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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

Damaso S. Puente, individually and on behalf of the Estate of Damaso I. Puente; Maria Puente; Daniel Malone; Diane Malone, individually and on behalf of the Estate of Christa Puente,	Supreme Ct. No.: 82554 Dave & Buster's of Nevada, Inc's Response to Order to Show Cause
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Appellants/Cross-Respondents
vs.

Dave & Buster's of Nevada, Inc.,

Respondent/Cross-Appellant.

On May 4, 2021 an order was entered for Dave & Buster's to show cause concerning its cross-appeal. There are two orders at issue in this appeal. Dave & Buster's first moved to dismiss the complaint, arguing that the entire complaint was barred by 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

1 Mr. Aparicio to the vehicle he drove that was then involved in the collision that
2 killed Damaso & Christa Puente.”

3 When discovery opened, Dave & Buster’s commenced discovery to
4 determine who may have assisted Mr. Aparicio to the vehicle he then drove. Dave
5 & Buster’s subpoenaed and obtained Metro’s investigative file that conclusively
6 identified the person who may have assisted Mr. Aparicio to his vehicle was an
7 employee of a co-defendant. Dave & Buster’s then moved for summary judgment
8 on the one remaining cause of action and it was granted.

9 Dave & Buster’s understands the order to show cause as asking why a cross-
10 appeal is necessary. Dave & Buster’s has reviewed *Ford v. Showboat Operating*
11 *Co.*¹ and agrees that the cross-appeal would not change any aspect of the judgment
12 that was entered in its favor. The cross-appeal was filed due to a concern that
13 without it Dave & Buster’s might have waived its arguments that the exempted
14 conduct described in the district court’s order on the motion to dismiss was not
15 actionable. If those arguments are still available to Dave & Buster’s via an
16 answering brief, without the need for a cross-appeal, because they are alternative
17 bases to affirm the district court’s judgment, then Dave & Buster’s agrees the
18 cross-appeal may be dismissed.

19
20 _____
¹ 110 Nev. 752, 877 P.2d 546 (1994).

1 DATED this 6th day of May, 2021.



3 /s/ Michael P. Lowry
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7 **Certificate of Service**

8 Per NRAP 21(a) and 25(c), I certify that I am an employee of Wilson Elser
9 Moskowitz Edelman & Dicker LLP, and that on May 6, 2021, **Dave & Buster's**
10 **of Nevada, Inc's Response to Order to Show Cause** was served via electronic
11 means by operation of the Court's electronic filing system to:

12 Thomas F. Christensen 13 Christensen Law 1000 S Valley View Blvd Las Vegas, Nevada 89107 14 Attorneys for Plaintiffs	
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15 BY: /s/ Amanda Hill
16 An Employee of

