

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

Damaso S. Puente; Estate of Damaso I. Puente; Maria Puente; Daniel Malone; Diane Malone; Estate of Christa Puente

v.

Dave & Buster's of Nevada, Inc.

No. 82554

Electronically Filed
Mar 03 2021 11:45 a.m.

DOCKETING Elizabeth Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District 8th Department 18
County Clark Judge Mary Kay Holthus
District Ct. Case No. A-20-813787-C

2. Attorney filing this docketing statement:

Attorney Michael Lowry Telephone 702-727-1267
Firm Wilson Elser Moskowitz Edelman & Dicker, LLP
Address 6689 Las Vegas Blvd. South, Suite 200
Las Vegas, Nevada 89119

Client(s) Dave & Buster's of Nevada, Inc.

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

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

Attorney Thomas F. Christensen Telephone 702-870-1000
Firm Christensen Law
Address 1000 S Valley View Blvd
Las Vegas, Nevada 89107

Client(s) All Respondents

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

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

- Child Custody
- Venue
- Termination of parental rights

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

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.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:
None, other than Mr. Aparicio's criminal matter that was remanded for re-sentencing.

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

On May 15, 2018, Henry Aparicio drove drunk and killed Damaso & Christa Puente. He was convicted for his actions. The Puentes' estates and their heirs sued Mr. Aparicio and Dave & Buster's, among other defendants. Plaintiffs argue Dave & Buster's is vicariously responsible for Mr. Aparicio's actions because he consumed alcohol 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.

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

The issue on the cross-appeal is limited to the district court's ruling that "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." Dave & Buster's asserts this ruling conflicts with *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 216 P.3d 793 (2009).

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

Dave & Buster's is not aware of any.

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

- N/A
- Yes
- No

If not, explain: Dave & Buster's cross-appeal does not involve constitutional issues.

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

- Reversal of well-settled Nevada precedent (identify the case(s))
- An issue arising under the United States and/or Nevada Constitutions
- A substantial issue of first impression
- An issue of public policy
- An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- A ballot question

If so, explain: Plaintiffs and Dave & Buster's both appealed. The appeals center on NRS 41.1305(1). Plaintiffs contend this statute is unconstitutional. Nevada's appellate courts have not yet ruled on the statute's constitutionality. If constitutional, Plaintiffs argue NRS 41.1305(1) was misapplied or did not apply to facts alleged in their complaint. Even if unconstitutional, the liability Plaintiffs allege was barred per *Hinegardner v. Marcor Resorts*, 108 Nev. 1091, 844 P.2d 800 (1992) and others.

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

This appeal appears presumptively assigned to the Supreme Court. NRAP 17(a)(11) applies because the appeal raises the constitutionality of NRS 41.1305(1) as a principal issue and that issue has not been addressed before. NRAP 17(a)(12) could conceivably apply too, as if NRS 41.1305(1) is unconstitutional and Supreme Court's prior decisions on this topic are overruled, then it would reverse decades of established precedent and force many businesses to adapt overnight.

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

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
Dave & Buster's does not plan to file a motion to disqualify.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 12/14/2020

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

17. Date written notice of entry of judgment or order was served 12/15/2020

Was service by:

Delivery

Mail/electronic/fax

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

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

NRCp 50(b) Date of filing _____

NRCp 52(b) Date of filing _____

NRCp 59 Date of filing _____

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

(b) Date of entry of written order resolving tolling motion _____

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

Was service by:

Delivery

Mail

19. Date notice of appeal filed 3/1/2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
Plaintiffs appealed on 2/24/2021.

Dave & Buster's cross-appealed on 3/1/2021.

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

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

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The district court granted Dave & Buster's motion to dismiss as to all causes of action but one. The district court subsequently granted Dave & Buster's motion for summary judgment as to that one cause of action and certified the judgment as final per NRCP 54(b).

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

(a) Parties:

Plaintiffs: Damaso S. Puente; Estate of Damaso I. Puente; Maria Puente; Daniel Malone; Diane Malone; Estate of Christa Puente

Defendants: Henry Biderman Aparicio; Morgan Hurley; Dave & Buster's of Nevada, Inc.; MAT-Summerlin, LLC dba Casa del Matador Summerlin; Mocre, LLC

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

The district court disposed of all causes of action only as to Dave & Buster's. NRCP 54(b) certification was entered only as to Dave & Buster's as the remaining parties continue with the case in the district court.

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

Plaintiffs allege various causes of action against Dave & Buster's asserting it is responsible for Aparicio driving drunk and killing Damaso & Christa Puente.

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

Yes

No

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

(a) Specify the claims remaining pending below:

The district court's orders disposed of all claims alleged as to Dave & Buster's and then certified those orders as final. Plaintiffs' claims against the remaining defendants are still proceeding in the district court.

(b) Specify the parties remaining below:

Henry Biderman Aparicio; Morgan Hurley; MAT-Summerlin, LLC dba Casa del Matador Summerlin; Mocre, LLC

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

Yes

No

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

Yes

No

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

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

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

VERIFICATION

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

Dave & Buster's of Nevada, Inc.
Name of appellant

Michael Lowry
Name of counsel of record

03/03/2021
Date

/s/ Michael Lowry
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

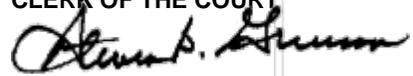
I certify that on the _____ day of _____, _____, I served a copy of this completed docketing statement upon all counsel of record:

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

Via Electronic Service:
Thomas F. Christensen
Christensen Law
1000 S Valley View Blvd
Las Vegas, Nevada 89107
Attorneys for Plaintiffs

Dated this 3rd day of March, 2021

/s/ Michael Lowry
Signature



1 **ACOM**
2 THOMAS F. CHRISTENSEN, ESQ.
3 Nevada Bar No. 2326
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9 courtnotices@injuryhelpnow.com

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

13 Plaintiffs,

14 vs.

15 Henry Biderman Aparicio, Morgan Hurley, Dave
16 & Buster's of Nevada, Inc.,; MAT-SUMMERLIN
17 LLC, dba Casa del Matador Summerlin;
18 MOCORE, LLC; DOES I - V, and ROE
19 CORPORATIONS I - V, ROE
20 MANUFACTURER I - V; ROE WHOLESALER,
21 I - V; ROE RETAILER, I - V;

22 Defendants.

CASE NO:
DEPT. NO:

**FIRST AMENDED
COMPLAINT**

21 COME NOW the Plaintiffs, Damaso S. Puente, individually and on behalf of the Estate of
22 Damaso I. Puente, Maria Puente, Diane Malone, individually and on behalf of the Estate of
23 Christa Puente, and Daniel Malone, by and through Plaintiffs' attorney, THOMAS
24 CHRISTENSEN, of the law firm of CHRISTENSEN LAW OFFICES, and complain against the
25 Defendants, and each of them, as follows:

26
27 **I. PARTIES/JURISDICTION**
28

1 1. Upon information and belief, that at all times relevant to this action, the Defendant,
2 Henry Biderman Aparicio, was a resident of Clark County, Nevada.

3
4 2. Upon information and belief, that at all times relevant to this action, the Defendant,
5 Morgan Hurley, was a resident of Clark County, Nevada.

6 3. Upon information and belief, that at all times relevant to this action, the Defendant,
7 MAT-SUMMERLIN LLC dba Casa del Matador Summerlin, was a business located in Clark
8 County, Nevada.

9 4. Upon information and belief, that at all times relevant to this action, the Defendant, Dave
10 & Buster's of Nevada, Inc. dba Dave & Buster's, was a business located in Clark County,
11 Nevada.

12
13 5. That Plaintiff Damaso S. Puente is the Special Administrator of the Estate of Damaso I.
14 Puente, who died in Clark County, Nevada.

15 6. That Damaso S. Puente and Maria Puente, at all times relevant to this action were the
16 parents of and are the heirs of Decedent Damaso I. Puente.

17 7. That Plaintiff Diane Malone is the Special Administrator of the Estate of Christa Puente,
18 who died in Clark County, Nevada.

19
20 8. That Daniel Malone and Diane Malone, at all times relevant to this action were the
21 parents of and are the heirs of Decedent Christa Puente.

22 9. Upon information and belief, MAT-SUMMERLIN, LLC is and was a business entity
23 registered in the State of Nevada and in the State of Washington, doing business as Casa del
24 Matador in Clark County, Nevada.

25
26 10. That Defendant MOCORE, LLC; is a Washington State and/or Nevada entity doing
27 business as Casa del Matador and/or El Matador (hereinafter collectively referred to as
28

1 “Matador”) in and subject to the laws of the State of Washington and doing business in and
2 subject to the laws of the State of Nevada.
3

4 11. That Defendant Dave & Buster’s of Nevada, Inc. (hereinafter “Dave & Buster’s”) is a
5 Delaware Corporation, registered as a foreign Corporation and doing business in and subject to
6 the laws of the State of Nevada.

7 12. That the true names and capacities, whether individual, corporate, partnership, associate
8 or otherwise, of Defendants DOES I through V, and ROES I through V, ROE
9 MANUFACTURER I - V; ROE WHOLESALER, I - V; ROE RETAILER, I - V; are unknown
10 to Plaintiffs, who therefore sues said Defendants by such fictitious names. Plaintiffs are
11 informed and believe and thereon allege that each of the Defendants designated herein as DOE,
12 ROE, ROE MANUFACTURER I - V; ROE WHOLESALER, I - V; ROE RETAILER, I - V is
13 responsible in some manner for the events and happenings referred to and caused damages
14 proximately to Plaintiffs as herein alleged, and that Plaintiffs will ask leave of this Court to
15 amend this Complaint to insert the true names and capacities of DOES I through V and ROES I
16 through V, ROE MANUFACTURER I - V; ROE WHOLESALER, I - V; ROE RETAILER, I -
17 V when the same have been ascertained, and to join such Defendants in this action.
18
19

20 **II. GENERAL ALLEGATIONS**

21 13. Upon information and belief, at all times relevant hereto, Defendant Henry Biderman
22 Aparicio was the operator and Defendant Morgan Hurley was the owner of a certain 2014
23 Mercedes-Benz, Nevada license plate number UNLV16935 (hereinafter referred to as
24 "Defendant's Vehicle"). He was operating the vehicle with the knowledge and consent of
25 Defendant Morgan Hurley and in carrying out a joint venture common purpose.
26
27
28

1 14. At all times relevant hereto, Decedent Damaso I. Puente was the operator of, and
2 Christa Puente was a passenger in, a certain 2010 Toyota Prius, Nevada license plate number
3 240ATX (hereinafter referred to as "Plaintiff's Vehicle").
4

5 15. On May 15, 2018 at approximately 9:08 pm, Defendant Henry Biderman Aparicio was
6 operating the Defendant's Vehicle with the consent of Morgan Hurley for a common purpose in
7 an eastbound direction on W. Sahara Ave approaching the intersection of S. Hualapai Way,
8 located in Clark County, Nevada.
9

10 16. Plaintiffs are informed and thereon allege, that on the date and time as set forth in the
11 preceding paragraph, Plaintiff's vehicle was stopped for a red light in the first eastbound travel
12 lane of West Sahara Ave., at its intersection with Hualapai Way.

13 17. On or about May 15, 2018, Defendant Henry Biderman Aparicio, acting in the course
14 and scope of his employment with Defendants and each of them, did carelessly and negligently
15 operate Defendant's vehicle so as to cause the same to collide with the rear of Plaintiff's vehicle
16 while far exceeding the posted speed of 45 mph (hereinafter "the crash.")
17

18 18. At the time of the crash, Defendant Henry Biderman Aparicio was driving under the
19 influence of alcohol .204 Blood Alcohol Content per blood test performed by LVMPD, which
20 was obtained at 1:47am and was 4 hours and 40 minutes after the crash. with such an elevated
21 B.AC. the Defendant showed signs of sedation, loss of memory and lack of comprehension,
22 delayed motor reactions, balance problems, blurred vision and sensation impairment, at the time
23 of the crash
24

25 19. Immediately prior to the crash, Defendant Henry Biderman Aparicio and Morgan
26 Hurley, acting in concert and as part of a joint venture, consumed alcohol on the premises of the
27 business of other named Defendants as a result of the Defendants illegal dangerous activities and
28 without being warned of the dangerous product.

1 20. On information and belief, immediately prior to the crash, Defendant Henry Biderman
2 Aparicio and Morgan Hurley, acting in concert and as part of a joint venture, consumed alcohol
3 on the premises of Dave & Buster's in excess of 8 hard liquor drinks served to Aparicio after he
4 was intoxicated in violation of law and as result of Dave & Buster's illegal and dangerous
5 activities and without being warned of the danger.
6

7 21. On May 15th, 2018, Defendant Henry Biderman Aparicio consumed at least 13 tequila
8 based alcoholic beverages in 3 hours and 15 minutes, before colliding with the Plaintiffs'
9 vehicle. These drinks were consumed on the premises of Defendants including Dave and
10 Buster's and Matador which are located in close proximity in the same mall building complex
11 and share common parking.
12

13 22. Defendant Aparicio, with the knowledge and consent of Morgan Hurley, Dave and
14 Buster's and The Matador, consumed alcohol each knowing that he would later operate a motor
15 vehicle.
16

17 23. Defendants, and each of them, promoted and encouraged the acts of the other
18 Defendants.
19

20 24. On information and belief, on May 15th, 2018 Defendant Henry Biderman Aparicio
21 consumed at least 13 alcoholic beverages, which were served at the location of and by Dave &
22 Buster's after Defendant Aparicio was obviously intoxicated and even though Dave & Buster's
23 knew Aparicio would thereafter be operating a motor vehicle.
24

25 25. On information and belief, on May 15th, 2018, and for some period of time leading up to
26 that date, Defendants Aparicio and Hurley enjoyed a friendly relationship with Dave & Buster's
27 whereby Defendant Dave & Buster's provided Aparicio and Hurley with alcoholic beverages for
28 free.

1 26. On information and belief, Defendant Dave & Buster's conspired with Aparicio and
2 Hurley in providing alcohol beyond the point of intoxication, knowing that the Defendant
3 Aparicio would drive and in helping Defendant Aparicio to the vehicle and providing him with
4 keys.
5

6 27. On information and belief, Defendant Dave & Buster's solicited Defendant Aparicio and
7 enticed him to drink at its establishment by offering free and/or discounted drinks based upon his
8 status as a bartender and/or frequent patron.
9

10 28. On information and belief, Dave & Buster's provided an excess amount of alcohol to
11 Defendant Aparicio and continued to provide alcohol despite actual or implied knowledge that
12 he was intoxicated and planning to drive.

13 29. Defendant Aparicio did not eat food during the time he consumed alcoholic drinks.

14 30. Plaintiffs are informed and thereon allege that Henry Biderman Aparicio was employed
15 by Casa Del Matador and that five of the beverages were consumed at Casa Del Matador just
16 prior to the crash.
17

18 31. At the time Defendant was served at Casa Del Matador, he was obviously intoxicated
19 within the meaning of Clark County Ordinance 8.20.300 and Washington Code RCW 66.44.200
20 (1). Morgan Hurley and Aparicio's co-employees knew he was intoxicated and knowingly
21 conspired to violate company policy and the law by providing alcohol to an intoxicated person.
22

23 32. At the time Defendant was served at Dave & Buster's, he was obviously intoxicated
24 within the meaning of Clark County Ordinance 8.20.300. Morgan Hurley and Aparicio's friends
25 and acquaintances, agents for Dave & Buster's, knew Defendant Aparicio was intoxicated and
26 knowingly conspired to violate company policy and the law by providing alcohol to an
27 intoxicated person.
28

1 33. Defendant Aparicio was served alcoholic drinks despite his obvious intoxication
2 because he was an employee and was given preferential treatment; he and his joint venturer,
3 Defendant Morgan Hurley, were served drinks until Defendant Hurley fell off her barstool due to
4 her drunken state and Defendant Aparicio staggered to the vehicle in the parking lot with the aid
5 of fellow employees. Defendants continued alcohol service because Aparicio and Hurley were
6 known by Aparicio's co-workers and given preferential treatment in violation of company policy
7 due to Aparicio's employment status at Casa Del Matador.
8

9 34. Defendant Aparicio was served alcoholic drinks despite his obvious intoxication because
10 he was a friend/acquaintance and regular patron of Defendant Dave & Buster's and he was given
11 preferential treatment; he and his joint venturer, Defendant Morgan Hurley, were served drinks
12 in reckless disregard for the safety of the public while in an obvious drunken state and
13 Defendant Aparicio staggered to the vehicle in the parking lot with the aid of Dave & Buster's
14 employees. Defendant Dave & Buster's continued to serve alcohol to Defendants Aparicio and
15 Hurley because these Defendants were well known and given preferential treatment in violation
16 of company policy due to their friendly relationship and in order to make greater profit.
17

18 35. On or about January 11, 2018, and at other times and in similar ways, Casa del Matador
19 Summerlin used a photograph of Aparicio, holding a bottle of Tequila, advertising happy hour
20 on social media.
21

22 36. On or about January 15, 2018 and at other times and in similar ways Casa del Matador
23 Summerlin posted on Instagram: "Start your week right with our bottomless MONDAYS!!! All
24 you can eat tacos and Margaritas for \$25. #tequila #tgifridays #mondays #tacos #mlkweekend
25 #downtownsummerlin".
26
27
28

1 37. On or about July 13, 2018 and at other times and in similar ways, Casa del Matador
2 Summerlin posted on Instagram a picture with the caption “You have 10 minutes to drink 30
3 tequila shots...who’s your team?”
4

5 38. Defendants Matador and Dave & Buster’s, at all relevant times, each was the possessor
6 of a Liquor License, issued by Clark County, State of Nevada and each offered intoxicating
7 liquors of various kinds for sale to the public.

8 39. At all relevant times, Defendants Matador and Dave & Buster’s owed a duty to comply
9 with all applicable statutes, regulations and rules related to responsible behavior expected of
10 liquor licensees for serving obviously intoxicated patrons.
11

12 40. Defendants Matador and Dave & Buster’s sold alcoholic beverages to Defendant
13 Aparicio and Defendant Hurley at a time when Matador and Dave & Buster’s, knew, or in the
14 exercise of reasonable care should have known, that Defendant Aparicio and Defendant Hurley
15 were intoxicated.

16 41. At all materials times, each of the Defendants were either joint tortfeasors with other
17 Defendants, were concurrently or jointly and severally liable and/or otherwise derivatively or
18 vicariously liable for the events described herein, which caused Plaintiff’s injuries and damages
19 described in this Complaint.
20

21 42. At all material times, each of the Defendants were the agent and employee of every other
22 Defendant in doing the events described and was at all times acting within the purpose and scope
23 of such agency and employment and are vicariously liable under the theory of *respondeat*
24 *superior* for the actions and inactions of their employees and contractors.

25 43. At all material times, Defendants Dave and Busters and Matador includes and included
26 any and all parents, subsidiaries, affiliates, divisions, franchises, partners, joint ventures, and
27
28

1 organization units of any kind, predecessors, successors and assigns and their officers, directors,
2 employees, agents, representatives and any and all other persons acting on their behalf.
3

4 44. The Plaintiffs have been required to retain the law firm of Christensen Law Offices, LLC
5 to prosecute this action, and are entitled to a reasonable attorney's fee.

6 **III. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 45. Plaintiffs repeat and reallege each and every allegation contained in the foregoing
9 paragraphs and incorporate the same herein by reference.
10

11 46. Defendants, and each of them, specifically including Dave and Buster's and Matador
12 owed a duty of care to Plaintiffs.

13 47. Defendants, and each of them, breached the duty of care owed to Plaintiffs.

14 48. Defendants, and each of them, were negligent so as to proximately cause the crash
15 described herein which resulted in the deaths of Damaso I. Puente and Christa Puente.

16 49. That, at all times mentioned herein, Defendants acted recklessly, maliciously and
17 willfully, as set forth herein, whereupon Defendants breached their duty of care.

18 50. That as a direct and proximate result of the aforesaid negligence and/ or reckless,
19 malicious and willful acts of Defendants, and each of them, specifically including Dave and
20 Buster's and Matador, Decedents Damaso I. Puente and Christa Puente sustained grievous and
21 serious personal injuries and damages, which caused their deaths.
22

23 51. At the time of the crash herein complained of, and immediately prior thereto, Defendant,
24 Henry Biderman Aparicio, and/or Defendant Morgan Hurley and each of the defendants in
25 breaching a duty owed to Plaintiffs, and each of them, were negligent and careless, inter alia, in
26 the following particulars:
27
28

- 1 a. Dave and Buster's and Matador in providing alcohol in violation of law, internal rules and
2 in a conspiracy and inherently dangerous activity to Aparicio and Hurley thus initiating
3 and enabling the tort.
4
5 b. Dave and Buster's and Matador in supporting, encouraging and enabling the activity of
6 Aparicio and Hurley in operating a vehicle.
7
8 c. In failing to keep Defendant's vehicle under proper control;
9
10 d. In operating Defendant's vehicle without due caution for the rights of Decedents;
11
12 e. In failing to keep a proper lookout for Decedents;
13
14 f. In driving recklessly and with reckless disregard for the safety of Damaso I and Christa
15 Puente;
16
17 g. In operating the Defendant's vehicle under the influence of alcohol and/or other controlled
18 or prescribed substances;
19
20 h. In entrusting the vehicle to the driver of the vehicle; and
21
22 i. In violating certain Nevada revised statutes and Clark County Ordinances, including but
23 not limited to Clark County Ordinance 8.20.300, NRS 484.377, 484.379 and 484.3795;
24 the Plaintiffs will pray leave of Court to insert additional statutes or ordinances at the
25 time of trial.
26

27 52. Defendant was convicted of the crime of driving under the influence and reckless driving
28 and is therefore civilly liable under NRS 41.133 for all damages caused pursuant to Nevada law.

SECOND CAUSE OF ACTION

53. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs and incorporate the same herein by reference.

1 54. That at the time of the crash herein complained of, and immediately prior thereto,
2 Defendant Morgan Hurley, in breaching a duty owed to the Plaintiffs, was negligent and
3 careless, inter alia, in the following particulars:
4

- 5 a. In failing to properly maintain the Defendant's Vehicle;
- 6 b. In negligently entrusting the Defendant's Vehicle to Defendant Aparicio;
- 7 c. Vicarious liability through operation of NRS 41.440; and
- 8 d. The Defendant violated certain state and local statutes, rules, regulations, codes and
9 ordinances, and the Plaintiff will pray leave of Court to insert the exact citations at the time
10 of trial.
11

12 41. Alternatively, Plaintiffs allege Defendant Hurley was the driver in the crash.

13 **THIRD CAUSE OF ACTION**

14 42. Plaintiffs repeat and reallege each and every allegation contained in the foregoing
15 paragraphs and incorporate the same herein by reference.

16 43. Defendants, including Dave and Buster's and Matador, in concert with each other, carried
17 on an abnormally dangerous activity that risked harm to the person of Decedent, which was
18 foreseeable even if reasonable care had been used.
19

20 44. The carrying on of this activity resulted in harm to the person of the Decedents.

21 **FOURTH CAUSE OF ACTION**

22 45. Plaintiffs repeat and reallege each and every allegation contained in the foregoing
23 paragraphs and incorporate the same herein by reference.
24
25
26
27
28

1 46. Defendant ROE RETAILER is an unknown entity engaged in the business of selling
2 tequila and other alcoholic beverages at retail and was and is the distributor, retailer and/or seller
3 of the tequila and other alcoholic beverages and as such did transport, ship, introduce and/or
4 cause said product to be introduced into the State of Nevada, the State of Washington, and other
5 states, for the purpose of its sale, distribution and/or use within the State of Nevada, the State of
6 Washington and other states.
7

8 47. Defendants, including Dave and Buster's and Matador, and each of them, expected the
9 tequila and other alcoholic beverages so sold to reach consumers or users in the condition in
10 which it was sold.
11

12 48. Defendant Aparicio either purchased or was provided with tequila and other alcoholic
13 beverages from each defendant including Dave and Buster's, Matador and ROE RETAILER for
14 a drink and actually used the tequila and other alcoholic beverages as a drink, and Aparicio's use
15 and manner of use of the tequila and other alcoholic beverages was reasonably foreseeable by the
16 Defendants, and each of them.
17

18 49. Plaintiff is informed and believes, and in reliance thereon alleges, that the tequila and
19 other alcoholic beverages were then and there in the condition existing when Defendant ROE
20 MANUFACTURER sold and/or delivered it to Defendant ROE WHOLESALER, and in the same
21 condition existing when Defendant ROE WHOLESALER sold and/or delivered it to ROE
22 RETAILER, Dave and Buster's and Matador.
23

24 50. Plaintiff is informed and believes, and in reliance thereon alleges, that the same condition
25 of the product existed when Defendants, Dave and Buster's, Matador and ROE RETAILER sold
26 and/or delivered the tequila and other alcoholic beverages to Aparicio, and the condition of the
27 product remained unchanged when Aparicio used the product which resulted in injuries and
28 damages because of the unreasonably dangerous condition of the product.

1 51. When Plaintiffs sustained the injuries hereinafter alleged, the tequila and other alcoholic
2 beverages were in a defective condition and were unreasonably dangerous to a user or consumer
3 in that the tequila was defective and unreasonably dangerous.
4

5 52. Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each of
6 them, knew or through the exercise of reasonable care and diligence, should have known of such
7 defective and unreasonably dangerous conditions.

8 53. Plaintiffs relied on the duty of Defendants, including Dave and Buster's, Matador and
9 ROE RETAILER, and each of them, to deliver the tequila and other alcoholic beverages at the
10 time of sale and/or delivery by each in a condition fit for use for the purpose intended. The
11 tequila and other alcoholic beverages were defective, unreasonably dangerous, and were in fact
12 not fit for the purposes and uses for which they were intended.
13

14 54. The breach of such duty by Defendants, including Dave and Buster's, Matador and ROE
15 RETAILER, and each of them, and such defective condition of the tequila and other alcoholic
16 beverages, were a proximate cause of the injuries sustained by Plaintiff.
17

18 55. By reason of the premises and as a direct and proximate result of all of the foregoing,
19 Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each of them, are
20 strictly liable to Plaintiff for the injuries and damages hereinabove set forth.

21 56. Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each of
22 them, owed a duty to all persons who could reasonably be foreseen to use the tequila and other
23 alcoholic beverages or be injured as a result of the use of the tequila and other alcoholic
24 beverages, and such a duty was specifically owed to Plaintiff.
25

26 57. Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each of
27 them, breached a duty owed to the Plaintiff consisting of, among other things, the following:
28

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- a. Failure to warn by statement on the product, in the instruction booklet, or otherwise, of the unreasonably dangerous conditions of the tequila and other alcoholic beverages;
 - b. Failure to properly design the tequila and other alcoholic beverages in such a manner as to avoid or minimize the unreasonable danger to users of the tequila and other alcoholic beverages;
 - c. Failure to properly and adequately test and inspect the tequila and other alcoholic beverages to ascertain its unreasonably dangerous condition; Failure to give adequate instructions regarding the safe use of the tequila and other alcoholic beverages; i.e. Tequila and other alcoholic beverages should not be consumed on an empty stomach, should not be consumed quickly, designed to be sipped and not taken in shot form. Failure to use due care to avoid misrepresentations, cannot operate machinery.

14 58. As a direct and proximate result of the actions and inactions of Defendants, and each
15 of them, Plaintiffs were caused to suffer the injuries and damages hereinabove set forth.

16 59. The Alcoholic Beverage Labeling Act (ABLA) of The Anti-Drug Abuse Act of
17 1988, enacted November 18, 1988, is United States federal law requiring that (among other
18 provisions) the labels of alcoholic beverages carry a government warning. The warning reads: (1)
19 According to the Surgeon General,... (2) Consumption of alcoholic beverages impairs your ability
20 to drive a car or to operate machinery; The ABLA also contains a declaration of policy and
21 purpose, which states the United States Congress finds that: The American public should be
22 informed about the health hazards that may result from the consumption or abuse of alcoholic
23 beverages, and has determined that it would be beneficial to provide a clear, non-confusing
24 reminder of such hazards, and that there is a need for national uniformity in such reminders in
25 order to avoid the promulgation of incorrect or misleading information and to minimize burdens
26 on interstate commerce.
27
28

1 83. Defendants, including Dave and Buster's, Matador and ROE RETAILER, in the
2 exercise of ordinary care, should have known of the individual employees' unfitness to act as
3 responsible employees and should not have hired/retained the employees.
4

5 84. Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each
6 of them, failed to adopt and administer adequate procedures to protect third parties.
7

8 85. Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each
9 of them, failed to evaluate, supervise and/or investigate factual indications which suggested that
10 overserving and/or serving to employees would create risks to third parties.
11

12 86. Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each
13 of them, failed to reasonably supervisor or monitor service of alcoholic beverages to ensure
14 adequate safety precautions were taken and to recognize and evaluate potential risks to third
15 parties.
16

17 87. Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each
18 of them was negligent and careless in failing to adequately train and educate its employees on the
19 dangers of serving intoxicated co-workers, patrons and friends.
20

21 88. Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each
22 of them, failed to adequately evaluate, supervise and/or investigate activities on its premises that
23 indicated danger to society.
24

25 89. Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each
26 of them, failed to use reasonable care to protect third parties from risk.
27

28 90. Defendant Matador breached its duty by failing to exercise due care in the hiring,
training, retention and supervision of its managers, bartenders and servers.

 91. Defendant Dave & Buster's breached its duty by failing to exercise due care in the
hiring, training, retention and supervision of its managers, bartenders and servers.

1 92. Defendant Matador breached its duty by intentionally encouraging its managers,
2 bartenders and servers to violate the law through its hiring, training, retention and supervision of its
3 managers, bartenders and servers in order to maximise profits for the company.
4

5 93. Defendant Dave & Buster's breached its duty by intentionally encouraging its
6 managers, bartenders and servers to violate the law through its hiring, training, retention and
7 supervision of its managers, bartenders and servers in order to maximise profits for the company.

8 94. At all times material to this complaint, Defendant Henry Biderman Aparicio was
9 employed at Casa Del Matador working behind the bar. Defendant Casa Del Matador, and DOE
10 1-2 knew or should have known that this Defendant exhibited known vicious, dangerous, and
11 lawless propensities that posed a substantial risk of harm to the public. These known propensities
12 included:
13

- 14 a. Arrest for drug use;
- 15 b. Reckless driving on the wrong side of the road;
- 16 c. Arrest for carrying a concealed weapon around schools;
- 17 d. Social media posts indicating a contempt for the law and law enforcement

18 95. At all times complained of, Morgan Hurley, Casa Del Matador and its employees
19 acted in concert with Defendant Aparicio. Due to Aparicio's employment relationship with Casa
20 Del Matador, Defendants escorted him out of the establishment and looked in on him while in
21 his vehicle in the parking lot, knowing that Aparicio was going to operate a motor vehicle on a
22 public roadway while intoxicated in violation of State Law.
23

- 24 96. Defendants Casa Del Matador and their employees violated their duty of care by:
- 25 a. Affirmatively aiding a severely intoxicated person to operate a motor vehicle;
 - 26 b. Affirmatively participating in the commission of a crime;
 - 27
 - 28

- c. Failing to render aid to a severely intoxicated person unable to safely operate a motor vehicle;
- d. Failing to obtain transportation for Defendant Aparicio and Hurley;
- e. Failing to call the police to prevent a crime.

97. As a direct and proximate result of the conduct of Defendants and Henry Biderman Aparicio's employment at Casa Del Matador, Damaso I. Puente and Christa Puente were killed, all to Plaintiffs' damages as are hereinafter alleged.

98. The Defendants, and each of them, under the doctrine of respondeat superior, are liable to the Plaintiffs for their damages caused by the Defendant Aparicio.

99. The actions of Defendants, and each of them, in this matter have been intentional, fraudulent, malicious, oppressive, reckless, and in conscious disregard of Plaintiffs' rights and therefore Plaintiffs are entitled to punitive damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

100. Casa Del Matador knew or should have known that Defendant was not fit for the employment and was a danger to others and still employed Aparicio. Defendant breached a duty in hiring an employee knowing or should have known of dangerous propensities. Matador and Casa Del Matador ratified the acts of Defendant Aparicio and his co-actor. Matador and Casa del Matador promoted illegal behavior. Employees received preferential treatment which directly caused injuries and damages to Plaintiffs.

101. The actions of Defendants were reckless and in violation of NRS 42.010 and give rise to punitive damages pursuant to that section and other state laws.

102. Defendants knew that driving under the influence was breaching a duty owed to Plaintiffs.

1 125. That Damaso S. Puente, Maria Puente, Daniel Malone and Diane Malone, were each
2 caused to suffer grief and sorrow, loss of probable support, companionship, society, comfort and
3 consortium as a result of the death and disfigurement of Damaso I. Puente and Christa Puente,
4 amounting to damage in an amount in excess of \$15,000.00.

5
6 126. By reason of the premises, and as a direct and proximate result of the aforesaid
7 negligence and carelessness, criminal and other wrongful acts of Defendants, and each of them,
8 Plaintiffs have been caused to expend monies, for funeral and miscellaneous expenses incidental
9 thereto as of this time in the approximate amount of \$15,000.00 and may in the future be caused
10 to expend additional monies for funeral expenses and miscellaneous expenses incidental thereto,
11 in a sum not yet presently ascertainable, and leave of Court will be requested to include said
12 additional damages when the same have been fully determined.

13
14 127. The Defendants, and each of them, are guilty of oppression, fraud and malice,
15 express or implied, and Plaintiffs in addition to compensatory damages, should recover punitive
16 damages, pursuant to NRS 42.010 and other legal basis, for the sake of example and by way of
17 punishing the Defendants, and each of them.

18
19 128. The Plaintiffs have been required to retain the law firm of Christensen Law Offices,
20 LLC to prosecute this action, and are entitled to a reasonable attorney's fee.

21 **WHEREFORE**, Plaintiffs, expressly reserving the right herein to include all items of
22 damage, demand judgment against the Defendants, and each of them, as follows:

- 23 1. General damages in an amount in excess of \$15,000.00;
24 2. General damages in an amount in excess of \$15,000.00;
25 3. Special damages in an amount in excess of \$15,000.00;
26 4. Pecuniary damages for Plaintiffs' grief and sorrow in excess of \$15,000.00
27
28

1 5. For damages for conscious pain, suffering, disfigurement, mental anguish and loss of
2 enjoyment of life of the Decedents in an amount in excess of \$15,000.00;

3
4 6. For loss of earning capacity and future loss of earning capacity of Decedents in amounts
5 to be proven at trial;

6 7. Special damages for medical, funeral and other expenses according to proof;

7 8. For damages for wrongful death in an amount in excess of \$15,000.00;

8 9. Punitive damages in excess of \$15,000.00;

9 10. For declaratory judgment;

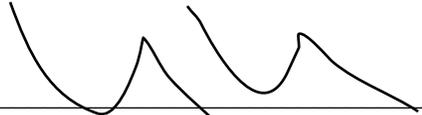
10 11. Costs of this suit;

11 12. Attorney's fees;

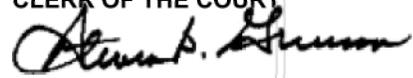
12
13 13. For such other and further relief as to the Court may seem just and proper in the
14 premises.

15
16 DATED THIS 7th day of August, 2020.

17 CHRISTENSEN LAW OFFICES, LLC

18
19 BY: 

20 THOMAS CHRISTENSEN, ESQ.
21 Nevada Bar No. 2326
22 1000 S. Valley View Blvd.
23 Las Vegas, Nevada 89107
24 Attorney for Damaso Puente, Maria Puente,
25 Daniel Malone and Diane Malone
26
27
28



1 **NOE**
2 THOMAS F. CHRISTENSEN, ESQ.
3 Nevada Bar No. 2326
4 CHRISTENSEN LAW OFFICES, LLC
5 1000 S. Valley View Blvd.
6 Las Vegas, Nevada 89107
7 T: 702-870-1000
8 courtnotices@injuryhelpnow.com

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

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

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

15 Plaintiffs,

16 vs.

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

27 Defendants.

28 **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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21
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23
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EXHIBIT 1

ORDR

THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar No. 2326
CHRISTENSEN LAW OFFICES, LLC
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Las Vegas, Nevada 89107
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**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 NRC 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).

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

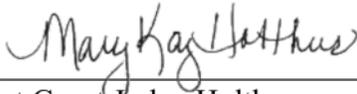
22 As to the negligence cause of action, the court concludes that NRS 41.1305(1) does not bar
23 a cause of action against Dave & Buster's to the extent that Dave & Buster's agents or employees
24 may have assisted Mr. Aparicio to the vehicle he drove that was then involved in the collision
25 that killed 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

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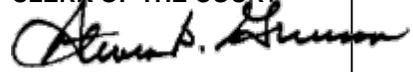
Approved as to form and content by:

Wilson, Elser Moskowitz Edelman & Dicker LLP

BY: /s/Michael Lowry

MICHAEL LOWRY, ESQ.

Nevada Bar No. 10666
6689 Las Vegas Blvd. South, Suite 200
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Attorney for Dave & Buster's



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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.; MAT-Summerlin, LLC dba
Casa del Matador Summerlin; 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

Notice of Entry

Please be advised the court entered the attached order.

DATED this 26th day of January, 2021.



BY: /s/ Michael P. Lowry

MICHAEL P. LOWRY, ESQ.

Nevada Bar No. 10666

VIRGINIA T. 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 January 26, 2021, I served **Notice of Entry** 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 A. Koning Wolfe & Wyman 6757 Spencer St. Las Vegas, NV 89119 Attorneys for Mocore, LLC; MAT-Summerlin, LLC	

BY: /s/ Michael Lowry
An Employee of





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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.; MAT-Summerlin, LLC dba Casa del Matador Summerlin; 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

Order re Dave & Buster's of Nevada, Inc's Motion for Summary Judgment

The court previously granted Dave & Buster's motion to dismiss, except on one, narrow point. The only remaining theory against Dave & Buster's is whether its 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 subpoenaed and obtained information from police identifying who "assisted Mr. Aparicio to the vehicle he drove that was then involved in the collision that killed Damaso & Christa Puente." That person was Casa del Matador employee Asa Eubanks. Dave & Buster's then filed this motion for summary judgment because Asa Eubanks was not an agent or employee of Dave & Buster's. Defendants Aparicio, Hurley, MAT-Summerlin, LLC, and Mocore, LLC did not oppose the motion.

1 Plaintiffs did oppose the motion. They asserted the evidence upon which Dave & Buster's
2 relied for its motion is inadmissible. The court disagrees because this evidence could be presented
3 in an admissible format. Second, Plaintiffs presented no contrary evidence indicating either 1)
4 someone other than Mr. Eubanks or 2) someone affiliated with Dave & Buster's assisted Mr.
5 Aparicio to the vehicle he drove that was then involved with this accident. Plaintiffs agreed at oral
6 argument they do not have contrary evidence on this point.

7 Plaintiffs' final argument is that summary judgment should be denied per Rule 56(d) to
8 allow for further discovery. However, the discovery Plaintiffs describe does not pertain to the sole
9 remaining theory of liability against Dave & Buster's. Even if Plaintiffs were given time to
10 pursue this discovery, it would not generate a genuine issue of material fact relevant to who
11 assisted Mr. Aparicio to the vehicle he drove that was then involved in the collision that killed
12 Damaso & Christa Puente. Plaintiffs have not demonstrated why Rule 56(d) relief is necessary for
13 that issue.

14 In conclusion, the admissible evidence indicates 1) Mr. Eubanks assisted Mr. Aparicio to
15 his vehicle; and 2) Mr. Eubanks was not an agent or employee of Dave & Buster's. There is no
16 genuine issue of material fact on these points, so summary judgment for Dave & Buster's is
17 appropriate and granted.

18 This ruling disposes of all causes of action against Dave & Buster's. During the hearing
19 on this motion for summary judgment, Plaintiffs and Dave & Buster's agreed there was no just
20 reason to delay entry of final judgment as to Plaintiffs' causes of action against Dave & Buster's.
21 The court agrees and designates this order as the final judgment, per Rule 54(b), as to Plaintiffs'
22 causes of action against Dave & Buster's only. Plaintiffs' remaining causes of actions against
23 other Defendants are not subject to Rule 54(b) certification at this time.

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1 **Order re Dave & Buster's of Nevada, Inc's Motion for Summary Judgment**

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<p>3  WILSON ELSER <small>WILSON ELSER MOSKOWITZ EDLMAN & DICKER LLP</small></p> <p>4</p> <p>5 <u>/s/ Michael Lowry</u> 6 MICHAEL P. LOWRY, ESQ. 7 Nevada Bar No. 10666 8 6689 Las Vegas Blvd. South, Suite 200 Las Vegas, Nevada 89119 Attorneys for Dave & Buster's of Nevada, Inc.</p>	<p>CHRISTENSEN LAW</p> <p><i>Approval refused.</i></p> <p><u>THOMAS F. CHRISTENSEN, ESQ.</u> Nevada Bar No. 2326 1000 S. Valley View Blvd. Las Vegas, Nevada 89107 Attorney for Plaintiffs</p>
	<p>9 It is so ordered. Dated this 26th day of January, 2021</p> <p>10 </p> <p>11 <u>DISTRICT JUDGE</u> 12 399 A42 06A8 6CC7 13 Mary Kay Holthus 14 District Court Judge</p>

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