

# 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 30 2021 11:19 a.m.  
Elizabeth N. Brown  
Clerk of Supreme Court  
**DOCKETING STATEMENT  
CIVIL APPEALS**

## GENERAL INFORMATION

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

## WARNING

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

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

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

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

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

Attorney Thomas Christensen Telephone 702-870-1000  
Firm Christensen Law Offices, LLC  
Address 1000 S. Valley View Blvd., Suite P  
Las Vegas, NV 78107

Client(s) Damaso Puente, Maria Puente, Daniel Malone, Diane Malone

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 Michael Lowry, Esq. Telephone 702-727-1400  
Firm Wilson Elser Moskowitz Edelman & Dicker, LLP  
Address 6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, NV 89119

Client(s) Dave & Buster's

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:

None

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

None

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

On May 15, 2018, two Nevada citizens were killed when stopped at a light and rear-ended at high speed. Allegations in the complaint allege facts which support causes of action against Dave & Buster's for a wrongful act, neglect or default under NRS 41.130, as a matter of law, and for violation by Dave and Buster's of codes making it illegal to serve alcohol to an intoxicated person. Plaintiffs' Complaint also alleged facts supporting causes of action against Dave & Buster's for negligence, gross negligence, willful and wanton misconduct, strict products liability, breach of express and implied warranties, acting in concert in an abnormally dangerous activity, and negligent supervision and hiring. The allegations in the complaint against Dave & Buster's alleged actions and inactions, some of which were wanton and willful misconduct, which result in liability under the common law. (See *Davies v. Butler*, 95 Nev. 763, 773 (Nev. 1980)).

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

- Interpretation & Constitutionality of NRS 4.1305(1)
- Appropriate trial court standards in evaluation of a Motion to Dismiss based on the pleadings in the case.
- Appropriate trial court standards in evaluation of a Motion for Summary Judgment.

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

Appellants/Cross Respondents are 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:

**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 assert NRS 41.1305(1), as amended, is unconstitutional. If the statute is constitutional, Plaintiffs assert it was misapplied.

**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 should be presumptively retained by the Supreme Court. Both NRAP 17(a)(11) and NRAP 17(a)(12) apply because a principal issue is the constitutionality of NRS 41.1305 that issue has not been addressed since the statute was last amended; and, the appeal raises a question of statewide public importance because upstanding Nevada residents are killed/injured when tavern owners fail to act responsibly in service of alcohol.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

**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?

No

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** January 26, 2021

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

Note: The Court certified the January 26, 2021 Order under rule 54(b).

Other orders appealed from : December 14, 2020, July 1, 2020.

**17. Date written notice of entry of judgment or order was served** January 26, 2021

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** February 24, 2021

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

Dave & Buster's filed a cross-appeal on March 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)

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**SUBSTANTIVE APPEALABILITY**

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

(a)

- |   |                                       |
|---|---------------------------------------|
| <input 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:

In its Order dated July 1, 2020, the District Court granted Dave & Buster's Motion to dismiss as to all causes of action except for one. In its Order dated December 14, 2020, the District Court concluded NRS 41.1305 did not bar a negligence cause of action, but only to the extent Dave & Buster's helped Aparicio to the car. Following discovery, the District Court then granted Dave & Buster's Motion for Summary Judgment. The District Court certified the judgment as final under 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; Mocore, 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. 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' Complaint alleged facts supporting causes of action against Dave & Buster's for negligence, gross negligence, willful and wanton misconduct, strict products liability, breach of express and implied warranties, acting in concert in an abnormally dangerous activity, negligent supervision and hiring.

**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:

Plaintiffs' claims against other Defendants remain, including: negligence, gross negligence, willful and wanton misconduct, strict products liability, breach of express and implied warranties, acting in concert in an abnormally dangerous activity, negligent supervision and hiring.

(b) Specify the parties remaining below:

Henry Biderman Aparcio, Morgan Hurley, MOCORE, LLC, MAT-SUMMERLIN LLC  
d/b/a Casa Del Matador Summerlin;

(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)):**

N/A

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

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

## VERIFICATION


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

D. & M. Puente/D. & D. Malone  
Name of appellant

3/31/2021  
Date

Clark County, Nevada  
State and county where signed

Thomas Christensen  
Name of counsel of record

  
Signature of counsel of record

## CERTIFICATE OF SERVICE

I certify that on the 30th day of March, 2021, I served a copy of this completed docketing statement upon all counsel of record:

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

XX By email to:

Michael Lowry, Esq.

Wilson Elser Moskowitz Edelman & Dicker, LLP


6689 Las Vegas Blvd. South, Suite 200

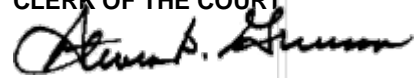
Las Vegas, NV 89119

Telephone: (702) 727-1400

michael.lowry@wilsonelser.com

Dated this 30th day of March, 2021

  
Signature



**ACOM**  
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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,

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:  
DEPT. NO:

**FIRST AMENDED  
COMPLAINT**

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

**I. PARTIES/JURISDICTION**

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

9           39. At all relevant times, Defendants Matador and Dave & Buster’s owed a duty to comply  
10 with all applicable statutes, regulations and rules related to responsible behavior expected of  
11 liquor licensees for serving obviously intoxicated patrons.  
12

13           40. Defendants Matador and Dave & Buster’s sold alcoholic beverages to Defendant  
14 Aparicio and Defendant Hurley at a time when Matador and Dave & Buster’s, knew, or in the  
15 exercise of reasonable care should have known, that Defendant Aparicio and Defendant Hurley  
16 were intoxicated.  
17

18           41. At all materials times, each of the Defendants were either joint tortfeasors with other  
19 Defendants, were concurrently or jointly and severally liable and/or otherwise derivatively or  
20 vicariously liable for the events described herein, which caused Plaintiff’s injuries and damages  
21 described in this Complaint.  
22

23           42. At all material times, each of the Defendants were the agent and employee of every other  
24 Defendant in doing the events described and was at all times acting within the purpose and scope  
25 of such agency and employment and are vicariously liable under the theory of *respondeat*  
26 *superior* for the actions and inactions of their employees and contractors.  
27

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

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

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

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

52. Defendant was convicted of the crime of driving under the influence and reckless driving 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.

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

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

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

### THIRD CAUSE OF ACTION

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

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

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

#### FOURTH CAUSE OF ACTION

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

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

22  
23 50. Plaintiff is informed and believes, and in reliance thereon alleges, that the same condition  
24 of the product existed when Defendants, Dave and Buster's, Matador and ROE RETAILER sold  
25 and/or delivered the tequila and other alcoholic beverages to Aparicio, and the condition of the  
26 product remained unchanged when Aparicio used the product which resulted in injuries and  
27 damages because of the unreasonably dangerous condition of the product.  
28

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

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

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



- 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.

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

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

1           60. Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each  
2 of them, placed on the market a defective product.

3  
4           61. Decedents' deaths were caused by the defect in the product.

5           62. Such defects existed when the product left the hands of the Defendants including  
6 Dave and Buster's, Matador and ROE RETAILER, and each of them.

7           63. It is unreasonably dangerous to place the product in the hands of a consumer without  
8 adequate warning concerning its safe and proper use.

9           64. As a direct and proximate result of the defective product, Plaintiffs have been  
10 deprived of the services, assistance, comfort, society, support maintenance, and companionship of  
11 Damaso I. Puente and Christa Puente, and were caused great emotional damage and injury in an  
12 amount to be more specifically determined at the time of trial, but which is an amount in excess  
13 of \$15,000.00.

14  
15           65. As a direct and proximate result of the defective product, Damaso I. Puente and  
16 Christa Puente were caused great pain and suffering in an amount to be more specifically  
17 determined at trial, but which is an amount in excess of \$15,000.00.

18  
19                           **FIFTH CAUSE OF ACTION**

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

22           67. Prior to the purchase or use of the tequila and other alcoholic beverages, Defendants,  
23 including Dave and Buster's, Matador and ROE RETAILER, and each of them, in order to induce  
24 the purchase or use of the tequila and other alcoholic beverages, provided express warranties and  
25 representations, including, but not limited to, the warranty that the products were fit for use for  
26 the purpose intended.  
27  
28

1           68.     The tequila and other alcoholic beverages were purchased and/or used in reliance on  
2 said express warranties and representations.  
3

4           69.     Said tequila and other alcoholic beverages were defective and unreasonably  
5 dangerous, were not fit for the purposes and uses for which they were intended, and were not of  
6 merchantable quality.

7           70.     As a direct and proximate result of the breach of express warranties and  
8 representations by the Defendants, including Dave and Buster's, Matador and ROE RETAILER,  
9 and each of them, Plaintiff was caused to suffer the injuries and damages as herein set forth.  
10

#### 11                               **SIXTH CAUSE OF ACTION**

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

14           72.     Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each  
15 of them, impliedly warranted that the tequila and other alcoholic beverages were fit for use for  
16 the purpose for which they were designed, and that the tequila and other alcoholic beverages  
17 were fit and suitable for the use in fact made by Aparicio.  
18

19           73.     In purchasing and using the tequila and other alcoholic beverages, Aparicio relied on  
20 the skill and judgment of Defendants, including Dave and Buster's, Matador and ROE  
21 RETAILER, and each of them, and the implied warranty of fitness for the purpose for which  
22 Aparicio purchased and/or used the tequila and other alcoholic beverages.

23           74.     The tequila and other alcoholic beverages were not fit for use for its intended  
24 purpose and Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each  
25 of them, breached the implied warranty of fitness.  
26  
27  
28

1           75.     As a direct and proximate result of the breach of implied warranty of fitness by  
2 Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each of them,  
3 Plaintiffs were caused to suffer said injuries and damages herein set forth.  
4

### 5                               SEVENTH CAUSE OF ACTION

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

8           77.     The Defendants, including Dave and Buster's, Matador and ROE RETAILER, and  
9 each of them, promoted a dangerous activity with a complete lack of disregard for the safety of  
10 the community in which they live and do business.  
11

12          78.     The Defendants, including Dave and Buster's, Matador and ROE RETAILER, and  
13 each of them, were promoting and encouraging drinking and driving.

14          79.     There is a special relationship between the Defendants including Dave and Buster's,  
15 Matador and ROE RETAILER, and Defendant Aparicio;  
16 the harm created by Aparicio's conduct is foreseeable.  
17

18          80.     Defendants including Dave and Buster's, Matador and ROE RETAILER, condone  
19 bartenders to do shots with customers.

20          81.     Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each  
21 of them, failed to warn or take steps to provide transportation for competitors in any of these  
22 drinking challenges.  
23

### 24                               EIGHTH CAUSE OF ACTION

25          82.     Defendants, including Dave and Buster's, Matador and ROE RETAILER, and each  
26 of them, were negligent and careless in failing to adequately investigate the background,  
27 personality traits and work history of their employees, and each of them, subsequent to hiring.  
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

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

- 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           103. Defendants substantially assisted and encouraged Aparicio's conduct and Plaintiffs  
2 thereby sustained damages.

3  
4           104. As a result of the foregoing wrongful conduct, Plaintiffs have suffered great physical  
5 and mental harm, mental anxiety, grief and sorrow.

6                                   **NINTH CAUSE OF ACTION**

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

9           106. Clark County code section 8.20.300 provides that it is unlawful for any licensee  
10 under the provisions of this chapter, or any of his servants or employees, to sell, serve or give  
11 away alcoholic liquor to any intoxicated person. Matador is subject to the Statutes of  
12 Washington including RCW 66.44.200 (1) which provides that no person shall sell any liquor to  
13 any person apparently under the influence of liquor.

14  
15           107. That Defendant Matador and Defendant Dave & Buster's violated these laws by  
16 overserving Defendants Aparicio and Hurley when each was obviously intoxicated.

17           108. That Plaintiffs were, at the time of the incident complained of, within the class of  
18 persons whom the above referenced laws were designed to protect and that the violation of the  
19 laws by Defendants was the direct and proximate cause of the Decedents' injuries and deaths and  
20 the Plaintiff's grief and sorrow.

21  
22           109. Violation of these statutory and code provisions establish negligence per se on the  
23 part of Defendant Matador and Defendant Dave & Buster's.

24           110. That Defendants' actions are not protected by NRS 41.1305 as they were outside of  
25 the limited merely "serves, sells or otherwise furnishes" alcoholic beverages specifically were  
26 violations of the county code section cited.  
27  
28



111. As a result of the foregoing wrongful conduct, Plaintiffs have suffered great physical and mental harm, mental anxiety, grief and sorrow.

#### **TENTH CAUSE OF ACTION**

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

113. To the extent NRS 41.1305 is ambiguous or protects the Defendants under the facts of this case, it is an unconstitutional taking and violation of the equal protection of the law and a taking of life liberty and the pursuit of happiness of the Plaintiffs without due process of law. NRS 41.1305 is unconstitutional.

114. Plaintiffs further allege that application of NRS 41.1305 immunity against “dramshop” type civil claims under the facts of this case is a violation of Plaintiff’s Civil rights under the Due Process and Equal Protection provisions of the Constitution of the State of Nevada, and the Constitution of the United States of America.

115. That Defendants’ actions are not protected by NRS 41.1305 as they were outside of the limited merely “serves, sells or otherwise furnishes” alcoholic beverages.

116. That decedent Damaso Puente was a person of latin descent and was the victim of the violation of the laws stated herein.

117. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning the respective rights and duties under the law and related to the law.

118. Plaintiffs desire a judicial determination of their rights and duties and a declaration as to their rights and remedies under the law and that the law is unconstitutional.

#### **ELEVENTH CAUSE OF ACTION**

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

1           120. Upon information and belief, at all times herein mentioned each of the Defendants  
2 was the agent and employee of the other Defendants and was acting within the course, scope and  
3 authority of said agency; each Defendant approved, ratified and authorized the acts of each of the  
4 other Defendants as herein alleged; each Defendant was subject to a right of control by the other  
5 Defendants; each Defendant was authorized to act for each and all of the other Defendants; and  
6 each Defendant is a successor in interest to each of the other Defendants.  
7

8           121. Upon information and belief, Defendant Aparicio, was employed by Defendants,  
9 and each of them, and was acting within the course and scope of his employment when the  
10 incident herein complained of occurred.  
11

12           122. Under the doctrine of respondeat superior, Defendants are jointly and severally  
13 liable for the torts and conduct of its employees herein referenced directly and proximately  
14 damaging the Plaintiffs in an amount to be more specifically determined at the time of trial.  
15

#### 16                                   IV. DAMAGES

17           123. By reason of the premises, and as a direct and proximate result of the aforesaid  
18 negligence, carelessness, criminal and other wrongful acts of Defendants, and each of them,  
19 delineated herein, Decedents Damaso I. Puente and Christa Puente, sustained multiple blunt force  
20 trauma injuries, and conscious pain and suffering, which were the proximate cause of their death,  
21 amounting to damage in an amount in excess of \$15,000.00.  
22

23           124. Prior to the injuries, complained of herein, Decedents Damaso I. Puente and Christa  
24 Puente were able-bodied persons, capable of being gainfully employed and capable of engaging  
25 in all other activities for which they were otherwise suited and have thereby suffered a loss of  
26 future earnings and household services.  
27  
28

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

22           **WHEREFORE**, Plaintiffs, expressly reserving the right herein to include all items of  
23 damage, demand judgment against the Defendants, and each of them, as follows:  
24

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

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 7<sup>th</sup> day of August, 2020.

17 CHRISTENSEN LAW OFFICES, LLC

18  
19 BY: 

20 THOMAS CHRISTENSEN, ESQ.

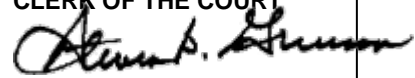
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Attorneys for Dave & Buster's of Nevada, Inc.

**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. dba Dave & Buster's; 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


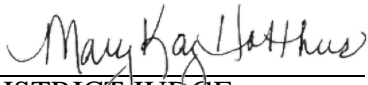
**Order on Dave & Buster's of Nevada,  
Inc's Motion to Dismiss**

///

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///

Dave & Buster's of Nevada, Inc. moved to dismiss per NRCP 12(b)(5). Plaintiffs opposed and the motion was heard on July 1, 2020. Michael Lowry appeared for Dave & Buster's, Thomas Christensen appeared for Plaintiffs. The Court denies Dave & Buster's motion without prejudice. As pled, it is unclear to the Court what Plaintiffs allege Dave and Buster's did. Plaintiffs are granted leave to file an amended complaint.

  <u>/s/ Michael Lowry</u> MICHAEL P. LOWRY, ESQ. Nevada Bar No. 10666 6689 Las Vegas Blvd. South, Suite 200 Las Vegas, Nevada 89119 Attorneys for Dave & Buster's of Nevada, Inc.	CHRISTENSEN LAW  <u>/s/ Tom Christensen</u> THOMAS F. CHRISTENSEN, ESQ. Nevada Bar No. 2326 1000 S Valley View Blvd Las Vegas, Nevada 89107 Attorney for Plaintiffs
	It is so ordered.  DISTRICT JUDGE  Date: <u>July 13th, 2020</u>

**Kelley, Cynthia H.**

---

**From:** Dawn Hooker <dawnh@injuryhelpnow.com>  
**Sent:** Wednesday, July 8, 2020 4:05 PM  
**To:** Lowry, Michael  
**Subject:** Re: Puente: Proposed Order

**[EXTERNAL EMAIL]**

Yes, that looks fine.  
You may use my esignature. Thank you very much.

Dawn Allysa Hooker, Esq.  
Nevada Bar 7019  
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](http://www.injuryhelpnow.com)

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On Wed, Jul 8, 2020 at 4:00 PM Lowry, Michael <[Michael.Lowry@wilsonelser.com](mailto:Michael.Lowry@wilsonelser.com)> wrote:

I could live with that. Attached is a revised order. Will it work for you too?

**From:** Dawn Hooker [mailto:[dawnh@injuryhelpnow.com](mailto:dawnh@injuryhelpnow.com)]  
**Sent:** Wednesday, July 8, 2020 15:43  
**To:** Lowry, Michael <[Michael.Lowry@wilsonelser.com](mailto:Michael.Lowry@wilsonelser.com)>  
**Cc:** [courtnotices@injuryhelpnow.com](mailto:courtnotices@injuryhelpnow.com)  
**Subject:** Re: Puente: Proposed Order

**[EXTERNAL EMAIL]**

Okay, keeping that sentence would be okay to keep. So, it would say :

"The Court denies Dave & Buster's motion without prejudice. As pled, it is unclear to the Court what Plaintiffs allege Dave and Buster's did. Plaintiffs are granted leave to file an amended complaint."

Dawn Allysa Hooker, Esq.  
Christensen Law Offices, LLC  
1000 S Valley View Blvd.  
Las Vegas, NV 89107  
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On Tue, Jul 7, 2020 at 5:40 PM Lowry, Michael <[Michael.Lowry@wilsonelser.com](mailto:Michael.Lowry@wilsonelser.com)> wrote:

Thank you, but the order needs to state some reason why the court ruled as it did. I kept it as simple as I could based upon what the judge said during the hearing. If you have alternative language to "As pled it is unclear to the court what Plaintiffs' allege Dave & Buster's did" I'm willing to consider it.

**From:** Dawn Hooker [mailto:[dawnh@injuryhelpnow.com](mailto:dawnh@injuryhelpnow.com)]  
**Sent:** Tuesday, July 7, 2020 15:55  
**To:** Lowry, Michael <[Michael.Lowry@wilsonelser.com](mailto:Michael.Lowry@wilsonelser.com)>  
**Cc:** [courtnotices@injuryhelpnow.com](mailto:courtnotices@injuryhelpnow.com)  
**Subject:** Re: Puente: Proposed Order

**[EXTERNAL EMAIL]**

Hello Michael:

I spoke to Mr. Christensen, who appeared at the hearing on this and he would prefer to have more simple language in the order.

After the introductory sentences regarding the motion, date and appearances, etc. could you change it to read as follows:

"The Court denies Dave and Buster's Motion without prejudice. Plaintiffs are granted leave to file an amended complaint."

If you are okay with that language, you may affix my electronic signature. (Bar number 7019). Thank you.

Dawn Allysa Hooker, Esq.



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Las Vegas, NV 89107  
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Direct Line: (702) 204-8490  
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On Fri, Jul 3, 2020 at 8:43 AM Lowry, Michael <[Michael.Lowry@wilsonelser.com](mailto:Michael.Lowry@wilsonelser.com)> wrote:

Hello,

A draft of the proposed order from the July 1 hearing is attached. If acceptable, please just reply and confirm that. I will then submit it to the court electronically.

Michael Lowry  
Attorney at Law  
Wilson Elser Moskowitz Edelman & Dicker LLP  
6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, NV 89119  
702.727.1267 (Direct)  
702.727.1400 (Main)  
702.727.1401 (Fax)  
[michael.lowry@wilsonelser.com](mailto:michael.lowry@wilsonelser.com)

CONFIDENTIALITY NOTICE: This electronic message is intended to be viewed only by the individual or entity to whom it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any dissemination, distribution or copying of this communication is strictly prohibited without our prior permission. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, or if you have received this communication in error, please notify us immediately by return e-mail and delete the original message and any copies of it from your computer system.

For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at [www.wilsonelser.com](http://www.wilsonelser.com) or refer to any of our offices.

Thank you.

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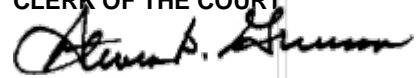
For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at [www.wilsonelser.com](http://www.wilsonelser.com) or refer to any of our offices.

Thank you.

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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at [www.wilsonelser.com](http://www.wilsonelser.com) or refer to any of our offices.

Thank you.



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 15<sup>th</sup> 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

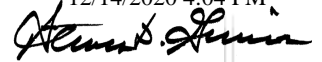
10 **CERTIFICATE OF SERVICE**

11 Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW  
12 OFFICES, LLC and that on this 15<sup>th</sup> 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  
18  
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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  
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 NRCP  
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.

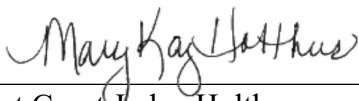
22 As to the negligence cause of action, the court concludes that NRS 41.1305(1) does not bar  
23 a cause of action against Dave & Buster's to the extent that Dave & Buster's agents or employees  
24 may have assisted Mr. Aparicio to the vehicle he drove that was then involved in the collision  
25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

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

25 BY:   /s/Thomas Christensen    
26 THOMAS CHRISTENSEN, ESQ.

27 Nevada Bar No. 2326

28 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 &lt;stephaniem@injuryhelpnow.com&gt;

**[courtnotices] RE: Puente: Proposed Order**

1 message

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

Wed, Oct 14, 2020 at 10:46 AM

To: Dawn Hooker &lt;dawnh@injuryhelpnow.com&gt;

Cc: "CourtNotices@InjuryHelpNow.com" &lt;courtnotices@injuryhelpnow.com&gt;

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](mailto:dawnh@injuryhelpnow.com)]**Sent:** Friday, October 9, 2020 13:04**To:** Lowry, Michael <[Michael.Lowry@wilsonelser.com](mailto: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](http://www.injuryhelpnow.com)

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On Thu, Oct 8, 2020 at 11:25 PM Lowry, Michael <[Michael.Lowry@wilsonelser.com](mailto: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:

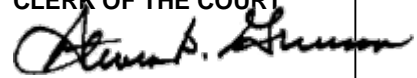
14 Service Date: 12/14/2020

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



MICHAEL P. LOWRY, ESQ.  
Nevada Bar No. 10666  
E-mail: [Michael.Lowry@wilsonelser.com](mailto:Michael.Lowry@wilsonelser.com)  
VIRGINIA T. TOMOVA, ESQ.  
Nevada Bar No. 12504  
E-mail: [Virginia.Tomova@wilsonelser.com](mailto:Virginia.Tomova@wilsonelser.com)  
6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, Nevada 89119  
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



*Heather S. Summerlin*  
CLERK OF THE COURT



MICHAEL P. LOWRY, ESQ.  
Nevada Bar No. 10666  
E-mail: [Michael.Lowry@wilsonelser.com](mailto:Michael.Lowry@wilsonelser.com)  
VIRGINIA T. TOMOVA, ESQ.  
Nevada Bar No. 12504  
E-mail: [Virginia.Tomova@wilsonelser.com](mailto:Virginia.Tomova@wilsonelser.com)  
6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, Nevada 89119  
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

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