Dave & Buster's") appeals to the Supreme Court of Nevada that part of the district court's December 14, 2020 order concluding "NRS 41.1305(1) does not bar a cause of action against Dave & Buster's to the extent that Dave & Buster's agents or employees may have assisted Mr. Aparicio to the vehicle he drove that was then involved in the collision that killed Damaso & Christa Puente." Plaintiffs filed a notice of appeal concerning this ruling on February 24, 2021 and the appeal is assigned Supreme Court docket number 82554. This cross-appeal is timely per NRAP 4(a)(2).

///

1 DATED this 1st day of March, 2021.



3
4 /s/ Michael P. Lowry

5 BY:

6 MICHAEL P. LOWRY, ESQ.
7 Nevada Bar No. 10666
8 VIRGINIA TOMOVA, ESQ.
9 Nevada Bar No. 12504
6689 Las Vegas Blvd. South, Suite. 200
Las Vegas, Nevada 89119
Attorneys for Dave & Buster's of Nevada, Inc.

10 **Certificate of Service**

11 Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman &
12 Dicker LLP, and that on March 1, 2021, I served **Dave & Buster's of Nevada, Inc.'s Notice of**
13 **Cross-Appeal** as follows:

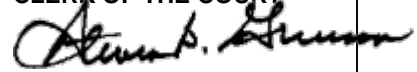
- 14 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
envelope upon which first class postage was prepaid in Las Vegas, Nevada;
15 ☒ via electronic means by operation of the Court's electronic filing system, upon each
16 party in this case who is registered as an electronic case filing user with the Clerk;

17

18 Thomas F. Christensen Christensen Law 1000 S Valley View Blvd 19 Las Vegas, Nevada 89107 Attorneys for Plaintiffs	Shea Backus Backus, Carranza & Burden 3050 S. Durango Dr. Las Vegas, NV 89117 Attorneys for Morgan Hurley; Henry Aparicio
20 Michael Koning 21 Wolfe & Wyman 6757 Spencer St. 22 Las Vegas, NV 89119 Attorneys for Mocore, LLC; MAT-Summerlin, 23 LLC	

24 BY: /s/ Amanda Hill
25 An Employee of





MICHAEL P. LOWRY, ESQ.
Nevada Bar No. 10666
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Tel: 702.727.1400/Fax: 702.727.1401
Attorneys for Dave & Buster's of Nevada, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

Damaso S. Puente, individually and on behalf of the
Estate of Damaso I. Puente; Maria Puente; Daniel
Malone; and Diane Malone, individually and on
behalf of the Estate of Christa Puente,

Plaintiffs,

vs.

Henry Biderman Aparicio; Morgan Hurley; Dave &
Buster's of Nevada, Inc. dba Dave & Buster's; Dave
& Buster's, Inc.; MAT-Summerlin, LLC dba Casa
del Matador Summerlin; Matador Investments, LLC;
Oppel Melang 5410, LLC; Mel-Opp & Griff, LLC;
Opp Mel & Griff, Inc.; Mocore, LLC; Does I-V, and
Roe Corporations I-V, Roe Manufacturer I-V; Roe
Wholesaler I-V; Roe Retailer I-V,

Defendants.

Case No.: A-20-813787-C
Dept. No.: 18

**Dave & Buster's of Nevada, Inc.'s Case
Appeal Statement**

1. **Name of appellant filing this case appeal statement:** Dave & Buster's of Nevada, Inc.
2. **Identify the judge issuing the decision, judgment, or order appealed from:** Judge Mary Kay Holthus
3. **Identify each appellant and the name and address of counsel for each appellant:**

Dave & Buster's of Nevada, Inc., represented by Michael P. Lowry, 6689 Las Vegas Blvd.
South, Suite 200, Las Vegas, Nevada 89119.

- 1 4. **Identify each respondent and the name and address of appellate counsel, if known, for**
2 **each respondent (if the name of a respondent's appellate counsel is unknown, indicate**
3 **as much and provide the name and address of that respondent's trial counsel):** Damaso
4 S. Puente, individually and on behalf of the Estate of Damaso I. Puente; Maria Puente; Daniel
5 Malone; and Diane Malone, individually and on behalf of the Estate of Christa Puente. All
6 are represented by Thomas F. Christensen, 1000 S Valley View Blvd., Las Vegas, Nevada
7 89107.
- 8 5. **Indicate whether any attorney identified above in response to question 3 or 4 is not**
9 **licensed to practice law in Nevada and, if so, whether the district court granted that**
10 **attorney permission to appear under SCR 42 (attach a copy of any district court order**
11 **granting such permission):** All lawyers appearing in this matter are licensed to practice in
12 Nevada.
- 13 6. **Indicate whether appellant was represented by appointed or retained counsel in the**
14 **district court:** Dave & Buster's was represented by retained counsel in the district court.
- 15 7. **Indicate whether appellant is represented by appointed or retained counsel on appeal:**
16 Dave & Buster's is represented on appeal by retained counsel.
- 17 8. **Indicate whether appellant was granted leave to proceed in forma pauperis, and the**
18 **date of entry of the district court order granting such leave:** Dave & Buster's did not
19 seek and was not granted leave to proceed in forma pauperis.
- 20 9. **Indicate the date the proceedings commenced in the district court (e.g., date complaint,**
21 **indictment, information, or petition was filed):** The complaint was filed April 17, 2020.
- 22 10. **Provide a brief description of the nature of the action and result in the district court,**
23 **including the type of judgment or order being appealed and the relief granted by the**
24 **district court:** On May 15, 2018, Henry Aparicio drove drunk and killed Damaso &
25 Christa Puente. He was convicted for his actions. The Puentes' estates and their heirs sued
26 Mr. Aparicio and Dave & Buster's, among other defendants. Plaintiffs argue Dave &
27 Buster's is vicariously responsible for Mr. Aparicio's actions because he consumed alcohol
28 at Dave & Buster's that night and then drove drunk. However, in Nevada the person who

drove drunk is responsible for his actions, not the restaurants where he drank. Dave & Buster's moved to dismiss per NRS 41.1305(1). The district court granted that motion, with one exception. "NRS 41.1305(1) does not bar a cause of action against Dave & Buster's to the extent that Dave & Buster's agents or employees may have assisted Mr. Aparicio to the vehicle he drove that was then involved in the collision that killed Damaso & Christa Puente." When discovery opened, Dave & Buster's obtained Metro's investigative file that conclusively identified the person who may have assisted Mr. Aparicio to his vehicle was an employee of a co-defendant. Dave & Buster's then moved for summary judgment on the one remaining cause of action and it was granted.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: The civil case has not been previously appealed or the subject of an original writ proceeding. However, Mr. Aparicio's sentencing for his criminal conviction was at issue in case 80072.

12. Indicate whether this appeal involves child custody or visitation: It does not.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

It is a civil case, but Plaintiffs have indicated they are not interested in settlement.

DATED this 1st day of March, 2021.



/s/ Michael P. Lowry

BY:

MICHAEL P. LOWRY, ESQ.
Nevada Bar No. 10666
VIRGINIA TOMOVA, ESQ.
Nevada Bar No. 12504
6689 Las Vegas Blvd. South, Suite. 200
Las Vegas, Nevada 89119
Attorneys for Dave & Buster's of Nevada, Inc.

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Certificate of Service

Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on March 1, 2021, I served **Dave & Buster's of Nevada, Inc.'s Case Appeal Statement** as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

Thomas F. Christensen Christensen Law 1000 S Valley View Blvd Las Vegas, Nevada 89107 Attorneys for Plaintiffs	Shea Backus Backus, Carranza & Burden 3050 S. Durango Dr. Las Vegas, NV 89117 Attorneys for Morgan Hurley; Henry Aparicio
Michael Koning Wolfe & Wyman 6757 Spencer St. Las Vegas, NV 89119 Attorneys for Mocore, LLC; MAT-Summerlin, LLC	

BY: /s/ Amanda Hill
An Employee of



EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. A-20-813787-C**

Damaso Puente, Plaintiff(s)
vs.
Henry Aparicio, Defendant(s)

§
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 §
 §
 §

Location: **Department 18**
 Judicial Officer: **Holthus, Mary Kay**
 Filed on: **04/17/2020**
 Cross-Reference Case Number: **A813787**
 Supreme Court No.: **82554**

CASE INFORMATIONCase Type: **Negligence - Auto**

Case
 Status: **04/17/2020 Open**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-20-813787-C
 Court Department 18
 Date Assigned 04/17/2020
 Judicial Officer Holthus, Mary Kay

PARTY INFORMATION

Plaintiff	Estate of Christa Puente	<i>Lead Attorneys</i> Christensen, Thomas F. <i>Retained</i> 7028701000(W)
	Estate of Damaso I Puente	Christensen, Thomas F. <i>Retained</i> 7028701000(W)
	Malone, Daniel	Christensen, Thomas F. <i>Retained</i> 7028701000(W)
	Malone, Diane	Christensen, Thomas F. <i>Retained</i> 7028701000(W)
	Puente, Damaso S	Christensen, Thomas F. <i>Retained</i> 7028701000(W)
	Puente, Maria	Christensen, Thomas F. <i>Retained</i> 7028701000(W)
Defendant	Aparicio, Henry Biderman	Backus, Shea A. <i>Retained</i> 702-872-5555(W)
	Dave & Busters Inc Removed: 06/09/2020 Dismissed	
	Dave & Busters of Nevada Inc	Lowry, Michael P. <i>Retained</i> 702-727-1400(W)
	Hurley, Morgan	Backus, Shea A. <i>Retained</i>

CASE SUMMARY**CASE NO. A-20-813787-C**

702-872-5555(W)

MAT Summerlin LLC**Koning, Michael A.***Retained*

702-258-6238(W)

Matador Investments LLC

Removed: 06/19/2020

Dismissed

Mel-Opp & Griff LLC

Removed: 06/19/2020

Dismissed

Mocore LLC**Koning, Michael A.***Retained*

702-258-6238(W)

Opp Mel & Griff Inc

Removed: 06/19/2020

Dismissed

Opper Meland 5410 LLC

Removed: 06/19/2020







Dismissed

**Special
Administrator****Malone, Diane****Christensen, Thomas F.***Retained*

7028701000(W)

Puente, Damaso S**Christensen, Thomas F.***Retained*

7028701000(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
04/17/2020	 Complaint Filed By: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Complaint</i>	
04/17/2020	 Initial Appearance Fee Disclosure Filed By: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Initial Appearance Fee Disclosure</i>	
04/17/2020	 Summons Electronically Issued - Service Pending Party: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Summons</i>	
04/17/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>	
04/17/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>	
04/17/2020	 Summons Electronically Issued - Service Pending	

CASE SUMMARY













CASE NO. A-20-813787-C

	<i>Summons</i>
04/17/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
04/17/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
04/17/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
04/17/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
04/17/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
04/17/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
05/14/2020	 Waiver Filed by: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Waiver</i>
05/19/2020	 Waiver Filed by: Special Administrator Puente, Damaso S; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane <i>Waiver</i>
05/20/2020	 Motion to Dismiss Filed By: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster's of Nevada, Inc.'s Motion to Dismiss</i>
05/20/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster s of Nevada, Inc. s Initial Appearance Fee Disclosure</i>
05/20/2020	 Disclosure Statement Party: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster s of Nevada, Inc. s NRCP 7.1 Disclosure</i>
05/21/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
06/02/2020	 Answer to Complaint Filed by: Defendant MAT Summerlin LLC; Defendant Mocore LLC <i>Defendants Mocore LLC and Mat-Summerlin LLC d/b/a The Matador's Answer to Plaintiff's Complaint</i>
06/02/2020	 Initial Appearance Fee Disclosure Filed By: Defendant MAT Summerlin LLC; Defendant Mocore LLC <i>Defendants Mocore LLC and Mat-Summerlin LLC d/b/a The Matador Initial Appearance Fee</i>

CASE SUMMARY

CASE NO. A-20-813787-C











Disclosure

06/02/2020	 Demand for Jury Trial Filed By: Defendant MAT Summerlin LLC; Defendant Mocore LLC <i>Defendants Mocore LLC and Mat-Summerlin LLC d/b/a The Matador's Demand for Jury Trial</i>
06/02/2020	 Disclosure Statement Party: Defendant MAT Summerlin LLC <i>Defendant Mat-Summerlin LLC d/b/a The Matador's NRCP 7.1 Disclosure Statement</i>
06/02/2020	 Disclosure Statement Party: Defendant Mocore LLC <i>Defendant Mocore LLC's NRCP 7.1 Disclosure Statement</i>
06/09/2020	 Opposition to Motion to Dismiss Filed By: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Plaintiffs' Opposition to Dave & Buster's Motion to Dismiss</i>
06/09/2020	 Notice of Voluntary Dismissal Filed By: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Notice of Voluntary Dismissal</i>
06/15/2020	 Waiver Filed by: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Notice of Waiver</i>
06/15/2020	 Waiver Filed by: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Notice of Waiver</i>
06/16/2020	 Answer to Complaint Filed by: Defendant Hurley, Morgan <i>Defendant Morgan Hurley's Answer to Complaint</i>
06/16/2020	 Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
06/16/2020	 Demand for Jury Trial Filed By: Defendant Aparicio, Henry Biderman <i>Demand for Jury Trial</i>
06/16/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Aparicio, Henry Biderman <i>Initial Appearance Fee Disclosure</i>
06/16/2020	 Answer to Complaint Filed by: Defendant Aparicio, Henry Biderman

CASE SUMMARY


CASE NO. A-20-813787-C

Henry Aparicio's Answer to Complaint

06/19/2020	 Stipulation and Order for Dismissal Without Prejudice <i>STIPULATION AND ORDER TO DISMISS MATADOR INVESTMENTS LLC; OPPER MELANG 5410, LLC; MEL-OPP AND GRIFF, LLC; AND OPPMEL AND GRIFF, INC. WITHOUT PREJUDICE</i>
06/19/2020	 Notice of Entry Filed By: Defendant Matador Investments LLC <i>Notice of Entry of Stipulation and Order to Dismiss Matador Investments LLC, Opper Melang 5410 LLC, Mel-Opp and Griff, LLC and Opp Mel Griff, Inc. Without Prejudice</i>
06/22/2020	 Request for Exemption From Arbitration Filed by: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Request for Exemption from Arbitration</i>
06/24/2020	 Reply to Opposition Filed by: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster's of Nevada, Inc's Reply re Motion to Dismiss</i>
07/09/2020	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption - GRANTED</i>
07/14/2020	 Order Denying Motion Filed By: Defendant Dave & Busters of Nevada Inc <i>Order on Dave & Buster s of Nevada, Inc s Motion to Dismiss</i>
07/24/2020	 Notice of Early Case Conference Filed By: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Notice of Early Case Conference</i>
08/07/2020	 First Amended Complaint Filed By: Special Administrator Puente, Damaso S; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane <i>First Amended Complaint</i>
08/14/2020	 Motion to Dismiss Filed By: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster's of Nevada, Inc.'s Renewed Motion to Dismiss</i>
08/18/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
08/25/2020	 Answer Filed By: Defendant Aparicio, Henry Biderman <i>Henry Aparicio's Answer to First Amended Complaint</i>
08/25/2020	 Answer to Amended Complaint Filed By: Defendant Hurley, Morgan <i>Defendant Morgan Hurley's Answer to First Amended Complaint</i>

CASE SUMMARY

CASE NO. A-20-813787-C

09/01/2020	 Answer to Amended Complaint Filed By: Defendant MAT Summerlin LLC; Defendant Mocore LLC <i>Defendant's Mocore LLC and Mat-Summerlin LLC d/b/a The Matador's Answer to Plaintiff's First Amended Complaint</i>
09/02/2020	 Opposition to Motion to Dismiss Filed By: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Plaintiffs' Opposition to Dave & Buster's Renewed Motion to Dismiss</i>
09/09/2020	 Reply to Motion Filed By: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster s of Nevada, Inc. s Reply re Renewed Motion to Dismiss</i>
10/20/2020	 Joint Case Conference Report Filed By: Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Joint Case Conference Report</i>
10/21/2020	 Recorders Transcript of Hearing <i>Recorder's Transcript Re: Dave & Buster's of Nevada, Inc.'s Renewed Motion to Dismiss - September 16, 2020</i>
11/14/2020	 Motion to Quash <i>Nevada Defense Group's Motion to Quash Subpoena Duces Tecum for Business Records</i>
11/16/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
11/16/2020	 Opposition to Motion <i>Dave & Buster s of Nevada, Inc s Opposition to Motion to Quash</i>
11/17/2020	 Motion to Quash <i>Nevada Defense Group's Motion to Quash Subpoena Duces Tecum for Business Records</i>
11/18/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
11/23/2020	 Notice of Change Filed By: Defendant Mocore LLC <i>Defendant Mocore LLC dba Mat-Summerlin LLC dba The Matador Notice of Change of Handling Attorney</i>
12/02/2020	 Order <i>ORDER SCHEDULING MANDATORY CASE MANAGEMENT CONFERENCE</i>
12/02/2020	 Answer Filed By: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster's of Nevada, Inc's Answer to Amended Complaint</i>
12/02/2020	 Demand for Jury Trial <i>Dave & Buster s of Nevada, Inc s Jury Demand</i>








CASE SUMMARY

CASE NO. A-20-813787-C

12/03/2020	 Motion for Summary Judgment Filed By: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster s of Nevada, Inc's Motion for Summary Judgment</i>
12/04/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
12/14/2020	 Order Filed By: Plaintiff Estate of Damaso I Puente; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Order Dave & Buster's Renewed Motion to Dismiss</i>
12/15/2020	 Notice of Entry Filed By: Special Administrator Puente, Damaso S; Special Administrator Malone, Diane <i>Notice of Entry of Order</i>
12/17/2020	 Opposition to Motion For Summary Judgment Filed By: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Plaintiff's Opposition to Dave & Buster's of Nevada, Inc.'s Motion for Summary Judgment</i>
12/23/2020	 Scheduling and Trial Order <i>Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial Conference/ Calendar Call</i>
12/28/2020	 Reply to Motion Filed By: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster's of Nevada, Inc.'s Reply re Motion for Summary Judgment</i>
01/26/2021	 Order Granting Summary Judgment <i>Order re Dave & Buster's of Nevada, Inc's Motion for Summary Judgment</i>
01/26/2021	 Notice of Entry of Order Filed By: Defendant Dave & Busters of Nevada Inc <i>Notice of Entry</i>
01/28/2021	 Memorandum of Costs and Disbursements <i>Dave & Buster's of Nevada, Inc's Memorandum of Costs</i>
01/29/2021	 Order Filed By: Defendant Dave & Busters of Nevada Inc <i>Order re Nevada Defense Group's Motion to Quash</i>
01/29/2021	 Notice of Entry of Order Filed By: Defendant Dave & Busters of Nevada Inc <i>Notice of Entry of Order</i>
02/03/2021	 Amended Certificate of Service <i>Amended Certificate of Service for Dave & Buster's of Nevada, Inc.'s Memorandum of Costs</i>
02/15/2021	 Motion for Attorney Fees Filed By: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster s of Nevada, Inc's Motion for Fees</i>

CASE SUMMARY

CASE NO. A-20-813787-C

02/16/2021	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
02/17/2021	 Order Filed By: Defendant Dave & Busters of Nevada Inc <i>Order Granting Dave and Buster 's Of Nevada Memorandum of Cost</i>
02/17/2021	 Notice of Entry of Order Filed By: Defendant Dave & Busters of Nevada Inc <i>Notice of Entry</i>
02/24/2021	 Notice of Appeal Filed By: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Notice of Appeal</i>
02/24/2021	 Case Appeal Statement Filed By: Special Administrator Puente, Damaso S; Plaintiff Estate of Damaso I Puente; Plaintiff Puente, Maria; Plaintiff Malone, Daniel; Special Administrator Malone, Diane; Plaintiff Estate of Christa Puente <i>Case Appeal Statement</i>
03/01/2021	 Case Appeal Statement Filed By: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster s of Nevada, Inc. s Case Appeal Statement</i>
03/01/2021	 Notice of Appeal Filed By: Defendant Dave & Busters of Nevada Inc <i>Dave & Buster s of Nevada, Inc. s Notice of Cross-Appeal</i>
<u>DISPOSITIONS</u>	
06/15/2020	Dismissal Pursuant to NRCP 41 (Judicial Officer: Holthus, Mary Kay) Debtors: Dave & Busters Inc (Defendant) Creditors: Damaso S Puente (Plaintiff), Estate of Damaso I Puente (Plaintiff), Maria Puente (Plaintiff), Daniel Malone (Plaintiff), Diane Malone (Plaintiff), Estate of Christa Puente (Plaintiff) Judgment: 06/15/2020, Docketed: 06/16/2020
06/19/2020	Order of Dismissal Without Prejudice (Judicial Officer: Holthus, Mary Kay) Debtors: Damaso S Puente (Plaintiff), Estate of Damaso I Puente (Plaintiff), Maria Puente (Plaintiff), Daniel Malone (Plaintiff), Diane Malone (Plaintiff), Estate of Christa Puente (Plaintiff) Creditors: Matador Investments LLC (Defendant), Opp Meland 5410 LLC (Defendant), Mel-Opp & Griff LLC (Defendant), Opp Mel & Griff Inc (Defendant) Judgment: 06/19/2020, Docketed: 06/22/2020
01/26/2021	Summary Judgment (Judicial Officer: Holthus, Mary Kay) Debtors: Damaso S Puente (Plaintiff), Estate of Damaso I Puente (Plaintiff), Maria Puente (Plaintiff), Daniel Malone (Plaintiff), Diane Malone (Plaintiff), Estate of Christa Puente (Plaintiff) Creditors: Dave & Busters of Nevada Inc (Defendant) Judgment: 01/26/2021, Docketed: 01/28/2021
02/17/2021	Judgment (Judicial Officer: Holthus, Mary Kay) Debtors: Damaso S Puente (Special Administrator, Plaintiff), Estate of Damaso I Puente (Plaintiff), Maria Puente (Plaintiff), Daniel Malone (Plaintiff), Diane Malone (Special Administrator, Plaintiff), Estate of Christa Puente (Plaintiff) Creditors: Dave & Busters of Nevada Inc (Defendant) Judgment: 02/17/2021, Docketed: 02/18/2021 Total Judgment: 866.19

CASE SUMMARY

CASE NO. A-20-813787-C

HEARINGS

07/01/2020



Motion to Dismiss (10:00 AM) (Judicial Officer: Holthus, Mary Kay)

Dave & Buster's of Nevada, Inc.'s Motion to Dismiss

Denied;

Journal Entry Details:

Thomas Christensen, Esq., Michael Rawlings, Esq., Michael Lowry, Esq. present via Bluejeans video conference. Statements by Mr. Lowry. Colloquy between parties. Arguments by Mr. Christensen. Following colloquy, COURT ORDERED, Dave & Buster's of Nevada, Inc.'s Motion to Dismiss was hereby DENIED; however, Court noted it would deny for now and allow amendment. Mr. Christensen to prepare Order and submit to opposing counsel for approval as to form and content. Mr. Christensen indicated in Order he would grant Deft. leave to amend and deny without prejudice. COURT DIRECTED Mr. Christensen to clear up which Deft. did what. Mr. Christensen concurred. ;

09/16/2020



Motion to Dismiss (10:00 AM) (Judicial Officer: Holthus, Mary Kay)

Dave & Buster's of Nevada, Inc.'s Renewed Motion to Dismiss

Granted in Part;

Journal Entry Details:

Thomas Christensen, Esq., Michael Rawlings, Esq., Michael Lowry, Esq. and Jacqueline Franco, Esq. present via Bluejeans video conference. Upon Court's inquiry, Mr. Lowry indicated the instant Motion was a renewed Motion to Dismiss which was previously denied without prejudice; additionally, Mr. Lowry indicated they reassessed the Complaint and re-filed. Arguments by Mr. Christensen. Statements by Mr. Lowry. Court noted it did believe statute was clear and would leave the first cause of action that would appear to take it out the door. Additionally, Court noted there may had been liability that Deft. couldn't find his car which Dave & Buster's facilitated getting Deft. to his car; however, it wasn't comfortable dismissing that cause of action at the instant time. Further Court indicated with respect to the remainder the statute stated Dave & Buster's just wasn't liable as to damages as to the service of alcohol. Statements by Mr. Lowry. COURT ORDERED, Dave & Buster's of Nevada, Inc.'s Renewed Motion to Dismiss was hereby GRANTED IN PART, DENIED IN PART. Mr. Lowry to prepare Order and submit to opposing counsel for approval as to form and content. ;

12/16/2020

CANCELED Motion to Quash (10:00 AM) (Judicial Officer: Holthus, Mary Kay)

Vacated

Nevada Defense Group's Motion to Quash Subpoena Duces Tecum for Business Records

12/16/2020



Mandatory Rule 16 Conference (10:00 AM) (Judicial Officer: Holthus, Mary Kay)

Matter Heard;

Journal Entry Details:

Dawn Hooker, Esq., Michael Koning, Esq. and Jeremy Robins, Esq. present via Bluejeans video conference. Court referred parties to Judge Wiese's Department; further, advised parties to contact Department 30 to set up a settlement conference if needed. COURT ORDERED, discovery cutoff is January 24, 2022; adding parties, amended pleadings, and initial expert disclosures DUE October 26, 2021; rebuttal expert disclosures DUE November 25, 2021; dispositive motions TO BE FILED BY February 23, 2022, trial ready date April 25, 2022. 6/15/22 9:00 AM CALENDAR CALL 6/27/22 1:00 PM JURY TRIAL ;

01/06/2021



Motion to Quash (10:00 AM) (Judicial Officer: Holthus, Mary Kay)

01/06/2021, 01/13/2021

Nevada Defense Group's Motion to Quash Subpoena Duces Tecum for Business Records

Matter Continued;

Granted in Part;

Matter Continued;

Granted in Part;

Journal Entry Details:

Thomas Christensen, Esq., Dawn Hooker, Esq., Shannon Mitchell, Esq., Virginia Tomova, Esq. and Jeremy Robins, Esq. present via Bluejeans video conference. Counsel from Nevada Defense Group not present. Court noted it assumed counsel wasn't seeking any privileged documents or information, which Ms. Tomova concurred, noting they weren't seeking any information that hadn't been disclosed. COURT ORDERED, matter CONTINUED to the


EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-813787-C

following week to see if Nevada Defense Group would be present. Court advised parties it was inclined to grant the instant Motion; however, it needed clarification that no one was seeking privileged and confidential information. Colloquy between parties. 1/13/21 10:00 AM
CONTINUED: NEVADA DEFENSE GROUP'S MOTION TO QUASH SUBPOENA DUCES
TECUM FOR BUSINESS RECORDS CLERK'S NOTE: The above minute order has been distributed to: Damian Sheets, Esq. (dsheets@defendingnevada.com)//1-7-21/ dy;

01/13/2021 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer: Holthus, Mary Kay)
Dave & Buster s of Nevada, Inc's Motion for Summary Judgment
Granted;

01/13/2021  **All Pending Motions** (10:00 AM) (Judicial Officer: Holthus, Mary Kay)
Matter Heard;
Journal Entry Details:
Thomas Christensen, Esq., Michael Koning, Esq., Michael Lowry, Esq. and Jeremy Robins, Esq. present via Bluejeans video conference. Kelsey Bernstein, Esq. present on behalf of the Nevada Defense Group. DAVE & BUSTER'S OF NEVADA, INC'S MOTION FOR SUMMARY JUDGMENT...NEVADA DEFENSE GROUP'S MOTION TO QUASH SUBPOENA DUCES TECUM FOR BUSINESS RECORDS As to NEVADA DEFENSE GROUP'S MOTION TO QUASH SUBPOENA DUCES TECUM FOR BUSINESS RECORDS: Upon Court's inquiry, Ms. Bernstein noted the discovery was received from the criminal case and is confidential due to that case being active; therefore, without a Court Order, she didn't believe they could give that up. Court noted it could sign a Court Order; therefore, DIRECTED Ms. Bernstein to submit a Court Order to that effect and to the extent reports were redacted. Mr. Lowry noted he would prepare an Order and that should take care of the Motion to Quash. COURT ORDERED, the instant Motion was hereby GRANTED IN PART. Mr. Lowry to prepare the Order and submit to opposing counsel for approval as to form and content. As to DAVE & BUSTER'S OF NEVADA, INC'S MOTION FOR SUMMARY JUDGMENT: Statements by Mr. Christensen. Colloquy between parties. Following colloquy, COURT ORDERED, Dave & Buster's of Nevada, Inc's Motion for Summary Judgment was hereby GRANTED; therefore, Dave & Buster's was out. Mr. Robins stipulated on the certification. No opposition by Mr. Koning. Mr. Lowry to prepare the Order and submit to opposing counsel for approval as to form and content.;

03/24/2021 **Motion for Fees** (10:00 AM) (Judicial Officer: Holthus, Mary Kay)
Dave & Buster s of Nevada, Inc's Motion for Fees

06/15/2022 **Calendar Call** (10:00 AM) (Judicial Officer: Holthus, Mary Kay)

06/27/2022 **Jury Trial** (1:00 PM) (Judicial Officer: Holthus, Mary Kay)

DATE

FINANCIAL INFORMATION

Defendant Aparicio, Henry Biderman

Total Charges 223.00

Total Payments and Credits 223.00

Balance Due as of 3/2/2021 0.00

Defendant Dave & Busters of Nevada Inc

Total Charges 471.00

Total Payments and Credits 471.00

Balance Due as of 3/2/2021 0.00

Defendant Hurley, Morgan

Total Charges 223.00

Total Payments and Credits 223.00

Balance Due as of 3/2/2021 0.00

Defendant Mocore LLC

Total Charges 253.00

Total Payments and Credits 253.00

Balance Due as of 3/2/2021 0.00

Plaintiff Estate of Christa Puente

CASE SUMMARY**CASE NO. A-20-813787-C**

Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 3/2/2021	0.00
 Plaintiff Estate of Damaso I Puente	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 3/2/2021	0.00
 Plaintiff Malone, Daniel	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 3/2/2021	0.00
 Special Administrator Malone, Diane	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 3/2/2021	0.00
 Special Administrator Puente, Damaso S	
Total Charges	294.00
Total Payments and Credits	294.00
Balance Due as of 3/2/2021	0.00
 Plaintiff Puente, Maria	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 3/2/2021	0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

CASE NO: A-20-813787-C
Department 18

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

Plaintiff(s) (name/address/phone): Damaso S. Puente, individually and on behalf of the Estate of Damaso I. Puente, Maria Puente, Daniel Malone, and Diane Malone, individually and on behalf of the Estate of Christa Puente,	Henry Biderman Aparicio, Morgan Hurley, Dave & Buster's of Nevada, Inc dba Dave & Buster's; Dave & Buster's Inc; MAT-SUMMERLIN LLC, dba Casa del Matador Summerlin; MATADOR INVESTMENTS, LLC; OPPER MELANG 5410, LLC; MEL-OPP & GRIFF, LLC; OPP MEL & GRIFF, INC.; MOCORE, LLC
Attorney (name/address/phone): Thomas Christensen Christensen Law Office, LLC 1000 S. Valley View Blvd., Ste. P Las Vegas, NV 89107	Attorney (name/address/phone): Shea Backus Backus Carranza and Burden 3050 South Durango Drive Las Vegas, Nevada 89117

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


Civil Case Filing Types

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

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

4/16/2020

Date


 Signature of initiating party or representative

See other side for family-related case filings.

Thomas F. Christensen

CLERK OF THE COURT

ORDR

THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar No. 2326
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
T: 702-870-1000
courtnotices@injuryhelpnow.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Damaso S. Puente, individually and on behalf of
the Estate of Damaso I. Puente, Maria Puente,
Daniel Malone, and Diane Malone, individually
and on behalf of the Estate of Christa Puente,

CASE NO:A-20-813787-C
DEPT. NO: XVIII

Plaintiffs,

vs.

Henry Biderman Aparicio, Morgan Hurley, Dave
& Buster's of Nevada, Inc dba Dave & Buster's;
Dave & Buster's Inc; MAT-SUMMERLIN LLC,
dba Casa del Matador Summerlin; MATADOR
INVESTMENTS, LLC; OPPER MELANG 5410,
LLC; MEL-OPP & GRIFF, LLC; OPP MEL &
GRIFF, INC.; MOCORE, LLC; DOES I - V, and
ROE CORPORATIONS I - V, ROE
MANUFACTURER I - V; ROE WHOLESALER,
I - V; ROE RETAILER, I - V;

Defendants.

ORDER RE: DAVE & BUSTER'S RENEWED MOTION TO DISMISS

Dave & Buster's of Nevada, Inc. moved to dismiss the amended complaint per NRC
12(b)(5). Dave & Buster's argued that NRS 41.1305(1) bars and eliminates all causes of action
against Dave and Buster's. Plaintiffs opposed and the motion was heard on September 16, 2020.
Michael Lowry appeared for Dave & Buster's, Thomas Christensen appeared for Plaintiffs.

1 When evaluating a motion to dismiss per NRCP 12(b)(5), the district court accepts all
2 factual allegations in the complaint as true and draws all inferences in the plaintiffs' favor.
3 Dismissal is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set
4 of facts, which, if true, would entitle [her] to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124
5 Nev. 224, 228, 181 P.3d 670, 672 (2008).
6

7 Dave & Buster's argued that the facts alleged in the amended complaint are all subject to
8 NRS 41.1305(1). If so, then Dave & Buster's argues Plaintiffs' causes of action against it are
9 barred. Plaintiffs opposed, arguing NRS 41.1305(1) did not abrogate the common law causes of
10 action against liquor providers pled in their complaint, including negligence, gross negligence,
11 willful and wanton misconduct, strict products liability, breach of express and implied warranties,
12 acting in concert in an abnormally dangerous activity, negligent supervision and hiring, and
13 negligence per se. The Plaintiff argued that NRS 41.1305(1) did not abrogate any common law
14 causes of action against liquor providers, but only served to protect licensees from strict liability
15 for reasonable service of alcohol, while making social hosts strictly liable for any amount of
16 alcohol served to minors. Plaintiff argued that if NRS 41.1305(1) is interpreted more broadly,
17 then it is unconstitutional. Dave & Buster's replied and disputed Plaintiffs' opposition.
18
19

20 The Court concludes Plaintiffs could prove one set of facts that could support a claim for
21 relief, so the motion is GRANTED IN PART and DENIED IN PART.

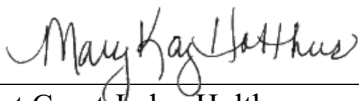
22 As to the negligence cause of action, the court concludes that NRS 41.1305(1) does not bar
23 a cause of action against Dave & Buster's to the extent that Dave & Buster's agents or employees
24 may have assisted Mr. Aparicio to the vehicle he drove that was then involved in the collision
25 that killed Damaso & Christa Puente. The motion to dismiss is denied on that point only. The
26 motion is granted as to all other remaining causes of action including negligence, gross
27 negligence, willful and wanton misconduct, strict products liability, breach of express and
28

1 implied warranties, acting in concert in an abnormally dangerous activity, negligent supervision
2 and hiring, and negligence per se.

3
4 Plaintiffs further argued NRS 41.1305(1) is ambiguous, so it is necessary to consider its
5 legislative history. “Statutory interpretation concerns determining legislative intent, and the
6 starting point is the statute’s plain language. When the meaning of the language is clear, the
7 analysis ends....” Considering legislative history becomes necessary only when the statute’s
8 language could support two or more reasonable interpretations. The Court finds NRS
9 41.1305(1)’s language is clear and unambiguous. Consequently, the Court did not consider NRS
10 41.1305(1)’s legislative history.

11
12 Plaintiffs alternatively argued NRS 41.1305(1) is unconstitutional because it results in a
13 denial of their right to a jury trial on the issues of negligence, gross negligence, willful and
14 wanton misconduct, strict products liability, breach of express and implied warranties, acting in
15 concert in an abnormally dangerous activity, negligent supervision and hiring, and negligence per
16 se. The Court finds the statute is constitutional because the restrictions are rationally related to a
17 legitimate state purpose.

18
19 DATED THIS ____ day of October, 2020. Dated this 14th day of December, 2020

20 
21 _____
22 District Court Judge Holthus

23 Submitted by:

24 CHRISTENSEN LAW OFFICES, LLC

25 **F39 8C4 E8FC A3AB**
26 **Mary Kay Holthus**
27 **District Court Judge**

28 BY: __/s/Thomas Christensen_____
THOMAS CHRISTENSEN, ESQ.

Nevada Bar No. 2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

Attorney for Damaso Puente, Maria Puente,

Daniel Malone and Diane Malone

1 Approved as to form and content by:

2 Wilson, Elser Moskowitz Edelman & Dicker LLP

3
4 BY: /s/Michael Lowry

5 MICHAEL LOWRY, ESQ.

6 Nevada Bar No. 10666

7 6689 Las Vegas Blvd. South, Suite 200

8 Las Vegas, NV 89119

9 Attorney for Dave & Buster's



Stephanie Martinez <stephaniem@injuryhelpnow.com>

[courtnotices] RE: Puente: Proposed Order

1 message

Lowry, Michael <Michael.Lowry@wilsonelser.com>

Wed, Oct 14, 2020 at 10:46 AM

To: Dawn Hooker <dawnh@injuryhelpnow.com>

Cc: "CourtNotices@InjuryHelpNow.com" <courtnotices@injuryhelpnow.com>

Thank you. I can accept that if you can insert the signature block and submit it to the court.

From: Dawn Hooker [mailto:dawnh@injuryhelpnow.com]**Sent:** Friday, October 9, 2020 13:04**To:** Lowry, Michael <Michael.Lowry@wilsonelser.com>**Cc:** CourtNotices@InjuryHelpNow.com**Subject:** Re: Puente: Proposed Order**[EXTERNAL EMAIL]**

Hello Michael:

Please see the attached proposed order (in word format). I have attempted to combine your language with ours a little bit more comprehensively.

I have not added your signature line yet, but obviously if you are agreeable to this version, that would be an easy fix.

Please let me know if this proposed Order is acceptable or if you have proposed modifications that would make it acceptable. Thank you.

Dawn Allysa Hooker, Esq.
Christensen Law Offices, LLC
[1000 S Valley View Blvd.](#)
[Las Vegas, NV 89107](#)
[Office: \(702\) 870-1000](#)
Direct Line: (702) 204-8490
Fax: (702) 870-6152
www.injuryhelpnow.com

***** PLEASE NOTE ***** This E-Mail/telefax message and any documents accompanying this transmission may contain privileged and/or confidential information and is intended solely for the addressee(s) named above. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this E-Mail/telefax information is strictly prohibited and may result in legal action against you. Please reply to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents. Thank you.*****

On Thu, Oct 8, 2020 at 11:25 PM Lowry, Michael <Michael.Lowry@wilsonelser.com> wrote:

Dawn, your response?

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Damaso Puente, Plaintiff(s)	CASE NO: A-20-813787-C
7 vs.	DEPT. NO. Department 18
8 Henry Aparicio, Defendant(s)	
9	

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

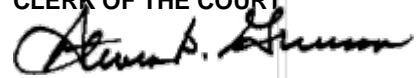
14 Service Date: 12/14/2020

15 Eservice Irvine	wiznet@wolfewyman.com
16 Jeremy Robins	jrobins@backuslaw.com
17 Michael Lowry	michael.lowry@wilsonelser.com
18 Shea Backus	sbackus@backuslaw.com
19 Anne Raymundo	anneraymundo@backuslaw.com
20 Efile LasVegas	efilelasvegas@wilsonelser.com
21 Evelyn Pastor	empastor@ww.law
22 BCB Clerk	rec@backuslaw.com
23 Kait Chavez	kait.chavez@wilsonelser.com
24 Agnes Wong	agnes.wong@wilsonelser.com
25 Thomas Christensen	courtnotices@injuryhelpnow.com
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Thomas Christensen courtnotices@injuryhelpnow.com

Virginia Tomova virginia.tomova@wilsonelser.com



NOE
THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar No. 2326
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
T: 702-870-1000
courtnotices@injuryhelpnow.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Damaso S. Puente, individually and on behalf of
the Estate of Damaso I. Puente, Maria Puente,
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and on behalf of the Estate of Christa Puente,

CASE NO:A-20-813787-C
DEPT. NO: XVIII

Plaintiffs,

vs.

Henry Biderman Aparicio, Morgan Hurley, Dave
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dba Casa del Matador Summerlin; MATADOR
INVESTMENTS, LLC; OPPER MELANG 5410,
LLC; MEL-OPP & GRIFF, LLC; OPP MEL &
GRIFF, INC.; MOCORE, LLC; DOES I - V, and
ROE CORPORATIONS I - V, ROE
MANUFACTURER I - V; ROE WHOLESALER,
I - V; ROE RETAILER, I - V;

Defendants.

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order was entered
in the above-entitled matter on the 14th day of December, 2020, a copy of which is attached

///

///

1 hereto.

2 Dated this 15th day of December, 2020.

3 CHRISTENSEN LAW OFFICES

4 

5 THOMAS F. CHRISTENSEN, ESQ.

6 Nevada Bar 2326

7 1000 S. Valley View Blvd.

8 Las Vegas, NV 89107

9 courtnotices@injuryhelpnow.com

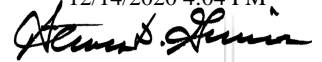
10 **CERTIFICATE OF SERVICE**

11 Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW
12 OFFICES, LLC and that on this 15th day of December, 2020, I served a copy of the foregoing
13 **NOTICE OF ENTRY OF ORDER** via the Court's e-service system to all registered users for
14 this case number.
15

16 

17 An employee of CHRISTENSEN LAW OFFICES, LLC
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EXHIBIT 1


CLERK OF THE COURT

ORDR

THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar No. 2326
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
T: 702-870-1000
courtnotices@injuryhelpnow.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Damaso S. Puente, individually and on behalf of
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and on behalf of the Estate of Christa Puente,

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Plaintiffs,

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dba Casa del Matador Summerlin; MATADOR
INVESTMENTS, LLC; OPPER MELANG 5410,
LLC; MEL-OPP & GRIFF, LLC; OPP MEL &
GRIFF, INC.; MOCORE, LLC; DOES I - V, and
ROE CORPORATIONS I - V, ROE
MANUFACTURER I - V; ROE WHOLESALER,
I - V; ROE RETAILER, I - V;

Defendants.

ORDER RE: DAVE & BUSTER'S RENEWED MOTION TO DISMISS

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5 Nev. 224, 228, 181 P.3d 670, 672 (2008).
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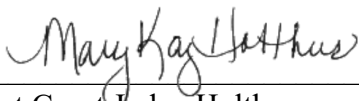
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28

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3
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9 41.1305(1)’s language is clear and unambiguous. Consequently, the Court did not consider NRS
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11
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13 denial of their right to a jury trial on the issues of negligence, gross negligence, willful and
14 wanton misconduct, strict products liability, breach of express and implied warranties, acting in
15 concert in an abnormally dangerous activity, negligent supervision and hiring, and negligence per
16 se. The Court finds the statute is constitutional because the restrictions are rationally related to a
17 legitimate state purpose.

18
19 DATED THIS ____ day of October, 2020. Dated this 14th day of December, 2020

20 
21 _____
22 District Court Judge Holthus

23 Submitted by:

24 CHRISTENSEN LAW OFFICES, LLC

25 **F39 8C4 E8FC A3AB**
26 **Mary Kay Holthus**
27 **District Court Judge**

28 BY: __/s/Thomas Christensen_____
THOMAS CHRISTENSEN, ESQ.

Nevada Bar No. 2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

Attorney for Damaso Puente, Maria Puente,

Daniel Malone and Diane Malone

1 Approved as to form and content by:

2 Wilson, Elser Moskowitz Edelman & Dicker LLP

3 BY: /s/Michael Lowry

4 MICHAEL LOWRY, ESQ.

5 Nevada Bar No. 10666

6 6689 Las Vegas Blvd. South, Suite 200

7 Las Vegas, NV 89119

8 Attorney for Dave & Buster's



Stephanie Martinez <stephaniem@injuryhelpnow.com>

[courtnotices] RE: Puente: Proposed Order

1 message

Lowry, Michael <Michael.Lowry@wilsonelser.com>

Wed, Oct 14, 2020 at 10:46 AM

To: Dawn Hooker <dawnh@injuryhelpnow.com>

Cc: "CourtNotices@InjuryHelpNow.com" <courtnotices@injuryhelpnow.com>

Thank you. I can accept that if you can insert the signature block and submit it to the court.

From: Dawn Hooker [mailto:dawnh@injuryhelpnow.com]**Sent:** Friday, October 9, 2020 13:04**To:** Lowry, Michael <Michael.Lowry@wilsonelser.com>**Cc:** CourtNotices@InjuryHelpNow.com**Subject:** Re: Puente: Proposed Order**[EXTERNAL EMAIL]**

Hello Michael:

Please see the attached proposed order (in word format). I have attempted to combine your language with ours a little bit more comprehensively.

I have not added your signature line yet, but obviously if you are agreeable to this version, that would be an easy fix.

Please let me know if this proposed Order is acceptable or if you have proposed modifications that would make it acceptable. Thank you.

Dawn Allysa Hooker, Esq.
Christensen Law Offices, LLC
[1000 S Valley View Blvd.](#)
[Las Vegas, NV 89107](#)
[Office: \(702\) 870-1000](#)
Direct Line: (702) 204-8490
Fax: (702) 870-6152
www.injuryhelpnow.com

***** PLEASE NOTE ***** This E-Mail/telefax message and any documents accompanying this transmission may contain privileged and/or confidential information and is intended solely for the addressee(s) named above. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this E-Mail/telefax information is strictly prohibited and may result in legal action against you. Please reply to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents. Thank you.*****

On Thu, Oct 8, 2020 at 11:25 PM Lowry, Michael <Michael.Lowry@wilsonelser.com> wrote:

Dawn, your response?

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4		
5		
6	Damaso Puente, Plaintiff(s)	CASE NO: A-20-813787-C
7	vs.	DEPT. NO. Department 18
8	Henry Aparicio, Defendant(s)	
9		

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/14/2020

15	Eservice Irvine	wiznet@wolfewyman.com
16	Jeremy Robins	jrobins@backuslaw.com
17	Michael Lowry	michael.lowry@wilsonelser.com
18	Shea Backus	sbackus@backuslaw.com
19	Anne Raymundo	anneraymundo@backuslaw.com
20	Efile LasVegas	efilelasvegas@wilsonelser.com
21	Evelyn Pastor	empastor@ww.law
22	BCB Clerk	rec@backuslaw.com
23	Kait Chavez	kait.chavez@wilsonelser.com
24	Agnes Wong	agnes.wong@wilsonelser.com
25	Thomas Christensen	courtnotices@injuryhelpnow.com
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Thomas Christensen courtnotices@injuryhelpnow.com

Virginia Tomova virginia.tomova@wilsonelser.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

July 01, 2020

A-20-813787-C Damaso Puente, Plaintiff(s)
vs.
Henry Aparicio, Defendant(s)

July 01, 2020 10:00 AM Motion to Dismiss

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Dara Yorke
Ro'Shell Hurtado

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT: Christensen, Thomas F. Attorney
Lowry, Michael P. Attorney
Rawlings, Michael S. Attorney
Robins, Jeremy R. Attorney

JOURNAL ENTRIES

- Thomas Christensen, Esq., Michael Rawlings, Esq., Michael Lowry, Esq. present via Bluejeans video conference.

Statements by Mr. Lowry. Colloquy between parties. Arguments by Mr. Christensen. Following colloquy, COURT ORDERED, Dave & Buster's of Nevada, Inc.'s Motion to Dismiss was hereby DENIED; however, Court noted it would deny for now and allow amendment. Mr. Christensen to prepare Order and submit to opposing counsel for approval as to form and content. Mr. Christensen indicated in Order he would grant Deft. leave to amend and deny without prejudice. COURT DIRECTED Mr. Christensen to clear up which Deft. did what. Mr. Christensen concurred.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

September 16, 2020

A-20-813787-C Damaso Puente, Plaintiff(s)
vs.
Henry Aparicio, Defendant(s)

September 16, 2020 10:00 AM Motion to Dismiss

HEARD BY: Holthus, Mary Kay

COURTROOM: RJC Courtroom 03H

COURT CLERK: Dara Yorke

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Christensen, Thomas F.	Attorney
	Franco, Jacquelyn M.	Attorney
	Lowry, Michael P.	Attorney
	Rawlings, Michael S.	Attorney

JOURNAL ENTRIES

- Thomas Christensen, Esq., Michael Rawlings, Esq., Michael Lowry, Esq. and Jacqueline Franco, Esq. present via Bluejeans video conference.

Upon Court's inquiry, Mr. Lowry indicated the instant Motion was a renewed Motion to Dismiss which was previously denied without prejudice; additionally, Mr. Lowry indicated they reassessed the Complaint and re-filed. Arguments by Mr. Christensen. Statements by Mr. Lowry. Court noted it did believe statute was clear and would leave the first cause of action that would appear to take it out the door. Additionally, Court noted there may had been liability that Deft. couldn't find his car which Dave & Buster's facilitated getting Deft. to his casr; however, it wasn't comfortable dismissing that cause of action at the instant time. Further Court indicated with respect to the remainder the statute stated Dave & Buster's just wasn't liable as to damages as to the service of alcohol. Statements by Mr. Lowry. COURT ORDERED, Dave & Buster's of Nevada, Inc.'s Renewed Motion to Dismiss was hereby GRANTED IN PART, DENIED IN PART. Mr. Lowry to prepare Order and submit to opposing counsel for approval as to form and content.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

December 16, 2020

A-20-813787-C Damaso Puente, Plaintiff(s)
vs.
Henry Aparicio, Defendant(s)

**December 16, 2020 10:00 AM Mandatory Rule 16
Conference**

HEARD BY: Holthus, Mary Kay

COURTROOM: RJC Courtroom 03F

COURT CLERK: Dara Yorke

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT: Hooker, Dawn Allysa Attorney
 Koning, Michael A. Attorney
 Robins, Jeremy R. Attorney

JOURNAL ENTRIES

- Dawn Hooker, Esq., Michael Koning, Esq. and Jeremy Robins, Esq. present via Bluejeans video conference.

Court referred parties to Judge Wiese's Department; further, advised parties to contact Department 30 to set up a settlement conference if needed. COURT ORDERED, discovery cutoff is January 24, 2022; adding parties, amended pleadings, and initial expert disclosures DUE October 26, 2021; rebuttal expert disclosures DUE November 25, 2021; dispositive motions TO BE FILED BY February 23, 2022, trial ready date April 25, 2022.

6/15/22 9:00 AM CALENDAR CALL

6/27/22 1:00 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

January 06, 2021

A-20-813787-C	Damaso Puente, Plaintiff(s) vs. Henry Aparicio, Defendant(s)
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January 06, 2021 10:00 AM Motion to Quash

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Dara Yorke

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Christensen, Thomas F.	Attorney
	Hooker, Dawn Allysa	Attorney
	Mitchell, Shannon L.	Attorney
	Robins, Jeremy R.	Attorney
	Tomova, Virginia T.	Attorney

JOURNAL ENTRIES

- Thomas Christensen, Esq., Dawn Hooker, Esq., Shannon Mitchell, Esq., Virginia Tomova, Esq. and Jeremy Robins, Esq. present via Bluejeans video conference.

Counsel from Nevada Defense Group not present. Court noted it assumed counsel wasn't seeking any privileged documents or information, which Ms. Tomova concurred, noting they weren't seeking any information that hadn't been disclosed. COURT ORDERED, matter CONTINUED to the following week to see if Nevada Defense Group would be present. Court advised parties it was inclined to grant the instant Motion; however, it needed clarification that no one was seeking privileged and confidential information. Colloquy between parties.

1/13/21 10:00 AM CONTINUED: NEVADA DEFENSE GROUP'S MOTION TO QUASH SUBPOENA DUCES TECUM FOR BUSINESS RECORDS

CLERK'S NOTE: The above minute order has been distributed to: Damian Sheets, Esq.

(dsheets@defendingnevada.com)//1-7-21/ dy

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

January 13, 2021

A-20-813787-C Damaso Puente, Plaintiff(s)
vs.
Henry Aparicio, Defendant(s)

January 13, 2021 10:00 AM All Pending Motions

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Dara Yorke

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT: Christensen, Thomas F. Attorney
 Koning, Michael A. Attorney
 Lowry, Michael P. Attorney
 Robins, Jeremy R. Attorney

JOURNAL ENTRIES

- Thomas Christensen, Esq., Michael Koning, Esq., Michael Lowry, Esq. and Jeremy Robins, Esq. present via Bluejeans video conference. Kelsey Bernstein, Esq. present on behalf of the Nevada Defense Group.

DAVE & BUSTER'S OF NEVADA, INC'S MOTION FOR SUMMARY JUDGMENT...NEVADA DEFENSE GROUP'S MOTION TO QUASH SUBPOENA DUCES TECUM FOR BUSINESS RECORDS

As to NEVADA DEFENSE GROUP'S MOTION TO QUASH SUBPOENA DUCES TECUM FOR BUSINESS RECORDS:

Upon Court's inquiry, Ms. Bernstein noted the discovery was received from the criminal case and is confidential due to that case being active; therefore, without a Court Order, she didn't believe they could give that up. Court noted it could sign a Court Order; therefore, DIRECTED Ms. Bernstein to submit a Court Order to that effect and to the extent reports were redacted. Mr. Lowry noted he would prepare an Order and that should take care of the Motion to Quash. COURT ORDERED, the instant Motion was hereby GRANTED IN PART. Mr. Lowry to prepare the Order and submit to

opposing counsel for approval as to form and content.

As to DAVE & BUSTER'S OF NEVADA, INC'S MOTION FOR SUMMARY JUDGMENT:
Statements by Mr. Christensen. Colloquy between parties. Following colloquy, COURT ORDERED,
Dave & Buster's of Nevada, Inc's Motion for Summary Judgment was hereby GRANTED; therefore,
Dave & Buster's was out. Mr. Robins stipulated on the certification. No opposition by Mr. Koning.
Mr. Lowry to prepare the Order and submit to opposing counsel for approval as to form and content.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MICHAEL P. LOWRY, ESQ.
6689 LAS VEGAS BLVD. SOUTH, SUITE 200
LAS VEGAS, NV 89119

DATE: March 2, 2021
CASE: A-20-813787-C

RE CASE: DAMASO S. PUENTE, individually and on behalf of the ESTATE OF DAMASO I, PUENTE; MARIA PUENTE, DANIEL MALONE, AND DIANE MALONE, individually and on behalf of the ESTATE OF CHRISTA PUENTE vs. HENRY BIDERMAN APARICIO; MORGAN HURLEY; DAVE & BUSTER'S OF NEVADA, INC. dba DAVE & BUSTER'S; MAT-SUMMERLIN LLC dba CADA DEL MATADOR SUMMERLIN; MOCORE, LLC

NOTICE OF APPEAL FILED: March 1, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

DAVE & BUSTER'S OF NEVADA, INC.'S NOTICE OF CROSS-APPEAL;
DAVE & BUSTER'S OF NEVADA, INC.'S CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; ORDER RE: DAVE & BUSTER'S RENEWED
MOTION TO DISMISS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE
OF DEFICIENCY

DAMASO S. PUENTE, individually and on
behalf of the ESTATE OF DAMASO I,
PUENTE; MARIA PUENTE, DANIEL
MALONE, AND DIANE MALONE,
individually and on behalf of the ESTATE OF
CHRISTA PUENTE,

Plaintiff(s),

vs.

HENRY BIDERMAN APARICIO; MORGAN
HURLEY; DAVE & BUSTER'S OF NEVADA,
INC. dba DAVE & BUSTER'S; MAT-
SUMMERLIN LLC dba CADA DEL
MATADOR SUMMERLIN; MOCORE, LLC,

Defendant(s),

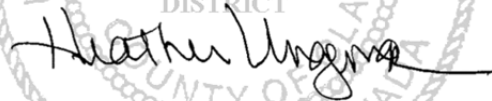
Case No: A-20-813787-C

Dept No: XVIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 2 day of March 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk