

IN THE SUPREME COURT OF THE STATE OF NEVADA

**Supreme Court No.
District Court Case No. A-19-800435-C**

Electronically Filed
Apr 11 2022 01:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**Gravady Nevada, LLC, a Nevada Limited Liability Company and Circus Trix,
LLC, a Utah Limited Liability Company,**

Petitioners,

**EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE JUDGE NADIA KRALL. in her capacity as**

District Judge

Respondent,

**JESUS MEJIA, an individual, ASSAF NEVADA, INC., a Nevada
Corporation; DOE PROPERTY OWNER I-V; ROE PROPERTY OWNER 1-
V; ROE MAINTENANCE COMPANY I-V; ROE PROPERTY
MANAGEMENT COMPANY I-V; DOE MAINTENANCE WORKER I-V;
DOE PROPERTY MANAGER I-V; DOE EMPLOYEE I-V; DOE
MANAGER I-V; ROE EMPLOYER I-V; DOE EQUIPMENT INSTALLER
I-V; ROE EQUIPMENT INSTALLATION COMPANY; and ROE
COMPANIES I-V,**

Real Parties in Interest.

**PETITIONERS, GRAVADY NEVADA, LLC AND CIRCUSTRIX, LLC'S
APPENDIX TO PETITION FOR WRIT OF MANDAMUS**

VOLUME I

**Phillip V. Tiberi (Nevada Bar No. 6146)
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CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

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1.	Complaint	08/19/19	1	1-17
2.	Defendants' Motion for Summary Judgment	04/07/21	1	18-38
	<u>Exhibit A</u> : True and correct copy of the Management and Administrative Services Agreement between Defendants CircusTrix, LLC and Gravady Nevada, LLC		1	39-42
	<u>Exhibit B</u> : True and correct copy of Gravady Nevada, LLC, Participant Agreement, Indemnification, General Release and Assumption, which Plaintiff executed on July 1, 2018 and disclosed to Plaintiff in discovery as Bates label GN-CT000002–GN-CT000003		1	43-45
	<u>Exhibit C</u> : True and correct copy of Plaintiff's Responses to Defendants' First Set of Requests for Admission		1	46-58
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	<u>Exhibit E</u> : True and correct copy of Defendant Gravady Nevada, LLC's Incident Report for the subject incident as kept in the normal course of business and disclosed to Plaintiff in discovery as Bates label GN-CT000001		1	85-86

[illegible]

7. Notice of Entry of Order for Summary Judgment 06/03/21 1 140-148

DATED: April 8, 2022

WOOD, SMITH, HENNING &
BERMAN LLP

By: /s/ Phillip V. Tiberi
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Attorneys for Petitioners, Gravady Nevada,
LLC and CircusTrix, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2022, a true and correct copy of **PETITIONERS, GRAVADY NEVADA, LLC AND CIRCUSTRIX, LLC'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS** this completed upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

By /s/ Michelle N. Ledesma

Michelle N. Ledesma, an Employee of
WOOD, SMITH, HENNING &
BERMAN LLP

SUMMONS

KIMBALL JONES, ESQ.

Nevada Bar No. 12982

JOSHUA P. BERRETT, ESQ.

Nevada Bar No. 12697

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JESUS MEJIA, an individual,

Plaintiff,

v.

CASE NO: A-19800435-C

DEPT. NO: 4

GRAVADY NEVADA, LLC;
CIRCUSTRIX, LLC.; ASSAF NEVADA,
INC.; DOE PROPERTY OWNER I-V; ROE
PROPERTY OWNER I-V; ROE
MAINTENANCE COMPANY I-V; ROE
PROPERTY MANAGEMENT COMPANY
I-V; DOE MAINTENANCE WORKER I-V;
DOE PROPERTY MANAGER I-V; DOE
EMPLOYEE I-V; DOE MANAGER I-V;
ROE EMPLOYER I-V; DOE EQUIPMENT
INSTALLER, I-V; ROE EQUIPMENT
INSTALLATION COMPANY; and ROE
COMPANIES I-V

Defendants.

SUMMONS

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.
READ THE INFORMATION BELOW.**

1 **TO THE DEFENDANT.** A Civil Complaint has been filed by the plaintiff(s) against you for
2 the relief set forth in the Complaint.

3 ~~GRAVADY NEVADA, LLC~~

4 1. If you intend to defend this lawsuit, within 20 days after this Summons is
5 served on you exclusive of the date of service, you must do the following:

- 6 a. File with the Clerk of this Court, whose address is shown below, a
7 formal written response to the Complaint in accordance with the rules
8 of the Court.
b. Serve a copy of your response upon the attorney whose name and
address is shown below.

9 2. Unless you respond, your default will be entered upon application of the
10 plaintiff(s) and this Court may enter a judgment against you for the relief demanded
11 in the Complaint, which could result in the taking of money or property or other
relief requested in the Complaint


12 3. If you intend to seek the advice of an attorney in this matter, you should do
13 so promptly so that your response may be filed on time.

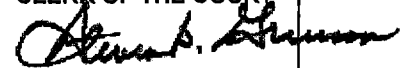
14 Issued at the direction of:

15 **BIGHORN LAW**

16 **CLERK OF COURT**

17
18 By: /s/ Joshua P. Berrett, Esq.
19 **JOSHUA P. BERRETT, ESQ.**
20 Nevada Bar No. 12982
21 716 S. Jones Blvd.
22 Las Vegas, NV 89107
23 *Attorneys for Plaintiff*

24
25 By:  9/16/2019
26 **Deputy Clerk**
27 County Courthouse
28 200 Lewis Avenue
Las Vegas, NV 89101
Alexander Banderas



1 **COMP**
2 **KIMBALL JONES, ESQ.**
3 Nevada Bar No.: 12982
4 **JOSHUA P. BERRETT, ESQ.**
5 Nevada Bar No.: 12697
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7 716 S. Jones Blvd.
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9 Phone: (702) 333-1111
10 Josh@BighornLaw.com
11 *Attorneys for Plaintiff*

CASE NO: A-19-800435-C
Department 4

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 JESUS MEJIA, an individual,
12
13 Plaintiff,
14
15 v.

CASE NO.:
DEPT. NO.:

16 GRAVADY NEVADA, LLC, a Nevada Limited
17 Liability Company; CIRCUSTRIX, LLC, a Utah
18 Limited Liability Company; ASSAF NEVADA,
19 INC., a Nevada Corporation; DOE PROPERTY
20 OWNER I-V; ROE PROPERTY OWNER I-V;
21 ROE MAINTENANCE COMPANY I-V; ROE
PROPERTY MANAGEMENT COMPANY I-V;
DOE MAINTENANCE WORKER I-V; DOE
PROPERTY MANAGER I-V; DOE EMPLOYEE
I-V; DOE MANAGER I-V; ROE EMPLOYER I-
V; DOE EQUIPMENT INSTALLER, I-V; ROE
EQUIPMENT INSTALLATION COMPANY; and
ROE COMPANIES I-V

22 Defendants.
23

24 **COMPLAINT**

25 COMES NOW Plaintiff JESUS MEJIA by and through his counsel, KIMBALL JONES,
26 ESQ. and JOSHUA P. BERRETT, ESQ., of the Law Firm of BIGHORN LAW, and for his
27 causes of action against Defendants, and each of them, alleges as follows:
28

1. That Plaintiff JESUS MEJIA (hereinafter referred to as "JESUS" or "PLAINTIFF"), was at all times relevant to this action a resident of Clark County, Nevada.
2. Upon information and belief, that at all times relevant to this action, Defendant GRAVADY NEVADA, LLC. (hereinafter referred to as "Defendant GRAVADY") is and was a domestic, Nevada limited liability company, doing business in Clark County, Nevada.
3. Upon information and belief, that at all times relevant to this action, Defendant CIRCUSTRIX, LLC (hereinafter referred to as "Defendant CIRCUSTRIX") is and was a Utah limited liability company doing business in Clark County, Nevada.
4. Upon information and belief, that at all times relevant to this action, Defendant ASSAF NEVADA, INC. (hereinafter referred to as "Defendant ASSAF") is and was a domestic Nevada corporation doing business in Clark County, Nevada.
5. That the true names and capacities, whether individual, corporate, partnership, associate or otherwise, of Defendants, DOES I through V, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of Defendants designated herein as DOE is responsible in some manner for the events and happenings referred to and caused damages proximately to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities of DOES I through V when the same have been ascertained and to join such Defendants in this action.
6. PLAINTIFF is informed and believes and thereon alleges that each of Defendants designated herein as ROE ENTITIES I-V are responsible in some manner for the events and happenings referred to and caused damages proximately to PLAINTIFF as herein alleged, and that PLAINTIFF will ask leave of this Court to amend this Complaint to insert the true names and

1 capacities of ROE ENTITIES I through V when the same have been ascertained and to join
2 such defendants in this action.

3 7. Plaintiff is informed, believe and thereupon allege that the Defendants designated herein as
4 DOES I through V and/or ROE ENTITIES I through V, inclusive, are any one of the following:
5

6 (a) Parties responsible in some manner for the events and happenings herein referred to
7 that caused injuries and damages proximately thereby to Plaintiff as herein alleged;

8 (b) Parties that are the agents, servants, employees and/or contractors of the Defendants,
9 each of them acting within the course and scope of their agency, employment or contract;
10

11 (c) Parties that own, lease, manage, operate, secure, inspect, repair, maintain and/or are
12 responsible for the Premises referred to herein;

13 (d) Parties that have assumed or retained the liabilities of any of Defendants by virtue of an
14 agreement, sale, transfer or otherwise; and/or
15

16 (e) Parties responsible for the design, manufacture, and/or installation of the flooring of the
17 Premises at issue herein.

18 8. That the true names and capacities, whether individual, corporate, partnership, associate or
19 otherwise, of Defendants DOE PROPERTY OWNER I through V are unknown to
20 PLAINTIFF, who therefore sues said Defendants by such fictitious names.
21

22 9. That the true names and capacities, whether individual, corporate, partnership, associate or
23 otherwise, of Defendants ROE PROPERTY OWNER I through V are unknown to
24 PLAINTIFF, who therefore sues said Defendants by such fictitious names.
25

26 10. That the true names and capacities, whether individual, corporate, partnership, associate or
27 otherwise, of Defendants ROE MAINTENANCE COMPANY I through V are unknown to
28 PLAINTIFF, who therefore sues said Defendants by such fictitious names.

- 1 11. That the true names and capacities, whether individual, corporate, partnership, associate or
2 otherwise, of Defendants ROE PROPERTY MANAGEMENT COMPANY I through V are
3 unknown to PLAINTIFF, who therefore sues said Defendants by such fictitious names.
4
- 5 12. That the true names and capacities, whether individual, corporate, partnership, associate or
6 otherwise, of Defendants DOE MAINTENANCE WORKER I through V are unknown to
7 PLAINTIFF, who therefore sues said Defendants by such fictitious names.
8
- 9 13. That the true names and capacities, whether individual, corporate, partnership, associate or
10 otherwise, of Defendants DOE PROPERTY MANAGER I through V are unknown to
11 PLAINTIFF, who therefore sues said Defendants by such fictitious names.
12
- 13 14. That the true names and capacities, whether individual, corporate, partnership, associate or
14 otherwise, of Defendants DOE EMPLOYEE I through V are unknown to PLAINTIFF, who
15 therefore sues said Defendants by such fictitious names.
16
- 17 15. That the true names and capacities, whether individual, corporate, partnership, associate or
18 otherwise, of Defendants DOE MANAGER I through V are unknown to PLAINTIFF, who
19 therefore sues said Defendants by such fictitious names.
20
- 21 16. That the true names and capacities, whether individual, corporate, partnership, associate or
22 otherwise, of Defendants ROE EMPLOYER I through V are unknown to PLAINTIFF, who
23 therefore sues said Defendants by such fictitious names.
24
- 25 17. That the true names and capacities, whether individual, corporate, partnership, associate or
26 otherwise, of Defendants DOE EQUIPMENT INSTALLER I through V are unknown to
27 PLAINTIFF, who therefore sues said Defendants by such fictitious names.
28

- 1 18. That the true names and capacities, whether individual, corporate, partnership, associate or
2 otherwise, of Defendants ROE EQUIPMENT INSTALLATION COMPANY I through V are
3 unknown to PLAINTIFF, who therefore sues said Defendants by such fictitious names.
4
- 5 19. That the true names and capacities, whether individual, corporate, partnership, associate or
6 otherwise, of Defendants ROE COMPANIES I through V are unknown to PLAINTIFF, who
7 therefore sues said Defendants by such fictitious names.
- 8 20. That upon information and belief, at all times relevant to this action, Defendants GRAVADY
9 NEVADA and/or ASSAF and/or DOE PROPERTY OWNER and/or ROE PROPERTY
10 OWNER and/or ROE EMPLOYER and/or ROE PROPERTY MANAGEMENT COMPANY
11 and/or ROE COMPANY, and each of the Defendants, were the owners and/or lessees of the
12 property located at or about 7350 Prairie Falcon Rd., #120 Las Vegas, NV (hereinafter referred
13 to as "the Premises") and occupied, operated, maintained and controlled the Premises where
14 it/they actively conducted a trampoline and/or adventure park.
15
- 16 21. That upon information and belief, at all times relevant to this action, Defendants GRAVADY
17 NEVADA, LLC., and/or CIRCUSTRIX and/or ASSAF and/or DOE PROPERTY OWNER
18 and/or ROE PROPERTY OWNER and/or ROE EMPLOYER and/or ROE PROPERTY
19 MANAGEMENT COMPANY and/or ROE COMPANY and/or DOE EQUIPMENT
20 INSTALLER and/or ROE EQUIPMENT INSTALLATION COMPANY and/or ROE
21 EMPLOYER and/or DOE EMPLOYEE and/or DOE MANAGER and/or DOE
22 MAINTENANCE WORKER and/or ROE MAINTENANCE COMPANY and each of the
23 Defendants, installed, constructed, maintained and controlled trampoline equipment at the
24 Premises, to be used as a trampoline and/or adventure park.
25
26
27
28

- 1 22. That upon information and belief, Defendants GRAVADY NEVADA, LLC and/or
2 CIRCUSTRIX and/or ASSAF and/or ROE PROPERTY OWNER and/or DOE PROPERTY
3 OWNER and/or ROE EMPLOYER and/or ROE PROPERTY MANAGEMENT COMPANY
4 and/or ROE COMPANY were the owners or lessees of the trampoline areas situated on or
5 about the Premises controlled by Defendants for use by its guests, and Defendants constructed,
6 occupied, operated, maintained and controlled the same.
7
- 8 23. That on or about August 1, 2018, Defendants, and each of them, owed PLAINTIFF a duty to
9 construct, keep and maintain the Premises in a manner as to be free of dangerous hazards,
10 conditions and/or defects, and reasonably safe.
11
- 12 24. That at all times complained of herein, Defendants, and each of them, owed a duty of care to
13 PLAINTIFF to warn PLAINTIFF of dangerous hazards, conditions and/or defects.
14
- 15 25. That on or about August 1, 2018, and for some time prior thereto, Defendants, and each of the
16 Defendants (by and through their authorized agents, servants, and employees, acting within the
17 course and scope of their employment), negligently and carelessly owned, constructed,
18 maintained, operated, occupied, and controlled the Premises in a manner that created and/or
19 became an unreasonably dangerous hazard to patrons.
20
- 21 26. That on or about August 1, 2018, and for some time prior thereto, Defendants, and each of the
22 Defendants, failed to maintain the aforesaid premises in a reasonably safe condition; and that
23 these Defendants, and each of them, negligently, carelessly and recklessly failed to inspect,
24 repair and correct the dangerous and hazardous condition, and/or warn PLAINTIFF of the
25 defect therein.
26
- 27 27. That on or about August 1, 2018, Plaintiff, while a guest at the Premises, and while utilizing
28 the services and accommodations therein, suffered a fall and sustained serious injuries.

1 28. Defendants, and each of them, negligently and carelessly failed to maintain the aforesaid
2 premises in a reasonably safe condition, free of hazardous and dangerous conditions; and
3 failed to warn Plaintiff of said condition.

4
5 29. Defendants, and each of them, breached a duty owed to Plaintiff, by at least the following
6 careless and negligent acts, inter alia:

- 7 a. Failure to provide a safe premises for Plaintiff;
- 8 b. Failure to warn Plaintiff of the dangerous and hazardous condition then and there
9 existing in the Premises;
- 10 c. Failure to properly and adequately inspect said premises to discover the hazardous and
11 dangerous condition;
- 12 d. Failure to properly and adequately construct, control, inspect and/or maintain said
13 premises to discover the hazardous and dangerous condition and/or defect then and there
14 existing within the Premises;
- 15 e. Failure to properly inform and prepare Plaintiff for the dangers posed by the inherently
16 dangerous and hazardous activities taking place on the Premises;
- 17 f. Failure to properly hire, train, monitor, and supervise all employees to ensure that they
18 properly maintain, and inspect the area of the Premises and/or property warn, inform
19 and prepare patrons and customer of and for the dangers existing on the Premises; and
20 g. Violations of certain statutes, ordinances and building codes, which Plaintiff prays
21 leave of Court to insert the exact statutes or ordinances or codes at the time of the trial.

22
23
24
25 30. As a direct and proximate result of the negligence and carelessness of Defendants, and each
26 of them, Plaintiff has been caused to incur medical expenses, and will in the future be caused
27 to expend monies for medical expenses and additional monies for miscellaneous expenses
28

1 incidental thereto, in a sum presently unascertainable. Plaintiff will pray leave of Court to
2 insert the total amount of the medical and miscellaneous expenses when the same have been
3 fully determined at the time of trial of this action.

4
5 31. That as a result of the incident, PLAINTIFF suffered damages in excess of \$15,000.00.

6 32. That this Court has subject matter jurisdiction over this matter pursuant to NRS 4.370(1), as
7 the matter in controversy exceeds \$15,000.00, exclusive of attorney's fees, interest, and costs.

8 33. That this Court has personal jurisdiction in this matter, as the incidents, transactions and
9 occurrences that comprise the basis of this lawsuit took place in Clark County, Nevada.
10

11 **FIRST CAUSE OF ACTION**

12 34. As and for his First Cause of Action, Plaintiff repeats and re-alleges each and every
13 allegation contained in the paragraphs above as though fully set forth herein and further
14 alleges:

15
16 35. That because of the acts and/or omissions of Defendants and each of them, Plaintiff has
17 suffered severe and permanent injuries.

18 36. At all times complained of herein, Defendants, and each of them, were under a duty to use
19 reasonable care in the conduct of their joint venture and responsibilities and efforts in
20 providing management, supervision, maintenance, control and/or repair of the Premises, and
21 Defendants, and each of them, breached their duties.
22

23 37. At all times complained of herein, Defendants, and each of them, owed a duty of care to
24 PLAINTIFF to maintain the Premises in a condition and manner as to be free of dangerous
25 hazards or conditions.
26

27 38. At all times complained of herein, Defendants, and each of them, owed a duty of care to
28 PLAINTIFF to warn PLAINTIFF of dangerous hazards or conditions.

1 39. That upon information and belief, Defendants, and each of them, breached these duties owed
2 to PLAINTIFF by creating and/or knowingly, negligently, and/or recklessly allowing
3 dangerous hazards and/or conditions to exist and remain on the Premises prior to
4 PLAINTIFF's incident and by intentionally, knowingly, negligently, and/or recklessly failing
5 to correct and/or remedy the dangerous hazard and/or condition and/or by failing to warn
6 PLAINTIFF of the existence of the dangerous hazard and/or condition.
7

8 40. That Defendants, and each of them, at the time of the incident were negligent and careless
9 or grossly negligent in the following particulars, but not limited to:
10

11 a. Failing to adequately control, inspect, secure and/or maintain the Premises in a
12 reasonably safe condition.

13 b. Failing to adequately warn and/or protect Plaintiff from stepping, walking, jumping,
14 landing or falling on the dangerous condition on the Premises.

15 c. Failing to warn and/or make known the dangerous conditions.

16 d. Failing to respond to prior complaints regarding the dangerous condition and remedy
17 the dangerous condition.
18

19 e. Showing reckless disregard for the safety of others, including the Plaintiff.
20

21 41. That Defendants, and each Defendant, had a duty of reasonable care in maintaining the Premises,
22 particularly the trampoline area, which is the subject of this incident, to make sure it was safe
23 and free of dangerous hazards and/or conditions.

24 42. Said injuries sustained by Plaintiff were the direct and proximate result of Defendants', and each
25 Defendant's, breach of its and their duties under the law and that Plaintiff's injuries were not a
26 result of any negligence on Plaintiff's part.
27
28

1 43. That Defendants, and each Defendant, negligently, carelessly and/or recklessly cared for the
2 subject area of the Premises by inadequately and/or improperly maintaining, inspecting,
3 controlling and/or supervising the area of the Premises. This action and/or inaction thereby
4 created a dangerous condition; a condition that Defendants, and each of them knew or should
5 have known was unreasonably dangerous.
6

7 44. In addition to their direct liability, Defendants, and each of them, were and are vicariously
8 liable for the acts and omissions of any staff, agents, apparent agents, servants, contractors,
9 employees or consultants, independent contractors, or singular persons or entities, whether in-
10 house or outside, which in any manner caused or contributed to Plaintiff's harm and damage.
11

12 45. That as a direct and proximate result of the Defendants' negligence, and each of them,
13 Plaintiff was seriously injured and caused to suffer great pain of body and mind in an
14 amount in excess of fifteen thousand dollars (\$15,000.00) in general damages.
15

16 46. As a result of the Defendants' negligence, and each of them, Plaintiff has suffered serious
17 injuries to his person, which injuries have required and will still require treatment and care
18 and from which Plaintiff has suffered pain, discomfort, irritation, upset, embarrassment,
19 reduced mental activity, reduced physical activity and the inability to live his life in the
20 manner it was conducted prior to the injury.
21

22 47. As further direct and proximate result of Defendants' negligence, and each of them, Plaintiff has
23 been forced to incur and continues to incur medical expenses for treatment for his injuries in an
24 amount in conformance to proof at trial. Plaintiff may incur future medical expenses as well in
25 an amount as not yet ascertained, but in an amount in excess of fifteen thousand dollars
26 (\$15,000.00).
27
28

1 48. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
2 and carelessness of Defendants, and each of them, PLAINTIFF has been caused to expend
3 monies for medical and miscellaneous expenses, and will in the future be caused to expend
4 additional monies for medical expenses and miscellaneous expenses incidental thereto, in a
5 sum not yet presently ascertainable, and leave of Court will be requested to include said
6 additional damages when the same have been fully determined.
7

8 49. Prior to the injuries complained of herein, PLAINTIFF was an able-bodied individual, capable
9 of being gainfully employed and capable of engaging in all other activities for which
10 PLAINTIFF was otherwise suited. By reason of the premises, and as a direct and proximate
11 result of the negligence of the said Defendants, and each of them, PLAINTIFF was caused to
12 be disabled and limited and restricted in his occupations and activities, which PLAINTIFF
13 pray leave of Court to insert herein when the same shall be fully determined.
14

15 50. That it has been necessary for Plaintiff to retain the services of an attorney to prosecute this
16 action and he is, therefore, entitled to reasonable attorney's fees and costs of this action,
17 and prejudgment interest herein.
18

19 **SECOND CAUSE OF ACTION**
20

21 51. As and for his Second Cause of Action, Plaintiff repeats and re-alleges each and every
22 allegation contained in the paragraphs above as though fully set forth herein and further
23 alleges:

24 52. That floor and/or ground and/or trampoline maintenance and repair safety standards, laws,
25 codes, rules, regulations, and/or ordinances have been violated by the Defendants, and each
26 of them. Plaintiff prays leave of Court to insert the exact standards, statutes, ordinances, laws,
27
28

1 codes, regulations and/or rules at the time of the trial. Violation of the ordinance and/or
2 statutes, etc., proximately caused the injuries and damages described herein.

3 53. That Plaintiff is among the class of persons that the standards, laws, codes, rules, regulations,
4 and/or ordinances are designed to protect.

5 54. That Plaintiff's injuries and damages are of the class that the standards, laws, codes, rules,
6 regulations, and/or ordinances are designed to prevent.

7 55. That Defendants' negligence per se is imputed by operation of the standards, laws, codes, rules,
8 regulations, and/or ordinances.

9 56. The injuries and damages sustained by Plaintiff resulted directly and proximately from
10 improperly maintained premises owned and/or operated by the Defendants, and each of them,
11 in violation of the standards, laws, codes, rules, regulations, and/or ordinances, and not from
12 any negligence of Plaintiff.

13 57. That as a direct and proximate result of Defendants' negligence per se, and each of them,
14 Plaintiff has and will continue to incur medical expenses and/or other special damages in an
15 amount according to proof at trial.

16 58. That as a further direct and proximate cause of Defendants' negligence per se, and each of
17 them, Plaintiff has and will continue to experience pain and suffering and has and will incur
18 other general damages in an amount in excess of fifteen thousand dollars (\$15,000.00).

19 59. That it has been necessary for Plaintiff to retain the services of an attorney to prosecute this
20 action and he is, therefore, entitled to reasonable attorney's fees and costs of this action, and
21 prejudgment interest herein.

22
23
24
25
26
27 **THIRD CAUSE OF ACTION**

28 60. As and for his Third Cause of Action, Plaintiff repeats and re-alleges each and every allegation

1 contained in paragraphs above as through fully set forth herein and further alleges:

2 61. That Defendants, and each Defendant, had a duty to properly hire, train, monitor, and
3 supervise all employees to ensure that they properly maintain, and inspect the area of the
4 Premises which is the subject of this incident.
5

6 62. That at all times pertinent hereto, Defendants, and each Defendant, breached their above-
7 referenced duties including proper hiring, training, supervising, and monitoring of their
8 employees, particularly the employees responsible for inspecting, and maintaining the area of
9 the Premises which is the subject of this incident.
10

11 63. That as a direct and proximate result of the Defendant's negligence Plaintiff suffered trauma
12 and other physical injuries and great pain of body and mind in an amount in excess of fifteen
13 thousand dollars (\$15,000.00) in general damages.
14

15 64. As a direct of the Defendants' negligence, Plaintiff has suffered severe injuries to his person,
16 which injuries have required and still require medical treatment and care and from which the
17 Plaintiff has suffered pain and the inability to live his full life in the manner it was conducted
18 prior to the incident.
19

20 65. As further and proximate result of Defendants' negligence, and each of them, Plaintiff has
21 suffered severe injuries and has been forced to incur and continues to incur medical expenses
22 for treatment of his injuries in an amount in conformance to proof at trial. Plaintiff will incur
23 future medical expenses as well in an amount as not yet ascertained, but in an amount excess
24 of fifteen thousand dollars (\$15,000.00).
25

26 66. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
27 and carelessness of Defendants, and each of them, PLAINTIFF has been caused to expend
28 monies for medical and miscellaneous expenses, and will in the future be caused to expend

1 additional monies for medical expenses and miscellaneous expenses incidental thereto, in a
2 sum not yet presently ascertainable, and leave of Court will be requested to include said
3 additional damages when the same have been fully determined.

4
5 67. Prior to the injuries complained of herein, PLAINTIFF was an able-bodied individual, capable
6 of engaging in all other activities for which PLAINTIFF was otherwise suited. By reason of
7 the premises, and as a direct and proximate result of the negligence of the said Defendants,
8 and each of them, PLAINTIFF was caused to be disabled and limited and restricted in his
9 occupations and activities, which PLAINTIFF pray leave of Court to insert herein when the
10 same shall be fully determined.

11
12 68. That Plaintiff has been compelled to retain the services of an attorney to prosecute this action
13 and is, therefore, entitled to reasonable attorneys' fees and costs incurred herein.

14 **PRAYER FOR RELIEF**

15
16 WHEREFORE, PLAINTIFF respectfully request that this Court enter the following
17 relief against Defendants, and each of Defendants herein, as follows:

- 18 1. General damages for PLAINTIFF in an amount in excess of \$15,000.00;
19
20 2. Special damages for PLAINTIFF'S medical and miscellaneous expenses, plus future
21 medical expenses and the miscellaneous expenses incidental thereto in a presently
22 unascertainable amount;
23
24 3. For compensatory damages in excess of \$15,000.00;
25
26 4. Costs of this suit;
27 5. Attorney's fees; and

28 ///

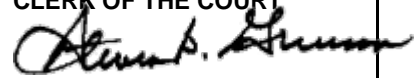
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1 6. For such and further relief as to the Court may seem just and proper.

2
3 DATED this 19th day of August, 2019.

4 **BIGHORN LAW**

5 By: /s/ Joshua P. Berrett, Esq.
6 **KIMBALL JONES, ESQ.**
7 Nevada Bar No.: 12982
8 **JOSHUA P. BERRETT, ESQ.**
9 Nevada Bar No.: 12697
10 **BIGHORN LAW**
11 716 S. Jones Blvd.
12 Las Vegas, Nevada 89107
13 Attorneys for Plaintiff



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5 Telephone: 702 251 4100
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6 ptiberi@wshblaw.com
7 Attorneys for Defendants Gravady Nevada, LLC
and CircusTriX, LLC
8
9

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

12 JESUS MEJIA, an individual,
13
14 Plaintiff,

15 v.

16 GRAVADY NEVADA, LLC, a Nevada
Limited Liability Company; CIRCUSTRIX,
17 LLC, a Utah Limited Liability Company;
ASSAF NEVADA, INC., a Nevada
18 Corporation; DOE PROPERTY OWNER I-V;
ROE PROPERTY OWNER I-V; ROE
19 MAINTENANCE COMPANY I-V; ROE
PROPERTY MANAGEMENT COMPANY I-
20 V; DOE MAINTENANCE WORKER I-V;
DOE PROPERTY MANAGER I-V; DOE
21 EMPLOYEE I-V; DOE MANAGER I-V;
ROE EMPLOYER I-V; DOE EQUIPMENT
22 INSTALLER I-V; ROE EQUIPMENT
INSTALLATION COMPANY; and ROE
23 COMPANIES I-V,

24 Defendants.

Case No.: A-19-800435-C
Dept. No.: IV

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

HEARING REQUESTED

25 COME NOW Defendants, GRAVADY NEVADA, LLC and CIRCUSTRIX, LLC
26 (hereinafter "Defendants"), by and through their attorneys of record, the law firm of Wood, Smith,
27 Henning & Berman, LLP, and hereby submit this Motion for Summary Judgment.

28 ///

1 This Motion is based on the following Memorandum of Points and Authorities, the attached
2 exhibits, the papers and pleadings on fil herein, and any oral argument or documentary evidence the
3 Court may entertain at the time of the hearing of this matter.

4 DATED this 7th day of April, 2021

5 WOOD, SMITH, HENNING & BERMAN LLP

6
7 By /s/ Phillip V. Tiberi

8 PHILLIP V. TIBERI, ESQ.

9 Nevada Bar No. 6146

10 KYLE. J. HOYT, ESQ.

11 Nevada Bar No. 14886

12 2881 Business Park Court, Suite 200

13 Las Vegas, Nevada 89128-9020

14 Tel. 702 251 4100

15 Attorneys for Defendants Gravady Nevada, LLC
16 and CircusTrix, LLC
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DECLARATION OF PHILLIP V. TIBERI IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

I, Phillip V. Tiberi, declare as follows:

1. I make this Declaration in compliance with NRS 53.045, NRCP 56, and EDCR 2.21.

2. I am an attorney at law, duly admitted to practice before the courts of the State of Nevada. I am a partner with Wood, Smith, Henning & Berman LLP, attorneys of record for Defendants Gravady Nevada, LLC and CircusTrix, LLC, and I am familiar with the proceedings in this matter.

3. Attached as **Exhibit A** is a true and correct copy of the Management and Administrative Services Agreement between Defendants CircusTrix, LLC and Gravady Nevada, LLC.

4. Attached as **Exhibit B** is a true and correct copy of Gravady Nevada, LLC, Participant Agreement, Indemnification, General Release and Assumption, which Plaintiff executed on July 1, 2018 and disclosed to Plaintiff in discovery as Bates label GN-CT000002–GN-CT000003.

5. Attached as **Exhibit C** is a true and correct copy of Plaintiff's Responses to Defendants' First Set of Requests for Admission.

6. Attached as **Exhibit D** is a true and correct copy of Plaintiff's Responses to Defendants' First Set of Interrogatories.

7. Attached as **Exhibit E** is a true and correct copy of Defendant Gravady Nevada, LLC's Incident Report for the subject incident as kept in the normal course of business and disclosed to Plaintiff in discovery as Bates label GN-CT000001.

8. Attached as **Exhibit F** is a true and correct copy of Declaration of Cord Robbins in Support of Defendants' Motion for Summary Judgment.

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I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true
and correct.

Executed on this 7th day of April, 2021.

/s/ Phillip V. Tiberi
PHILLIP V. TIBERI

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter arises from a trampoline park incident that occurred on August 1, 2018 wherein Plaintiff Jesus Mejia (hereinafter "Plaintiff") claims to have been injured as a result of jumping on a trampoline. Prior to using the trampoline park's facilities, Plaintiff signed a clear liability waiver and agreed to release Defendants from any liability for injuries resulting from his use of the trampoline park. Despite signing said waiver and assuming the risk of injury, Plaintiff brought this lawsuit alleging causes of action for Negligence, Negligence Per Se, and Negligent Hiring, Training, Supervision, and Monitoring of Employees against Defendants. Yet, Plaintiff's negligence claims are expressly barred by the unambiguous contractual release Plaintiff signed prior to using the trampoline that he jumped on at Gravady Nevada, LLC's (hereinafter "Gravady") trampoline park. For these reasons, and the reasons set forth more fully below, Defendants respectfully request this Court to grant their Motion for Summary Judgment and enter a judgment in favor of Defendants on all of Plaintiff's negligence claims.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. The Incident

1. On August 1, 2018, Plaintiff, a 44-year-old man, visited Gravady's trampoline park located at 7350 Prairie Falcon Road #120, Las Vegas, Nevada 89128 ("subject trampoline park") with his teenage son. *See* Pl.'s Compl. ¶ 20, 27; *see also* Plaintiff's Responses to Defendants' First Set of Interrogatories, Nos. 1, 11, at pp. 3, 10, attached hereto as Exhibit D.

2. Prior to entering the subject trampoline park, Plaintiff signed Defendant Gravady Nevada, LLC's Participant Agreement, Indemnification, General Release and Assumption ("Participant Agreement"). *See* Plaintiff's Responses to Defendant's First Set of Requests for Admission, Nos. 1–3, at pp. 2–3, attached hereto as Exhibit C; *see also* Participant Agreement, attached hereto as Exhibit B.

3. After signing the Participant Agreement and entering the subject trampoline park, Plaintiff thereafter "was jumping on a trampoline when he suddenly felt a sharp pain in his foot and leg." *See id.*; *see also* Ex. D, No. 15, at p. 12.

4. An incident report was created by Gravady wherein the Participant Agreement that was signed by Plaintiff on the day of the subject incident was electronically saved to the incident report file. *See* Incident Report, attached hereto as Exhibit E.

B. The Participant Agreement

5. On the first page of the Participant Agreement, at the very top of the page, Plaintiff initialed next to the following paragraph or waiver, which was in bold text, large font size, and in all capital letters as follows:

BY SIGNING THIS AGREEMENT I AM GIVING UP MY RIGHTS AND THE RIGHTS OF MY SPOUSE AND/OR CHILD(REN) TO SUE GRAVADY FOR ANY INJURY, INCLUDING PARALYSIS OR DEATH, CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF GRAVADY, INCLUDING ANY OF ITS AGENTS, EMPLOYEES AND EQUIPMENT.

See Ex. B, at 1.

6. Just above the waiver language described in the aforementioned paragraph, the following notice is provided in all capital letters: "(PLEASE READ THIS DOCUMENT CAREFULLY, BY SIGNING IT, YOU ARE GIVING UP YOUR AND/OR YOUR SPOUSE AND MINOR'S LEGAL RIGHTS)". *See id.*

7. Thereafter, the first full paragraph of the Participant Agreement provides in relevant part the following:

In consideration of being allowed to participate in the services and activities, including, but not limited to, trampoline park access . . . trampoline courts . . . and any other amusement activities (collectively "ACTIVITIES"), provided by GRAVADY NEVADA, LLC and its agents, owners, officers, directors, principals, volunteers, participants, clients, customers, invitees, employees, independent contractors, insurers, facility operators, land and/or premises owners, and any and all other persons and entities acting in any capacity on its behalf (collectively "GRAVADY"), I, on behalf of myself . . . hereby agree to forever release, indemnify and discharge GRAVADY on behalf of myself . . . [and] hereby acknowledges, agrees and represents that immediately upon entering or participating I will, inspect and carefully consider GRAVADY'S premises and facilities. . . . The undersigned, for myself . . . hereby represent that (i) I/we are in good health and in proper physical condition to participate in the activities in which GRAVADY provides. . . . The undersigned, for myself . . . agree to be familiar with and to abide by the rules established for the ACTIVITIES, which include without limitation the rules posted in the facility and/or the

website. The undersigned, for myself . . . accepts sole responsibility for my own conduct and actions . . . while participating in the activities, and the condition and adequacy of the equipment.

See id.

8. The "release of liability" provision of the Participant Agreement, which is labeled accordingly in bold text and in all capital letters, provides in relevant part, the following, in normal text and font size:

(1) **RELEASE OF LIABILITY:** Despite all known and unknown risks including but not limited to serious bodily injury, permanent disability, paralysis and loss of life, I, on behalf of myself . . . expressly and voluntarily remise, release, acquit, satisfy and forever discharge and agree not to sue GRAVADY . . . and agree to hold said parties harmless of and from any and all manner of actions or omission(s), causes of action, suits, sums of money, controversies, damages, judgments, executions, claims and demands whatsoever, in law or equity, including, but not limited to, any and all claims which allege negligent acts and/or omissions committed by GRAVADY . . . whether the action arises out of any damage, loss, personal injury, or death to me . . . while participating in or as a result of participating in any of the ACTIVITIES in or about the premises. This Release of Liability, is effective and valid regardless of whether the damage, loss or death is a result of any act or omission on the part of GRAVADY. . . .

See id.

9. The "indemnification" provision of the Participant Agreement, which is labeled accordingly in bold text and in all caps, provides in relevant part, the following, in normal text and font size:

(2) **INDEMNIFICATION:** I understand that the known and unknown risks may be caused in whole or in part by my . . . own actions or inactions, the actions or inactions of others participating in activities, or the acts, inaction or negligence of GRAVADY . . . and in consideration of being allowed . . . to participate in the ACTIVITIES, I hereby assume all risk of damage, loss, personal injury, or death to myself . . . as a result of the participation in ACTIVITIES in or about the facility, including any such loss due to any negligence of GRAVADY . . . and agree to indemnify and hold harmless GRAVADY . . . from and against any and all losses, liabilities, claims, obligations, costs, damages and/or expenses whatsoever paid, incurred and/or suffered by GRAVADY . . . as a result of any claims asserted by myself . . . against GRAVADY. . . .

See id.

1 10. The "terms of agreement" provision of the Participant Agreement, which is
2 labeled accordingly in bold text and in all capital letters, provides in relevant part, the following, in
3 normal text and font size:

4 (5) **TERMS OF AGREEMENT:** I understand that this agreement extends
5 forever into the future and will have full force and legal effect each and
6 every time I . . . visit GRAVADY, whether at the current location or any
other location or facility.

7 *See* Ex. B, at 2.

8 11. The final paragraph of the Participant Agreement, which provides in relevant
9 part, the following, in bold text:

10 **By signing this document, I understand that I may be found by a court**
11 **of law to have forever waived my . . . right to maintain any action**
12 **against GRAVADY on the basis of any claim from which I have**
13 **released GRAVADY and any released party herein and that I have**
14 **assumed all risk of damages, loss, personal injury, or death to myself. .**
. . I have had a reasonable and sufficient opportunity to read and
understand this entire document. . . I knowingly and voluntarily agree
to be bound by all terms and conditions set forth herein.

15 *See id.*

16 12. At the end of the Participant Agreement, just under the aforementioned
17 paragraph, there is an area for patrons to sign and provide identifying information. Plaintiff signed
18 the Participant Agreement and wrote his birthdate, phone number, and the full name and date of
19 birth of his son who was with him on the day of the subject incident. *See id.*

20 **C. The Management Agreement**

21 13. Gravady and CircusTrix, LLC (hereinafter "CircusTrix") entered into a
22 Management and Administrative Services Agreement ("Management Agreement") whereby
23 CircusTrix would provide Gravady with management and administrative services. *See* Management
24 and Administrative Services Agreement, attached hereto as Exhibit A.

25 14. Some of these services, as provided by the Management Agreement, include
26 the following: human resources services, office administration services, accounting and tax
27 services, engineering services, management information services, legal services, and purchasing
28 services relating to Gravady's business. *See id.* at 3.

III. STANDARD OF REVIEW

At any time after the filing of a lawsuit, a Defendant may move with or without supporting affidavits for a summary judgment in the party's favor. NRCP 56(b). Summary judgment is appropriate when, after a review of the record viewed in the light most favorable to the non-moving party, no genuine issues of material fact remain, and the moving party is entitled to judgment as a matter of law. *Fire Insurance Exchange v. Cornell*, 120 Nev. 303, 305, 90 P.3d 978, 979 (2004). An issue of material fact is "genuine" if the evidence is such that a reasonable jury, applying the applicable quantum of proof, could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1968). The party opposing a motion for summary judgment must do more than simply show that there is some doubt as to the material facts. In *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005), the Nevada Supreme Court clarified the obligation of the nonmoving party on a motion for summary judgment as follows:

The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026, 1031 (2005). A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Id.* Where the facts of a case are reasonably susceptible to only one interpretation, the issue before the court is a pure question, of law and therefore properly subject to summary judgment. *Univ. of Nevada, Reno v. Stacey*, 116 Nev. 428, 433, 997 P.2d 812, 814 (2000).

The Nevada Supreme Court has clearly indicated that summary judgment should not be regarded as a disfavored procedural shortcut, but instead as an integral part of the judicial process, designed to secure a just, speedy, and inexpensive resolution of every action. *Wood v. Safeway, Inc.*, 121 Nev. at 724, 121 P.3d at 1031. As will be demonstrated below, when applying the applicable substantive law to the facts of the case at bar, Gravady is entitled to judgment as a matter of law.

IV. LEGAL ARGUMENT

A. Defendants' Motion for Summary Judgment Should be Granted as Plaintiff Released Defendants from Liability as a Matter of Law

1. *It is well-settled in Nevada that Unambiguous and Specifically Clear Exculpatory Clauses are Valid and Enforceable*

Nevada courts have consistently granted summary judgment motions based on exculpatory clauses that unambiguously and clearly waive liability. In Nevada, exculpatory provisions are

1 "generally regarded as a valid exercise of the freedom of contract" and the Nevada Supreme Court,
2 among other courts in Nevada, has consistently upheld exculpatory clauses that specifically waive
3 negligence claims. *See Miller v. A&R Joint Venture*, 97 Nev. 580, 582, 636 P.2d 277, 278 (1981).

4 In several cases, Nevada's appellate courts have upheld district court decisions granting
5 summary judgment in favor of a defendant based on a plaintiff's executed waiver of personal injury
6 claims. In *Waldschmidt*, the Supreme Court of Nevada affirmed a district court order granting
7 summary judgment in favor of a fitness club based on an unambiguous exculpatory clause in a gym
8 membership agreement that the member signed, which stated that the member understood the risk
9 of injury from using any club equipment and knowingly and freely assumed all such risks associated
10 with using the exercise equipment by signing said agreement; therefore, the member released,
11 indemnified, and held harmless the fitness club from any and all injury arising from negligence or
12 otherwise as a result. *Waldschmidt v. Edge Fitness, LLC*, 417 P.3d 1120 (Nev. 2018) (unpublished
13 decision).

14 In *Shuman*, the Supreme Court of Nevada also affirmed the order of the district court
15 granting summary judgment to a golf club where a photographer executed an agreement containing
16 a personal injury liability waiver. *Shuman v. Meadowbrook Mountain Spa, LLC*, 281 P.3d 1218
17 (Nev. 2009) (unpublished decision). The Court held that the district court properly concluded that
18 under the agreement, the photographer had waived the golf club's liability for her personal injuries
19 resulting from a golf cart accident. *Id.*

20 In *Martz-Alvarado*, the Nevada Court of Appeals upheld a district court order granting
21 summary judgment to a tour operator when a tourist agreed to a waiver of liability before going on
22 a horseback riding tour where she was injured when she dismounted from a horse. *Martz-Alvarado*
23 *v. Truax*, 462 P.3d 1237 (Nev. App. 2020) (unpublished decision).

24 Nevada's federal courts also follow Nevada appellate court guidance that summary judgment
25 can be granted in personal injury cases where the Plaintiff has executed a waiver that defines that
26 the plaintiff assumes the risk of injury. In *Moffitt*, the United States District Court, District of
27 Nevada, granted summary judgment for a gym club after finding that the gym membership entered
28 into by the member stated that one assumes the risk of injury whether related to exercise or not.

1 *Moffitt v. 24 Hour Fitness USA, Inc.*, 2013 WL 1080441, at *3 (D. Nev. Mar. 14, 2013).

2 Not limited to the decisions identified above, there is also an overwhelming amount of
3 authority in Clark County that recognizes a defendant's right to summary judgment when a plaintiff
4 executes an enforceable and clearly unambiguous waiver of liability. *See Kaufman v. Sweat It Out,*
5 *Inc.*, 2020 WL 4251083, at *3 (Nev. Dist. Ct. June 17, 2020) (Hon. David M. Jones granting summary
6 judgment for fitness club where the contract executed by its member contained an enforceable
7 assumption of the risk clause that was sufficiently clear, unambiguous, and conspicuous in providing
8 the member with actual knowledge of the risks associated with use of the facility and requiring the
9 member to agree to understand and voluntarily accept the risk of injury and hold fitness club
10 harmless for injuries suffered while using facility); *Leto, Jr. v. Edge Fitness, LLC*, 2017 WL
11 7053153, at *2 (Nev. Dist. Ct. Dec. 5, 2017) (granting summary judgment in favor of gym and against
12 member as the membership agreement's exculpatory clause was unambiguous, valid, and
13 enforceable and relieved gym from liability for negligence arising from member's injuries); *Soto v.*
14 *Poole-Sanford, LLC*, 2015 WL 9916542, at *1 (Nev. Dist. Ct. Dec. 22, 2015) (summary judgment
15 granted in favor of skating center where skater signed a waiver prior to skating at facility, which
16 provided that skater knowingly and voluntarily assume the risk of injury and agree to disclaim
17 skating center from liability for any injuries); *Kendall v. Vegas*, 2013 WL 1852934 (Nev. Dist. Ct.
18 Mar. 14, 2013) (granting summary judgment against patron who expressly assumed the risk of riding
19 a restaurant's mechanical bull by executing a waiver of liability that was clear and unambiguous as
20 to its release of the property owner and restaurant from any and all liability); *Bartman v. 24 Hour*
21 *Fitness*, 2013 WL 1852918 (Nev. Dist. Ct. Mar. 11, 2013) (granting summary judgment for fitness
22 club based on the unambiguous, clear, and conspicuous language in the membership agreement,
23 which constituted a valid express assumption of the type of risk at issue).

24 Similarly, even courts in other jurisdictions have upheld exculpatory clauses in cases where
25 the liability release agreement was sufficiently clear, specific, and/or unambiguous. In Texas, a
26 patron brought a negligence lawsuit against a trampoline park and its subsidiaries/affiliates for
27 injuries sustained while jumping on a trampoline at the trampoline park. *Quiroz v. Jumpstreet8,*
28 *Inc.*, 2018 WL 3342695, at *1 (Tex. App. July 9, 2018). The trampoline park and its

1 subsidiaries/affiliates moved for summary judgment based on a pre-injury release signed by the
2 patron, and the trial court granted said motion. *Id.* The court of appeals affirmed the trial court's
3 decision and held that the release the patron signed before entering the trampoline park was
4 enforceable as the release agreement's language was conspicuous, explicit, and applied to all
5 trampoline park entities. *Id.* at *3.

6 Specifically, the Texas appeals court found that although the release was two pages long, it
7 conspicuously contained several paragraphs with bolded headings and capitalized font; the
8 assumption of risk section was separate from the release of liability section; the warnings regarding
9 waiver of legal rights appeared directly under the title of the release and in capital letters; there were
10 several references to the risks and dangers of participating in the trampoline park's services
11 throughout the release; the waiver and release language was repeated a final time, in capital lettering,
12 immediately above the signature line where the patron printed her name, date of birth, age, address,
13 and telephone number; the release listed possible injuries; the person signing the release
14 acknowledged the potentially dangerous activity; and the release expressly listed the types of claims
15 and causes of action the patron was waiving, including negligence claims and personal injury claims.
16 *Id.* at *3–4.

17 In Illinois, an appellate court affirmed the judgment of the circuit court granting gymnastics
18 club's motion for summary judgment where gymnast signed two-page liability release containing an
19 exculpatory clause that released gymnastics club from liability for any acts of negligence and finding
20 the liability release agreement was clear, explicit, and unequivocal to relieve the gymnastics club
21 from liability for gymnast's injury. *Macias v. Naperville Gymnastics Club*, 2015 WL 1048388
22 (Ill.App. 2 Dist. Mar. 10, 2015) (unpublished opinion).

23 In Michigan, the court of appeals affirmed the city's summary judgment motion where a rope
24 climbing participant brought an action against the city after sustaining permanent injuries when he
25 lost his grasp of a rope while crossing a river at an event. *Dombrowski v. City of Omer*, 199 Mich.
26 App. 705, 706, 502 N.W.2d 707, 708 (1993). The court of appeals held that prior to participating
27 in the event, the participant signed a waiver of liability that was fairly obvious as the waiver was
28 printed in normal-size type, all caps, double-spaced, and with the caption "waiver of liability." *Id.*

1 at 712, 711. The court of appeals also held that although the participant was required to sign the
2 waiver in order to participate in the rope climbing event, there was no inducement for him to sign it
3 without first reading it. *Id.* at 711, 710. Therefore, the court concluded that the waiver was
4 enforceable as the nature of the document was clear and there was no basis for rescission as the
5 participant chose to sign the waiver without reading it. *Id.* at 712, 710.

6 In California, the court of appeal granted a skydiving operator's petition for writ of mandate
7 directing the trial court to grant its motion for summary judgment where the heirs of a skydiver
8 brought a wrongful death action against skydiving company. *Paralift, Inc. v. Superior Court*, 23
9 Cal. App. 4th 748–51, 29 Cal. Rptr. 2d 177–78 (1993). The court of appeal held that the release
10 signed by the skydiver three years prior to the date of the accident was valid as the release was broad
11 in scope as to time and place—"the decedent 'forever' released and discharged [the skydiving
12 operator] from liability for injuries arising out of participation in parachuting activities"—and as to
13 the type of risk to be assumed—"the object or purpose of the release the decedent signed . . . was to
14 allow him to engage in parachuting activity," which was precisely the activity the skydiver was
15 engaged in when he fell and therefore, the nature of the risks were within the reasonable expectations
16 of the parties. *Id.* at 756–57, 181–82 (citing *Madison v. Superior Court*, 203 Cal. App. 3d 589, 601,
17 250 Cal. Rptr. 299 (Ct. App. 1988), *modified* (Sept. 1, 1988)). The court of appeal further noted
18 that "where a participant in an activity has expressly released the defendant from responsibility for
19 the consequences of any act of negligence," the participant need not have a specific knowledge of
20 the particular risk that results in injury or death and not "every possible specific act of negligence
21 by the defendant must be spelled out in the agreement or discussed by the parties." *Id.*

22 As will be detailed below, Plaintiff executed a Participant Agreement containing an
23 exculpatory clause, which expressly waived any claim of personal injury against Defendants. This
24 broad waiver, by its own clear terms, bars Plaintiff's claims for negligence. The Participant
25 Agreement clearly waives any potential right to hold Defendants responsible for any injury
26 suffered by Plaintiff, even in the event of its own negligence. As such, the Court should grant
27 Defendants' motion for summary judgment, in accord with the vast amount of authority, in
28 Nevada and in other jurisdictions, that have done the same in similar circumstances.

2. *The Participant Agreement that Plaintiff Executed is Sufficiently Clear, Unambiguous, and Conspicuous and therefore, Valid and Enforceable*

The Participant Agreement, including the exculpatory provisions contained within it, is facially clear, conspicuous, and enforceable. Nevada courts construe contracts that are clear on their face from the written language and enforce such contracts as written. *Canfora v. Coast Hotels and Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). It is well-settled that interpreting the meaning of a contract is a question of law, not a question of fact. *Redrock Valley Ranch, LLC v. Washoe County*, 127 Nev. 451, 460, 254 P.3d 641, 647 (2011). Disputes regarding the scope or meaning of a contract do not preclude summary judgment because such disputes present pure questions of law for the court, not the jury, to resolve. *Galardi v. Naples Polaris LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013). When exculpatory language is unambiguous, the contract must be strictly construed. *Agric. Aviation Eng'g Co. v. Bd. of Clark Cty. Comm'rs*, 106 Nev. 396, 399–400, 794 P.2d 710, 713 (1990).

As detailed earlier, the Participant Agreement contained unambiguous exculpatory provisions releasing Defendants from liability for personal injuries sustained by patrons participating in various activities inside the subject trampoline park, such as jumping on or using the trampolines. In particular, the first full paragraph of the Participant Agreement, which follows the warning notice and waiver paragraph, provides in pertinent part: "In consideration of being allowed to participate in the services and activities, including, but not limited to, **trampoline park access, trampoline courts, and any other activities** provided by Defendants, the patron, in this case Plaintiff, agreed to **forever release, indemnify and discharge** Defendants." *See* Ex. B at 1 (emphasis added). The warning notice at the top of the Participant Agreement also clearly advises the patron, in all capital letters, to "READ THIS DOCUMENT CAREFULLY" and that "BY SIGNING IT, YOU ARE GIVING UP YOUR . . . LEGAL RIGHTS." *See id.* The waiver paragraph, also on the top of the first page of the Participant Agreement, unequivocally states, "**BY SIGNING THIS AGREEMENT I AM GIVING UP MY RIGHTS . . . TO SUE GRAVADY FOR ANY INJURY . . . CAUSED . . . BY THE NEGLIGENCE OR FAULT OF GRAVADY . . .**" *See id.* Additional waiver language on the second page of the Participant Agreement, also unambiguously and plainly

1 states in bold font, "**By signing this document, I understand that I may be found by a court of**
2 **law to have forever waived my . . . right to maintain any action against GRAVADY on the**
3 **basis of any claim from which I have released GRAVADY . . . and that I have assumed all risk**
4 **of damages, loss, personal injury, or death to myself. . . .**" *See id.* at 2.

5 The Participant Agreement also expressly details the types of causes of action (i.e.,
6 negligence) and types of injuries (i.e., personal injury) that the release or waiver of liability covered.
7 The release of liability paragraph in the Participant Agreement explicitly bars Plaintiff's negligence
8 claims against Defendants and contains specific language releasing Defendants for injuries in
9 carrying out trampoline activities, even as a result of any negligence of Defendants. *See id.* at 1.
10 The release of liability paragraph states, in pertinent part:

11 Despite all risks, including serious bodily injury, permanent disability, paralysis
12 and loss of life, the patron expressly and voluntarily releases, forever discharges,
13 and agrees not to sue Defendants and agrees to hold said parties harmless of and
14 from any and all causes of action, lawsuits, damages, and judgments, and claims in
15 law, including, any and all negligent acts committed by Defendants whether the
action arises out of any damage, loss, personal injury, or death to the patron while
participating in, or as a result of participating in, any activities, such as the use of
trampolines, in or about the premises.

16 *See id.*

17 Further, the provisions of the Participant Agreement were clearly conspicuous. As can be
18 seen by the quoted language above, the waiver paragraph, in addition to the paragraphs regarding
19 release of liability and assumption of risk, were captioned in bold text and in all caps, and with
20 regard to the waiver paragraph, was in a larger font size and located at the top of the first page just
21 under the title of the document. *See id.* In addition, the release of liability and indemnification, or
22 assumption of the risk, paragraphs were separate with their own bold headings or labels, clearly
23 defined, and located on the first page. *See id.* The waiver paragraph was also conspicuously
24 presented at the top of the first page of the Participant Agreement where the patron had to initial
25 next to the paragraph. *See id.* Further, additional waiver language was located on the last page of
26 the Participant Agreement just above the signature area, and was in a separate paragraph with bold
27 lettering. *See id.* at 2.

28 The Participant Agreement and all provisions contained therein, is therefore effective, valid,

1 and enforceable regardless of any negligence on the part of Defendants. The provisions of the
2 Participant Agreement, including the waiver, release, and assumption of risk language are clear,
3 unambiguous, and conspicuous. The very injuries Plaintiff is suing for, namely, a right foot
4 dislocation/fracture, is specifically precluded by the express waiver and release, which covers
5 Plaintiff's alleged injuries as said injury was sustained while jumping on a trampoline inside the
6 subject trampoline park. *See* Ex. D, Nos. 3, 15, at 4, 12. **Therefore, Defendants are absolved of**
7 **any liability arising from Plaintiff's trampoline activity** at the subject trampoline park on the day
8 of the subject injury as Plaintiff signed the Participant Agreement and waived all liability thereby
9 barring any claim or action by Plaintiff against Defendants. As such, this Court should grant
10 Defendants' motion for summary judgment.

11 **3. *Plaintiff Expressly Assumed the Risk of Injury and Waived All Liability***
12 ***When He Executed the Participant Agreement***

13 Plaintiff expressly assumed the risk of injury and waived all liability when he signed the
14 Participant Agreement prior to entering the subject trampoline park and jumping on the trampolines.
15 Express assumptions of risk serve as an enforceable bar to liability in Nevada. *Mizushima v. Sunset*
16 *Ranch*, 103 Nev. 259, 737 P.2d 1158 (1987), *overruled on other grounds* by *Turner v. Mandalay*
17 *Sports Ent't, LLC*, 124 Nev. 213, 221, 180 P.3d 1172, 1177 (2008). Parties may agree to assume the
18 risk of injury by contract as the issue of assumption of the risk is a question for the court, not a jury.
19 *Turner v. Mandalay Sports Ent't, LLC*, 124 Nev. 213, 221, 180 P.3d 1172, 1177 (2008). "To form
20 the predicate for express assumption of the risk, a document must indicate that the plaintiff agrees
21 to assume the risk of injury caused by the other party's negligence." *Id.* at 264, 1161. Further, two
22 things are required for a plaintiff to have assumed the risk of injury: First, there must be a voluntary
23 exposure to danger. Second, there must have been actual knowledge of the risk assumed." *Renaud*
24 *v. 200 Convention Ctr. Ltd.*, 102 Nev. 500, 501, 728 P.2d 445, 446 (1986). A risk is voluntarily
25 assumed by a person if it was known to him and he fully appreciated the danger. *Id.*

26 It is undisputed that Plaintiff entered the trampoline park, signed the Participant Agreement
27 containing exculpatory provisions, and then participated in the subject trampoline park's activities,
28 which ultimately led to Plaintiff's alleged injury. Plaintiff admitted that he signed a document prior

1 to entering the subject trampoline park. *See* Ex. C, Nos. 1–3, at 2–3. Immediately following the
2 subject incident, an incident report was created and a copy of the Participant Agreement that Plaintiff
3 signed was electronically attached to or saved to the incident report file. *See* Ex. E. Plaintiff also
4 knowingly and voluntarily signed the Participant Agreement, which clearly and conspicuously
5 stated that Plaintiff was assuming the risk of injury, including paralysis and death. *See* Ex. B.
6 Plaintiff had a voluntary choice to not sign the Participant Agreement and to not make use of
7 Defendant's trampoline park; however, Plaintiff chose to enter the subject trampoline park and
8 voluntarily waive liability, knowing of the possibility of injury, including dislocating/fracturing
9 one's foot, that could result. Further, Plaintiff was a capable adult who is able to evaluate predictable
10 and known risks to his own health and safety. Nevertheless, Plaintiff voluntarily accepted the known
11 risks involved in using trampolines and therefore, Plaintiff knew and appreciated the risks associated
12 with the subject trampoline park's trampoline activity.

13 Although Plaintiff potentially may argue that he did not sign the Participant Agreement
14 disclosed in this matter on August 1, 2018 because the Participant Agreement was dated July 1,
15 2018, the Participant Agreement that was executed by Plaintiff would still cover Plaintiff's visit on
16 August 1, 2018 due to the broad exculpatory provisions. Particularly, the terms of the Participant
17 Agreement provide that "I understand that this agreement extends forever into the future and will
18 have full force and legal effect each and every time I . . . visit GRAVADY, whether at the current
19 location or any other location or facility." *See* Ex. B, at 2. Furthermore, throughout the Participant
20 Agreement, the waiver and release language states that Plaintiff "forever waived," "forever release,
21 indemnify, and discharge," and "forever discharge and agree not to sue" Defendants for any damages
22 or personal injuries that may have been committed by Defendants as a result of Plaintiff's
23 participation in activities at the subject trampoline park. *See* Ex. B, at 1–2. Therefore, should the
24 Court find that the Participant Agreement disclosed by Defendants in this matter was executed on
25 July 1, 2018 and not August 1, 2018, the Participant Agreement that was erroneously dated July 1,
26 2018 would still encompass Plaintiff's claims in the instant matter due to the broad nature of the
27 release and waiver of liability, which was agreed by Plaintiff to apply to each future visit to the
28 subject trampoline park, including the August 1, 2018 visit.

1 Finally, should Plaintiff instead or additionally argue that he did not fully read the Participant
2 Agreement before signing it, and therefore, cannot be fairly held to its terms, this does not create a
3 dispute sufficient to defeat summary judgment as the Participant Agreement, and the exculpatory
4 provisions therein, are still enforceable and binding on Plaintiff. *See Pentax Corp. v. Boyd*, 111 Nev.
5 1296, 1299, 904 P.2d 1024, 1026 (1995) (holding that whether a party read a contract before signing
6 it does not create a genuine issue of material fact sufficient to defeat summary judgment because
7 parties may be held to contracts which they did not read); *see also Weddell v. H2O, Inc.*, 128 Nev. 94,
8 n.1, 271 P.3d 743, n.1 (2012) (noting that when a party to a written contract agrees to the contract,
9 he is bound by the stipulations and conditions expressed in it, whether he reads them or not, and
10 ignorance through negligence will not relieve a party from his contractual obligations.).

11 In accordance with Nevada law and supporting authority in other jurisdictions, Plaintiff
12 expressly waived all liability and released Defendants from any personal injury claims arising from
13 the date of the Participant Agreement and thereafter, which includes the date of the subject incident
14 (i.e., the correct date that the Participant Agreement was executed by Plaintiff) and voluntarily
15 assumed the risk of injury, which includes any dislocation/fracture to his foot, as a result of signing
16 the Participant Agreement prior to Plaintiff jumping on the trampoline at the subject trampoline park
17 on August 1, 2018. Plaintiff cannot assert claims for negligence against Defendants as a matter of
18 law; therefore, Defendant is entitled to summary judgment.

19 **4. *As an Agent of Gravady, Defendant CircusTrix is Equally Covered Under***
20 ***the Language of the Participant Agreement and therefore, CircusTrix is***
21 ***Entitled to Summary Judgment***

22 Defendant CircusTrix is entitled to summary judgment because the Participant Agreement
23 provides for the waiver or release of liability against it. Pursuant to the Participant Agreement, in
24 consideration of Plaintiff being allowed to participate and enter the subject trampoline park provided
25 by Gravady and its "**agents**, owners, officers, directors, principals, volunteers, participants, clients,
26 customers, invitees, employees, independent contractors, insurers, **facility operators**, land and/or
27 premises owners, and **any and all other persons and entities acting in any capacity on its behalf**,"
28 Plaintiff agreed to forever release and discharge not only Gravady, but its agents, facility operators,
and any and all other entities acting in any capacity on its behalf. *See Ex. B*, at 1.

1 Defendants Gravady and CircusTrix entered into a Management Agreement whereby
2 CircusTrix would provide Gravady with management and administrative services, including human
3 resources services, office administration services, accounting and tax services, engineering services,
4 management information services, legal services, and purchasing services relating to Gravady's
5 business. *See* Ex. A. By acting as an agent of Gravady, as authorized by and pursuant to the
6 Management Agreement, the Participant Agreement thereby extends to and covers CircusTrix.
7 Even if Plaintiff were to successfully argue that CircusTrix is not an agent of Gravady, CircusTrix
8 would still be provided for under the Participant Agreement as either a "facility operator" or "other
9 entity acting in any capacity on [Gravady's] behalf." *See* Ex. B, at 1. As described in the
10 Management Agreement, CircusTrix performed various duties on Gravady's behalf, such as
11 interviewing, hiring, discharging, and training Gravady's personnel and establishing office
12 procedures and business rules and procedures, to name a few. *See* Ex. A, at 3. Therefore, CircusTrix
13 is clearly acting as an agent, operator, or entity on behalf of Gravady and accordingly, Plaintiff is
14 barred from bringing any negligence claims against CircusTrix. As such, Defendants' motion for
15 summary judgment should be granted as CircusTrix is equally entitled to summary judgment for the
16 same reasons as Gravady, as described above.

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1 **V. CONCLUSION**

2 Based on the foregoing, Defendants respectfully request the Court grant their Motion for
3 Summary Judgment and dismiss all of Plaintiff's negligence claims against Defendants.

4 DATED this 7th day of April , 2021

5 WOOD, SMITH, HENNING & BERMAN LLP

6
7 By /s/ Phillip V. Tiberi

8 PHILLIP V. TIBERI, ESQ.

9 Nevada Bar No. 6146

10 KYLE. J. HOYT, ESQ.

11 Nevada Bar No. 14886

12 2881 Business Park Court, Suite 200

13 Las Vegas, Nevada 89128-9020

14 Tel. 702 251 4100

15
16 Attorneys for Defendants Gravady Nevada, LLC
17 and CircusTrix, LLC
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2021, a true and correct copy of **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

By /s/ Kimberly Amy
Kimberly Amy, an Employee of
WOOD, SMITH, HENNING & BERMAN LLP

EXHIBIT A

MANAGEMENT AND ADMINISTRATIVE SERVICES AGREEMENT

This Management and Administrative Services Agreement effective as of September 1, 2014, by and between Circus Trix, LLC, a Utah limited liability company (“Circus Trix”) and Gravady Nevada, LLC (the “Company”).

WITNESSETH:

WHEREAS, the Company desires to obtain certain management, administrative and other services from Circus Trix, and Circus Trix is willing to provide such management, administrative and other services to the Company on the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth, the parties hereby agree as follows:

1. **Services Provided by Circus Trix.**

a. **Description of Services.** During the term of this Agreement, Circus Trix will provide, cause to be provided, arrange for, or supervise the performance of certain management, administrative, and other services for the Company, including but not limited to some of the services listed on Exhibit 1 hereto (the “Contracted Services”).

b. **Quality of Services.** All services, consultation, training, assistance, or other support that Circus Trix provides, arranges for, or supervises pursuant to this Agreement will be of a nature and of a quality substantially similar to that which Circus Trix requires for its own internal operations with respect to similar services. Circus Trix may subcontract the Contracted Services, in whole or in part, without the consent of the Company.

2. **Rate of Compensation.** In consideration for the Contracted Services performed by Circus Trix pursuant to this Agreement, Company agrees to pay Circus Trix a fixed management and administration fee as set forth on Exhibit 1 hereto (the “Management Fee”). The Management Fee may be adjusted from time to time by agreement of the parties, and such adjustments shall be set forth on a revised Exhibit 1. The Management Fee may be paid monthly, quarterly, or annually, but in no event later than 90 days after the end of the Company’s fiscal year. Any dispute concerning the Management Fee shall be resolved by the Company’s independent certified public accounting firm, whose determination shall be final.

3. **Term.** This Agreement will become effective on the date hereof and shall continue in full force for an initial period ending on the last day of the Company’s current fiscal year (the “Initial Term”). Thereafter, at the expiration of the Initial Term or any renewal term hereof, this Agreement shall automatically renew for an additional one year term unless either party gives the other party notice to cancel at least 90 days prior to the expiration of the applicable Initial Term or renewal term.

4. **Termination.** This Agreement may be terminated by the mutual consent of the parties hereto. In addition, this Agreement may be terminated by either party hereto if the other party: (i) files a petition of bankruptcy or other similar proceeding, or (ii) fails to cure a material breach of this Agreement after 30 days written notice thereof.

5. **Miscellaneous.** This Agreement may not be assigned without the prior written consent of the other party hereto. Except as otherwise stated herein, this Agreement may only be amended by a written instrument signed by both of the parties hereto. In the event that any of the terms of this Agreement is judged to be invalid or unenforceable, such terms and provisions shall be deemed stricken from this Agreement to the extent necessary and the remainder of this Agreement shall continue in full force and effect. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah (without regard to the conflict of law rules of any jurisdiction).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first above written.

COMPANY:

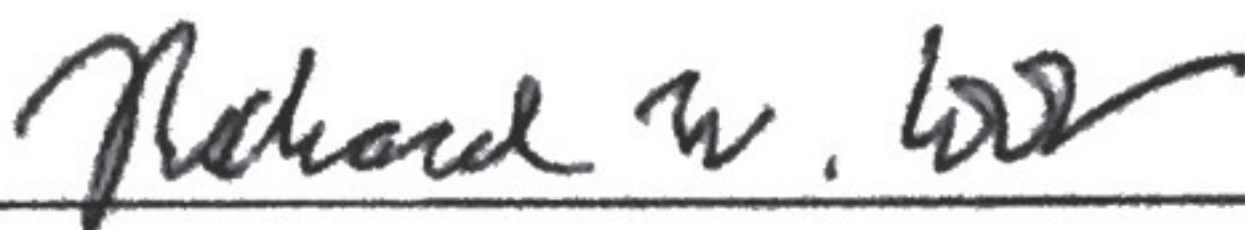
Gravady Nevada, LLC

By: 

Its: Managing Member

CIRCUS TRIX:

CIRCUS TRIX, LLC

By: 

Its: Chief Operating Officer

EXHIBIT 1

CONTRACTED SERVICES

Some of the services Circus Trix will provide, cause to be provided, arrange for, or supervise for the Company shall include some of the following:

1. Purchasing services relating to Company's business.
2. Human resource services, including interviewing, hiring, discharging and training certain of the Company's personnel.
3. Office administration services, including establishing office and accounting procedures and business ethics rules and procedures.
4. Accounting and tax services, including accumulating and preparing certain financial statements of the Company and filing state and federal tax returns for the Company.
5. Engineering services, including the design, drafting and planning of certain products and offices.
6. Management information services, including establishment and maintenance of certain computer networks and implementing solutions for other informational needs of the Company.
7. Legal services, including tracking, administrating and advising relating to lawsuits and other proceedings against or relating to the Company.
8. Such other management or administrative services that the Company from time to time shall reasonably request and that Circus Trix is able to provide.

MANAGEMENT FEE

The annual Management Fee to be paid by the Company to Circus Trix shall be as follows:

A monthly payment of [REDACTED] for the Contracted Services as outlined in this exhibit (Exhibit 1). This management fee is subject to an increase or decrease as determined by Circus Trix. The Company will be appropriately notified of any change in the management fee. Any change will be effective the 1st of the month following the month the notification was communicated.

EXHIBIT B

GRAVADY NEVADA, LLC, PARTICIPANT AGREEMENT, INDEMNIFICATION, GENERAL RELEASE AND ASSUMPTION

(PLEASE READ THIS DOCUMENT CAREFULLY, BY SIGNING IT, YOU ARE GIVING UP YOUR AND/OR YOUR SPOUSE AND MINOR'S LEGAL RIGHTS)

BY SIGNING THIS AGREEMENT I AM GIVING UP MY RIGHTS AND THE RIGHTS OF MY SPOUSE AND/OR CHILD(REN) TO SUE GRAVADY FOR ANY INJURY, INCLUDING PARALYSIS OR DEATH, CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF GRAVADY, INCLUDING ANY OF ITS AGENTS, EMPLOYEES AND EQUIPMENT. Initials: SL

In consideration of being allowed to participate in the services and activities, including, but not limited to, trampoline park access, trampoline dodge ball, trampoline basketball, aerial training, fitness classes, trampoline courts, foam pit activities and snack bar access and any other amusement activities (collectively "ACTIVITIES"), provided by GRAVADY NEVADA, LLC and its agents, owners, officers, directors, principals, volunteers, participants, clients, customers, invitees, employees, independent contractors, insurers, facility operators, land and/or premises owners, and any and all other persons and entities acting in any capacity on its behalf (collectively "GRAVADY"), I, on behalf of myself, and/or on behalf of my spouse, minor child(ren)/ward(s), hereby agree to forever release, indemnify and discharge GRAVADY on behalf of myself, my spouse, legal partner, my children, my parents, my guardians, heirs, assigns, personal representatives and estate, and all other persons and entities as set forth below. The undersigned, for myself, and/or on behalf of my spouse, minor child(ren)/ward(s), hereby acknowledges, agrees and represents that immediately upon entering or participating I will, inspect and carefully consider GRAVADY'S premises and facilities. It is further warranted that such entry into GRAVADY'S facilities for observation or use of any facilities or equipment or participation in ACTIVITIES constitutes an acknowledgement that such premises and all facilities and equipment thereon have been inspected and carefully considered and that the undersigned finds and accepts same for myself, and/or on behalf of my spouse, minor child(ren)/ward(s) as being safe and reasonably suited for the purpose of such observation, use or participation by myself, and/or by my spouse, minor child(ren)/ward(s). The undersigned, for myself, and/or on behalf of my spouse, minor child(ren)/ward(s) hereby represent that (i) I/we are in good health and in proper physical condition to participate in the activities in which GRAVADY provides; and (ii) I/we are not under the influence of alcohol or any illicit or prescription drugs which would in any way impair my/our ability to safely participate in activities; (iii) I/we have not been advised against activities by a health professional. I agree that it is my sole responsibility to determine whether I/we are sufficiently fit and healthy enough to participate in activities. The undersigned, for myself, and/or on behalf of my spouse, minor child(ren)/ward(s), agree to be familiar with and to abide by the rules established for the ACTIVITIES, which include without limitation the rules posted in the facility and/or the website. The undersigned, for myself, and/or on behalf of my spouse, minor child(ren)/ward(s), accepts sole responsibility for my own conduct and actions, as well as the conduct and actions of my spouse, minor child(ren)/ward(s) while participating in the activities, and the condition and adequacy of the equipment.

(1) **RELEASE OF LIABILITY:** Despite all known and unknown risks including but not limited to serious bodily injury, permanent disability, paralysis and loss of life, I, on behalf of myself, and/or on behalf of my spouse, minor child(ren)/ward(s) hereby expressly and voluntarily remise, release, acquit, satisfy and forever discharge and agree not to sue GRAVADY, including its suppliers, designers, installers, manufacturers of any trampoline equipment, foam pit material, or such other material and equipment in GRAVADY'S facility (all hereinafter referred to as "EQUIPMENT SUPPLIERS") and agree to hold said parties harmless of and from any and all manner of actions or omission(s), causes of action, suits, sums of money, controversies, damages, judgments, executions, claims and demands whatsoever, in law or in equity, including, but not limited to, any and all claims which allege negligent acts and/or omissions committed by GRAVADY or any EQUIPMENT SUPPLIERS, whether the action arises out of any damage, loss, personal injury, or death to me or my spouse, minor child(ren)/ward(s), while participating in or as a result of participating in any of the ACTIVITIES in or about the premises. This Release of Liability, is effective and valid regardless of whether the damage, loss or death is a result of any act or omission on the part of GRAVADY and/or any EQUIPMENT SUPPLIERS.

(2) **INDEMNIFICATION:** I understand that the known and unknown risks may be caused in whole or in part by my or my spouse or child(ren)/wards own actions or inactions, the actions or inactions of others participating in activities, or the acts, inaction or negligence of GRAVADY or any EQUIPMENT SUPPLIERS, and in consideration of being allowed, along with my spouse and/or my minor child(ren)/ward(s) to participate in the ACTIVITIES, I hereby assume all risk of damage, loss, personal injury, or death to myself, my spouse and/or my minor child(ren)/ward(s) as a result of the participation in ACTIVITIES in or about the facility, including any such loss due to any negligence of GRAVADY and all EQUIPMENT SUPPLIERS and agree to indemnify and hold harmless GRAVADY and all EQUIPMENT SUPPLIERS from and against any and all losses, liabilities, claims, obligations, costs, damages and/or expenses whatsoever paid, incurred and/or suffered by GRAVADY and all EQUIPMENT SUPPLIERS as a result of any claims asserted by myself, my spouse and/or child(ren)/ward(s) against GRAVADY and all EQUIPMENT SUPPLIERS, including, but not limited to, any and all attorneys' fees, costs, damages and/or judgments GRAVADY and all EQUIPMENT SUPPLIERS incurs in the event of such loss whether caused by the negligence of GRAVADY or any EQUIPMENT SUPPLIERS and that on behalf of myself, my spouse or my minor child(ren)/ward(s) I further agree to indemnify and hold harmless GRAVADY for any injury, damage and/or harm myself, my spouse and/or my minor child(ren)/ward(s) cause to GRAVADY or its facility and/or to any and all other persons and entities acting in any capacity on behalf of GRAVADY.

(3) **ATTORNEYS' FEES:** I promise to indemnify GRAVADY for any attorneys' fees and/or costs incurred to enforce this agreement, including all costs associated with any collection efforts. Further, should any debt and/or judgment accrue in favor of

GRAVADY, pre-judgment and post-judgment interest shall accrue thereon at a rate of 18% per annum.

(4) **PHOTO RELEASE:** By entering GRAVADY and participating in the ACTIVITIES, I hereby grant GRAVADY on behalf of myself, my spouse and on behalf of my child(ren)/ward(s), the irrevocable right and permission to photograph and/or record me, my spouse or my child(ren)/ward(s) in connection with GRAVADY and to use the photograph and/or recording for all purposes, including advertising and promotional purposes, in any manner and all media now or hereafter known, in perpetuity throughout the world, without restriction as to alteration. I waive any right to inspect or approve the use of the photograph and/or recording, and acknowledge and agree that the rights granted to this release are without compensation of any kind.

(5) **TERMS OF AGREEMENT:** I understand that this agreement extends forever into the future and will have full force and legal effect each and every time I or my spouse and/ or child(ren)/ward(s) visit GRAVADY, whether at the current location or any other location or facility. The undersigned further expressly agrees that this agreement is intended to be as broad and inclusive as is permitted by the laws of this state and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

(6) **VENUE:** In the event a lawsuit is filed against GRAVADY, I agree to the sole and exclusive venue of Clark County, Nevada. I further agree that the substantive law of Nevada shall apply without regard to any conflict of law rules.

By signing this document, I understand that I may be found by a court of law to have forever waived my and my spouse and/or child(ren)/ward(s) right to maintain any action against GRAVADY on the basis of any claim from which I have released GRAVADY and any released party herein and that I have assumed all risk of damage, loss, personal injury, or death to myself, my spouse and/or my minor child(ren)/ward(s) and agreed to indemnify and hold harmless GRAVADY and all EQUIPMENT SUPPLIERS from and against any and all losses, liabilities, claims, obligations, costs, damages and/or expenses whatsoever paid, incurred and/or suffered by GRAVADY and all EQUIPMENT SUPPLIERS as a result of the participation in ACTIVITIES in or about the facility by myself, my spouse and/or child(ren)/ward(s) and/or claims asserted by myself, my spouse and/or child(ren)/ward(s) against GRAVADY and all EQUIPMENT SUPPLIERS related to such participation in ACTIVITIES. I have had a reasonable and sufficient opportunity to read and understand this entire document and consult with legal counsel, or have voluntarily waived my right to do so. I knowingly and voluntarily agree to be bound by all terms and conditions set forth herein.

You MUST be 18 years old or older to sign your own waiver
You MUST be the Parent or Legal Guardian to sign for a minor (under age 18)

Enter Adult Full Name and Date of Birth
(If under age 18, it must be completed by Parent/Legal Guardian -- Enter Adult Full Name/Date of Birth of Parent/Guardian)
Adult First Name: Jason Majid Adult Last Name: _____
Adult Date of Birth: 10/12/77 Phone: (702) 857-0138
Email: _____
Signature: [Signature]
Date: 07/01/18

Enter Child Full Name and Date of Birth of all Family Members under age 18
Child Full Name #1: Jonathan Majid Date of Birth: 02/04/04
Child Full Name #2: _____ Date of Birth: _____
Child Full Name #3: _____ Date of Birth: _____
Child Full Name #4: _____ Date of Birth: _____
Child Full Name #5: _____ Date of Birth: _____
Child Full Name #6: _____ Date of Birth: _____

We reserve the right to review your license and/or other forms of ID to verify identity and age.
This waiver is good for one day only.

EXHIBIT C

RSPN
KIMBALL JONES, ESQ.
Nevada Bar No.: 12982
JOSHUA P. BERRETT, ESQ.
Nevada Bar No.: 12697
BIGHORN LAW
716 S. Jones Blvd.
Las Vegas, Nevada 89107
Phone: (702) 333-1111
Email: Josh@bighornlaw.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JESUS MEJIA, an individual,

Plaintiff,

v.

Case No.: A-19-800435-C
Dept. No.: 4

GRAVADY NEVADA, LLC, a Nevada
Limited Liability Company; CIRCUSTRIX,
LLC, a Utah Limited Liability Company;
ASSAF NEVADA, INC., a Nevada
Corporation; DOE PROPERTY OWNER IV;
ROE PROPERTY OWNER I-V; ROE
MAINTENANCE COMPANY I-V; ROE
PROPERTY MANAGEMENT COMPANY
I-V; DOE MAINTENANCE WORKER I-V;
DOE PROPERTY MANAGER I-V; DOE
EMPLOYEE I-V; DOE MANAGER I-V;
ROE EMPLOYER I-V; DOE EQUIPMENT
INSTALLER I-V; ROE EQUIPMENT
INSTALLATION COMPANY; and ROE
COMPANIES I-V,

Defendants.

PLAINTIFF'S RESPONSES TO DEFENDANTS GRAVADY NEVADA, LLC AND
CIRCUSTRIX, LLC'S FIRST SET OF REQUESTS FOR ADMISSION TO PLAINTIFF JESUS
MEJIA

COMES NOW, Plaintiff, JESUS MEJIA, by and through his attorneys of record, KIMBALL

1 JONES, ESQ. and JOSHUA P. BERRETT, ESQ. of BIGHORN LAW and hereby provides his
2 Responses to Defendants Gravady Nevada, LLC and Circustrix, LLC's First Set of Requests for
3 Admission to Plaintiff Jesus Mejia as follows:

4 Plaintiff has not yet completed his discovery and investigation for the preparation of this case
5 for trial. Accordingly, the answers set forth herein are provided without prejudice to the responding
6 party's right to produce any subsequent discovered facts or interpretations thereof and/or to add,
7 modify or otherwise change or amend the answers herein. The information hereinafter set forth is true
8 and correct to the best of the responding party's knowledge at this particular time, but it is subject to
9 correction for inadvertent errors or omission, if any such error or omissions are found to exist.

10 **REQUEST NO. 1:**

11 Admit that the document attached hereto as **Exhibit "A"** is a true and complete copy of the
12 Gravady Nevada, LLC Participant Agreement, Indemnification, General Release and Assumption form
13 signed by YOU.

14 **RESPONSE TO REQUEST NO. 1:**

15 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
16 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
17 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
18 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
19 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
20 objections, Plaintiff responds that he was directed to sign a document before being allowed to enter,
21 but he is unable to say if the attached document is a true and complete copy of what he was told to
22 sign, therefore he must respond: Deny.

23 **REQUEST NO. 2:**

24 Admit that YOU signed the Gravady Nevada, LLC Participant Agreement, Indemnification,
25 General Release and Assumption form attached hereto as **Exhibit "A"**.

26 ///

27 ///

1 **RESPONSE TO REQUEST NO. 2:**

2 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
3 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
4 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
5 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
6 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
7 objections, Plaintiff responds that he was directed to sign a document before being allowed to enter,
8 but he is unable to say if the attached document is a true and complete copy of what he was told to
9 sign, therefore he must respond: Deny.

10 **REQUEST NO. 3:**

11 Admit that YOU read the Gravady Nevada, LLC Participant Agreement, Indemnification,
12 General Release and Assumption form attached hereto as **Exhibit "A"** prior to signing of the same.

13 **RESPONSE TO REQUEST NO. 3:**

14 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
15 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
16 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
17 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
18 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
19 objections, Plaintiff responds that he was directed to sign a document before being allowed to enter,
20 but he is unable to say if the attached document is a true and complete copy of what he was told to
21 sign, therefore he must respond: Deny.

22 **REQUEST NO. 4:**

23 Admit that the Gravady Nevada, LLC Participant Agreement, Indemnification, General Release
24 and Assumption form attached hereto as **Exhibit "A"** notified YOU of the potential risk of injury.

25 **RESPONSE TO REQUEST NO. 4:**

26 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
27 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
28

1 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
2 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
3 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
4 objections, Plaintiff responds: Deny.

5 **REQUEST NO. 5:**

6 Admit that YOU were aware of the potential risk of injury while participating in activities at
7 Gravady Nevada, LLC.

8 **RESPONSE TO REQUEST NO. 5:**

9 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
10 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
11 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
12 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
13 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
14 objections, Plaintiff responds: Deny.

15 **REQUEST NO. 6:**

16 Admit that the Gravady Nevada, LLC Participant Agreement, Indemnification, General Release
17 and Assumption form attached hereto as **Exhibit "A"** contains a provision for release of liability as to
18 claims for personal injury.

19 **RESPONSE TO REQUEST NO. 6:**

20 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
21 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
22 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
23 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
24 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
25 objections, Plaintiff responds: Deny.

26 ///

27 ///

1 **REQUEST NO. 7:**

2 Admit that YOU waived all claims for personal injury as a result of signing the Gravady
3 Nevada, LLC Participant Agreement, Indemnification, General Release and Assumption form
4 attached hereto as **Exhibit “A”**

5 **RESPONSE TO REQUEST NO. 7:**

6 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
7 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
8 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
9 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
10 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
11 objections, Plaintiff responds: Deny.

12 **REQUEST NO. 8:**

13 Admit that YOU had a reasonable and sufficient opportunity to read and understand the
14 Gravady Nevada, LLC Participant Agreement, Indemnification, General Release and Assumption
15 form attached hereto as **Exhibit “A.”**

16 **RESPONSE TO REQUEST NO. 8:**

17 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
18 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
19 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
20 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
21 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
22 objections, Plaintiff responds: Deny.

23 **REQUEST NO. 9:**

24 Admit that YOU, by executing the Gravady Nevada, LLC Participant Agreement,
25 Indemnification, General Release and Assumption form attached hereto as **Exhibit “A”**, knowingly
26 agreed to be bound by the terms and conditions set forth within said document.
27
28

1 **RESPONSE TO REQUEST NO. 9:**

2 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
3 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
4 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
5 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
6 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
7 objections, Plaintiff responds: Deny.

8 **REQUEST NO. 10:**

9 Admit that by executing the Gravady Nevada, LLC Participant Agreement, Indemnification,
10 General Release and Assumption form attached hereto as **Exhibit "A"**, YOU voluntarily agreed to be
11 bound by the terms and conditions set forth within the form.

12 **RESPONSE TO REQUEST NO. 10:**

13 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
14 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
15 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
16 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
17 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
18 objections, Plaintiff responds: Deny.

19 **REQUEST NO. 11:**

20 Admit that the Gravady Nevada, LLC Participant Agreement, Indemnification, General Release
21 and Assumption form attached hereto as **Exhibit "A"** is not void as against public policy.

22 **RESPONSE TO REQUEST NO. 11:**

23 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
24 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
25 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
26 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
27

1 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
2 objections, Plaintiff responds: Deny.

3 **REQUEST NO. 12:**

4 Admit that the terms contained within the Gravady Nevada, LLC Participant Agreement,
5 Indemnification, General Release and Assumption form attached hereto as **Exhibit "A"** is enforceable
6 under Nevada law.

7 **RESPONSE TO REQUEST NO. 12:**

8 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
9 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
10 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
11 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
12 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
13 objections, Plaintiff responds: Deny.

14 **REQUEST NO. 13:**

15 Admit that the Gravady Nevada, LLC Participant Agreement, Indemnification, General Release
16 and Assumption form attached hereto as **Exhibit "A"** specifically indicated the terms of the
17 contractual waiver.

18 **RESPONSE TO REQUEST NO. 13:**

19 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
20 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
21 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
22 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
23 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
24 objections, Plaintiff responds: Deny.

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1 **REQUEST NO. 14:**

2 Admit that the Gravady Nevada, LLC Participant Agreement, Indemnification, General Release
3 and Assumption form attached hereto as **Exhibit “A”** described the respective responsibilities of each
4 party.

5 **RESPONSE TO REQUEST NO. 14:**

6 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
7 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
8 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
9 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
10 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
11 objections, Plaintiff responds: Deny.

12 **REQUEST NO. 15:**

13 Admit that the release of liability language contained within the Gravady Nevada, LLC
14 Participant Agreement, Indemnification, General Release and Assumption form attached hereto as
15 **Exhibit “A”** was set forth in clear language.

16 **RESPONSE TO REQUEST NO. 15:**

17 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
18 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
19 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
20 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
21 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
22 objections, Plaintiff responds: Deny.

23 **REQUEST NO. 16:**

24 Admit that the Gravady Nevada, LLC Participant Agreement, Indemnification, General Release
25 and Assumption form attached hereto **Exhibit “A”** contained language which was unambiguous.

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1 **RESPONSE TO REQUEST NO. 16:**

2 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
3 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
4 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
5 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
6 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
7 objections, Plaintiff responds: Deny.

8 **REQUEST NO. 17:**

9 Admit that there is no specific Nevada case law that prohibits the waiver of a right to pursue a
10 personal injury claim.

11 **RESPONSE TO REQUEST NO. 17:**

12 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
13 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
14 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
15 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
16 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
17 objections, Plaintiff responds: Deny.

18 **REQUEST NO. 18:**

19 Admit that there is no Nevada legislative enactment that specifically prohibits the waiver of a
20 right to pursue a personal injury claim.

21 **RESPONSE TO REQUEST NO. 18:**

22 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
23 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
24 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
25 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
26 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
27 objections, Plaintiff responds: Deny.

1 **REQUEST NO. 19:**

2 Admit that the Gravady Nevada, LLC Participant Agreement, Indemnification, General Release
3 and Assumption form attached hereto as **Exhibit “A”** is not violative of any Nevada case law
4 authority.

5 **RESPONSE TO REQUEST NO. 19:**

6 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
7 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
8 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
9 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
10 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
11 objections, Plaintiff responds: Deny.

12 **REQUEST NO. 20:**

13 Admit that the Gravady Nevada, LLC Participant Agreement, Indemnification, General Release
14 and Assumption form attached hereto as **Exhibit “A”** is not an adhesion contract.

15 **RESPONSE TO REQUEST NO. 20:**

16 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
17 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
18 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
19 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
20 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
21 objections, Plaintiff responds: Deny.

22 **REQUEST NO. 21:**

23 Admit that the Gravady Nevada, LLC Participant Agreement, Indemnification, General Release
24 and Assumption form attached hereto as **Exhibit “A”** is not procedurally unconscionable.

25 **RESPONSE TO REQUEST NO. 21:**

26 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
27 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
28

1 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
2 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
3 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
4 objections, Plaintiff responds: Deny.

5 **REQUEST NO. 22:**

6 Admit that the Gravady Nevada, LLC Participant Agreement, Indemnification, General Release
7 and Assumption form attached hereto as **Exhibit “A”** is not substantively unconscionable.

8 **RESPONSE TO REQUEST NO. 22:**

9 Objection. Plaintiff objects to this Request on the grounds that it is improper as it calls for
10 either crucial facts central to the issue in this lawsuit or a legal conclusion regarding an ultimate issue
11 in this litigation, in violation of the holding in *Morgan v. DeMille*, 106 Nev. 671, 675, 799 P.2d 561,
12 564 (1990). Plaintiff also objects on the grounds that the Request calls for a legal conclusion and/or
13 expert liability opinion, which Plaintiff cannot give. Subject to and without waiving the foregoing
14 objections, Plaintiff responds: Deny.

15 DATED this 10th day of April, 2020

16 **BIGHORN LAW**

17 By: /s/ Joshua P. Berrett, Esq.

18 **KIMBALL JONES, ESQ.**

19 Nevada Bar No.: 12982

20 **JOSHUA P. BERRETT, ESQ.**

21 Nevada Bar No.: 12697

22 716 S. Jones Boulevard

23 Las Vegas, Nevada 89107

24 *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to NRCP 5, I hereby certify that I am an employee of BIGHORN LAW and on the 10th
4 day of April, 2020, an electronic copy of the **PLAINTIFF'S RESPONSES TO DEFENDANTS**
5 **GRAVADY NEVADA, LLC AND CIRCUSTRIX, LLC'S FIRST SET OF REQUESTS FOR**
6 **ADMISSION TO PLAINTIFF JESUS MEJIA** as follows:

- 7
8 ☒ Electronic Service – By serving a copy thereof through the Court's electronic service
9 system
10 ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid
11 and addressed as listed below; and/or
12 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s)
13 shown below and in the confirmation sheet filed herewith. Consent to service under NRCP
14 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made
15 in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of
16 Service; and/or

17 **Phillip V. Tiberi, Esq.**

18 Nevada Bar No. 6146

19 **Wood, Smith, Henning & Berman LLP**

20 2881 Business Park Court, Suite 200

21 Las Vegas, Nevada 89128-9020

22 Telephone: 702 251 4100

23 Facsimile: 702 251 5405

24 ptiberi@wshblaw.com

25 *Attorneys for Defendants Gravady Nevada, LLC*
26 *and CircusTriX, LLC*

27 /s/ Sandy L. Jackson
28 An employee/agent of **BIGHORN LAW**

EXHIBIT D

RSPN
KIMBALL JONES, ESQ.
Nevada Bar No.: 12982
JOSHUA P. BERRETT, ESQ.
Nevada Bar No.: 12697
BIGHORN LAW
716 S. Jones Blvd.
Las Vegas, Nevada 89107
Phone: (702) 333-1111
Email: Josh@bighornlaw.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JESUS MEJIA, an individual,

Plaintiff,

v.

Case No.: A-19-800435-C

Dept. No.: 4

GRAVADY NEVADA, LLC, a Nevada
Limited Liability Company; CIRCUSTRIX,
LLC, a Utah Limited Liability Company;
ASSAF NEVADA, INC., a Nevada
Corporation; DOE PROPERTY OWNER IV;
ROE PROPERTY OWNER I-V; ROE
MAINTENANCE COMPANY I-V; ROE
PROPERTY MANAGEMENT COMPANY
I-V; DOE MAINTENANCE WORKER I-V;
DOE PROPERTY MANAGER I-V; DOE
EMPLOYEE I-V; DOE MANAGER I-V;
ROE EMPLOYER I-V; DOE EQUIPMENT
INSTALLER I-V; ROE EQUIPMENT
INSTALLATION COMPANY; and ROE
COMPANIES I-V,

Defendants.

PLAINTIFF'S RESPONSES TO
DEFENDANTS GRAVADY NEVADA, LLC
AND CIRCUSTRIX, LLC'S FIRST SET OF
INTERROGATORIES TO PLAINTIFF
JESUS MEJIA

COMES NOW, Plaintiff, JESUS MEJIA, by and through his attorneys of record, KIMBALL JONES, ESQ. and JOSHUA P. BERRETT, ESQ. of BIGHORN LAW and hereby provides his Responses to Defendants Gravady Nevada, LLC and Circustrix, LLC's First Set of Interrogatories to Plaintiff Jesus Mejia as follows:

///

1 Plaintiff has not yet completed his discovery and investigation for the preparation of this case
2 for trial. Accordingly, the answers set forth herein are provided without prejudice to the Plaintiff's
3 right to produce any subsequent discovered facts or interpretations thereof and/or to add, modify or
4 otherwise change or amend the answers herein. The information hereinafter set forth is true and
5 correct to the best of the Plaintiff's knowledge at this particular time, but it is subject to correction
6 for inadvertent errors or omission, if any such error or omissions are found to exist.
7

8 **GENERAL ANSWER AND OBJECTIONS**

9 The following terms, conditions, representations, and statements shall apply to all answers
10 contained herein:

- 11 1. The answers given in this document are made in direct response to the interrogatories
12 submitted by Defendants GRAVADY NEVADA, LLC and CIRCUSTRIX, LLC to
13 Plaintiff on or about February 18, 2020 (the "Interrogatories") and shall not be construed
14 or interpreted to respond to any discoverable matter outside the scope of the
15 Interrogatories.
16
- 17 2. Discovery is continuing. Plaintiff reserves the right to supplement these Answers at any
18 time prior to trial.
19
- 20 3. Under no circumstances shall any answer contained herein be construed as an exhaustive
21 response to the corresponding interrogatory. The Plaintiff is not omnipotent and all
22 knowing. Information and/or evidence outside of the Plaintiff's present scope of
23 knowledge may be available to further prove or supplement any answer given herein.
24
- 25 4. These Answers are given by Plaintiff and only reflect the current state of his knowledge
26 of the matter(s) discussed. Plaintiff makes no representation, assertion, or statement as to
27 the knowledge of other individuals, employees, agents, contractors, vendors,
28

1 stockholders, associates, or affiliates. In the event that the Defendant seeks information
2 known to such persons, then the Defendant must individually depose such persons.

- 3 5. The Defendant's Interrogatories repeatedly use certain undefined terms that are vague,
4 ambiguous, or otherwise confusingly worded. Unable to effectively answer the
5 Interrogatories containing such undefined terms, Plaintiff objects to each and every
6 Interrogatory containing such terms and demands clarification from the Defendant.
7

8 **INTERROGATORY NO. 1:** State YOUR full name and all names by which YOU have been
9 known or have used, including nicknames, along with YOUR present address, date of birth, birth place and
10 Social Security Number.

11 **RESPONSE TO INTERROGATORY NO. 1:** Objection. Plaintiff objects to this Interrogatory
12 on the grounds that it is compound and contains subparts in violation of law, rule, or regulation. Plaintiff
13 objects to this Interrogatory on the grounds that it is irrelevant and not reasonably calculated to lead to
14 the discovery of admissible evidence, and is meant to do nothing more than embarrass, annoy, and
15 harass the Plaintiff. Plaintiff's information is protected pursuant to federal and state law. Even should
16 some information from Plaintiff's personal records may be discoverable, this does not grant authority to
17 have full, carte blanche access to all of Plaintiff's personal files and records. The Nevada Supreme Court
18 specifically forbids "carte blanche discovery of all information contained in" records "without regard
19 to relevancy" Schlatter v. Eighth Judicial Dist. Court In & For Clark Cnty., 93 Nev. 189, 192, 561 P.2d
20 1342 (1977). "Our discovery rules provide no basis for such an invasion into a litigant's private affairs
21 merely because redress is sought for personal injury." Id. Subject to and without waiving the foregoing
22 objections, Plaintiff responds that his name is Jesus Mejia, his current address is 8767 Lilac Ave., Las
23 Vegas, Nevada 89142, and his date of birth is October 12, 1973. Discovery is continuing and Plaintiff
24 reserves the right to supplement this response as additional information becomes available.
25

26 **INTERROGATORY NO. 2:** If YOU were involved in any accident or accidents prior to and/or
27 after the ALLEGED OCCURRENCE wherein YOU sustained any injuries whatsoever which required
28 or resulted in any medical care, consultation, examination or treatment, please IDENTIFY of each such

1 accident or accidents including the dates of injuries, treatment and names of doctors or any other
2 member of the healing arts with whom YOU consulted in connection with such accident including
3 information regarding any residual symptoms.

4 **RESPONSE TO INTERROGATORY NO. 2:** Objection. Plaintiff objects to this Interrogatory
5 on the grounds that it is compound and contains subparts in violation of law, rule, or regulation. This
6 Interrogatory is also overly broad and unduly burdensome, as it is unlimited as to time and scope. The
7 Interrogatory is irrelevant not reasonably calculated to lead to the discovery of admissible evidence.
8 Finally, the Interrogatory is vague and ambiguous in its use of the term “accident” and “accidents.”
9 Subject to and without waiving the foregoing objections, Plaintiff responds that, to the best of his
10 knowledge and recollection, he has not been involved in any other incidents in which he sustained
11 injuries to the same body parts that were injured in the subject incident that gives rise to this lawsuit.
12 Discovery is continuing and Plaintiff reserves the right to supplement this response as additional
13 information becomes available.

14 **INTERROGATORY NO. 3:** List the injuries which YOU claim were caused by the ALLEGED
15 OCCURRENCE including all symptoms and residual injuries.

16 **RESPONSE TO INTERROGATORY NO. 3:** Objection. Plaintiff objects to this interrogatory
17 on the grounds that it calls for an expert medical opinion that Plaintiff, as a lay person, is unable to
18 provide. This Interrogatory is also overly broad and unduly burdensome and duplicative as calls for
19 information which is contained in Plaintiff’s medical records which have previously been provided to
20 Defendants. Subject to and without waiving the foregoing objections, Plaintiff responds that, to the best
21 of his knowledge and recollection, he sustained injuries to, but not limited to, pain in right foot,
22 dislocation of tarsometatarsal joint of right foot, swelling and tenderness, lisfranc dislocation, acute
23 lisfranc injury in the midfoot with fractures and joint malalignment, fracture through the proximal waist
24 and the proximal base of the medial cuneiform with osseous malalignment between the fracture
25 fragments, proximal second and third metatarsal base corner fractures, second through fifth tarsal
26 metatarsal joint malalignment, and surrounding soft tissue swelling. Discovery is continuing and
27 Plaintiff reserves the right to supplement this response as additional information becomes available.
28

1 **INTERROGATORY NO. 4:** List all injuries, symptoms or ailments enumerated in YOUR
2 answer to Interrogatory No. 3 which YOU had prior to the ALLEGED OCCURRENCE.

3 **RESPONSE TO INTERROGATORY NO. 4:** Objection. Plaintiff objects to this interrogatory
4 on the grounds that it calls for an expert medical opinion that Plaintiff, as a lay person, is unable to
5 provide. This Interrogatory is also overly broad and unduly burdensome and duplicative as calls for
6 information which is contained in Plaintiff's medical records which have previously been provided to
7 Defendants. Subject to and without waiving the foregoing objections, Plaintiff responds that to the best
8 of his knowledge and recollection, none. Discovery is continuing and Plaintiff reserves the right to
9 supplement this response as additional information becomes available.

10 **INTERROGATORY NO. 5:** List any medical treatment or expense which YOU claim will be
11 necessary in the future as a result of the injuries, symptoms or ailments enumerated in YOUR answer
12 to Interrogatory No. 3. Please state the nature and/or expense and IDENTIFY each doctor, physician or
13 other member of the healing arts who advised of such necessity.

14 **RESPONSE TO INTERROGATORY NO. 5:** Objection. Plaintiff objects to this Interrogatory
15 on the grounds that it is compound and contains subparts in violation of law, rule, or regulation. Plaintiff
16 objects to this interrogatory on the grounds that it calls for an expert medical opinion that Plaintiff, as a
17 lay person, is unable to provide. This Interrogatory is also overly broad and unduly burdensome and
18 duplicative as calls for information which is contained in Plaintiff's medical records which have
19 previously been provided to Defendants. Subject to and without waiving the foregoing objections,
20 Plaintiff responds that to the best of his knowledge, understanding and recollection, there has been
21 discussion of having a follow up surgery in the future to remove hardware placed the prior surgery, but
22 that procedure has not yet been scheduled. Discovery is continuing and Plaintiff reserves the right to
23 supplement this response as additional information becomes available.

24 **INTERROGATORY NO. 6:** In addition to information provided at the early case conference,
25 please IDENTIFY each hospital and each doctor, physician or other member of the healing arts YOU
26 have been to or seen from ten (10) years prior to the day of the ALLEGED OCCURRENCE up to and
27
28

1 including the present date, and to be supplemented up to and including the day of the trial in the event
2 of any further examination, consultation or treatment.

3 **RESPONSE TO INTERROGATORY NO. 6:** Objection. Plaintiff objects to this Interrogatory
4 on the grounds that it is compound and contains subparts in violation of law, rule, or regulation. Plaintiff
5 objects to this Interrogatory on the grounds that it is overly broad, irrelevant, and outside the scope of
6 permissible discovery and not reasonably calculated to lead to the discovery of admissible evidence,
7 and is meant to do nothing more than embarrass, annoy, and harass the Plaintiff. Plaintiff's information
8 is protected pursuant to federal and state law. Even should some information from Plaintiff's personal
9 records may be discoverable, this does not grant authority to have full, carte blanche access to all of
10 Plaintiff's personal files and records. The Nevada Supreme Court specifically forbids "carte blanche
11 discovery of all information contained in" records "without regard to relevancy" Schlatter v. Eighth
12 Judicial Dist. Court In & For Clark Cnty., 93 Nev. 189, 192, 561 P.2d 1342 (1977). "Our discovery
13 rules provide no basis for such an invasion into a litigant's private affairs merely because redress is
14 sought for personal injury." Id. Subject to and without waiving the foregoing objections, Plaintiff
15 responds that, to the best of his knowledge and recollection he has received treatment from the
16 following:
17

- 18 1. NRCP 30(b)(6) Representative and/or
19 Custodian of Records and/or
20 Christopher M. Navarez, MD; David P. Gorczyca MD; Sunil K.
21 Gujrathi MD and Joshua Owen MD of
22 Mountain View Hospital
23 3100 North Tenaya Way
24 Las Vegas, NV 89128
- 25 2. NRCP 30(b)(6) Representative and/or
26 Custodian of Records and/or
27 Christopher M. Navarez, MD of
28 Fremont Emergency Services
PO Box 638972
Cincinnati, OH 45263-8972

3. NRCP 30(b)(6) Representative and/or
Custodian of Records and/or
David P. Gorczyca MD; Sunil K. Gujrathi MD and Joshua Owen MD of
Radiology Specialists LLC
PO Box 50709
Henderson, NV 89016-0709
4. NRCP 30(b)(6) Representative and/or
Custodian of Records and/or
Christopher Krall, MD; Trevor Houston, MD; Aditi Singh, MD; Sean Davis, MD;
Jona Jimenez, PT and Richard N. Wulff MD of
University Medical Center
1800 W. Charleston Blvd.
Las Vegas, NV 89102
5. NRCP 30(b)(6) Representative and/or
Custodian of Records and/or
Christopher Krall, MD of
EMP Of Clark
PO Box 18925
Belfast, ME 04915-4084
6. NRCP 30(b)(6) Representative and/or
Custodian of Records and/or
Anil Rao MD; Steven Topham MD; Michael Carducci MD and
Richard N. Wulff MD of
Desert Radiology
PO Box 3057
Indianapolis, IN 46206-3057
7. NRCP 30(b)(6) Representative and/or
Custodian of Records and/or
Richard N. Wulff, MD of
Orthopedic Specialists of Nevada
3233 W Charleston Blvd suite 101
Las Vegas, NV 891021923
8. NRCP 30(b)(6) Representative and/or
Custodian of Records and/or
Tyler Meyers, PT of
ATI Physical Therapy
3233 W. Charleston Suite
Las Vegas, NV 89102

1 And that these providers have been more fully identified in Plaintiff's Initial 16.1 Disclosures
2 and any supplements thereto. Discovery is continuing and Plaintiff reserves the right to supplement
3 this response as additional information becomes available.
4

5 **INTERROGATORY NO. 7:** List the amount in dollars of each item of special damage (each
6 loss which YOU have incurred) including loss of income/loss of earning capacity, which YOU claim
7 was caused by the occurrence which is the subject of PLAINTIFF'S Complaint, with sufficient
8 identification of the nature of each item or loss to be able to identify how it was determined or to whom
9 it was and is to be paid, including a description of the services or products provided or to be provided.

10 **RESPONSE TO INTERROGATORY NO. 7:** Objection. Plaintiff objects to this Interrogatory
11 on the grounds that it is compound and contains subparts in violation of law, rule, or regulation. Plaintiff
12 objects to this interrogatory on the grounds that it calls for an expert opinion that Plaintiff, as a lay
13 person, is unable to provide. This Interrogatory is also overly broad and unduly burdensome. The
14 Interrogatory is also duplicative and calls for Plaintiff to compile and restate information that has
15 previously been provided to, and is equally available to, Defendants, in the form of the computation of
16 damages included in Plaintiff's Initial 16.1 List of Witnesses and Documents. Subject to and without
17 waiving the foregoing objections, Plaintiff identifies his damages as follows:

18 **NRCP 16.1(A)(1)(C) COMPUTATION OF DAMAGES**

19 NRCP 16.1(a)(1)(C) states in pertinent part as follows:
20

21 "A computation of any category of damages claimed by the disclosing
22 party, making available for inspection and copying under Rule 34 the
23 documents or other evidentiary matter, not privileged or protected from
24 disclosure, on which such computation is based, including materials
25 bearing on the nature and extent of injuries suffered."

26 Plaintiff JESUS MEJIA'S total damages including to date are **\$105,391.05 calculated as follows:**

Mountain View Hospital	\$ 20,227.00
Fremont Emergency Services	\$ 927.00
Radiology Specialists LLC	\$ 231.00
University Medical Center	\$ 76,415.41

EMP Of Clark	\$ 1,396.50
Desert Radiology	\$ 694.22
Orthopedic Specialists Of Nevada	\$ 3,240.03
ATI Physical Therapy	\$ 2,259.89
Total	\$ 105,391.05
Future Treatment: To include but not limited to, injection therapy and surgical intervention into Plaintiff Jesus Mejia's right foot, right ankle, low back as well as chiropractic care and physical therapy.	Pending
Past Due and Future Pain and Suffering	To Be Determined by Jury

Discovery is continuing and Plaintiff reserves the right to supplement this response as additional information becomes available.

INTERROGATORY NO. 8: If, as a result of any injuries sustained as a result of the incident mentioned in YOUR Complaint, YOU are unable to perform any of YOUR normal and usual functions, duties or activities of whatever nature at any time since the incident (which YOU are able to perform prior to the incident), please IDENTIFY each such function, duty and activity YOU are unable and the inclusive period of time from day to day that YOU are unable to perform such activity, and which activity YOU are unable to perform and which activities YOU are still unable to perform.

RESPONSE TO INTERROGATORY NO. 8: Objection. Plaintiff objects to this Interrogatory on the grounds that it is compound and contains subparts in violation of law, rule, or regulation. Plaintiff objects to this interrogatory on the grounds that it calls for an expert opinion that Plaintiff, as a lay person, is unable to provide. This Interrogatory is also overly broad and unduly burdensome and overly broad. Subject to and without waiving the foregoing objections, Plaintiff responds that to the best of his recollection, since the incident, among other things, he has been severely limited his ability to participate in physical activities, including running, exercising, walking, standing and other physical activities. Discovery is continuing and Plaintiff reserves the right to supplement this response as additional information becomes available.

1 **INTERROGATORY NO. 10:** If YOU have ever been convicted of any felony and/or any crime
2 involving dishonesty (including misdemeanors), please IDENTIFY all relevant facts relating to such
3 conviction, including, but not limited to, the nature of the crime and the date and place of each
4 conviction.

5 **RESPONSE TO INTERROGATORY NO. 10:** Objection. This interrogatory is overly broad,
6 unduly burdensome and is not limited in time so as to be relevant or material to the subject matter of
7 the pending action. This Interrogatory is also compound and contains multiple subparts in violation of
8 law, rule or regulation. Subject to and without waiving the foregoing objections, Plaintiff responds that
9 to the best of his knowledge and recollection, none.

10 **INTERROGATORY NO. 11:** Please IDENTIFY, sufficiently to permit service of subpoena,
11 each witness to the accident referenced in YOUR Complaint known to YOU, YOUR attorney, agent, or
12 any investigator or detective employed by YOU or YOUR attorney or anyone acting on YOUR behalf.

13 **RESPONSE TO INTERROGATORY NO. 11:** Objection. This Interrogatory is overly
14 broad and unduly burdensome. The interrogatory is vague and ambiguous, particularly in its use of the
15 phrase “witness to the accident.” Subject to and without waiving the foregoing objections, Plaintiff
16 responds that he does not know who actually observed the incident, other than his teenage son, Jonathan
17 Mejia. Discovery is continuing and Plaintiff reserves the right to supplement this response as additional
18 information becomes available.

19 **INTERROGATORY NO. 12:** State the extent of YOUR recovery from the injuries YOU claim
20 resulted from the ALLEGED OCCURRENCE.

21 **RESPONSE TO INTERROGATORY NO. 12:** Objection. Plaintiff objects to this
22 Interrogatory on the grounds that it is compound and contains subparts in violation of law, rule, or
23 regulation. Plaintiff objects to this interrogatory on the grounds that it calls for an expert medical opinion
24 that Plaintiff, as a lay person, is unable to provide. This Interrogatory is also overly broad and unduly
25 burdensome. Subject to and without waiving the foregoing objections, Plaintiff responds that he
26 continues to deal with pain and soreness, including additional pain when the weather changes; he still
27 has a lump around his ankle area that swells up when he spends more than a couple of hours on his feet
28

1 or puts weight on his leg. Discovery is continuing and Plaintiff reserves the right to supplement this
2 response as additional information becomes available.

3 **INTERROGATORY NO. 13:** IDENTIFY all accidents of any type which YOU have had
4 during the past ten years wherein YOU received personal injuries and describe each such injury.

5 **RESPONSE TO INTERROGATORY NO. 13:** Objection. This Interrogatory is also overly
6 broad and unduly burdensome, and outside the scope of permissible discovery as it is irrelevant and not
7 reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving
8 the foregoing objections, Plaintiff responds that, to the best of his knowledge and recollection, none
9 Discovery is continuing and Plaintiff reserves the right to supplement this response as additional
10 information becomes available.

11 **INTERROGATORY NO. 14:** State the nature and date of any claims YOU have made prior to
12 or during the pendency of the present action against any person or organization for damages or personal
13 injuries or damages to YOUR property, and IDENTIFY sufficiently to permit service of subpoena each
14 person or organization, including but not limited to worker's compensation.

15 **RESPONSE TO INTERROGATORY NO. 14:** Objection. This Interrogatory is also overly
16 broad and unduly burdensome, unlimited as to time and scope, and outside the scope of permissible
17 discovery as it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
18 Plaintiff further objects on the grounds that the Request seeks information not relevant to the subject
19 matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence, in
20 violation of the collateral source rule. Subject to and without waiving the foregoing objections, Plaintiff
21 responds that, to the best of his knowledge and recollection, other than those claims that are the basis to
22 this lawsuit, none. Discovery is continuing and Plaintiff reserves the right to supplement this response
23 as additional information becomes available.

24 **INTERROGATORY NO. 15:** In YOUR own words, describe the accident or incident which is
25 the subject matter of the Complaint on file herein, including but not limited to the force of the impact
26 felt by YOUR body on the date of the ALLEGED OCCURRENCE as a result of YOUR fall as set forth
27 within YOUR Complaint.
28

1 **RESPONSE TO INTERROGATORY NO. 15:** Objection. This Interrogatory is compound and
2 contains subparts in violation of law, rule, or regulation. This Interrogatory is overly broad, unduly
3 burdensome, vague, ambiguous, burdensome, and seeks a lengthy narrative which is best suited for
4 verbal interrogatory during deposition. The Interrogatory also seeks expert opinions as to forces, which
5 Plaintiff, as a lay person, cannot answer. Subject to and without waiving the foregoing objections,
6 Plaintiff responds that, to the best of his knowledge and recollection, he was at Gravady with his son,
7 Jonathan and was jumping on a trampoline when he suddenly felt a sharp pain in his foot and leg.
8 Discovery is continuing and Plaintiff reserves the right to supplement this response as additional
9 information becomes available.

10 **INTERROGATORY NO. 16:** Please state all facts that support YOUR contention within
11 paragraph 25 of YOUR Complaint on file herein wherein it states: "That on or about August 1, 2018,
12 and for some time prior thereto, Defendants, and each of the Defendants....negligently and carelessly
13 owned, constructed, maintained, operated, occupied and controlled the Premises in a manner that
14 created and/or became an unreasonably dangerous hazard to patrons."

15 **RESPONSE TO INTERROGATORY NO. 16:** Objection. Plaintiff objects to this
16 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
17 outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial
18 speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly
19 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
20 is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for
21 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
22 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
23 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
24 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
25 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
26 lead to believe that participation at the park was safe, and did not present any risks. Discovery is
27
28

1 continuing and Plaintiff reserves the right to supplement this response as additional information
2 becomes available.

3 **INTERROGATORY NO. 17:** Please state all facts that support YOUR contention within
4 paragraph 26 of YOUR Complaint on file herein wherein it states: "That on or about August 1, 2018,
5 and for some time prior thereto, Defendants, and each of the Defendants, failed to maintain the aforesaid
6 premises in a reasonably safe condition..."

7 **RESPONSE TO INTERROGATORY NO. 17:** Objection. Plaintiff objects to this
8 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
9 outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial
10 speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly
11 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
12 is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for
13 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
14 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
15 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
16 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
17 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
18 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
19 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
20 is continuing and Plaintiff reserves the right to supplement this response as additional information
21 becomes available.
22

23 **INTERROGATORY NO. 18:** Please state all facts that support YOUR contention within
24 paragraph 29, subsection (a) of YOUR Complaint on file herein wherein it states: "Defendants, and each
25 of them, breached a duty owed to Plaintiff, by at least the following careless and negligent acts, inter
26 alia: (a) Failure to provide a safe premises for Plaintiff..."

27 **RESPONSE TO INTERROGATORY NO. 18:** Objection. Plaintiff objects to this
28 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is

1 outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial
2 speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly
3 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
4 is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for
5 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
6 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
7 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
8 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
9 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
10 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
11 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
12 is continuing and Plaintiff reserves the right to supplement this response as additional information
13 becomes available.

14
15 **INTERROGATORY NO. 19:** Please state all facts that support YOUR contention within
16 paragraph 29, subsection (b) of YOUR Complaint on file herein wherein it states: "Defendants, and
17 each of them, breached a duty owed to Plaintiff, by at least the following careless and negligent acts,
18 inter alia: (b) Failure to warn Plaintiff of the dangerous and hazardous condition then and there existing
19 in the Premises..."

20 **RESPONSE TO INTERROGATORY NO. 19:** Objection. Plaintiff objects to this
21 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
22 outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial
23 speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly
24 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
25 is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for
26 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
27 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
28 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,

1 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
2 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
3 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
4 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
5 is continuing and Plaintiff reserves the right to supplement this response as additional information
6 becomes available.

7 **INTERROGATORY NO. 20:** Please state all facts that support YOUR contention within
8 paragraph 29, subsection (c) of YOUR Complaint on file herein wherein it state: “Defendants, and each
9 of them, breached a duty owed to Plaintiff, by at least the following careless and negligent acts, inter
10 alia: (c) Failure to properly and adequately inspect said premises to discover the hazardous and
11 dangerous condition...”

12 **RESPONSE TO INTERROGATORY NO. 20:** Objection. Plaintiff objects to this
13 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
14 outside of Plaintiff’s possession, custody or control, and requires Plaintiff to engage in substantial
15 speculation as to “all facts.” Plaintiff further objects on the grounds that the Interrogatory improperly
16 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
17 is also premature as discovery and Plaintiff’s investigation are ongoing. The Interrogatory also calls for
18 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
19 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
20 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
21 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
22 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
23 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
24 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
25 is continuing and Plaintiff reserves the right to supplement this response as additional information
26 becomes available.
27
28

1 **INTERROGATORY NO. 21:** Please state all facts that support YOUR contention within
2 paragraph 29 , subsection (d) of YOUR Complaint on file herein wherein it states: “Defendants, and
3 each of them, breached a duty owed to Plaintiff, by at least the following careless and negligent acts,
4 inter alia: (d) Failure to properly and adequately construct, control, inspect and/or maintain said
5 premises to discovery the hazardous and dangerous condition and/or defect then and there existing
6 within the Premises...”

7 **RESPONSE TO INTERROGATORY NO. 21:** Objection. Plaintiff objects to this
8 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
9 outside of Plaintiff’s possession, custody or control, and requires Plaintiff to engage in substantial
10 speculation as to “all facts.” Plaintiff further objects on the grounds that the Interrogatory improperly
11 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
12 is also premature as discovery and Plaintiff’s investigation are ongoing. The Interrogatory also calls for
13 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
14 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
15 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
16 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
17 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
18 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
19 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
20 is continuing and Plaintiff reserves the right to supplement this response as additional information
21 becomes available.
22

23 **INTERROGATORY NO. 22:** Please state all facts that support YOUR contention within
24 paragraph 29, subsection (e) of YOUR Complaint on file herein wherein it states: “Defendants, and each
25 of them, breached a duty owed to Plaintiff, by at least the following careless and negligent acts, inter
26 alia: (e) Failure to properly inform and prepare Plaintiff for the dangers posed by the inherently
27 dangerous and hazardous activities taking place on the Premises...”
28

1 **RESPONSE TO INTERROGATORY NO. 22:** Objection. Plaintiff objects to this
2 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
3 outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial
4 speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly
5 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
6 is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for
7 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
8 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
9 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
10 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
11 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
12 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
13 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
14 is continuing and Plaintiff reserves the right to supplement this response as additional information
15 becomes available.
16

17 **INTERROGATORY NO. 23:** Please state all facts that support YOUR contention within
18 paragraph 29, subsection (f) of YOUR Complaint on file herein wherein it states: "Defendants, and each
19 of them, breached a duty owed to Plaintiff, by at least the following careless and negligent acts, inter
20 alia: (f) Failure to properly hire, train, monitor, and supervise all employees to ensure that they properly
21 maintain, and inspect the area of the Premises and/or property (sic) warn, inform and prepare patrons
22 and customers of and for the dangers existing on the Premises..."

23 **RESPONSE TO INTERROGATORY NO. 23:** Objection. Plaintiff objects to this
24 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
25 outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial
26 speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly
27 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
28 is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for

1 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
2 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
3 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
4 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
5 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
6 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
7 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
8 is continuing and Plaintiff reserves the right to supplement this response as additional information
9 becomes available.

10 **INTERROGATORY NO. 24:** Please state all facts that support YOUR contention within
11 paragraph 29, subsection (g) of YOUR Complaint on file herein wherein it states: “Defendants, and
12 each of them, breached a duty owed to Plaintiff, by at least the following careless and negligent acts,
13 inter alia: (g) Violations of certain statutes, ordinances and building codes, which Plaintiff prays leave
14 of Court to insert the exact statutes or ordinances or codes at the time of trial.”

15 **RESPONSE TO INTERROGATORY NO. 24:** Objection. Plaintiff objects to this
16 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
17 outside of Plaintiff’s possession, custody or control, and requires Plaintiff to engage in substantial
18 speculation as to “all facts.” Plaintiff further objects on the grounds that the Interrogatory improperly
19 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
20 is also premature as discovery and Plaintiff’s investigation are ongoing. The Interrogatory also calls for
21 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
22 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
23 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
24 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
25 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
26 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
27 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
28

1 is continuing and Plaintiff reserves the right to supplement this response as additional information
2 becomes available.

3 **INTERROGATORY NO. 25:** Please state all facts that support YOUR contention within
4 paragraph 40, subsection (a) of the First Cause of Action of YOUR Complaint on file herein wherein it
5 states: “That Defendants, and each of them, at the time of the incident were negligent and careless or
6 grossly negligent in the following particulars, but not limited to: (a) Failing to adequately control,
7 inspect, secure and/or maintain the Premises in a reasonably safe condition.”

8 **RESPONSE TO INTERROGATORY NO. 25:** Objection. Plaintiff objects to this
9 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
10 outside of Plaintiff’s possession, custody or control, and requires Plaintiff to engage in substantial
11 speculation as to “all facts.” Plaintiff further objects on the grounds that the Interrogatory improperly
12 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
13 is also premature as discovery and Plaintiff’s investigation are ongoing. The Interrogatory also calls for
14 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
15 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
16 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
17 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
18 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
19 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
20 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
21 is continuing and Plaintiff reserves the right to supplement this response as additional information
22 becomes available.
23

24 **INTERROGATORY NO. 26:** Please state all facts that support YOUR contention within
25 paragraph 40, subsection (b) of the First Cause of Action of YOUR Complaint on file herein wherein it
26 states: “That Defendants, and each of them, at the time of the incident were negligent and careless or
27 grossly negligent in the following particulars, but not limited to: (b) Failing to adequately warn and/or
28

1 protect Plaintiff from stepping, walking, jumping, landing or falling on the dangerous condition on the
2 Premises."

3 **RESPONSE TO INTERROGATORY NO. 26:** Objection. Plaintiff objects to this
4 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
5 outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial
6 speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly
7 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
8 is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for
9 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
10 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
11 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
12 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
13 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
14 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
15 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
16 is continuing and Plaintiff reserves the right to supplement this response as additional information
17 becomes available.
18

19 **INTERROGATORY NO. 27:** Please state all facts that support YOUR contention within
20 paragraph 40, subsection (c) of the First Cause of Action of YOUR Complaint on file herein wherein it
21 states: "That Defendants, and each of them, at the time of the incident were negligent and careless or
22 grossly negligent in the following particulars, but not limited to: (c) Failing to warn and/or make known
23 the dangerous conditions."

24 **RESPONSE TO INTERROGATORY NO. 27:** Objection. Plaintiff objects to this
25 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
26 outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial
27 speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly
28 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory

1 is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for
2 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
3 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
4 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
5 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
6 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
7 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
8 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
9 is continuing and Plaintiff reserves the right to supplement this response as additional information
10 becomes available.

11 **INTERROGATORY NO. 28:** Please state all facts that support YOUR contention within
12 paragraph 40, subsection (d) of the First Cause of Action of YOUR Complaint on file herein wherein it
13 states: "That Defendants, and each of them, at the time of the incident were negligent and careless or
14 grossly negligent in the following particulars, but not limited to: (d) Failing to respond to prior
15 complaints regarding the dangerous condition and remedy the dangerous condition."

16 **RESPONSE TO INTERROGATORY NO. 28:** Objection. Plaintiff objects to this
17 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
18 outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial
19 speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly
20 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
21 is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for
22 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
23 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
24 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
25 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
26 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
27 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
28

1 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
2 is continuing and Plaintiff reserves the right to supplement this response as additional information
3 becomes available.

4 **INTERROGATORY NO. 29:** Please state all facts that support YOUR contention within
5 paragraph 40, subsection (e) of the First Cause of Action of YOUR Complaint on file herein wherein it
6 states: “That Defendants, and each of them, at the time of the incident were negligent and careless or
7 grossly negligent in the following particulars, but not limited to: (e) Showing reckless disregard for the
8 safety of others, including the Plaintiff.”

9 **RESPONSE TO INTERROGATORY NO. 29:** Objection. Plaintiff objects to this
10 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
11 outside of Plaintiff’s possession, custody or control, and requires Plaintiff to engage in substantial
12 speculation as to “all facts.” Plaintiff further objects on the grounds that the Interrogatory improperly
13 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
14 is also premature as discovery and Plaintiff’s investigation are ongoing. The Interrogatory also calls for
15 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
16 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
17 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
18 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
19 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
20 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
21 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
22 is continuing and Plaintiff reserves the right to supplement this response as additional information
23 becomes available.

24 **INTERROGATORY NO. 30:** Please state all facts that support YOUR contention within
25 paragraph 52 of the Section Cause of Action of YOUR Complaint on file herein wherein it states: “That
26 floor and/or ground and/or trampoline maintenance and repair safety standards, laws, codes, rules,
27 regulations, and/or ordinances have been violated by the Defendants, and each of them...”
28

1 **RESPONSE TO INTERROGATORY NO. 30:** Objection. Plaintiff objects to this
2 Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is
3 outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial
4 speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly
5 and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory
6 is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for
7 a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the
8 Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory
9 during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that,
10 among other things, Plaintiff received no training, instruction, warnings, or other explanations on
11 dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also
12 lead to believe that participation at the park was safe, and did not present any risks. Finally, we was
13 seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery
14 is continuing and Plaintiff reserves the right to supplement this response as additional information
15 becomes available.
16

17 **INTERROGATORY NO. 31:** Please state all facts that support YOUR contention within
18 paragraph 52 of the Second Cause of Action of YOUR Complaint on file herein that "...Violation of
19 the ordinance and/or statutes caused the injuries and damages described herein."
20

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

RESPONSE TO INTERROGATORY NO. 31: Objection. Plaintiff objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is outside of Plaintiff's possession, custody or control, and requires Plaintiff to engage in substantial speculation as to "all facts." Plaintiff further objects on the grounds that the Interrogatory improperly and prematurely attempts to limit the evidence upon which Plaintiff may rely at trial. The Interrogatory is also premature as discovery and Plaintiff's investigation are ongoing. The Interrogatory also calls for a legal conclusion and/or expert opinion, which Plaintiff is not qualified to provide. Finally, the Interrogatory is vexatious and seeks a lengthy narrative which is best suited for verbal interrogatory during deposition. Subject to and without waiving the foregoing objections, Plaintiff responds that, among other things, Plaintiff received no training, instruction, warnings, or other explanations on dangers, safety, hazards, or risks before being permitted to jump on the trampolines. Plaintiff was also lead to believe that participation at the park was safe, and did not present any risks. Finally, we was seriously injured while jumping on the trampoline area in a normal and anticipated fashion. Discovery is continuing and Plaintiff reserves the right to supplement this response as additional information becomes available.

DATED this 10th day of April, 2020

BIGHORN LAW

By: /s/ Joshua P. Berrett, Esq.

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

JOSHUA P. BERRETT, ESQ.

Nevada Bar No.: 12697

716 S. Jones Boulevard

Las Vegas, Nevada 89107

Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to NRCP 5, I hereby certify that I am an employee of BIGHORN LAW and on the 10th
4 day of April, 2020, an electronic copy of the **PLAINTIFF'S RESPONSES TO DEFENDANTS**
5 **GRAVADY NEVADA, LLC AND CIRCUSTRIX, LLC'S FIRST SET OF INTERROGATORIES**
6 **TO PLAINTIFF JESUS MEJIA** as follows:

- 7
8 ☒ Electronic Service – By serving a copy thereof through the Court’s electronic service system
9 ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and
10 addressed as listed below; and/or
11 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s)
12 shown below and in the confirmation sheet filed herewith. Consent to service under NRCP
13 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in
14 writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of
15 Service; and/or

13 **Phillip V. Tiberi, Esq.**

14 Nevada Bar No. 6146

15 **Wood, Smith, Henning & Berman LLP**

16 2881 Business Park Court, Suite 200

17 Las Vegas, Nevada 89128-9020

18 Telephone: 702 251 4100

19 Facsimile: 702 251 5405

20 ptiberi@wshblaw.com


21 *Attorneys for Defendants Gravady Nevada, LLC*
22 *and CircusTrix, LLC*

23
24 /s/Sandy L. Jackson
25 An employee/agent of **BIGHORN LAW**

EXHIBIT E

Incident Report

#4939

Select Park *	Gravady
Name of Participant: *	Jesus Mejia
Name of Guardian (if participant is a minor):	
Birthdate of Participant *	<u>Friday, October 12, 1973</u>
Date of Incident *	<u>Wednesday, August 1, 2018</u>
Time of Incident *	6:16:00 PM
Does this incident require further medical treatment by a Licensed Medical Professional which is reasonably expected to result in an expense of any type? *	Yes
Type of Injury *	<ul style="list-style-type: none">Foot
Describe Other Type of Injury	
Attraction where injury occurred: *	Open Jump
Describe Attraction where Injury Occurred:	
Description of injury or incident *	At 18:16:29 on Camera 8 Jesus is jumping across the open jump area when he jumps on the pad and then collapses onto the trampoline over. At 18:17:15 on Camera 8 Jordan Burnett ran over to check on the injured jumper. He immediately after called for help. At 18:18:18 on camera 8 the shift lead came over to see the situation and write a incident report. At 18:20:26 on camera 8 and 3 Damian and Jordan helped wheel Jesus out on a chair. At 18:25:35 Jordan White helped Jesus out the door and to his car.
Staff Assistance Provided *	Jordan W. wrote the incident report. Tuqa M. provided ice
Type of Waiver Signed: *	Printed
Attach the Waiver	 jesus_mejia_waiver.pdf (Moved to Dropbox folder /Wufoo IR)
Name of individual who completed the Incident Report: *	Jordan White
Was the CCTV footage saved and uploaded to google drive in your park specific folder? *	Yes
Date Saved	<u>Wednesday, August 1, 2018</u>
What Shift Leader or GM was on site at the time of the incident? *	Jordan White
Was it during any special program? *	No
If yes, in which program did the incident occur?	
Were other witnesses involved? *	No
If so, were they a customer or a Flight Crew Member? (Select all that apply)	
Witness Names:	
Who from the Flight Crew provided injury response: *	Jordan burnett
Did anyone else respond? If yes, please list who responded.	Jordan White, Tuqa Mahdy, Damian Gordon
Please provide additional information (e.g. additional circumstances around the injury; statements made by the injured participant and/or other guest; any pre-existing conditions, etc) *	N/A

Created 8 Aug 2018 9:11:35 PM	174.71.236.179 IP Address	Updated 8 Aug 2018 9:12:17 PM
PUBLIC		PUBLIC

Complete

EXHIBIT F

Phillip V. Tiberi, Esq.
Nevada Bar No. 6146
Kyle J. Hoyt, Esq.
Nevada Bar No. 14886
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2881 Business Park Court, Suite 200
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Telephone: 702 251 4100
Facsimile: 702 251 5405
ptiberi@wshblaw.com
Attorneys for Defendants Gravady Nevada, LLC
and CircusTrix, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

JESUS MEJIA, an individual,
Plaintiff,

v.

GRAVADY NEVADA, LLC, a Nevada
Limited Liability Company; CIRCUSTRIX,
LLC, a Utah Limited Liability Company;
ASSAF NEVADA, INC., a Nevada
Corporation; DOE PROPERTY OWNER I-V;
ROE PROPERTY OWNER I-V; ROE
MAINTENANCE COMPANY I-V; ROE
PROPERTY MANAGEMENT COMPANY I-
V; DOE MAINTENANCE WORKER I-V;
DOE PROPERTY MANAGER I-V; DOE
EMPLOYEE I-V; DOE MANAGER I-V;
ROE EMPLOYER I-V; DOE EQUIPMENT
INSTALLER I-V; ROE EQUIPMENT
INSTALLATION COMPANY; and ROE
COMPANIES I-V,

Defendants.

Case No.: A-19-800435-C
Dept. No.: IV

**DECLARATION OF CORD ROBBINS IN
SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

DECLARATION OF CORD ROBBINS

I, Cord Robbins, declare as follows:

1. I am the Chief Park Operator for CircusTrix, a party in the above-entitled action. I
am over 18 years of age. I know the following facts to be true of my own knowledge, and if called

1 to testify, I could competently do so.

2 2. Gravady is a trampoline park located at 7350 Prairie Falcon Rd #120, Las Vegas,
3 NV 89128 that provides to the public various trampoline related and amusement activities, which
4 include but are not limited to trampoline dodge ball, trampoline basketball, aerial training, fitness
5 classes, trampoline courts and foam pit activities.

6 3. Prior to a patron gaining access to the activities provided by Gravady, patrons are
7 required to review and sign a Gravady Nevada, LLC, Participant Agreement, Indemnification,
8 General Release and Assumption.

9 4. Patrons signing the waiver must be 18 years of age or older in order to sign the
10 Participant Agreement.

11 5. As part of the Participant Agreement, patrons acknowledge all risks, known and
12 unknown, including the potential for serious bodily injury, permanent disability, paralysis and loss
13 of life.

14 6. As part of that acknowledgment and execution of the Participant Agreement, patrons
15 expressly release Gravady, as well as their agents, owners, officers, directors, principals, volunteers,
16 participants, clients, customers, invitees, employees, independent contractors, insurers, facility
17 operators, land and/or premises owners from any and claims for liability.

18 7. Pursuant to the terms of the Participant Agreement, it is understood that the waiver
19 extends into the future and has the same full force and effect upon subsequent visits to Gravady.

20 8. Gravady does not permit access to the trampoline park to guests unless they have
21 executed a Participant Agreement. A guest need only sign a Participant Agreement once, after which
22 the employee checking them in for any subsequent visits can and does check to ensure that there is
23 a waiver on file before permitting access.

24 9. Upon review of the subject matter litigation, Plaintiff Jesus Mejia executed a
25 Gravady Nevada, LLC, Participant Agreement, Indemnification, General Release and Assumption
26 form on July 1, 2018.

27 10. Plaintiff Jesus Mejia noted his date of birth as October 12, 1973 on the Gravady
28 Nevada, LLC, Participant Agreement, Indemnification, General Release and Assumption form,

1 acknowledging that he was of the age of majority with the ability to enter into a contract agreement.

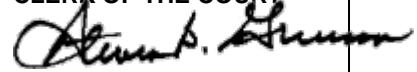
2 11. Plaintiff Jesus Mejia alleges to have sustained personal injury on August 1, 2018 as
3 a result of participating in activities in the area designated as the open jump area.

4 12. Pursuant to the copy of the Gravady Nevada, LLC, Participant Agreement,
5 Indemnification, General Release and Assumption form. Plaintiff Jesus Mejia entered into a valid
6 contractual agreement wherein he waived any and all potential claims for personal injury as a result
7 of his participation in trampoline park related activities at Gravady.

8 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
9 is true and correct.

10 Executed on this 7th day of April, 2021

11
12 /s/ Cord Robbins
13 Cord Robbins
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1 **OPPM**

2 **KIMBALL JONES, ESQ.**

3 Nevada Bar No.: 12982

4 **EVAN K. SIMONSEN, ESQ.**

5 Nevada Bar No.: 13762

6 **BIGHORN LAW**

7 2225 E. Flamingo Rd.

8 Building 2, Suite 300

9 Las Vegas, Nevada 89119

10 Phone: (702) 333-1111

11 Email: Kimball@Bighornlaw.com

12 Evans@Bighornlaw.com

13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 JESUS MEJIA, an individual,

17 Plaintiff,

18 v.

19 GRAVADY NEVADA, LLC, a Nevada Limited
20 Liability Company; CIRCUSTRIX, LLC, a Utah
21 Limited Liability Company; ASSAF NEVADA,
22 INC., a Nevada Corporation; DOE PROPERTY
23 OWNER I-V; ROE PROPERTY OWNER I-V;
24 ROE MAINTENANCE COMPANY I-V; ROE
25 PROPERTY MANAGEMENT COMPANY I-V;
26 DOE MAINTENANCE WORKER I-V; DOE
27 PROPERTY MANAGER I-V; DOE EMPLOYEE I-
28 V; DOE MANAGER I-V; ROE EMPLOYER IV;
DOE EQUIPMENT INSTALLER, I-V; ROE
EQUIPMENT INSTALLATION COMPANY; and
ROE COMPANIES I-V,

Defendants.

CASE NO.: A-19-800435-C

DEPT. NO.: Department 4

24 **PLAINTIFF JESUS MEJIA'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY**
25 **JUDGMENT**

26 COMES NOW Plaintiff, JESUS MEJIA, an individual, by and through his counsels of record,
27 KIMBALL JONES, ESQ. and EVAN SIMONSEN, ESQ., with the Law Offices of **BIGHORN LAW**,
28 and hereby submits Opposition to Defendants' Motion for Summary Judgment.

1 Whether or not an individual has “assumed a risk” is a question of fact that is reserved solely for
2 the jury to determine. The instant matter is ideal for showcasing *why* an assumption of risk analysis is
3 left for the jury to determine—Plaintiff is Spanish-speaking and was offered only an English-language
4 waiver, which was never explained to him in his native tongue, it is thus a clear question of fact as to
5 whether or not Plaintiff understood the document well enough to “assume” the risk set forth therein.
6 Since the determination of this Motion for Summary Judgment relies entirely on questions of fact, it
7 cannot succeed.

9 Moreover, the waiver on which Defendant relies is clearly an Adhesion Contract of the type that
10 Nevada has deemed unenforceable. Plaintiff was provided no opportunity to negotiate the terms of the
11 adhesion contract, which exceeds all bounds of permissible scope by waiving even gross negligence
12 and willful acts by the Defendant.

14 Finally, it bears noting that Discovery is not yet complete and as such Defendant’s Motion is
15 premature.

16 This Opposition is supported by the papers and pleadings on file herein, the accompanying
17 Memorandum of Points and Authorities, the attached Exhibits and any Oral Argument that the Court
18 may entertain at the hearing of said motion.

20 DATED this 21st day of April, 2021.

BIGHORN LAW

By: /s/ Evan Simonsen

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

EVAN K. SIMONSEN, ESQ.

Nevada Bar No.: 13762

BIGHORN LAW

2225 E. Flamingo Rd.

Building 2, Suite 300

Las Vegas, Nevada 89119

Attorneys for Plaintiff

DECLARATION OF EVAN SIMONSEN, ESQ. IN ACCORDANCE WITH NRCP 56(d)

EVAN SIMONSEN, ESQ., under penalty of perjury declares the following is true and correct:

1. I am an attorney, duly licensed to practice law in the State of Nevada, with the Law Offices of BIGHORN LAW.

2. I am knowledge of and am competent to testify as to the matters set forth herein.

3. My understanding is that Defendants' Motion is presented under the Assumption of Risk doctrine and that case law dictates that Assumption of Risk is a question of fact for the jury to consider, in regard to whether Plaintiff was fully aware of the nature of the risks involved in an activity.

4. Plaintiff anticipates that this element will be fully presented to the jury, who may then determine this genuine issue of material fact.

5. As such, Summary Judgment at this juncture is premature.

6. This Declaration is made in good faith, and not for the purposes of delay.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

/s/ *Evan Simonsen*

EVAN SIMONSEN, ESQ.

I. INTRODUCTION

The entirety of Defendants' Motion is based upon the erroneous argument that Plaintiff assumed the risk of injury when he signed a release and purchased a ticket to use Defendants' facilities.

Defendants' Motion fails for numerous reasons. First, Defendants fail to note that, in Nevada, an individual must be fully cognizant of the dangers inherent in an activity, and that the question of whether an individual has **fully, knowledgeably** assumed the risks inherent in an activity is a **question of fact** for the jury:

Ms. Renaud denied appreciation of the risks associated with the free-fall simulator. **Because actual knowledge of the risks assumed is an essential element of this defense, such a matter must be reserved for the fact finder. It is necessary to evaluate all the circumstances as they existed at the time the release was obtained.** Considerations should include (but are not limited to) the following: the nature and extent of the injuries, the haste or lack thereof with which the release was obtained, and the understandings and expectations of the parties at the time of signing.

1
2 **Thus, because there was a dispute as to whether Ms. Renaud**
3 **knowingly and voluntarily assumed the risks associated with the**
4 **simulator, the matter was not appropriate for a determination as a**
5 **matter of law. E.g., *Pacific Pools Constr. v. McClain's Concrete*, 101**
6 **Nev. 557, 706 P.2d 849 (1985). See also *O'Connell v. Walt Disney***
7 ***World Co.*, 413 So.2d 444 (Fla.Dist.Ct.App.1982) (a signed liability**
8 **waiver was deemed not sufficient as a matter of law to show that**
9 **appellant subjectively understood the risks inherent in horseback**
10 **riding and actually intended to assume those risks). Here, it is**
11 **necessary for the fact finder to hear testimony and assess credibility.**
12 **Accordingly, we reverse the ruling of the district court and remand the**
13 **case for further proceedings consistent with this opinion. In light of**
14 **our disposition, we decline to reach the other contentions raised on**
15 **appeal.**

16 Renaud v. 200 Convention Ctr. Ltd., 102 Nev. 500, 501–02, 728 P.2d 445, 446 (1986).

17 With Nevada law clearly proclaiming that assumption of risk is a question of fact for the jury to
18 determine, it is no wonder why Defendants lean exclusively on non-binding and/or non-jurisdictional
19 case law. Defendants cite to: unpublished Nevada cases; cases from other Nevada District Courts which
20 have no binding effect on this case; and cases from Texas, Illinois, Michigan, and California.
21 Defendants failed to cite to any cases with any mandatory authority. The great majority of these cases
22 lacked any persuasive authority, either.

23 It is also curious why Defendants, if they were briefing the Court on non-binding, non-
24 jurisdictional cases, failed to brief the court on other non-jurisdictional cases involving assumption of
25 risk where the question of assumed risk was found to be a question of fact for the jury:

26 Therefore, questions of fact remain as to whether Davis had entered
27 the physical confines of the attraction and whether she could be
28 expected to foresee or accept the attendant risk of injury from being
chased by a costumed haunted house worker. The trial court erred by
entering summary judgment in favor of Dungeons on the basis of
primary assumption of the risk.

...

In this case, because questions of fact remain as to whether Davis
reasonably chose to proceed in the face of a known risk, the trial court
erred by entering summary judgment in favor of Dungeons on
the basis of implied assumption of the risk.

Davis v. Dungeons of Delhi, 2019-Ohio-1457, ¶ 41, 135 N.E.3d 469, 477–78.

1 As such, it is only once all factual considerations as to whether Plaintiff had knowledge of the
2 nature of the risks he faced have been heard and analyzed by a jury, that a determination on assumption
3 of risk is settled.

4 *b. There is no Evidence of Knowledgeable Waiver of Liability or Assumption of Risk*

5 A limitation of liability clause is a contractual clause limiting the amount of damages that may
6 be recovered for the negligent acts of a party. While Nevada law is limited on this subject, the law that
7 is available makes it clear that these types of provisions are only valid under very particular
8 circumstances.

9 In Nevada, the controlling case on this issue is *Obstetrics & Gynecologists v. Pepper*, 101 Nev.
10 105 (Nev. 1985). In this case, a clinic required its patients to sign an arbitration agreement before
11 receiving treatment. The receptionist at the clinic would hand each patient an arbitration agreement,
12 along with two information sheets, and inform the patient that any questions he or she had regarding the
13 agreement would be answered. If the patient refused to sign the agreement, then absent an emergency
14 the clinic would refuse treatment. Ms. Pepper went to the clinic to get a prescription for an oral
15 contraceptive. She signed the agreement, but in an affidavit, she stated that she had no recollection of
16 signing this agreement or of having the agreement explained to her. She then was left partially
17 paralyzed due to the clinic's alleged negligence in prescribing her the contraceptive, which was
18 contraindicated by her medical history. *Id.* at 106.

19 The court in *Pepper* found that an adhesion contract is defined "as a standardized contract form
20 offered to consumers of goods and services essentially on a 'take it or leave it' basis, without affording
21 the consumer a realistic opportunity to bargain, and under such conditions that the consumer cannot
22 obtain the desired product or service except by acquiescing to the form of the contract." *Id.* at 107. The
23 Court also held that an adhesion contract "need not be unenforceable if it falls within the reasonable
24 expectations of the weaker or 'adhering' party and is not unduly oppressive. However, **courts will not**
25 **enforce against an adhering party a provision limiting the duties or liabilities of the stronger**
26 **party absent plain and clear notification of the terms and an understanding consent."** *Id.* at 107-
27 108 (emphasis added) (citations omitted).

1 In this case there has been no evidence presented of Plaintiff having the opportunity to bargain,
2 and of him being in a superior position to, or even equal position with, Defendants. As such, the
3 “participation agreement” is not binding in this case.

4 Another case that illustrates how Nevada treats limitation of liability clauses is *Bernstein v.*
5 *GTE Directories Corp.*, 631 F. Supp. 1551 (D. Nev. 1986). In this case, Edward M. Bernstein and Carl
6 F. Piazza, practicing Nevada attorneys, entered into a contract with the company that compiled and
7 issued the telephone directory for Clark County, Nevada.

8 According to the contract, the phonebook company was to place Mr. Bernstein and Mr. Piazza’s
9 name, listing, and display advertisements in the phonebooks; however, when the phonebooks were
10 printed and circulated the white pages omitted Mr. Piazza’s name and the yellow pages failed to contain
11 the names, listings, or display advertisements of either Mr. Bernstein or Mr. Piazza. The contract
12 between Mr. Bernstein and Mr. Piazza and the phonebook company contained a limitation of liability
13 clause.

14 The *Bernstein* court turned to *Pepper* for guidance and found that the *Bernstein* contract fell
15 within the definition of an adhesion contract per *Pepper. Id.* at 1553. Even though Mr. Bernstein and
16 Mr. Piazza were practicing Nevada attorneys, the *Bernstein* court found that they were the weaker
17 parties that were left without a realistic opportunity to bargain the terms of the contract. *Id.*

18 However, in *Bernstein*, even though the contract in question was deemed an adhesion contract,
19 the limitation of liability clause was upheld in part because the limitations clause did not seek immunity
20 from gross negligence or willful misconduct; the agreement was not so one-sided and unfair as to shock
21 the conscience; and the plaintiffs were practicing attorneys familiar with the consequences of a
22 contractual agreement who did not provide evidence that they misunderstood the terms of the contract
23 or that the contract fell outside of their expectations. *Id.* at 1554. None of those elements are present in
24 this case. Plaintiff is not an attorney. Likewise, Defendants’ clause excuses any and all actions—which
25 necessarily include gross negligence and willful misconduct.

26 Here, as in *Bernstein*, the release at issue is an adhesion contract, based upon the unequal status
27 of the parties and an inability to bargain on terms of admission. However, unlike in *Bernstein*, there has
28 been no presentation of a properly limited clause that does not excuse all actions from liability. See

1 Participation Agreement attached hereto as **Exhibit “1.”** Furthermore, Plaintiff, unlike the attorneys in
2 *Bernstein*, is not an attorney and has no understanding of waiving his litigation rights.

3 It also bears noting that Plaintiff is Spanish-speaking and was never even offered the
4 opportunity to review a Spanish-language version of the adhesion contract, nor were the terms ever
5 explained to him in a manner ensuring his understanding.

6 To be clear, there has been no evidence presented in this matter that would demonstrate
7 knowledgeable contractual waiver of liability or assumption of risk. The “Participation Agreement” is
8 nothing more than an unenforceable adhesion contract and is of no force.

9 Furthermore, Nevada is loath to allow prospective waiver of litigation rights from a public
10 policy standpoint. Contracts are against public policy when they promote a breach of the law or tend to
11 harm the state or its citizens. “All contracts the purpose of which is to create a situation which tends to
12 operate to the detriment of the public interest are against public policy and void whether in a particular
13 case the purpose of the contract is effectuated.” *Western Cab Co. v. Kellar*, 90 Nev. 240, 244 (Nev.
14 1974). For a party to unilaterally decide what conduct is, or is not, acceptable without alerting the
15 customer to the scope of dangers found therein is clearly a policy which injures Nevada citizens and
16 consumers.

17 *c. Discovery is Ongoing in this Matter*

18 As noted above, assumption of risk is a question of fact for the jury to determine.
19 Discovery is ongoing and Plaintiff intends to continue pursuing evidence of his lack of
20 assumption of risk in this case. As such, at a minimum, Defendants’ Motion is premature.

21 **II. LEGAL ARGUMENT AND ANALYSIS**

22 **A. Standard of Review for Summary Judgment**

23 Pursuant to NRCP Rule 56(c), summary judgment is appropriate if there is no genuine
24 issue of material fact and the moving party is entitled to judgment as a matter of law. *See Butler*
25 *v. Bogdanovich*, 101 Nev. 449, 705 P.2d 662, *Parman v. Petricciani*, 70 Nev. 427, 272 P.2d 492
26 (1954), *Fyssakis v. Night Equipment Corp.*, 108 Nev. 212, 826 P.2d 570 (1992), and *Charles v.*
27 *Jay Steven Lemons and Associates*, 104 Nev. 388, 760 P.2d 188 (1998).
28

1 In deciding whether Summary Judgment is appropriate, the Court must first determine, in
2 the light most favorable to the non-moving party, “whether issues of material fact exist, thus
3 precluding judgment by summary proceeding.” National Union Fire Ins., Co. of Pittsburgh v.
4 Prat & Whitney Canada, Inc., 107, Nev. 535, 815 P.2d 601, 602 (1991). Summary Judgment is
5 generally supported or opposed by the pleadings, depositions, answers to interrogatories,
6 admissions, and affidavits on file. If no genuine issues of fact exist, or is shown to exist, it is the
7 duty of the Court to grant Summary Judgment. Dzack v. Marshall, 80 Nev. 345, 393 P.2d 610
8 (1964); Short v. Hotel Riviera, Inc., 79 Nev. 94, 379 P.2d 979 (1963); and McColl v. Scherer, 73
9 Nev. 226, 315 P.2d 807 (1957).

10 When a Motion for Summary Judgment is made and supported by facts appearing in the
11 record, any party opposing the Motion may not merely rest on the allegations of the pleadings,
12 but must set forth supported facts showing a genuine issue for trial. Grayson v. Jones, 101 Nev.
13 749, 751, 710 P.2d 76, 77 (1985); Bird v. Casa Royale West, 97 Nev. 67, 71, 624 P.2d 17
14 (1981); and N.R.C.P. 56(3).

15 The word “genuine” has moral overtones, but it does not mean a fabricated issue. Aldabe v.
16 Adams, 891 Nev. 2809, 402 P.2d 34 (1965).

17 **B. Analysis of Assumption of Risk is a Question of Fact Reserved SOLELY for**
18 **the Jury to Decide**

19 As noted above, case law directly on this issue was given by the Nevada Supreme Court.
20 The Court noted **an individual must be fully cognizant of the dangers inherent in an activity.**
21 The Court then noted that the question of whether an individual has fully, **knowledgeably**
22 assumed the risks inherent in an activity is a **question of fact** for the jury:

23 Assumption of the risk is based on a theory of consent. In *Sierra*
24 *Pacific v. Anderson*, 77 Nev. 68, 358 P.2d 892 (1961), this court
25 asserted that in order for a litigant to have assumed the risk, two
26 requirements must be met. First, there must have been voluntary
27 exposure to the danger. Second, there must have been actual
28 knowledge of the risk assumed. *Id.* at 73, 358 P.2d at 894. “**A risk can
be said to have been voluntarily assumed by a person only if it was
known to him and he fully appreciated the danger.**” *Id.* at 71–72,
358 P.2d at 894, quoting *Papagni v. Purdue*, 74 Nev. 32, 35, 321 P.2d
252, 253 (1958). As elucidated in *Sierra*, the essential element of the

1 defense is the *actual knowledge* of the danger assumed. 77 Nev. at 71,
2 358 P.2d at 894.

3 Ms. Renaud denied appreciation of the risks associated with the free-
4 fall simulator. **Because actual knowledge of the risks assumed is an**
5 **essential element of this defense, such a matter must be reserved**
6 **for the fact finder. It is necessary to evaluate all the circumstances**
7 **as they existed at the time the release was obtained.** Considerations
8 should include (but are not limited to) the following: the nature and
9 extent of the injuries, the haste or lack thereof with which the release
10 was obtained, and the understandings and expectations of the parties at
11 the time of signing.

12 **Thus, because there was a dispute as to whether Ms. Renaud**
13 **knowingly and voluntarily assumed the risks associated with the**
14 **simulator, the matter was not appropriate for a determination as a**
15 **matter of law.** *E.g., Pacific Pools Constr. v. McClain's Concrete*, 101
16 Nev. 557, 706 P.2d 849 (1985). *See also O'Connell v. Walt Disney*
17 *World Co.*, 413 So.2d 444 (Fla.Dist.Ct.App.1982) (a signed liability
18 waiver was deemed not sufficient as a matter of law to show that
19 appellant subjectively understood the risks inherent in horseback
20 riding and actually intended to assume those risks). Here, it is
21 necessary for the fact finder to hear testimony and assess credibility.
22 Accordingly, we reverse the ruling of the district court and remand the
23 case for further proceedings consistent with this opinion. In light of
24 our disposition, we decline to reach the other contentions raised on
25 appeal.

26 Renaud v. 200 Convention Ctr. Ltd., 102 Nev. 500, 501–02, 728 P.2d 445, 446 (1986).

27 Defendants' Motion fails to establish that Plaintiff was cognizant of any of the risks which were
28 actually present, and which caused his injuries. The "Participation Agreement" fails to note any of the
scope of potential hazards which Plaintiff would be undertaken.

There is no reason to think that Plaintiff expected the trampoline to be negligently maintained or
to suppose that by simply jumping on the trampoline his foot could become wedged within the
trampoline such that it could so severely injure him. A jury, and only a jury, can determine if Plaintiff
knowingly assumed this risk, and all other risks incumbent with attending this attraction.

Moreover, as noted above, Plaintiff is Spanish-speaking, and while he may recognize a few
words of written English so as to be able to fill out paperwork—*i.e.*, "name", "date", or "birth"—it is
absurd to assume that he fully understood and appreciated the legal clauses proposing to waive his
rights. This clearly supported by the fact that, in completing the adhesion contract, Plaintiff appears to

1 have *signed* his whole name where he was only supposed print his first name, failed to write anything
2 on the line for his “last name,” only to then sign it *again* where it says “signature.” Defendants never
3 offered Plaintiff a Spanish-language release, nor did they offer to explain the terms of the contract to
4 him in Spanish. The simple matter is that Plaintiff was handed a document, written in a language
5 foreign to him, and told to sign it before he could enter and use the facilities. He was never informed as
6 to what he was signing, or the legal ramifications of signing the document.

7 As such a clear question of fact remains as to the Plaintiff’s “actual knowledge of the risks
8 assumed...” *Id.* As only a jury can determine whether Plaintiff assumed this risk, Summary Judgment
9 is improper, premature, and unwarranted. Furthermore, as assumption of risk remains a genuine issue
10 of material fact, Summary Judgment simply cannot be awarded at this time.

11 **C. The Participation Agreement is a mere Adhesion Contract and is not an**
12 **Enforceable Waiver of Liability**

13 As noted above, the Courts’ findings in *Pepper* and *Bernstein* establish that in Nevada, adhesion
14 contracts are unenforceable. As with the contractual agreement in *Pepper*, here, the Plaintiff was
15 handed the adhesion contract and told he had to sign it before he could enter and participate. Just as in
16 *Pepper*, the person handing the Plaintiff the adhesion contract never explained the information in the
17 contract before asking Plaintiff to sign it. And, just as in *Pepper*, the Plaintiff was told simply that if he
18 refused to sign, he could not enter.

19 The adhesion contract at issue herein, just as in *Pepper*, is clearly a “as a standardized contract
20 form offered to consumers of goods and services essentially on a ‘take it or leave it’ basis, without
21 affording the consumer a realistic opportunity to bargain, and under such conditions that the consumer
22 cannot obtain the desired product or service expect by acquiescing to the form of the contract.” *Pepper*,
23 101 Nev. at 107. Notably, the *Pepper* court specifically stated that “**courts will not enforce against an**
24 **adhering party a provision limiting the duties or liabilities of the stronger party absent plain and**
25 **clear notification of the terms and an understanding consent.**” *Id.* at 107-108 (emphasis added)
26 (citations omitted). Here, as already discussed above, the Defendants failed to provide Plaintiff with a
27 Spanish-language version of the adhesion contract, or to explain to Plaintiff the provisions of the
28

1 contract in Spanish, and thus cannot show that the Plaintiff had ‘clear notification of the terms and an
2 understanding consent’ to release Defendants of liability.

3 Certainly, in situations where the weaker party is sophisticated enough to understand the
4 ramifications of signing the adhesion contract, the court is more likely to uphold limitation of liability
5 clauses in the contract, as in *Bernstein*. The court in *Bernstein* went on to reason that the adhesion
6 contract could be upheld specifically because *it did not seek immunity from gross negligence or willful*
7 *misconduct* and therefore was not so one-sided and unfair as to shock the conscience. None of those
8 elements are present in this case. Plaintiff is not an attorney. In fact, Plaintiff is Spanish-speaking, and
9 as such there is a genuine issue of material fact as to whether Plaintiff had *any* knowledge or
10 understanding of the adhesion contract he was asked to sign without any explanation. Likewise,
11 Defendants’ clause excuses any and all actions—which necessarily include gross negligence and willful
12 misconduct.

13 Defendants have failed to demonstrate that Plaintiff had any bargaining power, but instead was
14 allowed to enter on a “take it or leave it” basis. Furthermore, the agreement does not allow for any sort
15 of negotiation on the terms. Finally, the “agreement” completely waives liability even for gross
16 negligence and for willful acts of Defendants. For all of these reasons, not to mention the inherent
17 language concerns, Defendant’s adhesion contract is properly deemed unenforceable as to the Plaintiff
18 in this matter.

19 Furthermore, Nevada is loath to allow prospective waiver of litigation rights from a public
20 policy standpoint. Contracts are against public policy when they promote a breach of the law or tend to
21 harm the state or its citizens. “All contracts the purpose of which is to create a situation which tends to
22 operate to the detriment of the public interest are against public policy and void whether in a particular
23 case the purpose of the contract is effectuated.” *Western Cab Co. v. Kellar*, 90 Nev. 240, 245 (Nev.
24 1974). For a party to unilaterally decide what conduct is, or is not, acceptable without alerting the
25 customer to the scope of dangers found therein is clearly a policy which injures Nevada citizens and
26 consumers.

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Defendants seek Summary Judgment despite the fact that Plaintiff has not yet completed discovery in this matter. As discussed above, the nature of Defendant's Assumption of Risk argument is such that it relies on a question of fact that can only be analyzed and determined by the trier of fact. The necessary facts relevant to Defendant's claim will come to light as discovery continues. Granting Summary Judgment prior to the close of discovery is premature.

III. CONCLUSION

Based on the above, Plaintiff respectfully requests that this Court DENY Defendants' Motion for Summary Judgment. Any assumption of risk theories are questions of fact for the jury to analyze, particularly in light of the language barriers in this case. Likewise, Defendants' one-sided, non-negotiable "participation agreement" was an adhesion contract, and is not enforceable.

DATED this 21st day of April, 2021.

BIGHORN LAW

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CERTIFICATE OF SERVICE

Pursuant to NRCF 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 21st day of April 2021, I served the foregoing ***PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT*** as follows:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system, and/or

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below, and/or

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An employee/agent of **BIGHORN LAW**

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EXHIBIT 1

GRAVADY NEVADA, LLC, PARTICIPANT AGREEMENT, INDEMNIFICATION, GENERAL RELEASE AND ASSUMPTION

(PLEASE READ THIS DOCUMENT CAREFULLY, BY SIGNING IT, YOU ARE GIVING UP YOUR AND/OR YOUR SPOUSE AND MINOR'S LEGAL RIGHTS)

BY SIGNING THIS AGREEMENT I AM GIVING UP MY RIGHTS AND THE RIGHTS OF MY SPOUSE AND/OR CHILD(REN) TO SUE GRAVADY FOR ANY INJURY, INCLUDING PARALYSIS OR DEATH, CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF GRAVADY, INCLUDING ANY OF ITS AGENTS, EMPLOYEES AND EQUIPMENT. Initials: SL

In consideration of being allowed to participate in the services and activities, including, but not limited to, trampoline park access, trampoline dodge ball, trampoline basketball, aerial training, fitness classes, trampoline courts, foam pit activities and snack bar access and any other amusement activities (collectively "ACTIVITIES"), provided by GRAVADY NEVADA, LLC and its agents, owners, officers, directors, principals, volunteers, participants, clients, customers, invitees, employees, independent contractors, insurers, facility operators, land and/or premises owners, and any and all other persons and entities acting in any capacity on its behalf (collectively "GRAVADY"), I, on behalf of myself, and/or on behalf of my spouse, minor child(ren)/ward(s), hereby agree to forever release, indemnify and discharge GRAVADY on behalf of myself, my spouse, legal partner, my children, my parents, my guardians, heirs, assigns, personal representatives and estate, and all other persons and entities as set forth below. The undersigned, for myself, and/or on behalf of my spouse, minor child(ren)/ward(s), hereby acknowledges, agrees and represents that immediately upon entering or participating I will, inspect and carefully consider GRAVADY'S premises and facilities. It is further warranted that such entry into GRAVADY'S facilities for observation or use of any facilities or equipment or participation in ACTIVITIES constitutes an acknowledgement that such premises and all facilities and equipment thereon have been inspected and carefully considered and that the undersigned finds and accepts same for myself, and/or on behalf of my spouse, minor child(ren)/ward(s) as being safe and reasonably suited for the purpose of such observation, use or participation by myself, and/or by my spouse, minor child(ren)/ward(s). The undersigned, for myself, and/or on behalf of my spouse, minor child(ren)/ward(s) hereby represent that (i) I/we are in good health and in proper physical condition to participate in the activities in which GRAVADY provides; and (ii) I/we are not under the influence of alcohol or any illicit or prescription drugs which would in any way impair my/our ability to safely participate in activities; (iii) I/we have not been advised against activities by a health professional. I agree that it is my sole responsibility to determine whether I/we are sufficiently fit and healthy enough to participate in activities. The undersigned, for myself, and/or on behalf of my spouse, minor child(ren)/ward(s), agree to be familiar with and to abide by the rules established for the ACTIVITIES, which include without limitation the rules posted in the facility and/or the website. The undersigned, for myself, and/or on behalf of my spouse, minor child(ren)/ward(s), accepts sole responsibility for my own conduct and actions, as well as the conduct and actions of my spouse, minor child(ren)/ward(s) while participating in the activities, and the condition and adequacy of the equipment.

(1) **RELEASE OF LIABILITY:** Despite all known and unknown risks including but not limited to serious bodily injury, permanent disability, paralysis and loss of life, I, on behalf of myself, and/or on behalf of my spouse, minor child(ren)/ward(s) hereby expressly and voluntarily remise, release, acquit, satisfy and forever discharge and agree not to sue GRAVADY, including its suppliers, designers, installers, manufacturers of any trampoline equipment, foam pit material, or such other material and equipment in GRAVADY'S facility (all hereinafter referred to as "EQUIPMENT SUPPLIERS") and agree to hold said parties harmless of and from any and all manner of actions or omission(s), causes of action, suits, sums of money, controversies, damages, judgments, executions, claims and demands whatsoever, in law or in equity, including, but not limited to, any and all claims which allege negligent acts and/or omissions committed by GRAVADY or any EQUIPMENT SUPPLIERS, whether the action arises out of any damage, loss, personal injury, or death to me or my spouse, minor child(ren)/ward(s), while participating in or as a result of participating in any of the ACTIVITIES in or about the premises. This Release of Liability, is effective and valid regardless of whether the damage, loss or death is a result of any act or omission on the part of GRAVADY and/or any EQUIPMENT SUPPLIERS.

(2) **INDEMNIFICATION:** I understand that the known and unknown risks may be caused in whole or in part by my or my spouse or child(ren)/wards own actions or inactions, the actions or inactions of others participating in activities, or the acts, inaction or negligence of GRAVADY or any EQUIPMENT SUPPLIERS, and in consideration of being allowed, along with my spouse and/or my minor child(ren)/ward(s) to participate in the ACTIVITIES, I hereby assume all risk of damage, loss, personal injury, or death to myself, my spouse and/or my minor child(ren)/ward(s) as a result of the participation in ACTIVITIES in or about the facility, including any such loss due to any negligence of GRAVADY and all EQUIPMENT SUPPLIERS and agree to indemnify and hold harmless GRAVADY and all EQUIPMENT SUPPLIERS from and against any and all losses, liabilities, claims, obligations, costs, damages and/or expenses whatsoever paid, incurred and/or suffered by GRAVADY and all EQUIPMENT SUPPLIERS as a result of any claims asserted by myself, my spouse and/or child(ren)/ward(s) against GRAVADY and all EQUIPMENT SUPPLIERS, including, but not limited to, any and all attorneys' fees, costs, damages and/or judgments GRAVADY and all EQUIPMENT SUPPLIERS incurs in the event of such loss whether caused by the negligence of GRAVADY or any EQUIPMENT SUPPLIERS and that on behalf of myself, my spouse or my minor child(ren)/ward(s) I further agree to indemnify and hold harmless GRAVADY for any injury, damage and/or harm myself, my spouse and/or my minor child(ren)/ward(s) cause to GRAVADY or its facility and/or to any and all other persons and entities acting in any capacity on behalf of GRAVADY.

(3) **ATTORNEYS' FEES:** I promise to indemnify GRAVADY for any attorneys' fees and/or costs incurred to enforce this agreement, including all costs associated with any collection efforts. Further, should any debt and/or judgment accrue in favor of

GRAVADY, pre-judgment and post-judgment interest shall accrue thereon at a rate of 18% per annum.

(4) **PHOTO RELEASE:** By entering GRAVADY and participating in the ACTIVITIES, I hereby grant GRAVADY on behalf of myself, my spouse and on behalf of my child(ren)/ward(s), the irrevocable right and permission to photograph and/or record me, my spouse or my child(ren)/ward(s) in connection with GRAVADY and to use the photograph and/or recording for all purposes, including advertising and promotional purposes, in any manner and all media now or hereafter known, in perpetuity throughout the world, without restriction as to alteration. I waive any right to inspect or approve the use of the photograph and/or recording, and acknowledge and agree that the rights granted to this release are without compensation of any kind.

(5) **TERMS OF AGREEMENT:** I understand that this agreement extends forever into the future and will have full force and legal effect each and every time I or my spouse and/or child(ren)/ward(s) visit GRAVADY, whether at the current location or any other location or facility. The undersigned further expressly agrees that this agreement is intended to be as broad and inclusive as is permitted by the laws of this state and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

(6) **VENUE:** In the event a lawsuit is filed against GRAVADY, I agree to the sole and exclusive venue of Clark County, Nevada. I further agree that the substantive law of Nevada shall apply without regard to any conflict of law rules.

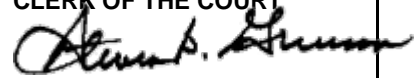
By signing this document, I understand that I may be found by a court of law to have forever waived my and my spouse and/or child(ren)/ward(s) right to maintain any action against GRAVADY on the basis of any claim from which I have released GRAVADY and any released party herein and that I have assumed all risk of damage, loss, personal injury, or death to myself, my spouse and/or my minor child(ren)/ward(s) and agreed to indemnify and hold harmless GRAVADY and all EQUIPMENT SUPPLIERS from and against any and all losses, liabilities, claims, obligations, costs, damages and/or expenses whatsoever paid, incurred and/or suffered by GRAVADY and all EQUIPMENT SUPPLIERS as a result of the participation in ACTIVITIES in or about the facility by myself, my spouse and/or child(ren)/ward(s) and/or claims asserted by myself, my spouse and/or child(ren)/ward(s) against GRAVADY and all EQUIPMENT SUPPLIERS related to such participation in ACTIVITIES. I have had a reasonable and sufficient opportunity to read and understand this entire document and consult with legal counsel, or have voluntarily waived my right to do so. I knowingly and voluntarily agree to be bound by all terms and conditions set forth herein.

You MUST be 18 years old or older to sign your own waiver
You MUST be the Parent or Legal Guardian to sign for a minor (under age 18)

Enter Adult Full Name and Date of Birth
(If under age 18, it must be completed by Parent/Legal Guardian -- Enter Adult Full Name/Date of Birth of Parent/Guardian)
Adult First Name: Jason Majid Adult Last Name: _____
Adult Date of Birth: 10/12/77 Phone: (702) 857-0138
Email: _____
Signature: [Signature]
Date: 07/01/18

Enter Child Full Name and Date of Birth of all Family Members under age 18
Child Full Name #1: Jonathan Majid Date of Birth: 02/04/04
Child Full Name #2: _____ Date of Birth: _____
Child Full Name #3: _____ Date of Birth: _____
Child Full Name #4: _____ Date of Birth: _____
Child Full Name #5: _____ Date of Birth: _____
Child Full Name #6: _____ Date of Birth: _____

We reserve the right to review your license and/or other forms of ID to verify identity and age.
This waiver is good for one day only.



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

12
13 JESUS MEJIA, an individual,
14
Plaintiff,

15 v.

16 GRAVADY NEVADA, LLC, a Nevada
Limited Liability Company; CIRCUSTRIX,
17 LLC, a Utah Limited Liability Company;
ASSAF NEVADA, INC., a Nevada
18 Corporation; DOE PROPERTY OWNER I-V;
ROE PROPERTY OWNER I-V; ROE
19 MAINTENANCE COMPANY I-V; ROE
PROPERTY MANAGEMENT COMPANY I-
20 V; DOE MAINTENANCE WORKER I-V;
DOE PROPERTY MANAGER I-V; DOE
21 EMPLOYEE I-V; DOE MANAGER I-V;
ROE EMPLOYER I-V; DOE EQUIPMENT
22 INSTALLER I-V; ROE EQUIPMENT
INSTALLATION COMPANY; and ROE
23 COMPANIES I-V,

24 Defendants.

Case No.: A-19-800435-C
Dept. No.: IV

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

25 COME NOW Defendants, GRAVADY NEVADA, LLC and CIRCUSTRIX, LLC
26 (hereinafter "Defendants"), by and through their attorneys of record, the law firm of Wood, Smith,
27 Henning & Berman, LLP, and hereby submit this Reply in Support of their Motion for Summary
28 Judgment.

1 This Reply is based on the following Memorandum of Points and Authorities, the papers and
2 pleadings on file herein, the exhibits attached hereto, and any oral argument or documentary
3 evidence the Court may entertain at the time of the hearing of this matter.

4 DATED this 18th day of May, 2021

5 WOOD, SMITH, HENNING & BERMAN LLP

6
7 By /s/ Phillip V. Tiberi

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. LEGAL ARGUMENT**

3 **A. Plaintiff Failed to Meet His Burden to Overcome Defendants' Motion for**
4 **Summary Judgment**

5 Plaintiff has not met the standard required to oppose summary judgment in this matter as
6 Plaintiff has not sufficiently demonstrated the existence of any genuine issues of material fact.
7 Summary judgment is appropriate when there is no genuine issue as to any material fact and the
8 moving party is entitled to judgment as a matter of law. N.R.C.P. 56(c). The party moving for
9 summary judgment has the **initial** burden of proving that there is no genuine issue of material
10 fact. *Long v. MGM Grand Hotel, LLC*, 128 Nev. 914, 381 P.3d 635 (2012) (emphasis added). The
11 moving party can satisfy its initial summary judgment burden by submitting evidence that negates
12 an essential element of the nonmoving party's claim or pointing out that there is an absence of
13 evidence to support the nonmoving party's case. *Jacobs v. Kinder Morgan Energy Partners, LP*,
14 128 Nev. 908, 381 P.3d 627 (2012). Once this initial burden has been satisfied, the nonmoving
15 party must show the existence of a genuine issue of material fact. 128 Nev. 914, 381 P.3d 635.

16 To successfully oppose a motion for summary judgment, "the non-moving party **must show**
17 **specific facts**, rather than general allegations and conclusions, presenting a genuine issue of material
18 fact for trial." *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002) (emphasis added). An
19 "issue of material fact is genuine when the evidence is such that a rational jury could return a verdict
20 in favor of the nonmoving party." *Smith v. Coast Hotels & Casinos, Inc.*, No. 62153, 2014 WL
21 3764810, at *2 (Nev. July 29, 2014) (citing *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d
22 1026, 1029 (2005)). The "non-moving party's **documentation must be admissible evidence**, and
23 he 'is not entitled to build its case on the gossamer threads of whimsy, speculation and
24 conjecture.'" *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 442 (1993) (citing *Collins*
25 *v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)) (emphasis added).

26 Here, Plaintiff failed to meet his burden by setting forth specific facts to rebut Defendants'
27 contention that the exculpatory provisions in the Gravady Nevada, LLC Participant Agreement,
28 Indemnification, General Release and Assumption (hereinafter "Participant Agreement" or

1 "agreement") is not only valid and enforceable, but also in executing said agreement, Plaintiff
2 expressly assumed the risks and waived negligence liability against Defendants. Plaintiff attempts
3 to argue that the Participant Agreement is not enforceable against him because he only speaks
4 Spanish and therefore, Plaintiff never fully understood and appreciated the risks and waiver. *See*
5 Pl.'s Opp'n to Defs' Mot. for Summ. J. at 10, 12. However, in making this contention, Plaintiff has
6 not presented any evidence proving Plaintiff did not understand English or was unaware of the risk
7 of personal injury.

8 Plaintiff conclusively asserts in his Opposition that he is Spanish speaking, and although he
9 may recognize a few words of written English to fill out paperwork, he would not have understood
10 the waiver of liability. *See* Pl.'s Opp'n to Defs' Mot. for Summ. J. at 10. Yet, Plaintiff makes this
11 factual assertion without citing to or submitting documentation required by NRCP 56(c)(1). Instead
12 of providing an affidavit by Plaintiff attesting to, and supporting, his contentions, Plaintiff submitted
13 a defective affidavit from his counsel in an attempt to stall this matter and prevent summary
14 judgment by improperly asserting Defendants' Motion is premature. **Notably, Plaintiff's counsel's**
15 **affidavit also fails to make any mention of Plaintiff's inability to speak or understand**
16 **English**—a fact Plaintiff patently claims throughout his Opposition. Plaintiff's repeated, self-
17 serving allegations does nothing to alter the simple fact that Plaintiff entered into a valid, binding,
18 and enforceable contract containing an express assumption of risk clause and waiver of liability.

19 Furthermore, Plaintiff's alleged lack of knowledge of English is the first time in this case
20 that this has been brought up by Plaintiff. In fact, there has been no evidence developed thus far
21 that even suggests Plaintiff does not understand English. Specifically, in responding to Defendants'
22 interrogatories, **Plaintiff verified that he read his answers, which were in English.** *See*
23 Verification to Plaintiff's Responses to Defendants' First Set of Interrogatories, attached hereto as
24 **Exhibit A.** In addition, Plaintiff's **medical records from University Medical Center and**
25 **Mountain View Hospital noted Plaintiff's language was English.** *See* Mountain View Hospital
26 and University Medical Center Medical Records, Bates Nos. PLTF000032 and PLTF000260,
27 attached hereto as **Exhibit B.** There were also **no notes in any of Plaintiff's disclosed medical**
28 **records that indicated a translator was present or that the doctor could not communicate with**

1 Plaintiff due to Plaintiff being Spanish-speaking. Notwithstanding, even if Plaintiff were able to
2 establish that he only speaks Spanish, or Defendants were to acquiesce to this allegation, Plaintiff
3 still would not be able to defeat Defendants' summary judgment motion because, as discussed above,
4 he does not factually establish that he did not waive his injury claims in the Participant Agreement,
5 and indeed appears to agree that he executed it.

6 **B. Plaintiff's Contention that He Does Not Speak English has No Legal Effect on**
7 **the Participant Agreement's Enforceability Against Him**

8 Plaintiff contends in his Opposition that because he does not speak English, the Participant
9 Agreement should not be enforced against him because he did not knowingly waive liability and
10 assume the risk of injury. Although there appears to be no case law on point in Nevada, several
11 other jurisdictions have addressed this specific issue. In California, a jurisdiction that Nevada often
12 examines, the court of appeals affirmed summary judgment in favor of an athletic club and held that
13 the release the plaintiff signed was valid, despite the plaintiff's claim that she could not read it.
14 *Randas v. YMCA of Metro. Los Angeles*, 17 Cal. App. 4th 158, 21 Cal. Rptr. 2d 245 (1993).

15 In *Randas*, the plaintiff, who was literate in Greek and not English, enrolled in a swimming
16 class at an athletic club and was given a release and waiver of liability and indemnity agreement,
17 which she signed. *Id.* at 160, 246. The plaintiff subsequently slipped and fell on a wet pool deck
18 and brought a personal injury action against the athletic club. *Id.* In support of its disposition, the
19 appeals court cited to several California cases that held, "It is well established, in the absence of
20 fraud, overreaching or excusable neglect, that one who signs an instrument **may not avoid the**
21 **impact of its terms on the ground that he failed to read the instrument before signing it.**" *Id.*
22 at 163, 248 (emphasis added). The appeals court further noted that this was not only the California
23 rule, but the general rule. *Id.* (quoting 3 Corbin, Contracts § 607 at 668–69 (1960)) ("One who signs
24 an instrument when for some reason, such as illiteracy or blindness, he can not read it, will be bound
25 by its terms in case the other party acts in good faith without trick or misrepresentation."); *see e.g.*,
26 *ViChip Corp. v. Lee*, 2005 WL 8177966, at *2 (N.D. Cal. Mar. 7, 2005) (holding that parties are
27 expected as a matter of law to read the terms of any agreement they sign even if it was signed in
28 error or if they did not understand it and this will not nullify the agreement).

1 As noted in Defendants' Motion, the Nevada Supreme Court has generally held that a party
2 will be required to abide by the terms of a contract that he has signed, **whether he read the contract**
3 **or not.** *Pentax Corp. v. Boyd*, 111 Nev. 1296, 1299, 904 P.2d 1024, 1026 (1995) (emphasis
4 added); *see Weddell v. H20, Inc.*, 128 Nev. 94, n.1, 271 P.3d 743, n.1 (2012); *see also CVSM, LLC*
5 *v. Doe Dancer V*, 435 P.3d 659 (Nev. 2019) (unpublished decision); *see e.g., Campanelli v.*
6 *Conservas Altamira, S.A.*, 86 Nev. 838, 841, 477 P.2d 870, 872 (1970) (holding that one who signs
7 or accepts a written contract, in the absence of fraud or other wrongful act, is conclusively presumed
8 to know its contents and to assent to them, and **there can be no evidence for the jury as to his**
9 **understanding of its terms**) (emphasis added).

10 Most similar to this matter, in New Jersey, the United States District Court held that the
11 defendants' motion for summary judgment was granted as the exculpatory clause in a gym
12 membership agreement was valid and enforceable, even though the plaintiff did not understand
13 English. *Kang v. Fitness*, 2016 WL 7476354, at *7 (D.N.J. Dec. 29, 2016) (unpublished decision).
14 Specifically, the plaintiff went to a fitness club with her husband and daughter to sign up for a gym
15 membership. *Id.* at *1. The membership agreement contained a release and waiver of liability and
16 indemnity clause. *Id.* The plaintiff and her husband did not read or understand English, but their
17 daughter was present to translate for them when they signed up. *Id.* at *2. The plaintiff later was
18 injured while working out and brought suit against the fitness club. *Id.*

19 Although the plaintiff argued that the waiver was invalid because: (1) she did not speak
20 English, (2) the fitness club knew this because her daughter was there to translate, and (3) the gym
21 employee did not explain the liability waiver to her, her daughter, or her husband, who initialed next
22 to the waiver provision, the court found these arguments to be ineffective. *Id.* at *5. The court held
23 that the plaintiff's inability to understand English did not bar her from becoming contractually bound
24 as courts have unequivocally held that "in the absence of fraud, one who signs an agreement is
25 conclusively presumed to understand and assent to its terms and legal effect." *Id.* The court further
26 held that the contract was not invalid based on the plaintiff's unconscionability argument because
27 the plaintiff was not under any undue pressure to execute the agreement, her daughter was present
28 to translate, and the plaintiff could have sought advice before signing it. *Id.* at *6.

1 Similarly, in the instant matter, Plaintiff was under no obligation to sign the Participant
2 Agreement and could have went somewhere else. Plaintiff also could have asked an employee to
3 read the agreement to him or have his teenage son, who was there with him, translate for him. Yet,
4 Plaintiff still went ahead and initialed next to the liability waiver, which was in bold font and all
5 caps, and signed the Participant Agreement. Plaintiff chose to sign the agreement without reading
6 or understanding it and consequently, he will be bound by its terms as a matter of law.

7 Although the aforementioned Nevada cases did not take on the specific issue of the plaintiff
8 not speaking or understanding English, the case law is in line with the legal reasoning of the
9 California and New Jersey decisions articulated above. Therefore, in accordance with authoritative
10 case law in Nevada, and supporting case law in other jurisdictions, Defendants' Motion should be
11 granted as the agreement is enforceable and valid against Plaintiff, regardless of whether Plaintiff
12 spoke Spanish or understood the agreement. Moreover, there is no genuine issue of material fact as
13 to the terms of the agreement or to the circumstances under which it was executed.

14 **C. The Participant Agreement is Not Unconscionable and is an Enforceable**
15 **Waiver of Liability**

16 The Participant Agreement that Plaintiff executed is not unconscionable, and therefore, is an
17 enforceable waiver of liability. To invalidate a contract as unconscionable, Nevada law requires
18 both procedural and substantive unconscionability. *U.S. Home Corp. v. Michael Ballesteros Tr.*,
19 134 Nev. 180, 190, 415 P.3d 32, 40 (2018). Unconscionability has "both a procedural and a
20 substantive element, the former focusing on oppression or surprise due to unequal bargaining power,
21 the latter on overly harsh or one-sided results." *Nagrapa v. MailCoups, Inc.*, 469 F.3d 1257, 1296
22 (9th Cir. 2006). "Although both procedural and substantive unconscionability must be present for
23 a court to exercise its discretion to refuse to enforce an unconscionable contract, 'they need not be
24 present to the same degree'" as the Nevada Supreme Court has adopted a sliding scale approach.
25 *Est. of Wildhaber v. Life Care Centers of Am., Inc.*, 2010 WL 2802176, at *4 (D. Nev. July 15,
26 2010); *Thi of Nevada at Henderson Convalescent, LLC v. Spierer*, 129 Nev. 1156, 2013 WL
27 5409269, *1 (2013) (unpublished disposition). The party asserting that a contract is unconscionable
28 bears the burden of proof. *Tompkins v. 23andMe, Inc.*, 840 F.3d 1016, 1023 (9th Cir. 2016).

1 **1. Procedural Unconscionability**

2 "A contract is procedurally unconscionable if it is a contract of adhesion." *Rojas v. Lewis*
3 *Brisbois Bisgaard & Smith LLP*, 2014 WL 3612568, at *5 (D. Nev. July 18, 2014). The Nevada
4 Supreme Court defined an adhesion contract as "a standardized contract form offered to consumers
5 on a 'take it or leave it' basis, without affording the consumer a realistic opportunity to bargain."
6 *Burch v. Second Jud. Dist. Ct. of State ex rel. Cty. of Washoe*, 118 Nev. 438, 442, 49 P.3d 647, 649
7 (2002). However, an adhesion contract will be enforced where there is a "plain and clear notification
8 of the terms and an understanding consent, and if it falls within the reasonable expectations of the
9 weaker party" and is not unduly oppressive. *Id.*; *Obstetrics & Gynecologists William G. Wixted,*
10 *M.D., Patrick M. Flanagan, M.D., William F. Robinson, M.D. Ltd. v. Pepper*, 101 Nev. 105, 107–
11 08, 693 P.2d 1259, 1261 (1985).

12 Procedural unconscionability exists "when a party lacks a meaningful opportunity to agree
13 to the clause terms either because of unequal bargaining power, as in an adhesion contract, or
14 because the clause and its effects are not readily ascertainable upon a review of the contract." *D.R.*
15 *Horton, Inc. v. Green*, 120 Nev. 549, 554, 96 P.3d 1159, 1162–63 (2004), *overruled on other*
16 *grounds by U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 415 P.3d 32 (2018). A
17 contract's terms are "not readily ascertainable if it is presented or negotiated in a way that conceals
18 the terms' meaning." *CVSM, LLC v. Doe Dancer V*, 435 P.3d 659, 2019 WL 978679, *2 (Nev.
19 2019) (unpublished disposition) (citation omitted). A party has no duty to explain the legal effects
20 of every provision of a contract. *Id.*

21 Furthermore, various courts have held that liability waivers, or exculpatory agreements, are
22 not adhesion contracts. *Charnis v. Watersport Pro, LLC*, 2009 WL 2581699, at *5 (D. Nev. May
23 1, 2009); *see e.g., Cobb v. Aramark Sports & Ent. Servs., LLC*, 933 F. Supp. 2d 1295, 1299 (D. Nev.
24 2013) (finding that the express waiver signed by the plaintiff was not an adhesion contract because
25 it concerned a voluntary recreational activity and not an essential service); *Olivelli v. Sappo Corp.*,
26 225 F. Supp. 2d 109, 119 (D.P.R. 2002) (holding there was nothing inherently unfair in the
27 mandatory use of waivers in recreational activities when the activity at question was a strictly
28 voluntary recreational pursuit and did not constitute the rendition of essential services where the

1 courts would be more likely to find that a contract of adhesion exists); *Pokrass v. The DirecTV Grp.,*
2 *Inc.*, 2008 WL 2897084, at *7 (C.D. Cal. July 14, 2008) ("California courts have consistently
3 declined to find procedural unconscionability in contracts for nonessential recreational activities.").
4 Although these cases concerned different types of recreational activities, the premise behind the
5 cases and their legal reasoning should apply to the instant matter. Further, these holdings from
6 Nevada federal courts and other jurisdictions, including California, should give some weight to the
7 unconscionability analysis as, in the words of Plaintiff, "Nevada law is limited on this subject." *See*
8 *Pl.'s Opp'n to Defs.' Mot. for Summ. J.*, at 6.

9 Here, the Participant Agreement, which was executed by Plaintiff, cannot be found to be an
10 adhesion contract and therefore, is not procedurally unconscionable. Plaintiff went to a trampoline
11 park to jump on trampolines, **which was a voluntary recreational activity and not an essential**
12 **service.** Plaintiff visited the trampoline park solely for the purposes of his leisure and at his own
13 volition. However, should this Court determine the Participant Agreement was an adhesion
14 contract, it should still be enforced as the agreement was clear as to its terms and not unduly
15 oppressive.

16 The waiver of liability clause in the Participant Agreement was contained in several places
17 throughout the agreement. The first waiver of liability clause was at the very top of the first page
18 of the agreement, in bold print and all caps, and Plaintiff had to initial next to the provision, which
19 stated that Plaintiff would be giving up his rights to sue for injury due to the negligence or fault of
20 Defendants. *See Defs.' Mot. for Summ. J., Ex. B*, at 1. The second waiver of liability clause, which
21 was more in-depth, was in subsection (1) of the agreement on the first page and contained the
22 heading, in bold and all caps, "**RELEASE OF LIABILITY.**" *See id.* The final waiver of liability
23 clause was on the second page of the agreement above the signature line, in all bold font. *See id.* at
24 2. Furthermore, the agreement does not use misleading or complicated language such that it would
25 fail to inform a reasonable person of the contractual language's consequences. Therefore, there was
26 no surprise as the terms of the liability waiver were legible, not hidden from view, and clearly
27 prominent throughout the agreement.

28 Additionally, Plaintiff has failed to show, and there is no disputed evidence that indicates,

1 Plaintiff was the victim of any deceptive or high pressure tactics in signing the agreement. Plaintiff
2 was not rushed nor was he prevented from having someone, either an employee or his son, read the
3 agreement to him. There was also was no disparity in the bargaining process because Plaintiff could
4 have went to another trampoline park to do the very same activity—jump on trampolines. There
5 are several trampoline parks all over the Las Vegas valley and in fact, there are two trampoline parks
6 just 15 minutes, or approximately 7 miles, from the subject trampoline park.¹ Thus, Plaintiff could
7 have easily went to another facility if he did not want to sign or could not read the agreement.

8 Plaintiff contends, erroneously, that the controlling case on the issue of unconscionability is
9 the *Pepper* case.² See Pl.'s Opp'n to Defs.' Mot. for Summ. J., at 6. Plaintiff argues that *Pepper* is
10 most analogous to the instant matter as *Pepper* involved a patient at a medical clinic who was
11 required to sign an arbitration agreement, or contract of adhesion, before she could receive
12 treatment, or else forego treatment. See *id.* at 11, Although the court in *Pepper* found that the
13 arbitration agreement was unenforceable, the same result should not apply here. *Pepper*, 101 Nev.
14 at 108, 693 P.2d at 1261.

15 Most distinguishing, the *Pepper* case involved a contract for medical services, which was an
16 essential service, and therefore, considered an adhesion contract. This matter involves a non-
17 essential recreational activity or service, which Plaintiff could obtain elsewhere, or even simply
18 forego, without any inconvenience or difficulty. The plaintiff in the *Pepper* case also submitted an
19 affidavit stating that the agreement was not explained to her. *Id.* Here, Plaintiff failed to submit an
20 affidavit indicating that he had no opportunity to read or understand the Participant Agreement or
21 that he requested same to be read or explained to him. Regardless, the Nevada Supreme Court has
22 held, as recently as 2019 (as compared to the *Pepper* case, which was decided in 1989), that there
23 is no duty on the part of a party (here, Defendants) to explain the legal consequences of a contract's
24 provisions. See 435 P.3d 659.

26 ¹ Xplozone Trampoline Park, 24640 S. Decatur Blvd., Las Vegas, 89102; and Uptown Jungle Fun Park, 1631 W. Craig
Road, North Las Vegas, 89032. The subject trampoline park is located at 7350 Prairie Falcon Road, 89128.

27 ² The controlling case(s) discussing unconscionability in Nevada is *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 96 P.3d
28 1159 (2004), *overruled by U.S. Home Corp. v. Michael Ballesteros Tr.*, 134 Nev. 180, 415 P.3d 32 (2018). Notably,
the majority of precedent in Nevada discussing unconscionability dealt primarily with arbitration clauses.

1 As discussed above, the Participant Agreement clearly provided Plaintiff with notification
2 of the terms of the agreement, including the waiver of liability provision; Plaintiff has produced no
3 admissible evidence to demonstrate he did not understand what he was signing; and any reasonable
4 person would expect to have to sign an exculpatory agreement, or waiver of liability, when entering
5 a trampoline park as this is typically required when participating in recreational activities and is
6 therefore not an adhesion contract. As such, the Participant Agreement, including the liability
7 waiver, is not procedurally unconscionable.

8 **2. Substantive Unconscionability**

9 On the other hand, substantive unconscionability "focuses on terms that 'are unreasonably
10 favorable to the more powerful party,'" and therefore, to determine whether a contract is
11 substantively unconscionable, the focus is on the oppressiveness or one-sidedness of the contract
12 terms. *FQ Men's Club, Inc. v. Doe Dancers I*, 471 P.3d 753 (Nev. 2020) (unpublished disposition);
13 *see also Ting v. AT&T*, 319 F.3d 1126, 1149 (9th Cir. 2003);

14 The Participant Agreement's contract terms, including the waiver of liability, should be
15 enforced as the agreement is not overly harsh or grossly unfair. Just because the agreement merely
16 gives Defendants a greater benefit by including a liability waiver, does not imply that the terms of
17 the agreement are harsh and so disproportionately one-sided such that they are oppressive.
18 Specifically, the liability waiver **only** prevents Plaintiff from suing for **negligent acts or omissions**
19 by Defendants. *See* Defs.' Mot. for Summ. J., Ex. B, at 1. The terms of the Participant Agreement
20 does not hinder Plaintiff from suing for gross negligence, an intentional tort, or even fraud. Plaintiff
21 contends in his Opposition that the waiver of liability clause "excuses any and all actions" and that
22 there "has been no presentation of a properly limited clause;" however, this argument is completely
23 misleading and simply untrue. *See* Pl.'s Opp'n to Defs.' Mot. for Summ. J., at 7, 12. In fact, the
24 agreement makes no mention, directly or indirectly, of gross negligence or willful misconduct.

25 Additionally, the liability waiver narrowly covers any personal injury arising out of
26 Plaintiff's participation in specific recreational activities, at the park. *See* Defs.' Mot. for Summ. J.,
27 Ex. B, at 1. A liability waiver in the context of a recreational activity does not implicate the public
28 interest and is not void as against public policy. Therefore, the Participant Agreement, including the

1 waiver of liability provision, is not substantively unconscionable.

2 Plaintiff has failed to show a genuine issue of material fact as to the procedural or substantive
3 unconscionability of the Participant Agreement and liability waiver contained within said
4 agreement, as required by Nevada law. Alternatively, even if the Participant Agreement and/or the
5 waiver of liability were found to have some characteristics of the factors considered in determining
6 procedural and substantive unconscionability, those characteristics are so minimal that it would not
7 warrant a finding of unconscionability. As such, because both procedural and substantive
8 unconscionability is required to avoid enforcement of a contract or clause within a contract under
9 Nevada law, Plaintiff's argument that the Participant Agreement is unconscionable and the liability
10 waiver is unenforceable fails.

11 **D. Plaintiff Expressly Assumed the Risk of Injury as a Matter of Nevada Law**

12 By signing the Participant Agreement, and initialing next to the liability of waiver provision,
13 Plaintiff expressly assumed the risk of personal injury as a matter of law. "Parties may agree to
14 assume risk by contract, and, in Nevada, **the issue of assumption of the risk is a question for the**
15 **court, not a jury.**" *Burnett v. Tufguy Prods., Inc.*, 2010 WL 4282116, at *4 (D. Nev. Oct. 20, 2010)
16 (citing *Turner v. Mandalay Sports Ent., LLC*, 124 Nev. 213, 221, 180 P.3d 1172, 1177 (2008))
17 (holding that assumption of the risk is always treated as a question of law); *see e.g., Galardi v.*
18 *Naples Polaris, LLC*, 129 Nev. 306, at 309, 301 P.3d 364, at 366 (2013) ("The interpretation of a
19 contract is an issue of law, long accepted as a proper matter for Motions for Summary Judgment.").
20 Further, express assumption of the risk arises from a "contractual undertaking that expressly relieves
21 a putative defendant from any duty of care to the injured party; such a party has consented to bear
22 the consequences of a voluntary exposure to a known risk." *Kerns v. Hoppe*, 128 Nev. 910, 381
23 P.3d 630 (2012) (unpublished disposition).

24 Under the Participant Agreement, Plaintiff both assumed the risk of his alleged injuries and
25 covenanted not to sue. Plaintiff voluntarily entered the trampoline park to jump on trampolines with
26 the knowledge of the potential risk for injury, as any reasonable person would know that if one
27 jumps on a trampoline, at the age of 45 years old such as Plaintiff, there is a chance he might be
28 injured. Plaintiff expressly assumed these risks as the Participant Agreement indicated that his

1 participation in Defendants' activities inside the trampoline park could subject Plaintiff to bodily
2 injury. *See* Defs.' Mot. for Summ. J., Ex. B, at 1. Plaintiff impliedly assumed these risks as well as
3 personal injury, and specifically, injury to the foot or ankle as in this case, is inherent in the activity
4 of trampolining. Therefore, Defendants' are entitled to summary judgment as Plaintiff not only
5 waived liability, but he also expressly and primarily assumed the risk of his alleged injuries.

6 Furthermore, Plaintiff has not presented any evidence showing a genuine issue of material
7 fact as to liability; therefore, Plaintiff has not met his burden. Plaintiff argues in his Opposition that
8 Plaintiff did not assume the risk because he had no reason to expect the "trampoline to be negligently
9 maintained" or his foot to "become wedged within the trampoline." *See* Pl.'s Opp'n to Defs.' Mot.
10 for Summ. J., at 10. However, the Participant Agreement does cover the condition and adequacy of
11 the trampoline equipment as the agreement states that the undersigned accepts sole responsibility
12 for his conduct and actions while participating in trampoline activities and "the condition and
13 adequacy of the equipment." *See* Defs.' Mot. for Summ. J., Ex. B, at 1. The agreement also
14 specifically indicates that Plaintiff was consenting to assume the risk of injury caused by Defendants'
15 negligence. Hence, it is undisputed that the Participant Agreement contained an express,
16 unambiguous, and narrow exculpatory clause pursuant to which Plaintiff consented to assume the
17 risk of injury caused by Defendants' negligence related to Plaintiff's use of the trampolines.

18 Under the Participant Agreement Plaintiff clearly accepted responsibility for the
19 consequences of any act of negligence by Defendants. Therefore, knowledge of a very specific and
20 particular risk—in this case, Plaintiff's allegation that his foot became "wedged within the
21 trampoline,"—is unnecessary when there is an express agreement to "assume all risk." *See* Pl.'s
22 Opp'n to Defs.' Mot. for Summ. J., at 10; *see* Defs.' Mot. for Summ. J., Ex. B, at 1. Whether Plaintiff
23 knew about this specific possibility at the time he signed the agreement is irrelevant. Defendants
24 cannot be expected to spell out every possible specific act of negligence in the Participant
25 Agreement, or to even discuss same with Plaintiff. The agreement signed by Plaintiff covers and
26 applies to the alleged act of negligence by Defendants; thus, the Participant Agreement, by its
27 express terms, applies in this matter and should bar Plaintiff's claims against Defendants for
28 negligence. As such, summary judgment should be granted.

1 **E. Nevada Courts Often Look to Other Jurisdictions for Guidance**

2 The Supreme Court of Nevada held that it may look to other jurisdictions for guidance when
3 Nevada has no law specifically on point. *Aspen Fin. Servs. v. Dist. Ct.*, 128 Nev. 635, 642, 289 P.3d
4 201, 205 (2012). Further, an unpublished disposition does not establish mandatory precedent except
5 to establish law of the case. Nev. R. App. P. 36(c)(2). A party may cite for its persuasive value.
6 Nev. R. App. P. 36(c)(3). Even federal courts use "intermediate appellate court decisions, decisions
7 from other jurisdictions, statutes, treatises, and restatements as guidance" when a state has not
8 addressed a particular issue. *Guerra v. Hertz Corp.*, 504 F. Supp. 2d 1014, 1019 (D. Nev. 2007)
9 (citation omitted).

10 Plaintiff incorrectly contends in his Opposition that Defendants cite to cases "which have no
11 binding effect on this case" and that "lacked any persuasive authority." *See* Pl.'s Opp'n to Defs.'
12 Mot. for Summ. J., at 5. However, Plaintiff fails to recognize that Nevada oftentimes refers to cases
13 in other jurisdictions to set precedent. Furthermore, unpublished dispositions can be used to set out
14 the law in a case and can be used for their persuasive value.

15 In Defendants' Motion, Defendants cited to cases involving liability waivers and similar
16 recreational activities or businesses to support Defendants' argument that exculpatory clauses are
17 valid and enforceable in Nevada. Specifically, cases that were cited to included cases involving
18 fitness clubs, horseback riding, a trampoline park, a skating facility, a golf club, a gymnastics
19 facility, and rope climbing. Although some of these cases were unpublished Nevada Supreme Court
20 decisions and cases in other jurisdictions or in federal and state courts in Nevada, they are cited and
21 provided to the Court since there is a lack of developed case law in Nevada dealing with liability
22 waivers and recreational activities similar to trampolining.

23 The lack of specific, on point authority in Nevada is prevalent in Plaintiff's Opposition as
24 Plaintiff cited to only three cases to support his arguments: (1) *Renaud*, which is a 1986 case
25 involving a free fall simulator and secondary assumption of risk; (2) *Pepper*, which is a 1985 case
26 pertaining to a contract for medical services and the unconscionability of an arbitration agreement;
27 and (3) *Bernstein*, which is a 1986 federal court case concerning an agreement for advertising
28 services and waiver of liability. Yet, of these three cases, *Renaud* was the only case that involved a

1 "recreational" activity—albeit an uncommon one using a complex and to some degree, dangerous,
2 mechanical device. *See* Pl.'s Opp'n to Defs.' Mot. for Summ. J., at 4–7.

3 Although Plaintiff makes the mistaken argument that Defendants "lean exclusively on non-
4 binding and/or non-jurisdictional case law' and "failed to cite to any cases with any mandatory
5 authority" with regard to assumption of risk, Defendants actually only cited to published Nevada
6 Supreme Court cases to support Defendants' assumption of the risk arguments. *See* Pl.'s Opp'n to
7 Defs.' Mot. for Summ. J., at 5; *see* Defs.' Mot. for Summ. J., at 10. In fact, the only "non-
8 jurisdictional cases" that Defendants cited to were a few cases involving express waivers of liability
9 and recreational activities, including, one in which Defendants specifically cited to so as to note the
10 disposition of a recent and analogous personal injury case, albeit in Texas, that involved a trampoline
11 park and an agreement signed by the plaintiff that was identical in language to Defendants'
12 Participant Agreement. *See* Defs.' Mot. for Summ. J., at 10–13.

13 **E. Plaintiff's Counsel's Affidavit Does Not Satisfy NRCP 56(d)**

14 Plaintiff submitted a defective affidavit from his counsel, which does not comply with NRCP
15 56(d). According to Nevada Rule of Civil Procedure 56, "[i]f a nonmovant shows by affidavit or
16 declaration that, for specified reasons, **it cannot present facts essential to justify its opposition,**"
17 the court may defer considering the motion or allow time to take discovery. N.R.C.P. 56(d)
18 (emphasis added).

19 Here, Plaintiff's counsel's affidavit failed to set forth specific reasons as to why Plaintiff
20 cannot present facts to justify his opposition. Specifically, the affidavit only states, improperly, that
21 Defendants' Motion is premature in that Defendants' Motion is premised on the doctrine of
22 assumption of risk, which is a question of fact for the jury to consider. However, Defendants'
23 Motion is not just based on assumption of risk, but also waiver of liability, which are two distinct
24 theories, either of which can defeat Plaintiff's case.

25 Nevertheless, Defendants' Motion is not premature as there can be no evidence uncovered
26 during discovery that would invalidate the Participant Agreement or its enforceability on Plaintiff,
27 including Plaintiff's express assumption of the risk and waiver of liability. Most importantly,
28 Plaintiff's affidavit does not provide details of what particular information in discovery would be

1 needed to oppose Defendants' Motion. Plaintiff has not demonstrated to the Court why additional
2 time is needed for discovery such that Defendants' Motion should be denied, or why it should defer
3 its decision of Defendants' Motion; therefore, Defendants' Motion is not premature and this Court
4 should consider Defendants' Motion and grant summary judgment.

5 **II. CONCLUSION**

6 For the foregoing reasons, Defendants request this honorable Court to grant their Motion for
7 Summary Judgment in its entirety.

8 DATED this 18th day of May, 2021

9 WOOD, SMITH, HENNING & BERMAN LLP
10

11 By /s/ Phillip V. Tiberi
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Attorneys for Defendants Gravady Nevada, LLC
and CircusTrix, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May, 2021, a true and correct copy of **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

By /s/ Kimberly Amy
Kimberly Amy, an Employee of
WOOD, SMITH, HENNING & BERMAN LLP

EXHIBIT A

VERIFICATION

I, **JESÚS MEJIA**, hereby declare that I am the Plaintiff herein; that I have read the foregoing Plaintiff's Answers to Defendant **PLAINTIFF'S RESPONSES TO DEFENDANTS GRAVADY NEVADA, LLC AND CIRCUSTRIX, LLC'S FIRST SET OF INTERROGATORIES TO PLAINTIFF JESUS MEJIA**, and know the contents thereof; that the same are true of my own knowledge, except as to those matters stated upon information and belief, and that as to such matters, I believe them to be true.

DATED this 15th day of June 2020.


JESUS MEJIA

EXHIBIT B

3100 North Tenaya Way, Las Vegas, Nevada 89128 (702) 962-5000

IN/OUT/ER PATIENT ADMISSION RECORD

ACCOUNT#:G00017814612	ADM DATE:08/01/18	UNIT RCRD #:G000695584	ARRIVAL:WI
ROOM/BED:	ADM TIME:1849	MARKET URN:D777341	CONF: VIP:
PT. TYPE:DEP ER	ADMIT PRI/SRC:EM / PR	LOCATION(S):G.ER	FC:99

PATIENT INFORMATION

NAME: MEJIA, JESUS
STREET: 4794EL ESCORIAL DR
STREET:
C/S/ZP: PARADISE, NV 89122
PHONE#: (702)857-0138 CNTY/RES: CLARK
S P O U S E / N O K / C O M P A N I O N
PT, REFUSED
4794EL ESCORIAL DR
PARADISE, NV 89122
(702)857-0138 RELTN: OTHER RELATIONSHIP
WORK PH:
P A T I E N T E M P L O Y E R
VENTIAN HOTEL
LAS VEGAS BLVD

OTHER NAME:
DOB: 10/12/1973 SS#: [REDACTED]
AGE: 44 RACE: OTHER
SEX: M MAR STATUS: S
REL: CATHOLIC LANG: ENGLISH
PERSON TO NOTIFY
PT, REFUSED
4794EL ESCORIAL DR
PARADISE, NV 89122
(702)857-0138 RELTN: OTHER RELATIONSHI
WORK PH:
GUARANTOR
MEJIA, JESUS
4794EL ESCORIAL DR

LAS VEGAS, NV 89101
(702)999-9999 OCC: BUSSE
G U A R A N T O R E M P L O Y E R
VENTIAN HOTEL
LAS VEGAS BLVD
LAS VEGAS, NV 89101
(702)999-9999

PARADISE, NV 89122
(702)857-0138 RELTN: SELF
OCCURRENCE CODES CONDITION CODES
05 08/01/18

INSURANCE INFORMATION

PHYSICIAN INFORMATION / DOCUMENTATION

ADM:	PCP:.NO PCP	NO PRIMARY OR FAMILY PHYSICIAN
HCS:	HCS:7943	
ATT:	REF:.SELF	SELF REFERRED
HCS:	HCS:9715	
ER: NEVCH	Nevarez,Christopher M	MD, 6489
REASON FOR VISIT/CHIEF COMPL:INJURY - ACCIDENT		

COMMENTS:
PRT BY:GHISJCR ON:08/02/18 0205

ADVANCE DIRECTIVE:
DISCH DATE: 08/01/18 TIME: 2342 DISPO:HOM



UMC Hospital		Patient: Mejia, Jesus L.
APGARS: /	Weight: oz	Hospital: 18003070575
Length: <i>WULF</i>		MRN: 0001399963
		Contact Serial #: 100030657011
		Encounter: 8/3/2018 1550
		ADM Date/Time: 08/03/18 09:51 PM

ENCOUNTER

Patient Class:	Inpatient	Unit:	2 W MED/SUR
Hospital Service:	Internal Medicine	Bed:	2 WE 244/01
Admitting Provider:	Aditi Singh, MD	Referring Physician:	
Attending Provider:	Aditi Singh, MD	Adm Diagnosis:	Swelling of foot joint, *

PATIENT

Name:	Jesus L. Mejia	DOB:	10/12/1973 (44 yrs)
Address:	4794 Escorial Dr	Sex:	Male
City:	N LAS VEGAS NV 89030	Pref Lang:	English
Primary Care Provider:		Primary Phone:	702-857-0138
EMERGENCY CONTACT			
Contact Name	Legal Guardian?	Relationship to Patient	Home Phone
1. Mejia, Jonathan		Son	(702)704-2970
2. *No Contact Specified*			Work Phone

GUARANTOR

Guarantor:	MEJIA, JESUS L.	DOB:	10/12/1973
Address:	4794 Escorial Dr	Sex:	Male
	N LAS VEGAS, NV 89030		
Relation to Patient:	Self	Home Phone:	702-857-0138
Guarantor ID:	944450	Work Phone:	
		Mobile Phone:	
GUARANTOR EMPLOYER			
Employer:	PALAZZO RESORT	Status:	Full Time



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 JESUS MEJIA,

9 Plaintiff,

10 vs.

11 GRAVADY NEVADA, LLC,

12 Defendant,

CASE#: A-19-800435-C

DEPT. IV

13
14 BEFORE THE HONORABLE NADIA KRALL, DISTRICT COURT JUDGE
15 TUESDAY, MAY 25, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

18 APPEARANCES: [All Appearances Via Videoconference]

19 For the Plaintiff: EVAN K. SIMONSEN, ESQ.

20 For Defendant: KYLE J. HOYT, ESQ.

21
22
23
24
25 RECORDED BY: ANGELICA MICHAUX, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, May 25, 2021

2
3 [Case called at 9:36 a.m.]

4 THE CLERK: A800435, Jesus Mejia vs. Gravady
5 Nevada.

6 THE RECORDER: I don't have anybody.

7 MR. SIMONSEN: Good morning, Your Honor, this is
8 Evan Simonsen, on behalf of Plaintiff, Jesus Majia, bar number
9 13762.

10 THE COURT: Good morning, Mr. Simonsen.

11 MR. HOYT: Good morning, Your Honor, this is Kyle
12 Hoyt, bar number 14886, on behalf of Gravady and Circustrix.

13 THE COURT: Your last name Haight?

14 MR. HOYT: Hoyt.

15 THE COURT: Hoyt. Good Morning, Mr. Hoyt.

16 This is Defendants' motion for summary judgment. The
17 Court has read everything. The Court's inclined to deny the motion,
18 because it would be an issue of fact as to whether the Plaintiff had
19 actual knowledge of the risk, that his foot would be caught under
20 the trampoline. The Court also is inclined to note that this is a
21 contract of adhesion, although the real issue for denying the motion
22 would be the fact that it's unclear whether or not he had actual
23 knowledge of the risk, and the only Nevada Supreme Court case
24 that is actually on point is the *Renaud v. 200 Convention Center*
25 case, 102 Nev. 500, and in that Nevada Supreme Court case, the

1 Nevada Supreme Court said that it was an issue of fact as to
2 whether or not the Plaintiff had actual knowledge of the risk. But,
3 Mr. Haught [sic] this is your -- Hoyt, this is your motion, so please
4 proceed.

5 MR. HOYT: I'll just briefly respond, and I appreciate the
6 Court's consideration of these issues. With respect to the *Renaud*
7 case, my argument with that is that it is a distinguishable matter.
8 That was a particularly -- I would consider a much more buttress
9 incident, in materials used. These are more common in trampoline
10 parks, there are many of them around the valley. It is very standard
11 for people to understand, you know, from childhood, that there's a
12 risk of injury when you're using a trampoline, and they're signing a
13 release as to that matter. So, I respect the Court's ruling, and I
14 appreciate the opportunity to make the argument. That is all I
15 wanted to add in light of the Court's preliminary thoughts.

16 THE COURT: Thank you, Mr. Hoyt.

17 Mr. Simonsen?

18 MR. SIMONSEN: No, Your Honor, I'm gonna -- I'll rest
19 on the pleadings, thank you.

20 THE COURT: Thank you.

21 The Court's going to deny the motion for the reasons
22 above. The Court understands defense's argument regarding
23 trampolines, but the Court believes that's better suited for an
24 argument to the jury as a finder of fact, and as a matter of law, has
25 to deny the motion.

1 Mr. Hoyt, can you prepare the order and run it by Mr.
2 Simonsen?

3 MR. HOYT: Yes, we'll prepare that.

4 THE COURT: I see that you have a jury trial set in
5 January, do the parties need anything from the Court, for example,
6 a settlement conference?

7 MR. SIMONSEN: At this time, Your Honor, I don't
8 believe so. This is Evan Simonsen for the Plaintiff. Yeah, I don't
9 believe at this point that -- finish up some discovery, and then we
10 may look into something like a mediation or a settlement
11 conference.

12 MR. HOYT: I'll agree with Mr. Simonsen, I think that's
13 appropriate for this case.

14 THE COURT: Thank you so much.

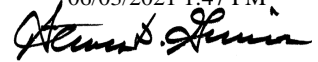
15 MR. HOYT: Thank you.

16 [Hearing concluded at 9:40 a.m.]
17
18
19
20

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

24 

25 _____
Melissa Burgener
Court Recorder/Transcriber


CLERK OF THE COURT

1 **ODM**

2 Phillip V. Tiberi, Esq.

3 Nevada Bar No. 6146

4 Kyle J. Hoyt, Esq.

5 Nevada Bar No. 14886

6 Wood, Smith, Henning & Berman LLP

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11 ptiberi@wshblaw.com

12 khyot@wshblaw.com

13 Attorneys for Defendants Gravady Nevada, LLC
14 and CircusTriX, LLC

15
16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 JESUS MEJIA, an individual,

19 Plaintiff,

20 v.

21 GRAVADY NEVADA, LLC, a Nevada
22 Limited Liability Company; CIRCUSTRIX,
23 LLC, a Utah Limited Liability Company;
24 ASSAF NEVADA, INC., a Nevada
25 Corporation; DOE PROPERTY OWNER I-V;
26 ROE PROPERTY OWNER I-V; ROE
27 MAINTENANCE COMPANY I-V; ROE
28 PROPERTY MANAGEMENT COMPANY I-
V; DOE MAINTENANCE WORKER I-V;
DOE PROPERTY MANAGER I-V; DOE
EMPLOYEE I-V; DOE MANAGER I-V;
ROE EMPLOYER I-V; DOE EQUIPMENT
INSTALLER I-V; ROE EQUIPMENT
INSTALLATION COMPANY; and ROE
COMPANIES I-V,

Defendants.

Case No.: A-19-800435-C

Dept. No.: IV

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendants, GRAVADY NEVADA, LLC and CIRCUSTRIX, LLC Motion for Summary Judgment, having come on regularly for hearing on the 25th day of May, 2021, at 9:00 a.m. in Department 4, the HONORABLE NADIA KRALL, Presiding, Defendants GRAVADY NEVADA,

1 LLC and CIRCUSTRIX, LLC, represented by KYLE J. HOYT, ESQ. of the law firm of WOOD
2 SMITH HENNING & BERMAN, and Plaintiff JESUS MEJIA being represented by EVAN K.
3 SIMONSEN, ESQ. of BIGHORN LAW, the Court being fully advised in the premises, the Court
4 having reviewed the papers as well the representations made by counsel at said hearing and as
5 reflected in the Court's minutes, the Court finds and orders as follows:
6

7 THE COURT FINDS that the issue of whether or not the Plaintiff assumed the risk of injury
8 is a question of fact for the jury.

9 THE COURT FURTHER FINDS that the Nevada Supreme Court's decision in *Renaud v.*
10 *200 Convention Center, Ltd.*, 102 Nev. 500, 728 P.2d 445 (1986) to be directly controlling on the
11 issue of assumption of risk and prevents summary judgment.

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IT IS HEREBY ORDERED that Defendants Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.

Dated this 3rd day of June, 2021



**B59 2CF 2FDF F029
Nadia Krall
District Court Judge**

Respectfully Submitted:

**APPROVED AS TO FORM AND
CONTENT:**

Dated this 2nd day of June, 2021.

Dated this 2nd day of June, 2021.

WOOD, SMITH, HENNING & BERMAN LLP

BIGHORN LAW

/s/ Kyle J. Hoyt
By: _____

/s/ Evan K. Simonsen

PHILLIP V. TIBERI, ESQ.
Nevada Bar No. 6146
KYLE J. HOYT.
Nevada Bar No. 14886
2881 Business Park Court, Suite 200
Las Vegas, NV 89128
Attorneys for Defendants

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JOSHUA P. BERRETT, ESQ.
Nevada Bar No. 12697
EVAN K. SIMONSEN, ESQ.
Nevada Bar No. 13762
716 S. Jones Blvd.
Las Vegas, NV 89107
Attorneys for Plaintiff

Kimberly Amy

From: Kimberly Amy
Sent: Wednesday, June 2, 2021 2:46 PM
To: Kimberly Amy
Subject: FW: [EXTERNAL] Re: Mejia v. Gravady - Draft Order Denying MSJ and Discovery

From: Evan Simonsen <evans@bighornlaw.com>
Sent: Wednesday, June 2, 2021 12:37 PM
To: Kyle J. Hoyt <KHoyt@wshblaw.com>
Subject: [EXTERNAL] Re: Mejia v. Gravady - Draft Order Denying MSJ and Discovery

Kyle,

The Order denying Defendant's Motion for Summary Judgment, as submitted to me, looks fine. You may affix my e-signature.

Thank you,



Evan K. Simonsen, Esq.
Attorney | Bighorn Law



2225 E. Flamingo building 2 suite 300 | Las Vegas, Nevada
| 89119
p. (702) 333-1111 | f. (702) 710-0999
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jesus Mejia, Plaintiff(s)

CASE NO: A-19-800435-C

7 vs.

DEPT. NO. Department 4

8 Gravady Nevada LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/3/2021

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16 Kenneth Januszewski

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18 Kimberly Amy

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19 Kyle Hoyt

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20 Phillip Tiberi

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21 Dolores Johnson

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22 Christopher Anthony

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23 Firm Calendar

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24 Athanasia Dalacas

adalacas@ag.nv.gov

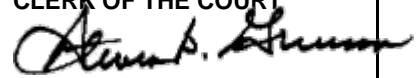
25 Evan Simonsen

evans@bighornlaw.com

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Tanya Bracken-Geller

tanya@bighornlaw.com



1 **NEOJ**
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3 Nevada Bar No. 14886
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5 Telephone: 702 251 4100
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6 ptiberi@wshblaw.com
khyot@wshblaw.com
7
8 Attorneys for Defendants Gravady Nevada, LLC
and CircusTriX, LLC
9

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**
12

13 JESUS MEJIA, an individual,
14 Plaintiff,
15 v.

Case No.: A-19-800435-C
Dept. No.: IV

16 GRAVADY NEVADA, LLC, a Nevada
Limited Liability Company; CIRCUSTRIX,
17 LLC, a Utah Limited Liability Company;
ASSAF NEVADA, INC., a Nevada
18 Corporation; DOE PROPERTY OWNER I-V;
ROE PROPERTY OWNER 1-V; ROE
19 MAINTENANCE COMPANY I-V; ROE
PROPERTY MANAGEMENT COMPANY I-
20 V; DOE MAINTENANCE WORKER I-V;
DOE PROPERTY MANAGER I-V; DOE
21 EMPLOYEE I-V; DOE MANAGER I-V;
ROE EMPLOYER I-V; DOE EQUIPMENT
22 INSTALLER I-V; ROE EQUIPMENT
INSTALLATION COMPANY; and ROE
23 COMPANIES I-V,

24 Defendants.
25

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

26 ///

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28 ///

1 **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY**
2 **JUDGMENT**

3 PLEASE TAKE NOTICE that an Order Denying Defendants' Motion for Summary
4 Judgment was entered in the above-entitled matter on June 3, 2021, a copy is attached hereto for
5 reference.
6

7 DATED this 3rd day of June, 2021

8 WOOD, SMITH, HENNING & BERMAN LLP

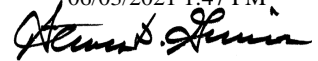
9
10 By /s/ Kyle J. Hoyt
11 PHILLIP V. TIBERI
12 Nevada Bar No. 6146
13 KYLE J. HOYT
14 Nevada Bar No. 14886
15 2881 Business Park Court, Suite 200
16 Las Vegas, Nevada 89128-9020
17 Tel. 702 251 4100

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28
Attorneys for Defendants Gravady Nevada, LLC
and CircusTriX, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2021, a true and correct copy of **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

By /s/ Kimberly Amy
Kimberly Amy, an Employee of
WOOD, SMITH, HENNING & BERMAN LLP



CLERK OF THE COURT

1 **ODM**

2 Phillip V. Tiberi, Esq.

3 Nevada Bar No. 6146

4 Kyle J. Hoyt, Esq.

5 Nevada Bar No. 14886

6 Wood, Smith, Henning & Berman LLP

7 2881 Business Park Court, Suite 200

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9 Telephone: 702 251 4100

10 Facsimile: 702 251 5405

11 ptiberi@wshblaw.com

12 khyot@wshblaw.com

13 Attorneys for Defendants Gravady Nevada, LLC

14 and CircusTriX, LLC

15
16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 JESUS MEJIA, an individual,

19 Plaintiff,

20 v.

21 GRAVADY NEVADA, LLC, a Nevada
22 Limited Liability Company; CIRCUSTRIX,
23 LLC, a Utah Limited Liability Company;
24 ASSAF NEVADA, INC., a Nevada
25 Corporation; DOE PROPERTY OWNER I-V;
26 ROE PROPERTY OWNER I-V; ROE
27 MAINTENANCE COMPANY I-V; ROE
28 PROPERTY MANAGEMENT COMPANY I-
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DOE PROPERTY MANAGER I-V; DOE
EMPLOYEE I-V; DOE MANAGER I-V;
ROE EMPLOYER I-V; DOE EQUIPMENT
INSTALLER I-V; ROE EQUIPMENT
INSTALLATION COMPANY; and ROE
COMPANIES I-V,

Defendants.

Case No.: A-19-800435-C

Dept. No.: IV

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendants, GRAVADY NEVADA, LLC and CIRCUSTRIX, LLC Motion for Summary Judgment, having come on regularly for hearing on the 25th day of May, 2021, at 9:00 a.m. in Department 4, the HONORABLE NADIA KRALL, Presiding, Defendants GRAVADY NEVADA,

1 LLC and CIRCUSTRIX, LLC, represented by KYLE J. HOYT, ESQ. of the law firm of WOOD
2 SMITH HENNING & BERMAN, and Plaintiff JESUS MEJIA being represented by EVAN K.
3 SIMONSEN, ESQ. of BIGHORN LAW, the Court being fully advised in the premises, the Court
4 having reviewed the papers as well the representations made by counsel at said hearing and as
5 reflected in the Court's minutes, the Court finds and orders as follows:
6

7 THE COURT FINDS that the issue of whether or not the Plaintiff assumed the risk of injury
8 is a question of fact for the jury.

9 THE COURT FURTHER FINDS that the Nevada Supreme Court's decision in *Renaud v.*
10 *200 Convention Center, Ltd.*, 102 Nev. 500, 728 P.2d 445 (1986) to be directly controlling on the
11 issue of assumption of risk and prevents summary judgment.

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Case No. A-19-800435-C
Mejia v. Gravady Nevada, LLC, et al.

IT IS HEREBY ORDERED that Defendants Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.

Dated this 3rd day of June, 2021



**B59 2CF 2FDF F029
Nadia Krall
District Court Judge**

Respectfully Submitted:

**APPROVED AS TO FORM AND
CONTENT:**

Dated this 2nd day of June, 2021.

Dated this 2nd day of June, 2021.

WOOD, SMITH, HENNING & BERMAN LLP

BIGHORN LAW

/s/ Kyle J. Hoyt
By: _____

/s/ Evan K. Simonsen

PHILLIP V. TIBERI, ESQ.
Nevada Bar No. 6146
KYLE J. HOYT.
Nevada Bar No. 14886
2881 Business Park Court, Suite 200
Las Vegas, NV 89128
Attorneys for Defendants

KIMBALL JONES, ESQ.
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Nevada Bar No. 12697
EVAN K. SIMONSEN, ESQ.
Nevada Bar No. 13762
716 S. Jones Blvd.
Las Vegas, NV 89107
Attorneys for Plaintiff

Kimberly Amy

From: Kimberly Amy
Sent: Wednesday, June 2, 2021 2:46 PM
To: Kimberly Amy
Subject: FW: [EXTERNAL] Re: Mejia v. Gravady - Draft Order Denying MSJ and Discovery

From: Evan Simonsen <evans@bighornlaw.com>
Sent: Wednesday, June 2, 2021 12:37 PM
To: Kyle J. Hoyt <KHoyt@wshblaw.com>
Subject: [EXTERNAL] Re: Mejia v. Gravady - Draft Order Denying MSJ and Discovery

Kyle,

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Thank you,



Evan K. Simonsen, Esq.
Attorney | Bighorn Law



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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jesus Mejia, Plaintiff(s)

CASE NO: A-19-800435-C

7 vs.

DEPT. NO. Department 4

8 Gravady Nevada LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/3/2021

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18 Kimberly Amy

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20 Phillip Tiberi

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21 Dolores Johnson

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23 Firm Calendar

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24 Athanasia Dalacas

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25 Evan Simonsen

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Tanya Bracken-Geller

tanya@bighornlaw.com