

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANNY CEBALLOS,

APPELLANT,

v.

NP PALACE LLC d/b/a PALACE
STATION HOTEL & CASINO,

RESPONDENT.

Electronically Filed
Aug 16 2021 01:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 82797

Eighth Judicial District Court Case No.:
A-20-823119-C

APPEAL

From the Eighth Judicial District Court, Department XIX
The Honorable Judge Bitá Yeager, District Judge

JOINT APPENDIX

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Dated this 16th day of August, 2021.

LAGOMARSINO LAW

/s/ Andre M. Lagomarsino
ANDRE M. LAGOMARSINO, ESQ. (#6711)
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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing *Joint Appendix* was made this 16th day of August, 2021, by electronic service through the Nevada Supreme Court's electronic filing system, to each of the following:

Scott Mahoney, Esq.
FISHER & PHILLIPS LLP
smahoney@fisherphillips.com
Attorney for Defendant/Respondent

/s/ Denise J. Valdivia
An employee of LAGOMARSINO LAW

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-20-823119-C
Department 19

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

Plaintiff(s) (name/address/phone): <div style="text-align: center;">Danny Ceballos</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">NP Palace Station d/b/a Palace Station Hotel & Casino</div>
Attorney (name/address/phone): <div style="text-align: center;">Andre M. Lagomarsino, Esq. and Daven P. Cameron, Esq.</div> <div style="text-align: center;">Lagomarsino Law</div> <div style="text-align: center;">3005 W. Horizon Ridge Pkwy., #241, Henderson, NV 89052</div> <div style="text-align: center;">(702) 383-2864</div>	Attorney (name/address/phone): <div style="text-align: center;">Unknown</div>

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

Civil Case Filing Types

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

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

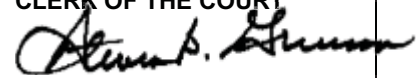
10/15/2020

Date

/s/ Daven P. Cameron

Signature of initiating party or representative

See other side for family-related case filings.



CASE NO: A-20-823119-C
Department 19

COMP
LAGOMARSINO LAW
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Attorneys for Plaintiff Danny Ceballos

EIGHTH DISTRICT JUDICIAL COURT

CLARK COUNTY, NEVADA

DANNY CEBALLOS, an individual,

Plaintiff,

v.

CASE NO.:

DEPT. NO.:

NP PALACE LLC d/b/a PALACE STATION
HOTEL & CASINO, a Domestic Limited
Liability Company,

Defendant.

COMPLAINT
WITH JURY DEMAND

COMES NOW Plaintiff DANNY CEBALLOS, by and through his attorneys, ANDRE M. LAGOMARSINO, ESQ. and DAVEN P. CAMERON, ESQ. of the law firm of Lagomarsino Law, and hereby files the following Complaint with Jury Demand.

IDENTIFICATION OF THE PARTIES

1. At all times relevant herein, Plaintiff DANNY CEBALLOS ("Plaintiff") was, and is, a resident of Clark County, Nevada.

2. At all times relevant herein, NP PALACE LLC d/b/a PALACE STATION HOTEL & CASINO ("Palace Station") was, and is, a domestic limited-liability company, organized and existing by virtue of the laws of the state of Nevada and doing business in Clark County, Nevada.

1 3. At all times relevant herein, Plaintiff CEBALLOS was employed by Defendant
2 Palace Station.

3 **JURISDICTION AND VENUE**

4 4. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6, § 6,
5 NRS 30.010, *et seq.*, and because the acts and omissions complained of herein occurred within
6 Clark County, Nevada between a resident of Clark County, Nevada and an entity authorized to do
7 business in Clark County, Nevada. Further, the amount in controversy exceeds \$15,000.
8

9 5. Venue is proper in this Court pursuant to NRS 13.010(1).

10 **ALLEGATIONS COMMON TO ALL CLAIMS**

11 6. On or about May 7, 2019, Palace Station hired Plaintiff as a part time employee to
12 work as a table games dealer.

13 7. In or around March of 2020, Plaintiff began working full time and started receiving
14 benefits from Palace Station such as health and dental insurance.

15 8. On the evening of June 25, 2020, Plaintiff was scheduled to work a graveyard shift at
16 Palace Station and arrived to work promptly and on time.

17 9. Towards the end of his shift, during the early morning hours of June 26, 2020, Plaintiff
18 took his last fifteen (15) minute break of his shift and proceeded to the employee dining room.
19

20 10. Plaintiff sat down at a table in the employee dining room directly in front of a
21 beverage island containing soda fountain, tea, coffee, and other beverage options for the employees
22 to utilize (the "Beverage Station").
23

24 11. Intending to get a beverage, Plaintiff got up from his table and walked towards the
25 Beverage Station.

26 ...

27 ...

1 12. Before reaching the Beverage Station, Plaintiff slipped on an unknown wet
2 substance on the ground, causing him to fall to the ground and hit his lower back, buttock, and left
3 elbow.

4 13. Upon information and belief, the floors in front of the Beverage Station were
5 recently mopped. Notably, no warning cones were placed near the wet floor to inform employees
6 that the floor was wet.

7 14. After the fall, security arrived and helped Plaintiff stand up. Security subsequently
8 called Plaintiff's supervisor and a security manager.

9 15. After intensely interrogating him as though he had committed a crime, the security
10 manager took Plaintiff to the security office holding cell for post-accident processing, despite
11 informing him and his direct supervisor that he was okay and did not need medical attention.
12 Plaintiff had no intention on filing a worker's compensation claim.

13 16. The security manager then forced Plaintiff to take an alcohol detection test, which
14 came back negative.

15 17. Plaintiff was also required to take a drug detection test, which was performed orally
16 via a mouth swab. Plaintiff was informed that his test came back positive for cannabis. Plaintiff was
17 not given the test results at the time.

18 18. After completing the tests, Plaintiff returned home. He did not seek medical
19 attention as he did not feel it was necessary for his mild injuries and he did not open a worker's
20 compensation claim.

21 19. Plaintiff continued to work without incident through July 6, 2020.

22 20. On or about July 6, 2020, Plaintiff's supervisor informed him that Plaintiff would
23 need to report to human resources the following day.

1 21. On or about July 7, 2020, Plaintiff reported to human resources and was informed
2 that he had tested positive for cannabis use. Palace Station placed Plaintiff on a suspension at this
3 time.

4 22. On or about July 16, 2020, Palace Station informed Plaintiff that he had been
5 terminated for testing positive for cannabis use.
6

7 23. Plaintiff did not consume cannabis in the twenty-four (24) hours preceding his
8 scheduled shift on June 25, 2020. Furthermore, Plaintiff was not under the influence, or in any way
9 impaired, during his June 25, 2020 shift and any cannabis consumption occurred at his home.

10 24. Plaintiff, a United States Army veteran with an honorable discharge, had been
11 working for Palace Station for a little over a year with no prior disciplinary issues. Plaintiff came to
12 work every day and did his job well with no complaints, so that he could support his family.
13

14 25. Despite Plaintiff's short period of time as Defendant's employee, he was quickly
15 moved from part time to full time and was, at times, used to fill in for supervisors to oversee other
16 table games. By all indications, Plaintiff was a good employee who performed his job without any
17 issues.
18

FIRST CAUSE OF ACTION

Wrongful Termination in Violation of NRS 613.333

19
20 26. Plaintiff repeats, re-alleges, and incorporates herein by reference Paragraphs 1
21 through 25, as though fully set forth herein.
22

23 27. Pursuant to NRS 613.333(1)(b), it is an unlawful employment practice for an
24 employer to "discharge ... any employee ... because the employee engages in the *lawful use in this*
25 *state of any product outside the premises of the employer during the employee's nonworking hours,*
26 if that use does not adversely affect the employee's ability to perform his or her job or the safety of
27 the employees." (emphasis added).
28

1 28. Under NRS 678D, recreational cannabis use within the chapter's limits and
2 provisions is lawful for adults over the age of 21.

3 29. Plaintiff was explicitly informed by Palace Station that he was terminated because
4 he tested positive for cannabis use.

5 30. Plaintiff, as an adult over the age of 21, is a lawful user of recreational cannabis
6 under NRS 678D.

7 31. Plaintiff was not engaging in cannabis use during working hours.

8 32. While Plaintiff occasionally engaged in lawful adult cannabis use outside of work
9 hours, he never did so in a way that could potentially affect his work performance or endanger other
10 employees. This is evidenced by his clean disciplinary record.

11 33. Palace Station is liable to Plaintiff for wrongful termination in violation of NRS
12 613.333, as it wrongfully terminated Plaintiff for engaging in an activity protected under the
13 aforementioned statute.

14 34. As a direct, proximate, and legal result of Palace Station's actions, Plaintiff
15 sustained, *inter alia*, loss of past, present, and future earnings, and other related damages, all in an
16 amount in excess of \$15,000.00.

17 35. Plaintiff has been required to retain an attorney to prosecute this matter and is
18 entitled to an award of reasonable attorneys' fees and costs incurred herein.

19 36. Palace Station acted deliberately and with a conscious disregard of Plaintiff's rights
20 as an employee and Plaintiff is entitled to an award of punitive damages.

21
22 **SECOND CAUSE OF ACTION**

23 ***Tortious Discharge***

24 37. Plaintiff repeats, re-alleges, and incorporates herein by reference Paragraphs 1
25 through 36, as though fully set forth herein.

1 38. A tortious discharge occurs when an employee is terminated in violation of Nevada
2 public policy.

3 39. Plaintiff was terminated after testing positive for cannabis use. This test was required
4 of him after Plaintiff slipped and fell on a wet unknown substance in the employee dining room
5 while on the last break of his shift.

6 40. Instead of being concerned for Plaintiff's wellbeing, security questioned Plaintiff as
7 though he had committed a crime.

8 41. Plaintiff was immediately required to take drug and alcohol detection tests.

9 42. Plaintiff was subsequently suspended and fired for testing positive for cannabis use.

10 43. It is Plaintiff's statutory right, under NRS 678D, to engage in adult cannabis
11 consumption pursuant to the chapter's guidelines. Palace Station terminated Plaintiff for exercising
12 this right in violation of NRS 613.333(1)(b).
13

14 44. Nevada has a strong public policy interest in protecting the statutory rights of its
15 citizens. Even more so, Nevada has a strong public policy interest in ensuring its citizens are not
16 denied the ability to support themselves and their families due to engagement in statutorily
17 protected *and* completely lawful activities.
18

19 45. Palace Station is liable to Plaintiff for tortious discharge, as it acted outrageously and
20 in violation of public policy by terminating Plaintiff for engaging in a statutorily protected activity.

21 46. As a direct, proximate, and legal result of Palace Station's actions, Plaintiff
22 sustained, *inter alia*, pain and suffering, general emotional damages, loss of past, present, and
23 future earnings, and other related damages, all in an amount in excess of \$15,000.00.
24

25 47. Plaintiff has been required to retain an attorney to prosecute this matter and is
26 entitled to an award of reasonable attorneys' fees and costs incurred herein.

27 48. Palace Station acted despicably and with a conscious disregard of Plaintiff's rights
28

as an employee by terminating Plaintiff for engagement in lawful activities, making it difficult to support his family and, as a result, he is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against Defendant as follows:

1. For general and compensatory damages in excess of \$15,000.00;
2. For special damages in excess of \$15,000.00;
3. For punitive damages in excess of \$15,000.00;
4. For pre- and post-judgment interest, at the highest rate allowable by law;
5. For reasonable attorneys' fees and costs of suit; and
6. For any such further relief this Court deems appropriate in the premises.

DATED this 15th day of October, 2020.

RESPECTFULLY SUBMITTED,

LAGOMARSINO LAW



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Henderson, Nevada 89052

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Facsimile: (702) 383-0065

Attorneys for Plaintiff Danny Ceballos

JURY DEMAND

PLEASE TAKE NOTICE that Plaintiff, by and through his undersigned attorneys, hereby demands a jury trial of all issues in the above-referenced matter.

DATED this 15th day of October, 2020.

RESPECTFULLY SUBMITTED,

LAGOMARSINO LAW



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Attorneys for Plaintiff Danny Ceballos

SUMM

LAGOMARSINO LAW

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daven@lagomarsinolaw.com

Attorneys for Plaintiff Danny Ceballos

EIGHTH DISTRICT JUDICIAL COURT

CLARK COUNTY, NEVADA

CASE NO: A-20-823119-C

CASE NO.:

DEPT. NO.: Department 19

DANNY CEBALLOS, an individual,

Plaintiff,

v.

NP PALACE LLC d/b/a PALACE STATION
HOTEL & CASINO, a Domestic Limited
Liability Company,

Defendant.

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU FILE A RESPONSE WITH THE COURT WITHIN TWENTY-ONE (21) DAYS. READ THE INFORMATION BELOW CAREFULLY.

TO the Defendant named above: NP PALACE LLC d/b/a PALACE STATION
HOTEL AND CASINO

A civil complaint has been filed by the Plaintiff against you. Plaintiff is seeking to recover the relief requested in the complaint, which could include a money judgment against you or some other form of relief.

If you intend to defend this lawsuit, within twenty-one (21) calendar days¹ after this Summons

¹ The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members, and legislators each have forty-five (45) days after service of this Summons within which to file a response to Plaintiff's complaint.

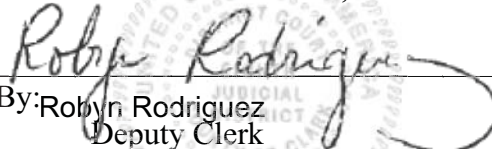
is served on you (not counting the day of service), you must:

1. File with the Clerk of the Court, whose address is shown below, a formal written response (typically a legal document called an “answer,” but potentially some other response) to Plaintiff’s complaint.
2. Pay the required filing fee to the court, or file an Application to Proceed *In Forma Pauperis* and request a waiver of the filing fee.
3. Serve (by mail or hand delivery) a copy of your response upon the Plaintiff whose name and address is shown below.

If you fail to respond, the Plaintiffs can request your default. The court can then enter judgment against you for the relief demanded by the Plaintiffs in the complaint, which could result in money or property being taken from you or some other relief requested in Plaintiffs’ complaint.

If you intend to seek an attorney’s advice, do it quickly so that your response can be filed on time.

STEVEN D. GRIERSON, CLERK OF COURT

By: 
Robyn Rodriguez
Deputy Clerk


10/15/2020

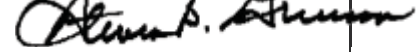
Date

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

Issued at the request of:

LAGOMARSINO LAW


ANDRE M. LAGOMARSINO, ESQ. (#6711)
DAVEN P. CAMERON, ESQ. (#14179)
3005 W. Horizon Ridge Pkwy., #241
Henderson, Nevada 89052
Attorneys for Plaintiffs



Attorney or Party without Attorney: ANDRE M. LAGOMARSINO, ESQ. (#6711) Lagomarsino Law 3005 W. Horizon Ridge Parkway, Suite 241 Henderson, NV 89052 Telephone No: (702) 383-2864				<div style="border: 1px solid black; padding: 5px;"> Ref. No. or File No.: CEBALLOS </div>	
Attorney For: Attorneys for Plaintiff Danny Ceballos					
Insert name of Court, and Judicial District and Branch Court: EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA					
Plaintiff: DANNY CEBALLOS, Defendant: NP PALACE LLC d/b/a PALACE STATION HOTEL & CASINO.					
DECLARATION OF SERVICE		Hearing Date:	Time:	Dept/Div: 19	Case Number: A-20-823119-C

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; COMPLAINT WITH JURY DEMAND
3.
 - a. Party served: NP PALACE LLC d/b/a PALACE STATION HOTEL & CASINO, a Domestic Limited Liability Company
 - b. Person served: Ricky Drummond - Corporate security, authorized to accept service.
Des., African American, Male, Age: 20's, Hair: Black, Eyes: Brown, Height: 5'9", Weight: 200
4. Address where the party was served: Registered Agent - Station Casinos LLC
1505 S Pavilion Center Dr, Las Vegas, NV 89135
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Wed, Oct 21 2020 (2) at: 02:09 PM

Fee for Service:

Pursuant to NRS 53.045

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

6. Person Who Served Papers:

- a. Tanner Trewet (R-2019-07712, Clark County)
- b. FIRST LEGAL
NEVADA PI/PS LICENSE 1452
2920 N. GREEN VALLEY PARKWAY, SUITE 514
HENDERSON, NV 89014
- c. (702) 671-4002

10/27/2020

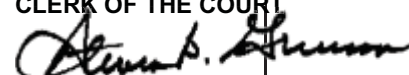
(Date)



(Signature)

DECLARATION OF
SERVICE4985580
(55157638)

JA000012



FISHER & PHILLIPS LLP
SCOTT M. MAHONEY, ESQ.
Nevada Bar No. 1099
300 S. Fourth Street
Suite 1500
Las Vegas, NV 89101
Telephone: (702) 252-3131
E-Mail Address: smahoney@fisherphillips.com
Attorney for Defendant

EIGHTH DISTRICT JUDICIAL COURT
CLARK COUNTY, NEVADA

DANNY CEBALLOS, an individual,	)	Case No.: A-20-823119-C
)	
Plaintiff,	)	Department: XIX
)	
vs.	)	HEARING REQUESTED
)	
NP PALACE LLC d/b/a PALACE)	
STATION HOTEL & CASINO, a)	
Domestic Limited Liability Company,)	
)	
Defendant.)	
)	

DEFENDANT'S MOTION TO DISMISS

Defendant, NP Palace LLC dba Palace Station Hotel & Casino, hereby moves this Court, pursuant to Nevada Rules of Civil Procedure 12(b)(5), for dismissal of all the claims set forth in Plaintiff's Complaint because they fail to state claims upon which relief may be granted.

This Motion is made and based upon the records, pleadings and papers on file herein, together with the following Memorandum of Points and Authorities.

FISHER & PHILLIPS LLP

/s/ Scott M. Mahoney, Esq.
SCOTT M. MAHONEY, ESQ.
300 South Fourth Street #1500
Las Vegas, Nevada 89101
Attorneys for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **FACTUAL ALLEGATIONS**

3 The Complaint alleges that: (a) Plaintiff was employed by Defendant as a
4 dealer; (b) while working on June 26, 2020, Plaintiff had a slip and fall in the
5 Employee Dining Room; (c) Plaintiff was given a drug test which came back positive
6 for marijuana; and (d) Plaintiff was eventually terminated for this positive test. See,
7 Complaint ¶ 6, 9, 12, 17, 22. Plaintiff also alleges that any marijuana use occurred at
8 home, that he was not under the influence when he reported to work for his June 25/26
9 shift, and that he had not used marijuana in the prior 24 hours. See, Complaint ¶ 23.
10 Even if the foregoing allegations are all true, Plaintiff cannot recover on his claims as
11 a matter of law.
12

13 **RULE 12(b)(5) STANDARD**

14 Nevada Rules of Civil Procedure 12(b)(5) provides a case may be dismissed
15 for “failure to state a claim upon which relief can be granted.” Such a motion is to be
16 granted when, after accepting all the allegations of the complaint as true and drawing
17 every reasonable inference in plaintiff’s favor, “it appears beyond a doubt that [the
18 plaintiff] could prove no set of facts, which, if true, would entitle him to recover.”
19 *Buzz Stew, LLC. v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670, 672 (2008).
20

21 **ARGUMENT**

22 ***The NRS 613.333 Claim Should Be Dismissed***

23 Plaintiff’s First Cause of Action is for “Wrongful Termination in Violation of
24 NRS 613.333.” This statute provides that it is unlawful to “[d]ischarge . . . any
25 employee . . . because the employee engages in the lawful use in this state of any
26 product outside the premises of the employer during the employee's nonworking hours
27
28

1 if that use does not adversely affect the employee’s ability to perform his or her job or
2 the safety of other employees.”

3 NRS 678D.200 exempts persons age 21 or older from prosecution for certain
4 acts relating to cannabis. However, Plaintiff did not engage in the lawful use of a
5 product, and does not fall within the scope of NRS 613.333, because marijuana
6 remains an unlawful drug under federal law. *See, e.g., Coats v. Dish Network, LLC.*,
7 350 P.3d 849, 852 (Colo. 2015).
8

9 In *Coats*, the Colorado Supreme Court dealt with the Colorado version of a
10 “lawful activity statute” which precluded the termination of an employee “due to that
11 employees engaging in any *lawful activity* off the premises of the employer during
12 nonworking hours.” *Id.*, 350 P.3d at 852 (emphasis in original). Coats argued that his
13 termination violated the statute because his medical marijuana use was a “lawful”
14 activity under Colorado law and the fact medical marijuana use was still illegal under
15 federal law was irrelevant in applying the statute.
16

17 The Colorado Supreme Court affirmed the dismissal of Coats’ claim. It noted
18 that while “lawful” was not defined by the statute, its generally construed meaning was
19 an activity that was not contrary to law (citing decisions from Colorado, Indiana and
20 North Dakota), and that nothing in the statute indicated it was limited to a consideration
21 of what was lawful under state law. *Id.*, at 852.
22

23 Likewise, “lawful” is not defined for purposes of NRS 613.333, and this Court
24 should find the statute does not apply because the use of marijuana is still illegal under
25 federal law and dismiss the First Cause of Action.

26 ///

27 ///

The Tortious Discharge Claim Should Be Dismissed

The Second Cause of Action is for tortious discharge in violation of public policy, with the alleged implicated public policy being “Plaintiff’s statutory right, under NRS 678D, to engage in adult cannabis consumption pursuant to the chapter’s guidelines.” See, Complaint ¶ 43.

In Nevada, all employees are presumed to be employed at-will, meaning they can usually be terminated without notice at any time for any or no reason without the employer incurring liability. *Ozawa v. Vision Airlines, Inc.*, 125 Nev. Adv. Op. No. 43, 216 P.3d 788, 791 (Nev. 2009) (citation omitted). In rare and exceptional cases, the Nevada Supreme Court has recognized exceptions to the at-will doctrine when the employer’s conduct violates strong and compelling public policy. *Id.*

Having an employee drug testing policy is not a violation of public policy.¹ The Court can also take judicial notice that, based on the possession and use of marijuana remaining illegal under federal law, the Nevada gaming authorities have taken a restrictive view of Nevada gaming licensees intersecting with recreational marijuana. See, Exhibit A.

Moreover, the mere existence of a violation of public policy is not enough for a tortious discharge claim. *See, e.g., Sands Regent v. Valgardson*, 105 Nev. 436, 440, 777 P.2d 898, 900 (1989) (declining to create such a claim for age discrimination even though such discrimination is clearly against Nevada public policy). *Chavez v. Sievers*, 118 Nev. 288, 43 P.3d 1022, 1025-26 (2002), declined to recognize a tortious discharge

¹ The Nevada Supreme Court has noted: “we are unaware of any prevailing public policy against employers seeking to provide safe and lawful working conditions through testing programs designed to identify and eliminate the use of *illicit* drugs.” *Blankenship v. O’Sullivan Plastics Corporation*, 109 Nev. 1162, 1166, 866 P.2d 293, 295 (1993) (emphasis added). Marijuana is still an illicit drug under federal law.

1 claim for race discrimination in businesses having less than fifteen employees.² It is
2 difficult to believe that the Nevada Supreme Court would reject a public policy tort for
3 something as repulsive as race discrimination (even though an employee may have no
4 statutory remedy for such racism against a small employer), but would find a tortious
5 discharge claim cognizable for persons discharged for testing positive for marijuana.
6

7 Finally, if the Court finds that the NRS 613.333 claim is a viable claim for relief
8 (which it should not), then the tortious discharge claim must be dismissed because such
9 claims are not recognized when a sufficiently-comprehensive statutory remedy exists.
10 *Shoen v. Amerco, Inc.*, 111 Nev. 735, 896 P.2d 469, 475 (1995) (citations omitted).
11 *Shoen* held that the remedy under NRS 50.070(2)(c) was comprehensive enough to
12 preclude a tortious discharge claim. *Id.*, at 745. The damages available under NRS
13 613.333(2) are virtually identical to those under NRS 50.070(2)(c), and thus Plaintiff
14 cannot assert a tortious discharge claim as a matter of law if his NRS 613.333 claim is
15 allowed to proceed.
16

17 Based on the foregoing, all of Plaintiff's claims should be dismissed.

18 Respectfully submitted,

19 FISHER & PHILLIPS, LLP
20

21 By: /s/ Scott M. Mahoney, Esq.
22 300 South Fourth Street
23 Suite 1500
24 Las Vegas, Nevada 89101
25 Attorneys for Defendant
26
27

28 ² Nevada's race discrimination statutes only apply to employers having 15 or more employees. *See*, NRS 613.310(2).

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify service of the foregoing Motion to Dismiss was made this date by electronic filing and/or service with the Eighth Judicial District Court, addressed as follows:

Lagomarsino Law
ANDRE M. LAGOMARSINO, ESQ.
DAVEN P. CAMERON, ESQ.
3005 W. Horizon Ridge Pkwy., Suite 241
Henderson, Nevada 89052

Dated: November 5, 2020.

By: /s/ Sarah Griffin
An employee of Fisher & Phillips LLP

EXHIBIT A

RESOLUTION OF THE NEVADA GAMING POLICY COMMITTEE REGARDING MARIJUANA AND GAMING

WHEREAS, in 2017, the Nevada State Legislature, acting pursuant to direction by the People of the State of Nevada, declared the recreational use of marijuana to be legal for persons 21 years of age and older, and established a regulatory framework for the cultivation and sale of marijuana in this State;

WHEREAS, the possession and consumption of marijuana remains illegal under the federal Controlled Substances Act;

WHEREAS, the Nevada Gaming Control Act and Nevada Gaming Commission Regulations require strict compliance with both state and federal law in the operation of licensed gaming in this State;

WHEREAS, questions exist regarding the propriety of certain relationships between the marijuana industry and gaming licensees and gaming operations;

WHEREAS, the continued success and growth of the gaming industry is essential to the economy of the State of Nevada, and Nevada has led the nation and the world in developing and maintaining the best policies and practices involving the regulation of the gaming industry;

WHEREAS, on September 20, 2017, pursuant to the authority vested by Nevada Revised Statutes (NRS) 463.021(5), the Governor issued Executive Order 2017-13 re-convening the Nevada Gaming Policy Committee (Committee) to address certain issues related to the intersection of the gaming and marijuana industries;

WHEREAS, on November 29, 2017, the Committee convened to gather information, engage in discussion, and provide recommendations on Nevada gaming policy regarding the following matters:

- The propriety of events on the premise of a licensed gaming establishment that cater to or promote the use, sale and cultivation or distribution of marijuana;
- The propriety of a licensee contracting or maintaining a business relationship with an individual or entity engaged in the sale, cultivation or distribution of marijuana;
- The propriety of a licensee receiving financing from or providing financing to an individual, entity or establishment that sells, cultivates, or distributes marijuana; and
- Any other matter as directed and determined necessary by the Chair;

WHEREAS, the Committee received public comment and an update from gaming regulators on the current status of marijuana and the gaming industry in Nevada;

WHEREAS, testimony was provided to the Committee concerning the federal status of marijuana as a prohibited controlled substance, potential legal challenges for gaming licensees who interact with the marijuana industry, and implications for financial institutions, including casinos, that do business with marijuana derived funds;

WHEREAS, testimony was also provided to the Committee concerning business events and conventions related to the marijuana industry, as well as the economic impact and taxation of the marijuana industry in Nevada;

WHEREAS, the Committee discussed and deliberated the issues based on the information provided by public comment and proffered testimony;

WHEREAS, the Committee is to deliver a report of its discussions, findings, and recommendations to the Governor, the Nevada Gaming Commission, and the Nevada Gaming Control Board; now, therefore, be it

RESOLVED, the Committee reaffirms and recommends, based on provisions of the Nevada Gaming Control Act and Nevada Gaming Commission Regulations and federal law and regulations, that Nevada gaming licensees shall not participate in the marijuana industry; and be it further

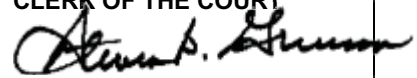
RESOLVED, the Committee recommends and advises that, in accordance with the State of Nevada's policy of strict regulation of gaming set out in NRS 463.0129 of the Nevada Gaming Control Act, and commensurate with the outline of unsuitable methods of operation detailed in Nevada Gaming Commission Regulation 5.011, Nevada gaming licensees should not contract with or maintain business relationships with individuals or entities engaged in the sale, cultivation or distribution of marijuana; be it further

RESOLVED, the Committee also recommends and advises that, in accordance with the state's policy of strict regulation of gaming set out in NRS 463.0129 of the Nevada Gaming Control Act, and commensurate with the outline of unsuitable methods of operation detailed in Nevada Gaming Commission Regulation 5.011, Nevada gaming licensees should not receive financing from or provide financing to individuals, entities or establishments that sell, cultivate or distribute marijuana. The Committee also advises that Nevada gaming licensees continue to follow all federal direction regarding AML obligations and SAR reporting, in accordance with FinCEN guidance; be it further

RESOLVED, the Committee recommends permitting licensees to host conferences, trade show, or similar conferences that may be related to marijuana but whose focus is primarily on networking between participants, exchange of knowledge related to the trade, and other trade or educational activities that do not facilitate the actual possession or consumption of marijuana on a licensed property in violation of Nevada or U.S. law; be it further

RESOLVED, the Committee recommends that Nevada gaming licensees take care to ensure that any events on the premises of a licensed gaming establishment do not promote illegal activities or foster incidents which might negatively impact the reputation of Nevada's gaming industry and, further, that all licensees conduct necessary due diligence and exercise discretion and sound judgment to prevent violations of Nevada or federal law in all business and financial activities.

Adopted March 5, 2018



OPPO
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EIGHTH DISTRICT JUDICIAL COURT

CLARK COUNTY, NEVADA

DANNY CEBALLOS, an individual,

Plaintiff,

v.

NP PALACE LLC d/b/a PALACE STATION
HOTEL & CASINO, a Domestic Limited
Liability Company,

Defendant.

CASE NO.: A-20-823119-C

DEPT. NO.: XIX

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

Plaintiff Danny Ceballos, by and through his attorneys, Andre M. Lagomarsino, Esq. and
Daven P. Cameron, Esq. of the law firm of Lagomarsino Law, hereby files his *Opposition to
Defendant's Motion to Dismiss.*

...

...

...

1 This Opposition is made and based on the following Memorandum of Points and
2 Authorities, all other pleadings, papers, and documents on file with the Court in this action, such
3 further documentary evidence as the Court deems appropriate, and the arguments of counsel at the
4 hearing.

5 DATED this day 2nd day of December, 2020.

7 LAGOMARSINO LAW

8 

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant moves to dismiss Plaintiff's first cause of action for wrongful termination in violation of NRS 613.333 and second cause of action for tortious discharge. Defendant's Motion is premised on three (3) primary arguments: (1) that NRS 613.333 does not protect employees from the use of marijuana because it is federally illegal under the Controlled Substances Act ("CSA"); (2) the existence of a violation of public policy is not enough to sustain a tortious discharge claim; and (3) if the Court finds Plaintiff's NRS 613.333 claim viable, then the tortious discharge claim should be dismissed because Plaintiff purportedly has a sufficiently-comprehensive statutory remedy available for recovery. Each of Defendant's arguments fail as a matter of law.

First, under NRS 613.333 it is unlawful for an employer to terminate or discriminate against an employee that "engages in the lawful use in this state of any product outside the premises of the employer during the employee's nonworking hours, if that use does not adversely affect the employee's ability to perform his or her job or the safety of other employees." Medical and recreational cannabis use is lawful in Nevada and the statute does not require the "product" to be legal under Federal law in order for an employee to benefit from the protections provided by the statute. Second, terminating an employee in violation of public policy is sufficient to sustain a tortious discharge claim. Finally, Plaintiff is entitled to recovery under his NRS 613.333 claim and his tortious discharge claim because NRS 613.333 does not allow Plaintiff to recover significant tort damages that are otherwise available to him under his tortious discharge claim. Accordingly, Plaintiff respectfully requests that this Court deny Defendant's Motion and allow his case to proceed.

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II. DISCUSSION

A. Legal Standard for a Motion to Dismiss

A motion to dismiss for failure to state a claim should be “rigorously reviewed.” *In re AMERCO Derivative Litig.*, 127 Nev. 196, 210 252 P.3d 681, 692 (2011) (quoting *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 634–35, 137 P.3d 1171, 1180 (2006)). In reviewing a motion to dismiss, this Court must construe the pleadings liberally and accept all factual allegations in the complaint as true. *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (emphasis added). On a motion to dismiss for failure to state a claim, the court must draw every fair inference in favor of the plaintiff. *Malfabon v. Garcia*, 111 Nev. 793, 796, 898 P.2d 107, 108 (1995). In evaluating a motion to dismiss, courts primarily focus on the allegations in the complaint. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

A complaint should be dismissed **only if it appears beyond a doubt** that the plaintiff could prove no set of facts which, if true, would entitle him to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (bold emphasis supplied); *See Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (quoting *Simpson v. Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997)) (“A complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief.”) A complaint need accomplish no more than to “set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought.” *Comstock Residents Ass’n v. Lyon Cty. Bd. of Commissioners*, 385 P.3d 607 (Nev. 2016) (quoting *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992)).

1 The formal sufficiency of a claim is governed by NRCP 8(a), which requires only that the
2 claim shall contain (1) a short and plain statement of the claim showing that the pleader is entitled
3 to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. *Breliant*
4 *v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260–61 (1993). Here, Plaintiff’s
5 Complaint sufficiently pleads facts that entitled him to relief under both causes of action.
6 Accordingly, Defendant’s Motion should be denied.
7

8 **B. The Nevada Legislature Intended to Protect Employees From Adverse**
9 **Employment Actions Related to Legal Cannabis Use.**

10 Under NRS 678D, recreational cannabis use within the chapter’s limits and provisions is
11 lawful for adults over the age of 21. Pursuant to NRS 613.333(1)(b), it is an unlawful employment
12 practice for an employer to “discharge ... any employee ... because the employee engages in the
13 lawful use in this state of any product outside the premises of the employer during the employee’s
14 nonworking hours, if that use does not adversely affect the employee’s ability to perform his or her
15 job or the safety of the employees.” (emphasis added). While the federal CSA criminalizes the use,
16 possession, and distribution of marijuana, Nevada is among no less than least forty-four (44) states that
17 have enacted legislation to legalize medical marijuana use and one of fifteen (15) states to legalize the
18 recreational use of marijuana.
19

20 Recently, the Nevada legislature enacted NRS 613.132 to prohibit employers from refusing “to
21 hire a prospective employee because the prospective employee submitted to a screening test and the
22 results of the screening test indicate the presence of marijuana.” Clearly, the Nevada legislature’s
23 intent is to protect employees from adverse employment actions related to the marijuana
24 consumption that occurs outside of work, off-premises, and does not affect the employee’s job
25 performance or safety of others. Recreational marijuana use is legal in Nevada, and NRS 613.333
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28

allows employees to engage in such lawful activities “in this state” without fear of adverse employment actions by their employer.

C. Plaintiff’s First Cause of Action for Wrongful Termination in Violation of NRS 613.333 Should not be Dismissed Because Marijuana use is Legal in Nevada.

Defendant argues that Plaintiff’s first cause of action for wrongful termination in violation of NRS 613.333 should be dismissed because marijuana use remains unlawful under federal law. For support, Defendant cites to a non-controlling case from the Colorado Supreme Court that ruled on a similar, but not identical, statute. In *Coats v. Dish Network, LLC*, the Colorado Supreme Court was tasked with interpreting Colorado Revised Statutes (“CRS”) § 24-34-402.5 which states, in pertinent part, “[i]t shall be a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee’s engaging in any lawful activity off the premises of the employer during nonworking hours . . .” 350 P.3d 849 (Colo. 2015). The plaintiff argued that medical marijuana use was considered a “lawful activity” under the Colorado statute, and that the defendant’s termination of him after a positive test result violated CRS § 24-34-402.5. The Colorado court found that the term “lawful” was not defined and that “nothing in the language of the statute limits the term ‘lawful’ to state law.” *Id.* at ¶ 18. Instead, the court determined that “lawful” was not restricted to state law and thus “lawful activity is that which complies with applicable law, including state and federal law.” *Id.* Accordingly, the court upheld the lower court’s dismissal of plaintiff’s complaint.

The Colorado statute discussed in *Coats* is different from NRS 613.333 in one critical respect that makes *Coats* distinguishable from this case. That is, unlike CRS § 24-34-402.5, NRS 613.333 is **not** silent as to whether the use of a substance is lawful in Nevada or federally. Indeed, NRS 613.333 specifically states that it is unlawful to discharge any employee that “engages in the lawful use **in this state** of any product outside the premises . . .” (emphasis added). By contrast,

CRS § 24-34-402.5 is silent as to whether the use of a substance must be legal federally or “in this state” in order to receive the protections under the statute. NRS 613.333 is clear that an employer cannot discharge an employee for consuming a substance that is lawful in this state, so long as that consumption is done during nonworking hours and does not affect the employee’s ability to perform his job or the safety of others. Accordingly, *Coats* is distinguishable from this case because it involved a statute that did not clearly identify whether the product consumed had to be legal under federal law or state law. NRS 613.333 clearly states that the product must be legal under Nevada law. As such, Plaintiff’s first cause of action for wrongful termination in violation of NRS 613.333 should not be dismissed.

D. The Tortious Discharge Claim is Properly Pled and Should not be Dismissed

Defendant further argues that Plaintiff’s second cause of action for tortious discharge should be dismissed because “having an employee drug testing policy is not a violation of public policy.” (*See* Motion at 4:14). Defendant also argues that “the mere existence of a violation of public policy is not enough for a tortious discharge claim.” (*Id.* 4:19-20). Both of these arguments fail here. First, Plaintiff’s Complaint does not allege that having a drug testing policy is a violation of public policy. To the contrary, a drug testing policy is sufficiently within the Defendant’s rights as an employer. It is not the act of drug testing the Plaintiff that violates public policy. It is the termination of the Plaintiff after he tested positive for a product that is legal in Nevada to consume that violates public policy. Plaintiff was not injured, did not file for workers compensation benefits, did not pose a risk to co-workers or the guests at the casino, and was not under the influence at the time of the incident. Terminating Plaintiff because he tested positive for marijuana has the same effect as refusing to hire an individual for testing positive for marijuana, which is also illegal under NRS 613.132.

1 Second, Defendant cites to *Sands Regent v. Valgardson*, 105 Nev. 436, 439–40, 777 P.2d
2 898, 899–900 (1989) to support his argument that “the mere existence of a violation of public policy
3 is not enough for a tortious discharge claim.” (*See* Motion at 4:19-20). However, in *Valgardson*, the
4 court declined to recognize a public policy tort solely because the plaintiff had already recovered
5 tort damages. *See D'Angelo v. Gardner*, 107 Nev. 704, 720, 819 P.2d 206, 217 (1991) (holding
6 “[w]e refused to recognize an independent tort action for violation of the public policy against age-
7 discrimination because the plaintiffs in *Valgardson* had already recovered tort damages.”). Thus, a
8 violation of public policy is sufficient to bring a viable tortious discharge claim, but the Court will
9 not permit plaintiffs to obtain double recovery – which is common for all claims.
10

11 Furthermore, Defendant attaches as Exhibit A to his Motion, a Resolution of the Nevada
12 Gaming Policy Committee Regarding Marijuana and Gaming (the “Resolution”) to suggest that the
13 Nevada gaming authorities do not permit gaming employees to engage in the recreational use of
14 marijuana. (*See* Motion at 15-18). However, upon review of the Resolution, it is clear that it does
15 not place limitations on the private actions of a gaming licensee’s employees, but instead was
16 implemented to ensure that gaming licensees do not conduct business or maintain business
17 relationships (i.e. host events, trade shows, conventions, etc.) with individuals or entities engaged in
18 the sale, cultivation or distribution of marijuana. (*See* Exhibit A, attached to Defendant’s Motion).
19 Nowhere in the Resolution does it suggest that employees cannot engage in the off-site, after hours
20 legal use of marijuana.
21
22

23 Finally, Defendant makes an alternative argument that, if this Court finds Plaintiff’s NRS
24 613.333 claim viable, Plaintiff’s tortious discharge claim should be dismissed because Plaintiff will
25 purportedly have a comprehensive statutory remedy available to him for recovery. While it is true
26 that Plaintiff can recover damages under NRS 613.333, those damages are limited to lost wages and
27 benefits, and attorney fees and costs. *See* NRS 613.333(2) – (3). NRS 613.333 does not allow
28

1 Plaintiff to recover tort damages that would otherwise be available to him under a tortious discharge
2 claim. *See Gardner*, 107 Nev. at 723 (providing that tort damages are permissible under a tortious
3 discharge claim). As properly pled in the Complaint, Nevada has a strong public policy interest in
4 protecting the statutory rights of its citizens. (*See Complaint at ¶ 44*). Plaintiff was wrongfully
5 terminated and, as a result, he was denied the ability to provide for his family solely because he
6 engaged in a legally recognized activity that is statutorily protected in Nevada. Tortious discharge
7 liability is a legally cognizable claim available to Plaintiff to recover tort damages for the pain and
8 suffering he has endured for being wrongfully terminated in the heart of a pandemic with limited
9 alternative employment opportunities available to him to feed and care for his family.
10

11 Alternatively, even if this Court finds that Plaintiff is not entitled to recover under both NRS
12 613.333 and under his tortious discharge claim, Plaintiff is entitled to plead alternative forms of
13 relief at the pleading stage. Accordingly, Plaintiff's tortious discharge claim is properly pled before
14 this Court and Defendant's Motion should be denied.
15

16 **III. CONCLUSION**

17 For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendant's
18 Motion to Dismiss in its entirety, order the Defendant to answer the Complaint, and allow this case to
19 proceed to discovery.
20

21 DATED this 2nd day of December, 2020.

22 RESPECTFULLY SUBMITTED,

23 LAGOMARSINO LAW

24 

25 ANDRE M. LAGOMARSINO, ESQ. (#6711)
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CERTIFICATE OF SERVICE

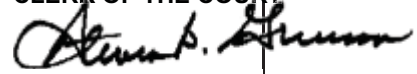
Pursuant to NRCP 5(b), I hereby certify that on this 2nd day of December, I served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** on all parties to this action by electronic service, via Odyssey eFileNV to the following:

Scott M. Mahoney, Esq.

FISHER & PHILLIPS LLP
smahoney@fisherphillips.com
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An Employee of **LAGOMARSINO LAW**



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 Attorney for Defendant

EIGHTH DISTRICT JUDICIAL COURT
CLARK COUNTY, NEVADA

DANNY CEBALLOS, an individual,	)	Case No.: A-20-823119-C
)	
Plaintiff,	)	Department: XIX
)	
vs.	)	Date of Hearing: 2/9/21
)	
NP PALACE LLC d/b/a PALACE	)	Time of Hearing: 9:00 a.m.
STATION HOTEL & CASINO, a)	
Domestic Limited Liability Company,)	
)	
Defendant.)	
)	

REPLY TO OPPOSITION TO MOTION TO DISMISS

Defendant, NP Palace LLC dba Palace Station Hotel & Casino, hereby replies to Plaintiff's Opposition to Defendant's Motion to Dismiss filed on December 2, 2020 (the "Opposition") based upon the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

The NRS 613.333 Claim Should Be Dismissed

NRS 613.333 prohibits certain employment actions based on the employee's "lawful use in this state of any product" outside of the employer's premises during

1 nonwork hours. As discussed in detail in the Motion,¹ Plaintiff did not engage in the
2 lawful use of a product and does not fall within the scope of NRS 613.333 because
3 marijuana remains an unlawful drug under federal law. *See, e.g., Coats v. Dish*
4 *Network, LLC*, 350 P.3d 849, 852 (Colo. 2015).

5 The Opposition contends that whether marijuana is unlawful under federal law
6 is of no moment because NRS 613.333 applies so long as the product in question is
7 lawful “in this state,” i.e., under state law without regard to legality under federal law.
8 First, NRS 678D.200 exempts persons age 21 or older from prosecution for certain acts
9 relating to cannabis. Being exempt from prosecution for engaging in certain acts is not
10 necessarily the same as an activity being “lawful.”

11 Regardless, Plaintiff focuses on the words “in this state” to the exclusion of the
12 word “lawful,” which is not defined for purposes of NRS 613.333. *Coats* affirmed the
13 dismissal of a claim under Colorado’s lawful use statute. In doing so, it noted that
14 while “lawful” was not defined under the statute, its generally construed meaning is an
15 activity that was not generally contrary to law, without restricting its analysis solely to
16 what was a lawful activity under Colorado state law. *Id.*, at 852-853.

17 Plaintiff argument that NRS 613.333 considers only state law in determining
18 what is “lawful” rests mainly on his wish that the law be interpreted in this manner. He
19 cites nothing from the legislative history which suggests federal law can be ignored in
20 deciding whether the use of a product is “lawful.” The impetus for the enactment of
21 NRS 613.333 was that employers could fire employees for using tobacco products
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28 ¹ “Motion” refers to Defendant’s Motion to Dismiss filed on November 5, 2020.

1 during non-work hours.² Except for minors, the use of tobacco is something that is
2 generally not illegal under federal or other laws. That is not the case with marijuana.

3 Finally, while not binding on the Court, there have been decisions from at least
4 two other Eighth Judicial District Court judges dismissing claims under NRS 613.333
5 because marijuana remains illegal under federal law. See, Ex. A 2:15-18; Ex. B 2:13-
6 19.

7
8 Plaintiff's NRS 613.333 claim should be dismissed.

9 ***The Tortious Discharge Claim Should Be Dismissed***

10 The Motion noted that the mere existence of a violation of public policy is not
11 enough for a tortious discharge claim. *See, e.g., Sands Regent v. Valgardson*, 105 Nev.
12 436, 440, 777 P.2d 898, 900 (1989). Citing *D'Angelo v. Gardner*, 819 P.2d 206, 217
13 (Nev. 1991), the Opposition contends "in *Valgardson*, the court declined to recognize a
14 public policy tort *solely* because the plaintiff had already recovered tort damages." See,
15 Opposition 8:3-5 (emphasis added).

16
17 Respectfully, Plaintiff fails to understand Nevada law in this regard. First,
18 *Valgardson* makes it clear there is a difference between having a public policy violation
19 and a public policy violation that is "sufficiently strong and compelling to warrant
20 another exception to the 'at-will' employment doctrine." *Id.*, 777 P.2d at 900. It
21 declined to recognize tortious discharge in an age discrimination case even though
22 "[c]learly Nevada has a public policy against age discrimination," finding that "age
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26 ² "Sam McMullen, Lobbyist, Phillip Morris, testified that this bill was started because of cases around the
27 country where employers were basing treatment of employees on their smoking habits off the job in a
28 way that did not influence their job, affect their job or job performance." *See, May 29, 1991 Minutes of
the Senate Committee on Commerce and Labor: Hearing on A.B.667 before the S. Comm. On Commerce
& Labor*, 1991 Leg., 66th Sess. 10 (Nev. 1991) (Statements of Sam McMullen, Lobbyist, Phillip Morris).

1 discrimination, as objectionable as it may be, does not rise to the same level as the
2 actionable tortious conduct found in *Hansen* or *K-Mart*.” *Id.*, at 900.

3 Two things are required for a tortious discharge in violation of public policy
4 claim in Nevada - the presence of a sufficiently strong public policy to warrant an
5 exception to the at-will employment doctrine *and* the absence of a comprehensive
6 statutory remedy for the violation. *Gardner* makes it clear there are two parts to the
7 analysis. In that case, the Nevada Supreme Court found a sufficiently strong public
8 policy violation to warrant an exception to the at-will doctrine, but then noted
9 “[c]oncluding that Western States violated public policy when it dismissed Jones does
10 not end the matter” because it still needed to be determined if a comprehensive statutory
11 remedy existed. *Id.*, 819 P.2d at 216-217.

12 If discriminating against someone based on age or race³ is insufficient to create
13 a tortious discharge in violation of public policy claim, discharging an employee for
14 marijuana use is equally insufficient.

15 Alternatively, as discussed in the Motion, if the Court finds that Plaintiff’s NRS
16 613.333 claim is a cognizable (which it should not), then the tortious discharge claim
17 must be dismissed because NRS 613.333 provides a sufficiently-comprehensive
18 statutory remedy for its violation. The Nevada Supreme Court has held that the remedy
19 under NRS 50.070(2)(c) is comprehensive enough to preclude a tortious discharge
20 claim, and the damages available under NRS 613.333(2) are virtually identical to those
21 under NRS 50.070(2)(c).⁴

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³ See, *Chavez v. Sievers*, 43 P.3d 1022, 1025-26 (Nev. 2002) (declining to recognize a tortious discharge claim for race discrimination in businesses having less than fifteen employees - even though there was no statutory remedy - despite the fact that “racial discrimination is fundamentally wrong and undoubtedly against Nevada public policy”).

⁴ *Shoen v. Amerco, Inc.*, 111 Nev. 735, 896 P.2d 469, 475 (1995) (citations omitted).

1 The Opposition ignores *Shoen* and fails to address the identical nature of the
2 damages available under the two statutes, instead claiming that the damages under NRS
3 613.333 “are limited to lost wages and benefits, and attorney fees and costs” and “do
4 not allow Plaintiff to recover tort damages that would otherwise be available to him
5 under a tortious discharge claim.” See, Opposition 8:26 – 9:1. This is incorrect. The
6 statute not only allows for the recovery of lost wages and benefits and attorney’s fees
7 and costs [*see*, NRS 613.333(2)(a) and (c)], it also allows for reinstatement of
8 employment and additional “[d]amages equal to the amount of the lost wages and
9 benefits.” *See*, NRS 613.333(2)(b) and (d).
10

11 **CONCLUSION**

12 Based on foregoing arguments, along with those set forth in the Motion, all of
13 Plaintiff’s claims should be dismissed.
14

15 Respectfully submitted,

16 FISHER & PHILLIPS, LLP

17 By: /s/ Scott M. Mahoney, Esq.
18 300 South Fourth Street
19 Suite 1500
20 Las Vegas, Nevada 89101
21 Attorneys for Defendant
22
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CERTIFICATE OF SERVICE


Pursuant to NRCP 5(b), I hereby certify service of the foregoing Reply to Opposition to Motion to Dismiss was made this date by electronic filing and/or service with the Eighth Judicial District Court, addressed as follows:

Lagomarsino Law
ANDRE M. LAGOMARSINO, ESQ.
DAVEN P. CAMERON, ESQ.
3005 W. Horizon Ridge Pkwy., Suite 241
Henderson, Nevada 89052

Dated: January 12, 2021

By: /s/ Sarah Griffin
An employee of Fisher & Phillips LLP

EXHIBIT A


CLERK OF THE COURT

OGM
FISHER & PHILLIPS LLP
SCOTT M. MAHONEY, ESQ.
Nevada Bar No. 1099
300 South Fourth Street
Suite 300
Las Vegas, NV 89101
Telephone: (702) 252-3131
Facsimile: (702) 252-7411

Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

Ross Hilder, an individual,	)	Case No. A-16-747824-C
)	
Plaintiff,	)	Dept. No. XV
)	
vs.	)	Date of Hearing: 3/7/17
)	
Boyd Gaming Corporation, a Domestic	)	Time of Hearing: 9:00 a.m.
Corporation; EMPLOYEE(S)/AGENT(S))	
DOES I-X; and ROE CORPORATIONS)	
XI-XX, inclusive,)	
)	
Defendants.)	

ORDER GRANTING MOTION TO DISMISS

Defendant, Boyd Gaming Corporation's Motion to Dismiss (the "Motion") having come on regularly for hearing on March 7, 2017 at the hour of 9:00 a.m. in Department XV of the above-entitled Court, the Honorable Joe Hardy presiding, Plaintiff being represented by Christian Gabroy, Esq. and Defendant being represented by Scott M. Mahoney, Esq., the Court having considered the Motion, Plaintiff's Opposition to Defendant's Motion to Dismiss and Defendant's Reply to Opposition to Motion to Dismiss (the "Reply"), as well as the arguments made at the hearing, the Court being fully advised in the premises makes the following findings:

FISHER & PHILLIPS LLP
300 S Fourth Street, Suite 1500
Las Vegas, Nevada 89101

<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Judgment of Arbitration
<input type="checkbox"/> Voluntary Dismissal
<input type="checkbox"/> Involuntary Dismissal
<input type="checkbox"/> Stipulated Dismissal
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)

1 1. At the time Plaintiff failed his drug test, he was not an employee of
2 Defendant, and he never became an employee. A claim for tortious discharge in
3 violation of public policy cannot be asserted absent an employer-employee relationship.

4 2. The Nevada Supreme Court has not recognized a claim for tortious
5 failure to hire, and the Court does not believe that it would recognize such a claim.

6 3. NRS Chapter 598 does not apply to potential employer-employee
7 relationships.

8 4. If Plaintiff had become an employee of Defendant, which he did not,
9 such employment would have been on an at-will basis. Any alleged negligence in
10 connection with a failure to hire or employee discharge would be antithetical to the at-
11 will employment doctrine, and no common law legal duty to correctly interpret and
12 apply medical marijuana laws exists for purposes of a negligence claim.

13 5. For purposes of a claim under NRS 613.333, in determining whether a
14 product is being lawfully used within the State of Nevada, it must be considered
15 whether the use is allowed under both state and federal law, and federal law continues
16 to prohibit the use of marijuana, even for medical reasons.

17 6. NRS 453A.800 is not applicable to the facts alleged in the Complaint for
18 the reasons set forth in the Motion and Reply, including, but not limited to, because the
19 statute is inapplicable to job applicants and no private cause of action is provided for or
20 implied by the statute.

21 ///

22 ///

23 ///

24 ..


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1 For the reasons set forth above, even assuming that all the facts alleged in the
2 Complaint are true, the Complaint fails to state any cognizable legal claims under
3 Nevada law, and good cause otherwise appearing therefor, Defendant's Motion to
4 Dismiss is hereby granted without prejudice.

5 DATED this 22nd day of March 2017.

6
7 
8 DISTRICT COURT JUDGE

9 Submitted by:

10 
11 Scott M. Mahoney, Esq.
12 Fisher & Phillips LLP
13 300 South Fourth Street
14 Suite 1500
15 Las Vegas, NV 89101
16 Attorneys for Defendant

17 Approved as to form and content only:


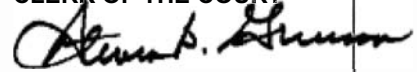
18 
19 Christian Gabroy, Esq.
20 Gabroy Law Offices
21 The District at Green Valley Ranch
22 170 South Green Valley Parkway
23 Suite 280
24 Henderson, Nevada 89012
25 Attorneys for Plaintiff
26
27
28

EXHIBIT B

SEMENZA KIRCHER RICKARD
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

Electronically Filed
10/3/2018 3:07 PM
Steven D. Grierson
CLERK OF THE COURT



LAWRENCE J. SEMENZA, III, ESQ., Bar No. 7174
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JOHN E. FITZSIMMONS (*Admitted Pro Hac Vice*)
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401 B Street, Suite 1700
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Telephone: 619.699.2700
Facsimile: 619.699.2701

Attorneys for Defendants
STATION CASINOS LLC AND
RED ROCK RESORTS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

THOMAS LARSON,

Plaintiff,

v.

STATION CASINOS LLC, a Domestic
Limited Liability Company; RED ROCK
RESORTS, INC, a Domestic Corporation;
DOE INDIVIDUALS 1 through 300; and
ROE BUSINESS OR GOVERNMENTAL
ENTITIES, 1 through 300 Inclusive,

Defendants.

Case No. A-18-774478-C
Dept. No. XIV

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 On July 24, 2018, the Court held a hearing on Defendants' Station Casinos LLC, and Red
2 Rock Resorts, Inc. (collectively, "Defendants") Motion to Dismiss With Prejudice (the
3 "Motion"). Jarrod L. Rickard, Esq., and John E. Fitzsimmons, Esq., appeared on behalf of the
4 Defendants. Philip Trenchak, Esq., and Victoria C. Mullins, Esq., appeared on behalf of Plaintiff
5 Thomas Larson ("Plaintiff").

6 Having considered the Motion, Plaintiff's June 25, 2018 Opposition, and Defendants' July
7 16, 2018 Reply, as well as the papers and pleadings in this case and the oral argument of counsel
8 at the hearing, with good cause appearing, the Court makes the following findings in granting the
9 Motion:

10 • According to the Complaint, Plaintiff's claims rest upon the premise that
11 Defendants violated NRS 613.333 by terminating Plaintiff's employment because he tested
12 positive for marijuana.

13 • However, NRS 613.333 makes it an "unlawful employment practice for an
14 employer to ... discharge or otherwise discriminate against any employee ... because the
15 employee engages in the lawful use in this state of any product outside the premises of the
16 employer during the employee's nonworking hours" (Emphasis added).

17 • Plaintiff has not alleged a "lawful use" of any product because marijuana use
18 remains a federal criminal offense under the Controlled Substances Act. 21 U.S.C. § 844; *see*
19 *Coats v. Dish Network, LLC*, 350 P.3d 849 (Col. 2015).

20 • To the extent that NRS 613.333 can be read to require that an employer permit or
21 accommodate an employee's off-duty use of marijuana, it would be preempted by the Controlled
22 Substances Act, in that it would stand as an obstacle to the accomplishment and execution of the
23 full purposes of the Controlled Substances Act.

24 • While Plaintiff alleges various tort claims, NRS 613.333 contains an express
25 exclusive remedy provision. Plaintiff cannot circumvent that provision by couching the alleged
26 violation as a tort.

1 • Finally, Plaintiff's claim for intentional infliction of emotional distress fails for the
2 additional reason that terminating an employee for marijuana use is not "extreme and outrageous
3 conduct" that is "outside all possible bounds of decency." *Shelstad v. TGS Servs., Inc.*, 2017 WL
4 2870083, at *4 (D. Nev. July 5, 2017). This is particularly so considering that Nevada is an "at-
5 will" employment state.

6 In light of the foregoing,

7 **IT IS HEREBY ORDERED** that Defendants' Motion is GRANTED and Plaintiff's
8 Complaint is hereby dismissed.

9 DATED this 2nd day of October, 2018.

10 
11 _____
12 EIGHTH JUDICIAL DISTRICT COURT JUDGE 

13 Respectfully submitted by,

14 SEMENZA KIRCHER RICKARD
15 

16 _____
17 Lawrence J. Semenza, III, Esq., Bar No. 7174
18 Christopher D. Kircher, Esq., Bar No. 11176
19 Jarrod L. Rickard, Esq., Bar No. 10203
20 10161 Park Run Drive, Suite 150
21 Las Vegas, Nevada 89145

22 *Attorneys for Defendants*

23 Approved as to form and content by,

24 MULLINS & TRENCHAK, ATTORNEYS AT LAW

25 *Refused*

26 _____
27 Philip J. Trenchak, Esq. Bar No. 9924
28 1212 S. Casino Center Blvd.
Las Vegas, Nevada 89104

Attorneys for Plaintiff

1 **RTRAN**

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 DANNY CEBALLOS,)
8)
9 Plaintiff,) CASE NO. A-20-823119-C
10 vs.) DEPT. NO. 1
11)
12 NP PALACE STATION,)
Defendant.)

13 BEFORE THE HONORABLE BITA YEAGER, DISTRICT JUDGE
14 THURSDAY, MARCH 11, 2021 AT 9:40 A.M.

15 **RECORDER'S TRANSCRIPT RE:**
16 **MOTION TO DISMISS**

17
18 APPEARANCES BY VIDEOCONFERENCE:

19
20 FOR THE PLAINTIFF: ANDRE M. LAGOMARSINO, ESQ.

21
22 FOR THE DEFENDANT: SCOTT M. MAHONEY, ESQ.
23
24

25 Recorded by: LISA A. LIZOTTE, COURT RECORDER

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(THURSDAY, MARCH 11, 2021 AT 9:40 A.M.)

THE COURT: Next I've got Danny Ceballos versus NP Palace Station, A-20-823119-C. If --

MR. LAGOMARSINO: Good morning, Your Honor. Andre Lagomarsino -- sorry about that -- 6711, for the Plaintiff.

THE COURT: Thank you.

MR. MAHONEY: Good morning, Your Honor. Scott Mahoney for the Defendant.

THE COURT: Okay. Thank you. So I've read through the pleadings and I need to ask a couple of questions. So -- and I note, Mr. Lagomarsino, that you had cited to NRS 678D as, you know, in talking about the recent marijuana legislation when you -- when you were referring the -- exempting the individuals who are over 21 from prosecution for certain acts related to cannabis.

Further on down in 678D, specifically NRS 678D.510 under title, Effect of chapter, it says, the provisions of this chapter do not prohibit, Subsection A, a public or private employer from maintaining and acting and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under this chapter. So with that in mind, how does, then, your claim stand?

MR. LAGOMARSINO: Thank you, Your Honor. So that's a very good question. We cited that statute for one reason, and that's under the tortious discharge in violation of public policy cause of action. We -- excuse me -- filed suit under two causes of action. The first was violation of NRS 613.333, and,

1 secondarily, as an alternative cause of action for the tortious discharge in
2 violation of public policy.

3 To answer your question, we cited that statute only to show
4 that there is a strong public policy in Nevada to allow citizens to consume
5 marijuana if they so choose, and so while that provision, as you'll read it, says
6 nothing under this particular chapter prevents an employer from enacting or
7 terminating an employee for using marijuana, there's a separate chapter, NR 16 -
8 - NRS 613.333 which precludes the firing of an employee for the use of a
9 substance that is lawful in this state. So we cited that statute --

10 THE COURT: Right. And so -- and I -- and I understand the
11 argument regarding federal law versus state law, right, so -- so it's -- it's lawful
12 under state law but still not lawful under federal law, and to me it seems like the
13 difference is in the emphasis in how 613.333 is read, so meaning, you know,
14 lawful use -- lawful use in this state of any product versus lawful use in this state
15 of any product. I don't know if you see the difference in the way that I'm
16 emphasizing it.

17 MR. LAGOMARSINO: I do, Your Honor, and I would argue
18 respectfully that that weighs in favor of the Plaintiff's claim for a couple of
19 reasons. If we're talking about lawful use in this state, meaning he was
20 geographically present in this state when he used it, I would argue that that
21 would weigh in favor of a finding that the federal law doesn't apply because he's
22 acting within the confines of this state, so the commerce clause is not impacted
23 or brought into play to bring into federal law.

1 Then if you look at it with the other emphasis, the lawful use of
2 a product in this state, meaning it's lawful to use marijuana in this state, I would
3 also argue that that weighs in favor of the Plaintiff.

4 THE COURT: Okay. Thank you.

5 Counsel, Mr. Mahoney, what's your response?

6 MR. MAHONEY: Well, my response to the last point, Your Honor, is
7 that Mr. Lagomarsino is assuming that lawful use in this state be interpreted in
8 the manner that favors the outcome he wants, but I think what the focus needs to
9 be on is whether an activity is lawful in the state and that would require an
10 examination. As everyone knows in looking at whether an activity is quote,
11 unquote lawful you need to consider all applicable laws, be they local, state,
12 federal, so to just stay -- say that we're focusing -- lawful activities only has to do
13 with what's lawful in the state I don't think cuts it.

14 I think you have to consider the federal law as well as state
15 law, as you do in any number of circumstances both in employment law and in
16 other matters. As far as Chapter 678D, I think Your Honor makes an excellent
17 point, and although I've never practiced criminal law --

18 THE COURT: I have.

19 MR. MAHONEY: -- when it says -- when it says -- I know -- when it
20 says in NRS 278D.200 that persons 21 or older under the conditions set forth
21 therein are exempt from prosecution, that makes me wonder whether an activity
22 is lawful as opposed to something that the state has decided they're not going to
23 prosecute people for, so I'm not even sure that you have a lawful activity under
24 .200.

1 THE COURT: Okay. And, Mr. Lagomarsino, I'm also aware of your
2 argument regarding the recent law prohibiting an employer from discriminating if -
3 - if they're in the application process, but I do see a distinction between the
4 application process and actually once they are -- once they are an employee.

5 So based on the emphasis being on lawful in -- under 613.333,
6 I do find that the Plaintiff hasn't alleged lawful use of any product because
7 marijuana still remains a federal criminal offense under the Controlled
8 Substances Act, especially in light of NRS 678D.510 which specifically states
9 that the provisions in this chapter -- that chapter referring to the use of marijuana
10 and the non-prosecution for those people who are 21 and over for certain acts
11 relating to cannabis, you know, that -- it specifically states that it does not prohibit
12 a public or private employer from maintaining, enacting and enforcing work place
13 policy prohibiting or restricting actions or conduct otherwise permitted under this
14 chapter. So with those two issues in mind, I am going to grant the Defendant's
15 motion to dismiss at this time.

16 Mr. Mahoney, if you will prepare the order within 10 days and
17 circulate it to Mr. Lagomarsino?

18 MR. MAHONEY: I will, Your Honor. Thank you.

19 THE COURT: Thank you.

20 MR. LAGOMARSINO: Thank you, Your Honor.

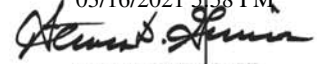
21 (Whereupon, the proceedings concluded.)

22 * * * * *

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

 —
LISA A. LIZOTTE
Court Recorder


CLERK OF THE COURT

OGM
FISHER & PHILLIPS LLP
SCOTT M. MAHONEY, ESQ.
Nevada Bar No. 1099
300 S. Fourth Street
Suite 1500
Las Vegas, NV 89101
Telephone: (702) 252-3131
E-Mail Address: smahoney@fisherphillips.com
Attorney for Defendant

EIGHTH DISTRICT JUDICIAL COURT
CLARK COUNTY, NEVADA

DANNY CEBALLOS, an individual,	)	Case No.: A-20-823119-C
)	
Plaintiff,	)	Department: I
)	
vs.	)	Date of Hearing: 3/11/21
)	
NP PALACE LLC d/b/a PALACE	)	Time of Hearing: 9:30 a.m.
STATION HOTEL & CASINO, a)	
Domestic Limited Liability Company,)	
)	
Defendant.)	
)	

ORDER GRANTING MOTION TO DISMISS

Defendant, NP Palace LLC's Motion to Dismiss (the "Motion") having come on regularly for hearing on March 11, 2021 at the hour of 9:30 a.m. in Department I of the above-entitled Court, the Honorable Bitu Yeager presiding, Plaintiff being represented by Andre M. Lagomarsino, Esq. and Defendant being represented by Scott M. Mahoney, Esq., the Court having considered the Motion, Plaintiff's Opposition to Defendant's Motion to Dismiss and Defendant's Reply to Opposition to Motion to Dismiss, as well as the arguments made at the hearing, the Court being fully advised in the premises makes the following findings:

1 1. Federal law should be considered as well as state law for purposes of
2 determining whether the use of a product is “lawful” for purposes of NRS 613.333 and
3 the use of marijuana remains forbidden under federal law (the Controlled Substances
4 Act). The Court therefore finds Plaintiff’s alleged marijuana use does not constitute the
5 lawful use of a product pursuant to NRS 613.333.
6

7 2. NRS 678D.510(1)(a) provides that Nevada’s laws pertaining to the adult
8 use of cannabis do not prevent an employer from having and enforcing policies relating
9 to the use of marijuana by employees.

10 3. Plaintiff does not allege that Defendant failed to hire him because he
11 tested positive for marijuana, so NRS 613.132, referenced by Plaintiff, does not apply to
12 the circumstances alleged in the Complaint.
13

14 4. Based on marijuana still being illegal under federal law and the language
15 of NRS 678D.510, the Complaint does not allege a violation of public policy, let alone
16 an exceptional one, upon which to assert a tortious discharge in violation of public
17 policy claim.

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1 Based on these findings:


2 IT IS HEREBY ORDER, ADJUDGED AND DECREED that the Motion is
3 granted and Plaintiff's Complaint is dismissed for failure to state claims upon which
4 relief may be granted.

5 DATED this ____ day of March 2021. Dated this 16th day of March, 2021

6 
7 Bita Yeager
8 DISTRICT COURT JUDGE

9 Submitted by:

B4B ECA F570 14B4
Bita Yeager
District Court Judge

10 
11 Scott M. Mahoney, Esq.
12 Fisher & Phillips LLP
13 300 South Fourth Street
14 Suite 1500
15 Las Vegas, NV 89101
16 Attorneys for Defendant

17 Approved as to form and content:

18 
19 Andre M. Lagomarsino, Esq.
20 Lagomarsino Law
21 3005 West Horizon Ridge Pkwy
22 Suite 241
23 Henderson, Nevada 89052
24 Attorneys for Plaintiff
25
26
27
28

Griffin, Sarah

Subject: FW: Proposed Order - Ceballos v. Palace Station
Attachments: doc20210311125745.pdf

From: Andre Lagomarsino <aml@lagomarsinolaw.com>
Sent: Thursday, March 11, 2021 1:05 PM
To: Mahoney, Scott <smahoney@fisherphillips.com>
Cc: Adryana Martinez <Adryana@lagomarsinolaw.com>; Denise Valdivia <denise@lagomarsinolaw.com>
Subject: Proposed Order - Ceballos v. Palace Station

Scott,

Enclosed please find a color copy of the proposed Order. We have mailed the original to your office.

Kind regards,

Andre

Andre M. Lagomarsino, Esq.



**3005 West Horizon Ridge Parkway, Suite 241
Henderson, Nevada 89052**

T: 702.383.2864

F: 702.383.0065

Website: www.lagomarsinolaw.com

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Danny Ceballos, Plaintiff(s) CASE NO: A-20-823119-C
7 vs. DEPT. NO. Department 1
8 NP Palace Station, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

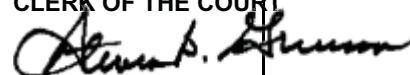
11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/16/2021

15 Andre Lagomarsino	aml@lagomarsinolaw.com
16 Denise Valdivia	denise@lagomarsinolaw.com
17 Stephanie Andersen	stephanie@lagomarsinolaw.com
18 Justin Bolor	justin@lagomarsinolaw.com
19 Scott Mahoney	smahoney@fisherphillips.com
20 Sarah Griffin	sgriffin@fisherphillips.com
21 Cory Ford	cory@lagomarsinolaw.com
22 Sydney Schuette	sydney@lagomarsinolaw.com
23 Jennifer D'Incecco	jennifer@lagomarsinolaw.com
24 Mary Nelson	mnelson@lagomarsinolaw.com

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JA000056



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Attorney for Defendant

EIGHTH DISTRICT JUDICIAL COURT
CLARK COUNTY, NEVADA

DANNY CEBALLOS, an individual,	)	Case No.: A-20-823119-C
)	
Plaintiff,	)	Department: XIX
)	
vs.)	
)	
NP PALACE LLC d/b/a PALACE)	
STATION HOTEL & CASINO, a)	
Domestic Limited Liability Company,)	
)	
Defendant.)	
)	

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the attached Order Granting Motion to Dismiss was entered in the above-captioned matter on March 16, 2021.

Respectfully submitted,

FISHER & PHILLIPS, LLP

By: /s/ Scott M. Mahoney, Esq.
300 South Fourth Street
Suite 1500
Las Vegas, Nevada 89101
Attorneys for Defendant

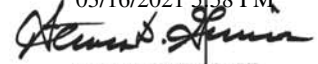
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify service of the foregoing Notice of Entry of Order was made this date by electronic filing and/or service with the Eighth Judicial District Court, addressed as follows:

Lagomarsino Law
ANDRE M. LAGOMARSINO, ESQ.
DAVEN P. CAMERON, ESQ.
3005 W. Horizon Ridge Pkwy., Suite 241
Henderson, Nevada 89052

Dated: March 17, 2021.

By: /s/ Sarah Griffin
An employee of Fisher & Phillips LLP


CLERK OF THE COURT

OGM
FISHER & PHILLIPS LLP
SCOTT M. MAHONEY, ESQ.
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Telephone: (702) 252-3131
E-Mail Address: smahoney@fisherphillips.com
Attorney for Defendant

EIGHTH DISTRICT JUDICIAL COURT
CLARK COUNTY, NEVADA

DANNY CEBALLOS, an individual,)	Case No.: A-20-823119-C
)	
Plaintiff,	)	Department: I
)	
vs.	)	Date of Hearing: 3/11/21
)	
NP PALACE LLC d/b/a PALACE	)	Time of Hearing: 9:30 a.m.
STATION HOTEL & CASINO, a)	
Domestic Limited Liability Company,)	
)	
Defendant.)	
)	

ORDER GRANTING MOTION TO DISMISS

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1 1. Federal law should be considered as well as state law for purposes of
2 determining whether the use of a product is “lawful” for purposes of NRS 613.333 and
3 the use of marijuana remains forbidden under federal law (the Controlled Substances
4 Act). The Court therefore finds Plaintiff’s alleged marijuana use does not constitute the
5 lawful use of a product pursuant to NRS 613.333.
6

7 2. NRS 678D.510(1)(a) provides that Nevada’s laws pertaining to the adult
8 use of cannabis do not prevent an employer from having and enforcing policies relating
9 to the use of marijuana by employees.

10 3. Plaintiff does not allege that Defendant failed to hire him because he
11 tested positive for marijuana, so NRS 613.132, referenced by Plaintiff, does not apply to
12 the circumstances alleged in the Complaint.
13

14 4. Based on marijuana still being illegal under federal law and the language
15 of NRS 678D.510, the Complaint does not allege a violation of public policy, let alone
16 an exceptional one, upon which to assert a tortious discharge in violation of public
17 policy claim.
18

19 ///

20 ///

21 ///

1 Based on these findings:


2 IT IS HEREBY ORDER, ADJUDGED AND DECREED that the Motion is
3 granted and Plaintiff's Complaint is dismissed for failure to state claims upon which
4 relief may be granted.

5 DATED this ____ day of March 2021. Dated this 16th day of March, 2021


6 
7 DISTRICT COURT JUDGE

8 Submitted by:

B4B ECA F570 14B4
Bita Yeager
District Court Judge

9 
10
11 Scott M. Mahoney, Esq.
12 Fisher & Phillips LLP
13 300 South Fourth Street
14 Suite 1500
15 Las Vegas, NV 89101
16 Attorneys for Defendant

17 Approved as to form and content:

18 
19 Andre M. Lagomarsino, Esq.
20 Lagomarsino Law
21 3005 West Horizon Ridge Pkwy
22 Suite 241
23 Henderson, Nevada 89052
24 Attorneys for Plaintiff
25
26
27
28

Griffin, Sarah

Subject: FW: Proposed Order - Ceballos v. Palace Station
Attachments: doc20210311125745.pdf

From: Andre Lagomarsino <aml@lagomarsinolaw.com>
Sent: Thursday, March 11, 2021 1:05 PM
To: Mahoney, Scott <smahoney@fisherphillips.com>
Cc: Adryana Martinez <Adryana@lagomarsinolaw.com>; Denise Valdivia <denise@lagomarsinolaw.com>
Subject: Proposed Order - Ceballos v. Palace Station

Scott,

Enclosed please find a color copy of the proposed Order. We have mailed the original to your office.

Kind regards,

Andre

Andre M. Lagomarsino, Esq.



**3005 West Horizon Ridge Parkway, Suite 241
Henderson, Nevada 89052**

T: 702.383.2864

F: 702.383.0065

Website: www.lagomarsinolaw.com

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Danny Ceballos, Plaintiff(s) CASE NO: A-20-823119-C
7 vs. DEPT. NO. Department 1
8 NP Palace Station, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

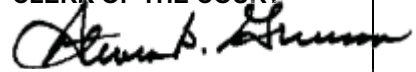
11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/16/2021

15 Andre Lagomarsino	aml@lagomarsinolaw.com
16 Denise Valdivia	denise@lagomarsinolaw.com
17 Stephanie Andersen	stephanie@lagomarsinolaw.com
18 Justin Bolor	justin@lagomarsinolaw.com
19 Scott Mahoney	smahoney@fisherphillips.com
20 Sarah Griffin	sgriffin@fisherphillips.com
21 Cory Ford	cory@lagomarsinolaw.com
22 Sydney Schuette	sydney@lagomarsinolaw.com
23 Jennifer D'Incecco	jennifer@lagomarsinolaw.com
24 Mary Nelson	mnelson@lagomarsinolaw.com

25
26
27
28

JA000063



1 **NOAS**
2 **LAGOMARSINO LAW**
3 **ANDRE M. LAGOMARSINO, ESQ. (#6711)**
4 **3005 W. Horizon Ridge Pkwy., Suite 241**
5 **Henderson, Nevada 89052**
6 **Telephone: (702) 383-2864**
7 **Facsimile: (702) 383-0065**
8 **aml@lagomarsinolaw.com**
9 **Attorney for Plaintiff Danny Ceballos**

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 **DANNY CEBALLOS, an individual,**

CASE NO.: A-20-823119-C

10 **Plaintiff,**

DEPT. NO.: I

11 **v.**

12 **NP PALACE LLC d/b/a PALACE STATION**
13 **HOTEL & CASINO, a Domestic Limited**
14 **Liability Company,**

15 **Defendant.**

16 **NOTICE OF APPEAL**

17
18 Notice is hereby given that Plaintiff DANNY CEBALLOS hereby appeals to the Supreme
19 Court of Nevada from the *Order Granting Motion To Dismiss*, entered in this action on March 16,
20 2021. A copy of the order is attached as **Exhibit 1**.

21 DATED this 15th day of April, 2021.

22 **RESPECTFULLY SUBMITTED,**

23 **LAGOMARSINO LAW**

24
25 
26 **ANDRE M. LAGOMARSINO, ESQ. (#6711)**
27 **3005 W. Horizon Ridge Pkwy., Suite 241**
28 **Henderson, Nevada 89052**
Telephone: (702) 383-2864
Facsimile: (702) 383-0065
Attorney for Plaintiff Danny Ceballos

CERTIFICATE OF SERVICE

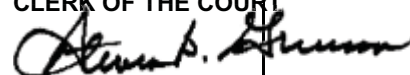
Pursuant to NRAP 3(b)(1), I hereby certify that on this 15th day of April, 2021, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** on all parties to this action by electronic service, via Odyssey eFileNV to the following:

Scott M. Mahoney, Esq.
FISHER & PHILLIPS LLP
smahoney@fisherphillips.com



An Employee of **LAGOMARSINO LAW**

EXHIBIT 1



FISHER & PHILLIPS LLP
SCOTT M. MAHONEY, ESQ.
Nevada Bar No. 1099
300 S. Fourth Street
Suite 1500
Las Vegas, NV 89101
Telephone: (702) 252-3131
E-Mail Address: smahoney@fisherphillips.com
Attorney for Defendant

EIGHTH DISTRICT JUDICIAL COURT
CLARK COUNTY, NEVADA

DANNY CEBALLOS, an individual,	)	Case No.: A-20-823119-C
)	
Plaintiff,	)	Department: XIX
)	
vs.)	
)	
NP PALACE LLC d/b/a PALACE)	
STATION HOTEL & CASINO, a)	
Domestic Limited Liability Company,)	
)	
Defendant.)	
)	

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the attached Order Granting Motion to Dismiss was entered in the above-captioned matter on March 16, 2021.

Respectfully submitted,

FISHER & PHILLIPS, LLP

By: /s/ Scott M. Mahoney, Esq.
300 South Fourth Street
Suite 1500
Las Vegas, Nevada 89101
Attorneys for Defendant

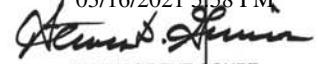
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify service of the foregoing Notice of Entry of Order was made this date by electronic filing and/or service with the Eighth Judicial District Court, addressed as follows:

Lagomarsino Law
ANDRE M. LAGOMARSINO, ESQ.
DAVEN P. CAMERON, ESQ.
3005 W. Horizon Ridge Pkwy., Suite 241
Henderson, Nevada 89052

Dated: March 17, 2021.

By: /s/ Sarah Griffin
An employee of Fisher & Phillips LLP


CLERK OF THE COURT

OGM
FISHER & PHILLIPS LLP
SCOTT M. MAHONEY, ESQ.
Nevada Bar No. 1099
300 S. Fourth Street
Suite 1500
Las Vegas, NV 89101
Telephone: (702) 252-3131
E-Mail Address: smahoney@fisherphillips.com
Attorney for Defendant

EIGHTH DISTRICT JUDICIAL COURT
CLARK COUNTY, NEVADA

DANNY CEBALLOS, an individual,	)	Case No.: A-20-823119-C
)	
Plaintiff,	)	Department: I
)	
vs.	)	Date of Hearing: 3/11/21
)	
NP PALACE LLC d/b/a PALACE	)	Time of Hearing: 9:30 a.m.
STATION HOTEL & CASINO, a)	
Domestic Limited Liability Company,)	
)	
Defendant.)	
)	

ORDER GRANTING MOTION TO DISMISS

Defendant, NP Palace LLC's Motion to Dismiss (the "Motion") having come on regularly for hearing on March 11, 2021 at the hour of 9:30 a.m. in Department I of the above-entitled Court, the Honorable Bitu Yeager presiding, Plaintiff being represented by Andre M. Lagomarsino, Esq. and Defendant being represented by Scott M. Mahoney, Esq., the Court having considered the Motion, Plaintiff's Opposition to Defendant's Motion to Dismiss and Defendant's Reply to Opposition to Motion to Dismiss, as well as the arguments made at the hearing, the Court being fully advised in the premises makes the following findings:

1 1. Federal law should be considered as well as state law for purposes of
2 determining whether the use of a product is “lawful” for purposes of NRS 613.333 and
3 the use of marijuana remains forbidden under federal law (the Controlled Substances
4 Act). The Court therefore finds Plaintiff’s alleged marijuana use does not constitute the
5 lawful use of a product pursuant to NRS 613.333.
6

7 2. NRS 678D.510(1)(a) provides that Nevada’s laws pertaining to the adult
8 use of cannabis do not prevent an employer from having and enforcing policies relating
9 to the use of marijuana by employees.

10 3. Plaintiff does not allege that Defendant failed to hire him because he
11 tested positive for marijuana, so NRS 613.132, referenced by Plaintiff, does not apply to
12 the circumstances alleged in the Complaint.
13

14 4. Based on marijuana still being illegal under federal law and the language
15 of NRS 678D.510, the Complaint does not allege a violation of public policy, let alone
16 an exceptional one, upon which to assert a tortious discharge in violation of public
17 policy claim.

18 ///

19 ///

20 ///

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1 Based on these findings:


2 IT IS HEREBY ORDER, ADJUDGED AND DECREED that the Motion is
3 granted and Plaintiff's Complaint is dismissed for failure to state claims upon which
4 relief may be granted.

5 DATED this ____ day of March 2021. Dated this 16th day of March, 2021


6 
7 Bita Yeager
8 DISTRICT COURT JUDGE

9 Submitted by:

B4B ECA F570 14B4
Bita Yeager
District Court Judge

10 
11 Scott M. Mahoney, Esq.
12 Fisher & Phillips LLP
13 300 South Fourth Street
14 Suite 1500
15 Las Vegas, NV 89101
16 Attorneys for Defendant

17 Approved as to form and content:

18 
19 Andre M. Lagomarsino, Esq.
20 Lagomarsino Law
21 3005 West Horizon Ridge Pkwy
22 Suite 241
23 Henderson, Nevada 89052
24 Attorneys for Plaintiff
25
26
27
28

Griffin, Sarah

Subject: FW: Proposed Order - Ceballos v. Palace Station
Attachments: doc20210311125745.pdf

From: Andre Lagomarsino <aml@lagomarsinolaw.com>
Sent: Thursday, March 11, 2021 1:05 PM
To: Mahoney, Scott <smahoney@fisherphillips.com>
Cc: Adryana Martinez <Adryana@lagomarsinolaw.com>; Denise Valdivia <denise@lagomarsinolaw.com>
Subject: Proposed Order - Ceballos v. Palace Station

Scott,

Enclosed please find a color copy of the proposed Order. We have mailed the original to your office.

Kind regards,

Andre

Andre M. Lagomarsino, Esq.



**3005 West Horizon Ridge Parkway, Suite 241
Henderson, Nevada 89052**

T: 702.383.2864

F: 702.383.0065

Website: www.lagomarsinolaw.com

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Danny Ceballos, Plaintiff(s) CASE NO: A-20-823119-C
7 vs. DEPT. NO. Department 1
8 NP Palace Station, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

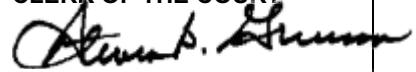
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23 Jennifer D'Incecco	jennifer@lagomarsinolaw.com
24 Mary Nelson	mnelson@lagomarsinolaw.com

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JA000073



ASTA
LAGOMARSINO LAW
ANDRE M. LAGOMARSINO, ESQ. (#6711)
3005 W. Horizon Ridge Pkwy., Suite 241
Henderson, Nevada 89052
Telephone: (702) 383-2864
Facsimile: (702) 383-0065
aml@lagomarsinolaw.com
Attorney for Plaintiff Danny Ceballos

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DANNY CEBALLOS, an individual,

CASE NO.: A-20-823119-C

Plaintiff,

DEPT. NO.: I

v.

NP PALACE LLC d/b/a PALACE STATION
HOTEL & CASINO, a Domestic Limited
Liability Company,

Defendant.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Plaintiff/Appellant, Danny Ceballos.

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Bitu Yeager, Dept. 1, Eighth Judicial District Court, Clark County, Nevada.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: Danny Ceballos

Counsel: LAGOMARSINO LAW
Andre M. Lagomarsino, Esq.
3005 W. Horizon Ridge Pkwy., Suite 241
Henderson, NV 89052

...

...

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Respondent: NP Palace LLC d/b/a Palace Station Hotel & Casino

Appellate Counsel: Unknown

Trial Counsel: FISHER & PHILLIPS LLP
Scott M. Mahoney, Esq.
300 S. Fourth St., Suite 1500
Las Vegas, NV 89101

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted the attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of the entry of the district court order granting such leave:

N/A

9. Indicate the date of the proceedings commenced in the district court (*e.g.*, date complaint, indictment, information, or petition was filed):

The Complaint was filed on October 15, 2020.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

On the evening of June 25, 2020, Plaintiff/Appellant Danny Ceballos ("Ceballos") was working as a full-time employee of Defendant/Respondent NP Palace LLC d/b/a Palace Station Hotel & Casino ("Palace Station"). In the early morning hours of June 26, 2020, Ceballos was taking his final fifteen (15) minute break when he slipped, on an unknown wet substance on the ground of the employee dining

1 room, and fell. Ceballos hit his lower back, buttock, and left elbow. After the fall, the Palace Station
2 security manager interrogated Ceballos and placed him in a holding cell for post-accident processing.
3 Ceballos informed both the security manager and his direct supervisor that he was okay and did not
4 need medical attention. Regardless, Ceballos was required to take an alcohol detection test and a drug
5 detection test. The alcohol detection test came back negative.
6

7 Plaintiff never sought medical attention nor filed a worker compensation claim. Plaintiff
8 continued to work without incident through July 6, 2020, when he was instructed by his supervisor to
9 report to human resources the next day. When Plaintiff reported to human resources on July 7, 2020,
10 he was informed that he had tested positive for cannabis use and was placed on suspension. On or about
11 July 16, 2020, Palace Station terminated Plaintiff for testing positive for cannabis use. Plaintiff had not
12 consumed cannabis in the twenty-four hours preceding his scheduled graveyard shift on June 25, 2020.
13 Furthermore, Plaintiff was not under the influence, nor in any way impaired, during his June 25, 2020
14 shift; any cannabis consumption occurred at his home.
15

16 Regardless of these facts, Palace Station's Motion to Dismiss was granted on the grounds that
17 adult marijuana use does not constitute the lawful use of a product pursuant to NRS 613.333, and
18 employers may have policies pertaining to the adult use of cannabis. On the basis of NRAP 3A(b)(1),
19 Ceballos appeals from the order granting Palace Station's Motion to Dismiss.
20

21 11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding
22 in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior
proceeding:

23 This case has not previously been the subject of an appeal or writ proceeding.

24 12. Indicate whether this appeal involves child custody or visitation:

25 This appeal does not involve child custody or visitation.

26 ...

27 ...


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

The appellant believes that this case does involve the possibility of settlement.

DATED this 15th day of April, 2021.

RESPECTFULLY SUBMITTED,

LAGOMARSINO LAW


ANDRE M. LAGOMARSINO, ESQ. (#6711)
3005 W. Horizon Ridge Pkwy., Suite 241
Henderson, Nevada 89052
Telephone: (702) 383-2864
Facsimile: (702) 383-0065
Attorney for Plaintiff Danny Ceballos

CERTIFICATE OF SERVICE

Pursuant to NRAP 3(b)(1), I hereby certify that on this 15th day of April, 2021, I served a true and correct copy of the foregoing **CASE APPEAL STATEMENT** on all parties to this action by electronic service, via Odyssey eFileNV to the following:

Scott M. Mahoney, Esq.
FISHER & PHILLIPS LLP
smahoney@fisherphillips.com


An Employee of LAGOMARSINO LAW