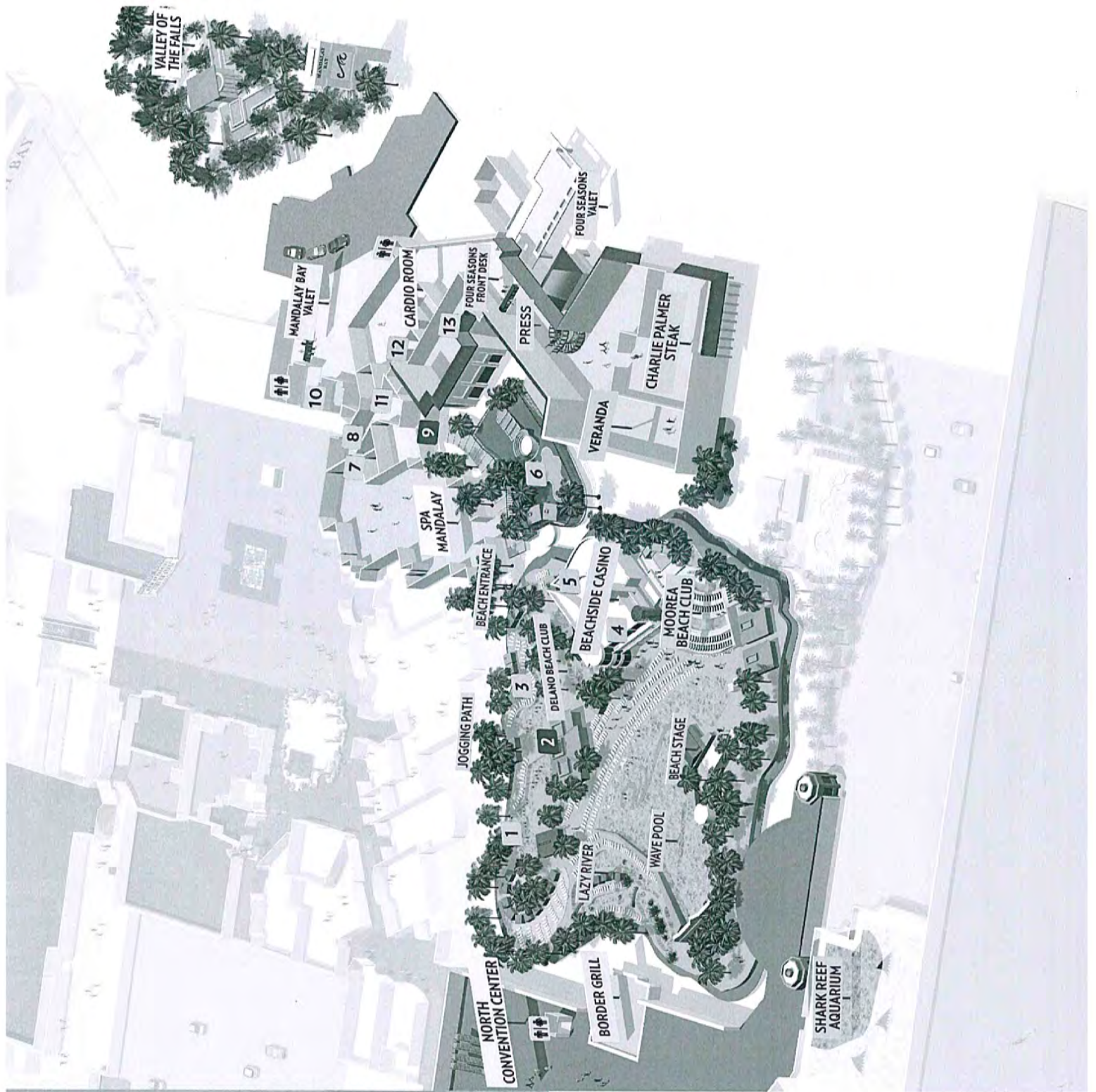


ADDENDUM 1

ADDENDUM 1



RESORT MAP

MANDALAY BAY | RESORT AND CASINO, LAS VEGAS

BEACH LEVEL

RESTAURANTS
4 BEACH BAR & GRILL
BORDER GRILL
CHARLIE PALMER STEAK
12 SEA BREEZE ICE CREAM & SMOOTHIES
VERANDA

ENTERTAINMENT & LOUNGES
2 BIKINI BAR
BEACH STAGE
CHARLIE PALMER STEAK LOUNGE
VERANDA BAR & LOUNGE
3 ONYX LOUNGE
PRESS
VERANDA BAR & LOUNGE

SHOPPING
11 CIRCUS
13 JEWELRY & ICE SPIRITS
7 PEARL MOON
18 SPA MANDALAY FOUTOUE
19 SURF SHOP

BEST & RELAXATION
6 FOUR SEASONS POOL
LAZY RIVER
MOOREA BEACH CLUB
SPA MANDALAY
WAVE POOL
WEST LAGOON POOL

MEETING ROOMS
NORTH CONVENTION CENTER
CAPTAIN'S BOARDROOM
CORAL ROOM
RELANDER BALL ROOM
MAGELLAN BOARDROOM
HAWAIIAN ROOM

ICONS
RESTROOM
ESCALATORS/STAIRS
ELEVATOR

[illegible]

PLATE JARDINE
RESTAURANT • BAR
LUPLO BY MICELANGILO
MEDIA
BATTLE CASE
RED SOLE
RIVER
POOR! NOOK GALL
SHIMMER
THE NOODLES SHOP
NO FISH FISH
NUT OF VEGARIZETA
STANISLO
VOGUEIN

1972 SQUADRON BAR
DARTMOUTH TEACH CLUB
EVENING CALL
EVENTS CENTER BAR
EVENTS CENTER LOUNGE
ETECANARY SOUND LOUNGE & BAR
FAT TILLYS CAFE
FOUNDATION ROOM LOUNGE
FRANKLIN
HOUSE OF BLUES MUSIC HALL
LIGHT NUGT CLUB

CASINO CASHIER
CRYSTAL ROOM
POKER ROOM
RACE & SPORTS BOOK

BELLA SCARPA
DAVINOFF
ESSENCE
HOUSE OF ALLES STORE
LIFE
MOLISA
PARADISO
RANGGONG WISATA'S
RUBY BLUE
SCENE
SHARK BEEF FROM-AGE
SHARK BEEF STORE
STARLIGHT TATTOO

BAY ESSENTIALS
 CARLSBOM
 CHAPPEL HATS
 ELTON'S MEN'S STORE
 FASHION 101
 FLY FLY FLY SHOPS
 GUNNESS STORE
 LUCK
 LUH
 LUCOME
 MAP
 NIKE GOLF
 NOBIA BLUE
 OF THE CA

3940 COFFEE+TEA
BATHHOUSE SPA AND GYM
BELL DESK
BUSINESS CENTER
DALLAS KITCHEN
FRANKLIN
FRONT DESK
INFO AND RESERVATION DESK
PINEA
SKYFALL LOUNGE

EVENTS CENTER
BOWENWAY ROOM
COUNTRY ROOM
EVENTS CENTER CLUB ROOM
JAZZ ROOM

FOUR SEASONS
ACACIA BALLROOM
COTTONWOOD
DESERT WILLOW
GARDEN OF EDDY BALL ROOM

THE PALMS
RUB ROOM
ROCK AND ROLL ROOM
SUNSHINE ROOM

THE PALMS
MESQUITE
PALM LOUNGE/PHILIP ROOM
PALM VERDE
SUNSHINE ROOM

LEVEL 1
BANDS

LEVEL 2
BREAKERS
LAGOON
MANDALAY BAY BALLROOM
REEF
SHORLINE
SURF

LEVEL 3
ADMIRAL
BAYVIEW
COMMANDEERS
EXPLORER
JAGUARE
OUTRIGGER
PALM
SOUTH SEAS
VOTAGER

DELANO LAS VEGAS

5TH FLOOR - INDIGO
6TH FLOOR - SAGE
3RD FLOOR - SE-NIA
4TH FLOOR - CRIMSON

- 21 CAR RENTAL
- 24 CONVENTION BUSINESS CENTER
- BAGS LUGGAGE SERVICE
- BELL DESK

RESTROOM

ADDENDUM 2

ADDENDUM 2

ORIGINAL

VER

FILED IN OPEN COURT
STEVEN D. JOHNSON
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

APR 16 2014 6:30pm

BY Tiffany A. Lawrence
TIFFANY A. LAWRENCE, DEPUTY

KYLE PIKALUK and DAVID SWITZER,

Case No. A-12-654252-C

Plaintiffs,

Dept. No. XXII

Vs.

C & HRV, LLC d/b/a VIRGIN RIVER
HOTEL & CASINO,

Defendant.

A-12-654252-C
JV
Jury Verdict
3702849



JURY VERDICT

We, the Jury in the above-entitled matter, find the following:

1. Do you find, by a preponderance of the evidence, Defendant VIRGIN RIVER
HOTEL & CASINO and/or its employees falsely imprisoned Plaintiff DAVID SWITZER?

Yes X No

*If you answered "Yes, to Question No. 1, answer Question No. 2, and then go to Question
No. 3. If you answered "No" to Question No. 1, skip Question No. 2, and go to Question No. 3.*

2. What are compensatory damages suffered by Plaintiff DAVID SWITZER as a result
of the false imprisonment suffered by him?

\$ 30,625

3. Do you find, by a preponderance of the evidence, Defendant VIRGIN RIVER
HOTEL & CASINO and/or its employees committed conversion against Plaintiff DAVID
SWITZER?

Yes X No

If you answered "Yes" to Question No. 8, answer Question No. 9. If you answered "No" to Question No. 8, skip Question No. 9.

9. What are the compensatory damages suffered by Plaintiff KYLE PIKALUK as a result of the conversion suffered by him?

\$ _____

If you answered "Yes" to either Questions No. 6 or 8, answer Question No. 10. If you answered "No" to both Questions Nos. 6 and 8, please skip Question No. 10.

10. Did Defendant VIRGIN RIVER HOTEL & CASINO and/or its employees act with oppression, fraud or malice warranting an award of punitive damages to Plaintiff KYLE PIKALUK?

Yes X No

DATED this 16 day of April 2014.

~~JURY~~ FOREPERSON

ADDENDUM 3

ADDENDUM 3

1 aware of the identity of these individuals, and will amend this complaint as their
2 identities are discovered.

- 3 3. Plaintiff was present in Las Vegas, Nevada, at a casino operated by Hard Rock on August
4 22-23, 2015.
- 5 4. While partaking of the services offered in the form of gambling, Plaintiff was card
6 counting at blackjack.
- 7 5. Plaintiff saw that he was being watched, and decided to leave.
- 8 6. Plaintiff had \$3625.00 in casino chips at that time, and was approaching the casino cage
9 to cash his chips and depart.
- 10 7. Plaintiff was stopped by Hard Rock personnel before he reached the cage, which
11 personnel requested possession of Plaintiff's identification.
- 12 8. Plaintiff refused the request, and instead, showed his identification to the Hard Rock
13 employees with a clear view that it was government issued I.D., a photo of Plaintiff, and
14 Plaintiff's date of birth.
- 15 9. Plaintiff was not legally required to provide identification, desired to maintain his privacy
16 and anonymity, and refused requested to leave and that his chips be cashed.
- 17 10. It is critical for persons in the Plaintiff's position (legal advantage gamblers) to maintain
18 their anonymity concerning casinos because casinos broadcast this information on
19 networks for others to use to the detriment of legal gamblers such as the Plaintiff.
- 20 11. At the time the Plaintiff presented the chips, the law required that the Defendant cash the
21 chips presented by the Plaintiff.
- 22 12. Plaintiff believes the persons with whom he was interacting were security personnel
23 employed by Hard Rock.
- 24
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- 1 13. Plaintiff stated his desire to leave, and when he stated he was leaving, was prevented
2 from doing so.
- 3 14. The security personnel of the Defendant then audaciously and without authority informed
4 the Plaintiff that, because the casino is private property, Plaintiff did not have the ability
5 to leave until he complied with Defendant's demands to turn over his identification.
- 6 15. The security personnel of Hard Rock, acting within the scope of their employment and
7 purported authority, then handcuffed Plaintiff on the floor of the casino in front of
8 numerous other patrons.
- 9 16. The duty of Hard Rock, minimally, at that point was to themselves contact the Nevada
10 Gaming Control Board pursuant to NRS 463.362.2(a) ("Whenever a patron and a licensee
11 . . . have any dispute which cannot be resolved to the satisfaction of the patron and which
12 involves . . . distribution of cash . . . the licensee is responsible for notifying the Board or
13 patron in accordance with the provisions of subsection 2." "Whenever a dispute
14 described in subsection 1 involves . . . at least \$500, the licensee shall immediately notify
15 the Board").
- 16 17. Plaintiff was then taken to a security office against his will, stating at the door that he
17 desired to not enter the room.
- 18 18. Plaintiff, while in the security office, was physically searched against his will, his wallet
19 unconsensually removed from his pocket and rifled, his picture taken against his will, on
20 information and belief, a copy of his driver's license taken against his will, and held in
21 handcuffs against his will.
- 22 19. As of today, on information and belief, Hard Rock has not contacted the Nevada Gaming
23 Board relative to the dispute and has effectively stolen Plaintiff's \$3625.00.
- 24
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1 20. Defendant's actions were for the ulterior purpose of gaining private information about
2 Plaintiff for the publication of the same to third persons, such information being private
3 to the Plaintiff and not legally required to be disclosed to the defendants.

4 21. Plaintiff suffered physical injuries in the form of contusions and abrasions through the
5 Defendant's unlawful seizure of him

6 22. For each of the following causes of action, the Defendant's actions were oppressive.

7 23. For each of the following causes of action, the Defendant's actions were undertaken with,
8 and exhibited, malice in fact and in law.

9 24. For each of the following causes of action, Plaintiff has been injured, and is entitled to
10 damages in an amount in excess of \$10,000.00, said injuries including:
11

- 12 a. Emotional distress;
- 13 b. Outrage;
- 14 c. Loss of liberty;
- 15 d. Humiliation;
- 16 e. Mortification;
- 17 f. Loss of reputation;
- 18 g. Loss of his \$3625.00;
- 19 h. Destruction of his vacation to Las Vegas;
- 20 i. Loss of sleep and its attendant discomfort;
- 21 j. Pain, discomfort, and suffering associated with the handcuffing;
- 22 k. Mental suffering;
- 23 l. Loss of liberty; and
- 24 m. A general loss of faith in society, justice, and fellow citizens.
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25. For each of the following causes of action, as related to the oppression and malice exhibited by the Defendant, Plaintiff is entitled to punitive damages.

I. FIRST CAUSE OF ACTION—THEFT/CONVERSION/TRESPASS TO CHATTELS

26. Plaintiff incorporates ¶¶ 1-25 above as though fully restated herein.

27. Plaintiff was legally in possession of his chips (chattels) when Defendant's unprivileged actions rendered them valueless.

28. The actions of the Defendant with respect to the Plaintiff's money/chips constitute conversion, theft of Plaintiff's personal property as defined under NRS 193.021 in the amount of \$3625.00. The claim in excess of \$10,000.00 on this cause of action incudes punitive damages in order to crest that sum.

II. SECOND CAUSE OF ACTION—FALSE IMPRISONMENT

29. Plaintiff incorporates ¶¶ 1-28 above as though fully restated herein.

30. The actions of the defendants and events as described above constitute the false imprisonment of the Plaintiff by the Defendant.

III. THIRD CAUSE OF ACTION--DEFAMATION

31. Plaintiff incorporates ¶¶ 1-30 above as though fully restated herein.

32. In handcuffing and asportating the Plaintiff in public without privilege or legal authority, Defendants communicated to the numerous persons viewing the interaction that the Defendant was a criminal.

33. Plaintiff is not, and was not, a criminal.

34. The publication of criminality associated with Plaintiff constitutes defamation *per se*.

35. The actions of the defendants as described above constitute the tortious defamation of the Plaintiff

IV. FOURTH CAUSE OF ACTION—BATTERY

36. Plaintiff incorporates ¶¶ 1-35 above as though fully restated herein.

37. The actions of the defendants and events as described above constitute the tortious battery of the Plaintiff by the defendants.

V. FIFTH CAUSE OF ACTION—NEGLIGENCE PER SE

38. Plaintiff incorporates ¶¶ 1-37 above as though fully restated herein.

39. In taking the actions stated above towards Plaintiff, Defendant violated NRS 200.460 and NRS 200.481.

40. The referenced statutes envision Plaintiff as a protected person from the activities undertaken by Defendant in violation of said statutes.

41. The violation of these statutes constitutes negligence per se by Defendant.

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AD DAMNUM

WHEREFORE Plaintiff prays that this court enter its judgment for Plaintiff, and against defendants, in actual damages on each cause of action in excess of \$10,000.00, together with punitive damages (on claims I-IV) determined by the trier of fact, and together therewith, award Plaintiff the interest, costs, and attorney's fees so wrongfully incurred in prosecuting the within action.

DATED this 19th day of January, 2016.

Nersesian & Sankiewicz

/s/ Robert A. Nersesian

Robert A. Nersesian
Nevada Bar No. 2762
528 S. Eighth Street
Las Vegas, Nevada 89101
Telephone: 702-385-5454
Facsimile: 702-385-7667
Email: vegaslegal@aol.com
Attorneys for Plaintiff

JURY DEMAND

Plaintiff herewith demands trial by jury of all issues so triable in the within case.

Dated this 19th day of January, 2016.

NERSESIAN & SANKIEWICZ

/s/ Robert A. Nersesian

Robert A. Nersesian, Esq.
Nevada Bar No. 2762
528 South Eighth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2016, pursuant to NRCP 5(b) and EDCR 8.05(f), the above referenced First Amended Complaint and Jury Demand was served upon the following parties via e-service through the Eighth Judicial District Court e-filing system, and that the date and time of the electronic service is in place of the date and place of deposit in the mail:

Justin W. Smerber, Esq.
Moran Brandon David Moran
630 S. 4th Street
Las Vegas, Nevada 89101
j.smerber@moranlawfirm.com
Attorneys for Defendant

/s/ Rachel Stein
An employee of Nersesian & Sankiewicz

ADDENDUM 4

ADDENDUM 4

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID L. LOCKHART,

Plaintiff,

vs.

VENETIAN CASINO RESORT, LLC,

Defendants.

Case No. 07-CV-1032-JCM

FILED
ENTERED

RECEIVED
SERVED ON
COUNSEL/PARTIES OF RECORD

APR - 7 2010

CLERK US DISTRICT COURT
DISTRICT OF NEVADA

BY: _____ DEPUTY

VERDICT

While you may review this verdict form in its entirety for understanding, and are even encouraged to do so, when answering the questions it is important that you proceed from the beginning through the questions sequentially while following the instructions that appear.

1. Do you find that the plaintiff is entitled to recover on his claim for assault?

X
Yes No

2. Do you find that the plaintiff is entitled to recover on his claim for battery?

X
Yes No

3. Do you find that the plaintiff is entitled to recover on his claim for false imprisonment?

X
Yes No

4. Do you find that the plaintiff is entitled to recover on his claim for conversion?

X
Yes No

5. Do you find that the plaintiff is entitled to recover on his claim for breach of innkeeper's duty?

X
Yes No

6. Do you find that the plaintiff is entitled to recover on his claim for intentional infliction of emotional distress?

X
Yes No

If you answered no each of questions 1-6 above, then proceed to question 10 and do not answer questions 7-9. If you answered yes to any of questions 1-6, proceed to question 7.

1 7. Did the plaintiff suffer injury proximately caused by of any of
2 the matters for which you answered yes in questions 1-6?

X
Yes No

3 *If you answered no to question 7, then an award for nominal damages will enter on these*
4 *claims and you should proceed to question 9. If you answered yes to question 7, proceed to*
5 *questions 8 and 9.*

6 8. What are the amount of damages suffered by the plaintiff as
7 a result of all the actions for which you answered yes to
8 questions 1-6?

\$ 200,000

9 9. Did the plaintiff prove by clear and convincing evidence that
10 the actions of the defendant for which you found plaintiff
11 entitled to recover were undertaken with oppression?

X
Yes No

12 *Proceed to question 10.*

13 10. Did the plaintiff prove negligence by a preponderance
14 of the evidence?

X
Yes No

15 *If you answered no to question 10, then proceed to question 16. If you answered yes to*
16 *question 10, then proceed to question 11.*

17 11. Did the plaintiff also commit negligence that proximately
18 caused any portion of his injuries?

X
Yes No

19 *If you answered no to question 11, then proceed to question 16. If you answered yes to*
20 *question 11, then proceed to question 12.*

21 12. As between plaintiff and defendant, the portion of the defendants'
22 negligence proximately causing plaintiff's injuries totals (answer between
23 1% and 100%):

% 80

24 *If your answer to question 12 totals less than 50%, do not answer questions 13, 14, or 15,*
25 *and proceed to question 16. If your answer to question 12 is 50% or more, proceed to*
26 *question 13 and 14.*

27 13. What are the total damages suffered by the plaintiff for negligence
28 without regard to fault between plaintiff and defendant?

\$ 200,000

14. Is any of the amount set forth in answer to question 13 also
included in any amount set forth in your answer to question 8?

X
Yes No

1 *If your answer to question 14 is no, do not answer question 15, and proceed to question 16. If*
2 *your answer to question 14 is yes, then proceed to question 15.*

3 15. What amount, if any, set forth in answer to question 13 is not
4 included in the amount set forth in your answer to question 8? \$ 0

5 *Proceed to question 16.*

6 16. Did the plaintiff prove breach of contract by a
7 preponderance of the evidence? X
Yes No

8 *If you answered no to question 16, then do not answer questions 17, 18 and 19. If you*
9 *answered yes to question 16, then proceed to question 17 and 18.*

10 17. What are the total damages suffered by the plaintiff for
11 breach of contract? \$ 6,400

12 18. Is any of the amount set forth in answer to question 17 also
13 included in any amount set forth in your answer to questions 8 and 15? X
Yes No

14 *If your answer to question 18 is no, do not answer question 19. If your answer to question 18*
15 *is yes, then proceed to question 19.*

16 19. What amount, if any, set forth in answer to question 17 is not
17 included in the amounts set forth in your answer to questions 8 and 15? \$ 0

18 *Review the verdict form and make certain that the instructions have been followed, that the*
19 *answers and figures, if any, are the answers and figures intended, execute the form where*
20 *indicated below and return the form to the bailiff*

21 Jury Foreperson

22 Dated: 04/07/2010

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1 White v. State, 45 S.W. 702 (Tex. Crim App. 1898), on
2 reh'g, 46 S.W. 825 (1898)

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1 **PETITION**

2 Appellant (“Dr. Slade”) herewith petitions for rehearing of this matter
3 because the Court has misapprehended the law and overlooked important
4 consequences arising from the majority Opinion.
5

6 **I. MISAPPREHENSION AND MISAPPLICATION OF THE LAW**
7 **CONCERNING “PREMISES . . . WHEREIN . . . GAMING IS DONE”**

8 The Opinion expands the definition of “premises” beyond that which the
9 legislature intended. The crux of the Opinion can be found in the statement that
10 the “premises” referred to in NRS 463.0129 must necessarily include the
11 entirety of the complex operated by the licensee. Opinion, p. 10. This ruling
12 ignores, and the Opinion misapprehends, the realities and practicalities of the
13 situation.¹
14

15
16 Resort hotels² with casino gambling are regularly called upon by law to
17 parse out their different areas, and treat the casino different than other portions
18 of their property. See e.g. NRS 463.350(1)(b)(requiring that casinos segregate
19 minors from gaming areas); NRS 609.210 (prohibiting employment of minors in
20 gaming areas); NRS 647.018 (providing a rule exclusive to the convention
21
22
23

24 ¹ Because the Opinion relies upon law and argument extraneous to the briefing,
25 citation to the record for the location of all points is not possible. While the
26 issue may have been raised at Appellee’s Brief, p. 10, the analysis applied in the
27 Opinion is new to the case.

28 ² See NRS 466.029

1 facility of a resort hotel). In short, the character and responsibilities of the
2 different factions of a resort hotel are regularly subjected to different duties
3 under the law.
4

5 In light of the definition of establishment being “the premises wherein or
6 whereon any gaming is done,”³ the Opinion applies the definition in reverse of
7 that clearly intended by the legislature. For example, attached Addendum
8 (“Add.”) 1 is the map of the Mandalay Bay resort hotel provided as a common
9 exemplar of a resort hotel complex. It, simply, defies reason to include the
10 “event’s center,” (1/4 of a mile away from any gaming), any of the three
11 convention centers on the map, or any of the tens of thousands of square feet of
12 hotel space as “premises upon which gaming is conducted.” Indeed, review of
13 Add. 1 shows that two of the three hotel towers at the complex are far distant
14 from any premises upon which gaming is done.
15

16 More directly, in context, the statement “wherein or whereon gaming is
17 done” is not expansive, as the Opinion holds, but more reasonably looked to as
18 restrictive or limited. I.e., “premises” where gaming is not done is not included
19 in the definition. In providing the definition of “establishment” as premises
20 where “gaming is done,” and applying the same rule of expressio unius est
21
22
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25

26
27 ³NRS 463.0148
28

1 exclusio alterius applied in the Opinion at p. 10, the “establishment” for which
2 the Opinion finds a right to exclude does not include those areas of the
3 compound where ‘gaming is not done.’ Truly, NRS 463.0148 can be just as
4 soundly, and even more reasonably, construed to exempt portions of the
5 premises where gaming is not done from the ability to exclude.
6

7
8 In this respect, the Opinion takes this ambiguous statute and uses it to
9 impliedly overrule five hundred years of common law, and exempt the class of
10 the world’s largest and most renowned innkeepers from the duties universally
11 applicable to innkeepers. See Opening Brief, pp. 10-11. This court has
12 repeatedly ruled that the legislature can overrule the common law directly (e.g.,
13 a statute expressly abolishing the common law duty of innkeepers), or by
14 implication, but then only in the most limited or circumstances. See W. Indies,
15 Inc., v. First Nat. Bank of Nev., 67 Nev. 13, 32 (1950)(“[R]epeal [of the
16 common law] by implication is not favored, and this result will be reached only
17 where . . . both cannot be carried into effect.”)(emphasis added); Consol.
18 Municipality of Carson City v. Lepire, 112 Nev. 363, 365 (1996)(Especially in
19 the context of gaming, a statute granting privileges to the licensee at variance
20 with the common law must be strictly construed against the licensee).
21
22
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25 The fact that the law, as referenced above, already places different
26 burdens on different facilities within a Nevada resort hotel positively
27 demonstrates that the innkeepers duty to allow access can still be “carried into
28

1 effect” while granting a casino the ability to exclude. The majority misapplies
2 the law in concluding that the statute relied upon obviates the common law
3 applicable to innkeepers, and also errs in failing to apply the required strict
4 construction of the statute against the licensee and in concluding that both the
5 common law and the statute “cannot be carried into effect.” Finally, it fails to
6 take into account that the Opinion exempts holders of restricted gaming licenses
7 to a lesser standard than the hundreds of non-gaming hotels in the State who
8 must still follow the universal common law rule. Truly, this is a distinction
9 unrelated to the condition of the State and provides no rational for the excuse of
10 the burden to those charged with the very reputation of the State and the
11 exaltation of tourism as Nevada’s core industry.
12

13
14 Also note that the definition relied upon by the majority is at odds with
15 the very definition upon which they rely in NRS 463.0148. Citing to Black’s
16 Law Dictionary, the Opinion determines that the entirety of the complex
17 attendant to the “building” housing the casino are, essentially, the “grounds” of
18 the building housing the casino. The statute does not call upon the reader to
19 address the “grounds of the complex,” which it could have said, but rather, the
20 grounds of the building where gaming is done. Reference to the Add. 1 clearly
21 shows that it is antithetical to the concept of “grounds” to include facilities
22 which dwarf the casino as the “grounds” of the casino. Less than 4.5% of this
23 complex is comprised of premises where gaming is conducted. Over 2,000,000
24
25
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1 square feet of convention space, and over 900,000 square feet of hotel room
2 space comprises the majority of the complex. Clearly, these are not “grounds”
3 to the casino, but rather, dwarf the casino in commerce, size, and function. It is
4 also bizarre to characterize a stand-alone 12,000 arena as “grounds” to the
5 casino, but that is the effect of the majority decision.

6
7
8 From a different perspective, especially considering the foregoing, the
9 Opinion is not consistent with a statute cited, and this is highlighted by the
10 language used in the Opinion. The majority rules: “NRS 463.0129(3)(a)
11 specifically provides that the common law right to exclude ‘any person from the
12 premises of [a gaming] establishment for any reason’ is not abridged.” Opinion,
13 p. 10 (emphasis added). The Court has misquoted the statute, and, thus,
14 inappropriately found a statutory right to exclude where none exists. In contrast
15 to the Opinion, the portion of NRS 463.0129 cited expressly provides that “any
16 common-law right to exclude,” not “the common law right to exclude,” is not
17 abrogated or abridged.⁴ (Emphasis added). The legislature was not, and could

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21
22 ⁴ Other courts have noted the distinction and the importance of the distinction.
23 At oral argument at 15:23-47, in Franceschi v. Harrah’s Entertainment, No. 11-
24 15272 (9th Cir. 2012). (available at <[http://www.ca9.uscourts.gov/media/view.
25 php?pk_id=0000008953](http://www.ca9.uscourts.gov/media/view.php?pk_id=0000008953)> viewed 5/22/16), the following interchange took
place:

26 **Counsel for Harrahs:** § 3 of 463.0129 has deemed lawful the exclusion
27 of card counters by expressly reserving to casinos the common law right
to exclude anyone

28 **Judge:** Counsel, you used an interesting word. You said “the common
law right.” Unfortunately, that’s not what the statute says. If it actually

1 not be, creating a common law right. Contrary to the Opinion, the language in
2 the statute effectively provides that the common law right asserted must emanate
3 from a source other than the statute.⁵ Nonetheless, the Opinion finds that the
4 common law right emanates from the statute. This is in derogation of the
5 language of the statute and in derogation of the source of the common law being
6 exclusively with the courts.
7

8 **II. THE OPINION FAILS TO CONDUCT A REQUIRED ANALYSIS** 9 **AND ALSO FAILS TO CONSIDER UNINTENDED CONSEQUENCES** 10

11 There are a number of facts overlooked or given short-shrift by the
12 Opinion which, now that the Opinion's parameters and rationale are present,
13 warrant reconsideration. These include:
14

- 15 1) Per the opinion, gaming licensees, as innkeepers or otherwise, are
16 granted the ability to exclude or eject tourists from access to common-
17

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21 said that, it would be a lot clearer, but it doesn't. It says "any" common
22 law right.
23 (emphasis added). The issue was not reached in the ultimate decision, the court
affirming on independent grounds.

24 ⁵ Curiously, the Opinion also seems to indicate that the legislature can define
25 and enact the common-law. It obviously cannot. "[B]y definition, the common
26 law is 'judge-made' law." Jones v. Barlow, 154 P.3d 808, 823 (Utah, 2007). In
27 the Opinion the Court cedes its exclusive jurisdiction to determine and find the
28 common-law to the legislature, and misapprehends the core nature of both its
responsibility and the limited power of the legislature.

carriers in violation of the right of individuals to access such conveyances.⁶

- 2) Per the opinion, there is now an argument that a gaming licensee could use the right to eject to avoid paying a jackpot or cashing casino chips. That is, having won at the casino, the casino could eject a patron for the reason that it chooses to not pay a patron their winnings.⁷

⁶ Nevada's only mass-transit rail is the Las Vegas Monorail. Locations for access can be found at the Las Vegas Monorail website. (<<http://www.lvmonorail.com/>>), and include" 1) "From Las Vegas Boulevard, **enter MGM Grand Hotel . . .**"; 2)"From Las Vegas Boulevard, **enter Bally's Hotel . . .**"; 3) "From Las Vegas Boulevard, **enter Flamingo Hotel . . .**"; and 4) "From Las Vegas Boulevard, **enter Harrah's Hotel and Casino . . .**" (Emphasis added) Under the Opinion, access to each of these stations are now subject to the unfettered whim and caprice of gaming licensees regardless of cause or reason. This is the horror raised in Spilotro v. State, ex rel. Nevada Gaming Comm'n, 99 Nev. 187, 196 (1983), only here it is shown that the access to the public common carrier is solely through areas to which access can be prohibited for no reason. This is not some hypothetical, but a direct ruling in the Opinion because the common carrier and innkeeper's duty of access are the same rule, and in overruling the innkeeper's duty, the Opinion necessarily overrules the common carrier's duty as well.

⁷ This is not the least farfetched. The Opinion gives an argument providing authority for such unjustified theft. And it has already happened with licensees suffering judgments or being sued for using this tactic to steal money by ejecting a patron while the casino holds thousands of dollars in the patron's chips or winnings. See Pikaluk v. C & HRV, LLC (Virgin River Casino), Clark County Case No. A654252 (4/14/14 by hotel patron including conversion on 4/14/14. Verdict attached, Add. 2, p. 1, ¶ 3); Kho v. LVHR Casino LLC (Hard Rock), Clark County Case No. A724105 (Complaint alleging plaintiff ejected from the premises coupled with a refusal to cash thousands of chips duly won by the plaintiff. Complaint attached, Add. 3, p. 5).

1 3) Per the Opinion, it appears that a hotel affiliated with a casino is
2 licensed to eject a patron without cause who also is a rooming guest,
3 and refuse to allow the patron secure their property or even pack.

4 4) The breach of innkeeper's duty has already been applied in analogous
5 circumstances without upset to the industry in courts applying the law
6 of Nevada.⁸

7
8
9 Considering this history, it appears that the Opinion fails to take into account the
10 broad-reaching implications of the rejection of an innkeeper's duty as a duty
11 imposed on resort hotels.

12
13 Did the Court intend that its ruling also overrule the common-law right to
14 access common carriers in Nevada? Probably not, but in light of the Las Vegas
15 Monorail being largely accessed through resort hotels, these properties are now
16 granted the ability to directly or incidentally bar innocent tourists from access.

17
18 Did the Court intend to grant license to resort hotels to steal from their guests, be
19 it winnings or property in the let rooms? Probably not, but in light of the ability
20 to eject without consideration of other factors or established legal duties
21 unrelated to gaming, the decision appears to give resort hotels that argument.

22
23 The decision, in its breadth, fails to consider the unintended consequences of its
24 sweeping conclusion, and should be reheard and reconsidered.
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1 **III. THE MATTER SHOULD BE REHEARD WITH ORAL ARGUMENT**
2 **BEFORE THE ENTIRE PANEL**

3 Only a panel of three justices heard oral argument on this matter of first
4 impression and great public concern involving Nevada's lifeblood—tourists.
5 Yet, the Court decided the matter en banc. Two of the three Justices hearing the
6 oral argument dissented from the majority Opinion. In order for the matter to be
7 given the level of review and consideration, especially with issues this far
8 reaching and contested, a rehearing with oral argument before the full body of
9 this Court should occur before a mandate and final Opinion issues.
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11

12 **IV. THE OPINION MISAPPLIES THE DEPTH OF ANALYSIS**
13 **REQUIRED IN ADDRESSING A SPLIT OF AUTHORITY**

14 Abrogating a common law principle should not be undertaken lightly, and
15 this Court has recognized that an examination of the rationale for the original
16 and proposed law is prerequisite to ruling. Rupert v. Stienne, 90 Nev. 397, 401
17 (1974). This was also pointed out in the Opening Brief, p. 20, that in deciding
18 on the common law applicable, the majority/minority distinction is of little
19 import, and the charge for the appellate court is to analyze the circumstances and
20 adopt the rule of law between competing rules as best suited to the
21 circumstances existing within the jurisdiction.
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27 ⁸ Lockhart v. Venetian Casino Resort, LLC, U.S. Dist. Ct., D. Nev., Case No.
28 07-CV-01032-JCM-PAL (4/7/10 Jury verdict finding breach of innkeeper's duty
in ejection of a patron without cause. Verdict Attached, Add. 4, ¶ 5).

1 There is no analysis within the Opinion as to the scope of the burden the
2 continued efficacy of the innkeeper's duty will have on the gaming industry.
3
4 There is no analysis on what public policy or good is caused by the ability of
5 gaming licensees to exclude professionals from important symposiums in their
6 fields. There is no analysis of the affect upon the rupute of the State arising
7 from the unfettered use of an ability to exclude innocent patrons. See Nev.
8 Gaming Control Bd. Reg. 5.011(1). There is no discussion of the justice of an
9 unjustified exclusion versus the justice of burdening a resort hotel have, at the
10 least, some justifiable reason for an exclusion. The Opinion merely tips its hat
11 to a conclusion that the gravity of the innkeeper's duty to accept guests is not as
12 important as it once was, but that is only one factor and severely ignores the
13 entire picture. In order for the Opinion to meet the strictures of Rupert, and the
14 legitimate requirement that the full effect of a departure or change in the
15 common law will engender, the Opinion requires a broader and more thorough
16 analysis of its application to the condition of Nevada and Nevada's citizens.
17 Thus, the matter should be reheard with a focus on the cause and effect of the
18 rule stated in the decision.
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24 **V. OTHER ISSUES**

25 Instead of analysis, the Opinion relies upon authority from 1947 to argue
26 that there has always been a split of authority regarding public amusements. No
27 earlier authority is cited (although there is some such authority dating to the
28

1 early 1900's as indicated in the opening brief. The authority cited as an
2 exemplar for this split is Madden v. Queens Cty. Jockey Club, 72 N.E. 2d 697
3 (N.Y. 1947), and other cases recognizing a public amusement's right to exclude,
4 all well after the date for examination of the common law adopted in Nevada
5 from 1864, at the latest. Opinion, p. 5, and n. 4.
6

7
8 While at n. 4, the Opinion seems to indicate that there are early cases
9 recognizing a right to exclude held by a public amusement, it ignores the fact
10 that there is no case predating the common law applicable in Nevada, and that as
11 of the time Nevada became a state, the law was absolutely uniform that a public
12 amusement held a duty to provide access. Opening Brief, pp. 16-22
13 (Voluminous, uniform, universal authority of a duty of access imposed on public
14 amusements in the 19th century—the time of Nevada's adopted common law.).
15
16 In failing to recognize and apply this universal common law stricture in place at
17 the time of Nevada's statehood, the court misapplied the law by adopting a later
18 burgeoning counter-position and maintaining that the common law, as of the
19 time of Nevada's statehood, recognized a split. It did not. No case has been
20 cited by the Appellee or the court recognizing a split at the time Nevada's
21 common law became applicable.
22
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24

25 The Opinion also provides a rationale asserting that no authority is
26 provided establishing gambling houses as public amusements. Opinion, n. 4.
27
28 From the cases provided and the discussions therein, bowling alleys, skating

1 rinks, theaters, circuses, amusement parks, and all means of entertainment open
2 to the public are public amusements.

3
4 Gambling houses were places of public amusement, although generally
5 prohibited. White v. State, 39 Tex. Crim. 269, 271, 45 S.W. 702, 702, on reh'g,
6 39 Tex. Crim. 269, 46 S.W. 825 (1898); accord State v. Hall, 32 N.J.L. 158, 162
7 (Sup. Ct. 1867); G.J.T., Inc. v. Boston Licensing Bd., 491 N.E.2d 594, 596
8 (1986)(pinball); City of Owensboro v. Smith, 383 S.W.2d 902, 904 (Ky.
9 1964)(same). Further, bowling alleys, skating rinks, theaters, circuses,
10 amusement parks, etc., are all public amusements in the cases cited throughout
11 the opening brief. Clearly, slot machines and gambling houses are ejusdem
12 generis to this list. The Opinion misapplies the law in finding that there is any
13 question as to whether or not a casino is a public amusement, and all the
14 authority would indicate that it is. This was not briefed initially before the court
15 as the proposition seemed evident (i.e., if a casino were not a public amusement,
16 what else could it be?).

17
18 Finally, as this petition is addressed, the Trial Court originally appeared
19 preoccupied with the reason that Dr. Slade was excluded. Opening Brief, p. 44:
20 17-20. This Court, too, felt there was a gap in Dr. Slade being unable to
21 articulate the basis for his exclusion. It was also an issue for the dissent. The
22 problem Dr. Slade faced is that he was never given a reason, although it may be
23 that his wife was ejected in Louisiana for winning at the Appellee's tables. Dr.

1 Slade was not even there when this occurred. Thus, without Appellee ever
2 having provided a basis for the exclusion other than a bare statement that they
3 could, the Opinion chastises Dr. Slade for failing to plead around an
4 impossibility at the time the litigation was commenced.
5

6 **IV. CONCLUSION**

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8 In the current matter, the Opinion finds that a statute that does not
9 mention or reference inns has overruled a universal and ancient rule of the
10 common-law applicable to inns. It has exalted the status of a statutorily created
11 and regulated industry, still viewed as a nuisance in this State, above the status
12 of a universal law dating back five-hundred years in Western civilization. To
13 accomplish this, a statute had to be rewritten, the concept of the common law as
14 it existed upon entry of Nevada into the Union had to be ignored, and the duties
15 of businesses providing services to travelers and tourists dating back thousands
16 of years had to be changed. The Opinion ignores the consequences of its
17 holding, and centers on the effects on the regulated industry to the exclusion of
18 discussing benefits and burdens on the State's citizens and visitors. For the
19 reasons set forth above, and for the benefit of Nevada's guests and citizens, the
20 matter should be reheard and reconsidered, and an opinion confirming the
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1 common law duties of innkeepers to accept properly presenting guests affirmed.

2 Dated this 31st day of May, 2016.

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16 **VII. CERTIFICATE OF COMPLIANCE**

- 17 1. I herby certify that this brief complies with the formatting
18 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
19 32(a)(5) and the type style requirement of NRAP 32(a)(6) because this
20 brief has been prepared in a proportionally spaced type face using
21 Word 2010 in fourteen point Times New Roman.
- 22 2. I further certify that this brief complies with the type-volume
23 limitations of NRAP 49(b)(3) because, excluding the parts of the brief
24 exempted by NRAP(a)(7)(C) it is proportionately spaced, has a
25 typeface of 14 points or more and contains 3340 words.
- 26 3. Finally, I hereby certify that I have read this appellate brief, and to the
27 best of my knowledge, information, and belief, it is not frivolous or
28

1 interposed for any improper purpose. I further certify that this brief
2 complies with all applicable Nevada Rules of Appellate Procedure, in
3 particular NRAP 28(e)(1), which requires every assertion in the brief
4 regarding matters in the record to be supported by a reference to the
5 page and volume number, if any, of the transcript or appendix where
6 the matter relied on is to be found. I understand that I may be subject
7 to sanctions in the event that the accompanying brief is not in
8 conformity with the requirements of the Nevada Rules of Appellate
9 Procedure.
10
11
12

13 Dated this 31st day of May, 2016

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1 **VIII. PROOF OF SERVICE**

2 On May 31, 2016, the undersigned did serve APPELLANT'S PETITION
3
4 FOR REHEARING upon following counsel:

5 James E. Whitmire
6 Jason D. Smith
7 Santoro Whitmire
8 10100 W. Charleston Blvd., Suite 250
9 Las Vegas, Nevada 89135

through the electronic filing system maintained by this court.

10 */s/ Rachel Stein*_____
11 An employee of Nersesian & Sankiewicz
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ADDENDA