

Case No. _____

In the Supreme Court of Nevada

LAS VEGAS DRAGON HOTEL, LLC, a Nevada limited liability company doing business as ALPINE MOTEL APARTMENTS,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark; and THE HONORABLE MARIA GALL, District Judge,

Respondents,

and

DEBORAH CIHAL CRAWFORD, individually and as heir to the ESTATE OF TRACY ANN CIHAL; JOHN DOE ADMINISTRATOR, as special administrator of the ESTATE OF TRACY ANN CIHAL; DIANE ROBERTS, individually and as heir to the ESTATE OF DONALD KEITH BENNETT; MIA LUCILEE BENNETT, individually and as heir to the ESTATE OF DONALD KEITH BENNETT, by and through her guardian ad litem Diane Roberts; DONALD ROBERTS, individually and as heir to the ESTATE OF DONALD KEITH BENNETT; and JOHN DOE ADMINISTRATOR, as special administrator of the ESTATE OF DONALD KEITH BENNETT; FRANCIS LOMBARDO, III, individually and as heir to the ESTATE OF FRANCIS LOMBARDO, JR.; JOHN DOE ADMINISTRATOR, as special administrator of the ESTATE OF FRANCIS LOMBARDO, JR.; RICHARD AIKENS; MICHELLE AIKENS; MICHAEL AIKENS, a minor by and through his natural parents, Richard Aikens and Michelle Aikens; BRIANNA AIKENS, a minor by and through her natural parents, Richard Aikens and Michelle Aikens;

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Elizabeth A. Brown
Clerk of Supreme Court

DEJOY WILSON; JOHNATHAN WILSON; RETOR JONES, JR.; HELEN CLARK; VICTOR COTTON; CHRISTINA FARINELLA; HAILU ADDIS; DENICIA JOHNSON; PAUL WISE; CARMAN MCCANDLESS; PARALEE MINTER; AUDREY PALMER; SARA RACHAL; KELVIN SALYERS; JOE AGUILERA; DAYSHENA THOMAS; ANDREW THOMAS, a minor by and through his natural parent, Dayshena Thomas; SANDRA JONES; TIACHERELL DOTSON; A'LAYNA DOTSON, by and through her natural parent, Tiacherell Dotson; CLEA ROBERTS; NELSON BLACKBURN; FLOYD GUENTHER; DOYLE MYERS; LAURA EDWARDS; ROY BACKHUS; JIMMY BROWN-LACY; DELMARKAS COMBS; CHARLES COUCH; STEPHANIE COUCH; ASHLEY ROGERS, a minor by and through her natural parent, Cheryl Rogers; CHERYL ROGERS; MATTHEW SYKES; THELMA SYKES; DAVID BARBARA; EDDIE ELLIS; C EUGENE FRAZIER; JEREMY GORDON SCOTTI HUGHES; TOMMY CALDERILLA; KAREN KELLY, Clark County Public Guardian for CHRISTIAN SPANGLER,

Real Parties in Interest.

**PETITIONER'S APPENDIX
VOLUME 1
PAGES 1-250**

District Court Case No. A-20-808100-C
Consolidated with Case Nos. A-20-810951-C, A-20-810949-C,
A-20-814863-C, A-20-816319-C, and A-20-817072-C

STEVEN T. JAFFE (SBN 7035)
MICHELLE R. SCHWARZ (SBN 5127)
TAYLOR R. ANDERSON (SBN 15136)
HALL JAFFE & CLAYTON LLP
7425 Peak Drive
Las Vegas, Nevada 89128

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169

Attorneys for Petitioner

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CERTIFICATE OF SERVICE

I certify that on July 27, 2022, I submitted the foregoing
Petitioner's Appendix for filing *via* the Court's eFlex electronic filing
system. Electronic notification will be sent to the following:

Rahul Ravipudi
Ian Samson
Adam Ellis
PANISH SHEA & BOYLE LLP
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Robert T. Eglet
Tracy A. Eglet
Danielle C. Miller
EGLET ADAMS
400 South Seventh Street, 4th Floor
Las Vegas, Nevada 89101

Attorneys for Real Parties in Interest Deborah Cihal Crawford, individually and as heir to the Estate of Tracy Ann Cihal; John Doe Administrator, as special administrator of the Estate of Tracy Ann Cihal; Diane Roberts, individually and as heir to the Estate of Donald Keith Bennett; Mia Lucilee Bennett, individually and as heir to the Estate of Donald Keith Bennett, by and through her guardian ad litem Diane Roberts; Donald Roberts, individually and as heir to the Estate of Donald Keith Bennett; and John Doe Administrator, as special administrator of the Estate of Donald Keith Bennett; Francis Lombardo, III, individually and as heir to the Estate of Francis Lombardo, Jr.; John Doe Administrator, as

Attorneys for Real Parties in Interest Richard Aikens; Michelle Aikens; Michael Aikens, a minor by and through his natural parents, Richard Aikens and Michelle Aikens; Brianna Aikens, a minor by and through her natural parents, Richard Aikens and Michelle Aikens; Dejoy Wilson; Johnathan Wilson; Retor Jones, Jr.; Helen Clark; Victor Cotton; Christina Farinella; Hailu Addis; Denicia Johnson; Paul Wise; Carman McCandless; Paralee Minter; Audrey Palmer; Sara Rachal; Kelvin Salyers; Joe Aguilera; Dayshena Thomas; Andrew Thomas, a minor by and through his natural parent, Dayshena Thomas; Sandra Jones; Tiacherell Dotson; A'Layna Dotson, by and through her natural parent, Tiacherell Dotson; Clea Roberts; Nelson Blackburn; Floyd Guenther; Doyle Myers; Laura Edwards; Roy

*special administrator of the
Estate of Francis Lombardo, Jr.*

Sean L. Anderson
Ryan Hastings
LEACH KERN
GRUCHOW ANDERSON SONG
2525 Box Canyon Drive
Las Vegas, Nevada 89128

*Backhus; Jimmy Brown-Lacy;
Delmarkas Combs; Charles Couch;
Stephanie Couch; Ashley Rogers, a
minor by and through her natural
parent, Cheryl Rogers; Cheryl Rogers;
Matthew Sykes; Thelma Sykes; David
Barbara; Eddie Ellis; C Eugene
Frazier; Jeremy Gordon Scotti
Hughes; Tommy Calderilla*

*Attorneys for Real Party in Interest
Estate of Donald Keith Bennett*

Robert E. Murdock
Sydney E. Murdock
MURDOCK & ASSOCIATES CHTD.
521 South Third Street
Las Vegas, Nevada 89101

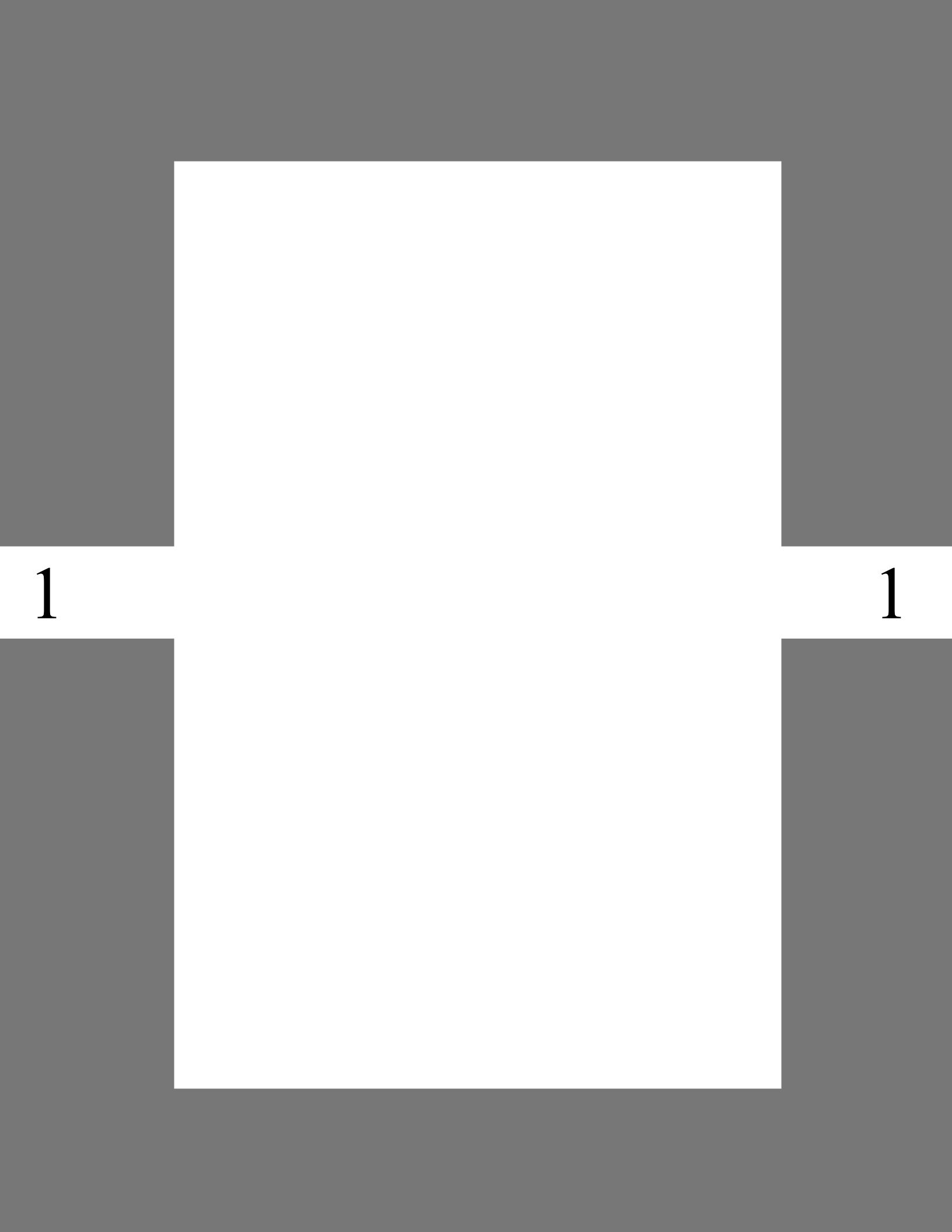
*Attorneys for Real Party in Interest
Karen Kelly, Clark County Public
Guardian for Christian Spangler*

I further certify that I served a copy of this document by mailing a
true and correct copy thereof, postage prepaid, at Las Vegas, Nevada,
addressed as follows:

The Honorable Maria Gall
DISTRICT COURT JUDGE – DEPT. 9
200 Lewis Avenue
Las Vegas, Nevada 89155

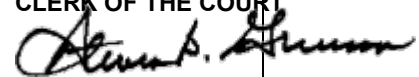
Respondent

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP



1

1



MDSM

STEVEN T. JAFFE, ESQ.

Nevada Bar No. 7035

sjaffe@lawhjc.com

MICHELLE R. SCHWARZ, ESQ.

Nevada Bar No. 005127

mschwarz@lawhjc.com

TAYLOR R. ANDERSON ESQ.

Nevada Bar. No. 015136C

tanderson@lawhjc.com

HALL JAFFE & CLAYTON, LLP

7425 Peak Drive

Las Vegas, Nevada 89128

(702) 316-4111

Fax (702) 316-4114

*Attorneys for Defendants Adolfo Orozco and
Las Vegas Dragon Hotel, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

DEBORAH CIHAL CRAWFORD,
individually and as heir to the ESTATE OF
TRACY ANN CIHAL; JOHN DOE
ADMINISTRATOR, as Special Administrator
of the ESTATE OF TRACY ANN CIHAL,

Plaintiff,

v.

LAS VEGAS DRAGON HOTEL, LLC, a
Nevada limited-liability company doing
business as the ALPINE MOTEL
APARTMENTS; ADOLFO OROZCO, an
individual; DOES 1 through 10; inclusive; and
ROE CORPORATIONS I through V,
inclusive,

Defendants.

AND ALL CONSOLIDATED MATTERS

LEAD CASE NO. A-20-808100-C

CONSOLIDATED:

A-20-810951-C (*Roberts*)

A-20-810949-C (*Lombardo*)

A-20-814863-C (*Aikens*)

A-20-816319-C (*Kelly/Spangler*)

A-20-817072-C (*Rucker*)

DEPT. NO. 32

**DEFENDANT LAS VEGAS DRAGON
HOTEL, LLC'S MOTION TO DISMISS
AND MOTION TO STRIKE**

[HEARING REQUESTED]

Defendant LAS VEGAS DRAGON HOTEL, LLC, by and through its attorneys
STEVEN T. JAFFE, ESQ., MICHELLE R. SCHWARZ, ESQ. and TAYLOR R.
ANDERSON, ESQ. of HALL JAFFE & CLAYTON, LLP hereby respectfully move this

1 Court for an order pursuant to NRCp 12(b)(5) to dismiss Plaintiffs' claims under NRS
2 41.800(1), because an alleged property owner such as Las Vegas Dragon Hotel, LLC, cannot
3 be held liable under the statute through any vicarious liability theory and there are insufficient
4 facts to plead the requisite intent.

5 This motion is made and based on the court's record, the memorandum of points and
6 authorities below, the exhibits, and any argument the Court may entertain from counsel.

7 DATED this 5th day of October, 2020.

8 **HALL JAFFE & CLAYTON, LLP**

9 */s/ Taylor R. Anderson*

10 By: _____

11 STEVEN T. JAFFE, ESQ.

12 Nevada Bar No. 7035

13 MICHELLE R. SCHWARZ, ESQ.

14 Nevada Bar No. 005127

15 TAYLOR R. ANDERSON, ESQ.

16 Nevada Bar. No. 015136C

17 7425 Peak Drive

18 Las Vegas, Nevada 89128

19 *Attorney for Defendants*

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 This action involves a tragic fire that occurred at the Alpine Motel and Apartments on
23 December 21, 2019, a property allegedly owned by Las Vegas Dragon Hotel, LLC ("Dragon
24 Hotel, LLC"). The parties agreed to consolidate the various cases for the purposes of the
25 motion practice, but each of the complaints includes some reference to NRS 41.800 as either a
26 separate claim for liability or a basis of liability. Use of that statute in this context, both in
27 relation to an entity such Dragon Hotel, LLC and as the property owner, rather than a non-
28 owner, is inappropriate. Defendant Adolfo Orozco filed a similar motion seeking dismissal of
the statutory claims against him.

...

II. FACTUAL BACKGROUND

The following factual summary is based entirely on the allegations contained with Plaintiffs' Complaints, because under relevant authority, such allegations must be taken as true for the purpose of this motion. *See Pack v. LaTourette*, 128 Nev. 264, 267-68, 277 P.3d 1246, 1248 (2012) (citing *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 634-35, 137 P.3d 1171, 1180 (2006)). Defendants nevertheless deny these allegations and demand strict proof of the same. That these facts have been recited in this factual background does not constitute Dragon Hotel's admission that they are true or that he accepts them in any way.

Plaintiffs generally alleges that on December 21, 2019, a fire occurred at a property owned and operated by Defendant Dragon Hotel, LLC, that resulted in the deaths of Tracy Ann Cihal, Donald Keith Bennett, Francis Lombardo¹, and varying degrees of injuries to the other Plaintiffs. Plaintiffs further allege that the deaths and injuries resulted from negligent conduct of the defendants. Plaintiffs have alleged that at the time of the fire, the backdoor was somehow barricaded. Based on that allegation, they have included various forms of claims under NRS 41.800 within their complaints.

III. STANDARD FOR MOTION TO DISMISS

Under NRCP 12(b)(5), "a complaint should not be dismissed unless it appears to a certainty that the plaintiff could prove no set of facts that would entitle him or her to relief."

Holcomb Condominium Homeowners' Ass'n, Inc. v. Stewart Venture, LLC, 129 Nev. 181,

¹ There was a total of six fatalities from this tragic incident. The other three individuals who perished were Henry Lawrence Pinc, Cynthia Mikell, and Kerry Baclaan. Upon information and belief, Defendants believe Mr. Pinc's estate or heirs are represented by the Panish Shea & Boyle law firm, which also represents the estates or heirs of Ms. Cihal, Mr. Bennett, and Mr. Lombardo. Defendants further believe that Marwan Porter, Esq., and Travis Buchanan, Esq., with the Cochran Law Firm represents the estates or heirs of Ms. Mikell and Ms. Baclaan. Mr. Porter confirmed this representation during a conversation with counsel for the movant, in June 2020. Moving Defendant presently serves a copy of this motion on Cochran Law Firm, so that they may participate on behalf of their clients, because the Court's ruling on this issue should have the effect of creating issue preclusion with respect to future claims against Mr. Orozco based on similar allegations. Mr. Orozco hereby represents that for the purpose of this Motion, he waives any defenses that the Cochran Law Firm would improperly appear as counsel for the claimants possessing rights stemming from the deaths of Ms. Mikell and Ms. Baclaan solely as necessary to address the issues raised in this Motion.

187, 300 P.3d 124, 128 (2013) (quoting *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62, P.3d 720 (2003)). The court is required to construe the “pleading liberally, drawing every inference in favor of the nonmoving party” *Id.* (quoting *Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 629, 218 P.3d 847, 850 (2009)). Nevertheless, “[a] court may dismiss a complaint for failure to state a claim upon which relief can be granted when an action is barred.” *Id.* (quoting *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998)).

8 IV. ARGUMENT

9 a. Plaintiffs cannot state a claim under NRS 41.800(1) against Dragon Hotel, LLC.

11 In addition to alleging common law claims, Plaintiffs have included a new and novel
12 statutory claim under NRS 41.800 related to the exit door allegedly blocked. Such a claim is
13 legally fails in this circumstance, because (1) an entity such as Dragon Hotel, LLC cannot be
14 held liable under this statute since it requires personal action by the individual held liable and
15 does not provide for vicarious liability by the alleged owner of the property; and (2) the
16 statute’s legislative intent indicates it was intended to be used by the property owner against
17 those who blocked ingress or egress, not in the situation Plaintiffs have alleged.

18 NRS 41.800(1) provides

19 *A person* shall not *intentionally obstruct*:

- 20 (a) The ingress or egress to any public or private property from any
21 other public or private place in such a manner as not to leave a free
22 passageway for persons and vehicles lawfully seeking to enter or
23 leave the property via the public or private place; or
- (b) Any public or private roadway, including, without limitation,
intersections, so as to prevent the safe passage of vehicles thereon
or therethrough.

24 (Emphasis added). Plaintiffs’ complaints fail to allege who *personally* and *intentionally*
25 blockaded the backdoor. In violation of NRS 41.800. Instead, Plaintiffs simply group the
26 Defendants together in a broad sweeping allegation without any factual basis. An entity is not
27 a person and cannot be held liable under this statute, because it only applies to actual people
28 who obstruct a point of ingress or egress.

1 Additionally, the legislative history of this statute indicates the Legislature never
2 intended to make property owners vicariously liable for the conduct of others. Instead, the
3 Legislature adopted this statute to *protect* property owners from others who blocked their
4 property. The statute was intended to be used against individual persons, not their agents, who
5 blocked access to a property, for instance, by picketing. Plaintiffs instead attempt to shoe horn
6 this statute for its attorney fee provision and inappropriately apply it to this case.

7 Statutory interpretation is a question of law, which can be considered by the Court on a
8 motion to dismiss. See *Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex*
9 *rel. Cty. of Washoe*, 122 Nev. 1298, 1302, 148 P.3d 790, 792 (2006). The Court may, in
10 making its evaluation, take judicial notice of the statutory history without converting the
11 motion to a motion for summary judgment. *Fierle v. Perez*, 125 Nev. 728, 738, 219 P.3d 906,
12 912 (2009), *as modified* (Dec. 16, 2009), and *overruled on other grounds* by *Egan v.*
13 *Chambers*, 129 Nev. 239, 299 P.3d 364 (2013)(statutory history is subject to judicial notice);
14 *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (court
15 may consider matters of public record in ruling on a motion to dismiss without converting to
16 summary judgment).

17 The Court first must look at whether the statutory language is clear on its face or
18 whether it is susceptible to more than one reasonable interpretation, when determining whether
19 a statute applies. *Washoe*, 122 Nev. at 1302, 148 P.3d at 793. If the statute is ambiguous, the
20 Court must look beyond its plain meaning to the intent of the legislature when it was adopted.
21 *Id.* “[L]egislative intent is controlling, and [the Court] look[s] to legislative history for
22 guidance.” *Id.* (citing *Potter v. Potter*, 121 Nev. 613, 616, 119 P.3d 1246, 1248 (2005)). The
23 Court then must consider the “policy and spirit of the law and []seek to avoid an interpretation
24 that leads to an absurd result.” *Id.* (quoting *City Plan Dev. v. State, Labor Comm'r*, 121 Nev.
25 419, 435, 117 P.3d 182, 192 (2005)).

26 The plain language of NRS 41.800(1) is unambiguous with respect to its requirement
27 that an individual person intentionally obstruct a point of ingress or egress and that it does not
28 include any form of vicarious liability or *respondeat superior*, or any other type of

1 principal/agent liability which would make Dragon Hotel, LLC liable for the conduct of an
2 agent. The Complaints do not even contain sufficient allegations to say that it was an agent
3 who allegedly blocked this doorway, most just allege the door was blocked.

4 Conversely, should the Court find the statute ambiguous, the legislative history shows
5 the Nevada Legislature never intended to extend liability beyond individual actors who were
6 blocking access to businesses. This statutory claim was enacted during the 2015 session of the
7 Nevada State Legislature as Assembly Bill 258 (the “Bill”). The Bill was originally
8 introduced as a measure to “exempt[] certain offers or sales of securities from registration
9 requirements for securities.” A.B. 258, 78th Leg. (Nev. 2015) (As Introduced). The Bill was
10 then entirely gutted at the last minute, on the day before *sine die*, and replaced with the
11 statutory language eventually adopted and signed into law. The specific language eventually
12 adopted was never debated in committee and all the exhibits related to this bill related to the
13 original securities version.

14 During the floor debates on the Bill, Assemblyman Ira Hansen objected to the Bill
15 being “hijacked” and asked for a conference committee. A.B. 258, 78th Leg., Journal of the
16 Assembly at 119 (Nev. 2015) (floor statement by Assemblyman Ira Hansen on May 31, 2015).
17 In the Senate, Senator Gregory Brower discussed this “hijacking”:

18 “This amendment to A.B. No. 258 essentially deletes all provisions of the
19 bill, and inserts new language providing that no person shall intentionally
20 obstruct the ingress or egress of any public or private property from any
21 other public or private place in such a way as to block persons or vehicles
22 from entering or exiting the property. A person who violates these
23 provisions is not subject to criminal liability but may be the subject of a
24 civil action seeking any or all of the following forms of relief: declaratory
and injunctive relief, including enjoining any ongoing activity that violates
these provisions. A person who brings such an action is entitled to a
rebuttable presumption of irreparable harm, actual damages, reasonable
attorney's fees and costs, and any other legal or equitable relief deemed
appropriate by the court. The bill would be effective upon passage and
approval.”

25 A.B. 258, 78th Leg., Journal of the Senate at 6882 (Nev. 2015) (floor statement by Senator
26 Gregory Brower on May 31, 2015) (attached as **Exhibit A**). The law’s remedy is proactive
27 relief to afford access, not retroactive damages.

28 Senator Aaron Ford, the now attorney general, uselessly objected to the “hijacking”:

1 “I have to stand in opposition to the bill as amended. Not necessarily
2 because it is entirely a bad idea, but because, it is ironic that we are
3 affording certain privileges to companies, and in circumstances like this,
4 we are giving a private right of action to a business to protect its profits
5 but not to a young kid to protect his psyche from conversion therapy, for
6 example. We are giving attorney's fees to companies to protect their
7 ingress and egress, but we remove the opportunity for homeowners to
8 recover those same attorney's fees for a defectively constructed doorway
9 entering into their home. Also, we are offering a presumption against an
10 individual that presumes damages but not against a company for product
11 liability. Those inconsistencies in legislation that have been passed
12 throughout this Session lead me to not support this bill.”

13 A.B. 258, 78th Leg., Journal of the Senate at 6882 (Nev. 2015) (floor statement by Senator
14 Aaron Ford on May 31, 2015) (attached as **Exhibit A**). Senator Gregory Brower responded,

15 “To our colleague who also spoke to the bill when it was on second
16 reading, I want to make sure everyone understands that this bill and the
17 private right of action it creates would apply to all persons, not just
18 businesses but any private property owner who finds his property being
19 blocked by another wrongfully. This does not apply to only businesses. It
20 applies to all persons in our State.”

21 A.B. 258, 78th Leg., Journal of the Senate at 6892 (Nev. 2015) (floor statement by Senator
22 Gregory Brower on May 31, 2015) (attached as **Exhibit A**). The Conference Committee was
23 formed and the houses eventually agreed to the passage of the Bill on the last day of the
24 session. A.B. 258, 78th Leg., Journal of the Assembly at 363-364. The Bill passed along
25 largely party lines, with Republicans approving and Democrats largely voting against passage.
26 A.B. 258, 78th Leg., Journal of the Assembly at 363-364; A.B. 258, 78th Leg., Journal of the
27 Senate at 6892.

28 To the extent the Court may take judicial notice of public statements around the time of
passage, in a blog post by Sean P. Redmond, the Executive Director for Labor Policy for the
U.S. Chamber of Commerce shortly after passage on June 30, 2015, opined that the intent of
the Bill was to “establish[] much-needed limitations on the disruptive picketing at businesses
in the Silver State.” **Exhibit B**. “As written, AB 258 will forbid protests or other activities
that prevent ingress or egress to public or private property and roads and give business owners
a right to sue to put an end to such transgressions.” **Exhibit B**.

This debate reveals how the intent of the Legislature was that *property owners* could use
this provision to remove people who were blocking the entrance and exit of their property or

1 business. Plaintiffs now ask this court to apply the statute in a context exceeding the
2 Legislature's intent, without any Supreme Court imprimatur for that flawed interpretation, in a
3 fashion completely contradictory to this legislative intent. Rather than the statute being used
4 by the property owner to ensure access to and from his or her property, Plaintiffs are
5 attempting to use the statute to apply *against* the alleged property owner, on an apparent
6 theory of vicarious liability, without the necessary factual allegations of intent. This is the
7 complete opposite situation envisioned by the Legislature and an absurd result. Plaintiffs
8 attempt to opportunistically bastardize this statutory claim, solely because it includes an
9 attorney fee provision. There exists no basis in fact or law for its pleading, much less its
10 perpetuation in this matter.

11 **b. Any amendment would be futile and so dismissal should be with prejudice.**

12 Plaintiffs may not now rely on NRCP as a putative cure for the defects cited herein.
13 "NRCP 15(a) provides that leave to amend a complaint shall be 'freely given when justice so
14 requires.' Instead, leave to amend should not be granted if the proposed amendment would be
15 futile." *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 398, 301 P.3d 1148, 1152
16 (2013) (citing *Allum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993)).
17 "A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in
18 order to plead an impermissible claim." *Id.* (citing *Soebbing v. Carpet Barn, Inc.*, 109 Nev.
19 78, 84 P.2d 731, 736 (1993)). To the extent the Court is inclined to allow Plaintiff to amend to
20 cure these alleged defects, such an amendment would be futile because the claims are
21 impermissible and legally barred.

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1 **V. CONCLUSION**

2 For these reasons, Defendant Las Vegas Dragon Hotel, LLC respectfully requests the
3 Court dismiss and strike any claim under NRS 41.800 from the various complaints with
4 prejudice and without leave to amend.

5 DATED this 5th day of October, 2020.

6 **HALL JAFFE & CLAYTON, LLP**

7 */s/ Taylor R. Anderson*

8 By: _____

9 STEVEN T. JAFFE, ESQ.

10 Nevada Bar No. 7035

11 MICHELLE R. SCHWARZ, ESQ.

12 Nevada Bar No. 005127

13 TAYLOR R. ANDERSON, ESQ.

14 Nevada Bar. No. 015136C

15 7425 Peak Drive

16 Las Vegas, Nevada 89128

17 *Attorney for Defendants*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of **HALL JAFFE & CLAYTON, LLP**, and on this 5th day of day of October, 2020, I served a copy of the foregoing **DEFENDANT LAS VEGAS DRAGON HOTEL, LLC'S MOTION TO DISMISS AND MOTION TO STRIKE** as follows:

- [] **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
- [] **FACSIMILE** — By facsimile transmission to the facsimile number(s) shown below; and/or
- [] **HAND DELIVERY** — By hand-delivery to the addresses listed below; and/or
- [X] **ELECTRONIC SERVICE** — Pursuant to the Court's e-filing system to all those individuals who have signed up to receive service on this case, including but not limited to the following:

Rahul Ravipudi
Ian Samson
Adam Ellis
PANISH SHEA & BOYLE LLP
8816 Spanish Ridge Ave.
Las Vegas, NV 89148
Attorneys for

Robert T. Eglet, Esq.
Tracy A. Eglet, Esq.
James A. Trummell, Esq.
EGLET ADAMS
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiffs (Aikens, et al.)

Ben Wilson, Esq.
MORGAN & MORGAN, P.A.
4450 Old Canton Road, Ste. 200
Jackson, MS 39207
*Attorneys for Plaintiffs (Crawford, et al.,
Roberts, et al., Lombardo, et. al)*

Robert E. Murdock, Esq.
MURDOCK & ASSOCIATES, CHTD.
521 South Third Street
Las Vegas, NV 89101
Attorneys for Plaintiff (Kelly for Spangler)

Marwan Porter, Esq.
Travis Buchanan, Esq.
THE COCHRAN FIRM
701 E. Bridger Avenue, Ste. 540
Las Vegas, NV 89101
Attorneys for Unfiled Claimants

Donald "Butch" Williams, Esq.
Robin Gullo, Esq.
WILLIAMS * STARBUCK
612 South Tenth Street
Las Vegas, NV 89101
Attorneys for Defendants TSI

Philip Kegler, Esq.
Michael J. Wiggins, Esq.
MCDONALD TOOLE WIGGINS, P.A.
111 N. Magnolia Ave., Ste. 1200
Orlando, FL 32801
Attorneys for Avanti

1
2 Martin Kravitz, Esq.
Tyler Watson, Esq.
3 **KRAVITZ SCHNITZER JOHNSON, P.C.**
8985 S Eastern Avenue Suite 200
4 Las Vegas, NV 89123
5 *Attorneys for EDS Electronics*

David Fassett, Esq.
DAVID W. FASSETT, J.D. PLLC
531 South Seventh Street
Las Vegas, NV 89101
*Attorneys for Plaintiffs Gary Rucker and
Dakoda Kuba (A-20-817072-C)*

6 Russell Christian, Esq.
TYSON & MENDES
7 3960 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
8 *Attorneys for Advanced Protection Industries*

David Barron, Esq.
BARRON & PRUITT
3890 W. Ann Rd., N.
Las Vegas, NV 89031
Attorneys for Stanley Security Solutions, Inc.

9 Ashley M. Watkins, Esq.
SAM & ASH
10 1108 S. Casino Center Blvd
Las Vegas, NV 89104
11 *Attorney for Corey Evans*

Jorge A. Ramirez, Esq.
Mark C. Severino, Esq.
**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP**
6689 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 89119
*Attorneys for Defendant Cooper Wheellock,
Inc.*

12
13 Elizabeth A. Skane, Esq. (Bar No. 7181)
eskane@skanewilcox.com
14 Sarai L. Brown, Esq. (Bar No. 11067)
sbrown@skanewilcox.com
15 **SKANE WILCOX LLP**
16 1120 Town Center Drive, Suite 200
Las Vegas, Nevada 89144
17 *Attorneys for Defendant AES Corporation*

18
19 /s/ Marianne Sylva
An Employee of
20 **HALL JAFFE & CLAYTON, LLP**
21
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EXHIBIT “A”

6812

THE ONE HUNDRED AND NINETEENTH DAY

CARSON CITY (Sunday), May 31, 2015

Senate called to order at 11:16 a.m.

President Hutchison presiding.

Roll called.

All present except Senator Segerblom, who was excused.

Prayer by Senator Scott Hammond.

Our Heavenly Father, we thank Thee, not only for this day, but for the opportunity to serve Thee and to serve our fellow Nevadans here in this Body. We are grateful Father for the opportunity in these last few hours that we have here to be able to contemplate what is necessary for those who live in this great State and to do so in a deliberative and communicative way; that we can work together with those who perhaps have different ideas or ideologies. We pray, Father, that we might be sensitive to the needs of all those who we serve.

We also express appreciation for our colleague, Assemblywoman Dooling, in the other Body, we know she is going through a very difficult time with the loss of her husband. We pray that she would be watched over and given the love and support she needs throughout this very trying time. We are so thankful, Father, that we have this day and all the blessings that are associated with it.

We pray this in the Name of Jesus Christ.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President and Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Education, to which was referred Senate Bill No. 92, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BECKY HARRIS, *Chair*

Mr. President:

Your Committee on Finance, to which was re-referred Senate Bill No. 325, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass as amended.

Also, Your Committee on Finance, to which was re-referred Senate Bill No. 371, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BEN KIECKHEFER, *Chair*

Mr. President:

Your Committee on Judiciary, to which was referred Assembly Bill No. 258, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

GREG BROWER, *Chair*

Remarks by Senator Lipparelli.

Amendment No. 1036 to Senate Bill No. 266 revises the definition of "facility" for the purposes of the Live Entertainment Tax and establishes that the tax, with certain exceptions, is based on an admission charge being paid for the right or privilege to enter or have access to either indoor or outdoor facilities where live entertainment is provided.

This amendment establishes provisions requiring the Live Entertainment Tax to be imposed on escort services, certain nude dancing, performances by disc jockeys and certain live entertainment provided at a facility with a maximum occupancy of 15,000 or more.

The current Live Entertainment Tax rates of 10 percent or 5 percent based on the 7,500 seat threshold are deleted and replaced by a single rate of 9 percent of the admission charge to the facility where live entertainment is provided. Provisions requiring the tax to be imposed on food, refreshments and merchandise are also deleted. For live entertainment provided by an escort, the 9 percent rate applies to the total amount for the live entertainment provided by the escort.

The amendment reinstates various provisions of current law regarding certain exemptions to the Live Entertainment Tax; clarifies that the tax does not apply to any facility with a maximum occupancy of less than 200; live entertainment provided by certain nonprofit organizations, only if the number of tickets offered for sale or distribution to the live entertainment is less than 7,500; live entertainment that is governed by the Nevada Interscholastic Activities Association or is sponsored by an elementary, junior high, middle or high school if only students or faculty provide the live entertainment; athletic events conducted by a professional team based in Nevada; and certain fees retained by an independent financial institution in connection with the use of credit cards or debit cards to pay the admission charge to a facility where live entertainment is provided. The amendment also provides for an annual appropriation of \$150,000 to the Nevada Arts Council.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 258.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 1034.

~~SUMMARY—[Exempts certain offers or sales of securities from registration requirements for securities.] Prohibits certain acts relating to the obstruction of property and roadways. (BDR [7-700] 3-700)~~

~~AN ACT relating to [securities; providing for an exemption from the requirement to register for certain offerings for the sale of securities made through certain Internet websites; establishing certain requirements relating to an issuer of a security who qualifies for such an exemption; providing for the registration of certain operators of Internet websites who post offerings for the sale of securities not required to be registered;] unlawful acts; prohibiting a person from obstructing certain property or roadways; and providing other matters properly relating thereto.~~

Legislative Counsel's Digest:

~~[Existing law sets forth requirements for the registration of a security with the Securities Division of the Office of the Secretary of State before an offer to sell or a sale of such a security is made unless certain exceptions apply. (NRS 90.460-90.510) Existing law further provides for an exemption of certain securities from the registration requirement and sets forth the filing requirements necessary to qualify for the exemption. (NRS 90.520-90.565)]~~

MAY 31, 2015 — DAY 119

6881

~~Section 3 of this bill provides an additional exemption from the registration requirement for securities for an offer to sell or sale of a security offered by an issuer through an Internet website, commonly known as a "crowdfunding" website, if certain filing and disclosure requirements are met. Section 3 requires that to qualify for this exemption, the issuer of the security and the Internet website conducting the offer of the security must be business entities organized and existing in Nevada. Section 3 also requires that any purchaser of such a security be a resident of, or a business entity organized and existing in, Nevada. The amount of the offer made pursuant to the exemption provided for in section 3 is limited to \$1,000,000 in any consecutive 12 month period. The exemption also limits an investor's purchase to \$5,000, unless the purchaser is an accredited investor. Section 3 further requires a depository institution to hold all investor funds in an escrow account until the issuer's crowdfunding goal is met. Section 3 also requires the Administrator of the Division to adopt regulations to carry out the implementation of the new registration exemption.~~

~~Section 4 of this bill requires such an Internet website to register with the Division before conducting any offer or sale of a security for an issuer pursuant to the exemption provided for in section 3. Section 4 also provides for certain registration exemptions for a crowdfunding Internet website if certain registration requirements are met with the Securities and Exchange Commission.] This bill: (1) prohibits a person from intentionally obstructing certain property or roadways; and (2) prescribes certain civil remedies for persons aggrieved by such conduct.~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Delete existing sections 1 through 7 of this bill and replace with the following new sections 1 and 2:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person shall not intentionally obstruct:

(a) The ingress or egress to any public or private property from any other public or private place in such a manner as not to leave a free passageway for persons and vehicles lawfully seeking to enter or leave the property via the public or private place; or

(b) Any public or private roadway, including, without limitation, intersections, so as to prevent the safe passage of vehicles thereon or therethrough.

2. In addition to any other remedy, a person aggrieved by a violation of subsection 1 may bring a civil action in a court of competent jurisdiction against any person who commits the violation to seek any or all of the following relief:

(a) Declaratory and injunctive relief, including, without limitation, injunctive relief to enjoin any ongoing activity that violates any provision of subsection 1. For the purposes of injunctive relief, a person who brings an

action pursuant to this subsection is entitled to a rebuttable presumption of irreparable harm.

(b) Actual damages.

(c) Reasonable attorney's fees and costs.

(d) Any other legal or equitable relief that the court deems appropriate.

3. A person who violates the provisions of this section is not subject to criminal liability.

Sec. 2. This act becomes effective upon passage and approval.

Senator Brower moved the adoption of the amendment.

Remarks by Senators Brower and Ford.

SENATOR BROWER:

This amendment to A.B. No. 258 essentially deletes all provisions of the bill, and inserts new language providing that no person shall intentionally obstruct the ingress or egress of any public or private property from any other public or private place in such a way as to block persons or vehicles from entering or exiting the property.

A person who violates these provisions is not subject to criminal liability but may be the subject of a civil action seeking any or all of the following forms of relief: declaratory and injunctive relief, including enjoining any ongoing activity that violates these provisions. A person who brings such an action is entitled to a rebuttable presumption of irreparable harm, actual damages, reasonable attorney's fees and costs, and any other legal or equitable relief deemed appropriate by the court. The bill would be effective upon passage and approval.

SENATOR FORD:

I have to stand in opposition to the bill as amended. Not necessarily because it is entirely a bad idea, but because, it is ironic that we are affording certain privileges to companies, and in circumstances like this, we are giving a private right of action to a business to protect its profits but not to a young kid to protect his psyche from conversion therapy, for example. We are giving attorney's fees to companies to protect their ingress and egress, but we remove the opportunity for homeowners to recover those same attorney's fees for a defectively constructed doorway entering into their home. Also, we are offering a presumption against an individual that presumes damages but not against a company for product liability. Those inconsistencies in legislation that have been passed throughout this Session lead me to not support this bill.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 325.

Bill read third time.

Remarks by Senator Kieckhefer.

Senate Bill No. 325 adds a factor measuring the connection between the bidder and this State to the elements that must be considered when evaluating a bid submitted to the State for its purchase of any materials, supplies and equipment estimated to cost more than \$50,000. Elements that may be considered to measure the connection between a bidder and this State include, without limitation: 1) the amount of State or local taxes paid by the bidder to this State; 2) the number of offices maintained by the bidder in this State; 3) the number of persons employed by or contracted with the bidder in this State; and 4) the amount of goods and commodities used by the bidder that are produced, manufactured or supplied in this State.

This bill further requires that, when determining whether a proposal is in the best interests of the State, this factor must be given a relative weight that is greater than the relative weight given to at least one other factor.

SENATOR ATKINSON:

I rise in support of this bill that I sponsored. I wanted to thank the Chair of Finance, the Majority Leader and everyone else who played a role in the last few days here to try to get this out. There was a lot of work done to try to appease quite a few different people. I wanted to say thanks to the people who came to the table. This is what we call one of our southern Nevada priorities. It puts folks to work.

As everyone knows the construction industry, I think we all believe is on the rebound, it is coming back in our State. However, at the same time it is coming back, some of our older workers are phasing out, retiring, moving on. This bill creates an opportunity for us to not only put folks to work, it also provides the opportunity for us to put folks out to work and giving them training in skilled trades and opportunities to learn while they are trying to acquire these skills to do these highly skilled jobs. I wanted to say thanks again; thanks for the opportunity. I promised to read a statement on behalf of the Airport Authority, Reno: "It is to the extent that the provisions of this bill aren't consistent with federal statutes or regulations supporting such Public Works projects than the requirements of this bill will be preempted." I needed to put this on the record so that the airport does not feel like they are in any way going to be harmed with this bill. Once again, I thank my colleagues and urge your support.

SENATOR SPEARMAN:

I rise in support of this bill as well. Not only for what it will do for the civilian community but I believe that it will be a game changer for many of our veterans who are coming home and cannot find work.

Roll call on Senate Bill No. 371:

YEAS—20.

NAYS—None.

EXCUSED—Segerblom.

Senate Bill No. 371 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 258.

Bill read third time.

Remarks by Senator Brower.

To our colleague who also spoke to the bill when it was on second reading, I want to make sure everyone understands that this bill and the private right of action it creates would apply to all persons, not just businesses but any private property owner who finds his property being blocked by another wrongfully. This does not apply to only businesses. It applies to all persons in our State.

Roll call on Assembly Bill No. 258:

YEAS—13.

NAYS—Atkinson, Ford, Kihuen, Parks, Smith, Spearman, Woodhouse—7.

EXCUSED—Segerblom.

Assembly Bill No. 258 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS

CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Bill No. 247.

The following Assembly amendment was read:

Amendment No. 783.

EXHIBIT “B”

<https://www.uschamber.com/article/nevada-law-curtails-mass-picketing>



U.S. Chamber of Commerce

Nevada Law Curtails "Mass" Picketing

SEAN P. REDMOND

Executive Director, Labor Policy

6/30/15

After successfully completing a circuitous path in the legislature earlier this month, a Nevada law scheduled to take effect on July 1 establishes much-needed limitations on disruptive picketing at businesses in the Silver State. The law, adopted as AB 258, was the last legislative action taken by the Nevada legislature in this year's session, done with less than a minute to spare before adjournment.

As written, AB 258 will forbid protests or other activities that prevent ingress or egress to public or private property and roads and give business owners a right to sue to put an end to such transgressions. It also allows business owners to collect damages and attorneys' fees.

This blog has pointed out previously that Nevada has seen its fair share of labor disputes where a law like AB 258 could help. In particular, an acrimonious campaign by Culinary Workers Local 226 (the largest affiliate of the UNITE-HERE union) against Station Casinos has employed many of the tactics covered by the new law, such as blocking Las Vegas Boulevard and harassing guests with offensive epithets as they try to enter a casino. Now that AB 258 is about to go into effect, it will be interesting to see how unions like Local 226 will behave in the future.

About the Author



Sean P. Redmond

Executive Director, Labor Policy

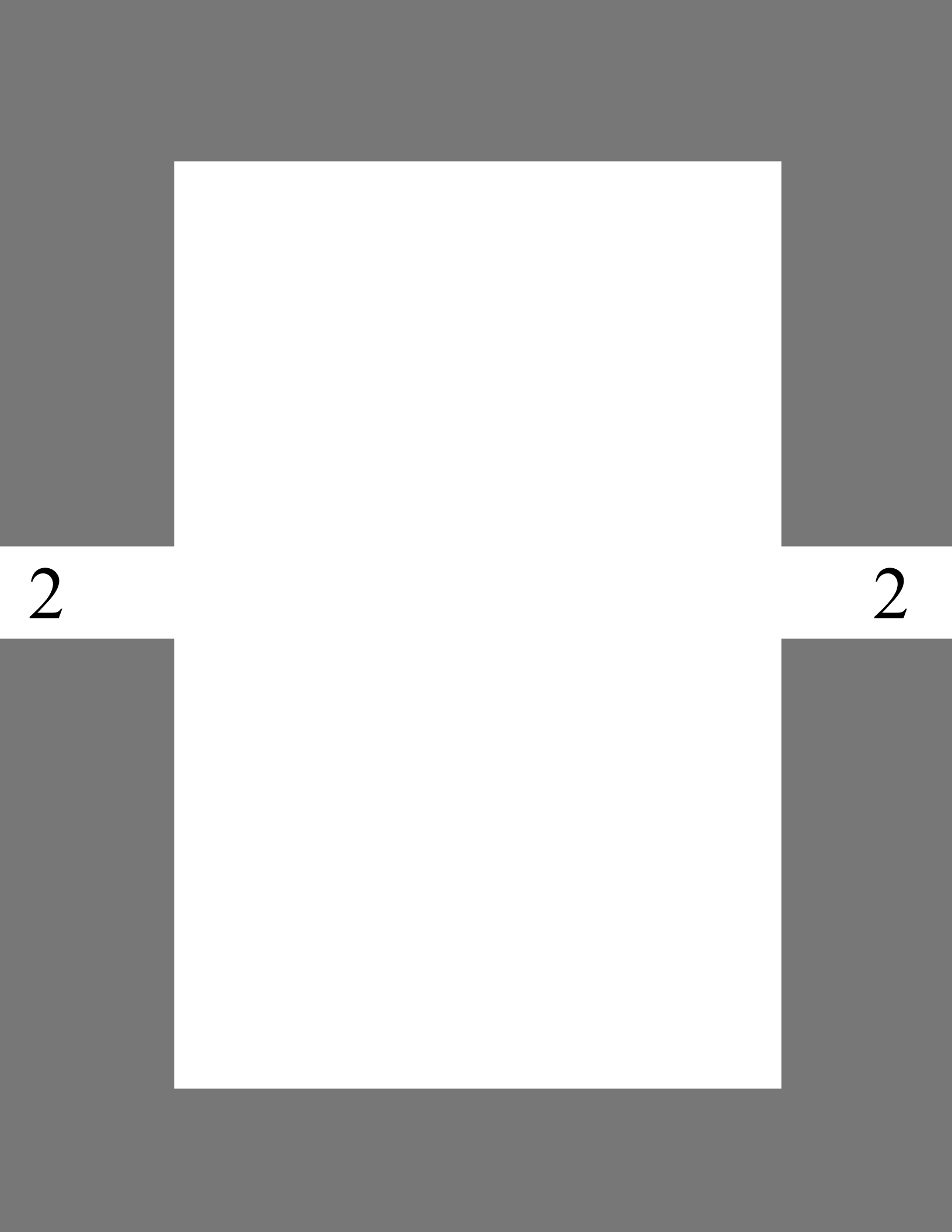
Sean P. Redmond is Executive Director, Labor Policy at the U.S. Chamber of Commerce.

[@FreeWorkforce](#)

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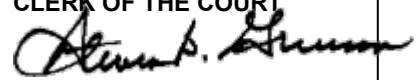
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JOPP
RAHUL RAVIPUDI, ESQ. (NV Bar No. 14750)
ravipudi@psblaw.com
IAN SAMSON, ESQ. (NV Bar No. 15089)
samson@psblaw.com
ADAM ELLIS, ESQ. (NV Bar No. 14514)
ellis@psblaw.com
PANISH SHEA & BOYLE LLP
8816 Spanish Ridge Avenue
Las Vegas, NV 89148
T: 702.560.5520
F: 702.975.2515

BENJAMIN H. WILSON, ESQ.
(admitted pro hac vice)
bwilson@forthepeople.com
MORGAN & MORGAN, P.A.
4450 Old Canton Road, Suite 200
Jackson, MS 39207
T: 601.718.0940
F: 601.949.3399
Attorneys for Plaintiffs

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DEBORAH CIHAL CRAWFORD, individually and as
heir to the ESTATE OF TRACY ANN CIHAL; JOHN
DOE ADMINISTRATOR, as Special Administrator of
the ESTATE OF TRACY ANN CIHAL,

Plaintiffs,

v.

LAS VEGAS DRAGON HOTEL, LLC, a Nevada
limited-liability company doing business as the
ALPINE MOTEL APARTMENTS; ADOLFO
OROZCO, an individual; DOES 1 through 10; ROE
ENTITIES 1 through 10,

Defendants.

AND ALL CONSOLIDATED MATTERS

Case No.: A-20-808100-C
(Lead Case)

Consolidated with
A-20-810951-C
A-20-810949-C
A-20-814863-C
A-20-816319-C

Dept. No.: XXXII

**CONDITIONAL OPPOSITION AND
JOINDER IN OPPOSITION TO
DEFENDANT LAS VEGAS DRAGON
HOTEL, LLC'S MOTION TO DISMISS
AND MOTION TO STRIKE**

COME NOW Plaintiffs DEBORAH CIHAL CRAWFORD (A-20-808100-C) by and through
her counsel of record the law firm of PANISH SHEA & BOYLE LLP and MORGAN & MORGAN,
P.A.; DIANE ROBERTS, DONALD ROBERTS, and MIA LUCILLE BENNETT (A-20-810951-C);
and FRANCIS LOMBARDO, III (A-20-810949-C) by and through their counsel of record the law

1 firm of PANISH SHEA & BOYLE LLP, and file this Conditional Opposition and Joinder in
 2 Opposition to Defendant Las Vegas Dragon Hotel, LLC's Motion to Dismiss and Motion to Strike
 3 ("Conditional Opposition"). This Conditional Opposition is based on the following Memorandum of
 4 Points and Authorities, the papers and pleadings on file, the argument of counsel at the hearing on this
 5 matter.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Plaintiffs Deborah Cihal Crawford, Diane Roberts, Mia Lucille Bennett, Donald Roberts, and
 9 Francis Lombardo, III ("Plaintiffs") file their Conditional Opposition as Plaintiffs and Defendants
 10 stipulated to permit Plaintiffs to each file a First Amended Complaint. Plaintiffs submitted a
 11 Stipulation and Order to the Court on October 16, 2020, which as of the time of this filing has not
 12 been entered by the Court. Therefore, Plaintiffs file this opposition to avoid any appearance or claim
 13 they waived any arguments. (Plaintiffs do not file this opposition and joinder as a means of evading
 14 the stipulation, but simply to ensure their positions are not misconstrued.) To be clear, although
 15 Plaintiffs wish to amend their complaints for a variety of reasons—including to add defendants and
 16 causes of action not contemplated by these motions to dismiss—that desire to amend does not indicate
 17 Defendant's motion has merit.

18 Further, Plaintiffs wish to amend their respective Complaints to add additional Defendants and
 19 causes of action, and such amendments should not be construed as any admission that Defendants
 20 arguments have merit. Likewise, Plaintiffs and Defendants agreed Defendants' Instant Motion will be
 21 instead directed at each Plaintiffs' First Amended Complaint, rather than the active Complaints.

22 **II. ARGUMENT**

23 A motion to dismiss may only be granted if "it appears *beyond a doubt* that it could prove no
 24 set of facts, which, if true, would entitle it to relief." *Buzz Stew, Ltd. Liab. Co. v. City of N. Las Vegas*,
 25 124 Nev. 224, 227-28, (2008). In performing the analysis, all factual allegations in the complaint must
 26 be taken as true, and all inferences must be drawn in the non-moving party's favor. *Id.*

27 **A. Defendant's Arguments Concerning NRS 41.800 Are Wrong**

28 Defendant argues he may not be held liable for violation of NRS 41.800 due to its legislative

1 history. That is incorrect. Although Defendant discusses the legislative history at length, nothing in
2 that discussion changes the unambiguous nature of the statute. The Court need only look behind the
3 curtain where the statute's lack of clarity compels it. *See In re Nev. State Eng'r Ruling No. 5823*, 128
4 Nev. 232, 239 (2012). NRS 41.800 unambiguously prohibits obstruction of ingress and egress of
5 buildings—precisely what the complaints allege Defendant Orozco did. And although the statute uses
6 the word “person,” nothing implies that is meant to override the well-established legal principle that
7 one may be liable for directing the actions of others. Resorting to the legislative history is
8 unnecessary, as the statute itself contains everything on its face.

9 **B. Leave to Amend Should Be Provided, and Collateral Estoppel Not Applied**

10 As the Nevada Supreme Court has held, “in the absence of any apparent or declared reason—
11 such as undue delay, bad faith or dilatory motive on the part of the movant—the leave sought should
12 be freely given.” *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105-06 (1973). Plaintiffs filed this
13 opposition conditionally given the stipulation for Plaintiffs to amend submitted with Defendants
14 Orozco and Las Vegas Dragon Hotel had not yet been approved. Even if the Court declines to
15 approve of that stipulation, and even if the Court determines the complaints' allegations to be
16 insufficient, Plaintiffs should be provided leave to amend. It would not be futile, it would not
17 prejudice Defendant, but it would significantly prejudice Plaintiffs.

18 The Court should likewise reject Defendant's request to collaterally estop future parties who
19 have not yet filed their actions. The Court cannot adjudicate the merits of a *potential* claim, let alone
20 by dismissing a different one without leave to amend (as Defendant suggests). All parties are afforded
21 due process rights. As a result, “issue preclusion can only be used against a party whose due process
22 rights have been met by virtue of that party having been a party or in privity with a party in the prior
23 litigation.” *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 481 (2009), *holding modified by Garcia*
24 *v. Prudential Ins. Co. of Am.*, 129 Nev. 15 (2013). None of the heirs and estate representatives
25 Defendant lists have appeared in this action; when they do, the time will be ripe for the Court to
26 consider those claims.

27 **III. JOINDER**

28 For the reasons stated above, Plaintiffs hereby join in the arguments raised by the Aikens

1 Plaintiffs and Karen Kelly, Clark County Public Guardian for Christian Spangler, each Opposition
2 filed October 19, 2020.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court should DENY the Motion in total.

5
6 **PANISH SHEA & BOYLE LLP**

7 /s/ Adam Ellis
8 RAHUL RAVIPUDI, ESQ. (NV Bar No. 14750)
9 IAN P. SAMSON, ESQ. (NV Bar No. 15089)
10 ADAM ELLIS, ESQ. (NV Bar No. 14514)
11 *Attorneys for Plaintiffs*

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PANISH SHEA & BOYLE LLP
8816 Spanish Ridge Ave.
Las Vegas, NV 89148
702.560.5520 phone • 702.975.2515 fax

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PANISH SHEA & BOYLE, LLP and that on this 19th day of October, 2020, I caused the foregoing **CONDITIONAL OPPOSITION AND JOINDER IN OPPOSITION TO DEFENDANT LAS VEGAS DRAGON HOTEL, LLC'S MOTION TO DISMISS AND MOTION TO STRIKE**, to be served as follows:

☒ pursuant to N.E.F.C.R. 9 by serving it via electronic service;
to all parties registered for electronic service.

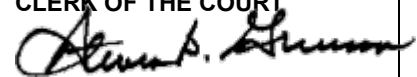
By: /s/ Adam Ellis

PANISH SHEA & BOYLE LLP
8816 Spanish Ridge Ave.
Las Vegas, NV 89148
702.560.5520 phone • 702.975.2515 fax

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OMD

Robert E. Murdock, Esq.
Nevada Bar No. 4013
Sydney E. Murdock, Esq.
Nevada Bar No. 15291
MURDOCK & ASSOCIATES, CHTD.
521 South Third Street
Las Vegas, NV 89101
Phone: 702-685-6111
Fax: 702-685-6222
rem@keachmurdock.com
sem@murdockassociates.com
*Attorneys for Plaintiff Karen Kelly,
Clark County Public Guardian for Christian Spangler*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DEBORAH CIHAL CRAWFORD,
individually and as heir to the ESTATE OF
TRACY ANN CIHAL; JOHN DOE
ADMINISTRATOR, as Special Administrator
of the ESTATE OF TRACY ANN CIHAL,

Plaintiff,

v.
LAS VEGAS DRAGON HOTEL, LLC, a
Nevada limited-liability company doing
business as the ALPINE MOTEL
APARTMENTS; ADOLFO OROZCO, an
individual; DOES 1 through 10; inclusive; and
ROE CORPORATIONS I through V,
inclusive,

Defendants.

Lead Case No.: A-20-808100-C
Dept. No.: XXXII

**PLAINTIFF KAREN KELLY, CLARK
COUNTY PUBLIC GUARDIAN FOR
CHRISTIAN SPANGLER'S OPPOSITION
TO DEFENDANT LAS VEGAS DRAGON
HOTEL, LLC'S MOTION TO DISMISS AND
MOTION TO STRIKE**

**Date of Hearing: 11/10/2020
Time of Hearing: 9:30 a.m.**

DIANE ROBERTS, individually and as heir to
the ESTATE OF DONALD KEITH
BENNETT; MIA LUCILLE BENNETT,
individually and as heir to the ESTATE OF
DONALD KEITH BENNETT, by and through
her guardian ad litem DIANE ROBERTS;
DONALD ROBERTS, individually and as heir
to the ESTATE OF DONALD KEITH
BENNETT; and JOHN DOE
ADMINISTRATOR, as Special Administrator
of the ESTATE OF DONALD KEITH

Case No.: A-20-810951-C
Dept. No.: XVIII

(Consolidated with A-20-808100-C)

1 BENNETT,
2
3
4 Plaintiffs,
5
6 v.
7
8 LAS VEGAS DRAGON HOTEL, LLC, a
9 Nevada limited-liability company doing
10 business as the ALPINE MOTEL
11 APARTMENTS; ADOLFO OROZCO, an
12 individual; DOES 1 through 10; ROE
13 ENTITIES 1 through 10,
14
15 Defendants.

16 FRANCIS LOMBARDO, III, individually and
17 as heir to the ESTATE OF FRANCIS
18 LOMBARDO, JR.; JOHN DOE
19 ADMINISTRATOR, as Special Administrator
20 of the ESTATE OF FRANCIS LOMBARDO,
21 JR.,

22 Plaintiffs,
23 v.
24 LAS VEGAS DRAGON HOTEL, LLC, a
25 Nevada limited-liability company doing
26 business as the ALPINE MOTEL
27 APARTMENTS; ADOLFO OROZCO, an
28 individual; DOES 1 through 10; ROE
ENTITIES 1 through 10,
Defendants.

RICHARD AIKENS; MICHELLE AIKENS;
MICHAEL AIKENS, a minor, by and through
his natural parents, RICHARD AIKENS and
MICHELLE AIKENS; BRIANNA AIKENS, a
minor, by and through her natural parents,
RICHARD AIKENS and MICHELLE
AIKENS; DEJOY WILSON; JOHNATHAN
WILSON; RETOR JONES JR.; HELEN
CLARK; VICTOR COTTON; CHRISTINA
FARINELLA; HAILU ADDIS; DENICIA
JOHNSON, PAUL WISE; CARMAN
MCCANDLESS; PARALEE MINTER;
AUDREY PALMER; SARA RACHAL;
KELVIN SALYERS; JOE AGUILERA;

Case No.: A-20-810949-C

Dept. No.: VIII

(Consolidated with A-20-808100-C)

Case No.: A-20-814863-C

Dept. No.: XXII

(Consolidated with A-20-808100-C)

1 DAYSHENA THOMAS; ANDREW
2 THOMAS a minor, by and through his natural
3 parent, DAYSHENA THOMAS; SANDRA
4 JONES, TIACHERELL DOTSON;
5 A'LAYNA DOTSON, by and through her
6 natural parent TIACHERELL DOTSON;
7 CLEA ROBERTS; NELSON BLACKBURN;
8 FLOYD GUENTHER; DOYLE MYERS;
9 LAURA EDWARDS; ROY BACKHUS;
10 JIMMY BROWN-LACY; DELMARKAS
11 COMBS; CHARLES COUCH; STEPHANIE
12 COUCH; ASHLEY ROGERS a minor, by and
13 through her natural parent CHERYL
14 ROGERS; CHERYL ROGERS; MATTHEW
15 SYKES; THELMA SYKES; DAVID
16 BARBARA; EDDIE ELLIS; C EUGENE
17 FRAZIER; JEREMY GORDON; SCOTTI
18 HUGHES and TOMMY CALDERILLA,

19 Plaintiffs,

20 vs.

21 LAS VEGAS DRAGON HOTEL, LLC, a
22 limited-liability company, dba ALPINE
23 MOTEL; ADOLFO G. OROZCO, an
24 individual; EDS ELECTRONICS INC., a
25 domestic corporation; TSI SALES &
26 INSTALLATION LLC, dba TSI, a domestic
27 limited-liability company; TSI MONITORING
28 LLC, dba TSI, a domestic limited-liability
company; TOTAL SAFETY
INCORPORATED, a domestic corporation;
STANLEY SECURITY SOLUTIONS INC., a
foreign corporation; COOPER WHEELOCK
INC., a domestic corporation; AES
CORPORATION, a domestic corporation;
DOE 1 through 40; ROE CORPORATIONS 1
through 40; DOE INSTALLERS 1 through 40;
DOE CONTRACTORS 1 through 40; ROE
SELLERS 1 through 40; DOE INDIVIDUALS
1 through 40; DOE EMPLOYEES 1 through
40; ROE DESIGNERS 1 through 40; ROE
MANUFACTURERS 1 through 40; ROE
HORN STROBE DESIGNERS 1 through 40;
ROE HORN STROBE MANUFACTURERS 1
through 40; ROE HORN STROBE

1 DISTRIBUTORS 1 through 40; ROE
2 WIRELESS RADIO ALARM
3 TRANSMISSION SYSTEM DESIGNERS 1
4 through 40; ROE WIRELESS RADIO
5 ALARM TRANSMISSION SYSTEM
6 MANUFACTURERS 1 through 40; ROE
7 WIRELESS RADIO ALARM
8 TRANSMISSION SYSTEM DESIGNERS 1
9 through 40; ROE COMPONENT PART
10 DESIGNERS 1 through 40; ROE
11 COMPONENT PART MANUFACTURERS 1
12 through 40; ROE COMPONENT PART
13 DISTRIBUTORS 1 through 40; DOE
14 NEGLIGENT EMPLOYERS 1 through 40;
15 DOE NEGLIGENT EMPLOYEES 1 through
16 40; ROE NEGLIGENT CORPORATIONS 1
17 through 40,

Defendants.

13 KAREN KELLY, Clark County Public
14 Guardian for CHRISTIAN SPANGLER,

Plaintiff,

v.

16 LAS VEGAS DRAGON HOTEL, LLC, a
17 limited-liability company, dba ALPINE
18 MOTEL; ADOLFO G. OROZCO, an
19 individual; ERIKA AYALA (aka ERIKA
20 AYALA-AGUILAR), an individual; ELITE1,
21 LLC, a domestic limited-liability company;
22 GALEANA, LLC, a Delaware limited-liability
23 company; CANCUN, LLC, a domestic limited-
24 liability company; JASON CASTEEL, an
25 individual; EDS ELECTRONICS INC., a
26 domestic corporation;; TOTAL SAFETY
27 INCORPORATED, a domestic corporation;;
28 COOPER WHELOCK INC., a domestic
corporation; AES CORPORATION, a
domestic corporation; DOES 1 through 40;
ROE CORPORATIONS 1 through 40; DOE
INSTALLERS 1 through 40; DOE
CONTRACTORS 1 through 40; ROE
SELLERS 1 through 40; DOE INDIVIDUALS
1 through 40; DOE EMPLOYEES 1 through
40; ROE DESIGNERS 1 through 40; ROE

Case No.: A-20-816319-C

Dept. No.: XXVII

(Consolidated with A-20-808100-C)

MANUFACTURERS 1 through 40; ROE DISTRIBUTORS 1 through 40, ROE STOVE DESIGNERS 1 through 40, ROE STOVE MANUFACTURERS 1 through 40, ROE STOVE DISTRIBUTORS 1 through 40, ROE STOVE INSTALLERS 1 through 40, ROE STOVE SELLERS 1 through 40, ROE STOVE MAINTAINERS 1 through 40, ROE HORN STROBE DESIGNERS 1 through 40; ROE HORN STROBE MANUFACTURERS 1 through 40; ROE HORN STROBE DISTRIBUTORS 1 through 40; ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM DESIGNERS 1 through 40; ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM MANUFACTURERS 1 through 40; ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM DISTRIBUTORS 1 through 40, ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM DESIGNERS 1 through 40; ROE COMPONENT PART DESIGNERS 1 through 40; ROE COMPONENT PART MANUFACTURERS 1 through 40; ROE COMPONENT PART DISTRIBUTORS 1 through 40; DOE NEGLIGENT EMPLOYERS 1 through 40; DOE NEGLIGENT EMPLOYEES 1 through 40; DOE MAINTENANCE WORKERS 1 through 40; DOE MONITORING COMPANIES 1 through 40; ROE NEGLIGENT CORPORATIONS 1 through 40,

Defendants.

GARY RUCKER, individually, DAKODA KUBA, individually,

Plaintiffs,

vs.

LAS VEGAS DRAGON HOTEL, LLC, a Nevada limited-liability company doing business as the ALPINE MOTEL APARTMENTS; ADOLFO OROZCO, an individual; DOES I through X, inclusive, and

Case No.: A-20-817072-C

Dept. No.: XIII

(Consolidated with A-20-808100-C)

1 ROE CORPORATIONS I through X,
2 inclusive,
3 Defendants.

4
5 COMES NOW Plaintiff KAREN KELLY, Clark County Public Guardian for CHRISTIAN
6 SPANGLER, by and through her attorneys of record Robert E. Murdock, Esq. and Sydney E.
7 Murdock, Esq. of Murdock & Associates, Chtd. and hereby submits her Opposition to Defendant
8 Las Vegas Dragon Hotel, LLC's Motion to Dismiss and Motion to Strike, as follows.

9
10 This Opposition is made and based upon all the pleadings and papers on file herein, the
11 following Points and Authorities, and any argument of counsel as may be had.

12 DATED this 19th day of October 2020.

13 MURDOCK & ASSOCIATES, CHTD.

14 /s/ Robert E. Murdock
15 Robert E. Murdock Bar No. 4013
16 Sydney E. Murdock Bar No. 15291
17 521 South Third Street
18 Las Vegas, NV 89101
19 *Attorneys for Plaintiff*
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POINTS AND AUTHORITIES

The Motion to Dismiss by Las Vegas Dragon Hotel, LLC is based solely upon its unreasonable interpretation of NRS 41.800. It attempts to create some kind of ambiguity so it can go outside of the words of the statute and argue the Legislative history, etc. However, the law does not allow this kind of argument. The statute is clear on its face. There is no ambiguity. NRS 41.800 provides for relief for a violation of same. Las Vegas Dragon Hotel, LLC violated the statute and the statute now provides a remedy to Plaintiff.

1. Motion to Dismiss Standard

The law guiding a Motion to Dismiss has been stated time and again:

“The City's motion to dismiss Buzz Stew's complaint under NRCP 12(b)(5) "is subject to a rigorous standard of review on appeal." Accordingly, this court will recognize **all factual allegations in Buzz Stew's complaint as true and draw all inferences in its favor.** Buzz Stew's complaint should be dismissed **only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.**”

Buzz Stew, Ltd. Liab. Co. v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Hence, the Court must accept all allegations in Plaintiff's Complaint as true, draw all inferences in favor of Plaintiff and, **only dismiss the matter if it appears beyond a doubt that Plaintiff could prove no set of facts, which if true, would entitle it to relief.**

2. The Facts Must Be Accepted as True

This Court well knows that the facts alleged in Plaintiff's Second Amended Complaint must be accepted as true. See **Pack v. LaTourette**, 128 Nev. 264, 267-68, 277 P.3d 1246, 1248 (2012). For the purposes of the NRS 41.800 issue, the facts which must be accepted as true are:

- a. Christian Spangler was a resident at the Alpine Motel. (Par. 3)

- b. Las Vegas Dragon Hotel, LLC was doing business as the Alpine Motel.¹ (Par. 4)
- c. Jason Casteel was the live-in property manager of the Alpine Motel and was an employee and /or agent of Las Vegas Dragon Hotel, LLC. (Par. 12)
- d. All of Casteel's actions were done in furtherance of his employment or agency and were within the course and scope of said employment or agency. (Par. 12)
- e. Casteel, acting within the course and scope of his employment or agency, ordered a maintenance worker at the Alpine Motel, who was also acting within the course and scope of his employment with Las Vegas Dragon Hotel, LLC, to bolt the back door of the Alpine Motel. (Par. 53)
- f. Hence, the bolting of the back door halted ingress and egress via the back door. (Par. 41, 53)
- g. In the early hours of the morning on or about December 21, 2019, a fire ignited in a first-floor unit located within the three-story ALPINE MOTEL. (Par. 37)
- h. In order to escape the fire, SPANGLER, whose unit was next to the stairs leading to the back door, would have attempted to escape via the back door but was unable to do so because it was bolted shut. (Par. 53)

3. NRS 41.800 is clear on its face

Plaintiff claims a cause of action for Las Vegas Dragon Hotel, LLC's violation of NRS 41.800. The statute states:

"41.800. Acts for which person is liable; remedies; no criminal liability for violation of section.

1. A person shall not intentionally obstruct:

(a) The ingress or egress to any public or private property from any other public or private place in such a manner as not to leave a free passageway for persons and

¹ As this Motion is limited to NRS 41.800 issues, Plaintiffs will not discuss the various issues with the alter ego matters related to Las Vegas Dragon Hotel, LLC.

1 vehicles lawfully seeking to enter or leave the property via the public or private
2 place; or

3 (b) Any public or private roadway, including, without limitation, intersections, so as
4 to prevent the safe passage of vehicles thereon or therethrough.

5 2. In addition to any other remedy, a person aggrieved by a violation of subsection 1
6 may bring a civil action in a court of competent jurisdiction against any person who
7 commits the violation to seek any or all of the following relief:

8 (a) Declaratory and injunctive relief, including, without limitation, injunctive relief
9 to enjoin any ongoing activity that violates any provision of subsection 1. For the
10 purposes of injunctive relief, a person who brings an action pursuant to this
11 subsection is entitled to a rebuttable presumption of irreparable harm.

12 (b) Actual damages.

13 (c) Reasonable attorney's fees and costs.

14 (d) Any other legal or equitable relief that the court deems appropriate.

15 3. A person who violates the provisions of this section is not subject to criminal
16 liability."

17 Nev. Rev. Stat. Ann. § 41.800.

18 Placing the facts as alleged into the statute, Plaintiff claims that Las Vegas Dragon Hotel,
19 LLC intentionally obstructed the back door of the Alpine Motel blocking egress such that no free
20 passageway for Mr. Spangler was available for him to leave the Alpine Motel.

21 Defendant argues that the statute is ambiguous because,

22 "Plaintiffs' complaints fail to allege who *personally* and *intentionally* blockaded
23 the backdoor. (sic) In violation of NRS 41.800. Instead, Plaintiffs simply group the
24 Defendants together in a broad sweeping allegation without any factual basis. An
25 entity is not a person and cannot be held liable under this statute, because it only
26 applies to actual people who obstruct a point of ingress or egress."

27 Motion at 4. (Emphasis added). **Defendant's last sentence is completely wrong** and ignores
28 statutory authority.

29 The Legislature has defined for us what the word "person" means and what it doesn't mean
30 when a statute does not explicitly define same. NRS 0.039 states:

31 "Except as otherwise expressly provided in a particular statute or required by the
32 context, "person" means a natural person, any form of business or social
33 organization and any other nongovernmental legal entity including, but not limited
34 to, a corporation, partnership, association, trust or unincorporated organization."

1 **And the statute even tells us what a person isn't:**

2 "The term does not include a government, governmental agency or political
3 subdivision of a government."

4 NRS 0.039. Hence, the word "person" which Defendant argues is ambiguous could only be so if
5 one decides to completely forego reading NRS 0.039, which, apparently Defendant did.

6 To be clear, NRS 41.800 did not "expressly provide otherwise" and therefore, NRS 0.039
7 controls and there is no ambiguity about "person" in the language of the statute. Succinctly, *but*
8 *with the aid of NRS 0.39*, it means, and can only mean: A person (meaning a natural person, any
9 form of business or social organization and any other nongovernmental legal entity including, but
10 not limited to, a corporation, partnership, association, trust or unincorporated organization) who
11 intentionally obstructs another's ingress or egress from one place to another, violates the statute.
12 There is no other reasonable interpretation—unless one wants to forget about the Legislature
13 providing definitions viz a viz NRS 0.039.

14 Hence, since Defendant obviously neglected to read NRS 0.039, Defendant exclaims that
15 the word "person" is ambiguous and then decides to provide a history lesson based upon
16 Legislative history. However, if there is no ambiguity in a statute, the statute is enforced as
17 written. **"If the statute's language is clear and unambiguous, we enforce the statute as**
18 **written."** *Sheriff v. Witzenburg*, 122 Nev. 1056, 1061, 145 P.3d 1002, 1005 (2006). **Hobbs v.**
19 **State**, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011); **Figueroa-Beltran v. United States**, 467
20 P.3d 615, 621 (Nev. 2020). As the United States Supreme Court has explained: "[I]n interpreting a
21 statute a court should always turn to one cardinal canon before all others. . . . [C]ourts must
22 presume that a legislature says in a statute what it means and means in a statute what it says there."
23 **Connecticut Nat'l Bank v. Germain**, 112 S. Ct. 1146, 1149 (1992). In explaining this, Justice
24 Kozinski of the Ninth Circuit has explained summarily "And if a statute expressly excluded golf
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1 from its definition of “fun sports,” we couldn't hold that golf is a fun sport.” **Pintos v. Pac.**
2 **Creditors Ass'n**, 605 F.3d 665, 672 (9th Cir. Cal. 2010) (Chief Judge Kozinski). Creating an
3 ambiguity where none is there, is improper. Courts cannot create ambiguity if none exists. **Miller**
4 **v. Burk**, 124 Nev. 579, 590, 188 P.3d 1112, 1120 (2008) (explaining that when a statute is clear
5 on its face, we will not go beyond its language “to create an ambiguity when none exists”); **State**
6 **v. Carter**, No. 60102-4-I, 2008 Wash. App. LEXIS 2050, at *6 (Ct. App. July 28, 2008)(Courts
7 should not use strained interpretations to create an ambiguity). As Justice Gibbons for an *en banc*
8 Nevada Supreme Court recently held:
9

10
11 “Only when the statute is ambiguous, meaning that it is subject to more than one
12 reasonable interpretation, do we look beyond the language [of the statute] to
13 consider its meaning in light of its spirit, subject matter, and public policy.” Id.
14 (alteration in original) (internal quotations omitted); see also *State v. Lucero*, 127
15 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) (explaining that when a statute is
16 ambiguous, this court may then look to legislative history and construe the statute
17 in a manner consistent with reason and public policy).

18 **Figueroa-Beltran v. United States**, 467 P.3d 615, 621 (Nev. 2020).

19 The meaning of “person” in NRS 41.800 is crystal clear via NRS 0.039: a natural person or
20 any form of business. Las Vegas Dragon Hotel, LLC is a form of business. It is a person thus
21 under the statute and is liable for its violation of same. Las Vegas Dragon Hotel, LLC’s agents
22 and/or employees intentionally bolted shut the door. This was intentional and acted as an
23 obstruction for Mr. Spangler to use as egress as the fire grew. The point is, Las Vegas Dragon
24 Hotel, LLC violated NRS 41.800. There is no ambiguity here. The words of the statute are clear.
25 And, as a result, Las Vegas Dragon Hotel, LLC is liable.

26 //

27 //

28 //

1 The Motion to Dismiss and Motion to Strike must be denied.

2 DATED this 19th day of October 2020.

3 Respectfully submitted,

4 MURDOCK & ASSOCIATES, CHTD.

5 /s/ Robert E. Murdock

6 Robert E. Murdock Bar No. 4013

7 Sydney E. Murdock Bar No. 15291

8 521 South Third Street

9 Las Vegas, NV 89101

Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2020, I served a copy of the foregoing Plaintiff Karen Kelly, Clark County Public Guardian for Christian Spangler's Opposition to Defendant Las Vegas Dragon Hotel, LLC's Motion to Dismiss and Motion to Strike upon the parties to this action via the Court's mandatory electronic service, addressed as follows:

Rahul Ravipudi, Esq.
 Ian Samson, Esq.
 Adam Ellis, Esq.
PANISH SHEA & BOYLE LLP
 8816 Spanish Ridge Ave.
 Las Vegas, NV 89148

Ben Wilson, Esq.
MORGAN & MORGAN, P.A.
 4450 Old Canton Road, Ste. 200
 Jackson, MS 39207
*Attorneys for Plaintiffs (Crawford, et al.,
 Roberts, et al., Lombardo, et. al)*

Steven T. Jaffe, Esq.
 Michelle R. Schwarz, Esq.
 Taylor R. Anderson Esq.
HALL JAFFE & CLAYTON, LLP
 7425 Peak Drive
 Las Vegas, Nevada 89128
*Attorneys for Defendants Adolfo Orozco and
 Las Vegas Dragon Hotel, LLC*

Donald "Butch" Williams, Esq.
 Robin Gullo, Esq.
WILLIAMS * STARBUCK
 612 South Tenth Street
 Las Vegas, NV 89101
Attorneys for Defendants TSI

Martin Kravitz, Esq.
 Tyler Watson, Esq.
KRAVITZ SCHNITZER JOHNSON, P.C.
 8985 S Eastern Avenue Suite 200
 Las Vegas, NV 89123
Attorneys for EDS Electronics

Robert T. Eglet, Esq.
 Tracy A. Eglet, Esq.
 James A. Trummell, Esq.
EGLET ADAMS
 400 South Seventh Street, Suite 400
 Las Vegas, Nevada 89101
Attorneys for Plaintiffs (Aikens, et al.)

Marwan Porter, Esq.
 Travis Buchanan, Esq.
THE COCHRAN FIRM
 701 E. Bridger Avenue, Ste. 540
 Las Vegas, NV 89101
Attorneys for Unfiled Claimants

Philip Kegler, Esq.
 Michael J. Wiggins, Esq.
MCDONALD TOOLE WIGGINS, P.A.
 111 N. Magnolia Ave., Ste. 1200
 Orlando, FL 32801
Attorneys for Avanti

David Fassett, Esq.
DAVID W. FASSETT, J.D. PLLC
 531 South Seventh Street
 Las Vegas, NV 89101
Attorneys for Plaintiffs Rucker and Kuba

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Russell Christian, Esq.
TYSON & MENDES
3960 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Attorneys for Advanced Protection Industries

Jorge A. Ramirez, Esq.
Mark C. Severino, Esq.
**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**
6689 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 89119
Attorneys for Defendant Cooper Wheelock, Inc.

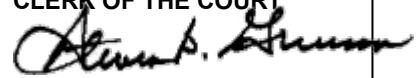
David Barron, Esq.
BARRON & PRUITT
3890 W. Ann Rd., N.
Las Vegas, NV 89031
Attorneys for Stanley Security Solutions, Inc.

Elizabeth A. Skane, Esq.
Sarai L. Brown, Esq.
SKANE WILCOX LLP
1120 Town Center Drive, Suite 200
Las Vegas, Nevada 89144
Attorneys for Defendant AES CORPORATION

/s/ Vera A. Minkova
An employee of Murdock & Associates, Chtd.

4

4



OPP
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE C. MILLER, ESQ.
Nevada Bar No. 9127
EGLET ADAMS
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Telephone: (702) 450-5400
Facsimile: (702) 450-5451
Email: eservice@egletlaw.com
*Attorneys for Plaintiffs Richard
and Michelle Aikens, et. al.*

DISTRICT COURT
CLARK COUNTY, NEVADA

DEBORAH CIHAL CRAWFORD,
individually and as heir to the ESTATE OF
TRACY ANN CIHAL; JOHN DOE
ADMINISTRATOR, as Special
Administrator of the ESTATE OF TRACY
ANN CIHAL,

Plaintiff,

v.

LAS VEGAS DRAGON HOTEL, LLC, a
Nevada limited-liability company doing
business as the ALPINE MOTEL
APARTMENTS; ADOLFO OROZCO, an
individual; DOES 1 through 10; inclusive;
and ROE CORPORATIONS I through V,
inclusive,

Defendants.

AND ALL CONSOLIDATED MATTERS

Lead Case No.: A-20-808100-C

Consolidated Cases:

A-20-810951-C (*Roberts*)

A-20-810949-C (*Lombardo*)

A-20-814863-C (*Aikens*)

A-20-816319-C (*Kelly/Spangler*)

A-20-817072-C (*Rucker*)

Dept. No.: XXXII

PLAINTIFFS' OPPOSITION TO
DEFENDANT LAS VEGAS DRAGON
HOTEL, LLC'S MOTION TO
DISMISS AND MOTION TO STRIKE

Date of Hearing: November 10, 2020

Time of Hearing: 9:30 a.m.

COMES NOW Plaintiffs Richard and Michelle Aikens, et. al., by and through their
attorneys of record, Robert T. Eglet, Esq., Tracy A. Eglet, Esq., and Danielle C. Miller, Esq. of
the law firm of EGLET ADAMS, and hereby submit *Plaintiffs' Opposition To Defendant Las*

1 *Vegas Dragon Hotel, LLC's Motion To Dismiss And Motion To Strike.*

2 The Opposition is based on the following points and authorities as well as any other
3 argument heard at the time of the hearing on this matter.

4 Dated this 19th day of October, 2020.

5
6 **EGLET ADAMS**

7 /s/ Danielle C. Miller, Esq.

8 ROBERT T. EGLET, ESQ.

9 Nevada Bar No. 3402

TRACY A. EGLET, ESQ.

Nevada Bar No. 6419

10 DANIELLE C. MILLER, ESQ.

11 Nevada Bar No. 9127

400 South 7th Street, 4th Floor

12 Las Vegas, Nevada 89101

13 *Attorneys for Plaintiffs Richard*
14 *and Michelle Aikens, et. al.*

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EGLET ADAMS
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Defendant Las Vegas Dragon Hotel, LLC (“Las Vegas Dragon”) has filed a Motion to
 5 Dismiss and Motion to Strike Plaintiffs’ First Amended Complaint (“Motion to Dismiss”) on the
 6 basis that Plaintiffs’ reference to NRS 41.800 as a basis for liability is improper.¹ First, Las Vegas
 7 Dragon argues that NRS 41.800 only applies to “actual people” who obstruct a point of ingress or
 8 egress and that because Las Vegas Dragon is an entity, and not a person, Las Vegas Dragon cannot
 9 be held liable under NRS 41.800. Las Vegas Dragon’s argument fails in its entirety as the Nevada
 10 Revised Statutes defines a “person” as a natural person, as well as *any* form of business entity,
 11 *and any* other nongovernmental entity. *See* NRS 0.039. Thus, Las Vegas Dragon is considered a
 12 “person” for purposes of NRS 41.800.

13 Second, Las Vegas Dragon argues that based on the legislative history of NRS 41.800, the
 14 Nevada Legislature never intended to make property owners vicariously liable for the conduct of
 15 others and that instead, the Nevada Legislature adopted NRS 41.800 to protect property owners
 16 from others who block access to their property. By looking at the statute’s legislative history, Las
 17 Vegas Dragon is simply attempting to create ambiguity where there is none. If a statute is
 18 unambiguous, the statute is enforced as written. Here, NRS 41.800 unambiguously states that a
 19 person shall not intentionally obstruct ingress or egress to any public or private property to prevent
 20 safe passage, and that any person aggrieved by such violation may bring a civil action.
 21 Accordingly, the Court need not look at the legislative intent and must enforce the statute as
 22 written. Therefore, because Las Vegas Dragon intentionally obstructed the egress of the Alpine
 23 Motel, which prevented Plaintiffs from a safe passage for exit, Las Vegas Dragon violated the
 24 statute and is consequently liable for damages. Because Plaintiffs’ First Amended Complaint sets
 25 forth sufficient factual and legal conclusions to give Las Vegas Dragon fair notice of the nature and
 26

27 ¹ Defendant Las Vegas Dragon’s Motion to Dismiss is also titled a “Motion to Strike.” However, Las Vegas Dragon’s
 28 Motion fails to cite to any case law and fails to set forth any legal argument to support striking Plaintiffs’ First
 Amended Complaint.

1 basis of Plaintiffs' claim under NRS 41.800, Plaintiffs' First Amended Complaint states a claim
 2 upon which relief can be granted. For the reasons, Plaintiffs respectfully request that Las Vegas
 3 Dragon's Motion to Dismiss be denied in its entirety.

4 II.

5 FACTUAL AND PROCEDURAL BACKGROUND

6 This matter arises out of a fire that occurred on December 21, 2019 at the Alpine Motel
 7 Apartments, located at 213 North 9th Street, Las Vegas, Nevada, 89101. The Alpine Motel is
 8 owned and operated by Defendant Las Vegas Dragon Hotel, LLC ("Las Vegas Dragon") and its
 9 managing member Defendant Adolfo G. Orozco ("Orozco"). On May 11, 2020, Plaintiffs filed
 10 their Complaint in this matter.² On May 21, 2020, Plaintiffs filed their First Amended Complaint.
 11 A true and correct copy of Plaintiffs' First Amended Complaint, dated May 21, 2020, is attached
 12 hereto as *Exhibit "1."* On July 31, 2020, this matter was consolidated with Case No.: A-20-
 13 808100-C.

14 On September 29, 2020, Plaintiffs filed a Motion to Amend seeking to add a cause of action
 15 for Alter Ego Liability against Las Vegas Dragon and Orozco, and seeking to add Orozco's wife,
 16 Erika Ayala-Aguilar ("Ayala-Aguilar"), Galeana, LLC ("Galeana"), Cancun, LLC ("Cancun"),
 17 and Elite 1, LLC ("Elite 1"), as additional defendants on the basis that Orozco and Ayala are the
 18 alter egos of Las Vegas Dragon, Galeana, Cancun and Elite 1, as each are run, maintained, and
 19 managed via commingled assets and liabilities that there is such unity of interest, and
 20 inseparableness that they should be considered as one so as not to sanction fraud or injustice. A
 21 true and correct copy of Plaintiffs' Proposed Second Amended Complaint, attached to Plaintiffs'
 22 Motion to Amend, dated September 29, 2020, is attached hereto as *Exhibit "2."* Thereafter, on
 23 October 5, 2020, Las Vegas Dragon filed the foregoing Motion to Dismiss asserting that Plaintiffs
 24 are unable to state a claim for relief under NRS 41.800. As will be discussed in greater detail
 25 below, Las Vegas Dragon's Motion to Dismiss fails in its entirety.

26 _____
 27 ² Plaintiffs respectfully request that this Court take judicial notice of its entire docket herein. It is well established that
 28 this Court can take judicial notice of matters contained within its own files. NRS 47.140(8); *Geary v. State*, 112 Nev.
 1434, 1437 (1996); *Hampton v. Washoe County*, 99 Nev. 819, 822 (1983); *See also In re Wilson*, 631 F.2d 118, 119
 (9th Cir. 1980).

1 III.

2 LEGAL ARGUMENT

3 A. Standard for Motion to Dismiss

4 The first rule of the Nevada Rules of Civil Procedure states that “[t]hese rules govern the
5 procedure in *all civil actions* and proceedings in the district courts.” NRCP 1. “They should be
6 construed, administered, and employed by the court and the parties to secure the just, speedy, and
7 inexpensive determination of *every action and proceeding*.” *Id.* NRCP 12(b)(5) provides that a
8 claim may be dismissed for “failure to state a claim upon which relief can be granted.” *Simpson v.*
9 *Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). The standard of review to dismiss a claim
10 under NRCP 12(b)(5) is rigorous. *Id.* The court “must construe the pleading liberally and draw
11 every fair inference in favor of the nonmoving party” and “***all factual allegations of the complaint***
12 ***must be accepted as true.***” *Id.* (emphasis added.) “A complaint will not be dismissed for failure to
13 state a claim unless it appears ***beyond a doubt*** that the plaintiff could prove no set of facts which,
14 if accepted by the trier of fact, would entitle him or her to relief.” *Id.* (emphasis added.)

15 “Because Nevada is a notice-pleading jurisdiction, our courts liberally construe pleadings to
16 place into issue matters which are fairly noticed to the adverse party.” *Hay v. Hay*, 100 Nev. 196,
17 198, 678 P.2d 672, 674 (1984). In asserting a claim for relief, the pleading “must contain: (1) a short
18 and plain statement of the grounds for the court’s jurisdiction, unless the court already has
19 jurisdiction and the claim needs no new jurisdictional support; (2) a short and plain statement of the
20 claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may
21 include relief in the alternative or different types of relief. . .” Nev. R. Civ. P. 8(a); *Swartz v. Adams*,
22 93 Nev. 240, 245, 563 P.2d 74, 77 (1977). “Each allegation must be simple, concise, and direct,”
23 and no technical forms of pleading are required. Nev. R. Civ. P. 8(e)(1). Nevada pleading
24 requirements do not require the legal theory relied upon to be correctly identified. *Swartz*, 93 Nev.
25 at 245, 563 P.2d at 77. The pleading of legal or factual conclusions is sufficient so long as the
26 pleading gives fair notice of the nature and basis of the claim. *Crucil v. Carson City*, 95 Nev. 583,
27 585, 600 P.2d 216, 217 (1979). ***Discovery may later disclose the acts needed to support these***

1 *conclusions, but for pleading purposes, conclusions alone are sufficient to withstand review*
 2 *under NRCP 12(b)(5). Id.*

3 Rule 9 of the Nevada Rules of Civil Procedure governs the pleading of special matters.
 4 Nev. R. Civ. P. 9. Rule 9(b) of the Nevada Rules of Civil Procedure expressly delineates under
 5 what circumstances a plaintiff will be required to meet a heightened pleading standard. *Id.* These
 6 circumstances include fraud, mistake, conditions of mind, denying conditions precedent, time and
 7 place, and special damages. *Id.* None of these circumstances appear here. Therefore, a heightened
 8 pleading standard for Plaintiffs' First Amended Complaint is not required. Accordingly, Plaintiffs'
 9 First Amended Complaint sets forth sufficient factual and legal conclusions to support Plaintiffs'
 10 claim for relief under NRS 41.800.

11 **B. Plaintiffs' First Amended Complaint Sets Forth a Claim for Relief Against Las Vegas**
 12 **Dragon Under NRS 41.800**

13 Las Vegas Dragon contends that because it is an entity, it cannot be liable under NRS 41.800
 14 as this statute only applies to persons. NRS 41.800 states as follows:

15 1. A *person* shall not intentionally obstruct:

16 (a) The ingress or egress to any public or private property from any other public
 17 or private place in such a manner as not to leave a free passageway for persons
 18 and vehicles lawfully seeking to enter or leave the property via the public or
 19 private place; or

20 (b) Any public or private roadway, including, without limitation, intersections,
 21 so as to prevent the safe passage of vehicles thereon or therethrough.

22 2. In addition to any other remedy, *a person aggrieved by a violation of subsection*
 23 *1 may bring a civil action in a court of competent jurisdiction against any person*
 24 *who commits the violation* to seek any or all of the following relief:

25 (a) Declaratory and injunctive relief, including, without limitation, injunctive
 26 relief to enjoin any ongoing activity that violates any provision of subsection
 27 1. For the purposes of injunctive relief, a person who brings an action pursuant
 28 to this subsection is entitled to a rebuttable presumption of irreparable harm.

(b) Actual damages.

(c) Reasonable attorney's fees and costs.

(d) Any other legal or equitable relief that the court deems appropriate.

See NRS 41.800 (emphasis added).

1 Las Vegas Dragon's reliance on the term "person" to support its argument that Las Vegas
 2 Dragon cannot be liable under NRS 41.800 is entirely misplaced. NRS 0.039, which defines a "person,"
 3 states as follows:

4 Except as otherwise expressly provided in a particular statute or required by the
 5 context, "**person**" means a natural person, **any form of business** or social organization
 6 **and any other nongovernmental legal entity including, but not limited to, a**
 7 **corporation, partnership, association, trust or unincorporated organization.** The
 term does not include a government, governmental agency or political subdivision of
 a government.

8 See NRS 0.039³ (emphasis added).

9 Because a "person" under NRS 0.039 includes **any** form of business and **any** nongovernmental
 10 legal entity, Las Vegas Dragon, a limited liability company, satisfies the definition of a "person" under
 11 NRS 41.800.

12 Las Vegas Dragon also contends that based on the legislative history of NRS 41.800, the
 13 Nevada Legislature enacted NRS 41.800 to protect property owners from others who blocked their
 14 property. Conveniently, to support its argument that Plaintiffs' application of NRS 41.800 is misplaced,
 15 Las Vegas Dragon attempts to create a statutory ambiguity by directing the Court to look at the
 16 legislative intent of NRS 41.800. However, pursuant to Nevada case law, the Court must **first** begin its
 17 inquiry by looking at the plain language of the statute and **only** if the statute is ambiguous, does the
 18 Court look at legislative intent. See *In re Nev. State Eng'r Ruling No. 5823*, 128 Nev. 232, 239, 277
 19 P.3d 449, 453 (2012) ("The starting point in statutory construction is to read and examine the text of
 20 the act and draw inferences concerning the meaning from its composition and structure.") Citing 2A
 21 Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 47:1, at 274–75 (7th
 22 ed. 2007). In other words, the Court must begin its inquiry with the statute's plain language. *Arguello*
 23 *v. Sunset Station, Inc.*, 252 P.3d 206, 209 (2011). The Court may not look beyond the statute's language
 24 if it is clear and unambiguous on its face. See *Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev.
 25 1298, 1302, 148 P.3d 790, 792-793 (2006). See also *Valdez v. Emp'rs Ins. Co. of Nev.*, 123 Nev. 170,
 26 162 P.3d 148 (2007); *Hobbs v. Nev.*, 127 Nev. Adv. Op. 18, 251 P.3d 177, 179 (2011); *Pro-Max Corp.*

27
 28 ³ Pursuant to NRS 0.010, the definitions apply to the Nevada Revised Statutes as a whole.

1 v. *Feenstra*, 117 Nev. 90, 95, 16 P.3d 1074, 1078 (2001). Stated another way, in circumstances where
 2 the statute's language is plain, there is no room for constructive gymnastics, and the court is not
 3 permitted to search for meaning beyond the statute itself. *See Pro-Max Corp. v. Feenstra*, 117 Nev.
 4 90, 95, 16 P.3d 1074 1078 (2001).

5 The U.S. Supreme Court has consistently held that if there is no ambiguity, the statute is
 6 enforced as written. *See Ratzlaf v. United States*, 510 U.S. 135, 147-48, 114 S. Ct. 655, 662 (1994) (we
 7 [the court] does not resort to legislative history to cloud a statutory text that is clear); *Schwegmann*
 8 *Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 395, 71 S. Ct. 745, 751 (1951) (Jackson, J., concurring)
 9 (“Resort to legislative history is only justified where the face of the [statute] is inescapably
 10 ambiguous.”).

11 As Justice Thomas wrote in *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 122 S. Ct. 941 (2002):

12 Our role is to interpret the language of the statute enacted by Congress. This statute
 13 does not contain conflicting provisions or ambiguous language. Nor does it require a
 14 narrowing construction or application of any other canon or interpretative tool. “We
 15 have stated time and again that courts must presume that a legislature says in a statute
 16 what it means and means in a statute what it says there. ***When the words of a statute***
 17 ***are unambiguous, then, this first canon is also the last: ‘judicial inquiry is***
 18 ***complete.’”***

16 *Id.* at 461-62, 956 (emphasis added).

17 Similarly, as Justice Gibbons for an en banc Nevada Supreme Court recently held in *Figueroa-*
 18 *Beltran v. United States*, 467 P.3d 615 (2020):

19 ***Only when the statute is ambiguous, meaning that it is subject to more than one***
 20 ***reasonable interpretation, do we look beyond the language [of the statute] to consider***
 21 ***its meaning in light of its spirit, subject matter, and public policy.”*** *Id.* (internal
 22 quotations omitted); *see also State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228
 23 (2011) (explaining that when a statute is ambiguous, this court may then look to
 24 legislative history and construe the statute in a manner consistent with reason and
 25 public policy).

24 *Id.* at 621.

25 Because NRS 41.800 clearly and unambiguously states that a person shall not intentionally
 26 obstruct ingress or egress to any public or private property to prevent safe passage, and that any
 27 person aggrieved by such violation may bring a civil action, the Court need not look at the
 28 legislative intent of NRS 41.800. Solely looking at the legislative intent of NRS 41.800 would

1 create an ambiguity where none exists, which would run counter to Nevada case law regarding
 2 statutory construction and more importantly, run counter to the U.S. Supreme Court's precedent
 3 regarding statutory construction. In the present case, Plaintiffs' First Amended Complaint
 4 specifically alleges that Las Vegas Dragon intentionally obstructed the egress of the Alpine Motel,
 5 which prevented Plaintiffs from a safe passage for exit. *See Ex. I*, at ¶ 151. As a result, Las Vegas
 6 Dragon violated the statute and is therefore liable for damages. Thus, Plaintiffs' First Amended
 7 Complaint properly pleads a cause of action against Las Vegas Dragon under NRS 41.800 to give
 8 Las Vegas Dragon fair notice of the nature and basis of Plaintiffs' claim under NRS 41.800.

9 **C. If The Court Finds That Plaintiffs' First Amended Complaint Is Legally Or Factually**
 10 **Deficient, Plaintiffs Respectfully Request Leave To Amend**

11 Although Plaintiffs maintain that Plaintiffs' First Amended Complaint properly pleads a cause
 12 of action against Las Vegas Dragon under NRS 41.800, if the Court finds that Plaintiffs' First
 13 Amended Complaint is somehow deficient, Plaintiffs respectfully request leave to amend. Pursuant to
 14 Rule 15 of the Nevada Rules of Civil Procedure, a party may amend its pleading only by leave of court,
 15 or by written consent of the adverse party, and that leave shall be freely given when justice so requires.
 16 *See Nev. R. Civ. P. 15(a)(1)-(2).*

17 The Nevada Supreme Court has held that, "in the absence of any apparent or declared
 18 reason—such as undue delay, bad faith or dilatory motive on the part of the movant—the leave
 19 sought should be freely given." *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105-06, 507 P.2d 138,
 20 139 (1973). "Thus, NRCP 15(a) contemplates the liberal amendment of pleadings, which in
 21 colloquial terms means that most such motions ought to be granted unless strong reason exists not
 22 to do so, such as prejudice to the opponent or lack of good faith by the moving party." *Stephens*,
 23 89 Nev. at 105, 507 P.2d at 139. (citing *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 284, 357 P.3d
 24 966, 970 (Nev. App. 2015).

25 Under NRCP 15(a), leave to amend, even if timely sought, need not be granted if the
 26 proposed amendment would be "futile." *Allum v. Valley Bank*, 109 Nev. 280, 287, 849 P.2d 297,
 27 302 (1993). *See also Halcrow Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 398, 302 P.3d
 28 1148, 1152 (2013). A proposed amendment may be deemed futile if the plaintiff seeks to amend

1 the complaint in order to plead an impermissible claim, such as one which would not survive a
2 motion to dismiss under NRCP 12(b)(5) or a “last-second amendment alleging meritless claims in
3 an attempt to save a case from summary judgment.” Citing *Soebbing v. Carpet Barn, Inc.*, 109
4 Nev. 78, 84, 847 P.2d 731, 736 (1993).

5 In *Nutton*, the Nevada Supreme Court addressed the futility exception to NRCP 15(a). The
6 Court explained that Nevada is a “notice pleading” state, which means that the ultimate facts
7 alleged within the pleadings need *not* be recited with particularity (except when required by NRCP
8 9), much less supported by citations to evidence and testimony within the pleading. (emphasis
9 added). See *Hall v. SSF, Inc.*, 112 Nev. 1384, 1391, 930 P.2d 94, 98 (1996) (“[A] complaint need
10 only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that
11 the defending party has adequate notice of the nature of the claim and the relief sought.”). Thus,
12 “a plaintiff is entitled under NRCP 8 to set forth only general allegations in its complaint and yet
13 be able to rely in trial upon specific evidentiary facts never mentioned anywhere in its pleadings.”
14 *Nutton*, 113 Nev. at 291.

15 Without any basis, Las Vegas Dragon claims that Plaintiffs should not be granted leave to
16 amend because an amendment would be futile. On the contrary, Plaintiffs contend that pursuant
17 to NRCP 8, Plaintiffs have set forth sufficient facts to provide Las Vegas Dragon with notice of
18 the nature of Plaintiffs’ claim under NRS 41.800 and the relief sought. However, if the Court finds
19 that Plaintiffs’ First Amended Complaint is somehow factually or legally deficient, Plaintiffs
20 respectfully request leave to amend pursuant to NRCP 15, which provides that leave to amend
21 should freely be given unless an amendment would be futile. Here, an amendment would not be
22 futile as Plaintiffs have asserted a viable claim for relief against Las Vegas Dragon under NRS
23 41.800 based on the facts and applicable law.

24 ///

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IV.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant Las Vegas Dragon Hotel, LLC's Motion To Dismiss And Motion To Strike.

Dated this 19th day of October, 2020.

EGLET ADAMS

/s/ Danielle C. Miller, Esq.

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

TRACY A. EGLET, ESQ.

Nevada Bar No. 6419

DANIELLE C. MILLER, ESQ.

Nevada Bar No. 14127

400 South 7th Street, 4th Floor

Las Vegas, Nevada 89101

*Attorneys for Plaintiffs Richard
and Michelle Aikens, et. al.*

EGLET ADAMS

1 **CERTIFICATE OF SERVICE**

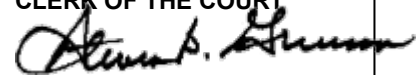
2 Pursuant to NEFC Rule 9(b), I hereby certify that on the 19th day of October, 2020, I
3 caused the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT LAS VEGAS**
4 **DRAGON HOTEL, LLC'S MOTION TO DISMISS AND MOTION TO STRIKE** to be e-
5 filed and e-served upon those persons designated by the parties in the E-Service Master List for
6 the above-referenced matter in the Eighth Judicial District Court e-Filing System in accordance
7 with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada
8 Electronic Filing and Conversion Rules and entered on the Court's docket in the above-
9 referenced matter.

10
11 /s/ Kiera Buckley
12 An Employee of **EGLET ADAMS**

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28
EGLET ADAMS

EXHIBIT 1

EXHIBIT 1



ACOM

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

TRACY A. EGLET, ESQ.

Nevada Bar No. 6419

JAMES A. TRUMMELL, ESQ.

Nevada Bar No. 14127

EGLET ADAMS

400 South Seventh Street, Suite 400

Las Vegas, Nevada 89101

Telephone: (702) 450-5400

Facsimile: (702) 450-5451

Email: eservice@egletlaw.com

DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD AIKENS; MICHELLE AIKENS;
MICHAEL AIKENS, a minor, by and through
his natural parents, RICHARD AIKENS and
MICHELLE AIKENS; BRIANNA AIKENS,
a minor, by and through her natural parents,
RICHARD AIKENS and MICHELLE
AIKENS; DEJOY WILSON; JOHNATHAN
WILSON; RETOR JONES JR.; HELEN
CLARK; VICTOR COTTON; CHRISTINA
FARINELLA; HAILU ADDIS; DENICIA
JOHNSON, PAUL WISE; CARMAN
MCCANDLESS; PARALEE MINTER;
AUDREY PALMER; KELVIN SALYERS;
JOE AGUILERA; DAYSHENA THOMAS;
ANDREW THOMAS a minor, by and through
his natural parent, DAYSHENA THOMAS;
SANDRA JONES, TIACHERELL DOTSON;
A'LAYNA DOTSON, by and through her
natural parent TIACHERELL DOTSON;
CLEA ROBERTS; NELSON BLACKBURN;
FLOYD GUENTHER; DOYLE MYERS;
LAURA EDWARDS; ROY BACKHUS;
JIMMY BROWN-LACY; DELMARKAS
COMBS; CHARLES COUCH; STEPHANIE
COUCH; ASHLEY ROGERS a minor, by and
through her natural parent CHERYL
ROGERS; CHERYL ROGERS; MATTHEW
SYKES; THELMA SYKES; DAVID
BARBARA; EDDIE ELLIS; C EUGENE
FRAZIER; JEREMY GORDON; SCOTTI
HUGHES and TOMMY CALDERILLA,

Case No.: A-20-814863-C

Dept. No.: XXII

**FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

**Exemption Requested: Damages Exceed
\$50,000.00**

EGLET ADAMS

Plaintiffs,

vs.

LAS VEGAS DRAGON HOTEL, LLC, a
 limited-liability company, dba ALPINE
 MOTEL; ADOLFO G. OROZCO, an
 individual; EDS ELECTRONICS INC., a
 domestic corporation; TSI SALES &
 INSTALLATION LLC, dba TSI, a domestic
 limited-liability company; TSI
 MONITORING LLC, dba TSI, a domestic
 limited-liability company; TOTAL SAFETY
 INCORPORATED, a domestic corporation;
 STANLEY SECURITY SOLUTIONS INC., a
 foreign corporaion; COOPER WHELOCK
 INC., a domestic corporation; AES
 CORPORATION, a domestic corporation;
 DOE 1 through 40; ROE CORPORATIONS 1
 through 40; DOE INSTALLERS 1 through 40;
 DOE CONTRACTORS 1 through 40; ROE
 SELLERS 1 through 40; DOE
 INDIVIDUALS 1 through 40; DOE
 EMPLOYEES 1 through 40; ROE
 DESIGNERS 1 through 40; ROE
 MANUFACTURERS 1 through 40; ROE
 HORN STROBE DESIGNERS 1 through 40;
 ROE HORN STROBE MANUFACTURERS
 1 through 40; ROE HORN STROBE
 DISTRIBUTORS 1 through 40; ROE
 WIRELESS RADIO ALARM
 TRANSMISSION SYSTEM DESIGNERS 1
 through 40; ROE WIRELESS RADIO
 ALARM TRANSMISSION SYSTEM
 MANUFACTURERS 1 through 40; ROE
 WIRELESS RADIO ALARM
 TRANSMISSION SYSTEM DESIGNERS 1
 through 40; ROE COMPONENT PART
 DESIGNERS 1 through 40; ROE
 COMPONENT PART MANUFACTURERS
 1 through 40; ROE COMPONENT PART
 DISTRIBUTORS 1 through 40; DOE
 NEGLIGENT EMPLOYERS 1 through 40;
 DOE NEGLIGENT EMPLOYEES 1 through
 40; ROE NEGLIGENT CORPORATIONS 1
 through 40,

Defendants.

1 COME NOW Plaintiffs, by and through their attorneys, ROBERT T. EGLET, ESQ., and
2 ROBERT A. ADAMS, ESQ. of the law firm EGLET ADAMS, hereby demand a trial by jury and
3 complain and allege against Defendants as follows:

4 **I.**

5 **INTRODUCTION**

6 About 4:00 a.m. on December 21, 2019, a fire broke out at the Alpine Motel Apartments,
7 a three-story apartment complex owned and operated by Defendant LAS VEGAS DRAGON
8 HOTEL, LLC dba ALPINE MOTEL (hereinafter ALPINE MOTEL) and its managing member
9 Defendant, ADOLFO G. OROZCO (hereinafter OROZCO), in downtown Las Vegas, Nevada. It
10 is believed that a stove used for heating purposes was the origin of the fire. It is further believed
11 there were no operating sprinklers and the fire alarms were inadequate and/or not functioning
12 properly or at all, thereby allowing the fire to spread throughout the building trapping residents
13 inside the building. When residents attempted to evacuate many found that the rear exit door had
14 been barricaded. Several were found trapped in the building, unable to escape, while others
15 resorted to jumping from the second and third story windows to escape the flames. At the time of
16 the fire, the ALPINE MOTEL was considered low income housing. Defendants ALPINE MOTEL
17 and OROZCO were downtown Las Vegas "slumlords" that took advantage of people under severe
18 financial constraints.

19 The following Plaintiffs resided at the ALPINE MOTEL located at 213 North 9th Street,
20 Las Vegas, Nevada 89101 on December 21, 2019:

21 Plaintiff, RICHARD AIKENS was present in the building at the time of the fire, sustained
22 personal injury, severe emotional distress, and property damage and/or loss of property;

23 Plaintiff, MICHELLE AIKENS was not present in the building at the time of the fire. She
24 has sustained a loss of consortium and property damage and/or loss of property;

25 Plaintiff, MICHAEL AIKENS, minor child of RICHARD and MICHELLE AIKENS, was
26 present in the building and did sustain severe emotional distress including Post Traumatic Stress
27 Disorder;

28

1 Plaintiff, BRIANNA AIKENS, minor child of RICHARD and MICHELLE AIKENS, was
2 present in the building and did sustain severe emotional distress including Post Traumatic Stress
3 Disorder;

4 Plaintiff, DEJOY WILSON was present in the building at the time of the fire, sustained
5 personal injury, severe emotional distress, a loss of consortium and property damage and/or loss
6 of property;

7 Plaintiff, JOHNATHAN WILSON was present in the building at the time of the fire,
8 sustained personal injury, severe emotional distress, a loss of consortium and property damage
9 and/or loss of property;

10 Plaintiff, RETOR JONES JR. was present in the building at the time of the fire, sustained
11 personal injury, severe emotional distress, Post Traumatic Stress Disorder, and property damage
12 and/or loss of property;

13 Plaintiff, HELEN CLARK was present in the building at the time of the fire, sustained
14 personal injury, severe emotional distress, and property damage and/or loss of property;

15 Plaintiff, VICTOR COTTON was present in the building at the time of the fire, sustained
16 personal injury, severe emotional distress, and property damage and/or loss of property;

17 Plaintiff, CHRISTINA FARINELLA was present in the building at the time of the fire,
18 sustained personal injury, severe emotional distress, and property damage and/or loss of property;

19 Plaintiff, HAILU ADDIS was present in the building at the time of the fire, sustained
20 personal injury, severe emotional distress, and property damage and/or loss of property;

21 Plaintiff, DENICIA JOHNSON was present in the building at the time of the fire, sustained
22 personal injury, severe emotional distress, and property damage and/or loss of property;

23 Plaintiff, PAUL WISE was present in the building at the time of the fire, sustained personal
24 injury, severe emotional distress, and property damage and/or loss of property;

25 Plaintiff, CARMAN MCCANDLESS was present in the building at the time of the fire,
26 sustained personal injury, severe emotional distress, and property damage and/or loss of property;

27 Plaintiff, PARALEE MINTER was present in the building at the time of the fire, sustained
28 personal injury, severe emotional distress, and property damage and/or loss of property;

1 Plaintiff, AUDREY PALMER was present in the building at the time of the fire, sustained
2 personal injury, severe emotional distress, and property damage and/or loss of property;

3 Plaintiff, KELVIN SALYERS was present in the building at the time of the fire, sustained
4 personal injury, severe emotional distress, and property damage and/or loss of property;

5 Plaintiff, JOE AGUILERA was present in the building at the time of the fire, sustained
6 personal injury, severe emotional distress, and property damage and/or loss of property;

7 Plaintiff, DAYSHENA THOMAS was present in the building at the time of the fire,
8 sustained personal injury, severe emotional distress, and property damage and/or loss of property;

9 Plaintiff, ANDREW THOMAS a minor child of DAYSHENA THOMAS was present in
10 the building and did sustain severe emotional distress including Post Traumatic Stress Disorder;

11 Plaintiff, SANDRA JONES was present in the building at the time of the fire, sustained
12 personal injury, severe emotional distress, and property damage and/or loss of property;

13 Plaintiff, TIACHERELL DOTSON was present in the building and did sustain severe
14 emotional distress including Post Traumatic Stress Disorder and property damage and/or loss of
15 property;

16 Plaintiff, A'LAYNA DOTSON, a minor child of TIACHERELL DOTSON was present in
17 the building and did sustain severe emotional distress including Post Traumatic Stress Disorder;

18 Plaintiff, CLEA ROBERTS was present in the building at the time of the fire, sustained
19 personal injury, severe emotional distress, a loss of consortium, and property damage and/or loss
20 of property;

21 NELSON BLACKBURN was present in the building at the time of the fire, sustained
22 personal injury, severe emotional distress, a loss of consortium and property damage and/or loss
23 of property;

24 Plaintiff, FLOYD, GUENTHER was present in the building and did sustain person injury,
25 severe emotional distress including Post Traumatic Stress Disorder and property damage and/or
26 loss of property;

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1 Plaintiff, DOYLE MYERS was present in the building and did sustain person injury, severe
2 emotional distress including Post Traumatic Stress Disorder, and property damage and/or loss of
3 property;

4 Plaintiff, LAURA EDWARDS was present in the building and did sustain person injury,
5 severe emotional distress including Post Traumatic Stress Disorder, and property damage and/or
6 loss of property;

7 Plaintiff, ROY BACKHUS was present in the building and did sustain severe emotional
8 distress, possible personal injury, and property damage and/or loss of property;

9 Plaintiff, JIMMY BROWN-LACY was present in the building and did sustain severe
10 emotional distress, possible personal injury and property damage and/or loss of property;

11 Plaintiff, DELMARKAS COMBS was present in the building and did sustain severe
12 emotional distress, possible personal injury and property damage and/or loss of property;

13 Plaintiff, CHARLES COUCH was present in the building and did sustain severe emotional
14 distress, possible personal injury and property damage and/or loss of property;

15 Plaintiff, STEPHANIE COUCH was present in the building and did sustain severe
16 emotional distress, possible personal injury and property damage and/or loss of property;

17 Plaintiff, ASHLEY ROGERS a minor child of CHERYL ROGERS was present in the
18 building and did sustain severe emotional distress and possible personal injury;

19 Plaintiff, CHERYL ROGERS was present in the building and did sustain severe emotional
20 distress, possible personal injury and property damage and/or loss of property;

21 Plaintiff, MATTHEW SYKES was present in the building and did sustain severe emotional
22 distress, possible personal injury, a loss of consortium and property damage and/or loss of
23 property;

24 Plaintiff, THELMA SYKES was present in the building and did sustain person injury,
25 severe emotional distress including Post Traumatic Stress Disorder, and property damage and/or
26 loss of property;

27 Plaintiff, DAVID BARBARA, fortunately, was not present in the building during the fire,
28 but did sustain loss of property;

1 Plaintiff, EDDIE ELLIS, fortunately, was not present in the building during the fire, but
2 did sustain loss of property;

3 Plaintiff, C EUGENE FRAZIER, fortunately, was not present in the building during the
4 fire, but did sustain loss of property;

5 Plaintiff, JEREMY GORDON, fortunately, was not present in the building during the fire,
6 but did sustain loss of property; and

7 Plaintiff, SCOTTI HUGHES, fortunately, was not present in the building during the fire,
8 but did sustain loss of property;

9 Plaintiff, TOMMY CALDERILLA was present in the building and did sustain severe
10 emotional distress, possible personal injury and property damage and/or loss of property.

11 II

12 PARTIES AND JURISDICTION

13 That all facts and circumstances that give rise to the subject lawsuit occurred in Clark
14 County, Nevada.

15 1. Plaintiffs, RICHARD AIKENS and MICHELLE AIKENS husband and wife, are,
16 and at all times relevant hereto, were residents of the County of Clark, State of Nevada and resided
17 at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101.

18 2. Plaintiff, MICHAEL AIKENS, a minor and the son of RICHARD AND
19 MICHELLE AIKENS is, and at all times relevant hereto, was a resident of the County of Clark,
20 State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada
21 89101.

22 3. Plaintiff, BRIANNA AIKENS, a minor and the daughter of RICHARD AND
23 MICHELLE AIKENS is, and at all times relevant hereto, was a resident of the County of Clark,
24 State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada
25 89101.

26 4. Plaintiffs, DEJOY WILSON and JOHNATHAN WILSON husband and wife, are,
27 and at all times relevant hereto, were residents of the County of Clark, State of Nevada and resided
28 at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101.

1 5. Plaintiff, RETOR JONES JR. is, and at all times relevant hereto, was a resident of
2 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
3 Street, Las Vegas, Nevada 89101.

4 6. Plaintiff, HELEN CLARK is, and at all times relevant hereto, was a resident of the
5 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
6 Las Vegas, Nevada 89101.

7 7. Plaintiff, VICTOR COTTON is, and at all times relevant hereto, was a resident of
8 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
9 Street, Las Vegas, Nevada 89101.

10 8. Plaintiff, CHRISTINA FARINELLA is, and at all times relevant hereto, was a
11 resident of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213
12 N. Ninth Street, Las Vegas, Nevada 89101.

13 9. Plaintiff, HAILU ADDIS is, and at all times relevant hereto, was a resident of the
14 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
15 Las Vegas, Nevada 89101.

16 10. Plaintiff, DENICIA JOHNSON is, and at all times relevant hereto, was a resident
17 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
18 Street, Las Vegas, Nevada 89101.

19 11. Plaintiff, PAUL WISE is, and at all times relevant hereto, was a resident of the
20 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
21 Las Vegas, Nevada 89101.

22 12. Plaintiff, CARMAN MCCANDLESS is, and at all times relevant hereto, was a
23 resident of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213
24 N. Ninth Street, Las Vegas, Nevada 89101.

25 13. Plaintiff, PARALEE MINTER is, and at all times relevant hereto, was a resident
26 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
27 Street, Las Vegas, Nevada 89101.

28

1 14. Plaintiff, AUDREY PALMER is, and at all times relevant hereto, was a resident of
2 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
3 Street, Las Vegas, Nevada 89101.

4 15. Plaintiff, KELVIN SALYERS is, and at all times relevant hereto, was a resident of
5 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
6 Street, Las Vegas, Nevada 89101.

7 16. Plaintiff, JOE AGUILERA is, and at all times relevant hereto, was a resident of
8 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
9 Street, Las Vegas, Nevada 89101.

10 17. Plaintiff, DAYSHENA THOMAS is, and at all times relevant hereto, was a resident
11 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
12 Street, Las Vegas, Nevada 89101.

13 18. Plaintiff, ANDREW THOMAS a minor, and the son of, DAYSHENA THOMAS
14 is, and at all times relevant hereto, was a resident of the County of Clark, State of Nevada and
15 resided at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101.

16 19. Plaintiff, SANDRA JONES is, and was at all times relevant hereto, was a resident
17 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
18 Street, Las Vegas, Nevada 89101.

19 20. Plaintiff, TIACHERELL DOTSON is, and at all times relevant hereto, was a
20 resident of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213
21 N. Ninth Street, Las Vegas, Nevada 89101.

22 21. Plaintiff, A'LAYNA DOTSON, a minor and daughter of TIACHERELL DOTSON
23 is, and at all times relevant hereto, was a resident of the County of Clark, State of Nevada and
24 resided at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101.

25 22. Plaintiff, CLEA ROBERTS and NELSON BLACKBURN, as husband and wife
26 were, and at all times relevant hereto, was a resident of the County of Clark, State of Nevada and
27 resided at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101.

28

1 23. Plaintiff, FLOYD, GUENTHER is, and at all times relevant hereto, was a resident
2 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
3 Street, Las Vegas, Nevada 89101.

4 24. Plaintiff, DOYLE MYERS is, and at all times relevant hereto, was a resident of the
5 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
6 Las Vegas, Nevada 89101.

7 25. Plaintiff, LAURA EDWARDS is, and at all times relevant hereto, was a resident
8 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
9 Street, Las Vegas, Nevada 89101.

10 26. Plaintiff, ROY BACKHUS is, and at all times relevant hereto, was a resident of the
11 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
12 Las Vegas, Nevada 89101;

13 27. Plaintiff, JIMMY BROWN-LACY is, and at all times relevant hereto, was a
14 resident of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213
15 N. Ninth Street, Las Vegas, Nevada 89101;

16 28. Plaintiff, DELMARKAS COMBS is, and at all times relevant hereto, was a resident
17 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
18 Street, Las Vegas, Nevada 89101;

19 29. Plaintiff, CHARLES COUCH and STEPHANIE COUCH as husband and wife is,
20 and at all times relevant hereto, was a resident of the County of Clark, State of Nevada and resided
21 at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101;

22 30. Plaintiff, ASHLEY ROGERS a minor, and the daughter of CHERYL ROGERS is,
23 and at all times relevant hereto, was a resident of the County of Clark, State of Nevada and resided
24 at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101;

25 31. Plaintiff, CHERYL ROGERS is, and at all times relevant hereto, was a resident of
26 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
27 Street, Las Vegas, Nevada 89101;

28

1 32. Plaintiff, MATTHEW SYKES and THELMA SYKES were, and at all times
2 relevant hereto, was a resident of the County of Clark, State of Nevada and resided at the Alpine
3 Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101;

4 33. Plaintiff, DAVID BARBARA is, and at all times relevant hereto, was a resident of
5 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
6 Street, Las Vegas, Nevada 89101;

7 34. Plaintiff, EDDIE ELLIS is, and at all times relevant hereto, was a resident of the
8 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
9 Las Vegas, Nevada 89101;

10 35. Plaintiff, C EUGENE FRAZIER is, and at all times relevant hereto, was a resident
11 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
12 Street, Las Vegas, Nevada 89101;

13 36. Plaintiff, JEREMY GORDON is, and at all times relevant hereto, was a resident of
14 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
15 Street, Las Vegas, Nevada 89101;

16 37. Plaintiff, SCOTTI HUGHES is, and at all times relevant hereto, was a resident of
17 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
18 Street, Las Vegas, Nevada 89101;

19 38. Plaintiff, TOMMY CALDERILLA is, and at all times relevant hereto, was a
20 resident of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213
21 N. Ninth Street, Las Vegas, Nevada 89101;

22 39. Defendant LAS VEGAS DRAGON HOTEL, LLC, dba ALPINE MOTEL.
23 (hereinafter "ALPINE MOTEL"), is and was a limited-liability company, which at all relevant
24 times, was authorized to do and was doing business in the County of Clark, State of Nevada.

25 40. Defendant ADOLFO G. OROZCO (hereinafter "OROZCO"), upon information
26 and belief, was at all times relevant hereto, a resident of County of Clark, State of Nevada.

27 41. At all relevant times and upon information and belief, Defendant OROZCO was
28 the member and sole decision-maker at ALPINE MOTEL.

1 42. Defendant EDS ELECTRONICS, INC. (hereinafter “EDS”) is and was a Domestic
2 Corporation, which at all relevant times and upon information and belief, was authorized to do and
3 was doing business in the County of Clark, State of Nevada, through its employees, agents,
4 representatives, and/or servants that maintained the fire alarm notification systems at ALPINE
5 MOTEL;

6 43. Defendant TSI SALES & INSTALLATION, LLC, dba, TSI (hereinafter “TSI
7 SALES”), is and was a Domestic Limited Liability Company, which at all relevant times and upon
8 information and belief, was authorized to do and was doing business in the County of Clark, State
9 of Nevada, through its employees, agents, representatives, and/or servants that monitored the fire
10 alarm systems at ALPINE MOTEL;

11 44. Defendant TSI MONITORING, dba, TSI (hereinafter “TSI MONITORING”), is
12 and was a Domestic Limited Liability Company, which at all relevant times and upon information
13 and belief, was authorized to do and was doing business in the County of Clark, State of Nevada,
14 through its employees, agents, representatives, and/or servants that monitored the fire alarm
15 systems at ALPINE MOTEL;

16 45. Defendant TOTAL SAFETY INCORPORATED (hereinafter “TOTAL
17 SAFETY”), was a Domestic Corporation, which at all relevant times and upon information and
18 belief, was authorized to do and was doing business in the County of Clark, State of Nevada,
19 through its employees, agents, representatives, and/or servants that monitored the fire alarm
20 systems at ALPINE MOTEL;

21 46. Defendant STANLEY SECURITY SOLUTIONS INC. (hereinafter
22 “STANLEY”), is an a Foreign Corporation, which at all relevant times and upon information and
23 belief, was authorized to do and was doing business in the County of Clark, State of Nevada,
24 through its employees, agents, representatives, and/or servants that monitored the fire alarm
25 systems at ALPINE MOTEL;

26 47. At all relevant times and upon information and belief, Defendants TSI SALES, TSI
27 MONITORING, TOTAL SAFETY, and STANLEY were agents, partners, co-ventures,
28 successors in business interest and/or assumed identities, each of the other.

1 48. Defendant COOPER WHEELOCK INC. (hereinafter "COOPER"), is and was a
2 Domestic Corporation, a New Jersey entity, doing business in the State of Nevada, and upon
3 information and belief, through its employees agents, representatives, and/or servants installed,
4 designed, manufactured, fabricated, distributed, assembled, and/or sold a Cooper Wheelock AH-
5 24WP-R horn strobes.

6 49. Upon information and belief, and that at all time relevant herein, COOPER installed
7 a Cooper Wheelock AH-24WP-R horn strobe at ALPINE MOTEL to replace a defective horn
8 strobe. Upon information and belief, the horn strobe did not sound and/or alert residents of a fire
9 at the ALPINE MOTEL.

10 50. That at all time relevant herein, it was reasonably foreseeable to Defendant
11 COOPER that when its products entered the State of Nevada, that Defendant could be expected to
12 be sued in the state where its products caused the injury. Jurisdiction is appropriate under the Due
13 Process Clause. Upon information and belief, Defendant COOPER was aware of the national
14 distribution system of its horn strobes, and as a consequence of that awareness, Defendant
15 COOPER indirectly and/or directly served the national market and derived economic benefit
16 therefrom. As such, Defendant COOPER could reasonably anticipate being subject to suit in any
17 forum within that market where its product caused injury.

18 51. Defendant AES CORPORATION (hereinafter "AES"), is a Domestic Corporation,
19 a Massachusetts entity, doing business in the State of Nevada, and upon information and belief,
20 through its employees agents, representatives, and/or servants installed, designed, manufactured,
21 fabricated, distributed, assembled, and/or sold a AES Intelli-Net 7750-F wireless radio alarm
22 transmission system to the general public.

23 52. That at all time relevant herein, it was reasonably foreseeable to Defendant AES
24 that when its products entered the State of Nevada, that Defendant could be expected to be sued
25 in the state where its products caused the injury. Jurisdiction is appropriate under the Due Process
26 Clause. Upon information and belief, Defendant AES was aware of the national distribution
27 system of its wireless radio alarm transmission systems, and as a consequence of that awareness,
28 Defendant AES indirectly and/or directly served the national market and derived economic benefit

1 therefrom. As such, Defendant AES could reasonably anticipate being subject to suit in any forum
2 within that market where its product caused injury.

3 53. At all relevant times, and upon information and belief, Defendants TSI SALES,
4 TSI MONITORING, TOTAL SAFETY, and STANLEY installed the AES Intelli-Net 7750-F
5 wireless radio alarm transmission system at the ALPINE MOTEL.

6 54. That Defendants, DOE EMPLOYEES 1 through 40, and/or DOE NEGLIGENT
7 EMPLOYEES 1 through 40, were acting within the course and scope of their employment, service
8 and/or agency, with the other Defendants, the Defendants, and each of them, are vicariously liable
9 for the injuries and damages sustained by Plaintiffs as alleged herein.

10 55. That Defendants, DOE EMPLOYEES, and DOE NEGLIGENT EMPLOYEES
11 were acting in concert with the other Defendants, the Defendants and each of them, are vicariously
12 and jointly and severally liable for the injuries and damages sustained by Plaintiffs as alleged
13 herein.

14 56. Defendants ALPINE MOTEL, OROZCO, DOES and ROES set forth above,
15 inclusive, and each of them, were the agent, representative, servant, independent contractor,
16 subcontractor, partner, joint venture, alter ego, successor in interest, affiliate, parent and/or
17 subsidiary, employee and franchise of each of the remaining Defendants, and each of them herein,
18 and were at all times acting within the purpose and scope of said agency, service, employment,
19 partnership, joint venture, parent/subsidiary and franchise as such and with the express and/or
20 implied permission, knowledge, consent, and ratification of all said other Defendants.

21 57. Plaintiffs further allege upon information and belief that the OROZCO, DOES and
22 ROES set forth above, and each of them, were the alter egos of ALPINE MOTEL and ROE
23 ENTITIES as set forth above, inclusive, and each of them named herein, having influenced and
24 governed the entities, there is such unity of interest and ownership that the limited-liability
25 company and the person are inseparable from each other; and adherence to the notion of the
26 limited-liability company being an entity separate from the person would sanction fraud or
27 manifest injustice. Further, OROZCO is liable for the damages caused to Plaintiffs as a result of
28 the duties he owed to them as an individual, separate and apart from his role as a member of

1 ALPINE MOTEL, including without limitation his individual negligence concerning his direct
2 knowledge of actions that threatened physical injuries to Plaintiffs.

3 58. That the true names and capacities, whether individual, corporate, associate, or
4 otherwise, of the Defendants herein designated as DOE 1 through 40, ROE CORPORATIONS 1
5 through 40, DOE INSTALLERS 1 through 40, ROE CONTRACTORS 1 through 40 ROE
6 SELLERS 1 through 40, DOE EMPLOYEES 1 through 40, DOE INDIVIDUALS 1 through 40,
7 ROE DESIGNERS 1 through 40, ROE DESIGNERS 1 through 40, ROE MANUFACTURERS 1
8 through 40, ROE DISTRIBUTORS 1 through 40, ROE DISTRIBUTORS 1 through 40, ROE
9 STOVE DESIGNERS 1 through 40, ROE STOVE MANUFACTURERS 1 through 40, ROE
10 STOVE DISTRIBUTORS 1 through 40, ROE STOVE INSTALLER 1 through 40, ROE STOVE
11 SELLER 1 through 40, ROE STOVE MAINTAINER 1 through 40, ROE HORN STROBE
12 DESIGNERS 1 through 40, ROE HORN STROBE MANUFACTURERS 1 through 40, ROE
13 HORN STROBE DISTRIBUTORS 1 through 40, ROE WIRELESS RADIO ALARM
14 TRANSMISSION SYSTEM DESIGNERS 1 through 40, ROE WIRELESS RADIO ALARM
15 TRANSMISSION SYSTEM MANUFACTURERS 1 through 40, ROE WIRELESS RADIO
16 ALARM TRANSMISSION SYSTEM DISTRIBUTORS 1 through 40, ROE COMPONENT
17 PART DESIGNERS 1 through 40, ROE COMPONENT PART MANUFACTURERS 1 through
18 40, ROE COMPONENT PART DISTRIBUTORS 1 through 40, DOE NEGLIGENT
19 EMPLOYERS 1 through 40, DOE NEGLIGENT EMPLOYEES 1 through 40, and/or ROE
20 NEGLIGENT CORPORATIONS 1 through 40 are unknown to Plaintiffs at this time who
21 therefore sue said Defendants by fictitious names.

22 59. Plaintiffs alleges that each named Defendant herein designated as DOE 1 through
23 40, ROE CORPORATIONS 1 through 40, ROE SELLERS 1 through 40, DOE EMPLOYEES 1
24 through 40, DOE INDIVIDUALS 1 through 40, DOE INSTALLERS 1 through 40, ROE
25 CONTRACTORS 1 through 40, ROE DESIGNERS 1 through 40, ROE DESIGNERS 1 through
26 40, ROE MANUFACTURERS 1 through 40, ROE DISTRIBUTORS 1 through 40, ROE STOVE
27 DESIGNERS 1 through 40, ROE STOVE MANUFACTURERS 1 through 40, ROE STOVE
28 DISTRIBUTORS 1 through 40, ROE STOVE INSTALLER 1 through 40, ROE STOVE SELLER

1 1 through 40, ROE STOVE MAINTAINER 1 through 40, ROE HORN STROBE DESIGNERS
2 1 through 40, ROE HORN STROBE MANUFACTURERS 1 through 40, ROE HORN STROBE
3 DISTRIBUTORS 1 through 40, ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM
4 DESIGNERS 1 through 40, ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM
5 MANUFACTURERS 1 through 40, ROE WIRELESS RADIO ALARM TRANSMISSION
6 SYSTEM DISTRIBUTORS 1 through 40, ROE COMPONENT PART DESIGNERS 1 through
7 40, ROE COMPONENT PART MANUFACTURERS 1 through 40, ROE COMPONENT PART
8 DISTRIBUTORS 1 through 40, DOE NEGLIGENT EMPLOYERS 1 through 40, DOE
9 NEGLIGENT EMPLOYEES 1 through 40, and/or ROE NEGLIGENT CORPORATIONS 1
10 through 40 is negligently, willfully, contractually, and/or otherwise legally responsible for the
11 events and happenings herein referred to and proximately caused injury and damages to Plaintiffs
12 as herein alleged. Plaintiffs will seek leave of Court to amend this Complaint to insert the true
13 names and capacities of such Defendants when same have been ascertained and will further seek
14 leave to join said Defendants in these proceedings.

15 60. Plaintiffs are informed and believe and thereon alleges that at all relevant times
16 herein-mentioned Defendants, and each of them, were the agents and/or servants and/or partners
17 and/or joint venture partners and/or employers and/or employees of the remaining Defendants and
18 were acting within the course and scope of such agency, employment, partnership or joint venture
19 and with the knowledge and consent of the remaining Defendants at the time of the event leading
20 to Plaintiffs' injuries.

21 61. That exercise of the jurisdiction by this Court over each and every Defendant in
22 this action is appropriate because at least one Defendant is a resident of the State of Nevada, and
23 each and every Defendant has done, and continues to do, business in the State of Nevada, and
24 committed a tort in the State of Nevada.

25 62. That all incidents described herein occurred in the County of Clark, State of
26 Nevada.

27
28

III.
FACTUAL ALLEGATIONS

63. Plaintiffs, each of them, were residents of the ALPINE MOTEL, located at 213 North 9th Street, Las Vegas, Nevada, 89101.

64. The ALPINE MOTEL is a forty-two (42) unit apartment complex and motel rented to the general public for residential use.

65. Upon information and belief, the ALPINE MOTEL did not have adequate heating facilities, in violation of applicable fire codes and/or NRS 118A.290 entitled Habitability of dwelling unit.

66. As a result of not having adequate heating facilities, and upon information and belief, residents of the ALPINE MOTEL resorted to using cooking stoves as heat sources.

67. In the early hours of the morning on December 21, 2019, a fire ignited in a first-floor unit located within the three-story ALPINE MOTEL.

68. An initial investigation by Las Vegas Fire and Rescue indicated the cause of the tragic fire was a cooking stove being used as a heat source.

69. After the fire broke out, residents attempted to evacuate the ALPINE MOTEL.

70. Some residents of the ALPINE MOTEL resorted to leaping from upper-story windows to escape the fire.

71. Upon information and belief, the ALPINE MOTEL did not have adequate hallway lighting as a means of egress illumination, as required by the applicable fire code including but not limited to NRS 477, which prevented residents from quickly and safely exiting the burning building.

72. Upon information and belief, the egress doors located within the ALPINE MOTEL were bolted closed, in violation of NRS 41.800, trapping residents from safely exiting the burning building.

1 73. Upon information and belief, the ALPINE MOTEL did not have working fire
2 alarms and/or smoke detectors, in violation of the applicable fire codes including those contained
3 in NRS 477, but not limited NRS 477.140 and NRS 477.350.

4 74. Upon information and belief, the ALPINE MOTEL did not have working fire
5 extinguishers or a fire suppression system, in violation of the applicable fire code contained in
6 NRS 477.

7 75. Upon information and belief, the ALPINE MOTEL units were uninhabitable and/or
8 failed to provide basic essential services and/or utilities, including heating and air systems, as
9 required by NRS 118A.290 and other applicable statutes or regulations.

10 76. Upon information and belief, prior to the subject fire, ALPINE MOTEL and
11 OROZCO failed to inspect, install, replace, test, and/or maintain the appliances, fire safety
12 equipment and devices, entry and exit doors and/or pathways, electrical power sources, and/or the
13 utilities at the ALPINE MOTEL.

14 77. Upon information and belief, EDS installed and maintained the COOPER
15 Wheelock AH-24WP-R horn strobe that failed to operate during the subject fire, and installed
16 and/or maintained the alarm system in general at the ALPINE MOTEL, as it existed at the time of
17 the subject fire..

18 78. Upon information and belief, TSI MONITORING, formerly TOTAL SAFETY was
19 the contracted monitor of the ALPINE MOTEL fire alarm system at the time of the subject fire.
20 The said system was designed to be monitored over a wireless radio network.

21 79. Upon information and belief, STANLEY purchased TOTAL SAFETY in 2016.

22 80. Upon information and belief, COOPER manufactured the AH-24WP-R horn
23 strobe that failed to operate during the subject fire.

24 81. Upon information and belief, AES was the manufacturer and distributor of AES
25 Intelli-Net 7750-F wireless radio alarm transmission system provided to EDS by AES and was
26 installed at the ALPINE MOTEL by either TSI or EDS. This radio alarm transmission was present
27 on the premises at the time of the subject fire and failed to operate.

28

85. The injuries of the Plaintiffs were the result of the negligent, knowing, oppressive, malicious, and/or reckless conduct of the Defendants and/or their failure to properly distribute, select, install, inspect, repair, maintain, test, or purchase smoke alarms, fire extinguishers, fire alarm system, essential utilities, entrance and exit doors, appliances, and/or electrical power sources at ALPINE MOTEL.

FIRST CAUSE OF ACTION

(As to ALPINE MOTEL, OROZCO, and ALL NAMED DOES AND ROES)

88. Defendants, ALPINE MOTEL and OROZCO owed Plaintiffs the duty to act as a reasonable landlord, obey by applicable laws, codes, and ordinances, and provide its tenants a habitable dwelling and a premise safe from unreasonable danger.

1 89. Additionally, Defendants; ALPINE MOTEL and OROZCO owed Plaintiffs the
2 non-delegable duty to maintain the ALPINE MOTEL and its common areas and means of egress
3 in a reasonably safe condition, owed a duty to use reasonable care when inspecting, servicing and
4 maintaining the ALPINE MOTEL and its common areas and means of egress, and had a duty to
5 comply with all applicable building, housing and fire codes.

6 90. Upon information and belief, Defendants, ALPINE MOTEL and OROZCO had
7 actual and constructive notice of code violations, dangerous conditions, and/or deficiencies that
8 rendered the Alpine Motel Apartments and its and common areas uninhabitable, prior the fire
9 described herein, and was given notice by residents, and/or local health and/or fire inspectors. The
10 Defendants conduct created a foreseeable zone of risk that a fire and smoke resulting therefrom
11 would occur.

12 91. Defendants, ALPINE MOTEL and OROZCO breached their duties in that they
13 failed to use reasonable care in the manner by which they owned, operated, managed, maintained,
14 supervised, inspected, failed to inspect, controlled, and/or renovated the ALPINE MOTEL,
15 including the property's fire prevention, suppression, and/or safety systems, heating, ventilation,
16 and cooling systems, emergency egress routes, and utility services at the time Plaintiffs occupied
17 the ALPINE MOTEL, Defendants:

- 18 a. Failed to provide and/or maintain, or adequately maintain the smoke alarms, fire
19 extinguishers, and fire alarm system at the subject property;
- 20 b. Failed to provide and/or inspect the smoke alarms, fire extinguishers, and fire alarm
21 system at the subject property;
- 22 c. Failed to maintain or adequately maintain the entrance and exit doors of the subject
23 property;
- 24 d. Failed to inspect, or adequately inspect the entrance and exit doors of the subject
25 property;
- 26 e. Failed to maintain or adequately maintain the utilities, specifically the heating systems,
27 of the subject property;

1 f. Failed to warn or adequately warn the Plaintiffs of the dangerous conditions relating to
2 the fire protection devices and systems, the entrance and exit doors (bolted shut), and lack
3 of essential utilities, including heat, when Defendants knew or should have known of their
4 existence and when Plaintiffs were unaware of the dangerous conditions;

5 g. Failed to correct or adequately correct the fire protection devices and systems and
6 dangerous conditions relating to the habitability and fire safety at the subject property when
7 Defendants knew or should have known of their existence;

8 h. Failed to provide a safe and secure means of moving about the subject property for
9 Plaintiffs, including escaping a fire;

10 i. Failed to install fire prevention devices, specifically smoke alarms, fire extinguishers,
11 and fire alarm systems;

12 j. Failed to provide and maintain a safe and secure premises as required by Nevada law;

13 k. Failed to comply with the applicable building, housing and fire codes; and

14 l. Failed to act reasonably under the circumstances.

15 92. Plaintiffs are informed and believe and allege thereon that these unsafe and
16 dangerous conditions were known to Defendants ALPINE MOTEL, OROZCO, ALL NAMED
17 DOES AND ROES, inclusive and each of them, and/or was discoverable through reasonable
18 inspection of the property.

19 93. As a result of Defendants, ALPINE MOTEL and OROZCO negligence per se, the
20 building was in an unsafe and dangerous condition so that instead of protecting the tenants, it
21 actually exposed the tenants to an unreasonable risk of harm and exacerbated, instead of mitigated,
22 the damages caused by the fire.

23 94. Plaintiffs are part of the class of people intended to be protected by the fire code of
24 the City of Las Vegas and other applicable codes, regulations, laws, and ordinances of which
25 Defendants, ALPINE MOTEL and OROZCO violated, including NRS 41.800 and/or NRS
26 118A.290 and/or NRS 477.

27 95. Defendants, each of them, by actions and omissions as alleged herein directly and
28 proximately caused the damages set forth in this Complaint for Plaintiffs.

97. Defendants, and each of them, acted with fraud, oppression, and/or malice toward Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

98. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof, have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION

GENERAL NEGLIGENCE

(As to ALPINE MOTEL, OROZCO, and ALL NAMED DOES AND ROES)

99. Plaintiffs reallege each and every allegation contained in the preceding and subsequent paragraphs, and by this reference incorporates said paragraphs as though fully set forth herein.

100. At all relevant times, Defendant ALPINE MOTEL and OROZCO, failed to install, properly maintain and test fire alarm systems.

101. Defendant ALPINE MOTEL and OROZCO, and each of them, posted no warning signs to alert individuals of the imminent hazards said Defendants created, and failed to provide proper exits in event of an emergency.

102. Defendant ALPINE MOTEL and OROZCO negligently hired, trained, and supervised the managers, maintenance personnel, and employees working at ALPINE MOTEL regarding fire safety and how to properly install, inspect, test, maintain, and/or repair the smoke alarms, fire extinguishers, fire alarm system, entrance and exit doors, and/or essential utilities, specifically the heating systems at ALPINE MOTEL;

1 103. That prior to the severe injuries suffered by Plaintiffs, Defendant ALPINE MOTEL
2 and OROZCO, and each of them, had knowledge of the hazardous safety conditions including but
3 not limited to bolted and locked exit doors, and failed to remedy said conditions that were a direct
4 and proximate result of Plaintiffs' injuries.

5 104. Defendant ALPINE MOTEL and OROZCO owed a duty to Plaintiffs to maintain
6 a safe premises. Defendants breached that duty causing Plaintiffs physical injury, severe emotional
7 distress, property damage and/or loss of property and other damages.

8 105. That said failures of Defendant ALPINE MOTEL and OROZCO, amount to a
9 conscious disregard for the safety of the Plaintiffs, as to constitute malice and oppression.

10 106. For the reasons set forth herein, Plaintiffs are entitled to exemplary damages in an
11 amount to be determined at trial.

12 107. As a direct and approximate result of the Defendants' negligence, Plaintiffs have
13 suffered injuries and/or severe emotional distress and/or property damage and/or loss of property
14 in excess of Fifteen Thousand Dollars (\$15,000.00).

15 108. Plaintiffs further seek exemplary and punitive damages in excess of Fifteen
16 Thousand Dollars (\$15,000.00).

17 109. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
18 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
19 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
20 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
21 Dollars (\$15,000.00).

22 110. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required
23 to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
24 have been damaged thereby, and are entitled to reasonable attorneys' fees and costs

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VI

THIRD CAUSE OF ACTION

NEGLIGENT MONITORING, MAINTENANCE, AND INSTALLATION

(As to EDS, TSI SALES, TSI MONITORING, TOTAL SAFETY, STANLEY, AES, COOPER,
and ALL NAMED DOES AND ROES)

111. Plaintiffs reallege each and every allegation contained in the preceding and subsequent paragraphs, and by this reference incorporates said paragraphs as though fully set forth herein.

112. At all relevant times, herein Defendants, negligently installed, maintained, monitored and/or tested the fire alarms including the horn strobe.

113. Defendants owed a duty to Plaintiffs to properly and with due care monitor, maintain and install the subject fire alarm and horn strobe.

114. Defendants breached those duties causing Plaintiffs physical injury, severe emotional distress, property damage and/or loss of property and other damages.

115. That said failures of Defendants amount to a conscious disregard for the safety of the Plaintiffs, as to constitute malice and oppression.

116. For the reasons set forth herein, Plaintiff is entitled to exemplary damages in an amount to be determined at trial.

117. As a direct and approximate result of the Defendants' negligence, Plaintiffs have suffered injuries and/or severe emotional distress and/or property damage and/or loss of property in excess of Fifteen Thousand Dollars (\$15,000.00).

118. Defendants, and each of them, acted with fraud, oppression, and/or malice toward Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

1 119. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required
2 to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
3 have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

4 **VII**

5 **FOURTH CAUSE OF ACTION**

6 **STRICT PRODUCTS LIABILITY – DESIGN DEFECT, MANUFACTURING DEFECT,**
7 **FAILURE TO WARN/INADEQUATE WARNING**

8 **(As to EDS, TSI SALES, TSI MONITORING, TOTAL SAFETY, STANLEY, COOPER,**
9 **AES, and ALL NAMED DOES AND ROES)**

10 120. Plaintiffs incorporate by reference each and every allegation previously made in
11 this Complaint, as if fully set forth herein.

12 121. That, at all times, relevant herein, Defendants, EDS, TSI SALES, TSI
13 MONITORING, TOTAL SAFETY, STANLEY installed the AES Intelli-Net 7750-F wireless
14 radio alarm transmission system at the ALPINE MOTEL.

15 122. That, at all times relevant herein, Defendant, COOPER, including but not limited
16 to all ROE and DOE Defendants, were the manufactures, designers, distributors, retailers,
17 marketers, sellers, repairers, installers, and/or maintainers of the Cooper Wheelock AH-24WP-R
18 horn strobe installed at ALPINE MOTEL for use by the general public, all with the knowledge
19 that the same would not be inspected or tested by the purchaser or user for defects. That at the time
20 of the December 21, 2019, the Cooper Wheelock AH-24WP-R horn strobe installed at the
21 ALPINE MOTEL failed to sound and/or alert residents of a fire at the ALPINE MOTEL which
22 caused Plaintiff severe and permanent physical and severe emotional injuries due to the defect(s)
23 contained therein.

24 123. That the AH-24WP-R horn strobe was defective in its design and/or manufacture
25 and/or distribution and/or installation, failing to provide warning to the Plaintiffs of the imminent
26 danger, lessening Plaintiff's ability to safely escape in time to avoid suffering personal injuries
27 and substantial bodily harm.

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1 124. That such defect(s) existed when the AH-24WP-R horn strobe left the hands of the
2 manufacturer, designer, distributor, retailer, marketer, seller, repairer, and/or maintainer.

3 125. That the Defendant, COOPER knew or should have known of the subject AH-
4 24WP-R horn strobe's defect(s) which rendered it unreasonably dangerous at the time of placing
5 the product into the stream of commerce and failed to undertake measures to prohibit it from
6 entering into the stream of commerce and into the hands of users in the State of Nevada, including
7 warnings of the risks for the product failure, proper use and maintenance of the product, proper
8 inspection and/or installation of the product for potential hazards and/or defects.

9 126. That Defendant, COOPER, knew or should have known that the general public
10 would use and/or rely upon the horn strobe in the event of a fire to perform its function of warning
11 them of the dangerous condition.

12 127. As a direct and approximate result of the Defendants' negligence, Plaintiffs have
13 suffered injuries and/or severe emotional distress and/or property damage and/or loss of property
14 in excess of Fifteen Thousand Dollars (\$15,000.00).

15 128. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
16 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
17 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
18 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
19 Dollars (\$15,000.00).

20 129. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required
21 to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
22 have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

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VIII

FIFTH CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS BYSTANDER- BRIANNA
AIKENS; MICHAEL AIKENS; MATTHEW SYKES and ANDREW THOMAS
(As to all Defendants)

130. That Plaintiffs repeat and reallege each and every allegation set forth in this
Complaint, as though the same were fully set forth herein.

131. The Defendants negligently caused the fire and subsequent injuries to Plaintiffs;

132. Plaintiffs MICHAEL AIKENS and BRIANNA AIKENS have a close familial
relationship with RICHARD AIKENS:

133. Plaintiffs MICHAEL AIKENS and BRIANNA AIKENS witnessed the injuries to
RICHARD AIKENS;

134. Plaintiff, ANDREW THOMAS has a close familial relationship with DAYSHENA
THOMAS;

135. Plaintiff, MATTHEW SYKES witnessed the injuries to THELMA SYKES;

136. Plaintiff, ANDREW THOMAS witnessed the injuries to DAYSHENA THOMAS;

137. As a result of witnessing or experiencing the fire, the plaintiffs suffered severe
emotional distress.

138. As a direct and proximate result of the acts, omissions, and conduct of Defendants,
Plaintiffs have suffered severe emotional distress.

139. As a direct and proximate result of the conduct of Defendants described
hereinabove, Plaintiffs have sustained damages in excess of FIFTEEN THOUSAND DOLLARS
(\$15,000.00).

140. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
Dollars (\$15,000.00)

141. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof, have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

IX

SIXTH CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

RICHARD AIKENS; DEJOY WILSON; JOHNATHAN WILSON; RETOR JONES JR;
HELEN CLARK; VICTOR COTTON; CHRISTINA FARINELLA; HAILU ADDIS; DENICIA
JOHNSON, PAUL WISE, CARMAN MCCANDLESS; PARALEE MINTER; AUDREY
PALMER; KELVIN SALYERS; JOE AGUILERA; DAYSHENA THOMAS; SANDRA
JONES, TIACHERELL DOTSON; A'LAYNA DOTSON, by and through her natural parent
TIACHERELL DOTSON; CLEA ROBERTS; NELSON BLACKBURN; FLOYD
GUENTHER, DOYLE MYERS, LAURA EDWARDS; ROY BACKHUS; JIMMY BROWN-
LACY; DELMARKAS COMBS; CHARLES COUCH; STEPHANIE COUCH; ASHLEY
ROGERS a minor,
by and through her natural parent CHERYL ROGERS; CHERYL ROGERS;
THELMA SYKES; and TOMMY CALDERILLA
(As to all Defendants)

142. That Plaintiffs repeat and reallege each and every allegation set forth in this Complaint, as though the same were fully set forth herein.

143. The Defendants negligently caused the fire and subsequent injuries to Plaintiffs;

144. Plaintiffs RICHARD AIKENS; DEJOY WILSON; JOHNATHAN WILSON;
RETOR JONES JR.; HELEN CLARK; VICTOR COTTON; CHRISTINA FARINELLA; HAILU
ADDIS; DENICIA JOHNSON; PAUL WISE; CARMAN MCCANDLESS; PARALEE
MINTER; AUDREY PALMER; KELVIN SALYERS; JOE AGUILERA; DAYSHENA
THOMAS; SANDRA JONES; TIACHERELL DOTSON; A'LAYNA DOTSON, by and through
her natural parent TIACHERELL DOTSON; CLEA ROBERTS; NELSON BLACKBURN;

1 FLOYD GUENTHER; DOYLE MYERS; LAURA EDWARDS; ROY BACKHUS; JIMMY
2 BROWN-LACY; DELMARKAS COMBS; CHARLES COUCH; STEPHANIE COUCH;
3 ASHLEY ROGERS a minor, by and through her natural parent CHERYL ROGERS; CHERYL
4 ROGERS; THELMA SYKES; TOMMY CALDERILLA were the persons who were injured;

5 145. As a result of experiencing their injuries and the fire, Plaintiffs suffered severe
6 emotional distress.

7 146. As a direct and proximate result of the acts, omissions, and conduct of Defendants,
8 Plaintiffs have suffered severe emotional distress.

9 147. As a direct and proximate result of the conduct of Defendants described
10 hereinabove, Plaintiffs have sustained damages in excess of FIFTEEN THOUSAND DOLLARS
11 (\$15,000.00).

12 148. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
13 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
14 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
15 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
16 Dollars (\$15,000.00).

17 149. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required
18 to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
19 have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

20 X

21 **SEVENTH CAUSE OF ACTION**

22 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

23 (As to ALPINE MOTEL, OROZCO, and ALL NAMED DOES AND ROES)

24 150. Plaintiffs repeat and reallege each and every allegation set forth in this Complaint,
25 as though the same were fully set forth herein.

26 151. Defendants knowingly, recklessly and intentionally engaged in extreme and
27 outrageous conduct. Defendants did not provide adequate heating, did not install fire suppression
28 systems, an operating alarm system, operating smoke detectors, or safe means of egress, including

1 but not limited to preventing exits from operating, all in violation of applicable fire codes that
2 resulted in severe mental, emotional distress, fear, indignity, and humiliation to Plaintiffs.

3 152. As a proximate result of the extreme and outrageous conduct of Defendants,
4 Plaintiffs suffered and continues to suffer serious emotional distress.

5 153. Plaintiffs have suffered, and continues to suffer, serious emotional distress
6 causing injury and illness as a result of the extreme and outrageous negligent wrongful conduct of
7 the Defendants, all to his/her damage in an amount in excess of Fifteen Thousand Dollars
8 (\$15,000.00).

9 154. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
10 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
11 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
12 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
13 Dollars (\$15,000.00).

14 155. Due to Defendants' intentional wrongful conduct as alleged herein, Plaintiff has
15 been required to retain the services of undersigned counsel and to incur attorney's fees and costs
16 thereby.

17 XI

18 EIGHTH CAUSE OF ACTION

19 LOSS OF CONSORTIUM for PLAINTIFFS MICHELLE AIKENS, DEJOY WILSON,
20 JOHNATHAN WILSON, MATTHEW SYKES, CLEA ROBERTS, NELSON BLAKBURN

21 (As to all Defendants)

22 156. That Plaintiffs repeat and reallege each and every allegation set forth in this
23 Complaint, as though the same were fully set forth herein.

24 157. That as a direct and proximate result of the aforesaid negligence of Defendants,
25 Plaintiff MICHELLE AIKENS, as the lawful wife of Plaintiff RICHARD AIKENS, was and is
26 entitled to the society, comfort, affection, services, companionship, and consortium of her husband
27 RICHARD AIKENS.

1 158. That, as a direct and proximate result of the aforesaid negligence of Defendants,
2 Plaintiff DEJOY WILSON as the lawful wife of Plaintiff, JOHNATHAN WILSON has been
3 denied the society, comfort, affection, services, companionship, and consortium of her husband
4 JOHNATHAN WILSON.

5 159. That, as a direct and proximate result of the aforesaid negligence of Defendants,
6 Plaintiff JOHNATHAN WILSON has been denied the society, comfort, affection, services,
7 companionship, and consortium of his wife DEJOY WILSON.

8 160. That, as a direct and proximate result of the aforesaid negligence of Defendants,
9 Plaintiff CLEA ROBERTS as the lawful wife of Plaintiff, NELSON BLACKBURN has been
10 denied the society, comfort, affection, services, companionship, and consortium of her husband
11 NELSON BLACKBURN.

12 161. That, as a direct and proximate result of the aforesaid negligence of Defendants,
13 Plaintiff MATTHEW SYKES as the lawful husband of Plaintiff, THELMA SYKES has been
14 denied the society, comfort, affection, services, companionship, and consortium of his wife
15 THELMA SYKES.

16 162. That, as a direct and proximate result of the aforesaid negligence of Defendants,
17 Plaintiff NELSON BLACKBURN as the lawful husband of Plaintiff, CLEA ROBERTS has been
18 denied the society, comfort, affection, services, companionship, and consortium of his wife CLEA
19 ROBERTS.

20 163. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
21 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
22 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
23 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
24 Dollars (\$15,000.00).

25 164. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required
26 to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
27 have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

28

XII

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. General damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00);
2. Compensatory damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00);
3. Special damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00);
4. Medical and/or incidental expenses incurred and to be incurred in excess of Fifteen Thousand Dollars (\$15,000.00);
5. Defendants, and each of them, acted with fraud, oppression, and/or malice toward Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00);
6. Damages for past and future pain, suffering, mental anguish, and loss of enjoyment of life in excess of Fifteen Thousand Dollars (\$15,000.00);
7. For pre- and post-judgment interest as provided by law;
8. Costs of suit, reasonable attorney fees, interest incurred herein;
9. For such other and further relief as is just and proper.

DATED this 21st day of May, 2020.

EGLET ADAMS

/s/Tracy A. Eglet, Esq.

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

TRACY A. EGLET, ESQ.

Nevada Bar No. 6419

JAMES A. TRUMMELL, ESQ.

Nevada Bar No. 14127

400 South 7th Street, Box 1, Suite 400

Las Vegas, Nevada 89101

Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs, by and through their attorneys of record, **EGLET ADAMS**, hereby demand a jury trial of all of the issues in the above matter.

DATED this 21st day of May, 2020.

EGLET ADAMS

/s/Tracy A. Eglet, Esq.

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

TRACY A. EGLET, ESQ.

Nevada Bar No. 6419

JAMES A. TRUMMELL, ESQ.

Nevada Bar No. 14127

400 South 7th Street, Box 1, Suite 400

Las Vegas, Nevada 89101

Attorneys for Plaintiffs

EGLET ADAMS

EXHIBIT 2

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000086

EXHIBIT 2

SACOM

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

TRACY A. EGLET, ESQ.

Nevada Bar No. 6419

DANIELLE C. MILLER, ESQ.

Nevada Bar No. 9127

EGLET ADAMS

400 South Seventh Street, Suite 400

Las Vegas, Nevada 89101

Telephone: (702) 450-5400

Facsimile: (702) 450-5451

Email: eservice@egletlaw.com*Attorneys for Plaintiffs***DISTRICT COURT****CLARK COUNTY, NEVADA**

DEBORAH CIHAL CRAWFORD,
individually and as heir to the ESTATE OF
TRACY ANN CIHAL; JOHN DOE
ADMINISTRATOR, as Special Administrator
of the ESTATE OF TRACY ANN CIHAL,

Plaintiff,

v.

LAS VEGAS DRAGON HOTEL, LLC, a
Nevada limited-liability company doing
business as the ALPINE MOTEL
APARTMENTS; ADOLFO OROZCO, an
individual; DOES 1 through 10; inclusive; and
ROE CORPORATIONS I through V,
inclusive,

Defendants.

Lead Case No.: A-20-808100-C

Dept. No.: XXXII

PLAINTIFFS' SECOND AMENDED
COMPLAINT AND DEMAND FOR
JURY TRIAL

DIANE ROBERTS, individually and as heir to
the ESTATE OF DONALD KEITH
BENNETT; MIA LUCILLE BENNETT,
individually and as heir to the ESTATE OF
DONALD KEITH BENNETT, by and through
her guardian ad litem DIANE ROBERTS;
DONALD ROBERTS, individually and as
heir to the ESTATE OF DONALD KEITH
BENNETT; and JOHN DOE
ADMINISTRATOR, as Special Administrator
of the ESTATE OF DONALD KEITH

Case No.: A-20-810951-C

Dept. No.: XVIII

(Consolidated with A-20-808100-C)

BENNETT,

Plaintiffs,

v.

LAS VEGAS DRAGON HOTEL, LLC, a Nevada limited-liability company doing business as the ALPINE MOTEL APARTMENTS; ADOLFO OROZCO, an individual; DOES 1 through 10; ROE ENTITIES 1 through 10,

Defendants.

FRANCIS LOMBARDO, III, individually and as heir to the ESTATE OF FRANCIS LOMBARDO, JR.; JOHN DOE ADMINISTRATOR, as Special Administrator of the ESTATE OF FRANCIS LOMBARDO, JR.,

Plaintiffs,

v.

LAS VEGAS DRAGON HOTEL, LLC, a Nevada limited-liability company doing business as the ALPINE MOTEL APARTMENTS; ADOLFO OROZCO, an individual; DOES 1 through 10; ROE ENTITIES 1 through 10,

Defendants.

Case No.: A-20-810949-C
Dept. No.: VIII

(Consolidated with A-20-808100-C)

RICHARD AIKENS; MICHELLE AIKENS; MICHAEL AIKENS, a minor, by and through his natural parents, RICHARD AIKENS and MICHELLE AIKENS; BRIANNA AIKENS, a minor, by and through her natural parents, RICHARD AIKENS and MICHELLE AIKENS; DEJOY WILSON; JOHNATHAN WILSON; RETOR JONES, JR.; HELEN CLARK; VICTOR COTTON; CHRISTINIA FARINELLA; HAILU ADDIS; DENICIA JOHNSON, PAUL WISE; CARMAN MCCANDLESS; PARALEE MINTER; AUDREY PALMER; KELVIN SALYERS; JOE AGUILERA; DAYSHENA THOMAS; ANDREW THOMAS a minor, by and through his natural parent, DAYSHENA THOMAS;

Case No.: A-20-814863-C
Dept. No.: XXII

SANDRA JONES, TIACHARELLE DOTSON; A'LAYNA DOTSON, a minor, by and through her natural parent TIACHARELLE DOTSON; CLEA ROBERTS; NELSON BLACKBURN; FLOYD GUENTHER; DOYLE MYERS; LAURA EDWARDS; ROY BACKHUS; JIMMY BROWN-LACY; DELMARKAS COMBS; CHARLES COUCH; STEPHANIE COUCH; ASHLEY ROGERS a minor, by and through her natural parent CHERYL ROGERS; CHERYL ROGERS; MATTHEW SYKES; THELMA SYKES; DAVID BARBARA; EDDIE ELLIS; C. EUGENE FRAZIER; JEREMY GORDON; SCOTTI HUGHES and TOMMY CALDERILLA,

Plaintiffs,

vs.

LAS VEGAS DRAGON HOTEL, LLC, a limited-liability company, dba ALPINE MOTEL; ADOLFO G. OROZCO, an individual; ERIKA AYALA a/k/a ERIKA AYALA-AGUILAR, an individual; ELITE 1, LLC, a domestic limited-liability company; GALEANA, LLC, a Delaware limited-liability company; CANCUN, LLC, a domestic limited-liability company; EDS ELECTRONICS, INC., a domestic corporation; COOPER WHEELLOCK, INC., a domestic corporation; AES CORPORATION, a domestic corporation; ADVANCED PROTECTION INDUSTRIES, LLC f/k/a ADVANCED PROTECTION INDUSTRIES, INC. d/b/a NATIONAL MONITORING CENTER; DOE 1 through 40; ROE CORPORATIONS 1 through 40; DOE INSTALLERS 1 through 40; DOE CONTRACTORS 1 through 40; ROE SELLERS 1 through 40; DOE INDIVIDUALS 1 through 40; DOE EMPLOYEES 1 through 40; ROE DESIGNERS 1 through 40; ROE MANUFACTURERS 1 through 40; ROE HORN STROBE DESIGNERS 1 through 40; ROE HORN STROBE MANUFACTURERS 1 through 40; ROE HORN STROBE DISTRIBUTORS 1 through 40; ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM DESIGNERS 1 through 40; ROE WIRELESS RADIO

ALARM TRANSMISSION SYSTEM
MANUFACTURERS 1 through 40; ROE
WIRELESS RADIO ALARM
TRANSMISSION SYSTEM DESIGNERS 1
through 40; ROE COMPONENT PART
DESIGNERS 1 through 40; ROE
COMPONENT PART MANUFACTURERS
1 through 40; ROE COMPONENT PART
DISTRIBUTORS 1 through 40; DOE
NEGLIGENT EMPLOYERS 1 through 40;
DOE NEGLIGENT EMPLOYEES 1 through
40; ROE NEGLIGENT CORPORATIONS 1
through 40,

Defendants.

KAREN KELLY, Clark County Public
Guardian for CHRISTIAN SPANGLER,

Plaintiff,

v.

LAS VEGAS DRAGON HOTEL, LLC, a
limited-liability company, dba ALPINE
MOTEL; ADOLFO G. OROZCO, an
individual; EDS ELECTRONICS, INC., a
domestic corporation; TSI SALES &
INSTALLATION, LLC, dba TSI, a domestic
limited-liability company; TSI
MONITORING, LLC, dba TSI, a domestic
limited-liability company; TOTAL SAFETY
INCORPORATED, a domestic corporation;
STANLEY SECURITY SOLUTIONS, INC.,
a foreign corporation; COOPER
WHEELOCK, INC., a domestic corporation;
AES CORPORATION, a domestic
corporation; DOES 1 through 40; ROE
CORPORATIONS 1 through 40; DOE
INSTALLERS 1 through 40; DOE
CONTRACTORS 1 through 40; ROE
SELLERS 1 through 40; DOE
INDIVIDUALS 1 through 40; DOE
EMPLOYEES 1 through 40; ROE
DESIGNERS 1 through 40; ROE
MANUFACTURERS 1 through 40; ROE
DISTRIBUTORS 1 through 40, ROE STOVE
DESIGNERS 1 through 40, ROE STOVE
MANUFACTURERS 1 through 40, ROE
STOVE DISTRIBUTORS 1 through 40, ROE
STOVE INSTALLERS 1 through 40, ROE
STOVE SELLERS 1 through 40, ROE

Case No.: A-20-816319-C
Dept. No.: XXVII

STOVE MAINTAINERS 1 through 40, ROE
HORN STROBE DESIGNERS 1 through 40;
ROE HORN STROBE MANUFACTURERS
1 through 40; ROE HORN STROBE
DISTRIBUTORS 1 through 40; ROE
WIRELESS RADIO ALARM
TRANSMISSION SYSTEM DESIGNERS 1
through 40; ROE WIRELESS RADIO
ALARM TRANSMISSION SYSTEM
MANUFACTURERS 1 through 40; ROE
WIRELESS RADIO ALARM
TRANSMISSION SYSTEM
DISTRIBUTORS 1 through 40, ROE
WIRELESS RADIO ALARM
TRANSMISSION SYSTEM DESIGNERS 1
through 40; ROE COMPONENT PART
DESIGNERS 1 through 40; ROE
COMPONENT PART MANUFACTURERS
1 through 40; ROE COMPONENT PART
DISTRIBUTORS 1 through 40; DOE
NEGLIGENT EMPLOYERS 1 through 40;
DOE NEGLIGENT EMPLOYEES 1 through
40; DOE MAINTENANCE WORKERS 1
through 40; DOE MONITORING
COMPANIES 1 through 40; ROE
NEGLIGENT CORPORATIONS 1 through
40,

Defendants.

PLAINTIFFS' SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs, by and through their attorneys of record, Robert T. Eglet, Esq., Tracy A. Eglet, Esq., and Danielle C. Miller, Esq. of the law firm of EGLET ADAMS, and hereby demand a trial by jury and complain and allege against Defendants as follows:

I.

INTRODUCTION

About 4:00 a.m. on December 21, 2019, a fire broke out at the Alpine Motel Apartments, a three-story apartment complex owned and operated by Defendant LAS VEGAS DRAGON HOTEL, LLC dba ALPINE MOTEL (hereinafter ALPINE MOTEL) and its managing member Defendant, ADOLFO G. OROZCO (hereinafter OROZCO), in downtown Las Vegas, Nevada. It is believed that a stove used for heating purposes was the origin of the fire. It is further believed there were no operating sprinklers and the fire alarms were inadequate and/or not functioning

1 properly or at all, thereby allowing the fire to spread throughout the building trapping residents
2 inside the building. When residents attempted to evacuate many found that the rear exit door had
3 been barricaded. Several were found trapped in the building, unable to escape, while others
4 resorted to jumping from the second and third story windows to escape the flames. At the time of
5 the fire, the ALPINE MOTEL was considered low income housing. Defendants ALPINE MOTEL
6 and OROZCO were downtown Las Vegas “slumlords” that took advantage of people under severe
7 financial constraints.

8 The following Plaintiffs resided at the ALPINE MOTEL located at 213 North 9th Street,
9 Las Vegas, Nevada 89101 on December 21, 2019:

10 Plaintiff, RICHARD AIKENS was present in the building at the time of the fire, sustained
11 personal injury, severe emotional distress, and property damage and/or loss of property;

12 Plaintiff, MICHELLE AIKENS was not present in the building at the time of the fire. She
13 has sustained a loss of consortium and property damage and/or loss of property;

14 Plaintiff, MICHAEL AIKENS, minor child of RICHARD and MICHELLE AIKENS, was
15 present in the building and did sustain severe emotional distress including Post Traumatic Stress
16 Disorder;

17 Plaintiff, BRIANNA AIKENS, minor child of RICHARD and MICHELLE AIKENS, was
18 present in the building and did sustain severe emotional distress including Post Traumatic Stress
19 Disorder;

20 Plaintiff, DEJOY WILSON was present in the building at the time of the fire, sustained
21 personal injury, severe emotional distress, a loss of consortium and property damage and/or loss
22 of property;

23 Plaintiff, JOHNATHAN WILSON was present in the building at the time of the fire,
24 sustained personal injury, severe emotional distress, a loss of consortium and property damage
25 and/or loss of property;

26 Plaintiff, RETOR JONES, JR. was present in the building at the time of the fire, sustained
27 personal injury, severe emotional distress, Post Traumatic Stress Disorder, and property damage
28 and/or loss of property;

- 1 Plaintiff, HELEN CLARK was present in the building at the time of the fire, sustained
2 personal injury, severe emotional distress, and property damage and/or loss of property;
- 3 Plaintiff, VICTOR COTTON was present in the building at the time of the fire, sustained
4 personal injury, severe emotional distress, and property damage and/or loss of property;
- 5 Plaintiff, CHRISTINIA FARINELLA was present in the building at the time of the fire,
6 sustained personal injury, severe emotional distress, and property damage and/or loss of property;
- 7 Plaintiff, HAILU ADDIS was present in the building at the time of the fire, sustained
8 personal injury, severe emotional distress, and property damage and/or loss of property;
- 9 Plaintiff, DENICIA JOHNSON was present in the building at the time of the fire, sustained
10 personal injury, severe emotional distress, and property damage and/or loss of property;
- 11 Plaintiff, PAUL WISE was present in the building at the time of the fire, sustained personal
12 injury, severe emotional distress, and property damage and/or loss of property;
- 13 Plaintiff, CARMAN MCCANDLESS was present in the building at the time of the fire,
14 sustained personal injury, severe emotional distress, and property damage and/or loss of property;
- 15 Plaintiff, PARALEE MINTER was present in the building at the time of the fire, sustained
16 personal injury, severe emotional distress, and property damage and/or loss of property;
- 17 Plaintiff, AUDREY PALMER was present in the building at the time of the fire, sustained
18 personal injury, severe emotional distress, and property damage and/or loss of property;
- 19 Plaintiff, KELVIN SALYERS was present in the building at the time of the fire, sustained
20 personal injury, severe emotional distress, and property damage and/or loss of property;
- 21 Plaintiff, JOE AGUILERA was present in the building at the time of the fire, sustained
22 personal injury, severe emotional distress, and property damage and/or loss of property;
- 23 Plaintiff, DAYSHENA THOMAS was present in the building at the time of the fire,
24 sustained personal injury, severe emotional distress, and property damage and/or loss of property;
- 25 Plaintiff, ANDREW THOMAS a minor child of DAYSHENA THOMAS was present in
26 the building and did sustain severe emotional distress including Post Traumatic Stress Disorder;
- 27 Plaintiff, SANDRA JONES was present in the building at the time of the fire, sustained
28 personal injury, severe emotional distress, and property damage and/or loss of property;

1 Plaintiff, TIACHARELLE DOTSON was present in the building and did sustain severe
2 emotional distress including Post Traumatic Stress Disorder and property damage and/or loss of
3 property;

4 Plaintiff, A'LAYNA DOTSON, a minor child of TIACHARELLE DOTSON was present
5 in the building and did sustain severe emotional distress including Post Traumatic Stress Disorder;

6 Plaintiff, CLEA ROBERTS was present in the building at the time of the fire, sustained
7 personal injury, severe emotional distress, a loss of consortium, and property damage and/or loss
8 of property;

9 Plaintiff, NELSON BLACKBURN was present in the building at the time of the fire,
10 sustained personal injury, severe emotional distress, a loss of consortium and property damage
11 and/or loss of property;

12 Plaintiff, FLOYD GUENTHER was present in the building and did sustain person injury,
13 severe emotional distress including Post Traumatic Stress Disorder and property damage and/or
14 loss of property;

15 Plaintiff, DOYLE MYERS was present in the building and did sustain person injury, severe
16 emotional distress including Post Traumatic Stress Disorder, and property damage and/or loss of
17 property;

18 Plaintiff, LAURA EDWARDS was present in the building and did sustain person injury,
19 severe emotional distress including Post Traumatic Stress Disorder, and property damage and/or
20 loss of property;

21 Plaintiff, ROY BACKHUS was present in the building and did sustain severe emotional
22 distress, possible personal injury, and property damage and/or loss of property;

23 Plaintiff, JIMMY BROWN-LACY was present in the building and did sustain severe
24 emotional distress, possible personal injury and property damage and/or loss of property;

25 Plaintiff, DELMARKAS COMBS was present in the building and did sustain severe
26 emotional distress, possible personal injury and property damage and/or loss of property;

27 Plaintiff, CHARLES COUCH was present in the building and did sustain severe emotional
28 distress, possible personal injury and property damage and/or loss of property;

1 Plaintiff, STEPHANIE COUCH was present in the building and did sustain severe
2 emotional distress, possible personal injury and property damage and/or loss of property;

3 Plaintiff, ASHLEY ROGERS a minor child of CHERYL ROGERS was present in the
4 building and did sustain severe emotional distress and possible personal injury;

5 Plaintiff, CHERYL ROGERS was present in the building and did sustain severe emotional
6 distress, possible personal injury and property damage and/or loss of property;

7 Plaintiff, MATTHEW SYKES was present in the building and did sustain severe emotional
8 distress, possible personal injury, a loss of consortium and property damage and/or loss of
9 property;

10 Plaintiff, THELMA SYKES was present in the building and did sustain person injury,
11 severe emotional distress including Post Traumatic Stress Disorder, and property damage and/or
12 loss of property;

13 Plaintiff, DAVID BARBARA, fortunately, was not present in the building during the fire,
14 but did sustain loss of property;

15 Plaintiff, EDDIE ELLIS, fortunately, was not present in the building during the fire, but
16 did sustain loss of property;

17 Plaintiff, C. EUGENE FRAZIER, fortunately, was not present in the building during the
18 fire, but did sustain loss of property;

19 Plaintiff, JEREMY GORDON, fortunately, was not present in the building during the fire,
20 but did sustain loss of property; and

21 Plaintiff, SCOTTI HUGHES, fortunately, was not present in the building during the fire,
22 but did sustain loss of property;

23 Plaintiff, TOMMY CALDERILLA was present in the building and did sustain severe
24 emotional distress, possible personal injury and property damage and/or loss of property.

25 **II.**

26 **PARTIES AND JURISDICTION**

27 That all facts and circumstances that give rise to the subject lawsuit occurred in Clark
28 County, Nevada.

1 1. Plaintiffs, RICHARD AIKENS and MICHELLE AIKENS husband and wife, are,
2 and at all times relevant hereto, were residents of the County of Clark, State of Nevada and resided
3 at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101.

4 2. Plaintiff, MICHAEL AIKENS, a minor and the son of RICHARD AND
5 MICHELLE AIKENS is, and at all times relevant hereto, was a resident of the County of Clark,
6 State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada
7 89101.

8 3. Plaintiff, BRIANNA AIKENS, a minor and the daughter of RICHARD AND
9 MICHELLE AIKENS is, and at all times relevant hereto, was a resident of the County of Clark,
10 State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada
11 89101.

12 4. Plaintiffs, DEJOY WILSON and JOHNATHAN WILSON husband and wife, are,
13 and at all times relevant hereto, were residents of the County of Clark, State of Nevada and resided
14 at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101.

15 5. Plaintiff, RETOR JONES, JR. is, and at all times relevant hereto, was a resident of
16 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
17 Street, Las Vegas, Nevada 89101.

18 6. Plaintiff, HELEN CLARK is, and at all times relevant hereto, was a resident of the
19 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
20 Las Vegas, Nevada 89101.

21 7. Plaintiff, VICTOR COTTON is, and at all times relevant hereto, was a resident of
22 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
23 Street, Las Vegas, Nevada 89101.

24 8. Plaintiff, CHRISTINIA FARINELLA is, and at all times relevant hereto, was a
25 resident of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213
26 N. Ninth Street, Las Vegas, Nevada 89101.

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1 9. Plaintiff, HAILU ADDIS is, and at all times relevant hereto, was a resident of the
2 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
3 Las Vegas, Nevada 89101.

4 10. Plaintiff, DENICIA JOHNSON is, and at all times relevant hereto, was a resident
5 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
6 Street, Las Vegas, Nevada 89101.

7 11. Plaintiff, PAUL WISE is, and at all times relevant hereto, was a resident of the
8 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
9 Las Vegas, Nevada 89101.

10 12. Plaintiff, CARMAN MCCANDLESS is, and at all times relevant hereto, was a
11 resident of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213
12 N. Ninth Street, Las Vegas, Nevada 89101.

13 13. Plaintiff, PARALEE MINTER is, and at all times relevant hereto, was a resident
14 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
15 Street, Las Vegas, Nevada 89101.

16 14. Plaintiff, AUDREY PALMER is, and at all times relevant hereto, was a resident of
17 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
18 Street, Las Vegas, Nevada 89101.

19 15. Plaintiff, KELVIN SALYERS is, and at all times relevant hereto, was a resident of
20 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
21 Street, Las Vegas, Nevada 89101.

22 16. Plaintiff, JOE AGUILERA is, and at all times relevant hereto, was a resident of
23 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
24 Street, Las Vegas, Nevada 89101.

25 17. Plaintiff, DAYSHENA THOMAS is, and at all times relevant hereto, was a resident
26 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
27 Street, Las Vegas, Nevada 89101.

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1 18. Plaintiff, ANDREW THOMAS a minor, and the son of, DAYSHENA THOMAS
2 is, and at all times relevant hereto, was a resident of the County of Clark, State of Nevada and
3 resided at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101.

4 19. Plaintiff, SANDRA JONES is, and was at all times relevant hereto, was a resident
5 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
6 Street, Las Vegas, Nevada 89101.

7 20. Plaintiff, TIACHARELLE DOTSON is, and at all times relevant hereto, was a
8 resident of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213
9 N. Ninth Street, Las Vegas, Nevada 89101.

10 21. Plaintiff, A'LAYNA DOTSON, a minor and daughter of TIACHARELLE
11 DOTSON is, and at all times relevant hereto, was a resident of the County of Clark, State of
12 Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101.

13 22. Plaintiffs, CLEA ROBERTS and NELSON BLACKBURN, as husband and wife
14 were, and at all times relevant hereto, was a resident of the County of Clark, State of Nevada and
15 resided at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101.

16 23. Plaintiff, FLOYD GUENTHER is, and at all times relevant hereto, was a resident
17 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
18 Street, Las Vegas, Nevada 89101.

19 24. Plaintiff, DOYLE MYERS is, and at all times relevant hereto, was a resident of the
20 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
21 Las Vegas, Nevada 89101.

22 25. Plaintiff, LAURA EDWARDS is, and at all times relevant hereto, was a resident
23 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
24 Street, Las Vegas, Nevada 89101.

25 26. Plaintiff, ROY BACKHUS is, and at all times relevant hereto, was a resident of the
26 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
27 Las Vegas, Nevada 89101;

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1 27. Plaintiff, JIMMY BROWN-LACY is, and at all times relevant hereto, was a
2 resident of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213
3 N. Ninth Street, Las Vegas, Nevada 89101;

4 28. Plaintiff, DELMARKAS COMBS is, and at all times relevant hereto, was a resident
5 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
6 Street, Las Vegas, Nevada 89101;

7 29. Plaintiffs, CHARLES COUCH and STEPHANIE COUCH as husband and wife is,
8 and at all times relevant hereto, was a resident of the County of Clark, State of Nevada and resided
9 at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101;

10 30. Plaintiff, ASHLEY ROGERS a minor, and the daughter of CHERYL ROGERS is,
11 and at all times relevant hereto, was a resident of the County of Clark, State of Nevada and resided
12 at the Alpine Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101;

13 31. Plaintiff, CHERYL ROGERS is, and at all times relevant hereto, was a resident of
14 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
15 Street, Las Vegas, Nevada 89101;

16 32. Plaintiffs, MATTHEW SYKES and THELMA SYKES were, and at all times
17 relevant hereto, was a resident of the County of Clark, State of Nevada and resided at the Alpine
18 Motel, located at 213 N. Ninth Street, Las Vegas, Nevada 89101;

19 33. Plaintiff, DAVID BARBARA is, and at all times relevant hereto, was a resident of
20 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
21 Street, Las Vegas, Nevada 89101;

22 34. Plaintiff, EDDIE ELLIS is, and at all times relevant hereto, was a resident of the
23 County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth Street,
24 Las Vegas, Nevada 89101;

25 35. Plaintiff, C. EUGENE FRAZIER is, and at all times relevant hereto, was a resident
26 of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
27 Street, Las Vegas, Nevada 89101;

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1 36. Plaintiff, JEREMY GORDON is, and at all times relevant hereto, was a resident of
2 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
3 Street, Las Vegas, Nevada 89101;

4 37. Plaintiff, SCOTTI HUGHES is, and at all times relevant hereto, was a resident of
5 the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213 N. Ninth
6 Street, Las Vegas, Nevada 89101;

7 38. Plaintiff, TOMMY CALDERILLA is, and at all times relevant hereto, was a
8 resident of the County of Clark, State of Nevada and resided at the Alpine Motel, located at 213
9 N. Ninth Street, Las Vegas, Nevada 89101;

10 39. Defendant, LAS VEGAS DRAGON HOTEL, LLC, dba ALPINE MOTEL.
11 (hereinafter "ALPINE MOTEL"), is and was a limited-liability company, which at all relevant
12 times, was authorized to do and was doing business in the County of Clark, State of Nevada.

13 40. Defendant, ADOLFO G. OROZCO (hereinafter "OROZCO"), upon information
14 and belief, was at all times relevant hereto, a resident of County of Clark, State of Nevada.

15 41. At all relevant times and upon information and belief, Defendant OROZCO was
16 the member and sole decision-maker at ALPINE MOTEL.

17 42. Defendant, ERIKA AYALA (hereinafter "MS. AYALA") a/k/a ERIKA AYALA-
18 AGUILAR is the wife of Defendant ADOLFO OROZCO and, upon information and belief, was
19 at all times relevant hereto, a resident of County of Clark, State of Nevada. It is alleged herein that
20 MS. AYALA was and is the alter ego of ALPINE MOTEL, along with Defendant OROZCO.

21 43. Defendant, ELITE1, LLC is a Nevada Limited Liability Company doing business
22 in the County of Clark, State of Nevada.

23 44. Defendant, GALEANA, LLC is a Delaware Limited Liability Company, currently
24 in default in the State of Delaware, but doing business in the County of Clark, State of Nevada.

25 45. Defendant, CANCUN, LLC is a Nevada Limited Liability Company doing
26 business in the County of Clark, State of Nevada.

27 46. Defendants, OROZCO, ALPINE MOTEL, AYALA, ELITE1, LLC, GALEANA,
28 LLC, CANCUN, LLC are all alter egos of each other as each are run, maintained, managed via

1 commingled assets and liabilities and/or influence and governance, unity of interest, and
2 inseparableness that they should be considered as one so as not to sanction a fraud or injustice.
3 They were each involved with each other to such an extent that they are liable per alter ego, joint
4 enterprise, common enterprise liability, single business enterprise and/or affiliate liability.

5 47. Defendant, EDS ELECTRONICS, INC. (hereinafter “EDS”) is and was a Domestic
6 Corporation, which at all relevant times and upon information and belief, was authorized to do and
7 was doing business in the County of Clark, State of Nevada, through its employees, agents,
8 representatives, and/or servants that maintained the fire alarm notification systems at ALPINE
9 MOTEL;

10 48. Defendant, COOPER WHEELOCK, INC. (hereinafter “COOPER”), is and was a
11 Domestic Corporation, a New Jersey entity, doing business in the State of Nevada, and upon
12 information and belief, through its employees agents, representatives, and/or servants installed,
13 designed, manufactured, fabricated, distributed, assembled, and/or sold a Cooper Wheelock AH-
14 24WP-R horn strobes.

15 49. Upon information and belief, and that at all time relevant herein, COOPER installed
16 a Cooper Wheelock AH-24WP-R horn strobe at ALPINE MOTEL to replace a defective horn
17 strobe. Upon information and belief, the horn strobe did not sound and/or alert residents of a fire
18 at the ALPINE MOTEL.

19 50. That at all time relevant herein, it was reasonably foreseeable to Defendant
20 COOPER that when its products entered the State of Nevada, that Defendant could be expected to
21 be sued in the state where its products caused the injury. Jurisdiction is appropriate under the Due
22 Process Clause. Upon information and belief, Defendant COOPER was aware of the national
23 distribution system of its horn strobes, and as a consequence of that awareness, Defendant
24 COOPER indirectly and/or directly served the national market and derived economic benefit
25 therefrom. As such, Defendant COOPER could reasonably anticipate being subject to suit in any
26 forum within that market where its product caused injury.

27 51. Defendant, AES CORPORATION (hereinafter “AES”), is a Domestic
28 Corporation, a Massachusetts entity, doing business in the State of Nevada, and upon information

1 and belief, through its employees agents, representatives, and/or servants installed, designed,
2 manufactured, fabricated, distributed, assembled, and/or sold an AES Intelli-Net 7750-F wireless
3 radio alarm transmission system to the general public.

4 52. That at all time relevant herein, it was reasonably foreseeable to Defendant AES
5 that when its products entered the State of Nevada, that Defendant could be expected to be sued
6 in the state where its products caused the injury. Jurisdiction is appropriate under the Due Process
7 Clause. Upon information and belief, Defendant AES was aware of the national distribution
8 system of its wireless radio alarm transmission systems, and as a consequence of that awareness,
9 Defendant AES indirectly and/or directly served the national market and derived economic benefit
10 therefrom. As such, Defendant AES could reasonably anticipate being subject to suit in any forum
11 within that market where its product caused injury.

12 53. At all relevant times, and upon information and belief, AES installed the AES
13 Intelli-Net 7750-F wireless radio alarm transmission system at the ALPINE MOTEL.

14 54. Defendant, ADVANCED PROTECTION INDUSTRIES, LLC f/k/a ADVANCED
15 PROTECTION INDUSTRIES, INC. d/b/a NATIONAL MONITORING CENTER (hereinafter
16 “NATIONAL MONITORING”), is and was a Domestic Limited Liability Company, which at all
17 relevant times and upon information and belief, was authorized to do and was doing business in
18 the County of Clark, State of Nevada, through its employees, agents, representatives, and/or
19 servants held the fire alarm monitoring permit for the ALPINE MOTEL.

20 55. That Defendants, DOE EMPLOYEES 1 through 40, and/or DOE NEGLIGENT
21 EMPLOYEES 1 through 40, were acting within the course and scope of their employment, service
22 and/or agency, with the other Defendants, the Defendants, and each of them, are vicariously liable
23 for the injuries and damages sustained by Plaintiffs as alleged herein.

24 56. That Defendants, DOE EMPLOYEES, and DOE NEGLIGENT EMPLOYEES
25 were acting in concert with the other Defendants, the Defendants and each of them, are vicariously
26 and jointly and severally liable for the injuries and damages sustained by Plaintiffs as alleged
27 herein.

28

1 57. Defendants, ALPINE MOTEL, OROZCO, DOES and ROES set forth above,
2 inclusive, and each of them, were the agent, representative, servant, independent contractor,
3 subcontractor, partner, joint venture, alter ego, successor in interest, affiliate, parent and/or
4 subsidiary, employee and franchise of each of the remaining Defendants, and each of them herein,
5 and were at all times acting within the purpose and scope of said agency, service, employment,
6 partnership, joint venture, parent/subsidiary and franchise as such and with the express and/or
7 implied permission, knowledge, consent, and ratification of all said other Defendants.

8 58. Plaintiffs further allege upon information and belief that the OROZCO, DOES and
9 ROES set forth above, and each of them, were the alter egos of ALPINE MOTEL and ROE
10 ENTITIES as set forth above, inclusive, and each of them named herein, having influenced and
11 governed the entities, there is such unity of interest and ownership that the limited-liability
12 company and the person are inseparable from each other; and adherence to the notion of the
13 limited-liability company being an entity separate from the person would sanction fraud or
14 manifest injustice. Further, OROZCO is liable for the damages caused to Plaintiffs as a result of
15 the duties he owed to them as an individual, separate and apart from his role as a member of
16 ALPINE MOTEL, including without limitation his individual negligence concerning his direct
17 knowledge of actions that threatened physical injuries to Plaintiffs.

18 59. Plaintiffs further allege upon information and belief that OROZCO, AYALA,
19 DOES and ROES set forth above, and each of them, were the alter egos of ALPINE MOTEL and
20 ROE ENTITIES as set forth above, inclusive, and each of them named herein, having influenced
21 and governed the entities, there is such unity of interest and ownership that the limited-liability
22 company and the person are inseparable from each other; and adherence to the notion of the
23 limited-liability company being an entity separate from the person would sanction fraud or
24 manifest injustice. Further, OROZCO is liable for the damages caused to Plaintiffs as a result of
25 the duties he owed to them as an individual, separate and apart from his role as a member of
26 ALPINE MOTEL, including without limitation his individual negligence concerning his direct
27 knowledge of actions that threatened physical injuries to Plaintiffs.

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60. Plaintiffs further allege upon information and belief that OROZCO, AYALA, ELITE1, LLC, GALEANA, LLC, CANCUN, LLC, DOES and ROES set forth above, and each of them, were the alter egos of ALPINE MOTEL (LAS VEGAS DRAGON HOTEL LLC) and ROE ENTITIES as set forth above, inclusive, and each of them named herein, having influenced and governed the entities, there is such unity of interest and ownership that the limited-liability company and the person are inseparable from each other; and adherence to the notion of the limited-liability company being an entity separate from the person would sanction fraud or manifest injustice. Further, OROZCO, AYALA, ELITE1, LLC, GALEANA, LLC, CANCUN, LLC, are liable for the damages caused to Plaintiffs as a result of the duties they owed to Plaintiffs by comingling the various entities into one another.

61. That the true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants herein designated as DOE 1 through 40, ROE CORPORATIONS 1 through 40, DOE INSTALLERS 1 through 40, ROE CONTRACTORS 1 through 40 ROE SELLERS 1 through 40, DOE EMPLOYEES 1 through 40, DOE INDIVIDUALS 1 through 40, ROE DESIGNERS 1 through 40, ROE DESIGNERS 1 through 40, ROE MANUFACTURERS 1 through 40, ROE DISTRIBUTORS 1 through 40, ROE DISTRIBUTORS 1 through 40, ROE STOVE DESIGNERS 1 through 40, ROE STOVE MANUFACTURERS 1 through 40, ROE STOVE DISTRIBUTORS 1 through 40, ROE STOVE INSTALLER 1 through 40, ROE STOVE SELLER 1 through 40, ROE STOVE MAINTAINER 1 through 40, ROE HORN STROBE DESIGNERS 1 through 40, ROE HORN STROBE MANUFACTURERS 1 through 40, ROE HORN STROBE DISTRIBUTORS 1 through 40, ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM DESIGNERS 1 through 40, ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM MANUFACTURERS 1 through 40, ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM DISTRIBUTORS 1 through 40, ROE COMPONENT PART DESIGNERS 1 through 40, ROE COMPONENT PART MANUFACTURERS 1 through 40, ROE COMPONENT PART DISTRIBUTORS 1 through 40, DOE NEGLIGENT EMPLOYERS 1 through 40, DOE NEGLIGENT EMPLOYEES 1 through 40, and/or ROE

1 NEGLIGENT CORPORATIONS 1 through 40 are unknown to Plaintiffs at this time who
2 therefore sue said Defendants by fictitious names.

3 62. Plaintiffs allege that each named Defendant herein designated as DOE 1 through
4 40, ROE CORPORATIONS 1 through 40, ROE SELLERS 1 through 40, DOE EMPLOYEES 1
5 through 40, DOE INDIVIDUALS 1 through 40, DOE INSTALLERS 1 through 40, ROE
6 CONTRACTORS 1 through 40, ROE DESIGNERS 1 through 40, ROE DESIGNERS 1 through
7 40, ROE MANUFACTURERS 1 through 40, ROE DISTRIBUTORS 1 through 40, ROE STOVE
8 DESIGNERS 1 through 40, ROE STOVE MANUFACTURERS 1 through 40, ROE STOVE
9 DISTRIBUTORS 1 through 40, ROE STOVE INSTALLER 1 through 40, ROE STOVE SELLER
10 1 through 40, ROE STOVE MAINTAINER 1 through 40, ROE HORN STROBE DESIGNERS
11 1 through 40, ROE HORN STROBE MANUFACTURERS 1 through 40, ROE HORN STROBE
12 DISTRIBUTORS 1 through 40, ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM
13 DESIGNERS 1 through 40, ROE WIRELESS RADIO ALARM TRANSMISSION SYSTEM
14 MANUFACTURERS 1 through 40, ROE WIRELESS RADIO ALARM TRANSMISSION
15 SYSTEM DISTRIBUTORS 1 through 40, ROE COMPONENT PART DESIGNERS 1 through
16 40, ROE COMPONENT PART MANUFACTURERS 1 through 40, ROE COMPONENT PART
17 DISTRIBUTORS 1 through 40, DOE NEGLIGENT EMPLOYERS 1 through 40, DOE
18 NEGLIGENT EMPLOYEES 1 through 40, and/or ROE NEGLIGENT CORPORATIONS 1
19 through 40 is negligently, willfully, contractually, and/or otherwise legally responsible for the
20 events and happenings herein referred to and proximately caused injury and damages to Plaintiffs
21 as herein alleged. Plaintiffs will seek leave of Court to amend this Complaint to insert the true
22 names and capacities of such Defendants when same have been ascertained and will further seek
23 leave to join said Defendants in these proceedings.

24 63. Plaintiffs are informed and believe and thereon allege that at all relevant times
25 herein-mentioned Defendants, and each of them, were the agents and/or servants and/or partners
26 and/or joint venture partners and/or employers and/or employees of the remaining Defendants and
27 were acting within the course and scope of such agency, employment, partnership or joint venture
28

1 and with the knowledge and consent of the remaining Defendants at the time of the event leading
2 to Plaintiffs' injuries.

3 64. That exercise of the jurisdiction by this Court over each and every Defendant in
4 this action is appropriate because at least one Defendant is a resident of the State of Nevada, and
5 each and every Defendant has done, and continues to do, business in the State of Nevada, and
6 committed a tort in the State of Nevada.

7 65. That all incidents described herein occurred in the County of Clark, State of
8 Nevada.

9 **III.**

10 **FACTUAL ALLEGATIONS**

11 66. Plaintiffs, each of them, were residents of the ALPINE MOTEL, located at 213
12 North 9th Street, Las Vegas, Nevada, 89101.

13 67. The ALPINE MOTEL is a forty-two (42) unit apartment complex and motel rented
14 to the general public for residential use.

15 68. Upon information and belief, the ALPINE MOTEL did not have adequate heating
16 facilities, in violation of applicable fire codes and/or NRS 118A.290 entitled Habitability of
17 dwelling unit.

18 69. As a result of not having adequate heating facilities, and upon information and
19 belief, residents of the ALPINE MOTEL resorted to using cooking stoves as heat sources.

20 70. In the early hours of the morning on December 21, 2019, a fire ignited in a first-
21 floor unit located within the three-story ALPINE MOTEL.

22 71. An initial investigation by Las Vegas Fire and Rescue indicated the cause of the
23 tragic fire was a cooking stove being used as a heat source.

24 72. After the fire broke out, residents attempted to evacuate the ALPINE MOTEL.

25 73. Some residents of the ALPINE MOTEL resorted to leaping from upper-story
26 windows to escape the fire.

27 74. Upon information and belief, the ALPINE MOTEL did not have adequate hallway
28 lighting as a means of egress illumination, as required by the applicable fire code including but

1 not limited to NRS 477, which prevented residents from quickly and safely exiting the burning
2 building.

3 75. Upon information and belief, the egress doors located within the ALPINE MOTEL
4 were bolted closed, in violation of NRS 41.800, trapping residents from safely exiting the burning
5 building.

6 76. Upon information and belief, the ALPINE MOTEL did not have working fire
7 alarms and/or smoke detectors, in violation of the applicable fire codes including those contained
8 in NRS 477, but not limited NRS 477.140 and NRS 477.350.

9 77. Upon information and belief, the ALPINE MOTEL did not have working fire
10 extinguishers or a fire suppression system, in violation of the applicable fire code contained in
11 NRS 477.

12 78. Upon information and belief, the ALPINE MOTEL units were uninhabitable and/or
13 failed to provide basic essential services and/or utilities, including heating and air systems, as
14 required by NRS 118A.290 and other applicable statutes or regulations.

15 79. Upon information and belief, prior to the subject fire, ALPINE MOTEL and
16 OROZCO failed to inspect, install, replace, test, and/or maintain the appliances, fire safety
17 equipment and devices, entry and exit doors and/or pathways, electrical power sources, and/or the
18 utilities at the ALPINE MOTEL.

19 80. Upon information and belief, EDS installed and maintained the COOPER
20 Wheelock AH-24WP-R horn strobe that failed to operate during the subject fire, and installed
21 and/or maintained the alarm system in general at the ALPINE MOTEL, as it existed at the time of
22 the subject fire.

23 81. Upon information and belief, COOPER manufactured the AH-24WP-R horn strobe
24 that failed to operate during the subject fire.

25 82. Upon information and belief, AES was the manufacturer and distributor of AES
26 Intelli-Net 7750-F wireless radio alarm transmission system provided to EDS by AES and was
27 installed at the ALPINE MOTEL by EDS. This radio alarm transmission was present on the
28 premises at the time of the subject fire and failed to operate.

1 83. Upon information and belief, NATIONAL MONITORING was the contracted
2 monitor of the ALPINE MOTEL fire alarm system at the time of the subject fire. The said system
3 was designed to be monitored over a wireless radio network.

4 84. Upon information and belief, the subject AES Intelli-Net 7750-F wireless radio
5 alarm transmission system installed by AES was monitored by EDS and NATIONAL
6 MONITORING. It is further believed that EDS and NATIONAL MONITORING were to relay
7 any fire signal to the Fire Department.

8 85. Defendants knew or should have known that the equipment, devices, products,
9 and/or conditions that caused or contributed to the fire and damages described herein were faulty
10 and that the ALPINE MOTEL was unreasonably dangerous and/or failed to meet or comply with
11 applicable laws, codes, and/or ordinances.

12 86. Upon information and belief, Defendant OROZCO and Defendant AYALA were
13 aware of all and/or some of the above issues but took no action to remedy same. That Defendant
14 OROZCO'S and/or Defendant AYALA'S conduct herein described was taken individually, on
15 behalf of ALPINE MOTEL and/or as the alter ego of same.

16 87. The conduct of OROZCO, ALPINE and AYALA herein described was also the
17 conduct of, ELITE1, LLC GALEANA, LLC and CANCUN, LLC based upon alter ego, joint
18 enterprise, common enterprise liability, single business enterprise and/or affiliate liability.

19 88. Plaintiffs' damages complained of herein were the direct and proximate result of
20 the failure of the Defendants to provide its tenants and/or invitees, with safe and/or habitable living
21 conditions.

22 89. The injuries of the Plaintiffs were the result of the negligent, knowing, oppressive,
23 malicious, and/or reckless conduct of the Defendants and/or their failure to properly distribute,
24 select, install, inspect, repair, maintain, test, or purchase smoke alarms, fire extinguishers, fire
25 alarm system, essential utilities, entrance and exit doors, appliances, and/or electrical power
26 sources at ALPINE MOTEL.

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IV.

FIRST CAUSE OF ACTION

(Negligence Per Se Violation of NRS 41.800, NRS 118A.290, and NRS 477 – As Against Defendants ALPINE MOTEL, OROZCO And All Named DOES and ROES)

90. Plaintiffs reallege each and every allegation contained in the preceding and subsequent paragraphs, and by this reference incorporates said paragraphs as though fully set forth herein.

91. On or about December 21, 2019, Plaintiffs were a tenant of the ALPINE MOTEL and legally on the premises described herein above.

92. Defendants, ALPINE MOTEL and OROZCO owed Plaintiffs the duty to act as a reasonable landlord, obey by applicable laws, codes, and ordinances, and provide its tenants a habitable dwelling and a premise safe from unreasonable danger.

93. Additionally, Defendants; ALPINE MOTEL and OROZCO owed Plaintiffs the non-delegable duty to maintain the ALPINE MOTEL and its common areas and means of egress in a reasonably safe condition, owed a duty to use reasonable care when inspecting, servicing and maintaining the ALPINE MOTEL and its common areas and means of egress, and had a duty to comply with all applicable building, housing and fire codes.

94. Upon information and belief, Defendants, ALPINE MOTEL and OROZCO had actual and constructive notice of code violations, dangerous conditions, and/or deficiencies that rendered the Alpine Motel Apartments and its and common areas uninhabitable, prior the fire described herein, and was given notice by residents, and/or local health and/or fire inspectors. The Defendants conduct created a foreseeable zone of risk that a fire and smoke resulting therefrom would occur.

95. Defendants, ALPINE MOTEL and OROZCO breached their duties in that they failed to use reasonable care in the manner by which they owned, operated, managed, maintained, supervised, inspected, failed to inspect, controlled, and/or renovated the ALPINE MOTEL, including the property's fire prevention, suppression, and/or safety systems, heating, ventilation,

1 and cooling systems, emergency egress routes, and utility services at the time Plaintiffs occupied
2 the ALPINE MOTEL, Defendants:

- 3 a. Failed to provide and/or maintain, or adequately maintain the smoke alarms, fire
4 extinguishers, and fire alarm system at the subject property;
 - 5 b. Failed to provide and/or inspect the smoke alarms, fire extinguishers, and fire alarm
6 system at the subject property;
 - 7 c. Failed to maintain or adequately maintain the entrance and exit doors of the subject
8 property;
 - 9 d. Failed to inspect, or adequately inspect the entrance and exit doors of the subject
10 property;
 - 11 e. Failed to maintain or adequately maintain the utilities, specifically the heating
12 systems, of the subject property;
 - 13 f. Failed to warn or adequately warn the Plaintiffs of the dangerous conditions
14 relating to the fire protection devices and systems, the entrance and exit doors (bolted shut),
15 and lack of essential utilities, including heat, when Defendants knew or should have known
16 of their existence and when Plaintiffs were unaware of the dangerous conditions;
 - 17 g. Failed to correct or adequately correct the fire protection devices and systems and
18 dangerous conditions relating to the habitability and fire safety at the subject property when
19 Defendants knew or should have known of their existence;
 - 20 h. Failed to provide a safe and secure means of moving about the subject property for
21 Plaintiffs, including escaping a fire;
 - 22 i. Failed to install fire prevention devices, specifically smoke alarms, fire
23 extinguishers, and fire alarm systems;
 - 24 j. Failed to provide and maintain a safe and secure premises as required by Nevada
25 law;
 - 26 k. Failed to comply with the applicable building, housing and fire codes; and
 - 27 l. Failed to act reasonably under the circumstances.
- 28

1 96. Plaintiffs are informed and believe and allege thereon that these unsafe and
2 dangerous conditions were known to Defendants ALPINE MOTEL, OROZCO, ALL NAMED
3 DOES AND ROES, inclusive and each of them, and/or was discoverable through reasonable
4 inspection of the property.

5 97. As a result of Defendants, ALPINE MOTEL and OROZCO's negligence per se,
6 the building was in an unsafe and dangerous condition so that instead of protecting the tenants, it
7 actually exposed the tenants to an unreasonable risk of harm and exacerbated, instead of mitigated,
8 the damages caused by the fire.

9 98. Plaintiffs are part of the class of people intended to be protected by the fire code of
10 the City of Las Vegas and other applicable codes, regulations, laws, and ordinances of which
11 Defendants, ALPINE MOTEL and OROZCO violated, including NRS 41.800 and/or NRS
12 118A.290 and/or NRS 477.

13 99. Defendants, each of them, by actions and omissions as alleged herein directly and
14 proximately caused the damages set forth in this Complaint for Plaintiffs.

15 100. As a direct and approximate result of the Defendants' negligence, Plaintiffs have
16 suffered injuries and/or severe emotional distress and/or property damage and/or loss of property
17 in excess of Fifteen Thousand Dollars (\$15,000.00).

18 101. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
19 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
20 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
21 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
22 Dollars (\$15,000.00).

23 102. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required
24 to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
25 have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

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V.

SECOND CAUSE OF ACTION

**(General Negligence – As Against Defendants ALPINE MOTEL, OROZCO And All
Named DOES and ROES)**

103. Plaintiffs reallege each and every allegation contained in the preceding and subsequent paragraphs, and by this reference incorporates said paragraphs as though fully set forth herein.

104. At all relevant times, Defendant ALPINE MOTEL and OROZCO, failed to install, properly maintain and test fire alarm systems.

105. Defendant, ALPINE MOTEL and OROZCO, and each of them, posted no warning signs to alert individuals of the imminent hazards said Defendants created, and failed to provide proper exits in event of an emergency.

106. Defendant, ALPINE MOTEL and OROZCO negligently hired, trained, and supervised the managers, maintenance personnel, and employees working at ALPINE MOTEL regarding fire safety and how to properly install, inspect, test, maintain, and/or repair the smoke alarms, fire extinguishers, fire alarm system, entrance and exit doors, and/or essential utilities, specifically the heating systems at ALPINE MOTEL;

107. That prior to the severe injuries suffered by Plaintiffs, Defendant ALPINE MOTEL and OROZCO, and each of them, had knowledge of the hazardous safety conditions including but not limited to bolted and locked exit doors, and failed to remedy said conditions that were a direct and proximate result of Plaintiffs' injuries.

108. Defendant, ALPINE MOTEL and OROZCO owed a duty to Plaintiffs to maintain a safe premises. Defendants breached that duty causing Plaintiffs physical injury, severe emotional distress, property damage and/or loss of property and other damages.

109. That said failures of Defendant ALPINE MOTEL and OROZCO, amount to a conscious disregard for the safety of the Plaintiffs, as to constitute malice and oppression.

110. For the reasons set forth herein, Plaintiffs are entitled to exemplary damages in an amount to be determined at trial.

111. As a direct and approximate result of the Defendants' negligence, Plaintiffs have suffered injuries and/or severe emotional distress and/or property damage and/or loss of property in excess of Fifteen Thousand Dollars (\$15,000.00).

112. Plaintiffs further seek exemplary and punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

113. Defendants, and each of them, acted with fraud, oppression, and/or malice toward Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

114. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof, have been damaged thereby, and are entitled to reasonable attorneys' fees and costs

VI.

THIRD CAUSE OF ACTION

(Negligent Monitoring, Maintenance, And Installation – As Against Defendants EDS, AES, COOPER, NATIONAL MONITORING And All Named DOES and ROES)

115. Plaintiffs reallege each and every allegation contained in the preceding and subsequent paragraphs, and by this reference incorporates said paragraphs as though fully set forth herein.

116. At all relevant times, herein Defendants, negligently installed, maintained, monitored and/or tested the fire alarms including the horn strobe.

117. Defendants owed a duty to Plaintiffs to properly and with due care monitor, maintain and install the subject fire alarm and horn strobe.

118. Defendants breached those duties causing Plaintiffs physical injury, severe emotional distress, property damage and/or loss of property and other damages.

119. That said failures of Defendants amount to a conscious disregard for the safety of the Plaintiffs, as to constitute malice and oppression.

1 120. For the reasons set forth herein, Plaintiffs are entitled to exemplary damages in an
2 amount to be determined at trial.

3 121. As a direct and approximate result of the Defendants' negligence, Plaintiffs have
4 suffered injuries and/or severe emotional distress and/or property damage and/or loss of property
5 in excess of Fifteen Thousand Dollars (\$15,000.00).

6 122. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
7 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
8 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
9 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
10 Dollars (\$15,000.00).

11 123. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required
12 to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
13 have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

14 **VII.**

15 **FOURTH CAUSE OF ACTION**

16 **(Strict Products Liability – Design Defect, Manufacturing Defect,**
17 **Failure To Warn/Inadequate Warning – As Against Defendants EDS, COOPER, AES,**
18 **NATIONAL MONITORING And All Named DOES and ROES)**

19 124. Plaintiffs incorporate by reference each and every allegation previously made in
20 this Complaint, as if fully set forth herein.

21 125. That, at all times, relevant herein, Defendants, EDS, COOPER and/or AES
22 installed the AES Intelli-Net 7750-F wireless radio alarm transmission system at the ALPINE
23 MOTEL.

24 126. That, at all times relevant herein, Defendant, COOPER, including but not limited
25 to all ROE and DOE Defendants, were the manufactures, designers, distributors, retailers,
26 marketers, sellers, repairers, installers, and/or maintainers of the Cooper Wheelock AH-24WP-R
27 horn strobe installed at ALPINE MOTEL for use by the general public, all with the knowledge
28 that the same would not be inspected or tested by the purchaser or user for defects. That at the time

1 of the December 21, 2019, the Cooper Wheelock AH-24WP-R horn strobe installed at the
2 ALPINE MOTEL failed to sound and/or alert residents of a fire at the ALPINE MOTEL which
3 caused Plaintiffs severe and permanent physical and severe emotional injuries due to the defect(s)
4 contained therein.

5 127. That the AH-24WP-R horn strobe was defective in its design and/or manufacture
6 and/or distribution and/or installation, failing to provide warning to the Plaintiffs of the imminent
7 danger, lessening Plaintiff's ability to safely escape in time to avoid suffering personal injuries
8 and substantial bodily harm.

9 128. That such defect(s) existed when the AH-24WP-R horn strobe left the hands of the
10 manufacturer, designer, distributor, retailer, marketer, seller, repairer, and/or maintainer.

11 129. That the Defendant, COOPER knew or should have known of the subject AH-
12 24WP-R horn strobe's defect(s) which rendered it unreasonably dangerous at the time of placing
13 the product into the stream of commerce and failed to undertake measures to prohibit it from
14 entering into the stream of commerce and into the hands of users in the State of Nevada, including
15 warnings of the risks for the product failure, proper use and maintenance of the product, proper
16 inspection and/or installation of the product for potential hazards and/or defects.

17 130. That Defendant, COOPER, knew or should have known that the general public
18 would use and/or rely upon the horn strobe in the event of a fire to perform its function of warning
19 them of the dangerous condition.

20 131. As a direct and approximate result of the Defendants' negligence, Plaintiffs have
21 suffered injuries and/or severe emotional distress and/or property damage and/or loss of property
22 in excess of Fifteen Thousand Dollars (\$15,000.00).

23 132. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
24 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
25 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
26 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
27 Dollars (\$15,000.00).

133. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof, have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

VIII.

FIFTH CAUSE OF ACTION

(Negligent Infliction Of Emotional Distress Bystander for Plaintiffs BRIANNA AIKENS; MICHAEL AIKENS; MATTHEW SYKES AND ANDREW THOMAS – As Against All Defendants And All Named DOES and ROES)

134. That Plaintiffs repeat and reallege each and every allegation set forth in this Complaint, as though the same were fully set forth herein.

135. The Defendants negligently caused the fire and subsequent injuries to Plaintiffs;

136. Plaintiffs MICHAEL AIKENS and BRIANNA AIKENS have a close familial relationship with RICHARD AIKENS:

137. Plaintiffs, MICHAEL AIKENS and BRIANNA AIKENS witnessed the injuries to RICHARD AIKENS;

138. Plaintiff, ANDREW THOMAS has a close familial relationship with DAYSHENA THOMAS;

139. Plaintiff, MATTHEW SYKES witnessed the injuries to THELMA SYKES;

140. Plaintiff, ANDREW THOMAS witnessed the injuries to DAYSHENA THOMAS;

141. As a result of witnessing or experiencing the fire, the plaintiffs suffered severe emotional distress.

142. As a direct and proximate result of the acts, omissions, and conduct of Defendants, Plaintiffs have suffered severe emotional distress.

143. As a direct and proximate result of the conduct of Defendants described hereinabove, Plaintiffs have sustained damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

144. Defendants, and each of them, acted with fraud, oppression, and/or malice toward Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard

1 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
 2 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
 3 Dollars (\$15,000.00)

4 145. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required
 5 to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
 6 have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

7 **IX.**

8 **SIXTH CAUSE OF ACTION**

9 **(Negligent Infliction Of Emotional Distress for Plaintiffs RICHARD AIKENS; DEJOY**
 10 **WILSON; JOHNATHAN WILSON; RETOR JONES, JR; HELEN CLARK; VICTOR**
 11 **COTTON; CHRISTINIA FARINELLA; HAILU ADDIS; DENICIA JOHNSON, PAUL**
 12 **WISE, CARMAN MCCANDLESS; PARALEE MINTER; AUDREY PALMER; KELVIN**
 13 **SALYERS; JOE AGUILERA; DAYSHENA THOMAS; SANDRA JONES,**
 14 **TIACHARELLE DOTSON; A'LAYNA DOTSON, by and through her natural parent**
 15 **TIACHARELLE DOTSON; CLEA ROBERTS; NELSON BLACKBURN; FLOYD**
 16 **GUENTHER, DOYLE MYERS, LAURA EDWARDS; ROY BACKHUS; JIMMY**
 17 **BROWN-LACY; DELMARKAS COMBS; CHARLES COUCH; STEPHANIE COUCH;**
 18 **ASHLEY ROGERS a minor, by and through her natural parent CHERYL ROGERS;**
 19 **CHERYL ROGERS; THELMA SYKES; AND TOMMY CALDERILLA – As Against All**
 20 **Defendants And All Named DOES and ROES)**

21 146. That Plaintiffs repeat and reallege each and every allegation set forth in this
 22 Complaint, as though the same were fully set forth herein.

23 147. The Defendants negligently caused the fire and subsequent injuries to Plaintiffs;

24 148. Plaintiffs RICHARD AIKENS; DEJOY WILSON; JOHNATHAN WILSON;
 25 RETOR JONES, JR.; HELEN CLARK; VICTOR COTTON; CHRISTINIA FARINELLA;
 26 HAILU ADDIS; DENICIA JOHNSON; PAUL WISE; CARMAN MCCANDLESS; PARALEE
 27 MINTER; AUDREY PALMER; KELVIN SALYERS; JOE AGUILERA; DAYSHENA
 28 THOMAS; SANDRA JONES; TIACHARELLE DOTSON; A'LAYNA DOTSON, by and

1 through her natural parent TIACHARELLE DOTSON; CLEA ROBERTS; NELSON
 2 BLACKBURN; FLOYD GUENTHER; DOYLE MYERS; LAURA EDWARDS; ROY
 3 BACKHUS; JIMMY BROWN-LACY; DELMARKAS COMBS; CHARLES COUCH;
 4 STEPHANIE COUCH; ASHLEY ROGERS a minor, by and through her natural parent CHERYL
 5 ROGERS; CHERYL ROGERS; THELMA SYKES; TOMMY CALDERILLA were the persons
 6 who were injured;

7 149. As a result of experiencing their injuries and the fire, Plaintiffs suffered severe
 8 emotional distress.

9 150. As a direct and proximate result of the acts, omissions, and conduct of Defendants,
 10 Plaintiffs have suffered severe emotional distress.

11 151. As a direct and proximate result of the conduct of Defendants described
 12 hereinabove, Plaintiffs have sustained damages in excess of FIFTEEN THOUSAND DOLLARS
 13 (\$15,000.00).

14 152. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
 15 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
 16 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
 17 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
 18 Dollars (\$15,000.00).

19 153. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required
 20 to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
 21 have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

22 **X.**

23 **SEVENTH CAUSE OF ACTION**

24 **(Intentional Infliction Of Emotional Distress – As Against Defendants ALPINE MOTEL,**
 25 **OROZCO And All Named DOES and ROES)**

26 154. Plaintiffs repeat and reallege each and every allegation set forth in this Complaint,
 27 as though the same were fully set forth herein.
 28

155. Defendants knowingly, recklessly and intentionally engaged in extreme and outrageous conduct. Defendants did not provide adequate heating, did not install fire suppression systems, an operating alarm system, operating smoke detectors, or safe means of egress, including but not limited to preventing exits from operating, all in violation of applicable fire codes that resulted in severe mental, emotional distress, fear, indignity, and humiliation to Plaintiffs.

156. As a proximate result of the extreme and outrageous conduct of Defendants, Plaintiffs suffered and continues to suffer serious emotional distress.

157. Plaintiffs have suffered, and continues to suffer, serious emotional distress causing injury and illness as a result of the extreme and outrageous negligent wrongful conduct of the Defendants, all to his/her damage in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

158. Defendants, and each of them, acted with fraud, oppression, and/or malice toward Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

159. Due to Defendants' intentional wrongful conduct as alleged herein, Plaintiffs have been required to retain the services of undersigned counsel and to incur attorney's fees and costs thereby.

XI.

EIGHTH CAUSE OF ACTION

**(Loss Of Consortium for Plaintiffs MICHELLE AIKENS, DEJOY WILSON,
JOHNATHAN WILSON, MATTHEW SYKES, CLEA ROBERTS, NELSON
BLACKBURN – As Against All Defendants)**

160. That Plaintiffs repeat and reallege each and every allegation set forth in this Complaint, as though the same were fully set forth herein.

161. That as a direct and proximate result of the aforesaid negligence of Defendants, Plaintiff MICHELLE AIKENS, as the lawful wife of Plaintiff RICHARD AIKENS, was and is

1 entitled to the society, comfort, affection, services, companionship, and consortium of her husband
2 RICHARD AIKENS.

3 162. That, as a direct and proximate result of the aforesaid negligence of Defendants,
4 Plaintiff DEJOY WILSON as the lawful wife of Plaintiff, JOHNATHAN WILSON has been
5 denied the society, comfort, affection, services, companionship, and consortium of her husband
6 JOHNATHAN WILSON.

7 163. That, as a direct and proximate result of the aforesaid negligence of Defendants,
8 Plaintiff JOHNATHAN WILSON has been denied the society, comfort, affection, services,
9 companionship, and consortium of his wife DEJOY WILSON.

10 164. That, as a direct and proximate result of the aforesaid negligence of Defendants,
11 Plaintiff CLEA ROBERTS as the lawful wife of Plaintiff, NELSON BLACKBURN has been
12 denied the society, comfort, affection, services, companionship, and consortium of her husband
13 NELSON BLACKBURN.

14 165. That, as a direct and proximate result of the aforesaid negligence of Defendants,
15 Plaintiff MATTHEW SYKES as the lawful husband of Plaintiff, THELMA SYKES has been
16 denied the society, comfort, affection, services, companionship, and consortium of his wife
17 THELMA SYKES.

18 166. That, as a direct and proximate result of the aforesaid negligence of Defendants,
19 Plaintiff NELSON BLACKBURN as the lawful husband of Plaintiff, CLEA ROBERTS has been
20 denied the society, comfort, affection, services, companionship, and consortium of his wife CLEA
21 ROBERTS.

22 167. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
23 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
24 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
25 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
26 Dollars (\$15,000.00).

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1 168. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been required
 2 to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof,
 3 have been damaged thereby, and are entitled to reasonable attorneys' fees and costs.

4 **XII.**

5 **NINTH CAUSE OF ACTION**

6 **(Alter Ego Liability Pursuant To Alter Ego, Joint Enterprise, Common Enterprise**
 7 **Liability, Single Business Enterprise And/Or Affiliate Liability - As Against Defendants**
 8 **OROZCO, AYALA, ALPINE MOTEL, ELITE1, LLC, GALEANA, LLC, CANCUN, LLC**
 9 **And All Named DOES and ROES)**

10 169. That Plaintiffs repeat and reallege each and every allegation set forth in this
 11 Complaint, as though the same were fully set forth herein.

12 170. Upon information and belief, Defendant ADOLFO OROZCO and/or
 13 Defendant ERIKA AYALA are the alter egos of LAS VEGAS DRAGON HOTEL, LLC d/b/a
 14 ALPINE MOTEL.

15 171. Additionally, Defendants OROZCO, ALPINE MOTEL, AYALA, ELITE1, LLC,
 16 GALEANA, LLC and CANCUN, LLC are all alter egos of each other as each are run, maintained,
 17 managed via commingled assets and liabilities and/or influence and governance, unity of interest,
 18 and inseparableness that they should be considered as one so as not to sanction a fraud or injustice.
 19 In addition, OROZCO, AYALA, ALPINE MOTEL, ELITE1, LLC, GALEANA, LLC and
 20 CANCUN, LLC were acting as alter egos, as a joint enterprise, common enterprise, single business
 21 enterprise, or affiliates and thus are liable pursuant to alter ego, joint enterprise, common enterprise
 22 liability, single business enterprise and/or affiliate liability.

23 172. Among other things, Defendant LAS VEGAS DRAGON HOTEL, LLC was and is
 24 influenced and governed by Defendants OROZCO, ALPINE MOTEL, AYALA, ELITE1, LLC,
 25 GALEANA, LLC, CANCUN, LLC, there is a unity of interest and ownership that one is
 26 inseparable from the other, the LLC was improperly capitalized, the LLC's assets were
 27 commingled with personal assets, and, adherence to the LLC fiction of a separate entity would,
 28 under the circumstances, sanction a fraud or promote injustice. They are all one and should be

1 treated as one or alter ego, joint enterprise, common enterprise liability, single business enterprise
2 and/or affiliate liability.

3 173. Accordingly, Defendants OROZCO, ALPINE MOTEL, AYALA, ELITE1, LLC,
4 GALEANA, LLC, CANCUN, LLC are liable for the debts of LAS VEGAS DRAGON HOTEL,
5 LLC, including all liability for damages suffered by Plaintiff, under alter ego theory.

6 **XIII.**

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
9 follows:

- 10 1. General damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00);
11 2. Compensatory damages in an amount in excess of Fifteen Thousand Dollars
12 (\$15,000.00);
13 3. Special damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00);
14 4. Medical and/or incidental expenses incurred and to be incurred in excess of Fifteen
15 Thousand Dollars (\$15,000.00);
16 5. Defendants, and each of them, acted with fraud, oppression, and/or malice toward
17 Plaintiffs, exhibited an intention and willingness to injure Plaintiffs and/or a conscious disregard
18 for the rights and safety of the Plaintiffs, and Defendants should be punished and made an example
19 of by imposition of punitive or exemplary damages in an amount in excess of Fifteen Thousand
20 Dollars (\$15,000.00);
21 6. Damages for past and future pain, suffering, mental anguish, and loss of enjoyment of
22 life in excess of Fifteen Thousand Dollars (\$15,000.00);
23 7. For pre- and post-judgment interest as provided by law;
24 8. Costs of suit, reasonable attorney fees, interest incurred herein;

25 ///

26 ///

27 ///

28 ///

1 9. For such other and further relief as is just and proper.

2 Dated this ____ day of _____, 2020.

3 **EGLET ADAMS**

4
5 /s/Tracy A. Eglet, Esq.
6 ROBERT T. EGLET, ESQ.
7 Nevada Bar No. 3402
8 TRACY A. EGLET, ESQ.
9 Nevada Bar No. 6419
10 DANIELLE C. MILLER, ESQ.
11 Nevada Bar No. 9127
12 400 South 7th Street, 4th Floor
13 Las Vegas, Nevada 89101
14 *Attorneys for Plaintiffs*
15
16
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EGLET ADAMS

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DEMAND FOR JURY TRIAL

Plaintiffs, by and through their attorneys of record, **EGLET ADAMS**, hereby demand a jury trial of all of the issues in the above matter.

Dated this ____ day of _____, 2020.

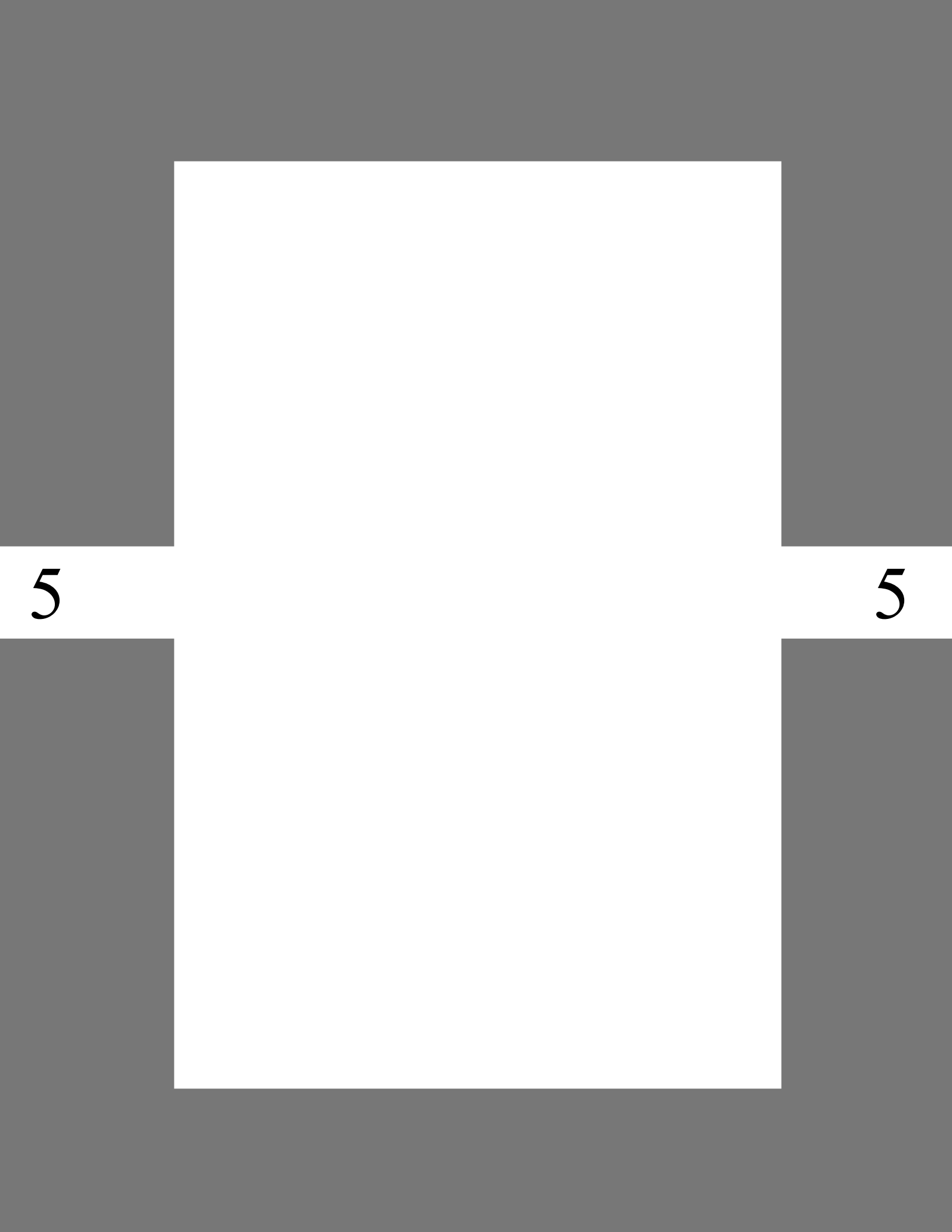
EGLET ADAMS

/s/Tracy A. Eglet, Esq.
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE C. MILLER, ESQ.
Nevada Bar No. 9127
400 South 7th Street, 4th Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiffs



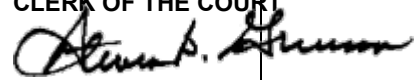
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/s/ Kiera Buckley
An Employee of EGLET ADAMS



5

5



RIS

STEVEN T. JAFFE, ESQ.

Nevada Bar No. 7035

sjaffe@lawhjc.com

MICHELLE R. SCHWARZ, ESQ.

Nevada Bar No. 005127

mschwarz@lawhjc.com

TAYLOR R. ANDERSON ESQ.

Nevada Bar. No. 015136C

tanderson@lawhjc.com

HALL JAFFE & CLAYTON, LLP

7425 Peak Drive

Las Vegas, Nevada 89128

(702) 316-4111

Fax (702) 316-4114

*Attorneys for Defendants Adolfo Orozco and
Las Vegas Dragon Hotel, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

DEBORAH CIHAL CRAWFORD,
individually and as heir to the ESTATE OF
TRACY ANN CIHAL; JOHN DOE
ADMINISTRATOR, as Special Administrator
of the ESTATE OF TRACY ANN CIHAL,

Plaintiff,

v.

LAS VEGAS DRAGON HOTEL, LLC, a
Nevada limited-liability company doing
business as the ALPINE MOTEL
APARTMENTS; ADOLFO OROZCO, an
individual; DOES 1 through 10; inclusive; and
ROE CORPORATIONS I through V,
inclusive,

Defendants.

AND ALL CONSOLIDATED MATTERS

LEAD CASE NO. A-20-808100-C

CONSOLIDATED:

A-20-810951-C (*Roberts*)

A-20-810949-C (*Lombardo*)

A-20-814863-C (*Aikens*)

A-20-816319-C (*Kelly/Spangler*)

A-20-817072-C (*Rucker*)

DEPT. NO. 32

**DEFENDANT DRAGON HOTEL,
LLC'S REPLY IN SUPPORT OF
MOTION TO DISMISS AND MOTION
TO STRIKE**

Date: November 30, 2020

Time: 1:30 p.m.

Defendant LAS VEGAS DRAGON HOTEL, LLC, by and through its attorneys

STEVEN T. JAFFE, ESQ., MICHELLE R. SCHWARZ, ESQ. and TAYLOR R.

1 ANDERSON, ESQ. of HALL JAFFE & CLAYTON, LLP, hereby respectfully submits the
2 following reply in support of its Motion to dismiss Plaintiffs' claims under NRS 41.800(1).

3 This Reply is made and based on the court's record, the memorandum of points and
4 authorities below, the exhibits, and any argument the Court may entertain from counsel.

5 DATED this 23rd day of November, 2020.

6 **HALL JAFFE & CLAYTON, LLP**

7 */s/ Taylor R. Anderson*

8 By: _____

9 STEVEN T. JAFFE, ESQ.

10 Nevada Bar No. 7035

11 MICHELLE R. SCHWARZ, ESQ.

12 Nevada Bar No. 005127

13 TAYLOR R. ANDERSON, ESQ.

14 Nevada Bar. No. 015136C

15 7425 Peak Drive

16 Las Vegas, Nevada 89128

17 *Attorney for Defendants*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION**

20 Contrary to Plaintiffs' arguments, NRS 41.800 is ambiguous with respect to whether it
21 applies to entities such as Las Vegas Dragon Hotel, LLC ("Dragon Hotel, LLC") and the
22 legislative intent indicates it was intended to be used by the property owner against those who
23 blocked ingress or egress, not in the situation Plaintiffs have alleged.

24 Plaintiffs wrongly argue that NRS 41.800 is unambiguous, to try and dissuade the
25 Court from looking to legislative intent, knowing full well that this legislative intent
26 annihilates their theory; however, the statute's inclusion of the term "person" is ambiguous in
27 the context of the statute. Additionally, this at best is considered a latent ambiguity with
28 respect to this particular situation. As such, legislative intent is appropriately considered and
reveals that the intent of the legislature was not to hold property owners, for acts of others in
obstructing an exit. Instead, the history of the statute reveals it was intended to be used *by*
property owners to protect their property from blockades, such as picketers.

1 More fundamentally, Dragon Hotel, LLC asks the court to now use the pragmatic sense
2 it commonly brings to contested issues and see this inappropriate and unsupportable pleading
3 under NRS 41.800 for what it really is. The Plaintiffs solely include this claim as a threat
4 against Dragon Hotel to extort attorneys' fees. The Plaintiffs' damages alleged within other
5 theories equally arise from more reasonable and plausible theories, but those "oddly" do not
6 include attorneys' fees, placing a neon spotlight on the reason why the Plaintiffs' raise claims
7 under this statute. The court needs to reign in this litigation to the concise parameters it
8 deserves, without such far-reaching claims solely intended as having the effect of proverbially
9 kicking Dragon Hotel, LLC in the groin. The Plaintiffs signed on as litigants knowing they
10 would have to pay their attorneys, presumably from their recovery; piling on the claims
11 against these moving parties is not only overkill, but it simply baselessly seeks to expand a law
12 enacted for a unique purpose. This must be shut down.

13 II. ARGUMENT

14 a. The Statute is ambiguous with respect to whether it applies to limited 15 liability companies

16 Whether the statute applies in this circumstance is not as clear cut as Plaintiffs argue
17 because the statute is ambiguous with respect to whether vicarious liability applies and
18 whether a company could even have requisite intent to make the statute applicable.

19 Statutory language must be given its plain meaning only if it is clear and unambiguous.
20 *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 476, 168 P.3d 731, 737
21 (2007). "A statute is ambiguous if it is capable of being understood in two or more senses by
22 reasonably well-informed persons." *Id.* "A latent ambiguity exists where some extrinsic
23 evidence creates a necessity for interpretation or a choice among two or more *possible*
24 *meanings.*" *Maghen v. Quicken Loans Inc.*, 94 F. Supp. 3d 1141, 1147 (C.D. Cal. 2015), *aff'd*
25 *in part, dismissed in part*, 680 F. App'x 554 (9th Cir. 2017) (quoting *Coburn v. Sievert*, 133
26 Cal.App.4th 1483, 1495, 35 Cal.Rptr.3d 596, 603 (2005)) (emphasis in original). Such a
27 necessity exists where a literal construction would frustrate rather than promote the purpose of
28 the statute or would produce absurd consequences. *Id.*

1 NRS 41.800(1) provides

2 *A person* shall not *intentionally obstruct*:

3 (a) The ingress or egress to any public or private property from any
4 other public or private place in such a manner as not to leave a free
5 passageway for persons and vehicles lawfully seeking to enter or
6 leave the property via the public or private place; or

7 (b) Any public or private roadway, including, without limitation,
8 intersections, so as to prevent the safe passage of vehicles thereon
9 or therethrough.

10 (Emphasis added).

11 Under the plain reading of the statute, it envisions a *person* doing something to
12 physically obstruct the entrance or exit of a property and doing so intentionally. This requires
13 two things: the ability to form intent and taking physical action. The statute does not include
14 *any* language about agency or vicarious liability. Taken to the logical extreme, if a property
15 owner put up a gate at the entrance to their private property on a private road and closed that
16 gate, they would be liable under this statute for intentionally obstructing their own private
17 roadway. In a state where there are untold numbers of private roadways and gates and where
18 private property rights are fundamental to Nevada citizens, it seems unfathomable that the
19 Legislature would provide civil liability in such a circumstance. There are countless instances
20 where one might imagine a property owner or business entity properly obstructing ingress or
21 egress for reasons which would be improper if done by an individual person. One such
22 example might be a property owner sealing one, of multiple, exits for purposes of repair. In
23 such a situation, it seems illogical to hold a property owner liable for such conduct, especially
24 where the alternative might be another form of liability due to a defective door. Property
25 owners can have responsibilities that individual persons do not which make equal application
26 of this statute illogical, untenable and “absurd”. See *Maghen*, 94 F. Supp. 3d at 1147.

27 Intent for corporations can only be found by looking to the intent of its officers. See
28 *Craig v. Circus-Circus Enterprises, Inc.*, 106 Nev. 1, 16, 786 P.2d 22, 32 (1990), superseded
on other grounds by *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 740, 192
P.3d 243, 253 (2008). The Court in *Massey v. City of Oklahoma City* noted this limitation on
corporate entities, finding that “a corporation or an ‘artificial person’ that can act only through
its officers . . . is incapable of forming the mens rea or criminal intent necessary to perform an

1 act of racketeering as defined by § 1961(1) of the RICO statute.” *Massey*, 643 F. Supp. 81, 85
2 (W.D. Okla. 1986). While NRS 41.800 is not a criminal charge, it requires the actor to
3 *intentionally obstruct* ingress or egress. Just as in *Massey*, the Dragon Hotel can only act
4 through its officers and is incapable of forming the intent required under NRS 41.800.
5 Importantly, such intent cannot be formed by rogue alleged employees such as Jason Casteel,
6 as alleged by Plaintiffs.

7 The statute is also ambiguous with respect to whether it applies to a company at all.
8 Although Plaintiffs cite to NRS 0.039, that is not the end of the analysis. A statute may still be
9 ambiguous even where there are words defined. The statute requires intentional conduct, but
10 does not include any accounting for agency or vicarious liability. A limited liability company
11 can only act through agents, it cannot act on its own. Without some legislative language on
12 agency being applicable, the statute is ambiguous with respect to whether it applies. The
13 legislature knows how to make companies liable for conduct of their agents. The Legislature
14 failed to do so in this circumstance and as such, it does not apply, or at the very least there is an
15 ambiguity. *See Iletto v. Glock, Inc.*, 421 F. Supp. 2d 1274, 1292, FN 20 (C.D. Cal. 2006), *aff’d*,
16 565 F.3d 1126 (9th Cir. 2009) (“Even if the words of a statute are plain and unambiguous on
17 their face, a court may still look to legislative history in construing a statute where the statute's
18 plain meaning contradicts the expressed legislative intent in enacting the statute.” (*citing*
19 *Escobar Ruiz v. I.N.S.*, 838 F.2d 1020, 1023 (9th Cir.1988), overruled on other grounds by
20 *Rueda–Menicucci v. I.N.S.*, 132 F.3d 493 (9th Cir.1997); *Flores–Arellano v. I.N.S.*, 5 F.3d
21 360, 363 (9th Cir.1993) (“Under the established approach to statutory interpretation, we rely
22 on plain language in the first instance, but always look to legislative history in order to
23 determine whether there is a clear indication of contrary intent.”) (Reinhardt, specially
24 concurring)); *see also National R.R. Passenger Corp. v. National Ass’n of R.R. Passengers*,
25 414 U.S. 453, 458, 94 S.Ct. 690, 38 L.Ed.2d 646 (1974) (“[E]ven the most basic general
26 principles of statutory construction must yield to clear contrary evidence of legislative
27 intent.”).

1 As such, the statute is ambiguous and so it is entirely appropriate to look at the
2 legislative history and intent to determine whether it should be applied in the circumstances
3 alleged by Plaintiffs.

4 **b. The legislative history reveals the class of persons the statute was meant to**
5 **protect was not the Plaintiffs in this case.**

6 Plaintiffs cannot use NRS 41.800 to form the basis of negligence per se because it was
7 not intended to protect them as a class of persons. “A statutory violation is negligence per se
8 if the injured party belongs to the class of persons whom the statute was intended to
9 protect, and the injury suffered is of the type the statute was intended to prevent.”

10 *Atkinson v. MGM Grand Hotel, Inc.*, 120 Nev. 639, 643, 98 P.3d 678, 680 (2004) (emphasis
11 added). NRS 41.800 is ambiguous as to whom it is intended to protect and what injury it is
12 intended to protect against. The language includes public and private places, “persons” and
13 vehicles, ingress and egress, with no limitation. A review of the legislative history is necessary
14 here to determine whom the statute was intended to protect and the type of injury the statute
15 was intended to prevent.

16 The legislature adopted this statute to protect property owners from others who blocked
17 their property. The statute was intended to be used against individual persons, not their agents,
18 who blocked access to a property, for instance, by picketing. *See* the Nevada State Legislature
19 as Assembly Bill 258, A.B. 258, 78th Leg. (Nev. 2015); Exhibit G; Exhibit H (A blog post by
20 Sean P. Redmond, the Executive Director for Labor Policy for the U.S. Chamber of
21 Commerce shortly after passage on June 30, 2015, opined that the intent of the Bill was to
22 “establish[] much-needed limitations on the disruptive picketing at businesses in the Silver
23 State.”). The legislative history of this statute indicates that the legislature never intended to
24 make property owners vicariously liable for the conduct of others but instead intended this
25 statute to be used by property owners to have people removed who are blocking their property.

26 The fact that NRS 41.800 is not intended to protect this class of plaintiffs from this
27 type of injury is further established by the existence of NRS 477.120 which arguably provides
28 for exactly this type of situation. Plaintiffs are well aware that chapter 477 applicability on this

1 issue, as they also cite to it in their negligence per se claim. However, in an effort establish a
 2 basis for attorneys' fees, Plaintiffs also include NRS 41.800, despite its obvious
 3 inapplicability.

4 Therefore, the Plaintiffs are not who this statute was intended to protect, and their
 5 alleged injuries are not the type of injury the legislature intended the statute to protect against.
 6 Plaintiffs now ask this court to apply the statute in a context exceeding the Legislature's intent,
 7 without any Supreme Court imprimatur for that flawed interpretation, in a fashion completely
 8 contradictory to this legislative intent. Plaintiffs cannot use this statute as a basis for a
 9 negligence per se claim.

10 **c. Even if the statute could apply, Plaintiffs have not adequately alleged their**
 11 **claims.**

12 Aiken's Plaintiffs Second Amended (and First Amended) Complaint does not allege
 13 that Dragon Hotel "intentionally obstruct[ed]" ingress or egress. Aiken's Plaintiffs Complaint
 14 does allege the following:

15 75. Upon information and belief, the egress doors located within the
 16 ALPINE MOTEL were bolted closed, in violation of NRS 41.800, trapping
 residents from safely exiting the burning building.

17 *Aikens' Second Amended Complaint*, pp. 21: 3 – 5.

18 d. Failed to inspect, or adequately inspect the entrance and exit doors of
 the subject property;

19 f. Failed to warn or adequately warn the Plaintiffs of the dangerous
 20 conditions relating to the fire protection devices and systems, the entrance
 and exit doors (bolted shut)

21 h. Failed to provide a safe and secure means of moving about the subject
 22 property for Plaintiffs, including escaping a fire;

23 *Id.* at 24.

24 107. That prior to the severe injuries suffered by Plaintiffs, Defendant
 25 ALPINE MOTEL and OROZCO, and each of them, had knowledge of the
 hazardous safety conditions including but not limited to bolted and locked
 exit doors, and failed to remedy said conditions that were a direct and
 proximate result of Plaintiffs' injuries.

26 *Id.* at 26: 18 – 21.

27 The Kelly/Spangler Complaint alleges that doors were bolted closed, but does not make
 28 any claim as to who physically bolted the doors. Kelly/Spangler Complaint, ¶ 41, pp. 15: 12 –

1 17. This Complaint also alleges that Defendant Casteel ordered a maintenance worker to
2 “bolt” the back door, while acting in the scope of his employment with Alpine Motel. *Id.* at ¶
3 53, pp. 17:6 – 16. However, there is no allegation that, even assuming the door was ordered
4 bolted as alleged, it was done with the intent to obstruct ingress and egress. Moreover, as to
5 Dragon Hotel, the Complaint alleges it “failed to *inspect*, install, replace, test, and/or *maintain*
6 the appliances, fire safety equipment and devices, entry and exit doors and/or pathways.” *Id.* at
7 ¶ 45, pp. 16: 1 – 5 (emphasis added).

8 Similar to the Aikens’ Complaint, the Crawford Complaint alleges that the door was
9 bolted, but does not make any claim as to who bolted it nor when it was bolted. Crawford
10 Complaint, ¶ 27, pp. 6: 3 – 5. However, the Complaint never claims that Dragon Hotel bolted
11 the door, much less that it did so with the intent of obstructing ingress or egress. Rather, the
12 Complaint merely alleges, via several variations, that Dragon Hotel failed to maintain or
13 adequately maintain the doors and/or to warn or adequately warn of the dangerous condition
14 relating to the doors. *Id.* at ¶ 31, pp. 6: 15 – 18, ¶ 45, pp. 8 – 10. The Complaint alleges that
15 “Defendants intentionally obstructed the ingress and egress of the Alpine Motel Apartments in
16 such a manner to prevent the free passageway.” *Id.* at ¶ 68, pp. 14: 5 – 7. However, this is not
17 factual support for a claim, but rather a legal conclusion that uses language directly from the
18 statute. The allegation is couched in a cause of action “against all defendants” giving no notice
19 as to whom it is truly directed at.

20 As a whole, Plaintiffs make plenty of claims regarding the status of the doors at the
21 motel, however, the Complaints fail to appropriately allege that Dragon Hotel, LLC
22 *intentionally obstructed* the door, in violation of NRS 41.800. Without forfeiting any
23 arguments made in the original motion, or conceding any liability, even if all the above
24 allegations were true, they still would not meet the requirements to move forward under NRS
25 41.800. The language of the statute requires a defendant “obstruct” ingress or egress – not
26 merely fail to allegedly make it safe. Further, “obstruct” is a verb requiring action. As pled,
27 Dragon Hotel, LLC’s actions regarding the door were passive. Even taking all of Plaintiffs’
28 allegations as true, Plaintiffs failed to sufficiently plead their claim(s) under NRS 41.800.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of **HALL JAFFE & CLAYTON, LLP**, and on this 23rd day of November, 2020, I served a copy of the foregoing **REPLY IN SUPPORT OF DEFENDANT ADOLFO OROZCO'S MOTION TO DISMISS** as follows:

- [] **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
- [] **FACSIMILE** — By facsimile transmission to the facsimile number(s) shown below; and/or
- [] **HAND DELIVERY** — By hand-delivery to the addresses listed below; and/or
- [X] **ELECTRONIC SERVICE** — Pursuant to the Court's e-filing system to all those individuals who have signed up to receive service on this case, including but not limited to the following:

Rahul Ravipudi
Ian Samson
Adam Ellis
PANISH SHEA & BOYLE LLP
8816 Spanish Ridge Ave.
Las Vegas, NV 89148
Attorneys for

Robert T. Eglet, Esq.
Tracy A. Eglet, Esq.
James A. Trummell, Esq.
EGLET ADAMS
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Attorneys for Plaintiffs (Aikens, et al.)

Ben Wilson, Esq.
MORGAN & MORGAN, P.A.
4450 Old Canton Road, Ste. 200
Jackson, MS 39207
*Attorneys for Plaintiffs (Crawford, et al.,
Roberts, et al., Lombardo, et. al)*

Robert E. Murdock, Esq.
MURDOCK & ASSOCIATES, CHTD.
521 South Third Street
Las Vegas, NV 89101
Attorneys for Plaintiff (Kelly for Spangler)

Marwan Porter, Esq.
Travis Buchanan, Esq.
THE COCHRAN FIRM
701 E. Bridger Avenue, Ste. 540
Las Vegas, NV 89101
Attorneys for Unfiled Claimants

Donald "Butch" Williams, Esq.
Robin Gullo, Esq.
WILLIAMS * STARBUCK
612 South Tenth Street
Las Vegas, NV 89101
Attorneys for Defendants TSI

Philip Kegler, Esq.
Michael J. Wiggins, Esq.
MCDONALD TOOLE WIGGINS, P.A.
111 N. Magnolia Ave., Ste. 1200
Orlando, FL 32801
Attorneys for Avanti

1 Martin Kravitz, Esq.
 2 Tyler Watson, Esq.
KRAVITZ SCHNITZER JOHNSON, P.C.
 8985 S Eastern Avenue Suite 200
 Las Vegas, NV 89123
Attorneys for EDS Electronics

David Fassett, Esq.
DAVID W. FASSETT, J.D. PLLC
 531 South Seventh Street
 Las Vegas, NV 89101
*Attorneys for Plaintiffs Gary Rucker and
 Dakota Kuba (A-20-817072-C)*

5 Russell Christian, Esq.
TYSON & MENDES
 3960 Howard Hughes Parkway, Suite 600
 Las Vegas, NV 89169
Attorneys for Advanced Protection Industries

David Barron, Esq.
BARRON & PRUITT
 3890 W. Ann Rd., N.
 Las Vegas, NV 89031
Attorneys for Stanley Security Solutions, Inc.

8 Ashley M. Watkins, Esq.
SAM & ASH, LLP
 1108 S. Casino Center Blvd
 Las Vegas, NV 89104
Attorney for Corey Evans

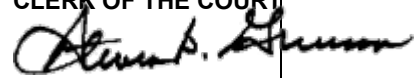
Jorge A. Ramirez, Esq.
 Mark C. Severino, Esq.
**WILSON, ELSER, MOSKOWITZ,
 EDELMAN & DICKER, LLP**
 6689 Las Vegas Blvd. South, Suite 200
 Las Vegas, NV 89119
*Attorneys for Defendant Cooper Wheellock,
 Inc.*

12 Elizabeth A. Skane, Esq. (Bar No. 7181)
 eskane@skanewilcox.com
 Sarai L. Brown, Esq. (Bar No. 11067)
 sbrown@skanewilcox.com
SKANE WILCOX LLP
 1120 Town Center Drive, Suite 200
 Las Vegas, Nevada 89144
Attorneys for Defendant AES Corporation

18 /s/ Marianne Sylva
 An Employee of
HALL JAFFE & CLAYTON, LLP

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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 DEBORAH CIHAL CRAWFORD,
8 Plaintiff,

CASE NO: A-20-808100-C

9 vs.

DEPT. XXXII

10 LAS VEGAS DRAGON HOTEL
11 LLC,

12 Defendant.

13 BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE
14 MONDAY, DECEMBER 14, 2020

15 **RECORDER'S TRANSCRIPT OF HEARING RE:**
16 **DEFENDANT ADOLFO OROZCO'S MOTION TO DISMISS;**
17 **DEFENDANT LAS VEGAS DRAGON HOTEL, LLC'S MOTION TO**
18 **DISMISS AND MOTION TO STRIKE**

19
20 APPEARANCES ON PAGE 2:

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25 RECORDED BY: KAIHLA BERNDT, COURT RECORDER

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APPEARANCES VIA BLUEJEANS VIDEO CONFERENCING:

For the Plaintiff(s): ROBERT T. EGLET, ESQ.,
 DANIELLE C. MILLER, ESQ.,
 ADAM R. ELLIS, ESQ.,
 ROBERT E. MURDOCK, ESQ.

For the Defendant: STEVEN T. JAFFE, ESQ.,
 TAYLOR R. ANDERSON, ESQ.,
 THOMAS E. WINNER, ESQ.,
 RUSSELL CHRISTIAN, ESQ.,
 MARK C. SEVERINO, ESQ.,
 SARAI L. BROWN, ESQ.,
 JASON WIGG, ESQ.,
 JUSTIN A. SHIROFF, ESQ.

1 Las Vegas, Nevada; Monday, December 14, 2020

2

3 [Proceeding commenced at 1:30 p.m.]

4 THE COURT RECORDER: Good afternoon, we're calling
5 case A808100 Deborah Cihal Crawford versus Las Vegas Dragon Hotel.

6 Welcome to Department XXXII with Judge Rob Bare. I'm
7 Kaihla, the Court Recorder. If you're calling in, please do not use
8 speakerphone, keep your microphones on mute until Judge Bare is
9 ready to hear from you, and state your name every time you speak.

10 Starting with Plaintiff's counsel, can you state your name and
11 bar number, who you're representing, and confirm if you're appearing by
12 video or audio?

13 MR. EGLET: [Inaudible] behalf of numerous Plaintiffs, bar
14 number 3402.

15 MS. MILLER: And Danielle Miller for Plaintiffs, bar number
16 9127.

17 MR. MURDOCK: Rob Murdock for Plaintiffs [inaudible]
18 Christian Spangler, 4013.

19 MR. ELLIS: And Adam Ellis for Plaintiffs Deborah Cihal
20 Crawford, Francis Lombardo, and the Bennett Estate, bar number
21 14514.

22 THE COURT RECORDER: And counsel for defense?

23 MR. JAFFE: Steven Jaffe and Taylor Anderson, Hall, Jaffe &
24 Clayton for Adolfo Orozco and Dragon Hotel.

25 MS. BROWN: Sarai Brown, appearing -- Sarai Brown,

1 appearing on behalf of AES Corporation.

2 MR. SEVERINO: Mark Severino on behalf of Cooper
3 Wheelock.

4 MR. WIGG: Jason Wigg on behalf of Jason Casteel, bar
5 number 7953.

6 MR. CHRISTIAN: Russell Christian on behalf of Advanced
7 Protection Industries.

8 MR. SHIROFF: Justin Shiroff, bar 12869 on behalf of EDS
9 Electronics.

10 THE COURT RECORDER: Do we have any other --

11 MS. LORELLI: Caitlin Lorelli on behalf of Erika Ayala.

12 MR. WINNER: Tom Winner also on behalf of Erika Ayala.

13 THE COURT: All right, well good afternoon everyone. This is
14 Rob Bare. And has everyone -- anyone else who hasn't made an
15 appearance, please make your appearance.

16 All right, it looks like we have everyone. We're here today as
17 the Defendant Adolfo Orozco has brought a motion to dismiss, as well
18 as the entity Las Vegas Dragon Hotel LLC, both a motion to dismiss and
19 a motion to strike.

20 As far as Mr. Orozco is concerned, Mr. Jaffe, your pleading
21 indicates that he isn't the owner of the Dragon Hotel, instead of course is
22 acting through the LLC. And you point out that the Plaintiffs essentially
23 seem to be indicating in their pleadings that Mr. Orozco has some duty
24 to them in his individual capacity outside that of the managing member
25 of the LLC, essentially to manage the property. And you, I think in your

1 motion, say at a minimum, it's implied. I'm sure the Plaintiffs would say
2 it's more express.

3 But in any event, the idea is that Mr. Orozco had -- was
4 negligent resulting in death and injury. And your motion centers on a
5 number of legal concepts, including NRS 86.371, the idea that an
6 individual, of course, cannot be held personally liable for actions taken
7 as a managing member of an LLC with exceptions that are spelled out
8 in, well, mainly the case law actually. There's what affectionately has
9 been referred to as *Gardner I* and *Gardner II*, the *Gardner versus*
10 *Henderson Water Park* case.

11 And you, Mr. Jaffe, point out that if you look at the case law
12 having to do with a sort of alter ego, if you will, the idea of perhaps
13 piercing the LLC veil, you point out, and I've looked and I've read both
14 cases -- or the case, of course, as well as a few others and including the
15 more recent *Chur* case that really was more of a -- I think a corporate
16 derivative case, but anyway it may have some utility.

17 But we know that in Nevada now the case law shows that
18 there is a circumstance. The defense position, I think, is this is a narrow
19 window of opportunity essentially, but there are circumstances that could
20 ostensibly allow for personal liability to attach. And there's a legal
21 standard to be applied to it.

22 I think, Mr. Jaffe, your motion argues a number of things. I
23 think it brings up the idea that on the face of the pleadings -- and that's
24 really what I have to look at in the posture that we're in, I mean, the
25 procedural posture that we're in as a motion to dismiss posture. So, I

1 think your position is that on the pleadings, face of the pleadings,
2 viewing them in the light most favorable to the Plaintiffs, which I think is
3 also part of the standard, that you feel as though, essentially, the
4 pleadings are defective and that they don't lay out this alter ego theory.

5 And so, that's part of it, I guess. There's a statute in Nevada
6 that all the lawyers talk about that actually this motion -- I guess this is
7 part of what I'll really miss, you know, not being a Judge anymore, is the
8 idea that the civil law, which I've done for ten years, and even in light of
9 being asked to do criminal by two chief judges, I never did because the
10 civil law, here we go again. It brings up something that makes your
11 brain work that you may have never seen. And I'll really miss that.

12 But in any event, I got to say, I don't remember ever seeing
13 this NRS 41.800 come up in, you know, a case. And so, anyway, we
14 have that in here. It's a statute that talks about liability. And I think it's
15 going to be relevant to, in addition to the alter ego concepts, or maybe
16 even in conjunction with those that we're talking about here today, it's a
17 statute that I would appreciate comment on because it does say, I mean,
18 it's a -- it's -- on the face of the statute, it says that a personally -- person
19 shall not intentionally obstruct ingress or egress to a property. And I
20 know everybody's familiar with the statute, but I -- of most relevance to
21 me in consideration of the motions today is the second part of the statute
22 that clearly provides a civil action remedy.

23 It says in relevant part, a person aggrieved by a violation of
24 subsection 1, which again talks about this ingress or egress to property,
25 may bring a civil action in a court of competent jurisdiction. And then it

1 says, against any person who commits, and it goes on from there. And
2 then the last part of the statute, it talks about a person who violates this
3 provision is not subject to a criminal liability under this statute.

4 So, that's, I think, the Legislative message that this statute,
5 41.800, is designed to clearly provide a civil court, civil action remedy to
6 any person is what it says. And of course, I bring that up because Mr.
7 Orozco is the individual involved as a person. And so, I think that statute
8 has to somehow be reconciled in all this and make -- be -- you have to
9 make sense of it, in addition to, of course, the standards that we have in
10 the alter ego area of law, which is also pretty well-developed in Nevada.

11 [Indiscernible] I really think it does apply to LLCs and
12 corporations, as well, this alter ego allowance, legal allowance I think
13 could be used in both contexts. And the idea is would the entity, Dragon
14 -- Las Vegas Dragon Hotel, LLC, would that entity be influenced and
15 governed by Mr. Orozco? Is there a unity of interests as between him,
16 that's -- and the ownership, which is inseparable pretty much from each
17 other? The idea of adherence to fiction of separate entity would promote
18 injustice or fraud, there's a whole litany of cases. There's the *Arlington*
19 case, the *Polaris* case; they've been around for a while.

20 But law in Nevada, to me, seems to be pretty clear though that
21 all the different factors that you look at in alter ego law, they're not any
22 one or even two together, perhaps, they're not really conclusive because
23 the Court has said -- the Supreme Court has said in the *Polaris* case that
24 these factors are not conclusive. There's no litmus test for determining
25 whether the corporate fiction should be disregarded. The result as to

1 whether someone is exposed to individual liability depends upon the
2 circumstances of each case. And so, there's not a lot of factors to be
3 considered.

4 In the motion today, [inaudible] I think rather the idea is, is it
5 adequately pled in a motion to dismiss context? And then, perhaps
6 someday, you know, whoever gets my caseload, might see a summary
7 judgment sort of effort or some other effort. But for today, you know, I
8 think the idea is, is there fair notice of the Plaintiff's efforts at piercing the
9 LLC veil?

10 And so, in addition -- I'm almost done. But in addition to that
11 statute that I mentioned, which we should talk about because it, you
12 know, plays a role, I think another question and the last one perhaps you
13 might want to take note of is this, and that is, is there allegations of
14 individual liability, nonetheless? Because as we all know, there's the
15 legal theory of alter ego. But in addition to that, if an individual, who
16 happens to be a manager of the entity, you know, Mr. Orozco here, if
17 there's intentional misconduct, that could be something, in my view, that
18 could be brought even separate and distinct from trying to pierce a veil
19 of some sort.

20 So, a lot to think about, a lot to talk about, and I don't know
21 how many lawyers made appearances, but it was quite a few, so I'll give
22 everybody a chance. But I think what I have to do is start with the
23 defense side, and Mr. Jaffe, so go ahead.

24 MR. JAFFE: Thank you, Your Honor. I'm not going to bother
25 sitting here rehashing and repeating everything that's been written and

1 stated in our briefs because I think we've already written and stated
2 quite a lot. And Your Honor's certainly read it all; there's no need for me
3 to go back through all of that. So, let me try and parse out the issues
4 that you've raised and that the Court's raised, and let's go in that
5 direction.

6 MR. EGLET: Can we ask which [inaudible] first, I'm sorry.

7 MR. JAFFE: I'm sorry?

8 MR. EGLET: I'm just trying to find out which motion we're
9 arguing first. Is it Orozco's individual motion, or the [inaudible] Dragon's
10 motion? I'm just trying to figure out which one we're arguing first.

11 THE COURT: Well, I called on Mr. Jaffe. I thought he was
12 going to comment regarding both of those.

13 MR. JAFFE: And I have no problem arguing everything
14 together because a lot of it does, in some respects, bleed together, Your
15 Honor.

16 THE COURT: Okay, go ahead. So, it's going to be together.
17 Go ahead.

18 MR. JAFFE: First, we talk about 41.800 because as Your
19 Honor Indicated, that is a pretty interesting issue and a topic here. So,
20 what the Plaintiffs are trying to do is take a statute that was clearly
21 intended for a very narrow purpose and explode it into all sorts of issues
22 any time that there is an ingress or egress in any way obstructed. So,
23 and we've given certain examples in our papers.

24 But what that would mean is that if a gate at a homeowner's
25 development is erected, that's obstruction to ingress and egress. If after

1 hours of a business there's loading and unloading of goods and it's
2 blocking off a door and somebody after hours decides to try and get in or
3 happens to be inside and get out, technically now that statute's been
4 violated with a threat of attorneys' fees.

5 So, clearly, that statute was intended for some purpose other
6 than the overarching broad interpretation advanced by the Plaintiffs.

7 And I think that's what we've got as a big problem here. And that's why,
8 Your Honor, what we've done is gone back and given you and the Court
9 the intent as indicated by the Legislature through many of the
10 comments. And we've included those in our papers.

11 And even Aaron Ford, who's now the Attorney General, and at
12 one point or another was an attorney with Mr. Eglet's firm, made it very
13 clear as to the intent and about comments that he raised regarding the
14 intent and limitations of that statute during argument on the legislative
15 floor. I'm not going to bother going back through all of them, but it is
16 very clear that this was a statute intended for picketing and others
17 intentionally obstructing a business owner's property to give that
18 business owner the opportunity to protect his ingress and egress. That
19 is so clear from the intent, from the legislative intent.

20 And the wording of this statute, while broader, raises the
21 problem of where do you draw the line? Because if you're going to draw
22 this line in such a way as to make it applicable to every possible ingress
23 or egress on public or private property or a roadway, then it's -- there's
24 such an unlimited number of possible circumstances to apply this to that
25 would then require payment of attorneys' fees that it's absurd.

1 So, the interpretation advanced by the Plaintiffs, Your Honor,
2 is so overarching and so overbroad and well beyond what was intended,
3 beyond -- rather by the Legislature.

4 The other thing is this, the statute says a person shall not
5 intentionally obstruct. Dragon Hotel is not a person; it is an entity.
6 There is no pleading that Mr. Orozco is the person who intentionally
7 obstructed this. While they're trying to argue that he has knowledge
8 about it, nobody has argued that he intentionally obstructed this. So, if
9 that's the case, Your Honor, then -- and if the Plaintiffs want to read this
10 statute as it's written, then Dragon Hotel must be dismissed because it is
11 not a person, and they have not pleaded that Mr. Orozco is the person
12 who intentionally obstructed it, in which case, 41.800 must then be
13 dismissed against both of my clients.

14 With respect to the alter ego and the -- excuse me, Your
15 Honor -- I apologize, sir. I'm getting over illness and a little brain fog, so
16 I got to -- I need a moment, periodically.

17 THE COURT: That's okay, Mr. Jaffe. I understand. I'm glad
18 to see you; I hope you're doing well.

19 MR. JAFFE: I am, thank you. Much better.

20 THE COURT: And let me tell you, this last month of doing
21 court, which I've continued to do, has been a little tough, too. Well, and I
22 got to tell you, every time I see the caliber of lawyers that I see here, you
23 know, it's not easy for me.

24 MR. JAFFE: I understand, sir.

25 THE COURT: Because I'm going to miss everybody a lot.

1 MR. JAFFE: And I can certainly say that we're going to miss
2 having you on this and [indiscernible] judiciary, sir.

3 THE COURT: But for whatever reason it's going to be,
4 whatever it -- whatever reason it is, you know, we'll all make it through
5 the pandemic, and we'll make it through the election. And I tell you
6 what, think about New Year's Eve. Take an extra second or two or
7 minute on New Year's Eve because 2020 needed to go, man.

8 MR. JAFFE: Here, here.

9 THE COURT: So, go ahead.

10 MR. JAFFE: I certainly [indiscernible] to that.

11 So, we've got allegations that Adolfo Orozco acted in some
12 way in a personal capacity beyond the duties applicable to him as the
13 managing member, but there is nothing that's been alleged that imputes
14 that personal liability. And that's why we need to look at *Gardner I* and
15 *Gardner II* collectively, not one versus the other even because those two
16 Supreme Court opinions were issued just a couple of months apart on
17 the same case, and essentially on the same situation and circumstance.

18 And when you look at *Gardner II*, Your Honor, it is very clear
19 that they -- the Supreme Court specifically looked at the conduct alleged
20 and given the fact that it -- they -- the allegation was of intentional and
21 willful conduct, that was the difference. And it's -- again, it's not enough
22 to simply say, well, he did something intentionally or willfully. There
23 needs to be something behind it. You can't just make bold allegations
24 simply to comply with what a Supreme Court opinion says or what a
25 statute says. There needs to be something behind it.

1 And notice pleading, while it is the standard in Nevada, does
2 require, and we've cited the case law, it does require factual support
3 behind it. Otherwise, like I said, you can sue Orozco and claim that he's
4 responsible for the Kennedy assassination, that he was the second
5 gunman on the grassy knoll. Because if you want to plead it and say
6 hey, you're on notice, we pleaded it, now go respond to it, I mean, you
7 can do that under this broad interpretation of notice pleading that's trying
8 to be advanced.

9 And that's why the *Gardner* decisions become important. And
10 when you look at the second *Gardner* decision to indicate that there was
11 some allegation of intentional and willfully breached duties, with some
12 factual support behind it, that was where the Supreme Court said no,
13 we're going to allow those allegations to stay. And respectfully, I was
14 one of the litigated attorneys in the *Gardner* cases.

15 So, there at least was some allegation of intentional, willful
16 breach brought up, not here. And Your Honor, we're suggesting that
17 because of it, the Plaintiffs have not met the standard for pleading in
18 such a way as to require those allegations against Orozco to remain in
19 this case as one who has exceeded the -- his duties as a managing
20 member in such a way as to impute personal liability.

21 We've seen general allegations to that effect in paragraphs 12
22 through 16 in the *Cihal*, *Bennett*, and *Lombardo* matters, 9 through 13 in
23 the *Rucker* matter, *Aikens* and *Spangler* have similar allegations, but
24 between those two complaints, there are a lot of mirrored pleadings.
25 When we then get to the alter ego issue, again, it gets back to what

1 we've put in our papers, sir. And I'm not going to belabor the point
2 because we've put this in there, and we've laid it out that there needs to
3 be obviously a unity of interest, but in such a way as to now create that
4 personal issue as to -- excuse me -- as to Mr. Orozco.

5 Because what the Supreme Court said and is cited in the *LFC*
6 *Marketing Group* case were five series of considerations. And
7 admittedly, they're not exclusive factors of consideration, but they talk
8 about comingling of funds under capitalization, unauthorized diversion of
9 funds, treatment of corporate assets as the individual's own, and failure
10 to observe corporate formalities.

11 It's not here, sir. There is no allegation with any support
12 behind it, again, beyond simply a notice pleading. So, it's our position,
13 sir, that those allegations need to be dismissed. And even if the Court,
14 frankly, also wants to dismiss them without prejudice to give them the
15 chance to conduct discovery and then if there is something, bring it back
16 in, but these allegations should not remain in there at this time without
17 there having been anything more behind it.

18 Other than that, Your Honor, I'm going to rest on our
19 pleadings. I think that we've briefed everything, Your Honor's read it,
20 and there's nothing more for me to add.

21 THE COURT: Okay, Mr. Jaffe, I just had a few questions for
22 you before I turn it over to the other attorneys.

23 MR. JAFFE: Sure.

24 THE COURT: All right. The first one has to do with this NRS
25 41.800.

1 MR. JAFFE: Yes, sir.

2 THE COURT: You make an argument as to the entity, the
3 Dragon Hotel, LLC entity, that based upon 41.800 that they -- that entity
4 should not be in the case because the statute talks about a person, and
5 of course, that sounds like an individual, as opposed to an entity. Right?
6 That's your argument, at least in part; is that correct?

7 MR. JAFFE: Yes, sir.

8 THE COURT: Okay. Let me ask you this hypothetical on that
9 then. In the event that there is a successful piercing of the LLC veil or
10 successful alter ego as a matter of law once the evidence comes in on
11 the alter ego aspect, in that setting when -- let's assume there's liability,
12 which I know you don't want to assume, but let's do that. Would the
13 liability be -- and the ultimate judgment, would it be, again, assuming
14 alter ego is successful, would it be individual against Orozco only? Or
15 would it be joint and several liability along with the entity that he
16 managed if alter ego has success? Do you know the answer to that?

17 MR. JAFFE: I can -- I mean, it's an interesting question.
18 What I would say is that the -- I -- and this kind of gets back to the
19 opposition that I've seen from the Plaintiffs which is the Plaintiffs seem to
20 be asserting that the Court needs to accept the statute in the wording in
21 which it was phrased. Since the statute does not talk about an entity or
22 a corporation or a business, I don't see any circumstance in which
23 41.800 can then apply to Las Vegas Dragon Hotel, LLC. It says a
24 person.

25 And if they --

1 THE COURT: Okay. So, let me interrupt you. I'm sorry.

2 MR. JAFFE: Sure.

3 THE COURT: Maybe I didn't ask that question the best. If
4 you're right about that, nonetheless, the question I'm asking you would
5 have to do with let's just say that you're correct about your 41.800 and
6 how it doesn't apply to the entity. Let's just assume you're correct about
7 that. But your motion goes beyond that, it seems to me, in trying to
8 dismiss the entity from the lawsuit.

9 So, I have to look at this idea that from the Plaintiff's
10 perspective I'm sure they're going to say that it's clear from the
11 pleadings that there's an attempt, clearly, it's -- you know, to spell out
12 this alter ego theory. I'm just asking you as a matter of law, you go
13 through a whole trial, let's just assume -- which I -- it's a devil's
14 advocate-style question. But let's just assume that Orozco is found to
15 be personally liable under the alter ego theory. When that happens, is
16 the entity still liable, jointly with you? That's my question. Do you know
17 whether that's the case or not?

18 MR. JAFFE: The short answer, sir, is I don't know. I haven't
19 thought that part of it through, and I guess it's probably because we're
20 in, to some extent, some uncharted water here because there is no case
21 law interpreting that statute that we've been able to identify. The Court
22 certainly hasn't indicated one. And I think that would then become a
23 question for the Court to decide whether an entity, which is not included
24 within the statute, can possibly then bear joint and several responsibility
25 for something that is uniquely drafted against what can only be a

1 responsible person.

2 Am I answering your question, sir?

3 THE COURT: Okay. Yeah, I understand what you're saying.
4 I'm going to use that statute and have another follow-up question. And
5 so, I just have a couple more things to ask you. Your motion is a
6 attempt, of course, to dismiss Mr. Orozco as an individual.

7 MR. JAFFE: Yes, sir.

8 THE COURT: I'm just going to ask you flat out. How can I do
9 that in light of this statute 41.800? Because even you seem to admit
10 that the statute allows for liability having to do with a person or an
11 individual. And if you look at the -- if you look at the entirety of the
12 statute and you mentioned a little bit of it --

13 MR. JAFFE: Mm-hmm.

14 THE COURT: -- it seems to be one where the Legislature, on
15 the face of the statute, clearly shows that they want to make sure that
16 there's ingress and egress to property because not only does it allow for
17 civil liability, but it talks about actual damages, and there's an -- seems
18 to be a bit of penalty in here built right into the statute, and you
19 mentioned it, reasonable attorneys' fees and costs.

20 So, you know, that's an indication of the seriousness of this
21 statute. So, how could I dismiss Mr. Orozco as an individual when we
22 have a clear statute that talks about a person who would be responsible
23 for ingress, egress to, you know, not being there in light of this damages
24 and attorneys' fees and everything else in this statute? So, that -- go
25 ahead, that's my question.

1 MR. JAFFE: Okay. Let's kind of take this statute in
2 piecemeal. What we've got is the very start, a person shall not
3 intentionally obstruct. There's no allegation that Adolfo Orozco
4 intentionally obstructed the door. The allegation is that he is aware that
5 it was obstructed, not that he actually obstructed it. So, this statute is
6 intended, as written, against the person who actually performs the
7 conduct leading to the obstruction, so the person who actually obstructs
8 it.

9 Section 2, in addition to any other remedy, a person aggrieved
10 by a violation of subsection 1 may bring a civil action in a court of
11 competent jurisdiction against any person who commits the violation.
12 Okay. The violation is intentionally obstructing. Adolfo Orozco is not
13 accused or alleged to have intentionally obstructed.

14 And what the Plaintiffs now want is to have this statute
15 interpreted both ways to suit their needs. Broad to include Orozco
16 because he knew it, but uniquely to -- hold on, let me back up.

17 Broadly against Orozco because he knew of it, but then they
18 turn around and say no, you should not consider the legislative intent
19 because you must adopt the statute as written. Well, as written, it is a
20 person shall not intentionally obstruct. They're not alleging that Adolfo
21 Orozco intentionally obstructed.

22 THE COURT: Yeah, I see.

23 MR. JAFFE: And if they want to go beyond that, that is
24 outside the statute.

25 THE COURT: Okay.

1 MR. JAFFE: It's very clear the purpose of this statute's
2 inclusion in the complaint is to create the threat of attorneys' fees and
3 costs. On top of it, the allegations for criminal liability have bene
4 alleged. So, why do you need this statute in here except for the fact that
5 it is because of the attorneys' fees and costs threat? That is what's
6 going on here, sir. That's -- I mean, let's cut to the chase, that's what
7 this is about.

8 THE COURT: Okay. And then my last question for you goes
9 back to the alter ego philosophy or legal theory itself. And I see and I
10 appreciate, Mr. Jaffe, that you are really familiar with *Gardner*, in that,
11 you were a lawyer in the case.

12 I looked over those cases trying to figure something I have to
13 admit I didn't know. And if I should have known, I guess I forgot it or I
14 just didn't know it. And that question I had in my mind was do those
15 cases, or any cases, suggest that in the alter ego area of law there is
16 some sort of heightened pleading standard, some more specific pleading
17 standard? You know, I'm not suggesting something like a Rule 9 fraud
18 standard, but you know, some sort of heightened, more notice -- more
19 specific notice standard.

20 And I couldn't see it. I actually thought the cases, and that
21 case too, stood more for the proposition that there's really not a
22 heightened pleading standard, that the idea is from a clear reading of a
23 pleading. You know, would Mr. Orozco be on notice of this alter ego
24 theory?

25 And there's a lot of different ways to try to do that, maybe

1 given what the Plaintiffs know at the time, because they wouldn't know,
2 perhaps, all the details of all the potential specific facts of unity of
3 interest or control, ownership, you know, this interesting, you know, idea,
4 which sounds like equity to me. You know, adherence to the fiction of a
5 separate entity would promote injustice. You know, not until really
6 discovery would the Plaintiffs ever know about, you know, all the
7 specifics to add fuel to their alter ego fire.

8 So, I was just trying to -- last night, in looking at this, I was
9 thinking to myself, well, is there a heightened pleading standard when
10 you allege alter ego? And so, tell me what you think about that, please.

11 MR. JAFFE: Well, I think what you have to do is plead
12 something more than simply saying we're entitled to alter ego, a
13 determination that we're piercing the corporate veil based upon Orozco
14 being the alter ego of the corporation and having engaged in some
15 conduct which causes a breach, rather a piercing, of that corporate veil.

16 But in this particular circumstance, Your Honor, what I would
17 also suggest is that the Plaintiffs have alleged, because they're looking
18 for punitive damages, the standard punitive damages of fraud, malice, or
19 oppression. Fraud is listed in there as an element for punitive damages.
20 And if that is the case, they must then plead it with particularity,
21 especially if they're claiming that this conduct has led to the punitive
22 damages, which include fraud.

23 So, I think there needs to be more than just sitting here saying
24 yeah, he -- we're piercing the corporate veil because he did something
25 wrong.

1 THE COURT: Okay.

2 MR. JAFFE: You can't just say that.

3 THE COURT: All right.

4 MR. JAFFE: You have to have something behind it.

5 THE COURT: Okay. Anything else you'd like to add, Mr.
6 Jaffe?

7 MR. JAFFE: Nothing at this time, Your Honor. I'll just save
8 my further argument for reply.

9 THE COURT: All right, thanks a lot. Now, there's, to my
10 count, at least nine defense lawyers including Mr. Jaffe on this call. So,
11 let me just say, are there -- is there anyone else who'd like to add
12 argument from the defense side?

13 [No audible response]

14 THE COURT: Okay, apparently not. That either ties or
15 breaks an all time record for a number of lawyers not saying anything to
16 a Judge's question.

17 So, now let's go to the Plaintiff's side. And we have pleadings
18 from a number of Plaintiffs here, as well, Spangler, Akins, Crawford, and
19 there's, you know, groupings of Plaintiffs, if you will. Mr. Murdock, you
20 want to go first, you want Mr. Eglet to go first? I think maybe one of you
21 two might go first.

22 Mr. Eglet, you have a thought?

23 MR. EGLET: So, contrary to, you know, Mr. Jaffe's comments
24 that there has to be something more behind the pleadings, that's not the
25 law in Nevada. Rule 8A sets forth the general rules of pleading in

1 Nevada and states in pertinent part that a pleading must contain one, a
2 short and plain statement of the grounds for the Court's jurisdiction, two,
3 a short and plain statement of the claims showing the pleader is entitled
4 to relief, and three, a demand for the relief sought. That's it.

5 Because Nevada is a pleading jurisdiction, the pleading of
6 legal or factual conclusions is [inaudible] so long as the pleading gives
7 fair notice of the nature and basis of the claim, which these pleadings
8 do. Discovery may later disclose the facts needed to support these
9 conclusions, but for pleading purposes, conclusions alone are sufficient
10 to withstand review under 12(b)(5).

11 Rule 9 of the Nevada Rules of Civil Procedure expressly
12 delineates under what circumstances a Plaintiff will be required to meet
13 a heightened pleading standard. These circumstances include fraud,
14 mistake, conditions of mind, denying conditions precedent, time and
15 place, and special damages.

16 And I -- let me just point out that the claim that well, there's a
17 fraud claim because that's what the statute requires in punitive damage,
18 that's just an alternative. It's conscious disregard or fraud. And I think in
19 this -- the facts of this case are more likely a conscious disregard thing
20 under punitive damage.

21 But this isn't a motion to dismiss punitive damages for not
22 pleading that specifically by Mr. Jaffe. This is a motion to dismiss the
23 entire complaint. Well, under -- in none of the circumstances under Rule
24 9 appear here. Therefore, a heightened pleading standard for Plaintiff's
25 first amended complaint is not required.

1 Accordingly, Mr. Orozco's motion to dismiss should be denied
2 as Plaintiff's first amended complaint sets forth sufficient factual and
3 legal conclusions to support Plaintiff's claim for relief under NRS 41.800.
4 Orozco argues that he cannot be held personally liable under NRS
5 86.371 because he did not violate any duty separate and apart from his
6 status as a member-manager of Las Vegas Dragon.

7 In support of his argument, he relies on *Gardner v. Henderson*
8 *Water Park LLC, Gardner I*, in which the Court held that pursuant to
9 NRS 86.371 and NRS 86.381, a member is not individually liable in a
10 negligence-based tort action against the LLC solely by virtue of being a
11 member of the LLC [inaudible] 86.371 was not intended to shield
12 members or managers from liability for personal negligence. [Inaudible]
13 held personally liable for actions he took on behalf of Las Vegas Dragon
14 as alleged in Plaintiff's first amended complaint.

15 In *Gardner II*, the Supreme Court held that while NRS 86.371
16 protects members and managers from individual liability resulting from
17 the liabilities of the LLC, it doesn't protect members and managers from
18 liabilities incurred as a result of individual acts. In *Gardner II*, the
19 petitioner sought to amend their complaint to assert a direct negligence
20 claim against seven managers of a limited liability company as individual
21 tortfeasors under an alter ego theory of liability.

22 The Nevada Supreme Court determined that NRS 86.371 did
23 not apply to the members because the petitioner's proposed amended
24 complaint contained multiple allegations of individual negligence by the
25 managers concerning their direct knowledge and actions that threatened

1 physical injuries to patrons. The petitioner's allegations that the
2 members had authority and control over the limited liability company,
3 and as such, owed personal duties to their patrons, which they
4 intentionally and willfully breached, was enough to adequately state a
5 negligence claim against the managers in their individual capacities.

6 Contrary to Orozco's argument, the Nevada Supreme Court
7 did not impose a heightened pleading standard in either *Gardner I* or
8 *Gardner II*, such that any breach must be intentional and willful. Rather,
9 the Nevada Supreme Court explicitly held that a complaint must simply
10 allege that the members breached a duty arising out of their individual
11 capacities, given that a member [inaudible] responsible for his or her
12 acts or omissions to the extent those acts or omissions would be
13 actionable against the member if that person were acting in an individual
14 capacity.

15 Orozco also relies on *Chur v. Eighth Judicial District Court of*
16 *Nevada* to support his argument that an officer or director cannot be held
17 personally liable on a showing of only gross negligence, instead,
18 intentional or knowingly and wrongful conduct must be alleged and
19 proven. Orozco's reliance on *Chur* is wholly misplaced as the facts in
20 *Chur* are entirely distinguishable from the facts in the present case.

21 In *Chur*, a receiver filed a derivative action against the former
22 directors of a bankrupt entity alleging that they had failed to properly
23 inform them of the risks that supposedly resulted in the receivership.
24 The Nevada Supreme Court held that the receiver's allegations of gross
25 negligence is not -- did not suffice to constitute a breach of the fiduciary

1 duty of care involving a knowing violation of law and to rebut the
2 business judgment rule.

3 I do a lot of this derivative shareholder work. And I know what
4 the Court -- the Court explained in that case that a Plaintiff in a derivative
5 action must allege one, the directors or officers act or affiliature [sic] act
6 constituted a breach of his or her fiduciary duties as a director or officer,
7 two, such breach involved intentional misconduct, fraud, or a knowing
8 violation of law. Mr. Orozco fails to recognize that *Chur* was a
9 shareholder derivative action. And in shareholder derivative actions, it's
10 -- it requires a showing of a breach of a fiduciary duty and intentional
11 conduct -- or intentional misconduct, fraud, or a knowing violation of law
12 in order to rebut the business judgment rule.

13 In order to have standing to sue in a derivative action, a
14 derivative Plaintiff is required under NRS 41.520 to plead allegations
15 with particularity. The same heightened pleading standard does not
16 apply in a simple negligence action as we have here.

17 Similar to the petition -- the petitioner's amended complaint in
18 *Gardner II*, paragraphs 76, 91, and 102 of Plaintiff's first amended
19 complaint attached to our opposition includes multiple allegations of
20 individual negligence against Orozco concerning his direct knowledge
21 and actions that threatened physical injury to Plaintiffs, including
22 allegations that Orozco failed to maintain and inspect the entrance and
23 exit doors of the Alpine Motel and that Orozco had knowledge of the
24 hazardous safety conditions, including but not limited to bolted and
25 locked exit doors.

1 Thus, Plaintiffs have alleged sufficient facts concerning
2 Orozco's conduct, direct knowledge and actions that threatened physical
3 injury to Plaintiffs, separate and apart from Las Vegas Dragon to provide
4 Orozco with notice of the nature of Plaintiff's claims by which Orozco can
5 be held personally liable. According to Orozco, we have failed to allege
6 that he owed a duty to Plaintiffs and failed to allege sufficient facts to
7 establish that a separate landlord relationship was created between
8 Orozco personally and any residents. This is simply not the case.

9 Pursuant to NRS 118A.290, paragraphs 88 through 94 of
10 Plaintiff's first amended complaint alleges that Orozco had a non-
11 delegable duty to maintain the premises in a safe and habitable
12 condition and had a duty to act as a reasonable landlord and provide his
13 tenants a habitable dwelling and a premises safe from unreasonable
14 danger. [Inaudible] that Orozco breached that duty when he failed to
15 maintain adequate smoke alarms, fire extinguishers, and/or a fire alarm
16 system at Alpine Motel and when he failed to maintain and inspect the
17 entrance and exit doors of the Alpine Motel in violation of NRS
18 118A.290.

19 As in *Gardner* -- as in *Gardner II*, page 3 of our first amended
20 complaint alleges that Orozco was not simply a member of Las Vegas
21 Dragon who oversaw management from afar. Orozco had personal
22 authority and control over decisions at the property and actively
23 participated in operating the property. In paragraphs 89 through 90 of
24 Plaintiff's first amended complaint also alleges that Orozco was
25 personally present on the property, met with fire inspectors, and was

1 aware of the numerous code violations that existed at the Alpine Motel.

2 The first amended complaint also alleges that Orozco failed to
3 remedy the code violations that existed within the Alpine Motel, which
4 ultimately led to Plaintiff's injuries and multiple deaths. Orozco had a
5 personal duty and intentionally and willfully breached that duty despite
6 his awareness of the dire circumstances at the Alpine Motel. When a
7 member or manager commits or participates in the commission of a tort,
8 whether or not he acts on behalf of his LLC, he is liable to third persons
9 injured thereby.

10 Orozco [inaudible] himself from the liability by alleging that any
11 duties owed to Plaintiffs were owed by Las Vegas Dragon when Orozco
12 personally managed the property, had his -- had superior knowledge of
13 the numerous code violations, and failed to take steps to make the
14 property safe for Plaintiffs. Notably, an investigation into the fire
15 presented such overwhelming evidence that Orozco was formally
16 charged with six counts of involuntary manslaughter and 15 counts of
17 performance of an act or neglect of duty and disregarded safety resulting
18 in substantial bodily harm or death.

19 If Orozco is criminally convicted of these charges, his
20 judgment of conviction will serve as conclusive evidence of his civil
21 liability in the instant matter, pursuant to *Desert Cab versus Marino*.
22 Orozco also contends that Plaintiffs have not sufficiently pled a factual
23 basis for alter ego liability. However, Plaintiff's first amended complaint
24 specifically, lines 21 through page 15, line 2, gives notice of Plaintiff's
25 alter ego claim based upon the facts contained in Plaintiff's first

1 amended complaint.

2 Moreover, paragraphs 42, 46, 57, 58, 59, 60, 86, and 87 of
3 Plaintiff's second amended complaint attached to our opposition, which
4 was filed on October 28th, 2020, alleged facts supporting a claim for alter
5 ego liability. Plaintiff's second amended complaint also alleges a
6 separate and distinct cause of action for alter ego liability [inaudible]
7 against Las Vegas Dragon and Orozco, Orozco -- alleging that Orozco is
8 the alter ego of Las Vegas Dragon, Galeana, Cancun, and Elite1 LLC.
9 The factual allegation supporting Plaintiff's claim for alter ego liability are
10 set forth in paragraphs 170 through 172 of our second amended
11 complaint.

12 Consistent [inaudible] notice pleading requirements, Plaintiff's
13 second amended complaint contains the legal and factual conclusions of
14 Plaintiff's claim for alter ego liability. Plaintiffs need not plead the legal
15 theory relied upon. The pleading of legal or factual conclusions is
16 sufficient, so long as the pleading gives fair notice of the nature and
17 basis of the claim, which [inaudible] contends that Plaintiffs have failed
18 to allege that Orozco engaged in any intentional conduct under NRS
19 41.800 and that the statute does not provide for any form of vicarious
20 liability to hold a property owner liable for the conduct of others.

21 NRS 48.800 [sic] states that a person shall not intentionally
22 obstruct the ingress or egress to any public or private property or private
23 place [inaudible] not to leave a free passageway for persons and
24 vehicles lawfully seeking to enter [inaudible] be it a public or private
25 place. Here, paragraph 151 of Plaintiff's first amended complaint

1 specifically alleges that Orozco intentionally failed to provide safe egress
2 by preventing exits from operating.

3 [Inaudible] *Carson City*, the Nevada Supreme Court explicitly
4 held that for pleading purposes, conclusions alone are sufficient to
5 withstand review under 12(b)(5). Thus, Plaintiffs have stated a claim for
6 Orozco's intentional conduct under 41.800.

7 Next, Orozco attempts to create statutory ambiguity by
8 directing the Court to look at the legislative intent of NRS 41.800.
9 However, Nevada case law is clear. The Court must first begin its
10 inquiry by looking at the plain language of the statute and only if the
11 statute is ambiguous does the Court look at legislative intent. In other
12 words, the Court must begin its inquiry with the statute's plain language.
13 In circumstances where the statute's language is plain, there is no room
14 for constructive gymnastics and the Court is not permitted to search for
15 meaning beyond the statute itself.

16 The United States Supreme Court has consistently held that if
17 there is no ambiguity, the statute is enforced as written. And they said
18 so in *Ratliff v. United States*, the Supreme -- US Supreme Court
19 explained that it does not resort to legislative history to cloud a statutory
20 text that is clear like we have here.

21 Further, Orozco -- Orozco's argument that Plaintiffs fail to
22 allege that he personally obstructed the door in violation of NRS 41.800
23 is inconsistent with the clear language of the statute as the statute does
24 not require individual action. Following Orozco's logic, a person could
25 readily be absolved of liability under NRS 41.800 by simply instructing

1 an agent to obstruct ingress or egress to public or private property,
2 which would lead to an absurd result in the statute.

3 And in *Harris Associates v. Clark County School District*, the
4 Nevada Supreme Court held it will not read the language of a statute to
5 produce absurd or unreasonable results. NRS 41.800 clearly and
6 unambiguously states that a person shall not intentionally obstruct
7 ingress or egress to any public or private property to prevent safe
8 passage and that any person aggrieved by such violation may bring a
9 civil action. The Court need not look at the legislative intent of NRS
10 41.800.

11 And so, the fact that [inaudible] my partner, before he was
12 Attorney General, and made some testimony about this statute, that's
13 legislative history and is irrelevant, Your Honor. Paragraphs 151 of
14 Plaintiff's first amended complaint alleges that Orozco intentionally
15 obstructed the egress of the Alpine Motel, which prevented Plaintiffs
16 from a safe passage for exit. Plaintiffs are not asserting a vicarious
17 liability claim under NRS 41.800. Plaintiffs are alleging that Orozco
18 violated the statute and is therefore liable for damages.

19 [Inaudible] at the legislative intent of NRS 41.800 would create
20 an ambiguity where none exists, which would run counter to Nevada
21 case law regarding statutory construction, and more importantly, run
22 counter to the US Supreme Court's precedent regarding statutory
23 construction. Plaintiff's first amended complaint properly pleads a cause
24 of action against Orozco under NRS 41.800 to give Orozco fair notice of
25 the nature and basis of Plaintiff's claim under that statute.

1 Finally, without -- although he seems to have given up in that -
2 - in his argument today, without any basis in their pleadings, they claim
3 that Orozco -- that -- be granted leave to amend because an amendment
4 would be futile. Well pursuant to Rule 8, Plaintiffs have set forth
5 sufficient facts to provide Orozco with notice of the nature of our claim
6 under NRS 41.800 and the relief sought.

7 However, if the Court finds that Plaintiff's first amended
8 complaint or our second amended complaint, at this stage, is somehow
9 factually or legally deficient, Plaintiff's respectfully request leave to
10 amend pursuant to Rule 15, which provides that leave to amend should
11 be freely given unless an amendment would be futile. Here, an
12 amendment would not be futile as Plaintiffs have asserted a viable claim
13 for relief against Orozco under NRS 41.800 based on the facts and the
14 applicable law.

15 The Nevada Supreme Court has consistently held that the
16 absence of any apparent or -- in the absence of any declared reason
17 such as undue delay, bad faith, or dilatory motive on the part of the
18 movement -- the leave -- [inaudible] then Rule 15 contemplates a liberal
19 amendment of pleadings, which means they ought to be granted unless
20 there are some sort of extreme circumstances to where they shouldn't
21 be granted.

22 Because Nevada is a notice pleading state, which means that
23 the ultimate facts alleged within the pleading need not be recited with
24 particularity, the only [inaudible] general allegations and at the time of
25 trial can rely upon specific evidentiary facts never mentioned anywhere

1 in its pleadings. And Plaintiffs have done just that. Because Plaintiff's
2 complaint sets forth sufficient factual and legal conclusions to give
3 Orozco fair notice of the nature and basis of Plaintiff's claim under NRS
4 41.800, Plaintiff's first amended complaint states a claim upon which
5 relief can be granted, and Orozco's motion to dismiss should be denied.

6 Your Honor, I -- let me just -- I'm going to go to the other
7 motion because there's a couple things that were not overlap. I know a
8 lot of the notice pleading stuff I'm not going to repeat all that for
9 purposes of this motion, but let me just [inaudible] to Las Vegas
10 Dragon's reliance on the term person to support its argument that Las
11 Vegas Dragon cannot be liable under NRS 41.800. It is entirely
12 misplaced.

13 According to NRS 48 -- 41.800, a person shall not intentionally
14 obstruct the ingress or egress to any public or private property from any
15 other public or private place in such a manner as not -- as not to leave a
16 free passageway for persons and vehicles lawfully seeking to enter or
17 leave the property via the public or private place. A person aggrieved by
18 this can bring a civil action and then it talks about the declaratory relief,
19 actual damages, attorneys' fees and costs, and any other legal or
20 equitable relief.

21 What Mr. Jaffe is missing is how the Nevada statutes work.
22 They work together. There is a section in the NRS which defines
23 commonly used terms throughout the statutes. And unless a specific
24 statute defines a term that's commonly defined in the general definitions
25 provision of the NRS statutes differently, then you look to what the

1 definition is in the NRS statutes. There is no specific definition of person
2 in NRS 41.800. It just says person.

3 So, you have to look at what the definition of a person is,
4 which is found under NRS 0.039 which defines a person. [Inaudible]
5 means a natural person, any form of a business or social organization
6 and any other non-governmental legal entity including but not limited to a
7 corporation, partnership, association, trust, or unincorporated
8 organization. Because a person under NRS 0.039 includes any form of
9 a business and any non-governmental legal entity, Las Vegas Dragon, a
10 limited liability company, satisfies the definition of a person under NRS
11 41.800.

12 You know, Las Vegas Dragon, they try to create this same
13 ambiguity. The statute's clear on its face. There's so -- there is
14 absolutely no basis to look at legislative history here, Your Honor. You
15 have to look at the plain language of the statute. When you read the
16 plain language of the statute, as long as -- as well as how the definitions
17 in the Nevada Revised Statute define a person and it's not defined
18 differently in this specific statute, then Las Vegas Dragon is subject to
19 the liabilities of this statute.

20 That's 151 of our first amended complaint. We specifically
21 alleged Las Vegas Dragon intentionally obstructed the egress of the
22 Alpine Motel which prevented Plaintiffs from a safe passage for exit. As
23 a result, Las Vegas Dragon violated the statute and is therefore
24 potentially liable for the damages.

25 Plaintiff's [inaudible] amended complaint properly pleads a

1 cause of action against Las Vegas Dragon under NRS 41.800 to give
2 Las Vegas Dragon fair notice of the nature and basis of Plaintiff's claims
3 under that statute. [Inaudible] covers -- more here.

4 Other than just wrapping up, I'm saying, you know, because
5 Plaintiff's first amended complaint sets forth sufficient factual and legal
6 conclusions to give Las Vegas Dragon fair notice of the nature and basis
7 of Plaintiff's claim under NRS 41.80 [sic], Plaintiff's first amended
8 complaint states a claim upon which relief can be granted. And Las
9 Vegas Dragon's motion to dismiss should be denied, as well, Your
10 Honor. Thank you.

11 THE COURT: All right, Mr. Eglet. Thank you. I have a couple
12 follow-up questions for you. So, Mr. Eglet, what I want to do is
13 something I was doing consistent with the questions I had with Mr. Jaffe.

14 And it has to do with, let's take out, for the purposes of this
15 back and forth between you and I now, let's just take off the table the
16 NRS 41.800. That's not to say I won't consider it because of course I
17 will. Let's just look at it in terms of what we have seen over the years as
18 more -- maybe a more conventional alter ego case, if you will.

19 So, it's just -- I'm just dealing with this idea of the defense
20 motion to dismiss the Dragon Hotel entity. But you've got the Dragon
21 Hotel sued, have -- I think you do have the alter ego theory pled
22 concerning Orozco. So, if you get a judgment against Orozco using the
23 alter ego theory, is that judgment joint and several with Dragon Hotel?
24 Do you have an answer to that question?

25 MR. EGLET: Just like -- and maybe Mr. Murdock would -- has

1 looked at this and knows this answer better and he can enlighten you on
2 it. But I, like Mr. Jaffe, I didn't look at that issue, Judge. So, I don't know
3 if there -- if the -- my first instinct is to say yes, there would be joint and
4 several liability, but I haven't researched it, so I can't tell you off the top
5 of my head.

6 THE COURT: You know, and I guess a question I haven't
7 asked, but it's just covering all potential bases to deal with a motion to
8 dismiss this entity, so please try to respect that's what I'm up to here.
9 So, it -- hypothetically, if you were -- if you did not prevail on the alter
10 ego theory, but yet were able to show liability against the entity, I mean,
11 you do have Las Vegas Dragon sued in that event or am I missing
12 something on that? You want to answer that question?

13 MR. EGLET: That doesn't preclude us from bringing and
14 seeking damages against Mr. Orozco personally, Your Honor.

15 THE COURT: [Inaudible].

16 MR. EGLET: And so, I mean, we're entitled under Nevada
17 law to plead multiple theories of liability, which I think all the Plaintiffs
18 have done here, which we're entitled to do. I mean, look, I've had many
19 cases where we've [inaudible] ability, sometimes three and four, and we
20 only -- and sometimes we only win on one. So, it's -- it -- the Plaintiffs
21 have -- got -- and we have to bring every -- as the Court knows, we have
22 to bring it all in one case; we can't piecemeal this. Or we -- were -- we
23 waive those claims.

24 So, we've got to bring it all at once, and you know, it's
25 important to do so. Quite frankly, it'd be malpractice not to, I think.

1 THE COURT: Okay. I'll try to explain all that -- what I'm
2 thinking in my decision. But thanks a lot. And Mr. Murdock, I think
3 you're next.

4 MR. MURDOCK: Yeah, Judge, you'd think I'd be used to this
5 over the years with Keach. But I'll just join what Mr. Eglet said, save
6 everybody some time, and I have nothing to add.

7 In terms of your question, I really don't have an answer either.
8 I've never looked at that issue. Seemingly, there'd be alter ego in that
9 instance that you posed the question is similar to vicarious liability in a
10 sense. But I think the entity would still remain liable. But nevertheless,
11 that's just an offhand thought. With that, I'll just join in with Mr. Eglet.

12 THE COURT: All right, Mr. Murdock, thanks. That's a heck of
13 a conference room there.

14 Okay, anything else from any of the Plaintiff attorneys?

15 [No audible response]

16 THE COURT: Apparently not. So, let me go back to the final
17 word now from the moving party, and of course, that's Mr. Jaffe. So, go
18 ahead, Mr. Jaffe, any final words on your two motions here?

19 MR. JAFFE: Thank you, Your Honor. First, let me talk about
20 41.800 because that's an interesting issue that we've got here. Now,
21 first, Your Honor, Mr. Eglet made it very clear, if there is no ambiguity,
22 then you must apply the statute as written. So, the question becomes, is
23 there an ambiguity? Because the statute as written states a person shall
24 not intentionally obstruct. Okay.

25 Well, this is not written to include a business or an entity or

1 anybody else. And it also applies directly to the person who does
2 obstruct, not anybody else. Now, it's interesting because Mr. Eglet cites
3 a statute defining person, but when you look, Your Honor, our entire
4 criminal code talks about persons without defining a person. I just
5 happened to pull up the statute on statutory sexual seduction. And it
6 says a person who commits statutory sexual seduction shall be
7 punished.

8 There is no statutory definition of person. Even in the
9 definition section, no definition of person. So, does that mean now a
10 business can be criminally charged for statutory sexual seduction or
11 another entity? Of course not. That's ridiculous.

12 So, if that's the case then, what Mr. Eglet has created is the
13 exact inconsistency and vaguery [sic] in the statute which is exactly what
14 we said. So, if that's the case, we must look at the statutory intent. And
15 the statutory intent from the language given to Your Honor, based upon
16 the arguments at the Legislature show that this is not what was intended
17 here.

18 I'm sorry, I just -- having a little -- I need a moment, Your
19 Honor.

20 Mr. Eglet's comment was, you cannot apply an interpretation if
21 the -- if it results in an absurd result. And that is exactly what they want
22 here, Your Honor. And they want that absurd result by expanding the
23 statute, which was very narrow in its intent and its scope because of the
24 way its written in such a way as to say well, because there was an
25 obstruction of an ingress or egress, we get attorneys' fees. That's what

1 they're really here for, Judge.

2 The -- if -- they've already got the criminal allegations.
3 They've already, you know -- Mr. Eglet already injected extraneous facts
4 about Mr. Orozco's criminal indictment and the investigation. Well, if
5 that's the case, then they've already got it. Why do you need the
6 superfluous one? Well, because they want the threat of the attorney
7 fees. And if that's the case, Your Honor, they're trying to pigeonhole this
8 whole thing and to make it sound consistent even though it's
9 inconsistent, yet it's consistently inconsistent.

10 That's the net effect of the argument on 41.800. So, either
11 we're going to apply it as it's written and it only applies to the person, in
12 which case the entity needs to be dismissed, or we're going to apply the
13 -- I'm sorry. I keep losing my train of thought here.

14 You know what, I don't need to go on any further with that.
15 We've got the fact that the statute is written the way it is. By trying to
16 inject further interpretation into it is creating the ambiguity. By trying to
17 inject the definition of person into it is creating the ambiguity.

18 The Plaintiffs cannot have it both ways, Your Honor. Either it's
19 going to be applied as written, in which case the dismissal has to work in
20 favor of both Dragon Hotel and Mr. Orozco because he is not the one
21 who intentionally obstructed, and that was even clear -- if that's the case,
22 if we want to go to the extraneous evidence from the investigation or --
23 and Dragon Hotel cannot be held in on this because it is not a person. It
24 was never intended as a person.

25 More so, Your Honor, the absurd result would be the fact that

1 applying the statute in the way Plaintiffs would like it applied would hold
2 liable any homeowner's association that has a gate, any business that
3 has boxes that may be impeding access to and from the -- a doorway,
4 anything at all that blocks a roadway, a sidewalk, anything at all. If that's
5 the case -- and the girl scouts are selling cookies. Are they responsible
6 now for attorneys' fees because they've blocked off a sidewalk? That's
7 the interpretation that the Plaintiffs now apparently want to apply.

8 Next, they have not alleged intentional and willful conduct
9 against Mr. Orozco. They've only injected -- rather they've only pleaded
10 negligence claims about direct knowledge, and they keep throwing the
11 other intentional and willful conduct words around as hyperbole. And
12 getting to the pleading issue, Your Honor, in our brief, we've pointed to
13 the case, *Breliant*, B-R-E-L-I-A-N-T, *versus Preferred Equities*, 109
14 Nevada 842, which shows that it's not enough to give just fair notice, but
15 you need to give the basis of a legally sufficient claim.

16 And that's not what's here. It's just the bare words; it's just the
17 bare allegations and trying to pigeonhole this in against Mr. Orozco.

18 The last thing I want to talk about is the *Gardner* decision,
19 Your Honor -- or decisions, Your Honor. Counsel is trying to say that
20 because *Gardner* in some way discussed by the Supreme Court a result
21 allowing the directors and officers or the members to be sued individual
22 that it opens up the door here. The difference is this: *Gardner* involved a
23 case where discovery had been going on. And the discovery had
24 already come out against those members and those directors and
25 officers.

1 And based upon that discovery presenting a basis in evidence
2 to bring the claim, the Court allowed an amendment to bring in those
3 officers, not suing them at the inception with the bare claims. And that is
4 now getting completely counter to the intent of the protections of the
5 corporate statutes for individual members. So, it's not enough to simply
6 just say yeah, you know, we're going to throw these words out, we're
7 going to plead it the -- without the basis.

8 In *Gardner*, a basis was presented by evidence in discovery,
9 and that is a significant difference, which is exactly why I suggested -- or
10 at the inception of my argument, Your Honor, that the Court grant this
11 motion, dismiss the case against Adolfo Orozco. And if during the
12 course of discovery evidence comes up that imputes his -- him for what
13 would be alter ego and allow piercing the corporate veil, as well as to
14 assert that he has acted in a way exceeding his duties as a managing
15 member to impute personal liability, then they can move to bring him in.
16 That is what *Gardner* stood for, and that is what *Gardner* addressed,
17 Your Honor. That is what happened in *Gardner*, the individuals were
18 brought in -- allowed to be sued after discovery had been going on.

19 So, Your Honor, I just suggest that the motion be granted
20 here, that Mr. Orozco be dismissed. We can -- if Your Honor wants to
21 do it without prejudice and allow them the opportunity to conduct
22 discovery, then at the appropriate time if they get it they can bring him in,
23 then so be it. But at this stage, he should not be kept in the case.
24 Thank you, Your Honor.

25 THE COURT: Okay. All right, everyone, I'd like to go ahead

1 and give the decision on all the motions right now. So, here's the
2 decision.

3 I'm going to start with the defense motion to dismiss Mr.
4 Orozco as an individual. That motion is denied, and here's all the
5 reasons why. I actually think there's a number of legal avenues that all
6 act in -- together to stand for the proposition that the motion to dismiss
7 Mr. Orozco should be denied.

8 So, first, the message I think from the *Gardner* case, I and II,
9 along with pretty much the plain meaning of NRS 86.371, is that in this
10 context, if you allege a factual predicate of individual acts, acts which as
11 alleged are separate and apart from any role as a member of an LLC,
12 well then, 86.371 essentially doesn't apply. And that is a legal avenue to
13 pursue if you have a factual predicate, ultimately, to support it.

14 Here, it's clear to me that there is intentional misconduct pled
15 in a number of the paragraphs referenced in the body of the pleadings
16 that allege that Mr. Orozco, again, separate and apart from any role as a
17 member of an LLC, Dragon Hotel, involved himself in. And so, that
18 alone would be a bases upon which to have a denial of the motion to
19 dismiss Mr. Orozco.

20 In addition to that, however, separate and distinct from that,
21 nonetheless, of course, Mr. Orozco is brought into the case under the
22 alter ego theory. That's a different analysis than an intentional
23 misconduct theory because an alter ego theory would have to do with
24 the idea of his capacity as a member of an LLC. And in that capacity did
25 he essentially influence and govern the LLC? Was there a unity of

1 interest as between him and the LLC to where the corporate fiction
2 would promote injustice or fraud?

3 And so, the question for me in this posture that we're in, the
4 motion to dismiss posture is, is there allegations in the body of the
5 complaints to sufficiently allege concepts of alter ego, you know, this
6 unity of interest, majority ownership, pervasive control over the affairs of
7 Dragon Hotel, or even this idea of comingling or siphoning LLC funds?
8 You know, that's -- all that comes into play. And I think it's real clear that
9 the body of the complaints clearly give notice under Rule 8 of this alter
10 ego theory.

11 And I don't believe that there's a heightened standard in
12 Nevada that requires any real specific mentioning of certain factual
13 matters as a factual predicate to plead alter ego. Rather, it is a -- it still
14 is notice pleading that you have to follow. And again, I think that the
15 Supreme Court actually is in the -- an older case, as I mentioned earlier,
16 this *Polaris* case, *Polaris Industries versus Kaplan* from 1987, I believe
17 that case is. The law has been around a while, but these alter ego-style
18 factors, you know, are not so conclusive one, or two, or even more than
19 that together.

20 But rather, there's no litmus test for determining this. And it's
21 really the circumstances of each case. And so, the question really
22 becomes is there enough to give notice under Rule 8 of, you know,
23 concepts that perhaps the Plaintiffs reasonably know about, you know,
24 prior or during discovery when they filed these pleadings? Is there
25 enough that they know about to clearly give notice that they're pursuing

1 the alter ego theory? And I think it's real clear, again, here that all that is
2 present.

3 So, that's a separate and distinct basis again to deny a motion
4 to dismiss Orozco. So, we have two bases enunciated by me so far,
5 one, intentional misconduct, two, alter ego. I think both of those theories
6 are perfected enough here in a motion to dismiss posture. But there's
7 another one that's probably the easiest one for me and the most clear
8 one having to do with Orozco.

9 And that is clearly NRS 41.800, which we've talked about and
10 I don't need to recite the language from that statute. But suffice to say
11 that in the wisdom of the Nevada Legislature in promulgating 41.800,
12 they make it clear that a person -- there's no dispute that Mr. Orozco is a
13 person -- is subject to a civil action for this failure to allow ingress or
14 egress to the property. And I think again, these pleadings are clearly
15 such that there's notice that the Plaintiffs are proceeding under that
16 statute under these unfortunate circumstances in the Alpine Motel fire.

17 So, that's three separate and distinct reasons not to allow for
18 the dismissal of Mr. Orozco. As to the entity, the Defendant Dragon
19 Hotel's motion to dismiss, likewise, I think that the correct choice is to
20 deny that motion, as well. And I have reasons for that that likewise are
21 sort of in the alternative I think I could reasonably say.

22 Let me start with the easier one. And as you know, if Courts
23 can sort of hang their hat on one thing that is clear, and you know, you
24 oftentimes do see Courts, even the higher Courts, say we need not
25 address the other issues because we've already determined the ultimate

1 issue. I respect that, but as most people know, stylistically, that's
2 normally not the way I do things; I like to cover everything at a District
3 Court level because you never know what's going to happen at an
4 appellate court level and I think Appellate Courts always appreciate
5 knowing what the Trial Court felt about everything just in case they need
6 to get to one of the alternative reasons.

7 So, let me talk about this denial of the motion to dismiss the
8 Dragon Hotel as an entity. One, in my view, the entity is sued, and of
9 course, as we know, there's an alter ego theory having to do with Mr.
10 Orozco as an individual. I asked that question, if the Plaintiff's succeed
11 and show alter ego, would the Dragon Hotel still be liable jointly with now
12 Mr. Orozco? I don't definitively know the answer to that either, but I do
13 know that the hotel, as an entity, is sued, and I think it's conceivable that
14 there would be joint liability.

15 But even if not, here's where I'm going with it. If for some
16 reason there's no success on the alter ego theory, well then, you're left
17 with the entity. And so, this is a motion to dismiss the entity. And there
18 are legal theories designed to sue the entity. So, whether it's joint
19 liability if the Plaintiffs succeed with alter ego on Orozco or not, it just
20 seems to me at a motion to dismiss stage, where the law is clear that I
21 have to view the pleadings in the light most favorable to the Plaintiffs in
22 this circumstance, there's alternative roads that could conceivably lead
23 to liability against the entity hotel, as I've just tried to explain.

24 In addition to that, the more difficult one is to determine this
25 issue having to do with 41.800. That is a -- an interesting, you know,

1 little issue. Now, what I've already done in explaining the denial of the
2 dismissal of the Dragon Hotel is given, you know, the -- I think, enough,
3 and I could simply say the Court need not get to 41.800 as it applies to
4 an entity. But you know, everybody knows I'd never do that, so here we
5 go. Let me give you the decision on 41.800.

6 You know, there's 32 general jurisdiction Judges, and my
7 guess is about half of them would do one thing and half would do the
8 other on this because it presents an interesting little quandary for a
9 Judge and for lawyers, and it's a good one. It's one that lets you think.
10 And I already said, God love the civil law, right, and how much I'll miss it.

11 Because it's clear to me that there's a body of evidence, if you
12 will, that Mr. Jaffe has brought forth that would stand for the proposition
13 that there's at least a good, colorable argument that the Nevada
14 Legislature may have intended that this statute not apply to entities. I
15 mean, there's an argument there. The question becomes, as a Judge,
16 should I even get to the legislative intent?

17 And Courts should not involve themselves with getting into
18 legislative intent issues unless the statute on its face is ambiguous or
19 susceptible to more than one meaning, actually is what the law is. And
20 so, it brings up the idea of, specifically, the word person in this statute.
21 Is that ambiguous in this context? Is this susceptible to more than one
22 meaning?

23 And that's where I get to this idea that some Judges would
24 think one thing, and some would think another, most likely. Well, you
25 have one; you just have me, at least for now.

1 And so, you know, my thought is, in lawyering, in judging, in
2 statute interpretation, we have to look at, is there a statute, is there
3 something that makes it clear what the word person would mean in this
4 context? And this situation, I think there is. I do think that the 0.039
5 statute, and it probably appears elsewhere too, but I think it's clear that -
6 - and you see it, I think, throughout the body of statutory law in Nevada,
7 that when you know, something like this occurs and I think common
8 sense -- you have to apply some common sense to it. You have to look
9 at the statute, and it does talk about a business entity.

10 And so, I'm going to find and I'll agree that the word person in
11 NRS 41.800 is both an individual person and a business entity, as well.
12 So, since it's a business entity and using the clear face of the definition
13 of the word person in the statutory law, I don't think I -- I can -- I don't
14 think I can get to, you know, what any legislative intent might have been
15 because I think it's clear from the face of the statute.

16 And so, for all those reasons, the -- both the motions, I think
17 rightly so, have to be denied. And then, that means that the prevailing
18 party, that would be the Plaintiffs, would put together the order, circulate
19 it, and submit it to the Court. And we'll e-sign it and get it out. So,
20 thanks a lot for everybody's time here today.

21 And if I -- I don't know if I have -- I still have some court for the
22 rest of this week. I'm not sure if I see any of you again in court, but I've
23 been saying lately for the last week or so to lawyers because it's sort of
24 my -- it's sort of my swan song in saying goodbye to everybody in a
25 court hearing. I just want to let you know, it's really been my honor to

1 get to know and work with Nevada lawyers the ten years I've been a
2 Judge, and I hope everybody has a safe and good holiday.

3 MS. BROWN: Same to you, Your Honor.

4 MS. MILLER: Thank you, Judge Bare. It's been a pleasure.

5 MR. EGLET: I can assure you that the -- at least with -- at
6 least with respect to the Civil Bench, we're going to miss you probably
7 more than you're going to miss us, Judge.

8 MR. JAFFE: Thank you very much for your service. It's been
9 a pleasure appearing before you.

10 MR. WINNER: It's not every day I say this, but I agree with
11 what Mr. Eglet just said.

12 THE COURT: Well, yeah Mr. Winner, I'm sure a good friend
13 of yours is in the same circumstance, your ex-law partner. So, I -- you
14 know, we all understand. And so far, I'm unemployed, so any ideas, let
15 me know.

16 MR. WINNER: But I agree, we will miss you more than you
17 miss us.

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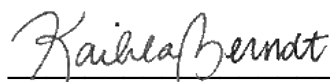
THE COURT: All right. Take care.

MR. JAFFE: Bye, sir.

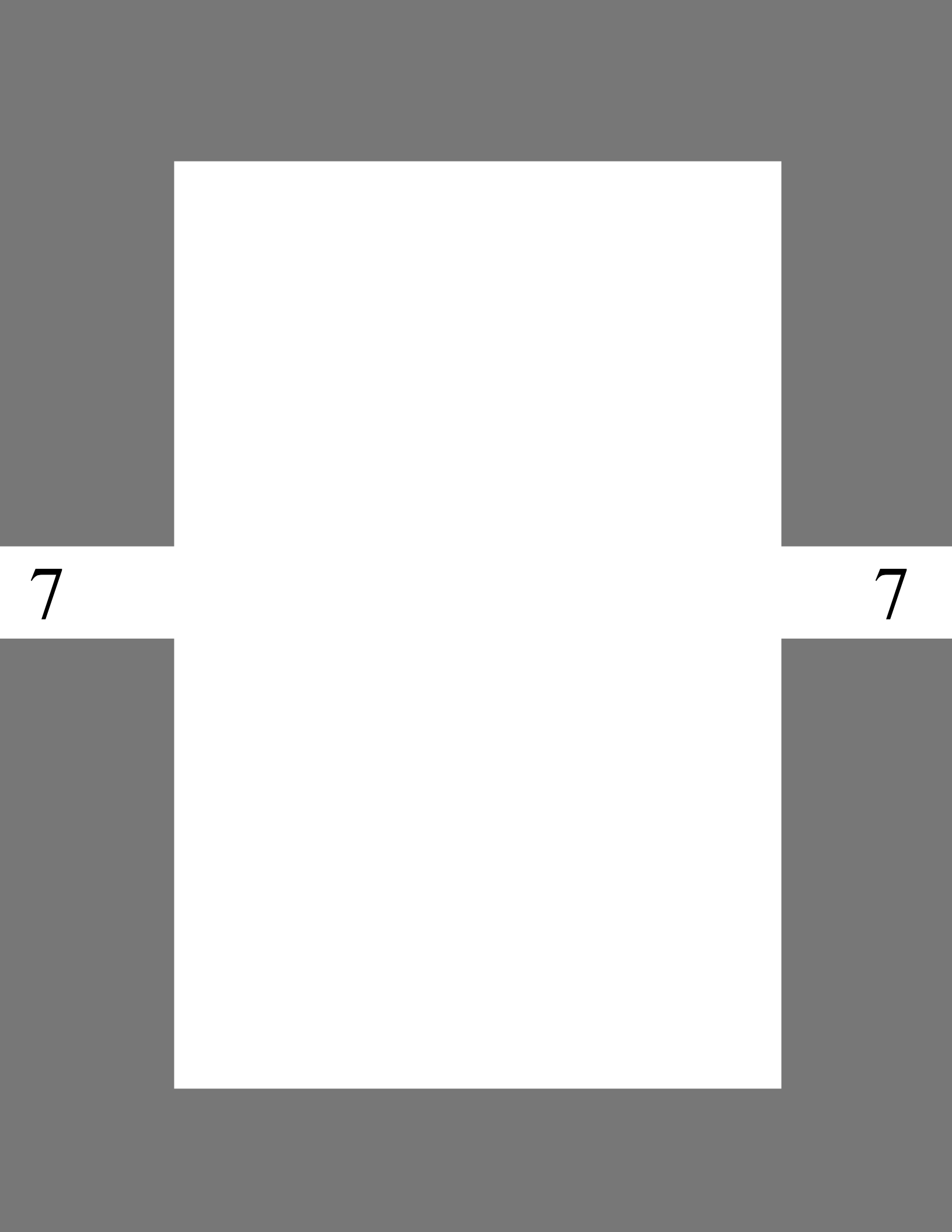
[Proceeding concluded at 3:06 p.m.]

* * * * *

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



Kaihla Berndt
Court Recorder/Transcriber



7

7

**NOTICE OF ENTRY OF ORDER DENYING DEFENDANT LAS VEGAS DRAGON
 HOTEL, LLC'S MOTION TO DISMISS AND MOTION TO STRIKE**

PLEASE TAKE NOTICE that the Order Denying Defendant Las Vegas Dragon Hotel, LLC's Motion to Dismiss and Motion to Strike was entered in the above entitled action on December 22, 2020, a copy of which is attached hereto as ***Exhibit "1."***

Dated this 6th day of January, 2021.

EGLET ADAMS

/s/ Danielle C. Miller, Esq.

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

TRACY A. EGLET, ESQ.

Nevada Bar No. 6419

DANIELLE C. MILLER, ESQ.

Nevada Bar No. 9127

400 South 7th Street, 4th Floor

Las Vegas, Nevada 89101

Attorneys for Plaintiffs

EGLET ADAMS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on the January 6, 2021, I caused the foregoing document entitled **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT LAS VEGAS DRAGON HOTEL, LLC'S MOTION TO DISMISS AND MOTION TO STRIKE** to be e-filed and e-served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court e-Filing System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and entered on the Court's docket in the above-referenced matter.

/s/ Kiera Buckley
An Employee of **EGLET ADAMS**

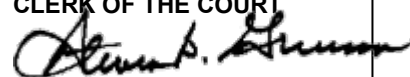
EGLET ADAMS

EXHIBIT 1

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EXHIBIT 1


ORDR

ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
TRACY A. EGLET, ESQ.
Nevada Bar No. 6419
DANIELLE C. MILLER, ESQ.
Nevada Bar No. 9127

EGLET ADAMS

400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
Telephone: (702) 450-5400
Facsimile: (702) 450-5451
Email: eservice@egletlaw.com
*Attorneys for Plaintiffs Richard
and Michelle Aikens, et al.*

DISTRICT COURT**CLARK COUNTY, NEVADA**

DEBORAH CIHAL CRAWFORD,
individually and as heir to the ESTATE OF
TRACY ANN CIHAL; JOHN DOE
ADMINISTRATOR, as Special
Administrator of the ESTATE OF TRACY
ANN CIHAL,

Plaintiff,

v.

LAS VEGAS DRAGON HOTEL, LLC, a
Nevada limited-liability company doing
business as the ALPINE MOTEL
APARTMENTS; ADOLFO OROZCO, an
individual; DOES 1 through 10; inclusive;
and ROE CORPORATIONS I through V,
inclusive,

Defendants.

AND ALL CONSOLIDATED MATTERS

Lead Case No.: A-20-808100-C

Consolidated Cases:

A-20-810951-C (*Roberts*)
A-20-810949-C (*Lombardo*)
A-20-814863-C (*Aikens*)
A-20-816319-C (*Kelly/Spangler*)
A-20-817072-C (*Rucker*)

Dept. No.: XXXII

**ORDER DENYING DEFENDANT LAS
VEGAS DRAGON HOTEL, LLC'S
MOTION TO DISMISS AND MOTION
TO STRIKE**

**Date of Hearing: December 14, 2020
Time of Hearing: 1:30 p.m.**

///

///

///

EGLET ADAMS

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*Richard and Michelle Aikens, et al. v.
Las Vegas Dragon Hotel, LLC, et al.*
Order Denying Defendant Las Vegas Dragon Hotel, LLC's
Motion to Dismiss and Motion to Strike
Lead Case No.: A-20-808100-C
Judge: Rob Bare
Dept.: XXXII

**ORDER DENYING DEFENDANT LAS VEGAS DRAGON HOTEL, LLC'S MOTION
TO DISMISS AND MOTION TO STRIKE**

Defendant LAS VEGAS DRAGON HOTEL, LLC's Motion to Dismiss and Motion to Strike came before the Honorable Rob Bare, Department 32, Eighth Judicial District Court, for oral argument via BlueJeans on December 14, 2020 at 1:30 p.m. Appearances were made by Robert T. Eglet, Esq. and Danielle C. Miller, Esq. of EGLET ADAMS, on behalf of Plaintiffs RICHARD AND MICHELLE AIKENS, ET AL.; Robert E. Murdock, Esq. of Murdock & Associates Chtd., on behalf of Plaintiff KAREN KELLY, Clark County Public Guardian for CHRISTIAN SPANGLER; Adam Ellis, Esq. of PANISH, SHEA & BOYLE, LLP on behalf of Plaintiffs DEBORAH CIHAL CRAWFORD, FRANCIS LOMBARDO, III, and DIANE ROBERTS; Steven T. Jaffe, Esq. and Taylor R. Anderson, Esq. of HALL JAFFE & CLAYTON, LLP, on behalf of Defendants LAS VEGAS DRAGON HOTEL, LLC and ADOLFO OROZCO; Sarai L. Brown, Esq. of SKANE WILCOX, LLP on behalf of Defendant AES CORPORATION; Mark C. Severino, Esq. of WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER, LLP, on behalf of Defendant COOPER WHEELOCK; and Thomas E. Winner, Esq. and Caitlin J. Lorelli, Esq. of WINNER & SHERROD on behalf of Defendant ERIKA AYALA.

The Court, having reviewed the moving papers and pleadings on file herein, hearing oral argument, being fully advised in the premises, and for good cause appearing, hereby finds as follows:

The Court finds that pursuant to U.S. Supreme Court case law, and Nevada case law, the court may not look at legislative intent unless a statute is ambiguous. The Court finds that in this case the term "person" as set forth in NRS 41.800, is defined under NRS 0.039 and includes a business entity, which applies to Defendant LAS VEGAS DRAGON HOTEL, LLC. Thus, a "person" as defined in NRS 0.039 applies to both a person and a business entity. The Court finds that in this case, the Court must not look at the legislative intent of NRS 41.800 because in the

Richard and Michelle Aikens, et al. v.
Las Vegas Dragon Hotel, LLC, et al.
 Order Denying Defendant Las Vegas Dragon Hotel, LLC's
 Motion to Dismiss and Motion to Strike
 Lead Case No.: A-20-808100-C
 Judge: Rob Bare
 Dept.: XXXII

1 Court's opinion, the statute is unambiguous. The finding and conclusions stated on the record on
 2 December 14, 2020, are incorporated in their entirety by this reference.

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant LAS
 4 VEGAS DRAGON HOTEL, LLC's Motion to Dismiss and Motion to Strike is **DENIED**.

5 **IT IS SO ORDERED.**

6 DATED this 22nd day of December, 2020.



 DISTRICT COURT JUDGE
 ROB BARE

9 **Respectfully submitted by:**

Approved as to Form and Content:

10 DATED this 22nd day of December, 2020.

DATED this 22nd day of December, 2020.

11 **EGLET ADAMS**

HALL JAFFE & CLAYTON LLP

12
 13 /s/ Danielle C. Miller, Esq.
 ROBERT T. EGLET, ESQ.
 Nevada Bar No. 3402
 14 TRACY A. EGLET, ESQ.
 Nevada Bar No. 6419
 15 DANIELLE C. MILLER, ESQ.
 Nevada Bar No. 9127
 16 400 South 7th Street, 4th Floor
 17 Las Vegas, Nevada 89101
 18 *Attorneys for Plaintiffs Richard*
and Michelle Aikens, et al

/s/ Taylor R. Anderson, Esq.
 STEVEN T. JAFFE, ESQ.
 Nevada Bar No. 7035
 MICHELLE R. SCHWARZ, ESQ.
 Nevada Bar No. 5127
 TAYLOR R. ANDERSON, ESQ.
 Nevada Bar No. 15136
 7425 Peak Drive
 Las Vegas, Nevada 89128
Attorneys for Defendants Las Vegas
Dragon Hotel, LLC and Adolfo Orozco

*Richard and Michelle Aikens, et al. v.
Las Vegas Dragon Hotel, LLC, et al.*
Order Denying Defendant Las Vegas Dragon Hotel, LLC's
Motion to Dismiss and Motion to Strike
Lead Case No.: A-20-808100-C
Judge: Rob Bare
Dept.: XXXII

Approved as to Form and Content:

DATED this 22nd day of December, 2020.

MURDOCK & ASSOCIATES CHTD.

/s/ Robert E. Murdock, Esq.
ROBERT E. MURDOCK, ESQ.
Nevada Bar No. 4013
SYDNEY E. MURDOCK, ESQ.
Nevada Bar No. 15291
521 South 3rd Street
Las Vegas, Nevada 89101
*Attorneys for Plaintiff Karen Kelly, Clark County
Public Guardian for Christian Spangler*

Approved as to Form and Content:

DATED this 22nd day of December, 2020.

PANISH SHEA & BOYLE LLP

/s/ Adam Ellis, Esq.
RAHUL RAVIPUDI, ESQ.
Nevada Bar No. 15089
IAN SAMSON, ESQ.
Nevada Bar No. 14514
ADAM ELLIS, ESQ.
Nevada Bar No. 14514
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Plaintiffs Deborah Cihal
Crawford, Francis Lombardo, III, and
Diane Roberts*

EGLET ADAMS

Danielle Miller

From: Adam Ellis <ellis@psblaw.com>
Sent: Monday, December 21, 2020 4:52 PM
To: Danielle Miller; Robert E. Murdock, Esq.
Cc: Rahul Ravipudi; Ian Samson
Subject: RE: Crawford, Cihal, et al. v. Las Vegas Dragon Hotel, et al. - Orders re Motions to Dismiss

Thanks Danielle, you can e-sign both for me.

Adam Ellis, Esq.
Panish Shea & Boyle LLP
 8816 Spanish Ridge Avenue
 Las Vegas, NV 89148
 Tel: (702) 560-5520
 Fax: (702) 975-2515
 Email: ellis@psblaw.com
 Web: www.psblaw.com

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From: Danielle Miller [mailto:dmiller@egletlaw.com]
Sent: Monday, December 21, 2020 4:22 PM
To: Robert E. Murdock, Esq. <rem@keachmurdock.com>; Adam Ellis <ellis@psblaw.com>
Cc: Rahul Ravipudi <ravipudi@psblaw.com>; Ian Samson <samson@psblaw.com>
Subject: Crawford, Cihal, et al. v. Las Vegas Dragon Hotel, et al. - Orders re Motions to Dismiss
Importance: High

Rob and Adam,

Attached are the proposed Orders Denying Defendants Las Vegas Dragon and Adolfo Orozco's Motions to Dismiss. Defense counsel has already approved as form and content. Please confirm that I have your permission to e-sign and submit for Judge Bare's signature.

I will be submitting these for signature first thing **tomorrow morning** so the sooner you provide your approval, the better. Thank you in advance.



Danielle C. Miller, Esq.

p: (702) 450-5400

w: www.egletlaw.com

a: 400 South 7th Street, Suite #400 Las Vegas, NV



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Danielle Miller

From: Robert E. Murdock, Esq. <rem@keachmurdock.com>
Sent: Monday, December 21, 2020 4:45 PM
To: Danielle Miller
Subject: Re: Crawford, Cihal, et al. v. Las Vegas Dragon Hotel, et al. - Orders re Motions to Dismiss

Perfect. Sign away. Thank you.

Robert E. Murdock, Esq
 Murdock & Associates Chtd.
 521 South Third St.
 Las Vegas, Nevada. 89101
 702-685-6111 office
 702-685-6222 fax
 702-497-7560 cell
 www.murdockassociates.com

Sent from my iPhone
 Please excuse any spelling errors

On Dec 21, 2020, at 5:22 PM, Danielle Miller <dmiller@egletlaw.com> wrote:

Rob and Adam,

Attached are the proposed Orders Denying Defendants Las Vegas Dragon and Adolfo Orozco's Motions to Dismiss. Defense counsel has already approved as form and content. Please confirm that I have your permission to e-sign and submit for Judge Bare's signature.

I will be submitting these for signature first thing **tomorrow morning** so the sooner you provide your approval, the better. Thank you in advance.

Danielle C. Miller, Esq.
 p: (702) 450-5400
 w: www.egletlaw.com
 a: 400 South 7th Street, Suite #400 Las Vegas, NV 89101

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<Order Denying LV Dragon Motion to Dismiss and Strike-29365.docx>

<Order Denying Orozco Motion to Dismiss-29366.docx>

Danielle Miller

From: Taylor Anderson <TAnderson@lawhjc.com>
Sent: Monday, December 21, 2020 5:06 PM
To: Danielle Miller
Cc: Lisa Holding; Marianne Sylva; Steve Jaffe
Subject: Re: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss

You may add my signature, thanks!

Happy holidays!

Taylor R. Anderson, Esq.
 HALL JAFFE & CLAYTON, LLP
[7425 Peak Drive](#)
[Las Vegas, NV 89128](#)
 Phone: [702.316.4111](tel:702.316.4111) x116
 Fax: [702.316.4114](tel:702.316.4114)
tanderson@lawhjc.com

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On Dec 21, 2020, at 5:04 PM, Danielle Miller <dmiller@egletlaw.com> wrote:

Hi Taylor,

So I just spoke to Adam Ellis and Rob Murdoch, and they are **not** submitting their own Orders. They asked me to include them on our Orders, which I've done since I'm feeling festive (lucky them). The Orders are substantively the same, but because I didn't feel comfortable submitting them without you being aware of this change, I'm resending them to confirm that I have your permission to e-sign and submit the attached Orders that now include approval as to form and content from both Adam Ellis and Rob Murdock. Please let me know. Thanks so much Taylor!

<image002.png>

Danielle C. Miller, Esq.
 p: (702) 450-5400
 w: www.egletlaw.com

a: 400 South 7th Street, Suite #400 Las Vegas, NV 89101

<image003.png>

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From: Danielle Miller

Sent: Monday, December 21, 2020 2:33 PM

To: Taylor Anderson <TAnderson@lawhjc.com>

Cc: Lisa Holding <LHolding@lawhjc.com>; Marianne Sylva <MSylva@lawhjc.com>; Steve Jaffe <SJaffe@lawhjc.com>

Subject: RE: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss

I assumed they would be submitting their own separate Orders since they filed separate Oppositions and didn't file Joinders.

From: Taylor Anderson <TAnderson@lawhjc.com>

Sent: Monday, December 21, 2020 2:30 PM

To: Danielle Miller <dmiller@egletlaw.com>

Cc: Lisa Holding <LHolding@lawhjc.com>; Marianne Sylva <MSylva@lawhjc.com>; Steve Jaffe <SJaffe@lawhjc.com>

Subject: RE: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss

Thanks, Danielle. You may add my signature and submit.

One thing I did just notice though, do we need a signature line for the other Plaintiffs' counsel (Murdock and the Panish firm) since they also filed oppositions?

Taylor R. Anderson, Esq.
HALL JAFFE & CLAYTON, LLP

<image008.jpg>

7425 Peak Drive

Las Vegas, NV 89128
 Phone: 702.316.4111 x116
 Fax: 702.316.4114
tanderson@lawhjc.com

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From: Danielle Miller <dmiller@egletlaw.com>
Sent: Monday, December 21, 2020 2:11 PM
To: Taylor Anderson <TAnderson@lawhjc.com>
Cc: Lisa Holding <LHolding@lawhjc.com>; Marianne Sylva <MSylva@lawhjc.com>; Steve Jaffe <SJaffe@lawhjc.com>
Subject: RE: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss

Hi Taylor,

That makes perfect sense. I went ahead and removed that sentence. The finalized Orders are attached. Please confirm that I have your permission to e-sign and submit the attached Orders for the Judge's signature.

From: Taylor Anderson <TAnderson@lawhjc.com>
Sent: Monday, December 21, 2020 2:07 PM
To: Danielle Miller <dmiller@egletlaw.com>
Cc: Lisa Holding <LHolding@lawhjc.com>; Marianne Sylva <MSylva@lawhjc.com>; Steve Jaffe <SJaffe@lawhjc.com>
Subject: RE: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss

Hi Danielle,

Sorry about that, it should have been tracked, it was removed. My recollection of the Court's finding on that subject was it was a tangential issue not actually up for decision since neither side had briefed the issue. The court essentially solicited comment on it out of curiosity; Mr. Jaffe, Mr. Eglet, and Mr. Murdock did not have a definitive answer since it was unbriefed. To the extent the court made what could be considered findings, it would be dicta or even just a comment and should not be included in this order.

If you would like to discuss, please do not hesitate to call.

Thank you.
 -Taylor

Taylor R. Anderson, Esq.
HALL JAFFE & CLAYTON, LLP

<image008.jpg>

7425 Peak Drive

Las Vegas, NV 89128

Phone: 702.316.4111 x116

Fax: 702.316.4114

tanderson@lawhjc.com

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From: Danielle Miller <dmiller@egletlaw.com>

Sent: Monday, December 21, 2020 1:45 PM

To: Taylor Anderson <TAnderson@lawhjc.com>

Cc: Lisa Holding <LHolding@lawhjc.com>; Marianne Sylva <MSylva@lawhjc.com>; Steve Jaffe <SJaffe@lawhjc.com>

Subject: RE: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss

Importance: High

Taylor,

I'm fine with your changes. But just to clarify, it looks like you deleted the joint and several liability sentence in the Order Denying LV Dragon's Motion to Dismiss and Motion to Strike, which was part of the Judge's findings. I didn't see that the change was tracked in what you sent back, just that the sentence was gone, so I just wanted to make sure. I've reattached them both again and highlighted the sentence I'm talking about. Please let me know. Thanks!

From: Taylor Anderson <TAnderson@lawhjc.com>

Sent: Monday, December 21, 2020 1:30 PM

To: Danielle Miller <dmiller@egletlaw.com>

Cc: Lisa Holding <LHolding@lawhjc.com>; Marianne Sylva <MSylva@lawhjc.com>; Steve Jaffe <SJaffe@lawhjc.com>

Subject: RE: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss

Hi Danielle,

I have just a few changes, please see attached.

If you'd like to discuss, please do not hesitate to call.

-Taylor

Taylor R. Anderson, Esq.

HALL JAFFE & CLAYTON, LLP

<image008.jpg>

7425 Peak Drive

Las Vegas, NV 89128
 Phone: 702.316.4111 x116
 Fax: 702.316.4114
tanderson@lawhjc.com

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From: Danielle Miller <dmiller@egletlaw.com>
Sent: Monday, December 21, 2020 12:18 PM
To: Taylor Anderson <TAnderson@lawhjc.com>; Steve Jaffe <SJaffe@lawhjc.com>
Cc: Lisa Holding <LHolding@lawhjc.com>; Marianne Sylva <MSylva@lawhjc.com>
Subject: RE: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss
Importance: High

Taylor,

I made a couple of changes. Can you please get back to me today regarding whether we have your permission not e-sign and file. Thanks!

From: Taylor Anderson <TAnderson@lawhjc.com>
Sent: Friday, December 18, 2020 2:22 PM
To: Danielle Miller <dmiller@egletlaw.com>; Steve Jaffe <SJaffe@lawhjc.com>
Cc: Lisa Holding <LHolding@lawhjc.com>; Marianne Sylva <MSylva@lawhjc.com>
Subject: RE: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss

I have a few changes, I should have them to you later today or first thing Monday. Thanks!

From: Danielle Miller <dmiller@egletlaw.com>
Sent: Friday, December 18, 2020 2:18 PM
To: Steve Jaffe <SJaffe@lawhjc.com>; Taylor Anderson <TAnderson@lawhjc.com>
Cc: Lisa Holding <LHolding@lawhjc.com>; Marianne Sylva <MSylva@lawhjc.com>
Subject: Fwd: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss

Good afternoon,

Following up regarding the attached proposed Orders.

Begin forwarded message:

From: Danielle Miller <dmiller@egletlaw.com>
Date: December 15, 2020 at 9:55:00 AM PST
To: Steve Jaffe <SJaffe@lawhjc.com>, Taylor Anderson <TAnderson@lawhjc.com>

Cc: Marianne Sylva <MSylva@lawhjc.com>, Lisa Holding <LHolding@lawhjc.com>

Subject: Las Vegas Dragon Hotel, LLC and Adolfo Orozco - Orders RE Motions to Dismiss

Counsel,

Attached is the proposed Order denying Las Vegas Dragon's Motion to Dismiss and Motion to Strike, and proposed Order denying Adolfo Orozco's Motion to Dismiss pursuant to the Judge's ruling yesterday. If you could please let me know by the close of business on **Friday, December 18, 2020**, that I have your permission to e-sign approving as to form and content, I would greatly appreciate it. Thank you for your anticipated cooperation.

Danielle C. Miller, Esq.

p: (702) 450-5400

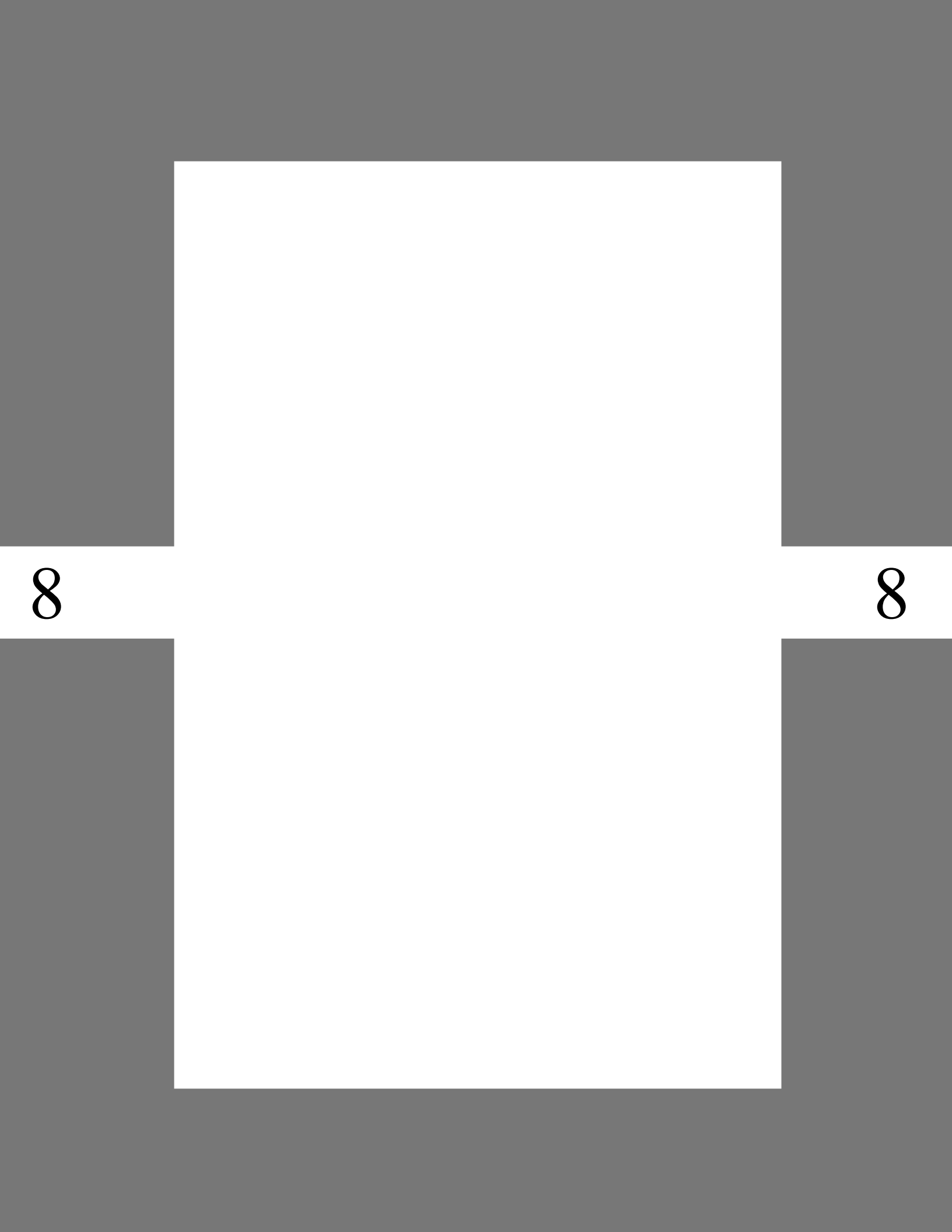
w: www.egletlaw.com

a: 400 South 7th Street, Suite #400 Las Vegas, NV 89101

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<Order Denying Orozco Motion to Dismiss-29366.docx>

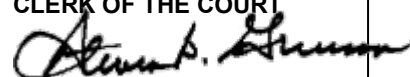
<Order Denying LV Dragon Motion to Dismiss and Strike-29365.docx>



8

8

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CLERK OF THE COURT



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STEVEN T. JAFFE (SBN 7035)
MICHELLE R. SCHWARZ (SBN 5127)
TAYLOR R. ANDERSON (SBN 15,136)
HALL JAFFE & CLAYTON LLP
7425 Peak Drive
Las Vegas, NV 89128
(702) 316-4111
(702) 316-4114 (Fax)
sjaffe@lawhjc.com
mschwarz@lawhjc.com
tanderson@lawhjc.com

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13250)
LEWIS ROCA ROTHBERGER CHRISTIE LLP
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169
(702) 949-8200
(702) 949-8398 (Fax)
DPolsenberg@LewisRoca.com
JHenriod@LewisRoca.com
ASmith@LewisRoca.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DEBORAH CIHAL CRAWFORD,
individually and as heir to the ESTATE OF
TRACY ANN CIHAL; JOHN DOE
ADMINISTRATOR, as Special
Administrator of the ESTATE OF TRACY
ANN CIHAL,

Plaintiffs,

v.

LAS VEGAS DRAGON HOTEL, LLC, a
Nevada limited-liability company doing
business as the ALPINE MOTEL
APARTMENTS; ADOLFO OROZCO, an
individual; DOES 1 through 10; inclusive;
and ROE CORPORATIONS I through V,
inclusive,

Defendants.

LEAD CASE NO. A-20-808100-C
CONSOLIDATED:
A-20-810951-C (Roberts)
A-20-810949-C (Lombardo)
A-20-814863-C (Aikens)
A-20-816319-C (Kelly/Spangler)
A-20-817072-C (Rucker)

Dep't No. 2

MOTION FOR CLARIFICATION

(HEARING REQUESTED)

1
2 In light of additional evidence, Defendant Las Vegas Dragon Hotel, LLC (“LV Dragon
3 Hotel”) moves for this Court to clarify its December 22, 2020 Order Denying LV Dragon Hotel’s
4 Motion to Dismiss and Motion to Strike as to the following issues:

- 5
- 6 • Whether NRS 41.800 prohibits an owner of private property from obstructing access to
7 and from the owner’s own property; and
 - 8 • Whether NRS 41.800 applies even when a person obstructs just one of several
9 passageways, such that there remains “a free passageway.”

10
11 **I. BACKGROUND**

12 This matter arises from a fire on December 21, 2019 at the Alpine Motel Apartments,
13 located in Las Vegas, Nevada and owned by LV Dragon Hotel. Plaintiffs, residents of the Alpine
14 Motel and administrators of estates for those who resided at the motel, brought a variety of claims
15 against Defendants, including a claim under NRS 41.800(1), which provides:

16 A person shall not intentionally obstruct:

17 (a) The ingress or egress to any public or private property from any other public or
18 private place in such a manner as not to leave a free passageway for persons and
19 vehicles lawfully seeking to enter or leave the property via the public or private
20 place; or

21 (b) Any public or private roadway, including, without limitation, intersections, so
22 as to prevent the safe passage of vehicles thereon or therethrough.

23 NRS 41.800.

24 The common law of negligence already recognizes a standard of ordinary care, and could
25 conceivably impose a duty to keep some passageways open in particular circumstances. *See*
26 *Ashwood v. Clark County*, 113 Nev. 80, 84, 930 P.2d 740, 742–43 (1997) (recognizing the legal
27 standard of “reasonable conduct in the light of the apparent risk” but rejecting a duty to keep a
28 particular gate at a horse show unlocked (emphasis and quotation marks omitted)). But NRS
41.800 goes much further than the common law, creating an automatic right to attorney’s fees,
NRS 41.800(2)(c), and changing the traditional analysis for injunctive relief by creating a
“rebuttable presumption” that an obstruction causes “irreparable harm,” NRS 41.800(2)(a).

Defendants moved to dismiss this claim, including because (1) NRS 41.800 applies only
to individuals, not entities; and (2) the statute is not applicable to the facts alleged because it was

1 narrowly intended to give business owners a remedy against those who block ingress or egress,
 2 such as in picketing situations. *See* Motion to Dismiss at 4 (Oct. 5, 2020). In support of the latter
 3 argument, Defendants pointed to the statute’s legislative history indicating that it was meant to
 4 afford prospective relief to ensure access to businesses—not retrospective damages¹—and that it
 5 creates a right of action for “businesses,” “companies,” and “any private property owner who
 6 finds his property being blocked by another wrongfully”—not for any individual ever obstructed
 7 from entering or leaving a business.² *See also* Sean P. Redmond, *Nevada Law Curtails “Mass”*
 8 *Picketing*, U.S. Chamber of Commerce, June 30, 2015, at
 9 <https://www.uschamber.com/article/nevada-law-curtails-mass-picketing> (describing the bill as
 10 “establish[ing] much-needed limitations on disruptive picketing at businesses in the Silver
 11 State”).

12 The Honorable Rob Bare held a hearing on the motion to dismiss on December 14, 2020.
 13 On December 22, Judge Bare issued an order denying the motion to dismiss. He reasoned that
 14 “pursuant to U.S. Supreme Court case law, and Nevada case law, the court may not look at
 15 legislative intent unless a statute is ambiguous,” that “the statute is unambiguous” as to the
 16 meaning of “person,” and that the term “person,” as defined by NRS 0.039, “includes a business
 17 entity.” Order Denying Motion to Dismiss at 2–3 (Dec. 22, 2020).

18 In the time since those proceedings, Defendants have learned of evidence presented in the
 19 ongoing criminal proceedings against Mr. Orozco Garcia and Ms. Meir—in particular, the
 20 testimony of Jason Casteel, manager of the Alpine Hotel at the time of the fire—that sheds
 21 additional light on the factual basis for Plaintiffs’ NRS 41.800 claims. Accordingly, Defendants
 22 now move for clarification of the Court’s order regarding the application of that statute to the
 23 circumstances here.

24 II. DISCUSSION

25 A. Applying NRS 41.800 Here Would Twist the Statute to Regulate Property 26 Owners’ Use of Their Own Property.

27 ¹ *See* A.B. 256, 78th Leg., Journal of the Senate at 6882 (Nev. 2015) (May 31, 2015) (floor
 statement by Senator Gregory Brower).

28 ² *See* A.B. 258, 78th Leg., Journal of the Senate at 6882 (Nev. 2015) (May 31, 2015) (floor
 statement by Senator Aaron Ford); *id.* at 6892 (floor statement by Senator Gregory Brower).

1 Mr. Casteel's testimony highlights that the alleged obstructions undergirding Plaintiffs'
2 urged application of NRS 41.800 were merely the conditions of Defendants' own property.
3 Mr. Casteel testified at length about various conditions of the hotel premises, maintenance
4 procedures, and management's level of responsiveness to reported problems with hotel facilities.
5 *See, e.g.*, Preliminary Hearing Transcript (Oct. 27, 2020) at 56:19–57:12 (describing response to
6 broken back door); *id.* at 59:11–60:5 (describing smoke detector maintenance). Indeed, his
7 testimony would be critical to any factual dispute over the accessibility of exit routes at the
8 Alpine Hotel on the night of the fire because he was the property manager: he (along with other
9 Alpine Motel employees) has unique knowledge of the conditions on this piece of private
10 property. This testimony puts the ingress/egress issue in its proper context, not as a unique kind
11 of “obstruction” for which NRS 41.800 provides a special remedy, but instead, as just one aspect
12 (among many) of the conditions Defendants allegedly maintained on their premises. Mr. Casteel
13 described the condition of the front and back doors in the same context as “the general condition
14 of the Alpine Motel apartments” and other potential “fire hazards” on the property. *Id.* at 53:6–
15 12. Just like any alleged negligence in maintaining smoke detectors or electrical appliances, the
16 failure to maintain adequate exit routes is appropriately addressed under ordinary principles of
17 tort law for negligence and premises liability—not an obscure statute, written for unique
18 circumstances, that authorizes injunctive relief and automatic attorney's fees. Applying NRS
19 41.800 to the circumstances in this case would contradict the legislative intent of the statute,
20 which was to provide property owners a remedy when others, particularly picketers, obstruct
21 access to the property.

22 Indeed, interpreting NRS 41.800 as imposing liability whenever a property owner blocks
23 ingress or egress to the property owner's *own* home or business produces absurd results. If the
24 statute created such a broad cause of action, then business owners would risk liability for
25 declaratory and injunctive relief, damages, and attorney's fees every time they block an access
26 route to their business, even briefly, for repairs or other legitimate reasons. This would seemingly
27 include situations where a business marks off an entrance with caution tape or safety cones while
28 repairing a broken door; it could also include blocking one's driveway while washing a car,

1 having landscaping or other debris obstructing a walkway, keeping a cluttered or disorderly
2 entrance area, and a host of other innocuous actions property owners take on a regular basis.
3 Under plaintiffs’ sweeping reading, even obstructions *within* a home or business might create
4 liability whenever someone—like a law enforcement officer executing a valid search warrant—is
5 “lawfully seeking to enter or leave.” Plaintiffs have identified no limiting principle by which NRS
6 41.800 could apply under the circumstances Mr. Casteel has described without also applying in
7 such absurd situations.

8 **B. Applying 41.800 Here Would Punish the Blocking of a Single Access Point,**
9 **Regardless of Free Passageway Elsewhere.**

10 Mr. Casteel’s testimony highlights a second reason NRS 41.800 should not apply here.
11 He testified that the back door of the hotel was “completely inoperable” because it was broken
12 and had been “bolted closed” approximately two months prior to the fire. Preliminary Hearing
13 Transcript (Oct. 27, 2020) at 123:8–15. He indicated, however, that it was possible to exit the
14 apartment building by other routes. *See id.* at 122:18–22. Also, while he also stated that the front
15 door to the hotel was broken, nowhere in his testimony did he indicate that it was “bolted closed”
16 or otherwise “inoperable” like the back door.

17 Although the statute forbids only the obstruction of “[t]he ingress or egress to any public
18 or private property from any other public or private place in such a manner as not to leave a *free*
19 *passageway*,” NRS 41.800(1)(a) (emphasis added), one would have to twist the statute to apply
20 whenever “*any single point of ingress or egress*” is obstructed—even when an alternative
21 passageway remains free—in order to apply it to the present case.

22 Mr. Casteel’s testimony underscores the difficulties that arise from applying NRS 41.800
23 outside its intended context, in a situation where a business allegedly failed to maintain adequate
24 access to *some* of its egress routes. Plaintiffs apparently read the statute as providing a remedy
25 any time a person “intentionally obstruct[s]” *any* “ingress or egress . . . in such a manner as not to
26 leave a free passageway for persons and vehicles lawfully seeking to enter or leave the property
27 via the public or private place” *by that route*—even if multiple other routes provide ready access
28 to and from the property. *See* NRS 41.800(1)(a). Applying NRS 41.800 under these

circumstances would run counter to the statute's plain language, which provides a remedy only when the obstruction does "not [] leave a free passageway for persons and vehicles lawfully seeking to enter or leave the property." *Id.* Thus, as highlighted in Mr. Casteel's testimony, even if *one* route is obstructed, the statutory language indicates that a person can avoid liability so long as *other* routes still ensure "a free passageway" to and from the property via a particular place.

In light of the facts Mr. Casteel described in his testimony, and in order "to avoid unreasonable or absurd results," *Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 588, 473 P.3d 1034, 1037 (2020), this Court should clarify that NRS 41.800 does not apply under such circumstances.

III. CONCLUSION

For the foregoing reasons, LV Dragon Hotel respectfully requests this Court clarify whether NRS 41.800 applies to a property owner on its own property and whether it applies when a "free passageway" remains despite blockage of one or more other passageways.

DATED this 13th day of December, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg

DANIEL F. POLSENBERG (SBN 2376)
 JOEL D. HENRIOD (SBN 8492)
 ABRAHAM G. SMITH (SBN 13,250)
 3993 Howard Hughes Parkway,
 Suite 600
 Las Vegas, Nevada 89169
 Tel: 702.949.8200
 Fax: 702.949.8398
DPolsenberg@LewisRoca.com
JHenriod@LewisRoca.com
ASmith@LewisRoca.com

STEVEN T. JAFFE (SBN 7035)
 MICHELLE R. SCHWARZ (SBN 5127)
 TAYLOR R. ANDERSON (SBN 15,136)
 HALL JAFFE & CLAYTON LLP
 7425 Peak Drive
 Las Vegas, NV 89128
 (702) 316-4111
 (702) 316-4114 (Fax)
sjaffe@lawhjc.com
mschwarz@lawhjc.com
tanderson@lawhjc.com
wpeterson@swlaw.com

Attorneys for Las Vegas Dragon Hotel, LLC

CERTIFICATE OF SERVICE

I certify that on December 13, 2021, I electronically filed and served the foregoing
“*Motion for Clarification*” through the Court’s electronic filing system, electronic service of the
foregoing documents shall be submitted upon all recipients listed on the master service list.

/s/ Emily D. Kapolnai

An Employee of Lewis Roca Rothgerber Christie LLP

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EXHIBIT A

EXHIBIT A

1 CASE NO. ORDER

2

3 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

4 COUNTY OF CLARK, STATE OF NEVADA

5

6

7 THE STATE OF NEVADA,)
Plaintiff,)
8 vs.)
ALDOFO OROZCO-GARCIA,)
9 MALINDA MIER,)
Defendants.)

ORIGINAL

CASE NO. 20-CR-014899-001
20-CR-014899-002

10

11 REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

12 BEFORE THE HONORABLE ANN E. ZIMMERMAN
13 JUSTICE OF THE PEACE

14 TUESDAY, OCTOBER 27, 2020
15 1:00 P.M.

16 APPEARANCES:

17 For the State:

J. GIORDANI, ESQ.
L. BEVERLY, ESQ.
DEPUTY DISTRICT ATTORNEYS

19 For Defendant Garcia:

D. GENTILE, ESQ.
ATTORNEY AT LAW

21 For Defendant Mier:

K. WILDEVELD, ESQ.
ATTORNEYS AT LAW

22

23

24

25 Reported by: CHRISTA BROKA, CCR. No. 574

EXHIBITS

ADMITTED

2	State's Exhibit 85D -	144
	State's Exhibit 85E -	144
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2020 DEC -2 A 7:35

20-CR-014899-001
RTP
Transcript of Proceedings
13019627



1 LAS VEGAS, CLARK COUNTY, NEVADA,

2 OCTOBER 27, 2020 AT 1:00 P.M.

PROCEEDINGS

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THE COURT: This is the time set for the continuation in State of Nevada versus Adolfo Orozco Garcia and Malinda Mier, 20-CR-014899-001 and 002. Is the state ready to proceed?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. GENTILE: Yes, Your Honor.

MS. WILDEVELD: Yes, Your Honor.

MS. BEVERLY: Judge, sorry before we call the first witness I wanted to address the issue that we raised last Thursday.

THE COURT: I was getting ready to do that. You need to give me a moment.

MS. BEVERLY: Okay.

THE COURT: I reviewed both of the cases both sides provided to me.

MR. GENTILE: I didn't get anything from the state, Judge.

MS. BEVERLY: Same case.

THE COURT: It's basically the same case you

5

1 offered or I can make a record.

2 MR. GENTILE: I certainly believe the court.

3 THE COURT: State offered NRS 48.105 and
4 51.035 as well as United States Stanton, United States
5 versus Bridges.

6 MR. GENTILE: What was the first one?

7 THE COURT: United States versus Stanton.

8 MR. GENTILE: I didn't provide that.

9 THE COURT: I said the state did.

10 MR. GENTILE: I understand. I never got a
11 copy of that is what I'm trying to say.

12 MS. WILDEVELD: Neither did I. Your Honor,
13 so the record is clear Miss Mier joins in Mr. Orozco's
14 objection.

15 THE COURT: Defense provide Mann versus
16 State of Nevada. U.S versus Hani El-Sayegh and United
17 State's versus Bridges.

18 MR. GENTILE: And the statute that the state
19 cited was 51.135?

20 THE COURT: 48.105 and 51.035. So I am
21 going to find that state may call Don Dibble as a
22 witness. I reviewed the cases provide by both sides. I
23 would note neither Miss Mier nor her counsel Kristina
24 Wildeveld were present at any meetings with the district
25 attorney and members of his office. According to Miss

7

1 here. This is a question of privilege.

2 THE COURT: I agree.

3 MR. GENTILE: Number two, one cannot assert
4 a blanket privilege. The only person the only
5 participant in a trial a criminal hearing that is immune
6 from being called to the stand by the state is the
7 defendant. It's the only one. Even a witness who's
8 going to assert the Fifth Amendment cannot assert a
9 blanket Fifth Amendment privilege. They have to take
10 the stand. They have to be asked questions and they
11 have to assert the privilege in response to the
12 questions. So what I said early on was not anything
13 other than they have a right to ask him the questions.
14 They do not have a right to the answers of any statement
15 that was made at the meeting that I described last week
16 because that meeting was for purposes of discussing what
17 was already offered which was a plea on the part of the
18 Alpine Hotel to the charges. The charges hadn't been
19 filed yet. The state was contemplating not just what
20 charges to bring but who to charge. Malinda Mier was
21 not at any time announced to me as a target of that
22 investigation. The purpose of this statement being
23 disclosed was in good faith negotiations for purposes of
24 avoiding prosecution of Mr. Orozco Garcia and basically
25 encouraging if the state was going to bring charges at

6

1 Wildeveld she was never invited. According to the
2 record made by Mr. Gentile and based upon he was present
3 at these meetings the purpose of the meeting was not to
4 explore and/or discuss possible plea negotiations for
5 Miss Mier. Furthermore Miss Mier's statement were made
6 to Don Dibble he is not a member of Miss Mier's defense
7 team. I would read into the record the transcript from
8 August 19, 2020, the first date of the preliminary
9 hearing. When the state moved to exclude Mr. Dibble and
10 Mr. Gentile objected. Mr. Gentile stated for the
11 record: They don't get to pick and choose who my
12 investigator is. Mr. Dibble is an employee of Clark
13 Hill. He has worked every minute of this case going
14 back to December. I have no problem if they want to put
15 him on the stand and ask him about the statement clearly
16 they have the right to do that.

17 MR. GENTILE: May I address that?

18 THE COURT: Sure. But my decision stands.

19 MR. GENTILE: No, I understand what your
20 decision is and I told you last week that Don Dibble is
21 not going to testify. If you have to hold him in
22 contempt, you're going to have to do that.

23 THE COURT: Okay.

24 MR. GENTILE: But I want to make a couple of
25 things clear. Number one, 51.035 has no application

8

1 all that they should be brought against the hotel. As a
2 matter of fact Robert Daskas brought up the fact at that
3 meeting that's how the PG&E case was resolved in
4 California by a corporate plea. So no statement -- the
5 statute is clear the statute is clear 48 -- excuse me.

6 MR. GIORDANI: Judge, I'm sorry to interrupt
7 but I would object to that statement regarding a member
8 of the district attorney's office making a statement
9 during this meeting because it sounds like that's
10 exactly what Mr. Gentile is claiming is part of a
11 negotiation. It's separate and distinct from what Miss
12 Mier stated to Don Dibble.

13 MR. GENTILE: You know, he's right. He's
14 right what Robert Daskas said at that meeting was as
15 protected as what we were asserting here. So, you know,
16 it kind -- it's an interesting comment on part of
17 Mr. Giordani accurate, accurate but interesting that
18 what Mr. Daskas said cannot be brought up but what I
19 said because I was the one who said it. I was the one
20 who handed about an inch thick as I recall document to
21 the state at that meeting. It was that document that
22 incorporated a memorandum by Mr. Dibble, so I think he
23 just proved my case.

24 So here's the situation the statement that
25 was made when we first addressed this at the beginning

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1 of the prelim at the motion to exclude was accurate then
2 and is accurate now. If they want to call Mr. Dibble to
3 the stand and they want to ask him questions, he's going
4 to assert -- he is going to refuse to answer anything at
5 all that was contained in any of the documents that we
6 handed over during that meeting.

7 THE COURT: Okay.

8 MR. GENTILE: He's going to do that at my
9 direction. In fact I will state the objection at that
10 point in time and the objection will be what is it 48 --
11 what is it, 135?

12 MS. WILDEVELD: 105.

13 MR. GENTILE: 48.105. If they want to call
14 him now we might as well get it done.

15 MS. WILDEVELD: Your Honor, for the purposes
16 of Miss Mier the other day the state said that although
17 Miss Mier was not in the negotiation portion of the
18 meeting with Mr. Gentile, they indicated that Miss Mier
19 if she was an agent of Mr. Orozco then she would have
20 been part of that meeting or she would have been covered
21 under the umbrella of that meeting. I would submit to
22 the Court the only reason we're here is because Miss
23 Mier is considered an agent of Mr. Orozco and that is
24 the whole reason why Miss Mier is even present during
25 these proceedings. They can't have it both ways.

10

1 Either she's an agent and covered during the proceedings
2 for the purposes of negotiations or she's not an agent
3 and we don't even need to be here in the these
4 proceedings.

5 THE COURT: Okay.

6 MS. BEVERLY: I have never ever said that.
7 I don't know if she heard incorrectly. I never said she
8 would be covered by some umbrella. In fact I said the
9 exact opposite which is -- really Judge this is a
10 standing issue I don't know how Mr. Gentile thinks he
11 has standing to object to an admission of a statement
12 that does not involve his client, is not his statement,
13 is not his investigator's statement. Aside from the
14 fact that there was no plea negotiations regarding Miss
15 Mier, he doesn't have standing to object to that. So
16 with that being said, Judge, if he's saying he is not
17 going to testify unless he's held in contempt, we should
18 go ahead and get this over with. But he's going to have
19 to per your ruling answer the questions that I ask him.

20 THE COURT: Okay.

21 MR. GENTILE: He's not going to do that. I
22 am telling you that now and I told you that last week.
23 But Stanton 48.105 1(b) the last sentence of it says
24 evidence of conduct or statements made in comprised
25 negotiations is likewise not admissible. It does not

11

1 say whose statements. It's the statements of the people
2 who are negotiating. If it be counsel, it's counsel's
3 statements that's what Bridges says. All right? Mr.
4 Orozco was not there. Miss Mier was not there.
5 Statements.

6 THE COURT: Does anybody know why Miss
7 Wildeveld wasn't invited to be there?

8 MR. GENTILE: At that time she wasn't -- her
9 client was not ever announced as a target or a subject.
10 It wasn't until this statement was made known that Miss
11 Mier was suddenly transformed into a target. At least
12 as far as we were told. My communication were not with
13 either Miss Beverly or Mr. Giordani prior to those
14 meetings. It was always with Mr. Digiacomo.

15 THE COURT: Okay.

16 MR. GIORDANI: Just for the record, number
17 one, we don't need to announce who's a target and who's
18 not during the course of an ongoing criminal
19 investigation. Number two, I believe Mr. Gentile said
20 there was an offer conveyed about a corporate plea, so
21 the record is very clear there was never an offer
22 conveyed to that effect from the state. That was a
23 suggestion that came up and suggested by Mr. Gentile
24 when I was in the meeting, so just so the record is
25 clear on that. The reason I'm objecting to the

12

1 statement made by Robert Daskas being inserted into this
2 record as though it's relevant that's an attorney who's
3 not conveying an offer but discussing negotiations.
4 Malinda Mier's statement to Don Dibble outside of any
5 negotiation discussion is separate and distinct and
6 that's why I raised the objection earlier.

7 THE COURT: Anything else?

8 MS. WILDEVELD: No, Judge.

9 MR. GENTILE: No, Your Honor.

10 THE COURT: I think everyone would agree
11 it's a very unusual fact pattern and my decision was
12 based upon the fact pattern and I'm certain a higher
13 court will have to determine whether it's a correct
14 ruling or not.

15 MR. GENTILE: Well, Your Honor, we certainly
16 intend to push that.

17 THE COURT: I hope you do.

18 MR. GENTILE: We will. I told you that last
19 week.

20 THE COURT: Nothing personal. I just want
21 to know the answer to the question.

22 MR. GENTILE: It really never is personal
23 and it never should be personal between an advocate and
24 the Court. We are all here for the same reason.

25 THE COURT: To find out the truth.

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13

1 MR. GENTILE: This is an issue that's not
2 been decided previously in Nevada. As I told you last
3 week but for the Bridges case I haven't found one where
4 it was counsel that was engaged without any witness
5 there without anybody else there in the negotiations.
6 We clearly have a public policy that's been enacted by
7 the statute and the statute could use some work but it
8 is what it is. I think that we will and I hope capably
9 be able to present what we believe the law to be. I
10 hope that we did that here. It's not that I disrespect
11 the Court's ruling, I don't disrespect it. I just think
12 it's wrong.

13 THE COURT: That's all right. You maybe
14 right and you maybe wrong.

15 MR. GENTILE: We'll find out.

16 THE COURT: There's only way to find out.

17 MR. GIORDANI: We can find out right now,
18 Judge.

19 THE COURT: All right.

20 MR. GENTILE: Your Honor, am I incorrect
21 that the state did not say that Miss Mier was an agent
22 of Mr. Orozco that she would be covered during
23 negotiations? Is that what --

24 THE COURT: I don't recall that being said
25 but I haven't reviewed a transcript yet of the last time

15

1 **A. I am employed as an investigator for Clark Hill**
2 **PLCC.**

3 **Q.** How long have you been employed by Clark Hill?

4 **A. At Clark Hill since September of last year when**
5 **my previous office merged into Clark Hill.**

6 **Q.** I'm sorry, Mr. Dibble, we are all having a
7 problems with the mask. Speak a little bit louder so I
8 can hear you. Mr. Dibble, were you working with
9 Mr. Gentile on June 9th, 2020?

10 **A. Yes, among other attorneys.**

11 **Q.** Did you conduct an interview with a person by the
12 name of Malinda Mier?

13 MR. GENTILE: Your Honor, I'm going to
14 object based on NRS 48.105 subparagraph -- excuse me --
15 not subparagraph B, 48.105. I am going direct Mr.
16 Dibble not to answer that question.

17 MS. WILDEVELD: I would join in the
18 objection.

19 THE COURT: All right. Overruled.
20 BY MS. BEVERLY

21 **Q.** Did you conduct an interview on June 9th, 2020.
22 With Malinda Mier?

23 **A. I am unable to answer that at this time based on**
24 **representations of Miss Wildeveld and Mr. Gentile.**

25 **Q.** Well, the Court actually has directed you that

14

1 we were here. I've been wondering and I sort of know
2 the answer now of why you weren't invited to any
3 meetings.

4 MR. GENTILE: From what we can gather from
5 what we've been disclosed there's never been any
6 declaration ever prior to that meeting that included the
7 name of Malinda Mier.

8 THE COURT: Okay.

9 MS. BEVERLY: Judge --

10 THE COURT: Call your witness.

11 MS. BEVERLY: We'll call Don Dibble.

12 MR. GENTILE: Don, take the stand.

13 THE CLERK: Do you solemnly swear to tell
14 the truth, the whole truth, and nothing but the truth?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated. State your
17 name for the record and spell it first and last name.

18 THE WITNESS: Donald R. Dibble.

19 D-I-B-B-L-E.

20 THE COURT: Go ahead.

21 MS. BEVERLY: Thank you.

22 DIRECT EXAMINATION

23 BY MS. BEVERLY:

24 **Q.** Sir, how are you currently employed?
25

16

1 you have to answer those questions so you have to answer
2 that, sir.

3 THE COURT: Mr. Dibble, I overruled the
4 objection. So you can answer the question.

5 THE WITNESS: I understand, Your Honor. I
6 maintain the silence based on the NRS.

7 MR. GENTILE: Let the reflect that I
8 gestured to Mr. Dibble so if you're going to hold him in
9 contempt you might need to held me in contempt too. I
10 am directing him not to answer that.

11 THE COURT: All right. Do you guys want to
12 have a separate contempt hearing? I would rather you
13 take my decision up and see what the higher court says.

14 MR. GENTILE: We have to go through this so
15 that I can.

16 THE COURT: All right.

17 MR. GENTILE: The district attorney is
18 actually assisting in making this record for the purpose
19 of the prelim. If this doesn't happen, I can't take it
20 up. I have to show that we asserted the objection and
21 that he refused to answer.

22 MS. BEVERLY: Just to be clear, Judge, I am
23 incorporating all of my prior arguments today and when
24 we were here two days ago in response to that objection.

25 THE COURT: All right. Mr. Dibble, are you

17

1 not going to answer at the instruction of Mr. Gentile?

2 THE WITNESS: No, Your Honor. I am not.

3 THE COURT: Mr. Gentile, for the record
4 you're instructing Mr. Dibble not to answer despite my
5 order to do so?

6 MR. GENTILE: With all due respect to the
7 Court and certainly not something I wanted to do, it's
8 something I have to do, and yes, that's what I'm
9 instructing him.

10 BY MS. BEVERLY:

11 Q. Judge, if I can ask a couple more questions just
12 to make a record. Mr. Dibble, you do not represent
13 Malinda Mier, do you?

14 MR. GENTILE: I think you can answer that
15 question.

16 THE COURT: I don't think he heard you.

17 MR. GENTILE: The question -- can we have
18 the question read back?

19 MS. BEVERLY: I can re-ask the question.

20 BY MS. BEVERLY:

21 Q. Mr. Dibble, isn't it true, that you do not
22 represent Malinda Mier?

23 MR. GENTILE: Objection to the form of the
24 question. The question was you, Mr. Dibble is not an
25 attorney. So he can't represent Malinda Mier but he can

19

1 company is not retained by Malinda Mier, I'm going to
2 ask that he be held in contempt for refusing to answer
3 the question that I asked previously regarding taking a
4 statement from Malinda Mier.

5 THE COURT: Is there anything you want to
6 say?

7 MR. GENTILE: Just assert 48.105.

8 THE COURT: All right. Mr. Dibble, I'm
9 going to have to hold you in contempt for refusing to
10 answer the questions despite the Court's order to do so.

11 BY MS. BEVERLY:

12 Q. Mr. Dibble, isn't it true you provided an
13 investigative memorandum dated June the 16th of 2020?

14 MR. GENTILE: Objection. Same basis.

15 48.105. I'm directing Mr. Dibble to not answer the
16 question. Okay. That's the objection. Record made.

17 MS. WILDEVELD: We continue to object along
18 with Mr. Gentile.

19 THE COURT: Do you want a standing joint
20 objection?

21 MS. WILDEVELD: We do, Your Honor.

22 MS. BEVERLY: I would ask that my prior
23 arguments from today and the last time we were here last
24 Wednesday be incorporated in every time this objection
25 is brought up if it's going to be a standing response.

18

1 answer the question.

2 THE WITNESS: No.

3 THE COURT: Can you please rephrase the
4 question?

5 MS. BEVERLY: I absolutely will.

6 BY MS. BEVERLY:

7 Q. Isn't it true that you do not work for nor have
8 you been retained by Malinda Mier as an investigator?

9 A. **Other than a joint defense agreement, no.**

10 Q. Is there a joint defense agreement?

11 A. **My understanding there is.**

12 Q. When did that come into fruition?

13 A. **I don't recall. I don't know.**

14 Q. So is your duty to Malinda Mier or is it to
15 Adolfo Orozco Garcia?

16 A. **To Mr. Orozco and to my employer pursuant to**
17 **Nevada law.**

18 Q. And your employer would be Clark Hill?

19 A. **Yes.**

20 Q. To your knowledge Clark Hill has not been
21 retained their services have not been retained by
22 Malinda Mier; isn't that true?

23 A. **That's true.**

24 MS. BEVERLY: Court's indulgence. Based on
25 the fact that he is not retained by Malinda Mier and his

20

1 I would also like to mark -- actually, Judge, before I
2 do that, may I approach the witness?

3 THE COURT: Yes.

4 BY MS. BEVERLY:

5 Q. Sir, I'm going to show you this document and let
6 me see if you recognize that?

7 MR. GENTILE: Do I get to see it?

8 MS. BEVERLY: He's seen it multiple times.

9 THE COURT: Which document? You haven't
10 identified what it is.

11 MS. BEVERLY: It's entitled investigation
12 memorandum prepared -- work product prepared under
13 direction of counsel in anticipation of litigation. It
14 has -- I can read further if Your Honor would like.

15 THE COURT: Did you want to see it?

16 MR. GENTILE: I would like to see it.

17 MS. BEVERLY: That would be the name of the
18 document, Judge, which I am sure he's quite familiar
19 with.

20 THE COURT: Come on up.

21 MR. GENTILE: I have the same objection.

22 This was I will state for the record a proffer but for
23 the meeting that took place which was for purposes of
24 exploring plea negotiations, the state would have no
25 access to this document. This document was provided by

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21

1 me to the state during the course of that meeting. Now
2 I can -- I didn't look up the date of it. My memory is
3 that was June or July, I could be wrong about that, but
4 I don't think I am.

5 THE COURT: I have another question. I was
6 wondering about this before. Is there a joint defense
7 agreement?

8 MR. GENTILE: I don't think I have to answer
9 that.

10 THE COURT: You don't. It's been brought
11 up.

12 MR. GENTILE: Yeah, I know. I'm not the
13 witness.

14 THE COURT: You don't have to answer if you
15 don't want to. I just wanted to know that would matter
16 to me.

17 MR. GIORDANI: Just for the record the state
18 has no idea whether a joint defense agreement exists or
19 not.

20 THE COURT: All right. That's between them.
21 Go ahead.

22 MS. BEVERLY: Thank you, Your Honor.

23 MS. WILDEVELD: For the record that document
24 was created for contemplation for negotiations also for
25 the corporation. There was never any consideration of

23

1 a witness and we are asking him questions. That fact
2 that he is refusing obviously Your Honor can make that
3 decision but we are certainly in the middle of the
4 preliminary hearing where Mr. Dibble is refusing to
5 answer questions and the state is proceeding to ask him
6 questions.

7 MS. WILDEVELD: Your Honor, I'm sorry. I
8 don't understand what the state is saying that's not
9 true. What is not true?

10 THE COURT: Could you be specific please?

11 MS. BEVERLY: Sure. Her statement about
12 that this document was the state was contemplating
13 charging the corporation and all these discussions were
14 about the corporation. Miss Wildeveld wasn't there, so
15 I don't what conversation she had but this whole concept
16 of well, we were only going to charge the corporation
17 and this was all related to the corporation is not
18 accurate.

19 MS. WILDEVELD: Well, certainly it was not
20 in contemplation that Miss Mier would be brought into
21 this. I think --

22 MS. BEVERLY: And that's not true either.

23 MS. WILDEVELD: -- that's pretty clear
24 throughout this preliminary hearing.

25 MR. GENTILE: If it please the Court?

22

1 them being charged individually one and two. That was
2 not a transcribed statement. That was Mr. Dibble's
3 summary of a conversation.

4 MS. BEVERLY: Just to be clear --

5 MR. GENTILE: That --

6 MS. BEVERLY: I'm not done talking. That is
7 not accurate whatsoever. I don't know if that's what
8 Mr. Gentile told her. That is certainly not the case.

9 MR. GENTILE: It would be nice if the
10 document was identified for purposes of the record. I'm
11 just saying.

12 MS. BEVERLY: Well, I'm not asking to admit
13 it. I'm asking does he recognize this document.

14 THE COURT: But if this issue is going to
15 up, so if you could identify what the document is for
16 the record for purposes if the record.

17 MS. BEVERLY: Sure. The title of the
18 document --

19 MR. GENTILE: I was thinking something in
20 the nature of it being identifying as an exhibit, a
21 proposed exhibit to this hearing which is not the
22 preliminary hearing but rather a contempt hearing.

23 MS. BEVERLY: Actually this is the
24 preliminary hearing. We are in the middle of the
25 preliminary hearing. The state had called Mr. Dibble as

24

1 THE COURT: Yes.

2 MR. GENTILE: The only time that a document
3 can be shown to a witness without first having it
4 identified for the record is to refresh their
5 recollection.

6 THE COURT: He's correct.

7 MR. GENTILE: It appears that counsel is
8 trying to get this into evidence. I don't know. I
9 don't know what's going on her her mind.

10 MS. BEVERLY: He's making a lot of
11 assumptions. I'll continue asking my questions, Judge,
12 and if he refuses to answer, then I will ask to
13 approach.

14 THE COURT: What is the number that that
15 document has been marked as?

16 MS. BEVERLY: We are asking to mark it as a
17 Court Exhibit for now. I don't want to mark it as a
18 State's Exhibit just a Court Exhibit.

19 THE COURT: I would prefer it to be a
20 State's Exhibit.

21 MS. BEVERLY: Okay. May I proceed?

22 THE COURT: Yes, please.

23 BY MS. BEVERLY

24 Q. Mr. Dibble --

25 MS. BEVERLY: Let me ask you this first,

25

1 Your Honor. It is clear that the witness is being
2 hostile. So I would ask to be able to lead him based on
3 what we've seen so far today.

4 THE COURT: What document is that marked as?

5 MS. BEVERLY: 86.

6 THE COURT: State's Proposed 86?

7 MS. BEVERLY: Yes, Judge.

8 THE COURT: Go ahead.

9 BY MS. BEVERLY:

10 Q. Mr. Dibble, isn't it true on June 9th of 2020 you
11 had an interview Malinda Mier?

12 MR. GENTILE: Object. 48.105. Direct the
13 witness not to answer the question.

14 THE COURT: Overruled. Mr. Dibble, you have
15 to answer the question.

16 THE WITNESS: I am adopting Mr. Gentile's
17 recommendation and not answering the question.

18 THE COURT: All right. Go ahead.

19 MS. BEVERLY: Your Honor, at this point then
20 I would ask that Mr. Dibble be held in contempt for
21 refusing to answer the question.

22 THE COURT: I held him in contempt for
23 refusing to answer the questions.

24 BY MS. BEVERLY:

25 Q. Mr. Dibble, isn't is true present at that meeting

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1 direct Mr. Dibble not answer the question.

2 THE COURT: Overruled. Mr. Dibble, you're
3 to answer the question.

4 THE WITNESS: I adopt Mr. Gentile's
5 recommendation based on the NRS.

6 BY MS. BEVERLY:

7 Q. Mr. Dibble, isn't it true that during your
8 interview with Malinda Mier she indicated to you that
9 she was in direct contact with various employees and
10 managers at the individual motels?

11 MR. GENTILE: Objection. NRS 48.105.

12 Direct Mr. Dibble not to answer the question.

13 THE COURT: Your objection is overruled.
14 Mr. Dibble, you're to answer the question.

15 THE WITNESS: I am adopting Mr. Gentile's
16 recommendation based on the NRS.

17 BY MS. BEVERLY:

18 Q. Mr. Dibble, isn't is true during your interview
19 with Malinda Mier she indicated to you she formed her
20 own business entity on March 20th, 2018, known as ORO,
21 O-R-O M-G-M-R-S-V-S, LLC?

22 MR. GENTILE: Objection. NRS 40.105.

23 Direct Mr. Dibble not answer the question.

24 THE COURT: Objection is overruled. Mr.
25 Dibble, you're to answer question.

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1 where you interviewed Miss Mier were Investigator
2 Richard Bearsley, law clerk Lobel last name A-S-E-F-A-N.
3 Malinda Mier and Wildeveld?

4 MR. GENTILE: Objection. 48.105. Direct
5 Mr. Dibble not to answer the question.

6 THE COURT: Overruled. Mr. Dibble, you're
7 to answer the question.

8 THE WITNESS: I am adopting Mr. Gentile's
9 recommendation based on the NRS.

10 BY MS. BEVERLY:

11 Q. Mr. Dibble, isn't it true that during your
12 interview with Miss Mier she indicated she was a long
13 term employee of Dragon, LLC?

14 MR. GENTILE: Objection. NRS 48.105.
15 Direct Mr. Dibble not to answer the question.

16 THE COURT: Overruled. Mr. Dibble, you are
17 to answer the question.

18 THE WITNESS: I am adopting Mr. Gentile's
19 recommendation to not respond based on the NRS.

20 BY MS. BEVERLY:

21 Q. Mr. Dibble, isn't it your interview with Malinda
22 Mier she indicate to you that she had supervisory
23 responsibilities at varios properties especially the
24 hotels and motels owned by Dragon, LLC?

25 MR. GENTILE: Objection NRS 48.105 and I

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1 THE WITNESS: I am adopting Mr. Gentile's
2 recommendation based on the NRS.

3 BY MS. BEVERLY:

4 Q. Mr. Dibble, isn't it true that during your
5 interview with Malinda Mier on June 9th, 2020, she
6 indicated to you Oro Management Services, LLC, was a
7 domestic limited liability company chartered by the
8 Nevada Secretary of State?

9 MR. GENTILE: Objection. NRS 48.105. I
10 direct Mr. Dibble not to answer the question.

11 THE COURT: Your objection is overruled.
12 Mr. Dibble, you're to answer the question.

13 THE WITNESS: On the recommendation of
14 Mr. Gentile I am refusing to answer based upon the NRS.

15 BY MS. BEVERLY:

16 Q. Mr. Dibble, isn't it true that during your
17 interview with Malinda Mier she indicated that no other
18 individuals were members or officers of the business of
19 Oro Management Services, LLC?

20 MR. GENTILE: Objection. NRS 48.105.

21 Direct Mr. Dibble not to answer the question.

22 THE COURT: Your objection is overruled.
23 Mr. Dibble you're to answer the question.

24 THE WITNESS: I am adopting Mr. Gentile's
25 recommendation based on the NRS.

29

1 BY MS. BEVERLY:

2 Q. Mr. Dibble, isn't it true that during your
3 interview with Malinda Mier she was asked about her
4 knowledge about the condition of the back exit door at
5 the Alpine Motel?

6 MR. GENTILE: Objection. NRS 48.105.
7 Direct Mr. Dibble not to answer the question.

8 THE COURT: Your objection is overruled.
9 Mr. Dibble, you're to answer the question.

10 THE WITNESS: Based on the representations
11 of Mr. Gentile I am not answering based on the NRS.

12 BY MS. BEVERLY:

13 Q. Mr. Dibble, isn't it true that during your
14 interview with Malinda Mier she indicated she was aware
15 of the ongoing problem of the back exit door at the
16 Alpine Motel?

17 MR. GENTILE: Objection. NRS 48.105. I
18 direct Mr. Dibble not to answer the question.

19 THE COURT: Your objection is overruled.
20 Mr. Dibble, you're to answer question.

21 THE WITNESS: Based on Mr. Gentile's
22 recommendation or direction I am not answering based on
23 the NRS.

24 BY MS. BEVERLY:

25 Q. Mr. Dibble, isn't it true that during your

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1 that he's now been held contempt in order to protect the
2 record.

3 THE COURT: Mr. Dibble, do you want separate
4 counsel? I'm happy to appoint somebody to represent
5 you.

6 THE WITNESS: First of all, I'd retain my
7 own counsel if I had the opportunity. I need to discuss
8 that with Mr. Gentile.

9 THE COURT: Do you want take a moment?

10 THE WITNESS: I would.

11 THE COURT: All right. You can step down
12 please.

13 (Recess taken.)

14 THE COURT: What did you decide, Mr. Dibble?

15 THE WITNESS: We have decided -- I have
16 elected to seek outside counsel.

17 THE COURT: Are you going to seek -- when
18 you say outside counsel do you mean outside the firm of
19 Clark Hill?

20 THE WITNESS: Yes. Independent counsel.

21 THE COURT: All right. We're going to have
22 to recess this portion of the matter for you to retain
23 outside counsel. Okay?

24 MS. BEVERLY: Thank you, Judge.

25 MR. GENTILE: Your Honor, it's my

30

1 interview with Malinda Mier she was aware of the fact
2 the back door was a problem because uninvited intruders,
3 tenants, and homeless people were entering the motel and
4 creating a nuisance?

5 MR. GENTILE: Objection. NRS 48.105.
6 Direct Mr. Dibble not to answer the question.

7 THE COURT: Your objection is overruled and
8 Mr. Dibble, you're instructed to answer the question.

9 THE WITNESS: Based on Mr. Gentile's
10 direction I am not answering the question.

11 BY MS. BEVERLY:

12 Q. Mr. Dibble, isn't it true that during your
13 interview with Malinda Mier she indicated that she was
14 aware that the door had been having problems and the
15 latch had been repaired a number of times between 2018
16 and 2019?

17 MR. GENTILE: Objection. NRS 48.105.
18 Direct Mr. Dibble not to answer the question.

19 THE COURT: Your objection is overruled.
20 Mr. Dibble, you're instructed to answer the question.

21 MS. BEVERLY: Just a question, Your Honor,
22 before I ask any further questions. Based on that fact
23 Your Honor held Mr. Dibble in contempt at the beginning
24 after the first question that I asked I'm not sure if he
25 needs independent counsel to advise him given the fact

32

1 understanding that the Nevada Attorneys for Criminal
2 Justice want to file an amicus brief on this issue.

3 THE COURT: Okay.

4 MR. GENTILE: So that might take a little
5 time.

6 THE COURT: You can step down.

7 THE WITNESS: Thank you.

8 MS. BEVERLY: Judge, State's Exhibit No. 86
9 do you want to mark it as a Court Exhibit or do you want
10 me to hold on to it.

11 THE COURT: It's not going to be an admitted
12 exhibit for sure.

13 MR. GENTILE: But it needs to be part of the
14 record.

15 MS. BEVERLY: We can mark it as a Court
16 exhibit?

17 THE COURT: Yes.

18 MR. GENTILE: I have a concern about it.

19 THE COURT: I'm not going to see it.

20 MR. GENTILE: That's why I have a concern
21 about it.

22 THE COURT: Do you want me to put it under
23 seal?

24 MR. GENTILE: It needs to be sealed.

25 THE COURT: It will be. I had no plans to

33

1 look at it.

2 MR. GENTILE: Also with regard to any of the
3 leading questions and I know the Court knows the law and
4 I have no reason to believe that the Court -- you know
5 human nature is, which is why you ask a leading question
6 in the first place as a tactic, human nature is to
7 remember what was said and not necessarily there's no
8 answer there. If it was jury I'd be really worried. I
9 am not worried about it with regard to you but I ask you
10 to be extra cautious in that regard.

11 THE COURT: At this point until a higher
12 court rules on this issue I won't consider the question
13 or anything with respect to Mr. Dibble.

14 MR. GENTILE: That is my point.

15 THE COURT: You don't have to worry about
16 that.

17 MS. BEVERLY: I want to say that I did ask
18 the Court to rule him as a hostile witness for purposes
19 of the leading questions.

20 THE COURT: Right but he's worried that your
21 leading questions are going to be evidence in my head
22 and they are not.

23 MS. BEVERLY: Thank you.

24 THE COURT: The exhibit will be sealed.

25 Who is going to be your next witness?

34

1 MR. GIORDANI: Jason Casteel.

2 THE COURT: Exhibit 86 needs to be
3 reclassified as a Court Exhibit 1 that shall be under
4 seal.

5 MR. GENTILE: It was proposed Exhibit 86.

6 THE COURT: Proposed Exhibit 86 was never
7 admitted. It shall be reclassified as Court Exhibit 1
8 and shall be under seal.

9 MR. GIORDANI: Before the witness comes I
10 provided -- well, I mentioned a stack of exhibits but
11 they are still sitting there so I don't believe the
12 defense has had a chance to look at them yet. Rather
13 than -- unless they want to start with the witness.

14 THE COURT: Defense?

15 MR. GENTILE: I'm sorry?

16 THE COURT: Did you hear what he said?

17 MR. GENTILE: No. I'd like to look through
18 them please. Do you have blow ups of the photos?

19 MR. GIORDANI: No. I'll zoom when I put
20 them up.

21 THE COURT: Let's take a break.

22 MR. GENTILE: The purpose of the break is to
23 allow us to read this, then it's going to take more than
24 five minutes.

25 MS. BEVERLY: They were provided in

35

1 discovery to be clear, Judge.

2 (Recess taken.)

3 THE COURT: Is everybody ready?

4 MR. GIORDANI: State's ready.

5 THE COURT: Defense?

6 MS. WILDEVELD: Yes, Your Honor.

7 THE COURT: Please call your next witness.

8 MR. GIORDANI: Jason Casteel.

9 THE COURT: Good afternoon.

10 THE CLERK: Do you solemnly swear to tell
11 the truth, the whole truth, and nothing but the truth?

12 THE WITNESS: I do.

13 THE CLERK: Please be seated. State your
14 name for the record and spell it first and last name.

15 THE WITNESS: Jason, J-A-S-O-N, Casteel,
16 C-A-S-T-E-E-L.

17 THE COURT: Thank you, sir. Please go
18 ahead.

19 MR. GIORDANI: Thank you.

21 DIRECT EXAMINATION

22 BY MR. GIORDANI:

23 Q. Good afternoon, sir.

24 A. Hello.

25 Q. Did you formerly work at the Alpine Motel?

36

1 A. Yes, I did.

2 Q. And did you also formerly live at the Alpine
3 Motel?

4 A. Yes, I did.

5 Q. Is that located at 213 North 9th Street?

6 A. Yes, sir.

7 Q. When would you estimate that you first moved onto
8 the Alpine?

9 A. I lived there for almost five years.

10 Q. So was the last time you lived there the date of
11 the fire?

12 A. Yes, sir.

13 Q. We can count five years back and that's
14 approximately when you moved in?

15 A. Yes, sir.

16 Q. Which unit did you live in initially?

17 A. No. 39.

18 Q. And who did you live there with?

19 A. My wife Christina Farinella -- my fiancée. I
20 call her my wife, sorry.

21 Q. She's your fiancée?

22 A. Yes.

23 Q. Did you have -- what unit did you live in with
24 Christina initially?

25 A. 39.

37

- 1 Q. Did you have any issues with Unit 39 while you
2 lived there?
- 3 A. **A few, yes.**
- 4 Q. How long did you live in Unit 39?
- 5 A. **Almost four and a half years right before I**
6 **started working there.**
- 7 Q. When would you estimate you started working at
8 the Alpine?
- 9 A. **End of July 1st of August.**
- 10 Q. End of July 1st of August, 2019?
- 11 A. **2019, yes, sir.**
- 12 Q. How did it come about that you started working
13 there?
- 14 A. **I had while living there I spoke to Adolfo a few**
15 **times about if he ever needed help in the office, you**
16 **know, I would available because I had ran a hotel and**
17 **apartment before moving here to Vegas.**
- 18 Q. You mentioned Adolfo. Do you know his last name?
- 19 A. **Orozco. I think.**
- 20 Q. Did you come in contact with Mr. Orozco at the
21 Alpine property?
- 22 A. **Yes.**
- 23 Q. While you lived there?
- 24 A. **Yes.**
- 25 Q. Did you see him several times at the property?

38

- 1 A. **Yes, sir.**
- 2 Q. How soon -- I'm sorry. Around when did you begin
3 discussing potentially working for him?
- 4 A. **It had been on and off since I had lived there**
5 **but probably it was probably two days before I started**
6 **is when I was offered the job.**
- 7 Q. Who offered you that job?
- 8 A. **Adolfo.**
- 9 Q. What did you do when he offered you that job?
- 10 A. **I told him I would take it.**
- 11 Q. Was there any formal written agreement for
12 employment?
- 13 A. **No.**
- 14 Q. What was the verbal agreement between you and Mr.
15 Orozco?
- 16 A. **For me to show up to the office the next day and**
17 **he would train me and we'd talk about the arrangement of**
18 **pay or anything like that.**
- 19 Q. Okay. Fair to say that the initial conversation
20 didn't include formal terms like you're going to get
21 paid this for this many hours?
- 22 A. **No.**
- 23 Q. Did you show up the next day to the office?
- 24 A. **Yes.**
- 25 Q. And who was present when you showed up?

39

- 1 A. **Adolfo and a gentleman named he called him Moses.**
2 **I think his name Moi.**
- 3 Q. Is that M-O-I for the record?
- 4 A. **Yes, I think. Everybody there called him Moses.**
- 5 Q. What was your understanding of Moses' role in the
6 Alpine Motel?
- 7 A. **He was their former manager.**
- 8 Q. Up until when you started?
- 9 A. **Yes.**
- 10 Q. What was your understanding of Mr. Orozco's
11 connection to the property?
- 12 A. **The owner.**
- 13 Q. Did Mr. Orozco stay in the office with you that
14 first day you started?
- 15 A. **Yes.**
- 16 Q. What types of things did you do on your first
17 day?
- 18 A. **I was shown how to fill out a rent receipt and to**
19 **show how to take the money and to deposit and drop the**
20 **money in the safe.**
- 21 Q. Did Mr. Orozco ask you or inquire of you as
22 whether you were licensed or had any work card or
23 anything of that nature?
- 24 A. **No.**
- 25 Q. When you went into the office that first day was

40

- 1 it Mr. Orozco training you or was it both Mr. Orozco and
2 this Mioses person?
- 3 A. **It was both.**
- 4 Q. And you indicated, correct me if I'm wrong, the
5 first day basically was a discussion about how to
6 collect money?
- 7 A. **Right.**
- 8 Q. Were there any discussions on that first day
9 about maintenance?
- 10 A. **No, not on the first day, no.**
- 11 Q. Were there any discussions that you recall about
12 say what to do in the event of a fire?
- 13 A. **No.**
- 14 Q. Did you go back a second day?
- 15 A. **Yes.**
- 16 Q. Were you trained again the second day?
- 17 A. **Yes.**
- 18 Q. Do you recall kind of the content of that second
19 day?
- 20 A. **The second day I was taught how to fill out a**
21 **maintenance list.**
- 22 Q. Who was training you that day?
- 23 A. **Adolfo.**
- 24 Q. What was your understanding of what you were
25 supposed to do with a maintenance list?

41

1 **A. When somebody from the apartment would come down**
 2 **and say there was something wrong with the apartment I**
 3 **would write it down on a list with the room number and**
 4 **what was wrong.**

5 **Q. But what would you do with that list?**

6 **A. At the end of the day I would take a picture of**
 7 **it and send it to a group chat that I was put into with**
 8 **the other managers of other apartments and Adolfo and**
 9 **the head of maintenance.**

10 **Q. What was the head of maintenance?**

11 **A. Jose.**

12 **Q. Do you know his last name?**

13 **A. I don't. I'm sorry.**

14 **Q. It's okay. This group chat were you doing that**
 15 **from a work phone or personal phone?**

16 **A. Personal phone.**

17 **Q. Was there a work phone provided to you?**

18 **A. No.**

19 **Q. So you did this from your personal phone?**

20 **A. Yes.**

21 **Q. What was your phone number at that time?**

22 **A. It's (702) 931-2302.**

23 **Q. In this group text there were several other**
 24 **employees of Mr. Orozco; is that right?**

25 **MR. GENTILE: I have an objection. This is**

43

1 **there at that time.**

2 **Q. You mentioned several names. I'm going to ask**
 3 **you about. Okay? You mentioned a Malinda. Do you know**
 4 **that person's last name?**

5 **A. Mier.**

6 **Q. Was Malinda Mier what was your understanding of**
 7 **Malinda's Mier's role in the company?**

8 **MR. GENTILE: Objection. Foundation.**

9 **THE COURT: So he can answer of he knows**
 10 **personally but not by hearsay.**

11 **THE WITNESS: Manager.**

12 **MR. GENTILE: I'd ask that a foundation be**
 13 **laid before he can.**

14 **THE COURT: Please lay a foundation.**

15 **MR. GIORDANI: Your Honor, I believe the**
 16 **foundation has been laid. She's on a work text in the**
 17 **group that other employees are on in addition to the**
 18 **owner Mr. Orozco. So I believe that's sufficient**
 19 **foundation to indicate she had some role in the company.**

20 **MR. GENTILE: That's not same as the**
 21 **foundation for manager. I object and asked that it be**
 22 **stricken without foundation.**

23 **THE COURT: Overruled. Can you please**
 24 **clarify?**

25 **MR. GIORDANI: Sure.**

42

1 **leading and again this is not an adverse witness.**

2 **MR. GIORDANI: Well, I was just repeating**
 3 **his answer. I can rephrase.**

4 **THE COURT: He previously testified that it**
 5 **was with other managers from other properties, so if you**
 6 **could clarify.**

7 **MR. GIORDANI: Sure.**

8 **BY MR. GIORDANI:**

9 **Q. You previously indicated --**

10 **THE COURT: Overruled.**

11 **BY MR. GIORDANI:**

12 **Q. You previously indicated that other employees**
 13 **were on the text string is what I'll call it?**

14 **A. Yes, sir.**

15 **Q. That's a group chat; is that right?**

16 **A. Yes, sir.**

17 **Q. You indicated Mr. Orozco was on that chat as**
 18 **well?**

19 **A. Yes, sir.**

20 **Q. Do you know any of the names of the other**
 21 **employees that were on the chat that you can recall?**

22 **A. Augustin, I'm not sure of his last name either.**
 23 **Cassandra Criss, Malinda, there was a lady named Tina**
 24 **who was the manager at the -- another one of Economy at**
 25 **the time, Jose and pretty sure that's all that was in**

44

1 **BY MR. GIORDANI:**

2 **Q. You indicated your understanding of Miss Mier's**
 3 **role was she was a manager; is that right?**

4 **A. Yes.**

5 **Q. Did she manage -- how did you become aware that**
 6 **she had a management role in the company?**

7 **A. While I was living there she had been the manager**
 8 **at the Alpine at one point.**

9 **Q. So did she --**

10 **MR. GENTILE: Same objection to at least a**
 11 **time foundation. He has lived there five years.**

12 **MS. WILDEVELD: I'd join in the objection.**

13 **THE COURT: So could you clarify the**
 14 **timeframe he lived there and he was aware she was the**
 15 **manager at the Alpine?**

16 **MR. GIORDANI: Yes, Your Honor.**

17 **BY MR. GIORDANI:**

18 **Q. You said you lived there approximately five**
 19 **years; correct?**

20 **A. Yes, sir.**

21 **Q. Do you recall when Miss Mier was the manager at**
 22 **the Alpine?**

23 **A. It was would have been the third year I was**
 24 **living there.**

25 **Q. Okay. Do you know that because you were a tenant**

45

- 1 there?
- 2 **A. Yes sir.**
- 3 **Q.** Did you see her in the office?
- 4 **A. She was the one I paid rent to, yes, sir.**
- 5 **Q.** Do you know how long she was the manager at the
- 6 Alpine?
- 7 **A. I don't. I'm sorry.**
- 8 **Q.** Just so we're clear when we say manager did she
- 9 essentially work the same job that you eventually ended
- 10 up working?
- 11 **A. Yes, sir.**
- 12 **Q.** At that time?
- 13 **A. Yes, sir.**
- 14 **Q.** Did you after she ceased to be the manager at the
- 15 Alpine did you continue to see her at the property?
- 16 **A. Yes, sir.**
- 17 **Q.** Did that continue up until the date of the fire?
- 18 **A. Yes, sir.**
- 19 **Q.** Was that sporadic or daily or how would you
- 20 describe seeing Miss Mier at the property?
- 21 **A. A few times a week.**
- 22 **Q.** Who would she be with when you did see her?
- 23 **A. Adolfo.**
- 24 **Q.** Was that that every time you saw her?
- 25 **A. Yes, sir.**

46

- 1 **Q.** Would they arrive together?
- 2 **A. Yes, sir.**
- 3 **Q.** Did you see how they arrived?
- 4 **A. In Adolfo's truck.**
- 5 **Q.** What type of truck was that?
- 6 **A. It's a white pretty sure it's a Dodge. It's got**
- 7 **big wheels on it. It's a white pick up truck.**
- 8 **Q.** You also mentioned -- before I move on. Did
- 9 during the course of the time where you saw Malinda at
- 10 the property but not when she was in the front manager
- 11 role, did she still have access to the office?
- 12 **A. Yes, sir.**
- 13 **Q.** Did it appear to you that she remained employed
- 14 in some capacity throughout the course of your time
- 15 living and working there?
- 16 **A. Yes, sir.**
- 17 **Q.** I wanted to ask you a couple more people that
- 18 were in that chat. You mentioned a Cassandra Criss?
- 19 **A. Yes.**
- 20 **Q.** What was your understanding of her role in the
- 21 company?
- 22 **A. Manager of the Economy Motel.**
- 23 **Q.** And Jose?
- 24 **A. Yes, sir.**
- 25 **Q.** What was his role in the company?

47

- 1 **A. Head of maintenance.**
- 2 **Q.** So we were initially talking about your training.
- 3 After those initial two days did you receive any
- 4 subsequent training?
- 5 **A. No, sir.**
- 6 **Q.** During those two days or anytime after do you
- 7 recall receiving any paperwork or handbooks or anything
- 8 of that nature?
- 9 **A. No, sir.**
- 10 **Q.** Were you ever trained or instructed on what to do
- 11 as the front manager in the event of a fire?
- 12 **A. No, sir.**
- 13 **Q.** I want to kind of step back a moment and talk to
- 14 you about your time at the Alpine prior to your working
- 15 as a manager.
- 16 **A. Okay.**
- 17 **Q.** I'll move onto the manager part later. While you
- 18 lived there and were not working there did you move from
- 19 one unit to a different unit?
- 20 **A. No, sir.**
- 21 **Q.** Did you stay in the same unit from the time you
- 22 moved there until --
- 23 **A. Until I started working, yes.**
- 24 **Q.** Did you move into a new unit once you started
- 25 working?

48

- 1 **A. Yes.**
- 2 **Q.** Why was that?
- 3 **A. It was a bigger unit. It was offered to me.**
- 4 **Q.** Offered to you by who?
- 5 **A. By Cassondra.**
- 6 **Q.** And what was the payment arrangement that you
- 7 ultimately entered into with regard to your working as a
- 8 manager?
- 9 **A. 8.25 an hour. I still had to continue paying**
- 10 **rent.**
- 11 **Q.** So your rent doesn't change but you start to get
- 12 8.25 an hour at the end of July early August 2019; is
- 13 that right?
- 14 **A. Yes, sir.**
- 15 **Q.** Were you paid via check or cash or what?
- 16 **A. Cash.**
- 17 **Q.** Who paid you?
- 18 **A. Augustin.**
- 19 **Q.** What was your understanding of Augustin's role in
- 20 the company?
- 21 **A. He would be the gentleman that would come and**
- 22 **pick up the deposits everyday from the rooms that I**
- 23 **rented.**
- 24 **Q.** Okay. So he had access to the money?
- 25 **A. Yes, sir.**

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- 1 Q. At least partially; is that right?
- 2 A. **Yes, sir.**
- 3 Q. You just mentioned deposits. What was the
- 4 typical process that you followed when taking rents and
- 5 receiving rent payments from tenants?
- 6 A. **I would fill out a receipt that would have their**
- 7 **name, their room number on it, the amount that they**
- 8 **paid, and when they were due again.**
- 9 Q. What would you do with the receipt?
- 10 A. **I would make a copy, give one to the tenant, and**
- 11 **then put the other copy in the file for each apartment.**
- 12 Q. Where was that file contained?
- 13 A. **In the office.**
- 14 Q. Was there any bookkeeping that was done payments
- 15 receipts or anything like that via the computer or was
- 16 this all done via handwritten papers?
- 17 A. **Handwritten papers.**
- 18 Q. Those receipts you would provide one to the
- 19 tenant and then retain one in the office?
- 20 A. **Yes, sir.**
- 21 Q. Did those receipts then stay in the office?
- 22 A. **Yes, sir. They stayed in a file in the office.**
- 23 Q. Do you know how long those were retained for?
- 24 A. **I don't.**
- 25 Q. Okay. When you would receive rent payments were

50

- 1 they typically in cash or were there other forms of
- 2 payment?
- 3 A. **Mostly cash, sometimes credit card.**
- 4 Q. Did you have a credit card machine in the office?
- 5 A. **Yes, sir.**
- 6 Q. When they were in cash what would you do with the
- 7 cash?
- 8 A. **It was put in an envelop and dropped in the safe.**
- 9 Q. What was the envelop -- was the envelop
- 10 identified in anyway?
- 11 A. **It would have the date on it of what day that**
- 12 **that was paid that day and then have the amount.**
- 13 Q. Okay. Then that would go into a safe, was that
- 14 safe contained within the office?
- 15 A. **Yes.**
- 16 Q. Just so the record is very clear when I reference
- 17 the office I'm talking about on the first floor of the
- 18 Alpine; is that what your understanding is?
- 19 A. **Yes.**
- 20 Q. So did you have access to that safe yourself?
- 21 A. **No, sir.**
- 22 Q. How would you drop money into the safe then?
- 23 A. **There was a little door you pull open and you**
- 24 **drop it in the safe and close the door and the envelop**
- 25 **would fall down into the safe.**

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- 1 Q. Okay. Once that envelop falls into the safe you
- 2 yourself have no access to reopening the safe?
- 3 A. **No, sir.**
- 4 MR. GENTILE: Objection leading.
- 5 THE COURT: Sustained.
- 6 BY MR. GIORDANI:
- 7 Q. Would you have any acces to the safe after you
- 8 dropped the envelop into it?
- 9 A. **No, sir.**
- 10 Q. Do you know who had access to that safe?
- 11 A. **Augustin and Adolfo.**
- 12 Q. Do you know if Miss Mier had access to the safe?
- 13 A. **I do not know.**
- 14 Q. How would they access that safe was there a key,
- 15 a punch pad?
- 16 A. **Punch pad combination.**
- 17 Q. Now you've indicated you were worked there from
- 18 I'm going to say August 1st just to keep it clean up
- 19 until the date of the fire; is that accurate?
- 20 A. **Yes, sir.**
- 21 Q. Did the process for receiving rents from tenants
- 22 remain the same throughout that time?
- 23 A. **Yes, sir.**
- 24 Q. I want to get back now to maintenance.
- 25 A. **Okay.**

52

- 1 Q. You've indicated that you were trained by Mr.
- 2 Orozco as to how to deal with maintenance problems; is
- 3 that right?
- 4 A. **Yes, sir.**
- 5 Q. You indicated it would be a maintenance list,
- 6 what would you do with that maintenance list?
- 7 A. **It would say daily maintenance list on it.**
- 8 **Alpine daily maintenance list and I would write down**
- 9 **what was wrong in each room. I would take a screen shot**
- 10 **of it and send it to the group chat.**
- 11 Q. That's the same group chat that included Mr.
- 12 Orozco?
- 13 A. **Yes.**
- 14 Q. Would you describe -- how would you describe
- 15 Mr. Orozco was as an owner?
- 16 MR. GENTILE: Objection. Form of the
- 17 question. That's very pretty vague.
- 18 MR. GIORDANI: If I ask it the way I wanted
- 19 to he is going to object to leading.
- 20 THE COURT: Overruled.
- 21 THE WITNESS: Very non-caring would be the
- 22 word I would use.
- 23 BY MR. GIORDANI:
- 24 Q. When you say non-caring what are you referring
- 25 to?

53

1 **A. Well, the maintenance list -- the maintenance**
 2 **list was sent in everyday and it sometimes it would be a**
 3 **week or two before anybody would ever come out to even**
 4 **look at the maintenance list.**

5 **Q.** Could you describe to the best of your ability
 6 the general condition of the Alpine Motel apartments
 7 from the time you started working there until the date
 8 of the fire?

9 **A. Very run down. Roaches. Bed bugs. Water leaks.**

10 **Q.** Were there any fire hazards in your opinion?

11 **A. Yes, sir.**

12 **Q.** Did you bring those fire hazards to the attention
 13 of Mr. Orozco?

14 **A. Yes, sir.**

15 **Q.** I want to talk to you about a couple specific
 16 things first with regard to the maintenance list.

17 **A. Okay.**

18 **Q.** Were you instructed to not repeat items on the
 19 list?

20 **A. Yes.**

21 **Q.** Who instructed you to not repeat items on the
 22 list?

23 **A. Adolfo.**

24 **Q.** And when I say repeat items on the list what does
 25 that mean to you? So the Court understands.

54

1 **A. Like Apartment 20 didn't have an air conditioner**
 2 **for months. Been on the list for a while. Adolfo told**
 3 **me he knew it didn't have one, he would take care of it.**
 4 **There was no need put it on the list anymore.**

5 **Q.** Did that occur multiple times with different
 6 items on the list?

7 **A. Yes.**

8 **Q.** Did there come a point in time while you were
 9 employed at the Alpine that issues with the back door
 10 came to your attention?

11 **A. Yes.**

12 **Q.** Do you recall when you first became aware of any
 13 issues with the back door?

14 **A. In August when I started the back door and the**
 15 **front door neither had locks for the tenants to use a**
 16 **key to come in and out. I had known about it even**
 17 **before I started that those doors had been like that for**
 18 **years.**

19 **Q.** Oh, okay. While you worked there -- I'm sorry
 20 while you lived there you were aware of it as well?

21 **A. Yes, sir.**

22 **Q.** Let's narrow this to August up until the date of
 23 the fire. Okay?

24 **A. Okay.**

25 **Q.** When you first start there, correct me if I am

55

1 wrong, there were no locks on the front and back doors?

2 **A. Yes, sir.**

3 **Q.** Were the doors operable meaning would they swing
 4 open if you pushed them?

5 **A. Yes, sir.**

6 **Q.** Did there come a point in time where that
 7 changed?

8 **A. Yes, sir.**

9 **Q.** When was that?

10 **A. October.**

11 **Q.** Do you remember when in October or?

12 **A. October 3rd I believe is the date.**

13 **Q.** Okay. What happened on October 3rd that's so
 14 specific in your mind?

15 **A. I had come down to the office and our onsite**
 16 **manager Don had reported to me that the back door had**
 17 **been broken completely off the hinges.**

18 **Q.** Okay. You mentioned Don?

19 **A. Mm-hmm.**

20 **Q.** Do you know his last name?

21 **A. I don't.**

22 **Q.** Do you know whether he made it out of the fire?

23 **A. No, sir, he didn't.**

24 **Q.** What was his role within the company?

25 **A. He was the onsite maintenance.**

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1 **Q.** Did he in fact live there as well?

2 **A. Yes, sir.**

3 **Q.** Do you have any first-hand knowledge on how he
 4 was paid or how much he was paid?

5 **A. Yes, sir.**

6 **Q.** What was that?

7 **MR. GENTILE:** Objection. Foundation.

8 **THE COURT:** How does he know?

9 **BY MR. GIORDANI:**

10 **Q.** How do you know?

11 **A. Because I was the manager I had access to his**
 12 **file for his apartment.**

13 **Q.** Okay. How much was he paid and in what form if
 14 you know?

15 **A. He wasn't paid. He was given his apartment.**

16 **Q.** Oh, okay. In exchange for work he could live
 17 there free?

18 **A. Yes, sir.**

19 **Q.** You indicated October 3rd that he brought the
 20 back door to your attention as broke at that time; is
 21 that right?

22 **A. Yes, sir.**

23 **Q.** Was it -- did you observe it yourself after that?

24 **A. Yes, sir.**

25 **Q.** Was it completely off the hinges or partially or

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1 what?

2 **A. It was completely off the hinges.**

3 **Q.** Did that cause you some concern?

4 **A. Yes, sir.**

5 **Q.** And did you bring that concern to Mr. Orozco's
6 attention?

7 **A. Yes, sir.**

8 **Q.** What did he say in response if anything?

9 **A. I took a picture of the back door the way it was**
10 **and sent it to him and his response was, we need to find**
11 **out who broke the door and have them pay for it or have**
12 **them put out.**

13 **Q.** Was the Alpine Motel equipped with video cameras,
14 surveillance cameras?

15 **A. Yes, sir.**

16 **Q.** Did you have access to the cameras?

17 **A. No, sir.**

18 **Q.** Do you know where the DVR for those cameras or I
19 guess the central device was contained?

20 **A. Yes, sir. It was in the office.**

21 **Q.** But when you say you didn't have access what do
22 you mean?

23 **A. There was a password to access. I could see like**
24 **in real time but I couldn't like look at any past or any**
25 **other time because you had to have a password to do that**

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1 **and I didn't have a password for it.**

2 **Q.** Some of your initial discussion with Mr. Orozco
3 about the broken door he wanted the tenant who allegedly
4 broke it to pay for it; right?

5 **A. Yes, sir.**

6 **Q.** Did you have subsequent conversations with Mr.
7 Orozco about that door?

8 **A. Yes, sir.**

9 **Q.** Did you have subsequent conversations with Mr.
10 Orozco's agents or employees about that door?

11 **MR. GENTILE:** Objection. Foundation. You
12 have lay a foundation to establish it's an agent or
13 employee.

14 **MR. GIORDANI:** Well, I got to get an answer
15 first.

16 **THE COURT:** If you could rephrase the
17 question to ask him if he had a conversation with whom
18 and when.

19 **BY MR. GIORDANI:**

20 **Q.** In addition to the conversation with Mr. Orozco
21 directly about the door, after October 3rd did you also
22 have a discussion or talk about the door with other
23 people within the company?

24 **A. Yes, sir.**

25 **Q.** Was one of those people Cassandra Criss?

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1 **A. Yes, sir.**

2 **Q.** You indicated that she was the manager of another
3 one of the properties?

4 **A. Yes, sir.**

5 **Q.** Did you also -- did you have any conversations
6 between October and the fire about the back door with
7 Miss Mier?

8 **A. No.**

9 **Q.** Before I move on, back to the rent receipts.

10 **A. Okay.**

11 **Q.** Did those rent receipts that you would provide to,
12 the tenant include a check box for whether the smoke
13 detector was working or not?

14 **A. Yes, sir.**

15 **Q.** What was the process by which that box would be
16 addressed if there wasn't?

17 **A. I would ask the tenant if their smoke detector**
18 **was working and if they told me yes, I would check the**
19 **box?**

20 **Q.** If they told you no, what would you do?

21 **A. It would be put on the maintenance list.**

22 **Q.** Okay. Did you ever yourself go through the
23 various units in the property and actually physically
24 check whether or not the smoke detectors were working?

25 **A. No, sir.**

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1 **Q.** To your knowledge did any of Mr. Orozco's
2 employees do that?

3 **A. No, sir.**

4 **Q.** Did you ever discuss whether to do that or not
5 with Mr. Orozco?

6 **A. I was told by Adolfo to just ask them and go by**
7 **what the tenant said.**

8 **MR. GIORDANI:** May I approach, Judge?

9 **THE COURT:** Yes.

10 **BY MR. GIORDANI:**

11 **Q.** Sir, I'm going to show you a number of exhibits.
12 I am going to through them one by one. First let me ask
13 you this: After the fire occurred did you retain or
14 keep your cellphone?

15 **A. Yes.**

16 **Q.** Did you ever delete any texts associated with the
17 Alpine Motel from your phone after the fire?

18 **A. No.**

19 **Q.** Ultimately was your phone provided to the
20 detectives with your consent to download?

21 **A. Yes, sir.**

22 **Q.** Did you receive your phone back after it was
23 worked on or whatever they did at Metro?

24 **A. Yes, sir.**

25 **Q.** Did you still have that phone today?

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1 **A. Yes, sir. I have it with me.**

2 **Q.** I want to want first show you -- a couple of
3 these got out of order. State's Proposed Exhibit 85.
4 Do you recognize generally what is contained in this
5 document?

6 **A. Yes.**

7 **Q.** Does this appear to be one of the numerous text
8 messages that were on your phone that you still have?

9 **A. Yes, sir.**

10 **Q.** Up here do you see where it says from and it
11 gives a phone number?

12 **A. Yes.**

13 **Q.** With the name next to it Tina?

14 **A. Yes, sir.**

15 **Q.** Who is Tina?

16 **A. Tina worked at the Economy Motel.**

17 **Q.** Economy?

18 **A. Mm-hmm.**

19 **Q.** Is that a yes?

20 **A. Yes. I'm sorry.**

21 **Q.** That's okay. She's taking everything down.

22 **A. Sorry.**

23 **Q.** In the body of the text it say --

24 **MR. GENTILE:** Objection. Excuse me. Your
25 Honor, is 85 in evidence?

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1 **THE COURT:** No.

2 **MR. GENTILE:** Then he can't publish that.

3 **MR. GIORDANI:** I understand that.

4 **THE COURT:** Sustained.

5 **BY MR. GIORDANI:**

6 **Q.** In 85 without reading this do you recognize the
7 content of the text message?

8 **A. Yes, sir.**

9 **Q.** Does that appear to be a text from this Tina
10 person to you?

11 **A. Yes.**

12 **MR. GIORDANI:** I move for the admission of
13 State's 85.

14 **THE COURT:** Any objection?

15 **MR. GENTILE:** I have objection with regard
16 to whether or not the content is that Tina is saying
17 because it may be hearsay.

18 **MR. GIORDANI:** I'm not offering --

19 **MR. GENTILE:** I don't know if it's offered
20 for the truth of the assertion because I don't know the
21 assertion.

22 **MR. GIORDANI:** This particular text I am not
23 offering for the truth just the effect on the listener.

24 **THE COURT:** Okay.

25 **MR. GENTILE:** Well, if it's not being

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1 offered for the truth then nothing is admissible for the
2 effect on the listener. That's not an exception.

3 **MR. GIORDANI:** It's non-hearsay if it's
4 offered for the effect on the listener.

5 **MR. GENTILE:** Then they have to establish
6 why the effect is relevant, so I have a relevancy
7 objection also.

8 **MR. GIORDANI:** I can't do that without the
9 content of the text.

10 **THE COURT:** I'll reserve my ruling on his
11 objection.

12 **BY MR. GIORDANI:**

13 **Q.** So you recognize this as a text from Tina and you
14 would agree with me there's a date and time on it?

15 **A. Yes, sir.**

16 **Q.** This was back December 20th, 2019?

17 **A. Yes, sir.**

18 **MR. GENTILE:** Same objection. He published
19 it. Move to strike.

20 **THE COURT:** Overruled.

21 **BY MR. GIORDANI:**

22 **Q.** The body of the text indicates 112 heater not
23 working. What does that mean to you?

24 **A. That Room 112 the heater in 112 is not working.**

25 **Q.** Why is that being conveyed to you on December

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1 20th, 2019?

2 **A. It should have been sent to all managers as part**
3 **of the daily maintenance.**

4 **MR. GENTILE:** Objection. Move to strike.

5 **THE COURT:** On what ground?

6 **MR. GENTILE:** Got nothing to do with the
7 Alpine or his job at the Alpine. So unless it's got
8 some other independent relevance, I move to strike it.

9 **THE COURT:** Is that an Economy Motel issue?

10 **MR. GIORDANI:** The purpose of this one
11 particular text is just to show that his phone was still
12 being accessed and operated on the day before the fire
13 and he was still employed there. That's it.

14 **MR. GENTILE:** In that case you don't need
15 the content and so I move to strike the content.

16 **MR. GIORDANI:** Not offering it for the truth
17 anyway so that's perfectly fine by me.

18 **THE COURT:** I'll strike the contents of it.

19 **BY MR. GIORDANI:**

20 **Q.** I'm going to show you State's 85A. Take a look
21 at that and tell me if you recognize it.

22 **A. Yes, sir.**

23 **Q.** Does that appear to be a text from your phone on
24 August 31st, 2019, at 3:14 a.m.?

25 **A. Yes, sir.**

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1 **Q.** Does it appear to be an outgoing text?
 2 **A. Yes.**
 3 **MR. GENTILE:** Your Honor, I have to ask that
 4 we be given a copy of what he is using. We were shown,
 5 I thought what we were shown was our own copy.
 6 Apparently I was incorrect in that regard. I can't
 7 follow this testimony without being able to look at the
 8 exhibits as he's testifying.
 9 **MR. GIORDANI:** They are welcome to make
 10 copies.
 11 **THE COURT:** Why aren't we using the screen?
 12 **MR. GENTILE:** Even with that I should have a
 13 copy.
 14 **MS. BEVERLY:** Judge, just to be clear this
 15 was all provided in discovery. It was also months ago
 16 at this point now. All of the contents of Jason's phone
 17 is on the drive that was given to them.
 18 **MR. GENTILE:** I am not contending that it
 19 wasn't part of the eight terabytes --
 20 **MS. WILDEVELD:** Ten.
 21 **MR. GENTILE:** Ten --
 22 **THE COURT:** Travis, do you think you could
 23 burn a quick two copies of these for both counsel?
 24 **COURT MARSHALL:** Yes, ma'am.
 25 **THE COURT:** While he is making copies you

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1 are going to step down for a moment and you can't
 2 discuss your testimony with anybody. Okay.
 3 **THE WITNESS:** Yes, ma'am.
 4 **THE COURT:** Do you want some water?
 5 **THE WITNESS:** I'm fine.
 6 **THE COURT:** Five minutes.
 7 (Recess taken.)
 8 **MR. GENTILE:** Can we identify them again?
 9 **THE COURT:** 85 and 85A.
 10 **MR. GENTILE:** 85 and 85A. 85 is the one you
 11 are striking the content?
 12 **THE COURT:** But admitted the exhibit.
 13 **MR. GENTILE:** But admitted the exhibit.
 14 **THE COURT:** 85A is still outstanding.
 15 **MR. GENTILE:** 85A I have an objection to as
 16 well but we'll wait until the witness gets on the stand.
 17 **THE COURT:** Sir, good afternoon again. I
 18 will just remind you that you are still under oath.
 19 Okay?
 20 **THE WITNESS:** Yes, ma'am.
 21 **THE COURT:** Thank you, sir. For the record
 22 both defense counsel now have a copy of the exhibit that
 23 we are looking at or that you guys are looking at. I am
 24 not looking at anything.
 25 ///

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1 **BY MR. GIORDANI:**
 2 **Q.** Now I want to show you 85A I believe I showed you
 3 this before. Do you recognize this as one of the text
 4 messages from your phone?
 5 **A. Yes, sir.**
 6 **Q.** And does it appear that text was an outgoing text
 7 from August 31st, 2019?
 8 **A. Yes, sir.**
 9 **Q.** Who was that text sent to?
 10 **A. Cassandra Criss.**
 11 **Q.** Did you send that text to Cassandra?
 12 **A. Yes.**
 13 **MR. GIORDANI:** I move for admission of 85A.
 14 **MR. GENTILE:** I still have an objection with
 15 regard to the part that is under the words the body, in
 16 other words, the narrative that was inserted by the
 17 witness the witness's words is an out-of-court statement
 18 and it's hearsay.
 19 **THE COURT:** State?
 20 **MR. GENTILE:** And if it's not being offered
 21 for the truth then what's the relevance?
 22 **MR. GIORDANI:** The text that I am about to
 23 get into not only this one but several more are some are
 24 this witness's statements they are out going texts and
 25 some are incoming. With regard to this particular text

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1 it goes to this declarant's then existing state of mind
 2 which is a valid hearsay exception. I can address them
 3 as we go or just move on.
 4 **MR. GENTILE:** The state mind of is
 5 irrelevant without showing as to why it's relevant.
 6 **MR. GIORDANI:** It's extremely relevant at
 7 this point. Their entire defense is trying to dump
 8 Jason Casteel as being liable for this offense. His
 9 state of mind between August and December is extremely
 10 relevant.
 11 **MR. GENTILE:** Are you finished, Counsel?
 12 **MR. GIORDANI:** Yes.
 13 **MR. GENTILE:** Counsel misperceives our
 14 defense. Our defense is one of law and is also of fact
 15 but it doesn't matter this particular narrative I mean
 16 his state of mind is of no consequence. His state of
 17 mind is of no consequence.
 18 **THE COURT:** So I am going to let you make
 19 your objections and I'll reserve my ruling until we go
 20 through the text messages because I don't think they can
 21 be considered independently of each other.
 22 **MR. GIORDANI:** Thank you. And considering
 23 that ruling, Your Honor, do I have permission to put
 24 them up in the overhead as we go?
 25 **THE COURT:** Yes.

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1 MR. GENTILE: Your Honor, I would like to
2 not have to make a separate motion to strike each and
3 every time. We are asking for a continuing motion to
4 strike for purpose --

5 THE COURT: On the same grounds?

6 MR. GENTILE: Yes. If I have additional
7 grounds I'll make them.

8 THE COURT: Okay.

9 MR. GENTILE: Not a continuing objection.
10 I'll make the objection individually but when you
11 overrule my objection I would like to make a single
12 motion to strike now.

13 THE COURT: I didn't overrule your
14 objection. I said I would reserve it.

15 MR. GENTILE: I understand that. To the
16 extent you either overrule or reserve, I would like to
17 have a standing motion to strike. If you are going to
18 sustain it, I don't need it.

19 THE COURT: Okay.

20 MR. GENTILE: Thank you.

21 MS. WILDEVELD: That's on behalf of Miss
22 Mier as well. Do I need to continue to say that?

23 THE COURT: Well, I think you should for the
24 record.

25 MS. WILDEVELD: For the record on behalf of

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1 something, it's an out-of-court statement, without a
2 valid hearsay exception.

3 THE COURT: I'm still going to reserve my
4 ruling on your objection.

5 MR. GENTILE: Move to strike in anticipation
6 of an adverse ruling.

7 THE COURT: Didn't you just ask for a
8 continuing motion to strike?

9 MR. GENTILE: I did but you said that for
10 the record that we should repeat it each and every time.

11 THE COURT: No. If she was going to join in
12 your objection, I thought it was important that she
13 stated on the record that she is joining your objection.

14 MR. GENTILE: I see. Okay.

15 THE COURT: Not that you repeat it every
16 time.

17 MR. GENTILE: I misunderstood.

18 THE COURT: I thought her representation of
19 Miss Mier it should be on the record if she joins in
20 your objection.

21 BY MR. GIORDANI:

22 Q. Do you remember the question?

23 A. **Can you ask me again please.**

24 Q. What did you mean by the place might fall apart?

25 A. **Me and Cassandra talked a lot about stuff that**

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1 Miss Mier as well.

2 MR. GENTILE: I just don't want -- well, if
3 that's what you want that's what we'll do.

4 BY MR. GIORDANI:

5 Q. Showing you 85A. You indicated this was sent
6 from your phone August 31st, 2019, to Cassandra; is that
7 right?

8 A. **Yes, sir.**

9 Q. Can you see the body of the text?

10 A. **Yes, sir.**

11 Q. For the record do you remember the context of why
12 you made these statements to Cassandra?

13 A. **Not this one statement I don't.**

14 Q. Would you agree that text says don't stay going
15 too long the place might fall apart?

16 A. **Yes, sir.**

17 Q. Understanding that you don't recall the context
18 do you know what the place refers to?

19 A. **Yes, sir.**

20 Q. What?

21 A. **The Alpine.**

22 Q. What did you mean by the place might fall apart?

23 MR. GENTILE: Objection. His state of mind
24 of what he means by this communication to the extent
25 that it's being offered to establish the truth of

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1 **was wrong at the Alpine so that would be a continuous**
2 **with other things we had talked about.**

3 Q. Showing you now State's 85B. Do you recognize
4 this as a text message from your phone?

5 A. **Yes.**

6 Q. Same date August 31st, 2019, would you agree this
7 time it was an incoming text from Cassandra?

8 A. **Yes.**

9 Q. It says at this point --

10 MR. GENTILE: Objection. Hearsay.

11 MR. GIORDANI: I thought we were doing an
12 ongoing objection?

13 MR. GENTILE: It is ongoing motion to
14 strike. It's not an ongoing objection. If I don't
15 object then the record would indicate that I don't have
16 an objection to particular narrative.

17 THE COURT: You're correct.

18 MR. GENTILE: So I am objecting to the
19 narrative as it being a statement of Cassandra.

20 MR. GIORDANI: Which would be admissible
21 pursuant to the hearsay listed in 51.035 sub 3, sub d.
22 which is a representative of Mr. Orozco in her
23 representative capacity. I am going to butcher the
24 language but that's the statute it fits under. If you'd
25 like me to pull it up and recite it, I sure can.

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1 THE COURT: Can I have it because I am
2 reserving his objection on a continuing basis.

3 MR. GIORDANI: I would also note that 51.035
4 sub 3, sub a, also fits this and other statements that I
5 am about to get into and that would be the party's own
6 statement either the party's individual or a
7 representative capacity the representative being
8 Cassondra.

9 MR. GENTILE: So this is a statement of
10 Adolfo that he doesn't give a fuck about himself?

11 MR. GIORDANI: Should I engage in a colloquy
12 Mr. Gentile?

13 MR. GENTILE: I am asking the Court that. I
14 don't see how you can draw that connection.

15 THE COURT: I'm sorry. I can't read the
16 body of the text but I am assuming it has the word fuck
17 in it.

18 MR. GIORDANI: It does.

19 THE COURT: Or I don't think he would say
20 that out loud in court.

21 MR. GIORDANI: Your Honor, those two hearsay
22 exceptions I just referenced are going to come up a lot
23 so I was just putting that one on the record. Sub d
24 fits this particular text.
25 ///

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1 BY MR. GIORDANI:

2 Q. This is a text from Cassondra --

3 MR. GENTILE: You're reserving your ruling
4 on that, Judge?

5 THE COURT: I already said that before.

6 BY MR. GIORDANI:

7 Q. -- that says at this point I can honestly give a
8 fuck less Adolfo doesn't care. Do you agree with me?

9 A. Yes, sir.

10 Q. Is that in the context of State's 85A that I just
11 showed you?

12 A. Yes, sir.

13 Q. Showing you 85B --

14 MR. GENTILE: If I may with regard to the
15 last one, Judge --

16 MR. GIORDANI: I'm sorry, 85C.

17 MR. GENTILE: Your Honor, I think Counsel
18 I'm sure he is operating in good faith first of all let
19 me say that. But 51035, 3d requires a foundation. The
20 foundation has to be that the agent, assuming that
21 Cassondra is one for purposes of this objection, is
22 speaking concerning a matter within the scope of her
23 agency or employment. Now if you look at the context,
24 forget about the context, the text of this statement at
25 this point I could honestly give a fuck less Adolfo

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1 doesn't care. He needs to establish in order to utilize
2 that exception that Cassondra was operating within her
3 authority to make this statement. Now, this particular
4 hearsay objection usually comes into play when you got a
5 clear-cut agency relationship when somebody is conferred
6 authority, for example, a sales situation where somebody
7 is making a statement in order to bind the person that
8 employs that person sometimes even in a fraud case. You
9 have to be able to establish that the speaker had
10 authority to say what that speaker was saying from the
11 master. If we're talking about master servant
12 relationship, you know what I'm saying.

13 THE COURT: I do.

14 MR. GENTILE: And he has not made that
15 shown.

16 THE COURT: I agree.

17 MR. GENTILE: So I move to strike it.

18 THE COURT: The exhibit or the text of the
19 exhibit?

20 MR. GENTILE: Well, to the extent that these
21 exhibits that are being used to show his phone worked,
22 I'll stipulate his phone worked. They don't have to
23 accept my stipulation. I understand that. So my
24 objection is not that the phone worked on a certain day.
25 My objection is that narrative in these various motions

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1 -- in these various statements. The objection will be
2 different as to each one.

3 THE COURT: Sure.

4 MR. GENTILE: I made the objection. He made
5 the response to it with regard to what he believes to be
6 or what permits it to come under the hearsay exception
7 but he has to lay the foundation for that.

8 THE COURT: For purpose of 85B is the state
9 offering this to try and assert that Adolfo doesn't
10 care?

11 MR. GIORDANI: No. As I said when I first
12 started the text messages it is being offered to show
13 the effect on Mr. Casteel. He was the manager at that
14 time. The defense is certainly going to cross-examine
15 him, I would presume, on why he didn't take more action
16 to fix the door and conduct these repairs that we've
17 alleged in the complaint. I'm rebutting that based on
18 these text messages.

19 MR. GENTILE: That is premature. I didn't
20 cross-examine Ms. Farinella so I don't see how the state
21 can presume I am going to cross-examine this witness.
22 If they want to wait until after I cross-examine the
23 witness to bring it in, maybe they can get it in but not
24 now.

25 THE COURT: As I said before I'm still going

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1 to reserve that -- I wouldn't accept that text that
2 Adolfo doesn't care for the truth of the matter asserted
3 anyway.

4 MR. GENTILE: Then we get back to what's his
5 state mind -- what part of this prosecution does his
6 state mind prove an element whether directly or even
7 through a chain? His state of mind is irrelevant.
8 Adolfo's is very relevant. Okay? But his state of mind
9 this witness's state of mind doesn't mean anything in
10 the context of this case.

11 THE COURT: Okay.

12 MR. GIORDANI: I would disagree. May I move
13 on?

14 THE COURT: Yes, please.

15 BY MR. GIORDANI:

16 Q. Showing State's 85D.

17 THE COURT: What happened to 85C?

18 MR. GIORDANI: I skipped over it because I
19 don't know where the photo is that is attached to it.

20 BY MR. GIORDANI:

21 Q. Showing you 85D, do you recognize this as a
22 message you sent from your phone to a contact saved as
23 Adolfo?

24 A. Yes.

25 Q. Is that Mr. Orozco?

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1 MR. GIORDANI: It's not offered for the
2 truth. This particular text is offered for the effect
3 on Mr. Orozco. Putting him on notice like you see in
4 this text and many others of the issues going on with
5 his employees and his properties. That is extremely
6 relevant. Mr. Gentile just said Mr. Orozco's state of
7 mind s extremely relevant in this case and this goes to
8 show his state of mind and the effect on him.

9 MR. GENTILE: I'll withdraw the objection.
10 He's right.

11 BY MR. GENTILE:

12 Q. Showing you 85F, do you recognize this as a text
13 message from your phone?

14 A. Yes, sir.

15 Q. This one is dated October 5th, 2019. It's
16 outgoing text from you to Mr. Orozco; is that right?

17 A. Yes, sir.

18 Q. This time the body of the text is, back door
19 broke?

20 A. Yes, sir.

21 Q. I'm showing you now 85E.

22 MR. GENTILE: No objection to 85F.

23 BY MR. GIORDANI:

24 Q. In addition to that text you sent to Mr. Orozco
25 saying back door broke did you send photographs?

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1 A. Yes, sir.

2 Q. Did you have him saved in your phone as Adolfo?

3 A. Yes, sir.

4 Q. With the phone number (702) 689-1516?

5 A. Yes, sir.

6 Q. In this particular text you had sent to Adolfo or
7 Mr. Orozco on October 1st, 2019, you say, correct me if
8 I'm wrong, Adolfo, Juan and Marcos are gone again they
9 work for a little bit then take off. We will never get
10 these rooms ready at this rate. Is that accurate?

11 A. Yes, sir.

12 Q. Who are Juan and Marcos?

13 A. **Juan and Marcos were maintenance men that worked
14 for Adolfo.**

15 MR. GENTILE: I have the same objection. I
16 don't think this is in evidence yet. So I don't know
17 how it got published but the fact that it is published
18 is probably not important but I move to strike it
19 because that's again an out-of-court statement by this
20 witness. Now if this was going the other way around and
21 it was Mr. Orozco Garcia that's speaking to this
22 witness, that's an objection -- that's an adverse party
23 statement. But this is his statement and it's out of
24 court and it's not sworn and it's being offered for the
25 truth.

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1 A. Yes, sir.

2 Q. Basically on this particular Exhibit 85E it shows
3 thumbnails of those photographs; would you agree?

4 A. Yes, sir.

5 Q. Showing you 85G.

6 THE COURT: So I'm sorry so the record is
7 clear 85E are photos of the back door? 85F is the text
8 to Adolfo back door broke?

9 MR. GIORDANI: Correct. Then 85E shows the
10 thumbnails associated with that text. I don't know if
11 Mr. Gentile said whether he had an objection to this one
12 or not.

13 MR. GENTILE: In 85E those photos that are
14 contained in 85E are the same as 85G, H and I, are they?

15 MR. GIORDANI: Yes.

16 MR. GENTILE: All right. Then no, I don't
17 have any objection.

18 BY MR. GIORDANI:

19 Q. Showing you 85G is that one of the photos --

20 A. Yes, sir.

21 Q. -- associated with the back door broke text?

22 A. Yes, sir.

23 Q. 85H is that another one of those photos?

24 A. Yes, sir.

25 Q. 85I is that another one of the photos associated

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1 with the back door broke text?

2 **A. Yes, sir.**

3 **Q.** Are those all photos of the back door of the
4 Alpine as it appeared on the date that you sent this
5 text?

6 **A. Yes, sir.**

7 **Q.** Showing you 85J --

8 THE COURT: So for the record does the
9 defense have any objection to G, H, and I?

10 MR. GENTILE: No, Your Honor.

11 MS. WILDEVELD: No, Your Honor.

12 BY MR. GIORDANI:

13 **Q.** Showing you 85J, do you recognize this as a text
14 sent from your phone?

15 **A. Yes.**

16 **Q.** Is that to Mr. Orozco?

17 **A. Yes, sir.**

18 **Q.** The body of that text says, just talked to the
19 guy at Home Depot and he said as of October 1 they no
20 longer install doors with panic bars they we can order
21 them but not install them?

22 **A. Yes, sir.**

23 **Q.** Did you send that text to Mr. Orozco on October
24 5th, 2019?

25 **A. Yes, sir.**

82

1 **Q.** What happened, if anything, between you sending
2 the photos of the door to Mr. Orozco and then the text
3 where you apparently have spoken to someone Home Depot?

4 **A. Back in August when I started we had talked -- I**
5 **had talked to Adolfo about trying to replace the back**
6 **doors because there was no locks on the door. So when I**
7 **had checked with Home Depot, he asked me to check around**
8 **and see -- Adolfo asked me to check around and see where**
9 **I can find doors that were cheap enough that he can**
10 **afford to put in the Alpine. I checked with Home Depot**
11 **and I sent some pictures of the doors to replace and up**
12 **until this time nothing was done about the doors. The**
13 **gentleman from Home Depot called me and said they can**
14 **still order the doors for us if we would like but they**
15 **cannot install doors with panic bars anymore.**

16 **Q.** Let me ask you a couple follow-up questions.

17 **A. Sure.**

18 **Q.** You indicated there was a discussion between you
19 and Mr. Orozco about fixing or replacing the door and
20 that started before this October 5th text?

21 **A. Yes.**

22 **Q.** And you indicated something about doors that were
23 cheap enough for him to afford. What did you mean by
24 that?

25 **A. When I talked to Adolfo about replacing the doors**

83

1 **he told me to check on line, check with people that did**
2 **replace doors, and to find the cheapest doors that I**
3 **could.**

4 **Q.** Did you find options various options for
5 replacing or repairing the door?

6 **A. Yes.**

7 **Q.** What was the price range of those options?

8 **A. From 1,000 to 3,000 installed.**

9 **Q.** Did you convey that information to Mr. Orozco?

10 **A. Yes, sir.**

11 **Q.** What did he say in response of anything?

12 **A. At first he told me to check with the people and**
13 **find out exactly how much it would cost for the people**
14 **at Home Depot and then I gave him that estimate and that**
15 **was the last we heard -- that I heard from him about**
16 **replacing it.**

17 **Q.** Okay. When you worked for Mr. Orozco between
18 August 1st, 2019, and December of 2019, did you have
19 authority in any way, shape, or form to make purchases
20 on his behalf?

21 **A. No.**

22 **Q.** Did you have access to any of his credit cards?

23 **A. No.**

24 **Q.** Did you have access to any of his accounts either
25 at Home Depot or Lowe's?

84

1 **A. No, sir.**

2 **Q.** Did you have petty cash or cash that you were
3 allowed to keep with you?

4 **A. Not up until the second week of December.**

5 **Q.** Okay. In the second week of December did you
6 receive some petty cash?

7 **A. Yes.**

8 **Q.** How much was it?

9 **A. \$100.**

10 **Q.** \$100?

11 **A. Uh-huh.**

12 **Q.** Yes?

13 **A. Yes.**

14 **Q.** Before you received that petty cash how would
15 you, for example, make change for tenants, say they give
16 you \$600 for rent and their rent is 595, how would you
17 make change?

18 **A. I had to pay for it out of my pocket or go to the**
19 **corner store. There was a corner store that was right**
20 **next -- half a block up from the Alpine and get change**
21 **from them and then bring it back to the client.**

22 **Q.** If you paid out of your pocket, I assume, were
23 you reimbursed?

24 **A. Yes.**

25 **Q.** How would you communicate that you came out of

85

1 pocket five dollars how would you communicate that with
 2 Mr. Orozco?
 3 **A. It was communicated to Adolfo and Augustin and**
 4 **then when it was time for payday Augustin would give it**
 5 **back to me with my pay.**
 6 **Q.** So Augustin actually paid you your --
 7 **A. Every time.**
 8 **Q.** -- hourly?
 9 **A. Yes. Every two weeks.**
 10 **Q.** And before I move on in the texts were there any
 11 subjects that you would text Mr. Orozco about that he
 12 wouldn't text you back but respond with a phone call?
 13 **A. Yes.**
 14 **Q.** What were those subjects if you recall?
 15 **A. There was different ones. We had conversation on**
 16 **the office phone about the back door. We had**
 17 **conversations on the phone about Apartment 20's air**
 18 **conditioner. We had conversations on the phone about**
 19 **the laundry room the electricity not working in the**
 20 **laundry for tenants washers and dryers. They would have**
 21 **been out since before I start working there. So there**
 22 **was different ones.**
 23 **Q.** I could have simplified this but let me ask it
 24 this way: Would looking in a bunch of text messages is
 25 it fair to say that not every conversation you had with

86

1 Mr. Orozco was contained in a text?
 2 **A. Right.**
 3 **Q.** Showing you now 85K.
 4 MS. BEVERLY: Did Mr. Gentile have an
 5 objection an to 85J?
 6 THE COURT: Any objection to 85J?
 7 MR. GENTILE: No.
 8 MS. WILDEVELD: No.
 9 BY MR. GIORDANI:
 10 **Q.** Showing you 85K do you recognize this as a text
 11 message from your phone?
 12 **A. Yes.**
 13 **Q.** Is that a text from Cassandra who you previously
 14 identified as Cassandra Criss on November 8th, 2019?
 15 **A. Yes.**
 16 **Q.** Where she asked you did they fix it; is that
 17 accurate?
 18 **A. Yes, sir.**
 19 **Q.** Showing you 85J -- I'm sorry 85L. Do you
 20 recognize that?
 21 **A. Yes, sir.**
 22 **Q.** Does that appear to be a follow-up text from
 23 Cassandra that same date shortly thereafter?
 24 **A. Yes, sir.**
 25 **Q.** And it says the back foot?

87

1 **A. Yes, sir.**
 2 **Q.** 85M. Do you recognize that?
 3 **A. Yes, sir.**
 4 **Q.** Does that appear to be another follow-up text
 5 from Cassandra on the same date this time it says door?
 6 **A. Yes, sir.**
 7 **Q.** What did you take that to mean?
 8 **A. Cassandra was asking me if the back door had been**
 9 **fixed.**
 10 **Q.** Showing you 85N. Do you recognize this?
 11 **A. Yes, sir.**
 12 **Q.** Is this your response to Cassandra on November
 13 8th, 2019, about at back door?
 14 **A. Yes, sir.**
 15 **Q.** You responded, no, it's not fixed yet?
 16 **A. Yes, sir.**
 17 **Q.** Prior to this text chain was there anymore
 18 discussion with Mr. Orozco about fixing the back door
 19 since the Home Depot text we just saw?
 20 **A. No.**
 21 **Q.** Did you discuss the back door with maintenance
 22 people on site?
 23 **A. Yes, sir.**
 24 MS. BEVERLY: I'm sorry. Did Mr. Gentile
 25 have an objection to 85K through N?

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1 THE COURT: Defense, any objection?
 2 MS. WILDEVELD: Miss Mier does not.
 3 MR. GENTILE: No. Mr. Gentile does not have
 4 an objection to those exhibits.
 5 THE COURT: No objection for the record.
 6 MR. GIORDANI: Court's brief indulgence.
 7 BY MR. GIORDANI:
 8 **Q.** I'm going to show you 85O. Do you recognize
 9 this?
 10 **A. Yes.**
 11 **Q.** Does this appear to be a text message that you
 12 sent from your phone on November 28th, 2019?
 13 **A. Yes, sir.**
 14 **Q.** There appears to be numerous recipients of the
 15 text message. Do you see that?
 16 **A. Yes.**
 17 **Q.** One is that contact previously identified as
 18 Adolfo. The next is Cassandra. The next is Augustin
 19 Travaio. The next is an empty or not saved phone
 20 number?
 21 **A. Right.**
 22 **Q.** Do you know whose that was?
 23 **A. I don't.**
 24 **Q.** The next was Casablanca cell?
 25 **A. Yes.**

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1 Q. Para Alex bug man?
 2 A. Yes.
 3 Q. The next is maintenance Jose; is that right?
 4 A. Yes.
 5 Q. And is Jose the Jose you mentioned previously as
 6 the maintenance guy?
 7 A. Yes.
 8 Q. Another person the text chain is a Candace?
 9 A. Yes, sir.
 10 Q. Who is that?
 11 A. She was an employee of the Economy.
 12 Q. Then another contact on that list is Tina who you
 13 previously described?
 14 A. Yes, sir.
 15 Q. Do you see the body here where it says, some
 16 idiot pulled the fire alarm, no, then there's four
 17 diamonds, at the Alpine?
 18 A. Yes, sir.
 19 Q. Do you remember the context of that text message?
 20 A. Yes, sir.
 21 Q. What was the context of that text message?
 22 A. Somebody had pulled a fire station on -- there's
 23 fire stations on the wall and somebody had pulled it.
 24 There was no fire. I sent a text to the group chat to
 25 let everybody know the fire station has been pulled.

90

1 Q. Okay. I'm going to ask you several follow-up
 2 questions. First let me ask you, do you now know what
 3 these four diamonds I guess icons mean after no?
 4 A. I don't know why I put those there.
 5 Q. Okay.
 6 THE COURT: What's the date of that text
 7 message?
 8 MR. GIORDANI: November 28th, 2019, 10:29
 9 a.m. UTC plus 0.
 10 BY MR. GIORDANI:
 11 Q. Do you recall when or what time of day
 12 approximately that fire -- that someone pulled that fire
 13 alarm?
 14 A. It was would have been earlier in the morning.
 15 Q. Okay. Are we talking pre-dawn hours or? Only if
 16 you recall.
 17 A. I can't recall the exact time. I'm sorry.
 18 Q. Were you home or at the Alpine when the alarm
 19 went off?
 20 A. Yes.
 21 Q. And was that an audible alarm?
 22 A. Yes.
 23 Q. Did you do anything in response to that audible
 24 alarm?
 25 A. Yes, sir.

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1 Q. What did you do?
 2 A. Went around to check to see if there was a fire.
 3 Q. Did you smell or see anything indicated a fire?
 4 A. No.
 5 Q. What did do you next?
 6 A. Don was with me and we went to the office. There
 7 was a -- where the fire box was in the office.
 8 Q. Is that just for identification purposes can you
 9 describe the color of the box?
 10 A. Red and white.
 11 Q. Okay. Contained within the Alpine office?
 12 A. Yes.
 13 Q. Was the office locked at that time?
 14 A. Yes, sir.
 15 Q. Did you have keys?
 16 A. Yes.
 17 Q. Did you go into that office?
 18 A. Yes.
 19 Q. Did you go in with anyone else?
 20 A. Don.
 21 Q. What did you and Don do when you into the office?
 22 A. Don said he knew how to turn off the alarm. I
 23 opened the fire box and he pressed a button to turn off
 24 the alarm.
 25 Q. Who opened the fire box if you recall?

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1 A. I did.
 2 Q. How did you go about doing that?
 3 A. There's a key that stays in the fire box at all
 4 times.
 5 Q. Okay. When you say stays in the fire box is it
 6 inserted into the lock on the fire box or hanging or
 7 something?
 8 A. Inserted into the lock.
 9 Q. So once Don presses the buttons on the panel what
 10 happens?
 11 A. The alarm went off.
 12 Q. When you say went off does that mean it goes
 13 silent?
 14 A. Yes, goes silent. I'm sorry.
 15 Q. Did you do anything in addition to what Don did
 16 to the box?
 17 A. No.
 18 Q. Did anyone from any monitoring company or fire
 19 did anyone respond that you saw?
 20 A. No.
 21 Q. After that occurred did you send this text
 22 message some idiot pulled the fire alarm, no, something,
 23 at the Alpine?
 24 A. Yes, sir.
 25 Q. Did you have any subsequent conversations with

93

1 Mr. Orozco about the fire alarm itself?

2 **A. Yes.**

3 **Q.** What was the purposes of those conversations?

4 **A. I sent him a text telling him about the fire box**
5 **being pulled, so we can be fixed.**

6 **Q.** Okay. Did you -- were you authorized or trained
7 in anyway to fix or reset that alarm panel?

8 **A. No.**

9 **Q.** Did you feel comfortable or have the capability
10 to actually do it?

11 **A. No.**

12 **Q.** Were you asked to?

13 **A. No.**

14 **Q.** What did Mr. Orozco indicate to you when you
15 informed him the stations were -- the fire stations were
16 pulled?

17 **A. He said he would take care of it.**

18 **Q.** Did you do any follow-up yourself after Mr.
19 Orozco indicated he would take care of it?

20 **A. No.**

21 **Q.** Do you know whether those pull levers or stations
22 were those still down at the time of the actual fire
23 December 21st, 2019?

24 **A. Yes, sir.**

25 **Q.** Showing you 85P.

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1 MS. BEVERLY: Did Mr. Gentile have an
2 objection to O?

3 THE COURT: Any objection by the defense to
4 O?

5 MS. WILDEVELD: No, Your Honor.

6 MR. GENTILE: No, Your Honor.

7 BY MR. GIORDANI:

8 **Q.** 85P here. Do you recognize that, sir?

9 **A. Yes.**

10 **Q.** If you can't see it I can always bring it up to
11 you.

12 **A. No, I'm fine.**

13 **Q.** Does that appear to be a text you sent from your
14 phone on November 28th, 2019, to Mr. Orozco?

15 **A. Yes.**

16 **Q.** The body of that text says, good morning, you
17 really need to get the cameras working over here because
18 someone pullec the fire alarm at 2:30 this morning but I
19 can't check the camera and see who it was because no one
20 knows the password for the system. Have a great,
21 something, it appears to be cut off?

22 **A. Yes, sir.**

23 **Q.** And do you recall sending that text to Mr. Orozco
24 on the 28th?

25 **A. Yes, sir.**

95

1 **Q.** Are these the surveillance cameras that we
2 discussed earlier in your testimony?

3 **A. Yes, sir.**

4 **Q.** So you yourself didn't have access to go back and
5 review them?

6 **A. No, sir, I didn't.**

7 **Q.** Did Mr. Orozco respond to this text to your
8 recollection?

9 **A. Not to my recollection.**

10 MS. BEVERLY: Any opposition to P?

11 THE COURT: Does the defense have any
12 objection to P?

13 MR. GENTILE: No.

14 MS. WILDEVELD: No, Your Honor.

15 THE COURT: Thank you.

16 BY MR. GIORDANI:

17 **Q.** Showing you 85Q. Do you recognize this text?

18 **A. Yes.**

19 **Q.** Is this a text you sent to the group on November
20 30th, 2019?

21 **A. Yes.**

22 **Q.** And the body of that text says, hell no, Alpine
23 is the black sheep of the company. We get maintenance
24 once every six months with three exclamation points?

25 **A. Yes, sir.**

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1 **Q.** What's the context, if you know, of that text
2 message?

3 **A. There had been a text from Cassandra into the**
4 **group chat about how she needed maintenance at the**
5 **Economy. She hadn't had maintenance in a few days. I**
6 **responded with -- she said they were the black sheep of**
7 **the company and I responded with this.**

8 **Q.** Okay. So it's not taken out of context is this
9 partially a joke?

10 **A. Partially but it's the truth.**

11 MS. BEVERLY: Any objection?

12 THE COURT: Defense?

13 MR. GENTILE: Just a moment. Your Honor,
14 I'm going to impose an objection and I'd like to carry
15 the subject to the cross-examination of this document.

16 THE COURT: Okay. Do you want to make your
17 objection for the record?

18 MR. GENTILE: The moment that a joke is
19 inserted you've got other issues and without the texts
20 that it's responsive to it also has some other problems.
21 All of them relate to hearsay because they are
22 out-of-court statements of this witness, the state of
23 mind doesn't matter. Okay? To the extent that it
24 communicates some sort notice or whatever, that's what's
25 the subject of the cross-examination. I would ask to --

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1 THE COURT: I'll note your objection for the
2 record and reserve.

3 MR. GIORDANI: Thank you, Your Honor. I
4 believe Miss Beverly said this earlier but for the
5 record all of these text messages are contained within
6 the discovery. I have not pulled every single text
7 message from Mr. Casteel's phone and marked them as
8 exhibits for the sake of brevity. The exhibits that we
9 did pull we believe are relevant to show the state mind
10 of the various players, et cetera.

11 THE COURT: Okay.

12 MR. GENTILE: I don't want my silence to be
13 taken as an indicia that somehow that's valid. I'll
14 revert to the earlier presentation that I made to the
15 Court with regard to state of mind.

16 THE COURT: Okay.

17 BY MR. GIORDANI:

18 Q. State's 85R. Does this appear to be a text sent
19 from your phone December 3rd, 2019?

20 A. Yes, sir.

21 Q. Sent to the group that we referenced previously?

22 A. Yes.

23 Q. And it says Alpine maintenance list; is that
24 right?

25 A. Yes, sir.

98

1 Q. So should there be a photo that follows that?

2 A. Yes.

3 Q. Showing you 85S. Do you recognize that?

4 A. Yes.

5 Q. Does that appear to be the photo associated with
6 85R?

7 A. Yes, sir.

8 Q. Is this an example of one of those handwritten
9 maintenance lists that you would sent to the group?

10 A. Yes, sir.

11 Q. On the top right it appears to be handwritten
12 11/30/19. Whose handwriting is that?

13 A. That's mine.

14 Q. And then all the handwriting below is that your
15 handwriting?

16 A. Yes, sir.

17 Q. The top line of that text -- I'm sorry, of that
18 photograph, it says No. 27 tile behind toilet missing
19 and leaking?

20 A. Yes, sir.

21 Q. Just for Court's edification does No. 27
22 reference a unit within the Alpine?

23 A. Yes, sir, that's Apartment 27.

24 Q. Okay. Showing you 85T.

25 MS. BEVERLY: Any objection to R through S?

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1 THE COURT: Any objection to R and S, 85R
2 and S?

3 MS. WILDEVELD: No, Your Honor.

4 MR. GENTILE: No, Your Honor.

5 MR. GIORDANI: Court's brief indulgence.

6 BY MR. GIORDANI:

7 Q. 85T do you recognize that as a text from your
8 phone on December 6th, 2019, to the group that you
9 referenced previously?

10 A. Yes, sir.

11 Q. Does it appear that someone is new on this group?

12 A. Yes, sir.

13 Q. Who is that?

14 A. **Michelle I'm not sure of the last name. She**
15 **lived in Apartment 17 at the Alpine but worked for**
16 **Adolfo at the I believe at that time it would have been**
17 **the Casablanca.**

18 Q. Okay. You don't know her last name you said?

19 A. I don't.

20 Q. So the group has now changed but from what you
21 can tell is they're all active employees on this list or
22 at the time were they active employees?

23 A. Yes, sir.

24 Q. And does this say Alpine maintenance list once
25 again?

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1 A. Yes, sir.

2 Q. Does the photo follow that or attached to that?

3 A. Yes, sir.

4 Q. Showing you 85U. Do you recognize that?

5 A. Yes, sir.

6 Q. That's the list or photo associated with that
7 last text message?

8 A. Yes, sir.

9 Q. I want to draw your attention here there appears
10 to be two items that are highlighted in blue?

11 A. **Mm-hmm. Yes, sir. Sorry.**

12 Q. Did you do that?

13 A. No.

14 Q. Do you know who did that?

15 A. **Jose maintenance.**

16 Q. Do you know why those items are highlighted and
17 the others aren't?

18 A. **When he would come to the Alpine when he would**
19 **fix anything he would highlight it in blue because the**
20 **maintenance list didn't change a lot if he didn't fix**
21 **anything so it was the same maintenance list sent**
22 **everyday. If he fixed something he would highlight it**
23 **in blue so he knew and the people in the group chat knew**
24 **that had been fixed.**

25 Q. Okay. And second from the bottom on this list

101

1 says front and back door broke?

2 **A. Yes, sir.**

3 **Q.** What is that referring to?

4 **A. The front door was still broke with no lock on it**
5 **and the back door was still broke from when it had been**
6 **broke in October.**

7 THE COURT: Does the defense have any
8 objection to 85T and U?

9 MR. GENTILE: No, Your Honor.

10 MS. WILDEVELD: No, Your Honor.

11 MR. GIORDANI: Court's brief indulgence.

12 May I proceed, Your Honor?

13 THE COURT: Yes, please.

14 BY MR. GIORDANI:

15 **Q.** Just for the record on 85U it appears the date
16 handwritten at the top of that maintenance list is
17 December 6th, 2019?

18 **A. Yes, sir.**

19 **Q.** You previously discussed an instruction from Mr.
20 Orozco about putting things repeatedly on the list?

21 **A. Yes.**

22 **Q.** Did there come a point in time where front and
23 back door broke was removed from the list?

24 **A. Yes.**

25 **Q.** Do you remember when that was?

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1 **A. I don't remember the specific date, no.**

2 **Q.** Assuming that did occur why?

3 **A. Adolfo told me he was taking care of it and it**
4 **didn't need to be put on the list constantly.**

5 **Q.** Okay. Showing you 85Y. Do you recognize that?

6 MR. GENTILE: 85Y?

7 MR. GIORDANI: Yes.

8 BY MR. GIORDANI:

9 **Q.** Do you recognize this one, sir?

10 **A. Yes, I do.**

11 **Q.** Does that appear to be a text from your phone
12 that you sent to Cassandra on December 6th, 2019?

13 **A. Yes, sir.**

14 **Q.** It says, hey, Alberto the new maintenance guy
15 says he can fix the front and back door at the Alpine if
16 Adolfo approved it, really need to get this done?

17 **A. Yes, sir.**

18 **Q.** Do you remember sending that text to Cassandra?

19 **A. Yes.**

20 **Q.** On December 6th, 2019?

21 **A. Yes.**

22 **Q.** Do you remember if she responded?

23 **A. I think she did.**

24 **Q.** I'm showing you 85Z. Do you recognize this?

25 **A. Yes.**

103

1 **Q.** You can always tell me if you need me to zoom in,
2 sir.

3 **A. Yes, sir.**

4 **Q.** This is a text you sent to Cassandra again
5 December 6th, 2019?

6 **A. Yes.**

7 **Q.** It says, he said you can fix the one we have
8 don't need to buy a new door?

9 **A. Yes.**

10 **Q.** Is this he that you're referring to the Albert
11 that you referenced in the last text?

12 **A. Yes, sir.**

13 **Q.** Clearly as of December 6th -- let me rephrase
14 that.

15 As of December 6th is the door the back door
16 still a concern for you?

17 **A. Yes, sir.**

18 **Q.** Showing you 85AA. Do you recognize this?

19 **A. Yes, sir.**

20 **Q.** Does that appear to be a text you sent on
21 December 6th, 2019, to Cassandra?

22 **A. Yes, sir.**

23 **Q.** In this text did you state, not sure the new guys
24 know what he is doing. Been here all day and fixed one
25 light?

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1 **A. Yes, sir.**

2 **Q.** Who is the new guy you're referring to then?

3 **A. Albert.**

4 **Q.** Is this the same guy you were referencing in the
5 last couple of texts?

6 **A. Yes, sir.**

7 MR. GENTILE: I object to this one. I don't
8 -- I don't have an objection to Y, Z and AA. I have no
9 objection.

10 THE COURT: Kristina?

11 MS. WILDEVELD: No, Your Honor.

12 BY MR. GIORDANI:

13 **Q.** Showing you 85BB. Do you recognize this as a
14 photo you sent from your phone to the list?

15 **A. Yes, sir.**

16 **Q.** On December 9th, 2019?

17 **A. Yes, sir.**

18 **Q.** And should there be a photo attached to that?

19 **A. Yes, sir.**

20 **Q.** Showing you 85DD.

21 THE COURT: What was the date on that?

22 MR. GIORDANI: December 9, 2019.

23 THE COURT: Thank you.

24 BY MR. GIORDANI:

25 **Q.** Showing you DD. Does it appear that that's the

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1 photo referenced in the thumbnail in the last exhibit?

2 **A. Yes, sir.**

3 MR. GENTILE: Your Honor, I think you need a
4 better foundation because you can't tell on these
5 exhibits which are what are in evidence as opposed to
6 what's been disclosed in discovery or what are proposed
7 exhibits which is all you're going to see unless you
8 want look through the eight terabytes.

9 MS. WILDEVELD: Ten.

10 MR. GENTILE: Ten, excuse me. I think there
11 needs to be a better foundation that this is the photo.

12 THE COURT: So since I can't really see --

13 MR. GENTILE: With regard to 85DD I don't
14 have a problem but without the photo it doesn't seem to
15 have any relevance so they really need to be taken
16 together. So I object.

17 MS. WILDEVELD: We would join in the
18 objection on behalf of Miss Mier.

19 MR. GIORDANI: May I approach the witness?

20 THE COURT: Yes.

21 BY MR. GIORDANI:

22 **Q.** If you can can you look at 85BB then 85DD and
23 based upon what you see in BB and your independent
24 recollection of the text you sent to the group, does
25 85DD appear to be the text showing the photograph

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1 associated with 85BB?

2 **A. Yes.**

3 MR. GIORDANI: Move for the admission of
4 them again.

5 THE COURT: Any objection?

6 MS. WILDEVELD: No, Your Honor.

7 MR. GENTILE: No.

8 BY MR. GIORDANI:

9 **Q.** So 85DD does this appear to be the photo you sent
10 to the group on December 9th of 2019?

11 **A. Yes, sir.**

12 **Q.** Correct me if I'm wrong it says December 6th,
13 2019, in your handwriting at the top?

14 **A. Yes, sir.**

15 **Q.** So is this essentially the same maintenance list
16 you've been sending to the group?

17 **A. Yes, sir.**

18 **Q.** Again it has front and back door broke on it?

19 **A. Yes, sir.**

20 **Q.** Showing you 85EE. Do you recognize that?

21 **A. Yes, sir.**

22 **Q.** Does this appear to be a text sent from your
23 phone on December 10th, 2019, to that same group we just
24 referenced?

25 **A. Yes, sir.**

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1 **Q.** In the body it says, keeps getting longer lol.

2 Do you know what that means?

3 **A. The list the maintenance list keeps getting
4 longer.**

5 **Q.** Showing you 85FF. Do you recognize this?

6 **A. Yes.**

7 **Q.** Is that a text sent to your phone from Mr. Orozco
8 on December 10th, 2019?

9 **A. Yes, sir.**

10 **Q.** In the text does it say, Jason what did Albert do
11 on Friday?

12 **A. Yes, sir.**

13 **Q.** Was Albert the person that was discussed
14 previously as kind of the newer maintenance guy?

15 **A. Yes, sir.**

16 **Q.** And had he been to the Alpine on the previous
17 Friday?

18 **A. Yes, sir.**

19 **Q.** Do you recall that?

20 **A. Yes.**

21 **Q.** Did you respond to the text from Mr. Orozco?

22 **A. Yes, sir, I did.**

23 **Q.** Showing you 85EE. Do you recognize this text?

24 **A. Yes, sir.**

25 MR. GENTILE: What is that one?

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1 THE COURT: You said EE.

2 MR. GIORDANI: That's what it looks like to
3 me. Maybe it's G. Is the one --

4 MR. GENTILE: 85EE --

5 MR. GIORDANI: No, this is G.

6 THE COURT: Does the defense any objection
7 to EE and FF?

8 MR. GENTILE: No objection.

9 MS. WILDEVELD: No, Your Honor.

10 THE COURT: Thank you.

11 BY MR. GIORDANI:

12 **Q.** Showing you 85GG, excuse me I misspoke earlier,
13 does this appear to be a text you sent from your phone
14 Mr. Orozco on December 10th, 2019?

15 **A. Yes, sir.**

16 **Q.** Is this response to his question about what
17 Albert did at the property?

18 **A. Yes, sir.**

19 **Q.** Did you respond, nothing, he fixed two wall
20 outlets and a light switch. That's all. Was gone to
21 Lowe's for three hours period. I called and told
22 Malinda about it and she said she would let you know?

23 **A. Yes, sir.**

24 **Q.** And the Malinda you're referencing in this text
25 is that Miss Mier?

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1 A. Yes, sir.

2 Q. That text I just showed you is from December
3 10th; is that right?

4 A. Yes, sir.

5 Q. Do you recall after December 10th, Mr. Orozco
6 being at the Alpine physically?

7 A. Yes, sir.

8 Q. What date was that if you recall?

9 A. Next day.

10 Q. The next day?

11 A. The 11th.

12 Q. And do you recall -- let me ask you: Why do you
13 recall that specifically?

14 A. Because he came over and wanted to see what
15 Albert had done before he paid him.

16 Q. When he came over was it during the day night or
17 morning?

18 A. It was during the morning.

19 Q. Did he enter the Alpine property?

20 A. Yes.

21 Q. And based upon your experience having worked and
22 lived there when you enter the Alpine property from the
23 front door can you see straight down the hallway to the
24 back door?

25 A. Yes, sir.

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1 those photos?

2 A. Yes, sir.

3 Q. And 85JJ is that a another one of those photos?

4 A. Yes, sir.

5 Q. 85KK --

6 MR. GENTILE: I have an objection in case
7 anybody wants to know. HH, II, and JJ relevance really
8 and truly. This is not a communication with Mr. Adolfo
9 Orozco Garcia.

10 MR. GIORDANI: They are relevant -- sorry.

11 MR. GENTILE: It certainly isn't something
12 that puts him on notice and it does not appear as though
13 this has any relevance at all other than the fact
14 there's a sloppy room that was according to the
15 testimony abandoned or left by a tenant that moved out.

16 THE COURT: State?

17 MR. GIORDANI: The relevance of these
18 particular photographs is the overall condition of the
19 Alpine which has been at issue since day one of this
20 preliminary hearing.

21 MR. GENTILE: Your Honor, the overall
22 condition of the Alpine has nothing to do with the fire.
23 There are parts of it that have to do with the fire.
24 The back door has to do with the fire but I just don't
25 see the relevance in terms of how it connects to what

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1 Q. And by that point in time clearly the back door
2 had not been fixed?

3 MR. GENTILE: Objection. Leading.

4 MR. GIORDANI: I'll withdraw it.

5 THE COURT: Sustained.

6 BY MR. GIORDANI:

7 Q. Showing you 85HH.

8 MR. GENTILE: For the record there's no
9 objection to GG.

10 THE COURT: Thank you. What about you?

11 MS. WILDEVELD: No, Your Honor.

12 BY MR. GIORDANI:

13 Q. 85HH. Do you recognize that?

14 A. Yes, sir.

15 Q. Does this appear to be a text you sent from your
16 phone on December 11th, 2019, to Cassandra?

17 A. Yes, sir.

18 Q. With some photos attached?

19 A. Yes, sir.

20 Q. Do you recall the context of this or the purpose
21 of that?

22 A. That is a room that had been -- a tenant moved
23 out of that had been left destroyed basically, disaster.
24 Excuse me.

25 Q. And just for the record for 85II is that one of

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1 we're here for which is an involuntary manslaughter case
2 that's based upon the on the Fan Man statute.

3 THE COURT: What did you want to say?

4 MR. GIORDANI: I would just say that I
5 disagree that the overall condition at the Alpine has
6 nothing to do with the charges in this case. We have a
7 general duty of habitability if it's not already in our
8 complaint it's in our amended complaint that we'll file
9 pursuant to the testimony that's been adduced at
10 preliminary hearing. We are going to argue over that
11 plenty but I disagree that the overall condition of the
12 Alpine has nothing to do with the charges.

13 THE COURT: Counsel, I do think that how the
14 property was maintained or not maintained in general is
15 relevant as well as the issue with the fire alarm and
16 the back door. I'm going to overrule your objection.

17 MR. GIORDANI: Thank you.

18 BY MR. GIORDANI:

19 Q. Showing you 85KK. Do you recognize this?

20 A. Yes, sir.

21 Q. This is -- does it appear to be a text sent from
22 your phone on December 13th, 2019, to the group that you
23 previously referenced?

24 A. Yes, sir.

25 Q. Does it appear there's a thumbnail photo attached

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1 to that text?

2 **A. Yes, sir.**

3 MR. GIORDANI: May I approach?

4 THE COURT: Yes.

5 BY MR. GIORDANI:

6 **Q.** Showing you 85KK and I'm showing you 85LL, MM,
7 NN, and OO. Just look through those four last exhibits
8 I referenced and tell me if you can tell which one of
9 those is the thumbnail and if you can't, that's okay.
10 Can you tell?

11 **A. I can't tell which one this specific is this**
12 **text.**

13 **Q.** I'm going to take these from you and hand them to
14 Miss Beverly and move on while she sorts these.

15 MR. GENTILE: So KK through OO are not being
16 offered at this time?

17 MR. GIORDANI: No.

18 MR. GENTILE: Am I correct?

19 MR. GIORDANI: Correct.

20 MR. GENTILE: I apologize, Your Honor. I
21 should not be talking to Counsel. I apologize.

22 THE COURT: No problem.

23 BY MR. GIORDANI:

24 **Q.** Now I'm going 85QQ. Do you recognize this?

25 **A. Yes, sir.**

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1 **Q.** Does this appear to be a text message you
2 received on your phone December 17th, 2019, from
3 Cassandra?

4 **A. Yes, sir.**

5 **Q.** In the body of that text, correct me if I am
6 wrong, it says, Adolfo then a bunch of colons have Jason
7 pick up truck drop and refrigersters at Alpine office;
8 is that right?

9 **A. Yes, sir.**

10 **Q.** 85RR. Do you recognize this text?

11 **A. Yes, sir.**

12 **Q.** Does it appear to be a text you received from
13 Cassandra that same day December 17th close in time to
14 that last text you just referenced?

15 **A. Yes.**

16 THE COURT: I'm sorry. I thought you said
17 December 27th before.

18 MR. GIORDANI: I must have misspoke. It was
19 12/17.

20 BY MR. GIORDANI:

21 **Q.** Do you recognize this, sir?

22 **A. Yes, sir.**

23 **Q.** Is this Cassandra's text to you says, new plan of
24 action Adolfo wants you to come get the truck and bring
25 it to Alpine and unload it?

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1 **A. Yes, sir.**

2 **Q.** Do you know what you and -- well, what Cassandra
3 is referencing there?

4 **A. Yes. There was U-Haul truck of refrigerators and**
5 **vending machine at the Economy.**

6 **Q.** And did you in fact go and pick that truck up?

7 **A. Yes, I did.**

8 **Q.** Where did you pick it up from for the record?

9 **A. The Economy Motel.**

10 **Q.** Was that based upon Cassandra's statement that
11 your boss is ordering you to do something or telling you
12 to do something?

13 **A. Yes, sir.**

14 **Q.** Did you go pick that U-Haul and then drive it to
15 a certain location?

16 **A. I picked it up from the Economy and drove it to**
17 **the Alpine.**

18 **Q.** What was in the U-Haul truck if you know?

19 **A. Refrigerators and a vending machine.**

20 **Q.** And did you yourself or did you reserve anyone
21 else to unload those items?

22 **A. Don unloaded it.**

23 **Q.** Was that Don Bennet?

24 **A. Yes, sir.**

25 **Q.** Where were those items placed?

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1 **A. They were placed in the hallway of the Alpine**
2 **apartment on the first floor by the office.**

3 **Q.** Is that on the -- is that the same day December
4 17th this text comes through that the items are actually
5 moved to the Alpine?

6 **A. Yes.**

7 **Q.** Do you know why they were moved from other
8 property to the Alpine?

9 MR. GENTILE: Objection. Hearsay.

10 MR. GIORDANI: I'm asking if he knows why.

11 THE COURT: That would be hearsay.

12 MR. GIORDANI: It's a yes or no question.
13 If he knows.

14 THE COURT: Okay.

15 BY MR. GIORDANI:

16 **Q.** Do you know why?

17 **A. Yes, sir.**

18 **Q.** How do you know not saying what you know but how
19 do you know?

20 **A. I was told by Cassandra and Augustin.**

21 **Q.** Okay. What did they tell you?

22 MR. GENTILE: Same objection.

23 MR. GIORDANI: At this point the hearsay
24 exception that I referenced earlier NRS 51035 sub 3, sub
25 d is a statement of Mr. Orozco's representatives in the

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1 course of the business or work being conducted.
 2 THE COURT: Objection is overruled.
 3 BY MR. GIORDANI:
 4 Q. What did they say to you, sir?
 5 A. I was told that these items were at the
 6 Casablanca another property they owned and they had to
 7 be moved from there because the property didn't pass
 8 inspection with them there.
 9 Q. Then they're moved to the Alpine and placed in
 10 the first floor hallway?
 11 A. Yes.
 12 Q. Showing you 85TT. Do you recognize this text?
 13 A. Yes, sir.
 14 Q. Is this a text from your phone to Cassandra on
 15 December 18th, 2019?
 16 A. Yes, sir.
 17 Q. The body of that text says, how is the inspection
 18 going; is that right?
 19 A. Yes, sir.
 20 Q. What are you referencing there?
 21 A. The inspection at the Casablanca.
 22 Q. Is that the inspection that you just referenced
 23 why you moved the large refrigerators into the Alpine?
 24 A. Yes, sir.
 25 THE COURT: Does defense have any objection

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1 to show the Alpine it was for sale, he'll come and show
 2 it to potential clients.
 3 Q. Okay. Do you know how long that property had
 4 been for sale prior to the fire on December 21st?
 5 A. I do not.
 6 Q. Did you have interactions personally with
 7 Mr. David Realtor?
 8 A. Yes.
 9 Q. Would he come to the property and personally
 10 interact with you?
 11 A. Yes, sir.
 12 Q. Do you recall when the last time was that he
 13 showed that property to potential buyers prior to the
 14 fire?
 15 A. In December. I don't know the exact date.
 16 Q. Fair enough. But it appears he is still involved
 17 or concerned with the property at this point?
 18 A. Yes, sir.
 19 Q. Showing you 85YY. Do you recognize that one?
 20 A. Yes, sir.
 21 Q. Does that appear to be another text from David
 22 Realtor in December 21st, 2019?
 23 A. Yes, sir.
 24 Q. Where he says, I stopped by the police officer
 25 said they're going to be here at least eight hours.

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1 85QQ, RR, and TT?
 2 MS. WILDEVELD: No, Your Honor.
 3 MR. GENTILE: No, Your Honor.
 4 THE COURT: Thank you.
 5 MR. GIORDANI: Court's brief indulgence.
 6 BY MR. GIORDANI:
 7 Q. Showing you 85XX. Do you recognize that?
 8 A. Yes, sir.
 9 Q. Does that appear to be a text you received from a
 10 contact in your phone listed as David Realtor?
 11 A. Yes, sir.
 12 Q. Do you recall receiving that text on December
 13 21st after the A pine Motel fire?
 14 A. Yes, sir.
 15 Q. That content of that text says, the fire
 16 department just called me. There was fire at the Alpine
 17 this morning. Is that right?
 18 A. Yes, sir.
 19 Q. Fair to say that you already knew there was a
 20 fire?
 21 A. Yes, sir.
 22 Q. You actually lived through it; correct?
 23 A. Yes, sir.
 24 Q. Who is David Realtor?
 25 A. David was a gentleman that had come to the Alpine

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1 Let's get together tomorrow discuss. Thanks.
 2 A. Yes, sir.
 3 Q. 85ZZ. Do you recognize that?
 4 A. Yes, sir.
 5 Q. That appears to be another text on December 21st
 6 the date of the fire from David Realtor to your phone?
 7 A. Yes, sir.
 8 Q. In which you say -- he says, I wanted to check in
 9 the property.
 10 A. Yes.
 11 Q. Did you have any physical interaction with David
 12 Realtor on the date of the fire?
 13 A. No, sir.
 14 Q. Okay.
 15 THE COURT: Defense have any objection to
 16 XX, YY, and ZZ?
 17 MR. GENTILE: No.
 18 MS. WILDEVELD: No, Your Honor.
 19 THE COURT: Thank you.
 20 BY MR. GIORDANI:
 21 Q. Before I show you a few more text messages I want
 22 to talk to you about the day of the fire. Okay?
 23 A. Okay.
 24 Q. You indicated that you were -- lived through it?
 25 A. Yes, sir.

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- 1 Q. Do you recall where you were when you first
2 became aware there might be a fire at the Alpine?
3 A. **In my apartment.**
4 Q. Who were you in your apartment with?
5 A. **My fiancée.**
6 Q. Is her name Christina?
7 A. **Yes, sir.**
8 Q. What's her last name?
9 A. **Farinella.**
10 Q. Farinella?
11 A. **Farinella, yes.**
12 Q. Did you have a dog too?
13 A. **Yes.**
14 Q. Was your dog present in the apartment?
15 A. **Yes, sir.**
16 Q. Anyone else present in your apartment when the
17 fire occurred?
18 A. **No, sir.**
19 Q. How did you become aware of the fire?
20 A. **Heard somebody yelling and screaming there was a**
21 **fire.**
22 Q. Did you hear any audible alarms?
23 A. **No.**
24 Q. Did you your smoke detector go off?
25 A. **No.**

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- 1 Q. And you're the manager of the property; right?
2 A. **Yes, sir.**
3 Q. At that time?
4 A. **Yes, sir.**
5 Q. What did you do when you heard or became aware
6 there might be a fire?
7 A. **I woke up Christina. She got dressed we grabbed**
8 **the dog and went out into the hallway.**
9 Q. Were you able to exit either of the stairwells in
10 the hallway?
11 A. **No, sir.**
12 Q. And did you live -- which floor did you live on
13 at the time?
14 A. **Third floor.**
15 Q. Were you able to get down even to the second
16 floor?
17 A. **No, sir.**
18 Q. From the third floor how do you get out of the
19 building?
20 A. **Come out of my apartment there's a door that**
21 **leads down steps to go down and out. You come out and**
22 **open the door and go down the steps.**
23 Q. So did you go down the steps?
24 A. **I tried to.**
25 Q. How did you ultimately get out?

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- 1 A. **The fire department we came back and rescued us**
2 **from the window of our apartment.**
3 Q. At the time of the fire were you aware of the
4 back door being broken?
5 A. **Yes, sir.**
6 Q. Was it at that point completely inoperable?
7 A. **Yes, sir.**
8 Q. Why was it or how was it completely inoperable at
9 that point?
10 A. **Because it was bolted closed.**
11 Q. Do you recall when it first was bolted closed?
12 A. **It would have been a few days after the October**
13 **5th pictures that were sent to Adolfo.**
14 Q. Okay. Back in October, early to mid October
15 would you estimate?
16 A. **Yes, sir.**
17 Q. Who bolted it shut initially?
18 A. **Jose and Don.**
19 Q. Once it was actually bolted shut did you express
20 concern to Mr. Orozco about it being bolted?
21 A. **Multiple times.**
22 Q. Multiple times in person or over the phone or
23 what?
24 A. **In person. Over the phone.**
25 Q. At that time between October and November of

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- 1 2019, how often would you physically see Mr. Orozco?
2 A. **A few times a week.**
3 Q. Would that be at the Alpine property?
4 A. **Yes.**
5 Q. Based upon your interactions with him was he
6 aware that the door was completely bolted shut?
7 A. **Yes.**
8 Q. Did you ever observe him physically observing or
9 inspecting that door?
10 A. **Yes.**
11 Q. Do you remember when that was?
12 A. **I don't remember the exact date, no, sir.**
13 Q. Was anyone present?
14 A. **Jose.**
15 Q. Is that the maintenance man you've referenced
16 previously?
17 A. **Yes, sir.**
18 Q. After you are rescued from the Alpine by the fire
19 department where do you physically go?
20 A. **The City had opened a shelter at the school that**
21 **was a few blocks down the road from the Alpine.**
22 Q. How long did you go and stay at the shelter?
23 A. **I was there for about three or four hours.**
24 Q. From there where did you go?
25 A. **Malinda Mier came and picked me up and we went**

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1 **back to the Alpine.**

2 Q. Did she pick you up in a vehicle that you
3 recognized?

4 A. **A white pick up truck that she drove.**

5 Q. Okay. Was that her vehicle to your knowledge?

6 A. **I don't know whose it was.**

7 Q. Okay. Where did you go in this vehicle with Miss
8 Mier?

9 A. **Down to he Alpine.**

10 Q. Were there still I guess fire personnel on scene?

11 A. **Yes, sir.**

12 Q. What did you do when you to the Alpine that time?

13 A. **Asked me there was a fire chief that was giving a
14 statement to the news and I just told him I was the
15 manager and asked him if everybody made it out of the
16 fire.**

17 Q. Did you see or observe Miss Mier talk to the
18 news?

19 A. **Yes, sir.**

20 Q. Do you recall what she said to the news?

21 A. **She said she was the coowner.**

22 Q. Was there like a news camera there?

23 A. **Yes, sir.**

24 MR. GENTILE: I have a hearsay objection to
25 that, Your Honor.

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1 A. **I do not know.**

2 Q. Did you remain at the Alpine with Miss Mier that
3 evening or that day?

4 A. **Yes, sir.**

5 Q. Do you know what time if day this was?

6 A. **This would have 9:00, 10:00 o'clock morning time.**

7 Q. Morning?

8 A. **Yes, sir.**

9 Q. And the fire occurred in the early morning hours;
10 right?

11 A. **Yes, sir.**

12 Q. When you went to the Alpine with Miss Mier and
13 she spoke to the news did your wife or your fiancée come
14 with you?

15 A. **No.**

16 Q. Where did she go?

17 A. **She stayed at the school at the shelter.**

18 Q. Okay. Did you subsequently see Mr. Orozco?

19 A. **No. Not that day.**

20 Q. Where did you go that day after the news
21 interaction?

22 A. **My fiancée came to the Alpine and Malinda took me
23 and Christina to eat.**

24 Q. After you ate where did you go?

25 A. **To the Starlight Motel.**

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1 MR. GIORDANI: Is the defendant's statement.

2 MR. GENTILE: It might be admissible against
3 her. It's not admissible to Mr. Orozco Garcia so I have
4 objection.

5 THE COURT: I'll sustain it as to you
6 because it would not be admissible against Mr. Orozco
7 Garcia.

8 MR. GIORDANI: I would stipulate to that
9 fact.

10 BY MR. GIORDANI:

11 Q. She indicated that she was a -- I'm sorry, I
12 didn't catch your words?

13 A. **Coowner.**

14 Q. Of the Alpine Motel?

15 A. **Yes.**

16 Q. Did Miss Mier have a key or access -- I'm sorry
17 have a key or control of Alpine?

18 MS. WILDEVELD: Objection, Your Honor.
19 Leading. If he can answer the question.

20 MR. GIORDANI: It's a yes or no. It's not
21 suggesting an answer.

22 THE COURT: Can you ask him if he knows.

23 BY MR. GIORDANI:

24 Q. Do you know at that time where she's claiming to
25 be a coowner whether she had the key to the property?

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1 Q. Where did you go within the Starlight Motel?

2 A. **It was room that Malinda was living in at the
3 time.**

4 Q. So did you go to Miss Mier's room that evening?

5 A. **Yes.**

6 Q. This is still the same day of the fire?

7 A. **Yes.**

8 Q. And did you stay there that evening?

9 A. **Yes.**

10 Q. Did you remain there throughout the next morning
11 and day?

12 A. **Yes.**

13 Q. At some point in time did you come into contact
14 with Mr. Orozco?

15 A. **Yes, sir.**

16 Q. And did you have a conversation with him?

17 MR. GENTILE: Can we have a foundation as to
18 when that was please, Your Honor?

19 THE COURT: I thought he testified the day
20 after the fire. Are you looking for a time and a place?

21 MS. WILDEVELD: He said at some point.

22 MR. GENTILE: The question was at some point
23 in time so it is just out there in a very amorphous
24 manner.

25 MR. GIORDANI: It's the following day I

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1 believe.

2 THE COURT: I heard him -- he did say that
3 but I heard him say the day after the fire at some point
4 but can you clarify?

5 MR. GIORDANI: Sure.

6 BY MR. GIORDANI:

7 Q. The day after the fire did you have a
8 conversation with Mr. Orozco at some point in time on
9 that date?

10 A. Yes.

11 Q. Do you recall when that was?

12 A. Nighttime.

13 Q. Where did the conversation occur?

14 A. Malinda's apartment at the Starlight.

15 Q. Who was present for that conversation?

16 A. Me, Adolfo, Christina Farinella, and Malinda
17 Mier.

18 Q. Okay. Before I get to that let me wrap up the
19 last few text messages. I'm going to show you 85AAA
20 now. Do you recognize this from your phone?

21 A. Yes, sir.

22 Q. Is this a text from Mr. Orozco on December 21st,
23 2019?

24 A. Yes, sir.

25 Q. And in the body does it say, we need to put

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1 A. Yes, sir.

2 Q. 85FFF. Do you recognize that?

3 A. Yes, sir.

4 Q. Does that appear to be a text from your phone on
5 December 22nd, 2019, from Cassandra?

6 A. Yes, sir.

7 Q. In the body of that text does it say, tel, with
8 one L, then you don't know anything right now?

9 A. Yes, sir.

10 Q. Do you know what that's in inference to?

11 A. Yes, sir. Clients people that were staying at
12 the Alpine had been asking about when they went to a new
13 place wherever they were -- put everybody on the
14 property, they were asking about if their rent would
15 carry over if they were still going to be due, they were
16 basically many questions and when they were going to be
17 able -- if they were going to be able to get back in so
18 their to get their stuff. I had asked Cassandra about
19 that and this is the text she sent me back.

20 Q. Understood. 85GGG. Do you recognize that?

21 A. Yes, sir.

22 Q. Does that appear to be a text on your phone from
23 Cassandra on December 22nd, 2019?

24 A. Yes, sir.

25 Q. In this one it says, everyone just be careful who

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1 everyone in our properties?

2 A. Yes, sir.

3 Q. 85BBB. Do you recognize that?

4 A. Yes, sir.

5 Q. Is that a text from your phone from Mr. Orozco on
6 December 21st, 2019?

7 A. Yes, sir.

8 Q. Does the body of that text say, let them all know
9 I got some money for them for the inconvenience?

10 A. Yes, sir.

11 Q. 85CCC. Do you recognize that?

12 A. Yes, sir.

13 Q. Is that a text on your phone from Mr. Orozco on
14 December 21st, 2019?

15 A. Yes, sir.

16 Q. Does the body of the text say, managers and
17 employees make sure you do not talk to anyone at all?

18 A. Yes, sir.

19 Q. 85DDD. Do you recognize that?

20 A. Yes, sir.

21 Q. And is that another text on your phone from Mr.
22 Orozco on December 21st, 2019?

23 A. Yes, sir.

24 Q. Does the body of that text say, the less you talk
25 the better?

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1 you talked to if you lived at Alpine?

2 A. Yes.

3 Q. Do you know what that references?

4 A. That was reference to there were attorneys
5 personal injury attorneys and stuff talking to -- they
6 had reached out to me and other people that worked and
7 that was the text that we were sent back.

8 Q. Now you were previously describing --

9 THE COURT: Does the defense have any
10 objection to AAA, BBB, CCC, DDD, FFF, GGG?

11 MR. GENTILE: I don't think EEE was offered.

12 MR. GIORDANI: EEE was not.

13 THE COURT: I didn't say E. I said AAA,
14 BBB, CCC, DDD, FFF and GGG?

15 MR. GENTILE: No.

16 MS. WILDEVELD: No, Your Honor.

17 THE COURT: Thank you.

18 BY MR. GIORDANI:

19 Q. You were previously describing a conversation
20 that you had at Miss Mier's house, I believe you said
21 Miss Mier, Mr. Orozco, yourself, and your fiancée were
22 present?

23 A. Yes, sir.

24 Q. Is that the day after the fire?

25 A. Yes.

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1 Q. What was the context --

2 MR. GENTILE: Can we have a date just to
3 make it clear because the fire happened like at night.
4 It was dark out. It was really the morning but it was
5 dark out so if we're talking about December 22nd, that's
6 fine.

7 THE COURT: Okay.

8 MR. GIORDANI: I'm asking the questions and
9 if he wants to ask on cross, he can feel free to do so.

10 MR. GENTILE: I would think the Court would
11 want to know.

12 THE COURT: I am assuming the fire was in
13 the early morning hours of December 21st. We know that
14 for a fact. This conversation that we're about to
15 discuss happened on the night of December 22nd; is that
16 correct?

17 MR. GENTILE: Okay. As long as it's the
18 state of the record I don't have a problem with that.

19 BY MR. GIORDANI:

20 Q. This conversation is when you say or when I say
21 the day after the fire are we referring to the 21st or
22 22nd?

23 A. **It would have been after midnight on the 21st**
24 **that's why I said the next day. The reason I know that**
25 **is we didn't get to the apartment until 11:30, 12:00**

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1 o'clock.

2 Q. Are we talking about a conversation on the 22nd?

3 A. **Yes, sir.**

4 Q. What was the context of that conversation?

5 A. **Adolfo had asked me if I would be willing to take**
6 **vacation.**

7 Q. What did you take that to mean?

8 MR. GENTILE: Objection. His state of mind
9 doesn't matter.

10 MR. GIORDANI: He can provide context to the
11 statement if he knows.

12 MR. GENTILE: Can't do it with hearsay.

13 MR. GIORDANI: It's not hearsay. It's the
14 defendant's statement.

15 THE COURT: Overruled.

16 THE WITNESS: I took it to mean that I
17 needed to leave.

18 BY MR. GIORDANI:

19 Q. Did he make any promises or offer you anything to
20 leave?

21 A. **He said would you be willing to take some money**
22 **and take a vacation.**

23 Q. The Court couldn't see your hands.

24 A. **Quotation marks.**

25 Q. What were the quotation marks around?

135

1 A. **Around taking money and taking a vacation.**

2 Q. Okay. At the time was -- did he have anything on
3 him on his person?

4 A. **Yes, sir.**

5 Q. What?

6 A. **A pistol on his hip and a mini AK.**

7 Q. Is s mini AK a firearm?

8 A. **Machine gun, yes, sir.**

9 Q. Did you agree to take this vacation or take the
10 money?

11 A. **No.**

12 Q. Did any money ultimately change hands?

13 A. **No.**

14 Q. Did you actually leave town?

15 A. **No.**

16 Q. Did you in fact talk to the police?

17 A. **Yes.**

18 Q. Had you already talked to the police once at the
19 time of this discussion?

20 A. **Yes.**

21 Q. In that discussion with the police was that the
22 day of the fire?

23 A. **Yes.**

24 Q. Then you have this discussion the following day?

25 A. **Yes.**

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1 Q. Then do you ultimately interview or have a
2 discussion, multiple discussions with detectives after
3 Mr. Orozco mentioned you taking a vacation?

4 A. **Yes.**

5 Q. Do you recall any discussion about your
6 cellphones or texts or anything of that nature?

7 A. **Yes.**

8 Q. What was the nature of that conversation?

9 A. **That conversation was with Malinda. She --**

10 Q. Let me stop you.

11 A. **Malinda Mier.**

12 Q. Malinda Mier. On what date does this discussion
13 occur?

14 A. **That would have on the 22nd.**

15 Q. So the day after the fire?

16 A. **Yes.**

17 Q. Was Mr. Orozco present for this particular
18 conversation?

19 A. **No.**

20 Q. What did Miss Mier say in this conversation?

21 A. **That she said that Adolfo had told her to tell**
22 **all of the managers to factory reset their phone.**

23 Q. What did that mean to you?

24 A. **That I was supposed to shut off my phone and not**
25 **and just reset it.**

137

- 1 Q. Did you in fact do that?
- 2 A. No.
- 3 Q. You preserved your phone?
- 4 A. Yes.
- 5 Q. At that point in time when Miss Mier said that to
- 6 you were you aware that detectives were involved?
- 7 A. Yes.
- 8 Q. You indicated your fiancée was present for this
- 9 conversation that you referenced with Adolfo -- Mr.
- 10 Orozco and Miss Mier?
- 11 A. Yes.
- 12 Q. How long have you been with your fiancée?
- 13 A. Fourteen and a half years.
- 14 Q. Fair to say you are familiar with her demeanor?
- 15 A. Very.
- 16 Q. How did that suggestion to take a vacation how
- 17 did that affect your fiancée?
- 18 A. She was terrified.
- 19 Q. Did your fiancée leave or take a vacation?
- 20 A. No.
- 21 Q. I'm going to go back and address a few things
- 22 with you but first let me ask you: After December 22nd
- 23 and up until I guess today's date have you had any
- 24 further discussions with Mr. Orozco?
- 25 A. No.

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- 1 Q. Have you had since December 22nd any further
- 2 discussions with Miss Mier?
- 3 A. No.
- 4 Q. Since December 22nd have you observed anyone that
- 5 you believed to be following you?
- 6 A. Yes.
- 7 Q. When did that occur for the first time?
- 8 A. The first time would have been in January.
- 9 Q. Of 2020?
- 10 A. Yes.
- 11 Q. What did you observe at that point in time?
- 12 A. Cassandra Criss -- me and my fiancée had moved
- 13 into a apartment that's a few blocks up from the Economy
- 14 and Cassandra saw us outside and stopped in front of our
- 15 apartment.
- 16 Q. Were you outside?
- 17 A. Yes.
- 18 Q. Did she interact with you in anyway?
- 19 A. Yes.
- 20 Q. What did she say?
- 21 A. She told me I needed to talk to Adolfo so we can
- 22 get our story straight.
- 23 Q. Did you in fact talk to Adolfo and get your story
- 24 straight?
- 25 A. No.

139

- 1 Q. Did you have a subsequent occasion to believe
- 2 someone was interacting with you about the fire or
- 3 following you?
- 4 A. Yes.
- 5 Q. When was that?
- 6 A. The first time would have been a month ago and
- 7 it's repeated then it was again two weeks ago and then
- 8 the day before yesterday.
- 9 Q. Describe the first time it occurred.
- 10 A. First time it occurred there was -- my wife was
- 11 walking our dog and she came in and she said the bumble
- 12 bee truck is following me.
- 13 Q. What is the bumble bee truck?
- 14 A. There's a yellow truck that Adolfo owns that
- 15 maintenance would drive and other people would drive
- 16 that worked for him would drive.
- 17 Q. What color is it?
- 18 A. Yellow.
- 19 Q. Why do you all it the bumble bee truck?
- 20 A. Because it says bumble bee on the back of it.
- 21 Q. Fair to say it's a pretty unique truck?
- 22 A. Yes.
- 23 Q. Did you observe that yourself the first time?
- 24 A. Yes. When she came in the house to tell me I
- 25 went out the door and I saw the truck driving past.

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- 1 Q. Did you see anyone inside that truck?
- 2 A. No.
- 3 Q. So you're not claiming Mr. Orozco himself was in
- 4 that truck, are you?
- 5 A. No, sir.
- 6 Q. Or Miss Mier?
- 7 A. No, sir.
- 8 Q. To be fair.
- 9 Was there another time where you had an
- 10 interaction with that truck?
- 11 A. Yes, sir.
- 12 Q. What was that?
- 13 A. Two weeks ago.
- 14 Q. What did that happen?
- 15 A. About 1:00 o'clock in the morning my roommate
- 16 came in and said there was a yellow pick up truck parked
- 17 in our driveway. I went to out to -- I got dressed out
- 18 and I went out and there was a yellow pick up the same
- 19 bumble bee pick up truck parked in my back driveway.
- 20 Q. And is that the same truck you recognized as
- 21 being owned by Mr. Orozco?
- 22 A. Yes, sir.
- 23 Q. Did you interact -- was there an occupant inside?
- 24 A. No.
- 25 Q. Did you interact with the truck in anyway?

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1 A. No.

2 Q. What did you do?

3 A. I went back inside because I just had a pair of
4 shorts on and a shirt. I went back inside to get
5 dressed and put my shoes on and when I came back out the
6 truck was gone.

7 Q. Was there another interaction with that truck
8 that occurred?

9 A. Yes, sir.

10 Q. When that that?

11 A. Two days ago.

12 Q. What was the interaction two days ago?

13 A. That same truck was parked in my front driveway.

14 Q. This time did you see anyone inside?

15 A. Yes.

16 Q. Do you know who it was?

17 A. Not -- not -- to me it looked like somebody that
18 I know, yes, but I couldn't say for sure.

19 Q. Without saying who it is, is it someone that you
20 know within the organization or someone that you know
21 from outside of the organization?

22 A. Someone within inside the organization.

23 Q. Okay. Do you feel comfortable saying the name of
24 that person?

25 A. Sure.

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1 Q. Who?

2 A. Juan.

3 Q. Juan what?

4 A. I have no idea of the last name.

5 Q. Was that this Juan an employee of Mr. Orozco or
6 was he at some point in time?

7 A. Yes.

8 Q. Do you know where he worked?

9 A. He worked at all different properties. He was a
10 maintenance man.

11 Q. I believe I asked you do you know Juan's last
12 name?

13 A. I do not.

14 Q. After the fire was there some --

15 MR. GIORDANI: Court's brief indulgence.
16 Judge, I should be wrapping relatively soon. Can we
17 take a quick break?

18 THE COURT: Sure.

19 MR. GENTILE: Your Honor, I am going to ask
20 some housekeeping --

21 MR. GIORDANI: Can we have the witness step
22 down?

23 MR. GENTILE: Sure.

24 THE COURT: Sir, I'm going to have you step
25 down so you can take a break and instruct you not to

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1 discuss your testimony with anybody in the hallway.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Thank you.

4 MR. GENTILE: Just very briefly. It would
5 be my request that when the direct examination is
6 finished we adjourn for the day. We have beaucoup notes
7 here.

8 THE COURT: I was going to do that.

9 MR. GENTILE: Were you going to do that?

10 THE COURT: Yes.

11 MR. GIORDANI: No objection at all.

12 MS. BEVERLY: Judge, can I just make a
13 record quickly, if Mr. Giordani is okay with that, I am
14 want to make a record so we are very clear about which
15 exhibits were admitted.

16 THE COURT: I am going to do that. I am
17 making my list here.

18 MS. BEVERLY: I also think we after that we
19 need to talk about the Mr. Dibble issue because that
20 affects the state's case.

21 THE COURT: We're going to.

22 MS. BEVERLY: Thank you.

23 (Recess taken.)

24 THE COURT: I want to make a record to see
25 if everybody's on the same page. I didn't have any

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1 objection so I was going to admit the following exhibits
2 -- are you ready?

3 MS. BEVERLY: Yes, Judge.

4 THE COURT: 85D.

5 MR. GENTILE: D?

6 THE COURT: D as in dog.

7 MR. GENTILE: No objection.

8 THE COURT: I already noted where you didn't
9 have an objection. These are the exhibits that defense
10 counsel had no objection to. I just wanted to make sure
11 it's accurate and correct for following exhibits the
12 defense collectively had no objection and they all being
13 with the number 85. D as in dog, F as in Frank, E as
14 Easy, G, H, I, J, K, L, M, N, O, P, R, S, T, U, Y and Z.
15 AA, BB, DD, EE, FF, GG. I overruled the objection to
16 HH, so it's admitted. I overruled the objection to II
17 and JJ, those are admitted. Double QQ, RR, TT, XX, YY,
18 ZZ, AAA, BBB CCC, DDD, FFF, and GGG. The following
19 exhibits were withdrawn: KK, LL, MM, NN, OO. Exhibit C
20 was skipped. The objections were reserved on Exhibits
21 85A, B and Q. I'm going to sustain those objections on
22 those three exhibits. They will not be admitted.

23 MS. BEVERLY: Thank you, Judge.

24 MR. GENTILE: To the extent that the clerk
25 can get us something to reflect that it would be

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1 helpful.

2 THE COURT: Yes. Christa -- Lauren will
3 incorporate that in the minutes.

4 MR. GENTILE: I'd also if it's possible I'd
5 like to get an expedited transcript and I'll pay for it.
6 Obviously I will pay for it. Can I get it tomorrow?

7 COURT REPORTER: No.

8 MR. GENTILE: Can I get it Thursday?

9 COURT REPORTER: I can't because I work all
10 day.

11 THE COURT: A rough is different from the
12 final.

13 MR. GENTILE: I definitely need a transcript
14 with regard to Mr. Dibble's testimony.

15 COURT REPORTER: Did you want the stuff from
16 the other day?

17 MS. BEVERLY: Yes.

18 THE COURT: My question for Mr. Dibble is he
19 going to available with his counsel?

20 MR. GENTILE: As of this moment his counsel
21 has not been retained so we don't know when counsel will
22 be available but I'm sure it will be Thursday certainly
23 before they rest because.

24 MS. BEVERLY: That's the issue, Judge, is
25 that when had the hearing earlier and Your Honor found

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1 him to be in contempt, I don't know what that means, but
2 obviously we're still going to want him to testify. If
3 he continues to refuse to testify, I guess we need to
4 have a contempt hearing or I don't know what Your Honor
5 wants to do but certainly we are not going to rest
6 before he testifies.

7 THE COURT: Or before a higher court rules
8 on that issue.

9 MS. BEVERLY: Exactly.

10 MR. GENTILE: There's not any question that
11 they should -- if this is going to be resolved clearly
12 we're going to go and seek a review of your decision.

13 THE COURT: Sure. That's my intention.

14 MR. GENTILE: If Mr. Dibble needs money to
15 be on his voucher over at the jail we will do that.

16 THE COURT: So the Court doesn't intend to
17 incarcerate Mr. Dibble.

18 MR. GENTILE: But in any case --

19 THE COURT: That's one way to get rid of him
20 I guess.

21 MR. GENTILE: But it could -- I have no clue
22 as to -- I can tell you this we will proceed with all
23 due haste. Frankly, you know, you need to -- there
24 needs to be an order because otherwise I can't get it to
25 a review.

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1 THE COURT: Right. Now that he decided he
2 wants counsel as I understand --

3 MR. GENTILE: Right.

4 THE COURT: I can't do doing anything until
5 that happens. So that's why I need some post haste.

6 MR. GENTILE: We will go forward with all
7 due speed I can tell you that for sure. I do know there
8 would be at least one amicus and maybe two. That
9 doesn't give them a right to slow it down, they have to
10 proceed without due haste as well.

11 MS. BEVERLY: If he is talking about the
12 state, I don't have any problem with haste. I am ready
13 to proceed right now. I don't know if he's talking
14 about the state. If he wants to take it up, that's
15 fine. Just informing the Court that we are not going to
16 rest before that issue is resolved.

17 MR. GENTILE: I understand that. I am just
18 trying to do some calendaring ideas.

19 THE COURT: That brings me to my next
20 question. I just wanted to clarify I believe we
21 discussed last time we were here that Mr. Gentile you
22 needed to be free next week during election week so I
23 wanted to make sure we didn't schedule --

24 MR. GENTILE: That's right.

25 MR. GIORDANI: I don't mean to interrupt I

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1 need about twenty more minutes with Jason so unless you
2 want me to not finish my direct today.

3 THE COURT: I do want you to finish.

4 MR. GENTILE: Can we discuss scheduling
5 after this?

6 THE COURT: Yes. It was my understanding
7 from last week that we're not doing any sessions next
8 week because of the election.

9 MR. GENTILE: There's a high probability
10 that we need to --

11 THE COURT: That's fine. I wanted to make
12 sure we were all on the same page.

13 MR. GIORDANI: I hope it doesn't happen. I
14 really hope that doesn't happen but it doesn't look
15 good.

16 MS. WILDEVELD: But we do have court
17 Thursday?

18 THE COURT: Yes. We do have court this
19 Thursday two days from now. We have a 1:00 o'clock
20 session scheduled.

21 MS. BEVERLY: Yes.

22 THE COURT: Good afternoon, again. Do you
23 want more water?

24 THE WITNESS: No, ma'am.

25 THE COURT: You are still under oath.

149

1 State, please proceed.

2 MR. GIORDANI: Thank you.

3 BY MR. GIORDANI:

4 Q. Sir, I just want to ask you some summary
5 questions regarding your time at the Alpine as the
6 manager.

7 A. Okay.

8 Q. During the course of working at the Alpine did
9 you keep regular hours?

10 A. Yes.

11 Q. Generally what were the hours?

12 A. **Monday through Saturday from 8:00 to 4:30.**

13 Q. Okay. During the course of your employment at
14 the Alpine between my date is August 1st I'm giving you
15 that up until the date of the fire, did you field
16 several complaints from tenants regarding their units?

17 A. Yes, sir.

18 Q. Did you do your best to document those complaints
19 and pass them along to your chain of command?

20 A. Yes, sir.

21 Q. Based on your conversations with Mr. Orozco and
22 your experience with him were you authorized to spend
23 any of his rent money yourself?

24 A. No, sir.

25 Q. Were you authorized in any way by Mr. Orozco to

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1 Q. That was a bad question. At any point in time
2 during the time that you worked at the Alpine did you
3 yourself observe new heaters being installed in units?

4 A. No.

5 Q. Was there at some point a discussion with Mr.
6 Orozco in which he provided heaters for lack of a better
7 term?

8 A. Yes.

9 Q. Did those heaters work?

10 A. No.

11 Q. Did you know why?

12 A. **They weren't heaters.**

13 Q. What were they?

14 A. **They were fake fireplaces that mounted on the
15 wall.**

16 Q. When did you receive those at the Alpine?

17 A. November.

18 Q. Was there a discussion that you had with
19 Mr. Orozco --

20 MR. GENTILE: Can we have the year? He
21 lived there five years.

22 BY MR. GIORDANI:

23 Q. He worked there -- this was 2019?

24 A. Yes, sir.

25 Q. Was there a discussion you had with Mr. Orozco

150

1 pay or charge or put on any account the repair cost or
2 the replacement cost for that back door?

3 A. No, sir.

4 Q. Were there various units within the Alpine Motel
5 that did not have heat?

6 A. Yes, sir.

7 Q. Were there various units --

8 MR. GENTILE: Objection. Foundation.

9 THE COURT: Could you lay a foundation?

10 BY MR. GIORDANI:

11 Q. During the course of your employment with the
12 Alpine did you field several complaints from tenants
13 regarding the lack of heat in their units?

14 A. Yes, sir.

15 Q. Did you have heat in your own unit?

16 A. Yes, sir.

17 Q. How did you have heat in your unit?

18 A. **I went and bought a space heater.**

19 Q. So Mr. Orozco didn't provide heat you provided it
20 yourself?

21 A. Right.

22 Q. Were there times were you would provide over, I
23 guess, replacing heaters or installing heaters in any of
24 the rooms?

25 A. Provide by meaning?

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1 about those?

2 A. Yes.

3 Q. What was that discussion about?

4 A. **I told him that those couldn't be put in rooms
5 for heat because they were fake fireplaces and they had
6 to be mounted on the wall and he said those aren't going
7 to work because our walls won't hold them.**

8 Q. During the course of your employment and when I
9 say that I mean late July early August, 2019, through
10 December 21st, 2019. Did you ever have access to a
11 company credit card?

12 A. No.

13 Q. Did you ever have access during that time or
14 authorization during that time to charge anything to Mr.
15 Orozco's Home Depot or Lowe's accounts?

16 A. No.

17 Q. Do you recall getting a quote from Home Depot
18 about the cost of those doors?

19 A. Yes.

20 Q. Do you remember when that was?

21 A. **I don't the remember specific date, no, sir.**

22 Q. Can you narrow it down to a month or no?

23 A. **November. October, November.**

24 Q. What was the quote for that door?

25 A. **For just for the one back door it was installed**

000249

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1 **it 1,000, 1,300 right around in there.**

2 **Q.** Was there a discussion at some point about
3 \$3,000?

4 **A.** That was for both doors.

5 **Q.** Front and back?

6 **A.** Yes.

7 **Q.** Did Mr. Orozco authorize or provide you funds in
8 order to make that purchase at point in time?

9 **A.** No.

10 **Q.** Did he say anything with regard to that \$3,000
11 pricing?

12 **A.** Said we needed to find something cheaper that was
13 too expensive.

14 **Q.** Did you attempt to find something cheaper?

15 **A.** Yes.

16 **Q.** And did you convey that information to Mr.
17 Orozco?

18 **A.** I couldn't find anything -- he wanted it the
19 price of the door ordered and installed. I couldn't
20 find anything cheaper than what Home Depot had offered
21 us.

22 **Q.** Based upon your physical interaction with the
23 rent money on various occasions do you believe that Mr.
24 Orozco had the funds to make that repair had he wished
25 to do so?

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1 **A.** Yes.

2 **MR. GENTILE:** Your Honor, we'll stipulate to
3 that purpose.

4 **MR. GIORDANI:** Perfect, thank you.

5 **MR. GENTILE:** That he had the funds to make
6 a repair.

7 **THE COURT:** Yes.

8 **MR. GENTILE:** But his belief is of no
9 relevance.

10 **THE COURT:** Right.

11 **MR. GENTILE:** But there is no issue with
12 regard to whether the funds were available to make the
13 repair.

14 **THE COURT:** I agree.

15 **MR. GIORDANI:** We appreciate the
16 stipulation.

17 **BY MR. GIORDANI:**

18 **Q.** Do you remember a point in time when Mr. Augustin
19 did not come to the property for an extended period of
20 time to pick up the rents?

21 **A.** Yes.

22 **Q.** Do you recall how much money piled up in the safe
23 at that time?

24 **A.** About right around probably \$10,000.

25 **Q.** Do you recall telling the detectives previously

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1 it was over \$18,000?

2 **A.** I could have said that, yes.

3 **Q.** As you sit here today do you know --

4 **A.** I don't exactly know how much it was, no.

5 **Q.** Fair enough. Did Mr. Orozco ever specifically
6 tell you not to spend his money without approval?

7 **A.** Yes.

8 **Q.** On how many occasions?

9 **A.** Multiple.

10 **Q.** Had you went out on your own and purchased let's
11 just stick to the back door what do you think the
12 consequences would have been?

13 **MR. GENTILE:** Objection. Calls for
14 speculation.

15 **MR. GIORDANI:** I can rephrase.

16 **THE COURT:** Okay.

17 **BY MR. GIORDANI:**

18 **Q.** Did he convey to you what would happen if you
19 spent his money without his authorization?

20 **A.** No.

21 **Q.** Did you hear rumors about what had happened to
22 manager's in the past?

23 **MR. GENTILE:** Objection. That is rank
24 hearsay.

25 **THE COURT:** Sustained.

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1 **BY MR. GIORDANI:**

2 **Q.** Okay. Did there ever come a point in time where
3 you needed to obtain cleaning supplies during the course
4 of your employment?

5 **A.** Yes.

6 **Q.** How would you go about doing that?

7 **A.** I would text Adolfo and tell him that I needed
8 cleaning supplies. He would tell me to contact Augustin
9 and to get money from Augustin.

10 **Q.** How much money are we talking about for cleaning
11 supplies?

12 **A.** \$25.

13 **Q.** After November the 28th false alarm --

14 **A.** Yes.

15 **Q.** -- did you have a discussion with Mr. Orozco
16 about having those alarm pull stations reset?

17 **A.** Yes.

18 **Q.** What was his response?

19 **A.** He would take care of it.

20 **Q.** And did you during the months of your employment
21 interact via text with Malinda Mier?

22 **A.** Yes.

23 **Q.** Do you recall what those interactions were about
24 generally?

25 **A.** Some of them were conditions of the property.