IN THE SUPREME COURT OF THE STATE OF NEVADA

D.I.P. INVESTMENT CORP. dba DIAMONDHEAD APARTMENTS,

Petitioner,

vs.

The Eighth Judicial District Court of the State of Nevada, In and For the County of Clark, and the Honorable Ronald J. Israel, District Judge,

Respondents,

and

SADIE BLAKE, a minor by and through her natural father and guardian BRIAN BLAKE, and BRIAN BLAKE, JR, a minor by and through his natural father and guardian BRIAN BLAKE,

Real Parties in Interest.

Electronically Filed
Nov 06 2025 11:33 AM
Elizabeth A. Brown
Clerk of Supreme Court

Case No.:

Eighth Judicial District Court
Case No.: A-25-915393-C

PETITIONER'S APPENDIX-VOLUME I OF III

APP000001-233

JASON D. SMITH, ESQ.
Nevada Bar No. 9691
jdsmith@spencerfane.com
JESSICA M. LUJAN, ESQ.
Nevada Bar No. 14913
jlujan@spencerfane.com
TIFFANY SOLARI, ESQ.
Nevada Bar No. 16003
tsolari@spencerfane.com
SPENCER FANE LLP
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 408-3400
Facsimile: (702) 408-3401
Attorneys for Defendant D.I.P. Investment Corp. dba Diamondhead Apartments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of November, 2025, I served a copy of this **PETITIONER'S APPENDIX-VOLUME I OF III** upon all parties via electronic means, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

HON. RONALD J. ISRAEL
EIGHTH JUDICIAL DISTRICT COURT
Department No. 28
200 Lewis Avenue
Las Vegas, NV 89101
dept28lc@clarkcountycourts.us

CHRISTIAN MORRIS, ESQ.
VICTORIA ALLEN, ESQ.
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle Suite 390
Henderson, NV 89074
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com

/s/ Jenny Leckie Ramirez
An Employee of **SPENCER FANE LLP**

Electronically Filed
5/4/2022 1:03 PM
Steven D. Grierson
CLERK OF THE COURT

COMP

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. MCLEOD, ESQ.
Nevada Bar No. 8185
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@nettlesmorris.com
alexandra@nettlesmorris.com
wesley@nettlesmorris.com
Attorneys for Plaintiffs

CASE NO: A-22-852100-C
Department 27

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendant.	CASE NO.: DEPT NO.: **COMPLAINT**

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

Case Number: A-22-852100-C

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, by and through their counsel, Christian M. Morris, Esq., Alexandra B. McLeod, Esq., and Wesley H. LeMay, Esq., of NETTLES | MORRIS, and for her causes of action against Defendants, PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, complains and alleges as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The Eighth Judicial District Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds $15,000.00.

GENERAL ALLEGATIONS

2. CANDICE SADE COOKS ("Decedent") at all relevant times described herein was a resident of Clark County, Nevada.

3. Plaintiff, TERESA MASON ("Plaintiff Teresa"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

4. Plaintiff, JANICE GONZALEZ ("Plaintiff Janice"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

5. Plaintiff, SADIE BLAKE ("Plaintiff Sadie"), is and at all relevant times was, a minor residing in Clark County, Nevada.

6. Plaintiff, BRIAN BLAKE, JR. ("Plaintiff Blake"), is and at all relevant times was, a minor residing in Clark County, Nevada.

7. At all times relevant herein, Plaintiff Sadie and Plaintiff Blake are the children of Decedent.

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

8. At all times relevant herein, BRIAN BLAKE is the natural father of Plaintiff Sadie and Plaintiff Blake.

9. Plaintiff Sadie is an heir of Decedent within the meaning of NRS 41.085.

10. Plaintiff Blake is an heir of Decedent within the meaning of NRS 41.085.

11. Plaintiff Sadie and Plaintiff Blake are each entitled to a one-half share of Decedent CANDANCE SADE COOKS' estate pursuant NRS 134.090.

12. Plaintiff Teresa, Plaintiff Janice, Plaintiff Sadie, Plaintiff Blake and Decedent collectively referred to as "Plaintiffs."

13. Defendant, PINK DRAGON ENTERTAINMENT, L.L.C. d/b/a Pink Dragon Entertainment ("Defendant Pink"), is, and at all relevant times, was a domestic limited-liability company doing business in Clark County, Nevada.

14. Defendant, AVILA PARK HOMEOWNERS ASSOCIATION ("Defendant Avila HOA"), is, and at all relevant times, was a domestic nonprofit company doing business in Clark County, Nevada.

15. Defendant Pink and Defendant Avila HOA hereinafter referred to as "Defendants."

16. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant is responsible, negligently, or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged.

17. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant was involved in the initiation, approval, support or execution of the wrongful acts upon which this litigation is premised, or of similar actions against Plaintiff of which Plaintiff is presently unaware.

18. That on or about April 09, 2021, Defendant Pink owned, controlled and/or operated the property located at 4200 W. Russell Road, Las Vegas, Nevada, commonly known as "Pink Dragon Entertainment", which was (hereinafter, "Employer Premises").

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

19. Upon information and belief, Defendant Avila HOA was responsible for governing, securing, and monitoring the housing development where the Employer Premises is located.

20. Upon information and belief, Decedent was an employee of Defendant Pink and was present for an employee meeting at the Employer Premises.

21. Upon information and belief, at all relevant times relevant hereto, Avila Park is located at 1800-1860 N. Decatur Boulevard, Las Vegas, Nevada 89108 ("Subject Neighborhood").

22. Upon information and belief, at all relevant times relevant hereto, Defendant Avila HOA was authorized to regulate the Subject Neighborhood and provide security for residents and guests.

23. Upon information and belief, the Employer Premises was active and in good standing with Defendant Avila HOA at the time of the Subject Incident.

24. Upon information and belief, on April 09, 2021, Decedent was driven by Brian Blake, a non-party, to Subject Neighborhood for an employee meeting

25. Upon information and belief, on April 09, 2021, once the employee meeting ended, a Client that was not a resident or guest of Defendant Avila HOA's property approached Decedent and accused her of stealing his wallet.

26. Upon information and belief, on April 09, 2021, Client shot Decedent ("Subject Incident").

27. On April 09, 2021, Decedent passed away at University Medical Center.

28. As a direct and proximate result of the negligence of the Defendant, Plaintiffs suffered damages in excess of $15,000.

29. As a direct and proximate result of Defendant's negligence, Plaintiffs have had to retain the services of the law offices of the NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

/ / /

/ / /

/ / /

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

FIRST CAUSE OF ACTION

(Negligent Security)

30. Plaintiffs repeat and reallege each and every allegation contained in paragraphs hereinabove as though fully set forth herein.

31. At all times relevant hereto, Defendant Pink was in control of the Employer Premises and had and/or assumed a non-delegable duty to maintain the Employer Premises for the care, safety, and protection of those persons present on said Premises, including Claimant.

32. At all times relevant hereto, Defendant Pink failed to provide adequate security personnel at the Subject Premises while a meeting took place, resulting in the Subject Incident.

33. At all times relevant hereto, Defendant Avila HOA was in control of the gated neighborhood and was responsible for security of residents and guests.

34. At all times relevant hereto, Defendant Avila HOA did not provide adequate security for residents and guests under their agreement with the property owners living in the neighborhood governed by the HOA.

35. That Defendants' failure to provide adequate security breached their duty of care to Decedent, which resulted in her death.

36. Defendants manifested reckless disregard for the safety of Decedent by failing to provide security where the Subject Incident occurred at the time of the Subject Incident.

37. Defendants' breach of this duty of care was the legal and proximate cause of each of the Decedent's death.

38. As a further direct and proximate result of Defendants' negligence, Plaintiffs suffered damages in excess of $15,000.00.

39. As a direct and proximate result of Defendants' negligence, Plaintiffs have had to retain the services of the law offices of the NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorneys' fees incurred therein.

/ / /

/ / /

/ / /

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

SECOND CAUSE OF ACTION

(Wrongful Death)

40. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs hereinabove as though fully set forth herein.

41. Plaintiff Brian and Plaintiff Sadie are heirs or personal representatives of Decedent.

42. Defendants caused Decedent's death by wrongful act or neglect as described hereinabove.

43. Therefore, under NRS 41.085 and NRS 41.100, Plaintiffs may maintain an action for damages against Defendants, or, if Defendants are dead, against their personal representative.

44. As a direct and proximate result of the actions or omissions of Defendants, Plaintiff Sadie and Plaintiff Brian suffered grief, sorrow, loss of a child, past and future loss of companionship, past and future loss of society, past and future loss of comfort, past and future loss of services, and funeral and burial related expenses, all in a sum in excess of excess of $15,000.00.

45. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs are entitled to punitive damages per NRS 42.005 and 42.007 in an amount to be determined by a jury.

/ / /

/ / /

/ / /

46. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs have had to retain the services of Nettles | Morris to pursue this action and are entitled to recover costs of suit and reasonable attorneys' fees incurred herein.

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. General damages in excess of $15,000.00 for Plaintiffs;
2. Special damages in excess of $15,000.00 for Plaintiffs;
3. For Punitive damages to be determined by the jury of Plaintiffs;
4. For pre- and post-judgment interest as permitted by law;
5. For costs and attorneys' fees as permitted by law; and
6. For such other and further relief as the Court deems necessary and proper.

DATED this 4th day of May, 2022.

NETTLES | MORRIS

/s/ Wesley H. LeMay, Jr.

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. McLEOD, ESQ.
Nevada Bar No. 8185
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Attorneys for Plaintiff

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

AFFT
Nettles Morris
Wesley H. Lemay, Jr.
1389 Galleria Dr., #200
Henderson , NV 89014
State Bar No.: 14907
Attorney(s) for: Plaintiff(s)

Electronically Filed
6/21/2022 1:26 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Teresa Mason and Janice Gonzalez, as Co-Special Administrators of the Estate of Candice Sade Cooks; et al.
Plaintiff(s)
vs
Pink Dragon Entertainment, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment, et al.
Defendant(s)

Case No.: **A-22-852100-C**
Dept. No.: **27**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Jennifer Lynn Jones**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Avila Park Homeowners Association; Complaint** on the **14th** day of **June**, **2022** and served the same on the **15th** day of **June**, **2022** at **9:33 AM** by serving the **Defendant(s)**, **Avila Park Homeowners Association, a domestic nonprofit corporation** by personally delivering and leaving a copy at **Registered Agent: Complete Association Management Company, LLC, 4775 W. Teco Ave., #140, Las Vegas, NV 89118** with **Ashley King, Chief Financial Officer** pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 15th day of June, 2022.

Jennifer Lynn Jones # R-2018-02711
Legal Process Service License # 604
WorkOrderNo **2204513**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

AFFT
Nettles Morris
Wesley H. Lemay, Jr.
1389 Galleria Dr., #200
Henderson , NV 89014
State Bar No.: 14907
Attorney(s) for: Plaintiff(s)

Electronically Filed
6/21/2022 1:26 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Teresa Mason and Janice Gonzalez, as Co-Special Administrators of the Estate of Candice Sade Cooks; et al.
Plaintiff(s)
vs
Pink Dragon Entertainment, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment, et al.
Defendant(s)

Case No.: **A-22-852100-C**
Dept. No.: **27**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Jennifer Lynn Jones**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Pink Dragon Entertainment, L.L.C.; Complaint** on the **14th** day of **June**, **2022** and served the same on the **15th** day of **June**, **2022** at **10:35 AM** by serving the **Defendant**, **Pink Dragon Entertainment, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment** by personally delivering and leaving a copy at **Registered Agent: Ryan Domenick, 4894 Lone Mountain Rd., #312, Las Vegas, NV 89130** with **Howard R. (male, 53-58 yrs old, white skin, 6'0" 300 lbs., gray/white hair)** pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 15th day of June, 2022.

Jennifer Lynn Jones # R-2018-02711
Legal Process Service License # 604
WorkOrderNo **2204512**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

Electronically Filed
7/7/2022 10:45 AM
Steven D. Grierson
CLERK OF THE COURT

ANSC
TIMOTHY F. HUNTER, ESQ.
Nevada Bar No. 010622
RAY LEGO & ASSOCIATES
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, NV 89113
Tel: (702) 479-4350
Fax: (702) 270-4602
tfhunter@travelers.com

Attorney for Defendant, **AVILA PARK HOMEOWNERS ASSOCIATION**

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	**CASE NO.: A-22-852100-C** **DEPT. NO.: 27**

DEFENDANT, AVILA PARK HOMEOWNERS ASSOCIATION'S, ANSWER TO PLAINTIFFS' COMPLAINT

Defendant, **AVILA PARK HOMEOWNERS ASSOCIATION,** ("Answering Defendant"), by and through their attorney, TIMOTHY F. HUNTER, ESQ., of RAY LEGO & ASSOCIATES, hereby answers the Plaintiffs' Complaint as follows:

STATEMENT OF JURISDICTION AND VENUE

1. Answering Paragraph 1 of Plaintiff's Complaint on file herein, this paragraph states a legal conclusion and no response is required by this answering Defendant, however to

Case Number: A-22-852100-C

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

the extent a response is deemed necessary, this answering Defendant DENIES the allegations set forth therein.

GENERAL ALLEGATIONS

2. Answering Paragraphs 2, 3, 4, 5, 6, 7, 8, 13, 16, 17, 18, 20, 22, 24, 25, 26 and 27 of Plaintiffs' Complaint on file herein, this answering Defendant lacks knowledge, information and belief as to the truth or falsity of the allegations set forth therein and therefore DENIES same.

3. Answering Paragraphs 9, 10 and 11 of Plaintiff's Complaint on file herein, this paragraph states a legal conclusion and no response is required by this answering Defendant, however to the extent a response is deemed necessary, this answering Defendant DENIES the allegations set forth therein.

4. Answering Paragraphs 12 and 15 of Plaintiffs' Complaint on file herein, this answering Defendant is unable to answer these paragraphs as there are no allegations set forth therein. To the extent an answer is required, the defendant DENIES any allegations.

5. Answering Paragraphs 14, and 21 of Plaintiffs' Complaint on file herein, this answering Defendant ADMIT the allegations set forth therein.

6. Answering Paragraphs 19, 23, 28 and 29 of Plaintiffs' Complaint on file herein, this answering Defendant DENY the allegations set forth therein.

FIRST CAUSE OF ACTION

(Negligent Security)

7. Answering Paragraph 30 of Plaintiffs' Complaint on file herein, this answering Defendant repeats and realleges their responses to Paragraphs 1 through 29 of Plaintiffs' Complaint on file herein as though set forth in detail.

8. Answering Paragraphs 31 and 32 of Plaintiffs' Complaint on file herein, this answering Defendant lacks knowledge, information and belief as to the truth or falsity of the allegations set forth therein and therefore DENIES same.

9. Answering Paragraph 33 of Plaintiffs' Complaint on file herein, this paragraph

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

states a legal conclusion and no response is required by this answering Defendant, however to the extent a response is deemed necessary, this answering Defendant DENIES the allegations set forth therein.

10. Answering Paragraphs 34, 25, 36, 37, 38 and 39 of Plaintiffs' Complaint on file herein, this answering Defendant DENIES the allegations set forth therein.

SECOND CAUSE OF ACTION

(Wrongful Death)

11. Answering Paragraph 40 of the Second Cause of Action of Plaintiff's Complaint on file herein, this answering Defendant repeats and realleges their responses to Paragraphs 1 through 39 of Plaintiffs' Complaint on file herein as though set forth in detail.

12. Answering Paragraph 41 of Plaintiffs' Complaint on file herein, this answering Defendant lacks knowledge, information and belief as to the truth or falsity of the allegations set forth therein and therefore DENIES same.

13. Answering Paragraphs 42, 44, 45 and 46 of Plaintiffs' Complaint on file herein, this answering Defendant DENIES the allegations set forth therein.

14. Answering Paragraph 43 of Plaintiffs' Complaint on file herein, this paragraph states a legal conclusion and no response is required by this answering Defendant, however to the extent a response is deemed necessary, this answering Defendant DENIES the allegations set forth therein.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint on file herein fails to state a claim against this answering Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The damages, if any, suffered by Plaintiffs were proximately caused in whole or in part, or were contributed to by reason of the negligence of the Plaintiffs and such negligence was greater than the negligence, if any, of this answering Defendant.

/ / /

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

THIRD AFFIRMATIVE DEFENSE

The occurrences referred to in the Complaint, and all damages, if any, resulting there from, were cause by the acts or omissions of third parties over whom this answering Defendant had no control.

FOURTH AFFIRMATIVE DEFENSE

All risks and dangers involved in the factual situation described in the Complaint were open, obvious and known to Plaintiffs, and said Plaintiffs voluntarily assumed said risks and dangers.

FIFTH AFFIRMATIVE DEFENSE

This answering Defendant alleges that Plaintiffs have failed to mitigate their damages, if any.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to name an indispensable party, that is, one needed for just adjudication.

SEVENTH AFFIRMATIVE DEFENSE

Defendant alleges that the injuries claimed to have been suffered by the Plaintiffs were caused by a subsequent accident or incident in no way related to the premises owned or operated by Defendant.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs failed to exercise ordinary care, caution or prudence for their own safety, thereby negligently and proximately causing or contributing to their own damages.

NINTH AFFIRMATIVE DEFENSE

Defendant acted with due care and diligence; Defendant breached no duty to Plaintiffs.

TENTH AFFIRMATIVE DEFENSE

Defendant's conduct was not oppressive nor made or committed with malice, oppression, or fraud.

/ / /

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to set forth any facts which would constitute a basis for any claim for punitive exemplary damages as against Defendant.

TWELFTH AFFIRMATIVE DEFENSE

Punitive damages as claimed will be excessive and otherwise violate the provisions for both the United States and Nevada Constitutions.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages.

FOURTEENTH AFFIRMATIVE DEFENSE

Any punitive or exemplary damages are limited, in whole or in part, by inter alia, NRS 42.005.

FIFTEENTH AFFIRMATIVE DEFENSE

This Answering Defendant is not jointly liable with any other persons or entities that may or may not be named in this action and will only be severally liable for that portion of Plaintiffs' claim that represents the percentage of negligence attributable to this answering Defendant, if any.

SIXTEENTH AFFIRMATIVE DEFENSE

That Plaintiffs' alleged medical treatment and related expenses were not reasonable, necessary, or related to the allegations contained in Plaintiff's Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

That the damages alleged to have been sustained by Plaintiffs was caused by the acts of unknown third persons who were not the agents, servants or employees of this answering Defendant; and who were not acting on behalf of this answering Defendant in any manner or form and as such, this answering Defendant is not liable in any manner to Plaintiffs.

EIGHTEENTH AFFIRMATIVE DEFENSE

That this answering Defendant hereby incorporates by this reference those affirmative

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

defenses enumerated in NRCP 8, as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defense, this answering Defendant reserves the right to seek leave of Court to amend the Answer to specifically assert the same. Such defenses are incorporated herein by reference for the specific purpose of not waiving the same.

PRAYER

WHEREFORE, Defendant, **AVILA PARK HOMEOWNERS ASSOCIATION**, by and through their undersigned counsel, prays this Honorable Court grant the following relief:

1. That Plaintiffs take nothing by virtue of this action and that the same be dismissed with prejudice;

2. That in the alternative, Plaintiffs be awarded only such monies as constitute reasonable compensation for those injuries and damages proved by admissible evidence to have been directly and proximately caused by the incident in question, same subject to Plaintiff's independent duty to mitigate damages;

3. For attorney's fees and costs incurred in defending this action; and,

4. For such other and further relief as the Court may deem just, equitable and proper.

DATED this 7th day of July, 2022.

Respectfully submitted,

RAY LEGO & ASSOCIATES

/s/ Timothy F. Hunter
TIMOTHY F. HUNTER, ESQ.
Nevada Bar No. 010622
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, NV 89113

Attorney for Defendant, **AVILA PARK HOMEOWNERS ASSOCIATION**

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of RAY LEGO & ASSOCIATES and that on the 7th day of July, 2022 I caused the foregoing **DEFENDANT, AVILA PARK HOMEOWNERS ASSOCIATION'S, ANSWER TO PLAINTIFFS' COMPLAINT** to be served as follows:

__X__ pursuant to N.E.F.C.R. 9 by serving it via electronic service.

Wesley H. Lemay, Jr., Esq., NSB #14907
NETTLES MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
wesley@nettlesmorris.com
P: 702/434-8282
F: 702/434-1488
Attorney for Plaintiffs, **TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE**

/s/ Nancy L. Berry
An employee of RAY LEGO & ASSOCIATES

Electronically Filed
12/21/2022 1:32 PM
Steven D. Grierson
CLERK OF THE COURT

COMP

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
JAMIE N. MCINELLY, ESQ.
Nevada Bar No. 15963
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
jamie@CMtrialattorneys.com
wesley@CMtrialattorneys.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendant.	CASE NO.: A-22-852100-C DEPT NO.:27 **FIRST AMENDED COMPLAINT**

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, by and through their counsel, Christian M. Morris, Esq., Victoria R. Allen, Esq., Jamie N. McInelly, Esq. and Wesley H. LeMay, Esq., of CHRISTIAN MORRIS TRIAL ATTORNEYS, and for their causes of action against Defendants, PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, complains and alleges as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The Eighth Judicial District Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds $15,000.00.

GENERAL ALLEGATIONS

2. CANDICE SADE COOKS ("Decedent") at all relevant times described herein was a resident of Clark County, Nevada.

3. Plaintiff, TERESA MASON ("Plaintiff Teresa"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

4. Plaintiff, JANICE GONZALEZ ("Plaintiff Janice"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

5. Plaintiff, SADIE BLAKE ("Plaintiff Sadie"), is and at all relevant times was, a minor residing in Clark County, Nevada.

6. Plaintiff, BRIAN BLAKE, JR. ("Plaintiff Blake"), is and at all relevant times was, a minor residing in Clark County, Nevada.

7. At all times relevant herein, Plaintiff Sadie and Plaintiff Blake are the children of Decedent.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

8. At all times relevant herein, BRIAN BLAKE is the natural father of Plaintiff Sadie and Plaintiff Blake.

9. Plaintiff Sadie is an heir of Decedent within the meaning of NRS 41.085.

10. Plaintiff Blake is an heir of Decedent within the meaning of NRS 41.085.

11. Plaintiff Sadie and Plaintiff Blake are each entitled to a one-half share of Decedent CANDANCE SADE COOKS' estate pursuant NRS 134.090.

12. Plaintiff Teresa, Plaintiff Janice, Plaintiff Sadie, Plaintiff Blake and Decedent collectively referred to as "Plaintiffs."

13. Defendant, PINK DRAGON ENTERTAINMENT, L.L.C. d/b/a Pink Dragon Entertainment ("Defendant Pink"), is, and at all relevant times, was a domestic limited-liability company doing business in Clark County, Nevada.

14. Defendant, AVILA PARK HOMEOWNERS ASSOCIATION ("Defendant Avila HOA"), is, and at all relevant times, was a domestic nonprofit company doing business in Clark County, Nevada.

15. Defendant Pink and Defendant Avila HOA hereinafter referred to as "Defendants."

16. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant is responsible, negligently, or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged.

17. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant was involved in the initiation, approval, support or execution of the wrongful acts upon which this litigation is premised, or of similar actions against Plaintiff of which Plaintiff is presently unaware.

18. That on or about April 9, 2021, Defendant Pink owned, controlled and/or operated the arts, entertainment, recreation business that operated out of 4200 W. Russell Road, Las Vegas, Nevada, commonly known as "Pink Dragon Entertainment".

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

19. Upon information and belief, Decedent was an employee and/or had a master/servant and/or employer/employee relationship with Defendant Pink at Pink Dragon Entertainment.

20. Upon information and belief, at all relevant times relevant hereto, Avila Park is located at 1800-1860 N. Decatur Boulevard, Las Vegas, Nevada 89108 ("Subject Neighborhood").

21. Upon information and belief, at all relevant times relevant hereto, Defendant Avila HOA was authorized to regulate the Subject Neighborhood and provide security for residents and guests, and was responsible for governing, securing, and monitoring the housing development where the Subject Neighborhood is located.

22. Upon information and belief, on April 9, 2021, Decedent was driven by a non-party to the Subject Neighborhood for an employee meeting with Pink Dragon Entertainment.

23. Upon information and belief, on April 9, 2021, once the employee meeting ended, a Client that was not a resident or guest of Defendant Avila HOA's property approached Decedent and accused her of stealing his wallet.

24. Upon information and belief, on April 9, 2021, Client shot Decedent ("Subject Incident").

25. On April 9, 2021, Decedent passed away at University Medical Center.

26. As a direct and proximate result of the negligence of the Defendant, Plaintiffs suffered damages in excess of $15,000.

27. As a direct and proximate result of Defendant's negligence, Plaintiffs have had to retain the services of the law offices of the Christian Morris Trial Attorneys to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

FIRST CAUSE OF ACTION

(Negligent Security)

28. Plaintiffs repeat and reallege each and every allegation contained in paragraphs hereinabove as though fully set forth herein.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

29. At all times relevant hereto, Defendant Pink had and/or assumed a non-delegable duty to provide care, safety, and protection to its employees and/or those with whom it has a master/servant and/or employer/employee relationship, including Decedent.

30. At all times relevant hereto, Defendant Pink failed to provide care, safety, and protection through adequate security personnel at the Subject Neighborhood while a work meeting took place, resulting in the Subject Incident.

31. At all times relevant hereto, Defendant Avila HOA was in control of the gated neighborhood and was responsible for security of residents and guests.

32. At all times relevant hereto, Defendant Avila HOA did not provide adequate security for residents and guests under their agreement with the property owners living in the neighborhood governed by the HOA.

33. That Defendants' failure to provide adequate security breached their duty of care to Decedent, which resulted in her death.

34. Defendants manifested reckless disregard for the safety of Decedent by failing to provide security where the Subject Incident occurred at the time of the Subject Incident.

35. Defendants' breach of this duty of care was the legal and proximate cause of each of the Decedent's death.

36. As a further direct and proximate result of Defendants' negligence, Plaintiffs suffered damages in excess of $15,000.00.

37. As a direct and proximate result of Defendants' negligence, Plaintiffs have had to retain the services of the law offices of the Christian Morris Trial Attorneys to pursue this action and is entitled to recover costs of suit and reasonable attorneys' fees incurred therein.

SECOND CAUSE OF ACTION

(Wrongful Death)

38. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs hereinabove as though fully set forth herein.

39. Plaintiff Brian and Plaintiff Sadie are heirs or personal representatives of Decedent.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

40. Defendants caused Decedent's death by wrongful act or neglect as described hereinabove.

41. Therefore, under NRS 41.085 and NRS 41.100, Plaintiffs may maintain an action for damages against Defendants, or, if Defendants are dead, against their personal representative.

42. As a direct and proximate result of the actions or omissions of Defendants, Plaintiff Sadie and Plaintiff Brian suffered grief, sorrow, loss of a parent, loss of support, past and future loss of companionship, past and future loss of society, past and future loss of comfort, past and future loss of services, and funeral and burial related expenses, all in a sum in excess of excess of $15,000.00.

43. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs are entitled to punitive damages per NRS 42.005 and 42.007 in an amount to be determined by a jury.

44. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs have had to retain the services of Christian Morris Trial Attorneys to pursue this action and are entitled to recover costs of suit and reasonable attorneys' fees incurred herein.

///

///

///

///

///

///

///

///

///

///

///

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. General damages in excess of $15,000.00 for Plaintiffs;
2. Special damages in excess of $15,000.00 for Plaintiffs;
3. For Punitive damages to be determined by the jury of Plaintiffs;
4. For pre- and post-judgment interest as permitted by law;
5. For costs and attorneys' fees as permitted by law; and
6. For such other and further relief as the Court deems necessary and proper.

DATED this 21st day of December, 2022.

CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/ Victoria R. Allen

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
JAMIE N. MCINELLY, ESQ.
Nevada Bar No. 15963
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CERTIFICATE OF E-SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 8.02, I hereby certify that on the 21st day of December, 2022, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT** was served to the following parties by electronic transmission through the Odyssey eFileNV system:

Timothy F. Hunter, Esq.
RAY LEGO & ASSOCIATES
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, NV 89113
Attorney for Defendant
Avila Park Homeowners Association

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Blvd., Ste. 120
Las Vegas, NV 89102
Attorney for Defendant
Pink Dragon Entertainment, LLC

/s/ Tiffany Pond
An employee of CHRISTIAN MORRIS TRIAL ATTORNEYS

Electronically Filed
1/23/2023 9:30 AM
Steven D. Grierson
CLERK OF THE COURT

ANSC
TIMOTHY F. HUNTER, ESQ.
Nevada Bar No. 010622
RAY LEGO & ASSOCIATES
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, NV 89113
Tel: (702) 479-4350
Fax: (702) 270-4602
tfhunter@travelers.com

Attorney for Defendant, **AVILA PARK HOMEOWNERS ASSOCIATION**

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	**CASE NO.: A-22-852100-C** **DEPT. NO.: 27**

DEFENDANT, AVILA PARK HOMEOWNERS ASSOCIATION'S, ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendant, **AVILA PARK HOMEOWNERS ASSOCIATION,** ("Answering Defendant"), by and through their attorney, TIMOTHY F. HUNTER, ESQ., of RAY LEGO & ASSOCIATES, hereby answers the Plaintiffs' First Amended Complaint as follows:

STATEMENT OF JURISDICTION AND VENUE

1. Answering Paragraph 1 of Plaintiffs' First Amended Complaint on file herein, this paragraph states a legal conclusion and no response is required by this answering

Case Number: A-22-852100-C

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

Defendant, however to the extent a response is deemed necessary, this answering Defendant DENIES the allegations set forth therein.

GENERAL ALLEGATIONS

2. Answering Paragraphs 2, 3, 4, 5, 6, 7, 8, 13, 16, 17, 18, 18, 22, 23 and 24 of Plaintiffs' First Amended Complaint on file herein, this answering Defendant lacks knowledge, information and belief as to the truth or falsity of the allegations set forth therein and therefore DENIES same.

3. Answering Paragraphs 9, 10 and 11 of Plaintiffs' First Amended Complaint on file herein, these paragraphs state a legal conclusion and no response is required by this answering Defendant, however to the extent a response is deemed necessary, this answering Defendant DENIES the allegations set forth therein.

4. Answering Paragraphs 12 and 15 of Plaintiffs' First Amended Complaint on file herein, this answering Defendant is unable to answer these paragraphs as there are no allegations set forth therein. To the extent an answer is required, the defendant DENIES any allegations.

5. Answering Paragraphs 14, 20 and 25 of Plaintiffs' First Amended Complaint on file herein, this answering Defendant ADMIT the allegations set forth therein.

6. Answering Paragraph 21 of Plaintiffs' First Amended Complaint on file herein, this answering Defendant ADMITS that at all relevant times relevant hereto, Defendant AVILA HOA was authorized to regulate the Subject Neighborhood, was responsible for governing the housing development. All to all remaining allegations, Defendant DENIES same.

7. Answering Paragraphs 26 and 27 of Plaintiffs' First Amended Complaint on file herein, this answering Defendant DENIES the allegations set forth therein.

FIRST CAUSE OF ACTION

(Negligent Security)

8. Answering Paragraph 28 of Plaintiffs' First Amended Complaint on file herein, this answering Defendant repeats and realleges their responses to Paragraphs 1 through 27 of

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

Plaintiffs' First Amended Complaint on file herein as though set forth in detail.

9. Answering Paragraphs 29 and 30 of Plaintiffs' First Amended Complaint on file herein, this answering Defendant is unable to answer these paragraphs as there are no allegations set forth therein. To the extent an answer is required, the defendant DENIES any allegations

10. Answering Paragraphs 31 and 32 of Plaintiffs' First Amended Complaint on file herein, these paragraphs state a legal conclusion and no response is required by this answering Defendant, however to the extent a response is deemed necessary, this answering Defendant DENIES the allegations set forth therein.

11. Answering Paragraphs 33 through 37 of Plaintiffs' First Amended Complaint on file herein, this answering Defendant DENIES the allegations set forth therein.

SECOND CAUSE OF ACTION

(Wrongful Death)

12. Answering Paragraph 38 of the Second Cause of Action of Plaintiff's First Amended Complaint on file herein, this answering Defendant repeats and realleges their responses to Paragraphs 1 through 37 of Plaintiffs' First Amended Complaint on file herein as though set forth in detail.

13. Answering Paragraphs 39 and 41 of Plaintiffs' First Amended Complaint on file herein, these paragraphs state a legal conclusion and no response is required by this answering Defendant, however to the extent a response is deemed necessary, this answering Defendant DENIES the allegations set forth therein.

14. Answering Paragraphs 40, 42, 43 and 44 of Plaintiffs' Complaint on file herein, this answering Defendant DENIES the allegations set forth therein.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' First Amended Complaint on file herein fails to state a claim against this answering Defendant upon which relief may be granted.

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

SECOND AFFIRMATIVE DEFENSE

The damages, if any, suffered by Plaintiffs were proximately caused in whole or in part, or were contributed to by reason of the negligence of the Plaintiffs and such negligence was greater than the negligence, if any, of this answering Defendant.

THIRD AFFIRMATIVE DEFENSE

The occurrences referred to in the First Amended Complaint, and all damages, if any, resulting there from, were cause by the acts or omissions of third parties over whom this answering Defendant had no control.

FOURTH AFFIRMATIVE DEFENSE

All risks and dangers involved in the factual situation described in the Complaint were open, obvious and known to Plaintiffs, and said Plaintiffs voluntarily assumed said risks and dangers.

FIFTH AFFIRMATIVE DEFENSE

This answering Defendant alleges that Plaintiffs have failed to mitigate their damages, if any.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's First Amended Complaint fails to name an indispensable party, that is, one needed for just adjudication.

SEVENTH AFFIRMATIVE DEFENSE

Defendant alleges that the injuries claimed to have been suffered by the Plaintiffs were caused by a subsequent accident or incident in no way related to the premises owned or operated by Defendant.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs failed to exercise ordinary care, caution or prudence for their own safety, thereby negligently and proximately causing or contributing to their own damages.

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

NINTH AFFIRMATIVE DEFENSE

Defendant acted with due care and diligence; Defendant breached no duty to Plaintiffs.

TENTH AFFIRMATIVE DEFENSE

Defendant's conduct was not oppressive nor made or committed with malice, oppression, or fraud.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' First Amended Complaint fails to set forth any facts which would constitute a basis for any claim for punitive exemplary damages as against Defendant.

TWELFTH AFFIRMATIVE DEFENSE

Punitive damages as claimed will be excessive and otherwise violate the provisions for both the United States and Nevada Constitutions.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages.

FOURTEENTH AFFIRMATIVE DEFENSE

Any punitive or exemplary damages are limited, in whole or in part, by inter alia, NRS 42.005.

FIFTEENTH AFFIRMATIVE DEFENSE

This Answering Defendant is not jointly liable with any other persons or entities that may or may not be named in this action and will only be severally liable for that portion of Plaintiffs' claim that represents the percentage of negligence attributable to this answering Defendant, if any.

SIXTEENTH AFFIRMATIVE DEFENSE

That Plaintiffs alleged medical treatment and related expenses were not reasonable, necessary, or related to the allegations contained in Plaintiff's First Amended Complaint.

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

SEVENTEENTH AFFIRMATIVE DEFENSE

That the damages alleged to have been sustained by Plaintiffs was caused by the acts of unknown third persons who were not the agents, servants or employees of this answering Defendant; and who were not acting on behalf of this answering Defendant in any manner or form and as such, this answering Defendant is not liable in any manner to Plaintiffs.

EIGHTEENTH AFFIRMATIVE DEFENSE

That this answering Defendant hereby incorporates by this reference those affirmative defenses enumerated in NRCP 8, as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defense, this answering Defendant reserves the right to seek leave of Court to amend the Answer to specifically assert the same. Such defenses are incorporated herein by reference for the specific purpose of not waiving the same.

PRAYER

WHEREFORE, Defendant, **AVILA PARK HOMEOWNERS ASSOCIATION**, by and through their undersigned counsel, prays this Honorable Court grant the following relief:

1. That Plaintiffs take nothing by virtue of this action and that the same be dismissed with prejudice;

2. That in the alternative, Plaintiffs be awarded only such monies as constitute reasonable compensation for those injuries and damages proved by admissible evidence to have been directly and proximately caused by the incident in question, same subject to Plaintiff's independent duty to mitigate damages;

3. For attorney's fees and costs incurred in defending this action; and,

/ / /

/ / /

/ / /

/ / /

4. For such other and further relief as the Court may deem just, equitable and proper.

DATED this 23rd day of January, 2023.

Respectfully submitted,

RAY LEGO & ASSOCIATES

/s/ Timothy F. Hunter
TIMOTHY F. HUNTER, ESQ.
Nevada Bar No. 010622
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, NV 89113

Attorney for Defendant, **AVILA PARK HOMEOWNERS ASSOCIATION**

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

Ray Lego & Associates
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Telephone No. (702) 479-4350
Facsimile No. (702) 270-4602

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of RAY LEGO & ASSOCIATES and that, on the 23rd day of January, 2023, I caused the foregoing **DEFENDANT, AVILA PARK HOMEOWNERS ASSOCIATION'S, ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** to be served as follows:

__X__ pursuant to N.E.F.C.R. 9 by serving it via electronic service.

____ by placing a true and correct copy in the United States mail, at Las Vegas, Nevada, first class, postage fully prepaid.

Wesley H. Lemay, Jr., Esq., NSB #14907
NETTLES MORRIS
2250 Corporate Circle, #390
Henderson, NV 89074
wesley@nettlesmorris.com
P: 702/434-8282
F: 702/434-1488
Attorney for Plaintiffs, **TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE**

John C. Courtney, Esq., #11092
Andrew P. Dunning, Esq., #13864
Sebastian F. Gajardo, Esq., #14874
LBC LAW GROUP
3215 W. Charleston Blvd., Suite 120
Las Vegas, NV 89102
info@LBCLawGroup.com
P: 702-608-3030
F: 702-463-4443
Attorneys for Defendant, **PINK DRAGON ENTERTAINMENT, L.L.C.**

/s/ Nancy L. Berry
An employee of RAY LEGO & ASSOCIATES

Electronically Filed
3/29/2023 4:34 PM
Steven D. Grierson
CLERK OF THE COURT

AACC
JOHN C. COURTNEY, ESQ.
Nevada Bar No. 11092
ANDREW P. DUNNING, ESQ.
Nevada Bar No. 13864
LBC LAW GROUP
723 South 7th Street
Las Vegas, Nevada 89101
Ph.: (702) 608-3030
Fax: (702) 463-4443
Info@LBCLawgroup.com
Attorneys for Defendant/Counterclaimant
Pink Dragon Entertainment, L.L.C.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON AND JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE,

Plaintiffs,

v.

PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive,

Defendants.

PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company,

Counterclaimant,

v.

TERESA MASON AND JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE,

Counter-Defendants.

Case No.: A-22-852100-C
Dept. No.: XXVII

PINK DRAGON ENTERTAINMENT L.L.C.'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

AND

COUNTERCLAIMS

ANSWER TO AMENDED COMPLAINT

Defendant/Counterclaimant Pink Dragon Entertainment, L.L.C. ("Defendant" or "Counterclaimant"), by and through its counsel of record LBC Law Group, hereby Answers Plaintiffs Teresa Mason and Janice Gonzalez, as Co-Special Administrators of the Estate of Candice Sade Cooks; Sadie Blake and Brian Blake, Jr, by and through their natural parent, Brian Blake's (collectively "Plaintiffs") Amended Complaint as follows:

1. Answering Paragraph(s) 13, 18, 24, and 25 of Plaintiffs' Amended Complaint, Defendant admits the allegations contained therein.

2. Answering Paragraph(s) 19, 22, 23, 26, 27, 29, 30, 33, 34, 35, 36, 37, 40, 41, 42, 43, and 44 of Plaintiffs' Amended Complaint, Defendant denies the allegations contained therein.

3. Answering Paragraph(s) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 20, 21, 31, 32, and 39 of Plaintiffs' Amended Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and therefore denies the same.

4. Answering Paragraph(s) 28 and 38 of Plaintiffs' Amended Complaint, Defendant repeats and realleges its answers to the allegations contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs failed to join necessary and indispensable parties in whose absence complete relief cannot be afforded.

THIRD AFFIRMATIVE DEFENSE

The damages allegedly suffered by Plaintiffs, if any, were caused in whole or in part by the acts and omissions of third parties over whom Defendant has no control.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs are estopped from maintaining this action.

/ / /

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs waived their rights, if any, to bring this action.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs suffered no damage and therefore are not entitled to any relief.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs failed to exercise ordinary care, caution or prudence to avoid the loss complained of in the Amended Complaint, and that failure directly and proximately contributed to, and was caused by the negligence, misconduct or fault of Plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from asserting any claims against Defendant because the alleged damages were the result of intervening and superseding conduct of others.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs failed to take reasonable efforts to mitigate their damages, if any, and are therefore barred from recovering damages from this Defendant.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is barred by the doctrine of unclean hands and its failure to do equity.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is barred by the doctrine of laches.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is barred by accord and satisfaction.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' causes of action are barred by the doctrine of mistake.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is barred by the doctrines of release and payment.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is barred by the doctrine of *in pari delicto*.

/ / /

SIXTEENTH AFFIRMATIVE DEFENSE

All or part of Plaintiffs' Amended Complaint is barred by the applicable statute of limitations.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is barred by Plaintiffs' ratification and confirmation of the alleged actions.

RESERVATION OF RIGHTS REGARDING AFFIRMATIVE DEFENSES

Pursuant to NRCP 8(c) and 11(b), all possible affirmative defenses may not have been alleged because insufficient facts are not yet available to allege them after reasonable inquiry upon the filing of this Answer. Defendant reserves its right to assert additional affirmative defenses, if warranted, as additional facts become known during the course of discovery.

DEMAND FOR JURY TRIAL

Defendant hereby demands to have the claims asserted against it be heard by a jury.

COUNTERCLAIMS

PARTIES

1. Counterclaimant Pink Dragon Entertainment, L.L.C. is, and has been at all times relevant, a Nevada limited-liability company doing business in Clark County, Nevada.

2. Counterclaimant is informed and believes that Counter-Defendant Teresa Mason is, and has been at all times relevant, a resident of the State of Nevada, County of Clark.

3. Counterclaimant is informed and believes that Counter-Defendant Janice Gonzalez is, and has been at all times relevant, a resident of the State of Nevada, County of Clark.

4. Counterclaimant is informed and believes that Decedent Candice Sade Cooks ("Decedent") was, at all times relevant, a resident of the State of Nevada, County of Clark.

5. Counterclaimant is informed and believes that Counter-Defendant Sadie Blake is, and has been at all times relevant, a resident of the State of Nevada, County of Clark.

6. Counterclaimant is informed and believes that Counter-Defendant Brian Blake Jr. is, and has been at all times relevant, a resident of the State of Nevada, County of Clark.

/ / /

7. Counterclaimant is informed and believes that Counter-Defendant Brian Blake is, and has been at all times relevant, a resident of the State of Nevada, County of Clark.

JURISDICTION AND VENUE

8. The Eighth Judicial District Court of the State of Nevada has subject jurisdiction over this matter because:

a. These Counterclaims arise from the same transactions and/or occurrences which are the subject matter of the underlying Complaint;

b. The amount in controversy exceeds the jurisdictional minimum of $15,000.00; and

c. The events described herein, unless otherwise indicated, occurred in Clark County, Nevada.

9. The Eighth Judicial District Court of the State of Nevada is the appropriate venue for resolution of this matter because:

a. Defendants are individuals and/or entities located and domiciled in Clark County, Nevada; and

b. The events described herein, unless otherwise indicated, occurred in Clark County, Nevada.

GENERAL ALLEGATIONS

10. On or about January 6, 2021, Decedent entered into an Independent Contractor Agreement with Counterclaimant.

11. That agreement provided that Decedent did not have an employment relationship with Counterclaimant, and Decedent was compensated by third-party clients for whom Decedent elected to provide services.

12. That agreement provided that Decedent took full responsibility for any repercussions of her failure to follow the law, and that Decedent held Counterclaimant harmless for any tortious acts committed while on a call.

/ / /

/ / /

13. Counterclaimant disclosed to Decedent that it did not have the ability to screen clients, and could not predict the behavior of third parties; Counterclaimant did not, and could not, control what independent contractors did on calls or how clients would respond to that conduct.

14. Decedent expressly acknowledged that she would hold Counterclaimant harmless for any and all injuries or damages arising from the services rendered in the course of the independent contractor relationship.

15. On or about April 9, 2021, Decedent, acting as a private dancer and using Counterclaimant as an arm's length call service, chose to set up an appointment with a third-party client, Kevin Osborne ("Client").

16. Decedent secured transit to that third-party Client's location by Decedent's own volition, and Decedent agreed to provide a private dance session with Client after communicating with the Client directly.

17. After arriving at the third-party Client's location, Decedent attempted to steal Client's wallet, which resulted in an altercation between individuals at that location.

18. Unknown to Counterclaimant and without Counterclaimant's approval, third party Jason Davis was waiting at the location to serve as Decedent's driver following the call.

19. At some point during that altercation, Client discharged a firearm at Decedent, resulting in substantial bodily harm to Decedent.

20. After Client shot Decedent, Jason Davis drove Decedent to University Medical Center, where he left her to obtain treatment.

21. Decedent ultimately succumbed to her injuries at University Medical Center.

22. Client's wallet was found among Decedent's property at University Medical Center.

23. Client was ultimately charged criminally for killing Decedent.

24. On or about October 19, 2021, Client pleaded guilty to one count of voluntary manslaughter with use of a deadly weapon, a category B felony.

25. A March 18, 2022 Judgment of Conviction reflects Client's manslaughter conviction for killing Decedent on or about April 9, 2021.

/ / /

26. Media coverage following Client's arrest and conviction reflected what responding officers and prosecutors acknowledged through those proceedings, that:

a. Client retaliated against Decedent for stealing his wallet;

b. a third-party driver had been waiting to escort Decedent away from the location of the incident;

c. the driver left Decedent at the hospital; and

d. investigators found Client's wallet inside Decedent's purse at that hospital.

27. On May 4, 2022, Counter-Defendants sued Counterclaimant for negligent security, alleging that Decedent was an employee attending an employee meeting on employer premises, and that Counterclaimant failed to provide adequate security to protect Decedent from Client.

28. On December 21, 2022, Counter-Defendants filed their Amended Complaint, which asserts the same claim against Counterclaimant based upon substantively identical allegations.

29. Counter-Defendants' operative allegations are predominantly false, disproven by readily-available documentation, and plagued by glaring omissions.

30. Counter-Defendants' asserted claims are unsupported by either law or fact, and are undermined by longstanding Nevada law and an undisputable evidentiary record.

31. These disparities have not stopped Counter-Defendants from maintaining this action on these fatally flawed bases, revealing Counter-Defendants' goal of abusing litigation proceedings to leverage an undeserved settlement from Counterclaimants.

CAUSES OF ACTION

Declaratory Relief

32. Counterclaimant repeats and realleges the allegations contained in the preceding and following paragraphs as if fully set forth herein.

33. Controversies exist between Counterclaimant and Counter-Defendants on multiple issues, including the Parties' relationship and relative rights and obligations.

34. Counterclaimant entered into certain agreements with Decedent when Decedent was acting in her capacity as an independent contractor.

/ / /

35. Declaratory relief is appropriate to determine the relative rights and obligations of Counterclaimant and Decedent.

36. These controversies are ripe for judicial determination as expressly authorized under NRS Chapter 30 and related Nevada procedural rules.

37. As a result of Counter-Defendants' unlawful conduct, Counterclaimant has been forced to retain counsel and is entitled to an award of reasonable attorney's fees and costs.

Abuse of Process

38. Counterclaimant repeats and realleges the allegations contained in the preceding and following paragraphs as if fully set forth herein.

39. Counter-Defendants initiated and are maintaining this litigation without good cause, and are prosecuting claims for ulterior purposes.

40. Upon information and belief, Counter-Defendants are asserting claims against Counterclaimant as a pretext to elicit a nuisance settlement where no liability or justiciable issues exist.

41. Upon information and belief, Counter-Defendants asserted claims against Counterclaimant in this action to compound litigation expenses and hardship against Counterclaimant in an attempt to leverage an undeserved settlement payout.

42. Upon information and belief, Counter-Defendants knew, or should have known, that the factual allegations in their Amended Complaint were demonstrably false and asserted in bad faith.

43. Upon information and belief, Counter-Defendants allege that Decedent was an employee of Counterclaimant, despite having actual knowledge that Decedent never had an employment relationship with Counterclaimant.

44. Upon information and belief, Counter-Defendants allege that Decedent was an employee of Counterclaimant, despite having actual knowledge of Decedent's valid and enforceable independent contractor agreement with Counterclaimant.

/ / /

/ / /

45. Upon information and belief, Counter-Defendants allege that Decedent attended an employee meeting on the night of the incident in question, despite having actual knowledge that Decedent was not attending any employee meeting on that date or at that time.

46. Upon information and belief, Counter-Defendants allege that Decedent attended an employee meeting on the night of the incident in question, despite having actual knowledge that Decedent was not attending any employee meeting at that location and that the location was not the Counterclaimant's premises.

47. Upon information and belief, Counter-Defendants allege that Decedent attended an employee meeting on the night of the incident in question, despite having actual knowledge that Decedent had exclusive control of her schedule, chose to meet with Client, and chose to visit that location.

48. Upon information and belief, Counter-Defendants allege that Counterclaimant had and/or assumed a non-delegable duty to protect the Decedent by virtue of Decedent being an employee, despite having actual knowledge that Decedent never had an employment relationship with Counterclaimant.

49. Upon information and belief, Counter-Defendants allege that Counterclaimant failed to provide adequate security personnel at the location of the incident in question, despite having actual knowledge that the incident did not occur on premises that Counterclaimant operates or controls, and did not occur at Counterclaimant's place of business.

50. Upon information and belief, Counter-Defendants allege that Counterclaimant had and/or assumed a non-delegable duty to protect Decedent by virtue of Decedent being an employee, despite having actual knowledge that Decedent agreed to and executed an explicit release which provided that "the independent contractor agrees that the independent contractor will hold the principal free and harmless from any and all injuries or damages that the independent contractor may receive from any person arising from the services provided by the independent contractor during the contractual relationship."

/ / /

/ / /

51. Upon information and belief, Counter-Defendants allege that Counterclaimant had and/or assumed a non-delegable duty to protect Decedent by virtue of Decedent being an employee, despite having actual knowledge that Decedent agreed to and executed an explicit release which provided that Decedent takes "full responsibility for any repercussions" and "holds harmless the [Counterclaimant] for any tortious acts committed while on a call."

52. Upon information and belief, Counter-Defendants allege that Counterclaimant failed to provide adequate security personnel at the location of the incident in question, despite having actual knowledge that Decedent agreed to and executed an express representation that Counterclaimant "does not have the ability to screen clients, nor can [Counterclaimant] predict the behavior of the client."

53. Upon information and belief, Counter-Defendants knew, or should have known, that the theories of relief articulated in their Amended Complaint have no basis in law and do not constitute viable causes of action.

54. Upon information and belief, Counter-Defendants allege that Counterclaimant had and/or assumed a non-delegable duty to protect Decedent by virtue of Decedent being an employee, despite having actual knowledge that Counterclaimant owed Decedent no such duty.

55. Upon information and belief, Counter-Defendants allege that Counterclaimant failed to provide adequate security and breached its duty of care, despite having actual knowledge that Decedent expressly disclaimed any such duty, and explicitly released Counterclaimant of any liability regarding the same.

56. Upon information and belief, Counter-Defendants allege that Counterclaimant failed to provide adequate security and breached its duty of care, despite having actual knowledge that Counterclaimant could not have notice or knowledge of any hazard with regard to the third-party Client or the location at issue.

57. Upon information and belief, Counter-Defendants knew, or should have known, that they were omitting salient factual averments from their operative pleading, and that they deliberately ignored intervening causes and necessary parties to this litigation.

/ / /

58. Upon information and belief, Counter-Defendants fail to acknowledge that Decedent sustained injuries after instigating a conflict with Client, despite having actual knowledge that Decedent attempted to steal Client's wallet and was injured as a result of the resulting altercation.

59. Upon information and belief, Counter-Defendants fail to acknowledge that the legal system has already found the third-party Client responsible for Decedent's injuries, despite having actual knowledge of the underlying criminal proceedings and resulting conviction.

60. Upon information and belief, Counter-Defendants fail to acknowledge that Decedent passed away after being abandoned at University Medical Center by driver Jason Davis, despite having actual knowledge of that fact.

61. Upon information and belief, Counter-Defendants fail to acknowledge that third party Jason Davis served as Decedent's getaway driver and abandoned Decedent at University Medical Center, despite having actual knowledge that Counterclaimant was not aware of Jason Davis's involvement, and Decedent's independent contractor agreements precluded decedent from bringing third parties to calls without Counterclaimant's prior knowledge and approval.

62. Upon information and belief, Counter-Defendants fail to acknowledge that the underlying incident was the undisputed result of an independent venture unrelated to Counterclaimant in any way, despite having actual knowledge from responding officer and prosecutorial records that Decedent instigated the incident by attempting to steal Client property.

63. Upon information and belief, Counter-Defendants fail to acknowledge that the underlying incident was not reasonably foreseeable by any third party, let alone Counterclaimant, because Counterclaimant could not have predicted that Decedent would instigate a dispute, that Client would respond with deadly force, or that a then-unknown getaway driver would abandon Decedent before her passing.

64. Upon information and belief, Counter-Defendants fail to acknowledge that Decedent instigated the underlying incident, despite having actual knowledge that Client's wallet was identified among Decedent's possessions at University Medical Center, and despite Client's representations in criminal proceedings that Decedent initiated the altercation.

65. Upon information and belief, Counter-Defendants fail to identify third-party driver Jason Davis and the convicted assailant Client as intervening causes of Decedent's injuries and fail to acknowledge Decedent's responsibility for her injuries, despite having actual knowledge that Counterclaimant is not an at-fault party.

66. Counter-Defendants have conceded, by and through their counsel, that they are only maintaining this litigation because they might find a basis to impose liability, and because evidence may exist which may ultimately support their claims.

67. Counterclaimants provided all of the relevant information and documentation to Counter-Defendants to assist with their investigation and to minimize litigation expense and hardship, yet Counter-Defendants have opted to proceed with frivolous litigation against Counterclaimant regardless.

68. Counterclaimants disclosed the salient legal issues and pleading defects in Counter-Defendants' initially-filed Complaint and Amended Complaint to minimize litigation expense and hardship, yet Counter-Defendants have opted to proceed with frivolous litigation against Counterclaimant regardless.

69. Counterclaimant repeatedly inquired as to what valid factual and legal basis Counter-Defendants have to assert and maintain any claims against Counterclaimant in this matter, and Counter-Defendants have failed to provide any edification beyond the face of their threadbare and facially inaccurate pleading.

70. Taken together, Counter-Defendants are engaged in a campaign of malicious and unnecessary legal action which constitutes an abuse of process, a waste of precious judicial resources, and a predatory implementation of litigation tools.

71. Counter-Defendants' claims are brought and maintained to extract an undeserved settlement payout, rather than to resolve a cognizable and justiciable legal dispute, and their decision to prosecute this action is neither necessary nor appropriate considering the nature of the facts and these proceedings.

/ / /

/ / /

72. Counter-Defendants' decision to bring and maintain this action against Counterclaimant without reasonable grounds and/or for the purpose of harassing and pressuring Counterclaimant is the exact conduct which entitles Counterclaimant to an award of attorney's fees pursuant to NRS 18.010(2)(b) and costs pursuant to NRS 18.020(3).

73. Counter-Defendants' action against Counterclaimant is frivolous, unnecessary, and unwarranted, and was brought and maintained so as to multiply proceedings and compound costs vexatiously, invoking the sanction provisions of EDCR 7.60(b).

74. Counter-Defendants' decision to bring and maintain this action against Counterclaimant despite not being well-grounded in fact nor warranted by existing law entitles Counterclaimant to an award of attorney's fees and costs pursuant to NRS 7.085.

75. As a result of Counter-Defendants' unlawful conduct, Counterclaimant has been forced to retain counsel and is entitled to an award of reasonable attorney's fees and costs.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

PRAYER FOR RELIEF

For the foregoing reasons and based upon the above allegations, Counterclaimant prays for judgment in their favor and against Plaintiffs as follows:

1. For an award of compensatory damages in excess of $15,000.00;
2. For an award of special damages;
3. For interest on damages, including awards of pre- and post-judgment interest;
4. For an award of reasonable attorney's fees and costs;
5. For declaratory relief as outlined herein; and
6. For any other such relief the Court deems appropriate under the circumstances.

Dated this 29th day of March, 2023.

LBC LAW GROUP

By: */s/ Andrew P. Dunning*

JOHN C. COURTNEY, ESQ.
Nevada Bar. No. 11092
ANDREW P. DUNNING, ESQ.
Nevada Bar No. 13864
723 South 7th Street
Las Vegas, Nevada 89101
Ph.: (702) 608-3030
Fax: (702) 463-4443
info@lbclawgroup.com
Attorneys for Defendant/Counterclaimant
Pink Dragon Entertainment, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of LBC LAW GROUP, and on March 29, 2023, a true and correct copy of the foregoing DEFENDANT PINK DRAGON ENTERTAINMENT, L.L.C.'S ANSWER TO FIRST AMENDED COMPLAINT AND COUNTERCLAIMS, was served electronically pursuant to Administrative Order 14-2 and NRCP 5(b) via the Court's electronic filing system, upon the following:

Christian M. Morris, Esq.
Victoria R. Allen, Esq.
Jamie N. McInelly, Esq.
Wesley H. Lemay, Jr., Esq.
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89014
christian@nettlesmorris.com
victoria@CMtrialattorneys.com
jamie@CMtrialattorneys.com
wesley@nettlesmorris.com
Attorneys for Plaintiffs

/s/ Kerri Rowland
An Employee of LBC LAW GROUP

Electronically Filed
10/6/2023 5:47 PM
Steven D. Grierson
CLERK OF THE COURT

NTSO
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
T: (702) 434-8282
F: (702) 434-1488
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; D.I.P. INVESTMENT CORP., a domestic corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	CASE NO.: A-22-852100-C DEPT NO.:27 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO AMEND COMPLAINT TO SUBSTITUTE DEFENDANT, DISMISS DEFENDANT, AND AMEND CASE CAPTION**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that a STIPULATION AND ORDER TO AMEND COMPLAINT TO SUBSTITUTE DEFENDANT, DISMISS DEFENDANT, AND AMEND

Case Number: A-22-852100-C

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

CASE CAPTION was duly entered in the above-entitled matter on the 6th day of October, 2023, a copy of which is attached hereto.

DATED this 6th day of October, 2023.

CHRISTIAN MORRIS TRIAL ATTORNEYS



CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

CERTIFICATE OF E-SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 8.02 I hereby certify that on the 6th day of October, 2023, a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO AMEND COMPLAINT TO SUBSTITUTE DEFENDANT, DISMISS DEFENDANT, AND AMEND CASE CAPTION** was served to the following parties by electronic transmission through the Odyssey Efile NV system:

Timothy F. Hunter, Esq.
RAY LEGO & ASSOCIATES
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, NV 89113
Attorney for Defendant
Avila Park Homeowners Association

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Blvd., Ste. 120
Las Vegas, NV 89102
Attorney for Defendant
Pink Dragon Entertainment, LLC

/s/ Laura Edwards
Employee of
CHRISTIAN MORRIS TRIAL ATTORNEYS

ELECTRONICALLY SERVED
10/6/2023 3:30 PM

Electronically Filed
10/06/2023 3:28 PM
CLERK OF THE COURT

SAO
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
T: (702) 434-8282
F: (702) 434-1488
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	CASE NO.: A-22-852100-C DEPT NO.: 27 **STIPULATION AND ORDER TO AMEND COMPLAINT TO SUBSTITUTE DEFENDANT, DISMISS DEFENDANT, AND AMEND CASE CAPTION**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF

Case Number: A-22-852100-C

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR ("Plaintiffs") by and through their counsel of record Christian M. Morris, Esq., Victoria R. Allen, Esq., and Sarah E. DiSalvo, Esq. of CHRISTIAN MORRIS TRIAL ATTORNEYS, Defendant AVILA PARK HOMEOWNER'S ASSOCIATION by and through its counsel of record Timothy Hunter, Esq. of RAY LEGO & ASSOCIATES, and Defendant PINK DRAGON ENTERTAINMENT LLC by and through its counsel of record Andrew Dunning, Esq. of LBC LAW GROUP, hereby stipulate and agree to the following and request that this Court approve the same as an Order of the Court:

1. THE PARTIES HEREBY STIPULATE AND AGREE that Plaintiff's claims in the above-entitled action against AVILA PARK HOMEOWNER'S ASSOCIATION only be dismissed with prejudice, with each party to bear their own fees and costs.
2. THE PARTIES FURTHER STIPULATE AND AGREE that discovery has indicated D.I.P. INVESTMENT CORP. is the properly named Defendant to this action.
3. THE PARTIES FURTHER STIPULATE AND AGREE that Plaintiff's Complaint will be amended with D.I.P. INVESTMENT CORP. substituted in place of AVILA PARK HOMEOWNER'S ASSOCIATION, the location of the Subject Incident be amended to 1813 N. Decatur Blvd., and such substitutions shall relate back to the filing of the original *Complaint,* for all purposes, including the statute of limitations.
4. THE PARTIES FURTHER STIPULATE AND AGREE that the caption of this matter will be amended as follows and the Clerk of Court will update to the same:

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment;	CASE NO.: A-22-852100-C DEPT NO.:27

D.I.P. INVESTMENT CORP., a domestic corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive,

Defendant.

DATED this 6th day of October, 2023.

CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/Victoria R. Allen
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiff

DATED this 6th day of October, 2023.

RAY LEGO & ASSOCIATES

/s/Timothy Hunter
Timothy F. Hunter, Esq.
Nevada Bar No. 010622
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Attorneys for Defendant,
Avila Park Homeowner's Association

DATED this 6th day of October, 2023.

LBC LAW GROUP

/s/Andrew Dunning
John C. Courtney, Esq.
Nevada Bar No. 11092
Andrew P. Dunning, Esq.
Nevada Bar No. 13864
Sebastian F. Gajardo, Esq.
Nevada Bar. No. 14874.
3215 W. Charleston Blvd., Ste. 120
Las Vegas, Nevada 89102
Attorney for Defendant
Pink Dragon Entertainment, LLC

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

ORDER

IT IS SO ORDERED.

Dated this 6th day of October, 2023

Nancy L Allf

225 D43 12B5 1D40
Nancy Allf
District Court Judge

Respectfully submitted by:
CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/Victoria R. Allen

VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiff

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

Laura Edwards

From: Andrew Dunning <apd@lbclawgroup.com>
Sent: Friday, October 6, 2023 12:35 PM
To: Hunter, Timothy F; Victoria Allen; Tiffany Pond; John Courtney; Kerri R
Cc: Sarah DiSalvo; Laura Edwards; Berry, Nancy L
Subject: RE: Cooks v. Pink Dragon Entertainment, et al. -

I am. You may submit with my signature.

Thank you,

Andrew
--

Andrew P. Dunning, Esq.
Attorney
LBC LAW GROUP
Blakesley Courtney, P.C.
723 South 7th Street
Las Vegas, Nevada 89101
Ph: (702) 608-3030 / Fx: (702) 463-4443
Email: APD@LBCLawGroup.com
Website: www.LBCLawGroup.com

THE CONTENTS OF THIS EMAIL MESSAGE CONSTITUTE ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION ONLY FOR THE USE OF THE INTENDED RECIPIENT INDIVIDUAL OR ENTITY. IF THE READER OF THIS MESSAGE IS NOT ITS INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY OUR OFFICE AND ENSURE THAT ANY COPY(IES) IN YOUR POSSESSION ARE DESTROYED OR RETURNED TO US. THANK YOU.

From: Hunter, Timothy F <TFHUNTER@travelers.com>
Sent: Friday, October 6, 2023 11:20 AM
To: Victoria Allen <Victoria@CMTrialAttorneys.com>; Andrew Dunning <apd@lbclawgroup.com>; Tiffany Pond <tiffanyp@CMTrialAttorneys.com>; John Courtney <JCC@lbclawgroup.com>; Kerri R <kerri@lbclawgroup.com>
Cc: Sarah DiSalvo <Sarah@CMTrialattorneys.com>; Laura Edwards <laura@CMTrialAttorneys.com>; Berry, Nancy L <NBERRY@travelers.com>
Subject: RE: Cooks v. Pink Dragon Entertainment, et al. -

Andrew,

Are you good with the proposed stipulation?

Thanks, Tim

Timothy F. Hunter
Associate Managing Counsel
Ray Lego & Associates
W: 702.479.4371 F: 702.270.4602

Physical Address:
7450 Arroyo Crossing Pkwy.
Suite 250
Las Vegas, Nevada 89113

Mailing Address:
P.O. Box 64093
St. Paul, MN 55164-0093

Not a Partnership or Professional Corporation
All attorneys are Employees of The Travelers Indemnity Company
and its Property Casualty Affiliates

From: Hunter, Timothy F
Sent: Monday, October 2, 2023 4:00 PM
To: 'Victoria Allen' <Victoria@CMTrialAttorneys.com>; Andrew Dunning <apd@lbclawgroup.com>; Tiffany Pond <tiffanyp@CMTrialAttorneys.com>; John Courtney <JCC@lbclawgroup.com>; Kerri R <kerri@lbclawgroup.com>
Cc: Sarah DiSalvo <Sarah@CMTrialattorneys.com>; Laura Edwards <laura@CMTrialAttorneys.com>; Berry, Nancy L <NBERRY@travelers.com>
Subject: RE: Cooks v. Pink Dragon Entertainment, et al. -

Hey Victoria,

You can use my electronic signature on the Stipulation and Order to Amend Complaint to Substitute Defendant, Dismiss Defendant, and Amend Caption.

Thanks, Tim

Timothy F. Hunter
Associate Managing Counsel

Ray Lego & Associates
W: 702.479.4371 F: 702.270.4602

Physical Address:
7450 Arroyo Crossing Pkwy.
Suite 250
Las Vegas, Nevada 89113

Mailing Address:
P.O. Box 64093
St. Paul, MN 55164-0093

Not a Partnership or Professional Corporation
All attorneys are Employees of The Travelers Indemnity Company
and its Property Casualty Affiliates

From: Victoria Allen <Victoria@CMTrialAttorneys.com>
Sent: Friday, September 22, 2023 4:53 PM
To: Andrew Dunning <apd@lbclawgroup.com>; Hunter, Timothy F <TFHUNTER@travelers.com>; Tiffany Pond <tiffanyp@CMTrialAttorneys.com>; John Courtney <JCC@lbclawgroup.com>; Kerri R <kerri@lbclawgroup.com>
Cc: Sarah DiSalvo <Sarah@CMTrialattorneys.com>; Laura Edwards <laura@CMTrialAttorneys.com>; Berry, Nancy L <NBERRY@travelers.com>
Subject: [External] RE: Cooks v. Pink Dragon Entertainment, et al. -

Please see the proposed SAO to amend and dismiss attached. Let me know if you all have any changes or if we may affix your e-signatures and submit. Thanks and have a good weekend!

Warm regards,



TORI R. ALLEN, ESQ.
Attorney

Office Phone: 702.434.8282
Direct Phone: 702.935.2440
2250 Corporate Circle, Suite 390
Henderson, NV 89074

CHRISTIAN MORRIS
TRIAL ATTORNEYS

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Candice Sade Cooks, Plaintiff(s) vs. Pink Dragon Entertainment, L.L.C., Defendant(s)	CASE NO: A-22-852100-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 10/6/2023

Timothy Hunter, Esq.	TFHUNTER@travelers.com
Nancy Berry	NBERRY@travelers.com
Christine Shaddock	CSHADDOC@travelers.com
John Courtney	info@lbclawgroup.com
Tori Allen	victoria@cmtrialattorneys.com
Kerri Rowland	kerri@lbclawgroup.com
Laura Edwards	laura@cmtrialattorneys.com
Andrew Dunning	apd@lbclawgroup.com
Chris Gramentz BRC	BRCNVFIL@travelers.com
Tiffany Pond	tiffanyp@cmtrialattorneys.com

Jamie McInelly jamie@cmtrialattorneys.com

Electronically Filed
10/11/2023 2:13 PM
Steven D. Grierson
CLERK OF THE COURT

SACOMP
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH DISALVO, ESQ.
Nevada Bar No. 16398
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
T: (702) 434-8282
F: (702) 434-1488
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; D.I.P. INVESTMENT CORP., a domestic corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendant.	CASE NO.: A-22-852100-C DEPT NO.:27 **SECOND AMENDED COMPLAINT**

Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by

Case Number: A-22-852100-C

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

and through their natural parent, BRIAN BLAKE, by and through their counsel, Christian M. Morris, Esq., Victoria R. Allen, Esq., Jamie N. McInelly, Esq. and Wesley H. LeMay, Esq., of CHRISTIAN MORRIS TRIAL ATTORNEYS, and for their causes of action against Defendants, PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; D.I.P. INVESTMENT CORP., a Domestic Corporation; ; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, complains and alleges as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The Eighth Judicial District Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds $15,000.00.

GENERAL ALLEGATIONS

2. CANDICE SADE COOKS ("Decedent") at all relevant times described herein was a resident of Clark County, Nevada.

3. Plaintiff, TERESA MASON ("Plaintiff Teresa"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

4. Plaintiff, JANICE GONZALEZ ("Plaintiff Janice"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

5. Plaintiff, SADIE BLAKE ("Plaintiff Sadie"), is and at all relevant times was, a minor residing in Clark County, Nevada.

6. Plaintiff, BRIAN BLAKE, JR. ("Plaintiff Blake"), is and at all relevant times was, a minor residing in Clark County, Nevada.

7. At all times relevant herein, Plaintiff Sadie and Plaintiff Blake are the children of Decedent.

8. At all times relevant herein, BRIAN BLAKE is the natural father of Plaintiff Sadie and Plaintiff Blake.

9. Plaintiff Sadie is an heir of Decedent within the meaning of NRS 41.085.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

10. Plaintiff Blake is an heir of Decedent within the meaning of NRS 41.085.

11. Plaintiff Sadie and Plaintiff Blake are each entitled to a one-half share of Decedent CANDANCE SADE COOKS' estate pursuant NRS 134.090.

12. Plaintiff Teresa, Plaintiff Janice, Plaintiff Sadie, Plaintiff Blake and Decedent collectively referred to as "Plaintiffs."

13. Defendant, PINK DRAGON ENTERTAINMENT, L.L.C. d/b/a Pink Dragon Entertainment ("Defendant Pink"), is, and at all relevant times, was a domestic limited-liability company doing business in Clark County, Nevada.

14. Defendant, D.I.P. INVESTMENT CORP. ("Defendant D.I.P. Investment"), is, and at all relevant times, was a domestic nonprofit company doing business in Clark County, Nevada.

15. Defendant Pink and Defendant D.I.P. Investment hereinafter referred to as "Defendants."

16. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant is responsible, negligently, or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged.

17. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant was involved in the initiation, approval, support or execution of the wrongful acts upon which this litigation is premised, or of similar actions against Plaintiff of which Plaintiff is presently unaware.

18. That on or about April 9, 2021, Defendant Pink owned, controlled and/or operated the arts, entertainment, recreation business that operated out of 4200 W. Russell Road, Las Vegas, Nevada, commonly known as "Pink Dragon Entertainment".

19. Upon information and belief, Decedent was an employee and/or had a master/servant and/or employer/employee relationship with Defendant Pink at Pink Dragon Entertainment.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

20. Upon information and belief, at all relevant times relevant hereto, Defendant D.I.P. Investment owned, operated, managed, supervised, and/or otherwise controlled the residential community/apartment complex commonly known as Diamondhead Apartments, located at 1799 N. Decatur Boulevard and 1813 N. Decatur Boulevard, Las Vegas, Nevada 89108 ("Subject Neighborhood").

21. Upon information and belief, at all relevant times relevant hereto, Defendant D.I.P Investment was authorized to regulate the Subject Neighborhood and provide security for residents and guests, and was responsible for governing, securing, and monitoring the housing development where the Subject Neighborhood is located.

22. Upon information and belief, on April 9, 2021, Decedent was driven by a non-party to the Subject Neighborhood for an employee meeting arranged with Pink Dragon Entertainment.

23. Upon information and belief, on April 9, 2021, once the employee meeting ended, a Client that was not a resident or guest of Defendant D.I.P Investment's property approached Decedent and accused her of stealing his wallet.

24. Upon information and belief, on April 9, 2021, Client shot Decedent ("Subject Incident").

25. On April 9, 2021, Decedent passed away at University Medical Center.

26. As a direct and proximate result of the negligence of the Defendant, Plaintiffs suffered damages in excess of $15,000.

27. As a direct and proximate result of Defendant's negligence, Plaintiffs have had to retain the services of the law offices of the Christian Morris Trial Attorneys to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

FIRST CAUSE OF ACTION

(Negligent Security)

28. Plaintiffs repeat and reallege each and every allegation contained in paragraphs hereinabove as though fully set forth herein.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

29. At all times relevant hereto, Defendant Pink had and/or assumed a non-delegable duty to provide care, safety, and protection to its employees and/or those with whom it has a master/servant and/or employer/employee relationship, including Decedent.

30. At all times relevant hereto, Defendant Pink failed to provide care, safety, and protection through adequate security personnel at the Subject Neighborhood while a work meeting took place, resulting in the Subject Incident.

31. At all times relevant hereto, Defendant D.I.P Investment was in control of the gated neighborhood and was responsible for security of residents and guests.

32. At all times relevant hereto, Defendant D.I.P Investment did not provide adequate security for residents and guests of the Subject Neighborhood, including Decedent.

33. That Defendants' failure to provide adequate security breached their duty of care to Decedent, which resulted in her death.

34. Defendants manifested reckless disregard for the safety of Decedent by failing to provide security where the Subject Incident occurred at the time of the Subject Incident.

35. Defendants' breach of this duty of care was the legal and proximate cause of each of the Decedent's death.

36. As a further direct and proximate result of Defendants' negligence, Plaintiffs suffered damages in excess of $15,000.00.

37. As a direct and proximate result of Defendants' negligence, Plaintiffs have had to retain the services of the law offices of the Christian Morris Trial Attorneys to pursue this action and is entitled to recover costs of suit and reasonable attorneys' fees incurred therein.

SECOND CAUSE OF ACTION

(Wrongful Death)

38. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs hereinabove as though fully set forth herein.

39. Plaintiff Brian and Plaintiff Sadie are heirs or personal representatives of Decedent.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

40. Defendants caused Decedent's death by wrongful act or neglect as described hereinabove.

41. Therefore, under NRS 41.085 and NRS 41.100, Plaintiffs may maintain an action for damages against Defendants, or, if Defendants are dead, against their personal representative.

42. As a direct and proximate result of the actions or omissions of Defendants, Plaintiff Sadie and Plaintiff Brian suffered grief, sorrow, loss of a parent, loss of support, past and future loss of companionship, past and future loss of society, past and future loss of comfort, past and future loss of services, and funeral and burial related expenses, all in a sum in excess of excess of $15,000.00.

43. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs are entitled to punitive damages per NRS 42.005 and 42.007 in an amount to be determined by a jury.

44. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs have had to retain the services of Christian Morris Trial Attorneys to pursue this action and are entitled to recover costs of suit and reasonable attorneys' fees incurred herein.

///

///

///

///

///

///

///

///

///

///

///

WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

1. General damages in excess of $15,000.00 for Plaintiffs;
2. Special damages in excess of $15,000.00 for Plaintiffs;
3. For Punitive damages to be determined by the jury of Plaintiffs;
4. For pre- and post-judgment interest as permitted by law;
5. For costs and attorneys' fees as permitted by law; and
6. For such other and further relief as the Court deems necessary and proper.

DATED this 11th day of October, 2023.

CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/ Victoria R. Allen

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH DISALVO, ESQ.
Nevada Bar No. 16398
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CERTIFICATE OF E-SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 8.02, I hereby certify that on the 11th day of October, 2023, a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** was served to the following parties by electronic transmission through the Odyssey eFileNV system and/or mailed via US mail:

D.I.P INVESTMENT CORP
c/o Cogency Global Inc.
321 W. Winnie Lane, #104
Carson City, NV 89703
Registered Agent for D.I.P. INVESTMENT CORP

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Blvd., Ste. 120
Las Vegas, NV 89102
Attorney for Defendant
Pink Dragon Entertainment, LLC

/s/ Laura Edwards
An employee of CHRISTIAN MORRIS TRIAL ATTORNEYS

AFFT
Christian Morris Trial Attorneys
Victoria R. Allen, Esq.
2250 Corporate Cir., #390
Henderson , NV 89074
State Bar No.: 15005
Attorney(s) for: Plaintiff(s)

Electronically Filed
10/26/2023 12:36 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Teresa Mason and Janice Gonzalez, as Co-Special Administrators of the Estate of Candice Sade Cooks; et al.
Plaintiff(s)
vs
Pink Dragon Entertainment, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; et al.
Defendant(s)

Case No.: **A-22-852100-C**
Dept. No.: **27**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Clinton Terry Turney**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to D.I.P. Investment Corp; Second Amended Complaint** on the **17th** day of **October**, **2023** and served the same on the **19th** day of **October**, **2023** at **9:18AM** by serving the **Defendant**, **D.I.P. Investment Corp., a domestic corporation** by personally delivering and leaving a copy at **Cogency Global Inc.; 321 W. Winnie Ln., #104, Carson City, NV 89703** with **Itzel Larson** pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 25th day of October, 2023.

Clinton Terry Turney # R-2022-04093
Legal Process Service License # 604
WorkOrderNo **2305844**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

Electronically Filed
11/9/2023 4:27 PM
Steven D. Grierson
CLERK OF THE COURT

MDSM
Jason D. Smith, ESQ.
Nevada Bar No. 9691
E-mail: jsmith@nevadafirm.com
John J. Pictum III, ESQ.
Nevada Bar No. 15979
E-mail: jpictum@nevadafirm.com
HOLLEY DRIGGS
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
Attorneys for Defendant D.I.P. Investment Corp.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA

Teresa Mason and Janice Gonzalez, as Co-Special Administrators of the Estate of Candice Sade Cooks; Sadie Blake and Brian Blake Jr., by and through their natural parent, Brian Blake, Plaintiffs, v. Pink Dragon Entertainment, L.L.C., a Domestic Limited Liability Company d/b/a/ Pink Dragon Entertainment; D.I.P. Investment Corp., a domestic corporation; Doe Individuals 1 through 10; Roe Corporations 11 through 20; and ABC limited liability companies 21 through 30, inclusive, Defendants.	Case No: A-22-852100-C Dept. No: 27 **MOTION TO DISMISS** **HEARING REQUESTED**

Defendant D.I.P. Investment Corp. ("***D.I.P.***") by and through its counsel of record, Jason D. Smith, Esq., and John J. Pictum III, Esq., of the law firm Holley Driggs, hereby moves to dismiss Plaintiff Teresa Mason and Janice Gonzales, as Co-Special Administrators of the Estate of Candice Sade Cooks ("***Estate of Candice Cooks***"); Sadie Blake and Brian Blake Jr., by and through their natural parent, Brian Blake ("***Sadie***" and "***Brian***") (together with the Estate of Candice Cooks "***Plaintiffs***") complaint for failure to state a claim upon which relief can be granted.

This Motion is based upon the papers and pleadings on file in this action, the memorandum of points and authorities, and any argument made during the hearing on this matter.

Case Number: A-22-852100-C

HOLLEY DRIGGS

DATED this 9th day of November 2023.

HOLLEY DRIGGS

/s/ Jason D. Smith

Jason D. Smith, Esq.
Nevada Bar No. 9691
E-mail: jsmith@nevadafirm.com
John J. Pictum III, Esq.
Nevada Bar No. 15979
E-mail: jpictum@nevadafirm.com
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
Attorneys for Defendant D.I.P. Investment Corp.

HOLLEY DRIGGS

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Although the underlying facts of this case are horrifying, the issue presented to the Court in this motion is procedural, not substantive. The procedural issues can be summed up into two questions: First, are Plaintiff's claims against D.I.P. untimely under NRS 11.190(4)? And second, if the claims are untimely, does NRCP 15(c)'s relation back rule allow the claims to proceed against D.I.P. anyways?

The answer to the first question is simple: Plaintiff's claims were brought two and a half years after the date of death or injury. Therefore, those claims are time barred pursuant to NRS 11.190(4). And although the second question seems daunting, it boils down to this simple analysis: Did D.I.P. have actual or constructive notice of the original complaint that Plaintiffs filed before the statute of limitations expired? And because the answer to that question is unequivocally no, the claims against D.I.P. cannot proceed. Therefore, the Court should dismiss all claims against D.I.P. with prejudice.

II. FACTS & PROCEDURAL HISTORY

Plaintiffs' original complaint was filed on May 4, 2022. *See* Compl. In that complaint, Plaintiffs allege that on April 9, 2021, Candice Cooks ("***Cooks***") drove to an apartment complex to meet up with an individual (that was not a resident of the apartment complex) for a "client meeting." *See* Compl. at ¶¶ 22-23. During this "client meeting", Cooks was acting as an employee of Pink Dragon Entertainment L.L.C. ("***Pink Dragon***"). *See id.* at ¶¶ 23-24. The original complaint further alleges that the apartment complex that Cooks drove to that night was located at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108, and was owned and operated by Avila Park Homeowners Association ("***Avila***"). *See id.*at ¶ 23.

Once Cooks' "client meeting" concluded, the individual Cooks met up with accused her of stealing his wallet. *See id.* And when she attempted to leave the apartment complex, that individual shot her; and she was later pronounced dead at University Medical Center of Southern Nevada. *See id.* at ¶¶ 24-25. Finally, the original complaint alleges that Cooks death and injuries were a

HOLLEY DRIGGS

"direct and proximate cause" of Avila's negligence. *See id.* At ¶27. Thus, the original complaint names Pink Dragon (Cooks' employer) and Avila (the alleged property owner of the apartment complex where Cooks was shot).

On December 22, 2022, the Court entered a stipulation signed by counsel for Plaintiffs and Avila. *See* Stipulation to Amend Compl., on file herein. In that stipulation, the Avila agreed to allow Plaintiffs to file its first amended complaint that clarified factual details of the April 9, 2021, incident. *See id.*

On October 6, 2023, the Court entered a second stipulation agreed up by counsel for Plaintiffs, Avila, and Pink Dragon. *See* Stipulation and Order to Amend First Am. Compl., on file herein. This stipulation states that "discovery has indicated D.I.P. INVESTMENT CORP. is the properly named Defendant to this action." *See id* at ¶ 2. Therefore, Plaintiffs, Avila, and Pink Dragon agreed to substitute D.I.P. in place of Avila. *See id.* at ¶ 3.

On October 11, 2023—185 days after the applicable statute of limitations expired—Plaintiffs filed their second amended complaint. *See* Second Am. Compl. In this second amended complaint, the factual allegations remain the same except for the location of the apartment complex that Cooks allegedly held her "client meeting" at. *See id.* at ¶ 20. Thus, instead of alleging that the "client meeting" and shooting happened at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108, Plaintiffs now allege that it took place at the "Diamondhead Apartments located at 1799 N. Decatur Blvd. and 1813 N. Decatur Blvd., Las Vegas, Nevada 89108." *Compare* Compl. at ¶ 21 *with* Second Am. Compl. at ¶ 20.

III. LEGAL ARGUMENT

A. MOTION TO DISMISS STANDARD

A party may assert by motion the defense that the plaintiff failed to state a claim upon which relief may be granted. Nev. R. Civ. P. 12(b)(5). Pursuant to Rule 12(b)(5), dismissal of a claim is appropriate if it appears with certainty that a plaintiff can prove no set of facts which would entitle him or her to relief under the claim. *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985). A court should dismiss a claim if it lacks a cognizable legal theory or if there are

HOLLEY DRIGGS

insufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1122 (9th Cir. 2008). Put simply, a complaint must contain some "set of facts, which, if true, would entitle [the plaintiff] to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

Here, the Court cannot grant relief to Plaintiffs against D.I.P. because the statute of limitations has expired on Plaintiff's claims. *See Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture, LLC*, 129 Nev. 181, 186, 300 P.3d 124, 128 (2013) (holding that dismissal for failure to state a claim is appropriate where the claim is time-barred by the statute of limitations). Therefore, the Court should grant D.I.P.'s motion to dismiss.

B. PLAINTIFF'S CLAIMS AGAINST D.I.P. ARE UNTIMELY PURSUANT TO NRS 11.190(4)

Plaintiff's original complaint was filed eleven months before the statute of limitations expired, on May 4, 2022. *See* Compl. Within that complaint, Plaintiff alleges that "[O]n or about April 9, 2021" Cooks drove to an apartment complex (located at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108) to meet up with an individual (that was not a resident of the apartment complex) for a "client meeting." *See* Compl. at ¶¶ 22-23. The complaint further alleges that the apartment complex was owned and operated by Avila Park Homeowners Association ("***Avila***"). *See id.*at ¶ 23.

After the "client meeting", the complaint alleges that when Cooks was leaving the apartment complex, the individual she met with accused her of stealing his wallet. *See id.* And when she attempted to leave the apartment complex, the individual shot her; and she was later pronounced dead at University Medical Center of Southern Nevada. *See id.* at ¶¶ 24-25. Finally, the original complaint alleges that Cooks death and injuries were a "direct and proximate cause" Avila's negligence. *See id.* at ¶27.

Nearly eighteen months after filing its original complaint, Plaintiffs now allege they have discovered that this incident purportedly did not happen on Avila's property—but rather at a property owned by D.I.P.; and thus, are now seekingto bring the same claims they originally asserted against Avila against D.I.P. *See* Second Am. Compl. But the statute of limitations for

HOLLEY DRIGGS

these claims expired on April 9, 2023. *See* NRS 11.190(4) (requiring a plaintiff to bring any action to recover damages for the wrongful death or injuries resulting from the negligence of another within two-years of the date of the death or injury). Therefore, because Plaintiff's claims are untimely, the Court should dismiss those claims with prejudice against D.I.P. *See Holcomb Condo. Homeowners' Ass'n, Inc*, 129 Nev. at 186, 300 P.3d at 128 (holding that dismissal for failure to state a claim is appropriate where the claim is time-barred by the statute of limitations).

C. PLAINTIFF'S SECOND AMENDED COMPLAINT DOES NOT RELATE BACK TO THE DATE OF THE ORIGINAL COMPLAINT

It is anticipated that Plaintiff's will argue that their claims against D.I.P. are not untimely because, under Rule 15, the second amended complaint relates back to the date of the original complaint, thereby making their claims available under NRS 11.190(4). However, that argument is belied by well-established law.

Rule 15(c) of the Nevada Rules of Civil Procedure was designed to assist plaintiffs to bring new claims or add new defendants to existing actions after the period of limitations has run as established by Chapter 11 of the Nevada Revised Statutes. *See* NRCP 15. Once example of this is demonstrated by NRCP 15(c)(1), which allows a plaintiff to assert new claims so long as they "arose out of the conduct, transaction, or occurrence set out-or attempted to be set out-in the original pleading . . . ." This rule is logical, considering that once a complaint is filed against a defendant, and the defendant has actual notice of the action by being personally served, the defendant is likely to understand the basic facts and circumstances surrounding the action. Thus, if—during the course of discovery—the plaintiff discovers new claims that all stem from the same basic facts that are plead in the original complaint, the defendant is not prejudiced at all as it has been on notice, since the day it received the complaint before the limitations period expired, of the action. But what is more difficult of a question is how does the court analyze a plaintiff's amended complaint that adds a new defendant into an action once the period of limitations has expired under Chapter 11? Luckly, NRCP 15(c) answers that question.

Under Rule 15, a plaintiff cannot substitute one defendant for another after the statute of

HOLLEY DRIGGS

limitations period has ended unless it can establish that the new defendant (the one that is being substituted into the action) "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." NRCP 15(c)(2)(B). One analogous example of the Rule 15(c) analysis that the Court should employ here is demonstrated in *Walker v. New Castle Corp*., 134 Nev. 1027, 431 P.3d 55 (Order of Affirmance) (2018).

In *Walker*, a couple was visiting the Excalibur Hotel and Casino, when a man working on the premises dropped a metal object on Marvina Walker's foot causing her personal injury. *See id.* at *1. Two days prior to the expiration of the two-year statute of limitations for Walker's personal injury claim, she sued New Castle Corp. d/b/a Excalibur Hotel and Casino, MGM Resorts International Global Gaming Development, LLC, and MGM Resorts Limited, LLC, and Doe defendants for negligence and negligent hiring. *See id.* After the two-year statute of limitations expired, Walker filed an amended complaint adding MGM's independent contractor, Thyssenkrupp Elevator Corporation ("***TKE***") as a party. *See id.*

In response to the amended complaint, TKE moved to dismiss itself as a party because of the expiration of the statute of limitations. *See id.* Walker opposed this motion on the basis that MGM had not yet filed a responsive pleading in the case and TKE was a necessary party under NRCP 19 and NRCP 20 such that relation back was permitted under NRCP 15. *See id.* The district court granted TKE's motion and dismissed TKE from the suit. *See id.*

Walker then appealed to the district court's order dismissing TKE from the suit, arguing that when analyzing a Rule 12 motion, all facts alleged in the complaint are presumed true and all inferences are drawn in favor of the complainant. *Id.* at *2. However, the Nevada Supreme Court did not find her arguments persuasive. *Id.* And instead, the Court held that Walker failed to demonstrate that TKE had actual notice of Walker's filing of the lawsuit against MGM prior to the statute of limitations' expiration. *Id.* And without demonstrating that TKE had actual notice of the suit prior to the statute of limitation's expiration, Walker could not satisfy the requirements of relation back under NRCP 15(c). *See id.* (citing *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979) ("[A] proper defendant may be brought into the action after the statute of

HOLLEY DRIGGS

limitations has run if the proper defendant (1) receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to its prejudice by the amendment." (emphasis added)). Therefore, the Supreme Court affirmed the district court's order dismissing TKE from the suit,

Here, the Court has an analogous factual scenario as *Walker*. Plaintiffs have failed to allege that D.I.P had any knowledge of the original complaint filed in May of 2022, and will be unable to do so since no such facts exist. And because Plaintiffs cannot establish that critical fact, Rule 15 does not operate as a shield for their negligence. Therefore, the Court should dismiss Plaintiff's claims against D.I.P. with prejudice because: (1) they are untimely under NRS 11.190(4); and (2) the second amended complaint cannot relate back to the date of the original complaints filing.

IV. CONCLUSION

The issue presented to the Court in this motion is procedural, not substantive. And the legal procedure here is simple, Plaintiff's claims against D.I.P. are subject to a two-year statute of limitation pursuant to NRS 11.190(4). But Plaintiffs did not bring their claims against D.I.P. until 185-days after the two-year limitations period expired—rendering their claims time barred. Additionally, any attempt by Plaintiffs to use Rule 15(c) to relate its second amended complaint back to the date of the original complaint is fruitless as Plaintiffs cannot establish that D.I.P. had actual knowledge of the original complaint before the statute of limitations expired.

Accordingly, the Court should dismiss D.I.P. from this instant case with prejudice.

Dated November 9th 2023.

HOLLEY DRIGGS

/s/ Jason D. Smith

Jason D. Smith, Esq.
Nevada Bar No. 9691
E-mail: jsmith@nevadafirm.com
John J. Pictum III, Esq.
Nevada Bar No. 15979
E-mail: jpictum@nevadafirm.com
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
Attorneys for Defendant D.I.P. Investment Corp.

HOLLEY DRIGGS

HOLLEY DRIGGS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 9th day of November 2023, and pursuant to NRCP 5(b), Administrative Order 14-21, and NEFCR 9, a true and correct copy of the foregoing **MOTION TO DISMISS** was filed and served electronically through with the Clerk of the Court using the Court's eFileNV system to the following:

Christian M. Morris, Esq.
Victoria R. Allen, Esq.
Sarah Disalvo, Esq.
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Email: christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com

Attorneys for Plaintiffs

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Boulevard, Suite 120
Las Vegas, Nevada 89102
Email: info@lbclawgroup.com

Attorneys for Defendant Pink Dragon Entertainment, LLC

/s/ Marissa Vallette
An employee of HOLLEY DRIGGS

Electronically Filed
11/22/2023 5:15 PM
Steven D. Grierson
CLERK OF THE COURT

OMD
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
T: (702) 434-8282
F: (702) 434-1488
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; D.I.P. INVESTMENT CORP., a domestic corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendant.	CASE NO.: A-22-852100-C DEPT NO.: 27 **PLAINTIFFS' OPPOSITION TO D.I.P. INVESTMENT CORP.'S MOTION TO DISMISS** **Hearing Date:** December 20, 2023 **Hearing Time:** 10:00 AM INTENT TO APPEAR BY AUDIO/ VISUAL

Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE ("Plaintiffs"), by and through their counsel,

Christian M. Morris, Esq., Victoria R. Allen, Esq., and Sarah E. DiSalvo, Esq., of CHRISTIAN MORRIS TRIAL ATTORNEYS, hereby submit the following *Plaintiffs' Opposition to D.I.P. Investment Corp.'s Motion to Dismiss*.

This Opposition is based on the pleadings and papers on file, the Memorandum of Points and Authorities contained herein, and any oral argument as may be allowed by counsel at the time of any hearing on this matter.

DATED this 22nd day of November, 2023.

CHRISTIAN MORRIS TRIAL ATTORNEYS



CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
2250 Corporate Circle, Suite 390
Henderson, Nevada 89014
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

DECLARATION OF VICTORIA R. ALLEN, ESQ., IN SUPPORT OF PLAINTIFFS' OPPOSITION TO D.I.P. INVESTMENT CORP.'S MOTION TO DISMISS

I, Victoria R. Allen, Esq. ("Declarant"), counsel for the above properly named Plaintiffs, hereby declare the following under penalty of perjury of the laws of the State of Nevada:

1. I am an attorney duly licensed to practice before the courts in the State of Nevada. I am an attorney with CHRISTIAN MORRIS TRIAL ATTORNEYS and am counsel for Plaintiffs in the above-referenced matter. The following facts are within my personal knowledge, unless stated otherwise, and if called as a witness, I am competent to testify thereto.

2. I make this Declaration in support of *Plaintiffs' Opposition to D.I.P. Investment Corp.'s Motion to Dismiss.*

3. At the time the original Complaint in the instant action was filed, Plaintiffs were informed and believed that Decedent, Candice Cooks, was shot at Avila Apartment in the general area of 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108, as alleged in Plaintiffs' original Complaint. Through discovery and following receipt of records pursuant to Plaintiffs' subpoena to Las Vegas Metropolitan Police Department, Plaintiffs learned the specific location of the shooting was a different property, Diamondhead Apartments, owned by D.I.P. Investment Corp. and located at 1813 N. Decatur Blvd. in Las Vegas. Based on such information and due to the mistake as to exactly where the shooting occurred, Plaintiffs stipulated and agreed to amend and substitute Defendant, D.I.P. Investment Corp. for Defendant, Avila Park Homeowner's Association, permitting relation back to the original Complaint.

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

EXECUTED this 23rd day of November 2023.

/s/ Victoria R. Allen
VICTORIA R. ALLEN, ESQ.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case arises from the tragic shooting death of Candice Cooks ("Decedent") which occurred at a property owned and operated by D.I.P. Investment Corp. ("DIP"). In the parking lot premises, Decedent was shot in the back suffering injuries that led to her eventual death. Due to the circumstances of Decedent's death and the fact that Plaintiffs were not physically present at the location of the shooting, Plaintiffs incorrectly believed the shooting took place at the parking lot of the Avila Park Apartments, which is located at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108. As a result, Plaintiffs mistakenly named Avila Park Homeowner's Association ("Avila") as a defendant. Upon receipt of subpoenaed records from the police homicide investigation, Plaintiffs learned that the shooting actually took place in the parking lot of a different apartment complex, Diamondhead Apartments, which is directly across the street from Avila Park and is owned and operated by DIP.

Upon discovering the mistake through discovery, Plaintiffs timely stipulated to amend and substitute DIP for Avila and permit the amendments to relate back to the original Complaint. *See* ***Stipulation and Order to Amend Complaint to Substitute Defendant, Dismiss Defendant, and Amend Case Caption,*** **attached hereto as Exhibit 1**. DIP now claims the amendment to properly name DIP as a defendant, as well as the Order signed by this Court permitting relation back to the original Complaint, is not permitted based on Nevada law. Specifically, DIP claims it "unequivocally" did not have actual or constructive notice of Plaintiffs' original Complaint. *See* ***Motion to Dismiss*** **at 3:10-14**. Yet, DIP ignores that it is a sophisticated party and that it knew or should have known a shooting on its property resulting in a murder investigation could lead to Plaintiffs' claims but for a mistake as to where the shooting occurred. Even more, DIP does not claim and cannot reasonably claim it will be prejudiced if it must join this litigation at this stage when the parties are still in the process of discovery.

In short, the Order granting Plaintiffs leave to amend and substitute DIP for Avila was reasonable and comports with Nevada law and rules of civil procedure because DIP knew or

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

should have known it would be a party but for a mistake as to where the shooting occurred, and it will not be prejudiced if added at such early stages of litigation. At the same time, even if relation back does not apply based on NRCP 15(c), the amendments permitted by NRCP 10(a), which allows relation back to properly name DOE/ROE defendants, even if DIP did not have actual or constructive notice of this litigation or claims against it. Thus, DIP's motion should be denied, and it should not be entitled to avoid liability based on a mistake as to the specific location where Decedent was shot and murdered.

II.

RELEVANT FACTS

Plaintiffs Complaint identifies a "Subject Neighborhood" somewhere around or "at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108" that is central to all events and allegations. *See* ***Complaint*** **at ¶¶ 14; 21-22, attached hereto as Exhibit 2**. Due to a mistake, Plaintiffs alleged "[u]pon information and belief, at all relevant times relevant hereto, Defendant Avila HOA was authorized to regulate the Subject Neighborhood and provide security for residents and guests." ***Id.*** **at ¶ 14**. Yet, Plaintiffs also alleged that DOE/ROE defendants were involved in "execution of the wrongful acts upon which this litigation is premised, or of similar actions against Plaintiff of which Plaintiff is presently unaware." ***Id.*** **at ¶ 17**. Plaintiffs further alleged that DOE/ROE defendants were responsible for and "caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged." ***Id.*** **at ¶ 16**. Plaintiffs properly name ROE Corporations as Defendants in the caption and pleadings. *See generally* **Exhibit 2**.

Plaintiffs claim for Negligent Security are not specific to Avila and allege that "Defendants' failure to provide adequate security breached their duty of care to Decedent, which resulted in her death." ***Id.*** **at ¶ 35**. Similarly, Plaintiffs alleged "**Defendants** manifested reckless disregard for the safety of Decedent by failing to provide security **where the Subject Incident occurred** at the time of the Subject Incident." ***Id.*** **at ¶ 36** (emphasis added). "Defendants" includes properly pled ROE Corporations, not just Avila. By extension, Plaintiffs' Wrongful Death claims allege "[a]s a direct and proximate result of the actions or omissions of **Defendants**" Plaintiffs suffered injuries due to Decedent's death. ***Id.*** **at ¶ 44** (emphasis added).

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

Through discovery, Plaintiffs obtained the critical murder investigation and learned the exact location of the shooting was 1813 N. Decatur Blvd. in Las Vegas, Nevada. **Exhibit 1**. It is worth noting 1813 N. Decatur Blvd. falls within the "Subject Neighborhood" Plaintiffs identified as "1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108" in their original Complaint. **Exhibit 2 at ¶ 14**. Upon information and belief, DIP owns and operates the premises where the shooting that is the subject of Plaintiffs' original Complaint occurred. **Exhibit 1**. On October 6, 2023, this court granted leave for Plaintiffs to amend and correct the mistake by replacing Avila with DIP and ordering "such substitutions shall relate back to the filing of the original Complaint, for all purposes, including the statute of limitations." ***Id***.

III.

LEGAL ARGUMENT

DIP has not and cannot establish it was clear error or contrary to Nevada law and rules to permit Plaintiffs to amend to correct a mistake and name a proper party in this litigation because DIP knew or should have known that but for a mistake it would be named as a defendant, and it will not be prejudiced if added as a party to this litigation. Even more, based on NRCP10(a), leave to amend to name DIP as a party is reasonable and justified regardless of whether DIP had actual notice of the claims at issue or if it will suffer prejudice, because it is a properly identified and alleged ROE Corporation. Thus, the Order granting leave to amend to substitute DIP for Avila was not clear error and claims against DIP should not be dismissed based on the statute of limitations.

A. Amendment to add DIP relates back under NRCP 15(c) because DIP knew or should have known it would be named but for a mistake and will not be prejudiced.

The plain language of NRCP 15(c), which was revised in March of 2019, specifically provides relation back is required if "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." NRCP 15(c)(1). Recent amendments to NRCP 15(c)(2) specifically now permit amendments to change "a party or the naming of a party against whom a claim is asserted" when NRCP 15(c)(1)'s requirements are met, and the party brought into the action:

> **(A)** received such **notice of the action that it will not be prejudiced** in defending on the merits; and
> (**B)** knew or **should have known that the action would have been brought** against it, **but for a mistake** concerning the proper party's identity.

See NRCP 15(c)(2) (emphasis added). The Advisory Committee Note for the 2019 amendments to NRCP 15 specifically emphasizes the entirely new provisions of NRCP 15(c)(2) "incorporates the text of FRCP 15(c)(1)(C)" and "if a fictitious-party replacement does not meet the Rule 10(d) test, it may be treated as an amendment to add a party under Rule 15 if the standards in Rule 15 are met." *See* Advisory Committee Notes to NRCP 15.

When the language of a rule or statute is plain and unambiguous, a court should give effect to the plain and ordinary meaning. *Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 840, 34 P.3d 546, 550 (2001) (citing *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989)). A "court should read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation." *Board of County Com'rs of Clark County v. CMC of Nevada, Inc*., 99 Nev. 739, 744, 670 P.2d 102, 105 (1983).

NRCP 15(c)(2) was revised in March of 2019, to specifically permit the relation back of amendments to add parties based on a mistake, incorporating nearly identical language from FRCP 15 (c)(1)(C). *See* Advisory Committee Notes to NRCP 15; *see also* FRCP15 (c)(1)(C). As the changes are so recent, there is limited Nevada case law addressing the application of the newly added provisions of NRCP 15(c)(2). Thus, cases interpreting the analogous federal rule should be considered extremely persuasive. *See Rock Bay, LLC v. Dist. Ct*., 129 Nev. 205, 289 P.3d 441 (2013).

The U.S. Supreme Court defines a "mistake" for purposes of FRCP 15(c)(1)(C), as "an error, misconception, or misunderstanding; an erroneous belief." *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 548, 130 S. Ct. 2485, 2494 (2010) (quoting Black's Law Dictionary 1092 (9th ed. 2009)). In *Krupski*, a cruise ship passenger intended to sue the ship for injuries sustained on a cruise, but instead mistakenly named a marketing agent for the ship as a defendant, believing the marketing agent owned and controlled the cruise line. *Id*. 560 U.S. at 543, 130 S. Ct. at

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

2491. The plaintiff later amended to name the proper party as a defendant after the statute of limitations ran, but claims against the new party were dismissed because the lower court found relation back did not apply. *Id*. 560 U.S. at 545, 130 S. Ct. at 2491. The lower court found the claims involved the same occurrence as the original complaint and the newly added party had constructive notice of the claims, but there was no mistake as to the proper party to sue. *Id*. 560 U.S. at 545, 130 S. Ct. at 2492.

Nonetheless, the *Krupski* Court determined naming the marketing agent for the cruise line as opposed to the cruise line itself, met the recognized definition of a mistake. *Id*. 560 U.S. at 549, 130 S. Ct. at 2494. The *Krupski* Court reasoned the names of the incorrect and correct defendants were similar, and that there would have been no reasonable strategy associated with "suing a defendant that was legally unable to provide relief" and because all other conditions for relation back were met, and it was clear error to dismiss the claims based on the statute of limitations. *Id*. 560 U.S. at 554-55, 130 S. Ct. at 2497. It is worth noting the *Krupski* Court emphasized relation back under FRCP15(c)(1)(C) is mandatory if all conditions are met, and the diligence or timing of a party in discovering the mistake is not dispositive as to if correcting the mistake relates back. *Id*. 560 U.S. at 553, 130 S. Ct. at 2496.

"NRCP 15(c) is to be liberally construed to allow relation back of the amended pleading where the opposing party will be put to no disadvantage." *Costello v. Casler*, 127 Nev. 436, 441, 254 P.3d 631, 634 (2011). The Nevada Supreme Court has emphasized "Modern rules of procedure are intended to allow the court to reach the merits, as opposed to disposition on technical niceties." *Id*. Admittedly, a plaintiff's rights to a determination on the merits is subject to and must be balanced against defendant's rights to be protected from stale claims and uncertainty. *Id*.

Here, the recently amended provisions of NRCP 15(c)(2) apply and permit Plaintiffs to amend and add DIP as a party to correct a mistake because DIP knew or should have known it would be a party but for a mistake as to where the shooting occurred, and DIP will not be prejudiced if added as a party at this early stage of litigation. This case is like *Krupski*, because it is clear Plaintiffs intended to sue to the owner of the apartment complex where Decedent was

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

shot, and but for a mistake as to the exact location of the shooting, Plaintiffs would have named DIP as a Defendant. Thus, all requirements of NRCP 15(c)(2) are met and relation back of the amendment is reasonable, justified, and required by the rule.

First, the amendment to name DIP clearly arises out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original Complaint. Specifically, Plaintiffs' Complaint alleged that "**Defendants** manifested reckless disregard for the safety of Decedent by failing to provide security **where the Subject Incident occurred** at the time of the Subject Incident." **Exhibit 2 at ¶ 36** (emphasis added). Even more, the shooting was believed to have occurred in or around the "Subject Neighborhood" identified as "1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108" in the original Complaint. ***Id.* at ¶ 14**. As the address of the property DIP owns and operates is 1813 N. Decatur Blvd. in Las Vegas, Nevada, and is where the shooting actually occurred, the claims against DIP clearly arise from the conduct and occurrence set out in the original Complaint—they merely occurred at a different apartment complex on the opposite side of the street from the property owned by Avila Park.

Second, DIP will not be prejudiced by defending this claim based on the merits if added at this stage of litigation as the parties are still in the discovery process and current deadlines can be extended to allow for DIP to conduct discovery. The plain language of the recently added provision of NRCP (c)(2)(A) requires that DIP "received such notice of the action that it will not be prejudiced in defending on the merits[.]" Critically, the newly added rule does not provide that DIP must have actual notice prior to the expiration of the statute of limitations; the rule only requires DIP receives notice and will not be prejudiced. Here, DIP does not claim any prejudice if it is added as a party and did not seek dismissal based on concerns about potential prejudice or the inability to defend itself based on the merits. Considering the current state of this litigation, there is no reasonable argument DIP will experience prejudice if made a party to this litigation.

Relation back under NRCP (c)(2) does not require that DIP had actual notice of the original Complaint prior to the statute of limitations running. Here, DIP claims dismissal is mandatory because it did not have actual notice of the original Complaint until after the statute

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

of limitations ran. *See Motion to Dismiss* at 8:5-10. Yet, Defendant's reliance on *Walker v. New Castle Corp.*, 134 Nev. 1027, 431 P.3d 55 (Order of Affirmance) (2018) and *Echols v. Summa* Corp., 95 Nev. 720, 722, 601 P.2d 716, 717 (1979) is misplaced and fails to consider relevant and recent changes to NRCP 15(c)(2), which occurred in March 2019. Specifically, DIP ignores that the plain language of a new rule amendment specifically provides only that notice is required and that DIP will not suffer prejudice to allow an amendment to correct a mistake to relate back to the original Complaint.

The rule could have required actual notice before the statute of limitations ran, but no such constraint was imposed when NRCP 15(c)(2) was drafted. Even more, as *Krupski* makes clear, actual notice prior to the statute of limitation running is not required for relation back based on the federal counterpart to NRCP 15(c)(2). 560 U.S. at 545, 130 S. Ct. at 2492. Thus, DIP's argument that it cannot be added as a party because it did not have actual notice of the complaint is faulty, and DIP's failure to argue it will suffer prejudice if made a party to this litigation is fatal to its request for dismissal.

Notice to DIP is timely pursuant to NRCP 4(e). Plaintiffs anticipate DIP will argue notice was not timely or compliant with NRCP 4(e), which is required for relation back under NRCP 15(c)(2). While NRCP (4)(e) requires a summons and complaint be served on a party 120 days after the complaint is filed, this Court also has the authority and discretion to enlarge such time upon finding that good cause exists for failing to serve the summons and complaint timely. Here, Plaintiffs timely filed the Summons and Second Amended Complaint on DIP on October 26, 2023. *See* ***Affidavit of Service,*** **attached hereto as Exhibit 3**. Arguably if there was any delay or if there are any issues with the timing of the service and notice to DIP, such delays are reasonable and good cause exists for such delays and extending time to permit service and notice upon DIP based on the circumstances and limited information about the exact location of the shooting.

Finally, the conditions for relation back under NRCP 15(c)(2) are met because DIP knew or should have known that but for an error it would have been named in this litigation as a Defendant. Specifically, NRCP 15(c)(2)(B) requires that DIP "knew or **should have known**

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

that the action would have been brought against it, **but for a mistake** concerning the proper party's identity. *See* NRCP 15(c)(2) (emphasis added). In this case, DIP cannot reasonably dispute that it knew or should have known it would be named in this litigation but for a mistake as to where the shooting actually occurred.

A shooting and subsequent murder investigation on DIP's property should be sufficient to establish that DIP knew or should have known it would be a party to this litigation but for a mistake as to its identity. Arguably, a shooting and subsequent murder investigation gives rise to the expectation that litigation is foreseeable, especially where there is inadequate security and an armed and dangerous individual shooting at people in the parking lot. Notably, DIP dba Diamondhead Apartments is a sophisticated party that has previously been involved in litigation in the Eighth Judicial District Court and a related Nevada Supreme Court appeal in which it was an appellant. *See D I P Investment Corp vs Nevada Tax Commission, State Board Of Equalization, et al,* Eighth J. Dist. Court Case No. 04A492428, (2004); *Canon Villas Apartment Corp., et al v. State of Nev. et al*, 124 Nev. Adv. Op. 72 (Sept. 25, 2008). In short, based on the incident, Decedent's subsequent death, and its familiarity with the litigation process, DIP knew or should have known that it would be a party to this litigation but for a mistake as to where the shooting occurred.

The allegations in the Complaint make it clear the shooting incident and subsequent death of Decedent give rise to this litigation and that such incidents occurred in the "Subject Neighborhood" where DIP's Diamondhead Apartment complex is located. This case is like *Krupski* because Plaintiffs had a misconception, misunderstanding, or an erroneous belief as to the exact location of the shooting, and such a misunderstanding is reasonable based on the facts and circumstances. 560 U.S. at 554-55, 130 S. Ct. at 2497. This case is not factually analogous to *Walker* because, in that case, there was no mistake justifying amending to add a party, only the desire to add a new independent contractor defendant. 134 Nev. 1027, 431 P.3d 55. Here, there was a clear mistake as to the exact location where the shooting occurred which is reasonable because Plaintiffs had a good faith belief that the previously identified Avila Park

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

apartments were the exact location of the shooting. Nonetheless, on learning that that belief was not correct, Plaintiffs timely moved to amend.

Here, Plaintiffs made a mistake as to the exact location and apartment complex parking lot where the shooting occurred and improperly named Avila as a defendant. As previously explained, the "Subject Neighborhood" related to the shooting includes the property DIP owns, just on the opposite side of the street. ***Id.* at ¶ 14**. Given the circumstances and confusion ascertaining the specific location of Decedent's death, it is entirely reasonable that Plaintiffs mistakenly believed the shooting occurred in the parking lot of an apartment complex directly across the street from where the actual shooting occurred. Arguably, prior to a police investigation of the murder, the exact details of what occurred and where were not fully clear to Plaintiffs. To that end, the Complaint and circumstances of this case make it clear that but for a mistake as to where the shooting occurred, Plaintiffs would have named DIP as a defendant, and DIP knew or should have known that it would be a party to this litigation.

In short, all conditions are met to require relation back under NRCP 15(c) for the amendment to add DIP as a party to this litigation to correct a mistake. Based on the general information Plaintiffs were provided about the geographic area where the shooting occurred, they mistakenly named Avila as a Defendant and not DIP. Further, DIP knew or should have known that, but for a mistake as to where the shooting occurred, Plaintiffs would have named DIP and not Avila as a Defendant in this matter. Finally, DIP has notice of this litigation and will not be prejudiced if it must Defendant this litigation, which is in its infancy. Thus, all requirements are met to permit the amendment to add DIP to relate back to the original Complaint, and DIP's request for dismissal should be denied.

B. Even if NRCP 15(c) does not apply, leave to amend to add DIP is permitted and justified based on NRCP 10(a) to identify a properly pled ROE Corporation.

If this court determines relation back is not appropriate or justified under NRCP 15(c), Plaintiffs can still amend to add DIP to name a properly pled ROE Corporation defendant pursuant to NRCP 10(a). Critically, Plaintiffs' original Complaint properly pleads ROE Corporations and alleges that ROE Corporations were responsible for the shooting alleged in the

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

Complaint due to negligence, and/or committed other actions or acts of which Plaintiffs were "presently unaware." **Exhibit 2 at ¶¶ 16-17**. Upon conducting timely discovery and obtaining the police investigation records, Plaintiffs learned they were mistaken as to the location of the shooting and learned that DIP was the correct premises defendant. Thus, pursuant to NRCP 10(a) Plaintiffs can amend to add DIP in place of properly pled ROE Corporations.

The Nevada Supreme Court explained "NRCP 10(a) is a self-contained rule that is independent of NRCP 15(c) in its relation back effect." *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 882, 822 P.2d 1100, 1106 (1991) overruled on other grounds in *Costello v. Casler*, 127 Nev. 436, 254 P.3d 631, (2011). The *Nurenberger* Court explained:

> [T]he effective utilization of Rule 10(a) requires: (1) pleading fictitious or doe defendants in the caption of the complaint; (2) pleading the basis for naming defendants by other than their true identity, and clearly specifying the connection between the intended defendants and the conduct, activity, or omission upon which the cause of action is based; and (3) exercising reasonable diligence in ascertaining the true identity of the intended defendants and promptly moving to amend the complaint in order to substitute the actual for the fictional.

Id. 107 Nev. at 881, 822 P.2d at 1106. When ROE corporate defendants are properly alleged, they are "already parties in legal contemplation" and amendments to identify such parties under NRCP 10(a) automatically relate back. *Id*.107 Nev. at 882, 822 P.2d at 1106.

Amendments under NRCP 10(a) "do not require that the intended defendant have actual notice of the institution of the action…because we have balanced the equities in favor of accountability and recompense over prejudice, the element concerning prejudice to the unnamed defendant is also inapplicable[.]" *Id*. "[M]eritorious causes of action should not be frustrated where, despite reasonable diligence, the true identity of culpable parties is uncertain or unknown to plaintiff or plaintiff's counsel." *Id*. 107 Nev. at 878, 822 P.2d at 1103. Here, the above conditions are all met and justify relation back to add DIP as a properly pled ROE Corporation pursuant to NRCP 10(a), and meritorious claims against DIP should not be frustrated due to previous uncertainties or unknown factors regarding where and how the shooting and murder of Decedent occurred.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

First, Plaintiffs properly pled fictitious ROE Corporations in the Complaint and caption. Specifically, the case caption identifies ROE Corporations, alleging ROE Corporations were responsible for the shooting that occurred, having committed relevant actions of which Plaintiffs were "currently unaware." **Exhibit 2 at ¶¶ 16-17**. This case is just like *Nurenberger* where "XYZ Corporations XI-XV" were identified, and plaintiffs were later permitted to amend and identify the unknown corporate defendants. 107 Nev. at 877, 822 P.2d at 1103. Thus, the first requirement for relation back under NRCP 10(a) is met, because Plaintiffs properly identified and pled the existence of ROE Corporations.

Second, the Complaint provides the basis for failing to name the ROE Corporations and specifically identifies the conduct at issue that gives rise to the cause of actions and allegations. Plaintiffs' properly alleged ROE Corporations were involved in similar actions as those alleged in the Complaint of which Plaintiffs were not presently aware. **Exhibit 2 at ¶ 17**. At the same time, Plaintiffs specifically identified the wrongful conduct and alleged "Defendants' **failure to provide adequate security** breached their duty of care to Decedent, which resulted in her death" and "Defendants manifested reckless disregard for the safety of Decedent by **failing to provide security where the Subject Incident occurred** at the time of the Subject Incident." ***Id.* at ¶¶ 35-36**. Critically, Plaintiffs made such allegations against all Defendants, including ROE Corporations, and not just Avila Park.

Based on the above allegations, Plaintiffs identified the reason the ROE Corporations, like DIP were not named, and the specific conduct that gives rise to liability by those corporate defendants. Here, Plaintiffs were not aware of DIP's involvement but believed and, therefore, alleged the security provided at the site where the shooting occurred was inadequate. This case is like *Nurenberger* where "XYZ Corporations XI-XV" were unknown, and plaintiffs alleged the unknown corporations designed, manufactured, or assembled a defective product. 107 Nev. at 877, 822 P.2d at 1103. In fact, the allegations in this case are even more specific—alleging inadequate security at the specific location where the shooting occurred, which included the property owned by DIP. Thus, the alleged wrongful actions of the ROE Corporations are clearly identified and apply to DIP.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

Finally, Plaintiffs exercised due diligence to discover the location of the shooting and murder and amended to add DIP upon obtaining the police records which reliably identified the exact location and circumstances of the shooting. Given the circumstances, Plaintiff's exercised reasonable due diligence to discover DIP's involvement and amend in a timely fashion. Plaintiffs believed and alleged the shooting occurred at an apartment complex with an approximate location provided, which is why "Subject Neighborhood" in the Complaint is so broad. **Exhibit 2 at ¶ 14**. Plaintiffs conducted discovery to subpoena the homicide records and timely moved to amend and add DIP as a party upon learning the exact location of the shooting. Thus, Plaintiffs exercised reasonable diligence to identify the exact location and circumstances of the shooting and exercised reasonable diligence in moving to amend and add DIP.

In short, all conditions are met for amending to add DIP under NRCP 10(a) because Plaintiffs properly pled and alleged that unknown ROE Corporations were involved in failing to provide adequate security at the location where the shooting occurred, and Plaintiffs timely moved to amend and add DIP upon learning through discovery DIP owned the apartment complex where the shooting occurred. If NRCP 15(c) does not permit amending to add DIP with relation back, NRCP 10(a) permits relations back to add DIP regardless of DIP's actual notice of any legal proceedings or prejudice. *Nurenberger*, 107 Nev. at 882, 822 P.2d at 1106. Plaintiffs' meritorious claims against DIP should not be frustrated merely because Plaintiffs were mistaken as to the true location of where the shooting occurred.

C. Plaintiffs reserve the right to file supplemental pleadings for any new arguments that DIP raises that were not properly advanced in DIP's original motion.

Plaintiffs reserve the right to address any new arguments that DIP advances, which should have been properly advanced and set out in its original request for dismissal. Here, DIP only advances the argument that relation back cannot apply under NRCP 15(c) because it did not have actual notice of the original Complaint, without any consideration of the March 2019 amendments and without acknowledging critical changes in how NRCP 15(c) operates where there is a mistake as to the identity of a party and request to substitute. Thus, Plaintiffs anticipate DIP will advance new arguments which should have been raised previously, and it

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

will not simply argue that relation back is not permitted due to a lack of actual notice of the original Complaint prior to the statute of limitation running. Plaintiffs tried to anticipate new arguments DIP may raise, but it still might be necessary to file supplemental pleadings to respond to new arguments DIP raises in its reply. If necessary and as justice requires, Plaintiffs respectfully reserve the right and request leave to file supplemental pleadings as required.

IV.

CONCLUSION

In short, DIP's request for dismissal is woefully deficient because it fails to acknowledge recent amendments to NRCP 15(c) specifically enacted to address amendments to correct a mistake or acknowledge that Plaintiffs can amend to add DIP pursuant to NRCP 10 (a). There is no reasonable dispute that DIP knew or should have known it would be a party to this litigation but for the mistake as to the exact location where the shooting occurred, and DIP can hardly claim it will be prejudiced by being added to this litigation at such early stages of litigation. Even if relation back is not required pursuant to NRCP 15(c), Plaintiffs properly alleged ROE Corporations and should be permitted to amend with relation back to add DIP based on the requirements of NRCP 10(a). In short, DIP's argument that it must be dismissed because it did not have actual notice of this litigation is legally deficient and woefully inadequate to grant the relief that is requested. DIP has not and cannot establish Nevada law or rules of civil procedure prohibit relation back of the amendment adding DIP.

WHEREFORE, Plaintiffs respectfully requests this Court DENY the instant motion seeking dismissal and permit all claims against DIP to proceed to discovery so that all claims can be decided based on the merits, and not dismissed due to a mistake or confusion as to the exact location of the shooting and murder of Decedent.

DATED this 22nd day of November, 2023.

CHRISTIAN MORRIS TRIAL ATTORNEYS

VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CERTIFICATE OF E-SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 8.02, I hereby certify that on the 22nd day of November, 2023, a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO D.I.P. INVESTMENT CORP.'S MOTION TO DISMISS** was served to the following parties by electronic transmission through the Odyssey eFileNV system and/or mailed via US mail:

Jason D. Smith, Esq.
John J. Pictum III, Esq.
HOLLY DRIGGS
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Attorneys for Defendant
D.I.P. Investment Corp.

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Blvd., Ste. 120
Las Vegas, NV 89102
Attorney for Defendant
Pink Dragon Entertainment, LLC

/s/ Laura Edwards
An employee of CHRISTIAN MORRIS TRIAL ATTORNEYS

Exhibit 1

Exhibit 1

Exhibit 1

ELECTRONICALLY SERVED
10/6/2023 3:30 PM

Electronically Filed
10/06/2023 3:28 PM
CLERK OF THE COURT

SAO
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
T: (702) 434-8282
F: (702) 434-1488
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	CASE NO.: A-22-852100-C DEPT NO.: 27 **STIPULATION AND ORDER TO AMEND COMPLAINT TO SUBSTITUTE DEFENDANT, DISMISS DEFENDANT, AND AMEND CASE CAPTION**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF

Case Number: A-22-852100-C

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR ("Plaintiffs") by and through their counsel of record Christian M. Morris, Esq., Victoria R. Allen, Esq., and Sarah E. DiSalvo, Esq. of CHRISTIAN MORRIS TRIAL ATTORNEYS, Defendant AVILA PARK HOMEOWNER'S ASSOCIATION by and through its counsel of record Timothy Hunter, Esq. of RAY LEGO & ASSOCIATES, and Defendant PINK DRAGON ENTERTAINMENT LLC by and through its counsel of record Andrew Dunning, Esq. of LBC LAW GROUP, hereby stipulate and agree to the following and request that this Court approve the same as an Order of the Court:

1. THE PARTIES HEREBY STIPULATE AND AGREE that Plaintiff's claims in the above-entitled action against AVILA PARK HOMEOWNER'S ASSOCIATION only be dismissed with prejudice, with each party to bear their own fees and costs.
2. THE PARTIES FURTHER STIPULATE AND AGREE that discovery has indicated D.I.P. INVESTMENT CORP. is the properly named Defendant to this action.
3. THE PARTIES FURTHER STIPULATE AND AGREE that Plaintiff's Complaint will be amended with D.I.P. INVESTMENT CORP. substituted in place of AVILA PARK HOMEOWNER'S ASSOCIATION, the location of the Subject Incident be amended to 1813 N. Decatur Blvd., and such substitutions shall relate back to the filing of the original *Complaint,* for all purposes, including the statute of limitations.
4. THE PARTIES FURTHER STIPULATE AND AGREE that the caption of this matter will be amended as follows and the Clerk of Court will update to the same:

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment;	CASE NO.: A-22-852100-C DEPT NO.:27

D.I.P. INVESTMENT CORP., a domestic corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive,

Defendant.

DATED this 6th day of October, 2023.

CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/Victoria R. Allen
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiff

DATED this 6th day of October, 2023.

RAY LEGO & ASSOCIATES

/s/Timothy Hunter
Timothy F. Hunter, Esq.
Nevada Bar No. 010622
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Attorneys for Defendant,
Avila Park Homeowner's Association

DATED this 6th day of October, 2023.

LBC LAW GROUP

/s/Andrew Dunning
John C. Courtney, Esq.
Nevada Bar No. 11092
Andrew P. Dunning, Esq.
Nevada Bar No. 13864
Sebastian F. Gajardo, Esq.
Nevada Bar. No. 14874.
3215 W. Charleston Blvd., Ste. 120
Las Vegas, Nevada 89102
Attorney for Defendant
Pink Dragon Entertainment, LLC

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

ORDER

IT IS SO ORDERED.

Dated this 6th day of October, 2023

Nancy L Allf

225 D43 12B5 1D40
Nancy Allf
District Court Judge

Respectfully submitted by:
CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/Victoria R. Allen

VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiff

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

Laura Edwards

From: Andrew Dunning <apd@lbclawgroup.com>
Sent: Friday, October 6, 2023 12:35 PM
To: Hunter, Timothy F; Victoria Allen; Tiffany Pond; John Courtney; Kerri R
Cc: Sarah DiSalvo; Laura Edwards; Berry, Nancy L
Subject: RE: Cooks v. Pink Dragon Entertainment, et al. -

I am. You may submit with my signature.

Thank you,

Andrew
--

Andrew P. Dunning, Esq.
Attorney
LBC LAW GROUP
Blakesley Courtney, P.C.
723 South 7th Street
Las Vegas, Nevada 89101
Ph: (702) 608-3030 / Fx: (702) 463-4443
Email: APD@LBCLawGroup.com
Website: www.LBCLawGroup.com

THE CONTENTS OF THIS EMAIL MESSAGE CONSTITUTE ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION ONLY FOR THE USE OF THE INTENDED RECIPIENT INDIVIDUAL OR ENTITY. IF THE READER OF THIS MESSAGE IS NOT ITS INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY OUR OFFICE AND ENSURE THAT ANY COPY(IES) IN YOUR POSSESSION ARE DESTROYED OR RETURNED TO US. THANK YOU.

From: Hunter, Timothy F <TFHUNTER@travelers.com>
Sent: Friday, October 6, 2023 11:20 AM
To: Victoria Allen <Victoria@CMTrialAttorneys.com>; Andrew Dunning <apd@lbclawgroup.com>; Tiffany Pond <tiffanyp@CMTrialAttorneys.com>; John Courtney <JCC@lbclawgroup.com>; Kerri R <kerri@lbclawgroup.com>
Cc: Sarah DiSalvo <Sarah@CMTrialattorneys.com>; Laura Edwards <laura@CMTrialAttorneys.com>; Berry, Nancy L <NBERRY@travelers.com>
Subject: RE: Cooks v. Pink Dragon Entertainment, et al. -

Andrew,

Are you good with the proposed stipulation?

Thanks, Tim

Timothy F. Hunter
Associate Managing Counsel
Ray Lego & Associates
W: 702.479.4371 F: 702.270.4602

Physical Address:
7450 Arroyo Crossing Pkwy.
Suite 250
Las Vegas, Nevada 89113

Mailing Address:
P.O. Box 64093
St. Paul, MN 55164-0093

Not a Partnership or Professional Corporation
All attorneys are Employees of The Travelers Indemnity Company
and its Property Casualty Affiliates

From: Hunter, Timothy F
Sent: Monday, October 2, 2023 4:00 PM
To: 'Victoria Allen' <Victoria@CMTrialAttorneys.com>; Andrew Dunning <apd@lbclawgroup.com>; Tiffany Pond <tiffanyp@CMTrialAttorneys.com>; John Courtney <JCC@lbclawgroup.com>; Kerri R <kerri@lbclawgroup.com>
Cc: Sarah DiSalvo <Sarah@CMTrialattorneys.com>; Laura Edwards <laura@CMTrialAttorneys.com>; Berry, Nancy L <NBERRY@travelers.com>
Subject: RE: Cooks v. Pink Dragon Entertainment, et al. -

Hey Victoria,

You can use my electronic signature on the Stipulation and Order to Amend Complaint to Substitute Defendant, Dismiss Defendant, and Amend Caption.

Thanks, Tim

Timothy F. Hunter
Associate Managing Counsel

Ray Lego & Associates
W: 702.479.4371 F: 702.270.4602

Physical Address:
7450 Arroyo Crossing Pkwy.
Suite 250
Las Vegas, Nevada 89113

Mailing Address:
P.O. Box 64093
St. Paul, MN 55164-0093

Not a Partnership or Professional Corporation
All attorneys are Employees of The Travelers Indemnity Company
and its Property Casualty Affiliates

From: Victoria Allen <Victoria@CMTrialAttorneys.com>
Sent: Friday, September 22, 2023 4:53 PM
To: Andrew Dunning <apd@lbclawgroup.com>; Hunter, Timothy F <TFHUNTER@travelers.com>; Tiffany Pond <tiffanyp@CMTrialAttorneys.com>; John Courtney <JCC@lbclawgroup.com>; Kerri R <kerri@lbclawgroup.com>
Cc: Sarah DiSalvo <Sarah@CMTrialattorneys.com>; Laura Edwards <laura@CMTrialAttorneys.com>; Berry, Nancy L <NBERRY@travelers.com>
Subject: [External] RE: Cooks v. Pink Dragon Entertainment, et al. -

Please see the proposed SAO to amend and dismiss attached. Let me know if you all have any changes or if we may affix your e-signatures and submit. Thanks and have a good weekend!

Warm regards,



TORI R. ALLEN, ESQ.
Attorney

Office Phone: 702.434.8282
Direct Phone: 702.935.2440
2250 Corporate Circle, Suite 390
Henderson, NV 89074

CHRISTIAN MORRIS
TRIAL ATTORNEYS

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Candice Sade Cooks, Plaintiff(s) vs. Pink Dragon Entertainment, L.L.C., Defendant(s)	CASE NO: A-22-852100-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 10/6/2023

Timothy Hunter, Esq.	TFHUNTER@travelers.com
Nancy Berry	NBERRY@travelers.com
Christine Shaddock	CSHADDOC@travelers.com
John Courtney	info@lbclawgroup.com
Tori Allen	victoria@cmtrialattorneys.com
Kerri Rowland	kerri@lbclawgroup.com
Laura Edwards	laura@cmtrialattorneys.com
Andrew Dunning	apd@lbclawgroup.com
Chris Gramentz BRC	BRCNVFIL@travelers.com
Tiffany Pond	tiffanyp@cmtrialattorneys.com

Jamie McInelly jamie@cmtrialattorneys.com

Exhibit 2

Exhibit 2

Exhibit 2

Electronically Filed
5/4/2022 1:03 PM
Steven D. Grierson
CLERK OF THE COURT

COMP

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. MᶜLEOD, ESQ.
Nevada Bar No. 8185
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@nettlesmorris.com
alexandra@nettlesmorris.com
wesley@nettlesmorris.com
Attorneys for Plaintiffs

CASE NO: A-22-852100-C
Department 27

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendant.	CASE NO.: DEPT NO.: **COMPLAINT**

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

Case Number: A-22-852100-C

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, by and through their counsel, Christian M. Morris, Esq., Alexandra B. McLeod, Esq., and Wesley H. LeMay, Esq., of NETTLES | MORRIS, and for her causes of action against Defendants, PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, complains and alleges as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The Eighth Judicial District Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds $15,000.00.

GENERAL ALLEGATIONS

2. CANDICE SADE COOKS ("Decedent") at all relevant times described herein was a resident of Clark County, Nevada.

3. Plaintiff, TERESA MASON ("Plaintiff Teresa"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

4. Plaintiff, JANICE GONZALEZ ("Plaintiff Janice"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

5. Plaintiff, SADIE BLAKE ("Plaintiff Sadie"), is and at all relevant times was, a minor residing in Clark County, Nevada.

6. Plaintiff, BRIAN BLAKE, JR. ("Plaintiff Blake"), is and at all relevant times was, a minor residing in Clark County, Nevada.

7. At all times relevant herein, Plaintiff Sadie and Plaintiff Blake are the children of Decedent.

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

8. At all times relevant herein, BRIAN BLAKE is the natural father of Plaintiff Sadie and Plaintiff Blake.

9. Plaintiff Sadie is an heir of Decedent within the meaning of NRS 41.085.

10. Plaintiff Blake is an heir of Decedent within the meaning of NRS 41.085.

11. Plaintiff Sadie and Plaintiff Blake are each entitled to a one-half share of Decedent CANDANCE SADE COOKS' estate pursuant NRS 134.090.

12. Plaintiff Teresa, Plaintiff Janice, Plaintiff Sadie, Plaintiff Blake and Decedent collectively referred to as "Plaintiffs."

13. Defendant, PINK DRAGON ENTERTAINMENT, L.L.C. d/b/a Pink Dragon Entertainment ("Defendant Pink"), is, and at all relevant times, was a domestic limited-liability company doing business in Clark County, Nevada.

14. Defendant, AVILA PARK HOMEOWNERS ASSOCIATION ("Defendant Avila HOA"), is, and at all relevant times, was a domestic nonprofit company doing business in Clark County, Nevada.

15. Defendant Pink and Defendant Avila HOA hereinafter referred to as "Defendants."

16. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant is responsible, negligently, or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged.

17. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant was involved in the initiation, approval, support or execution of the wrongful acts upon which this litigation is premised, or of similar actions against Plaintiff of which Plaintiff is presently unaware.

18. That on or about April 09, 2021, Defendant Pink owned, controlled and/or operated the property located at 4200 W. Russell Road, Las Vegas, Nevada, commonly known as "Pink Dragon Entertainment", which was (hereinafter, "Employer Premises").

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

19. Upon information and belief, Defendant Avila HOA was responsible for governing, securing, and monitoring the housing development where the Employer Premises is located.

20. Upon information and belief, Decedent was an employee of Defendant Pink and was present for an employee meeting at the Employer Premises.

21. Upon information and belief, at all relevant times relevant hereto, Avila Park is located at 1800-1860 N. Decatur Boulevard, Las Vegas, Nevada 89108 ("Subject Neighborhood").

22. Upon information and belief, at all relevant times relevant hereto, Defendant Avila HOA was authorized to regulate the Subject Neighborhood and provide security for residents and guests.

23. Upon information and belief, the Employer Premises was active and in good standing with Defendant Avila HOA at the time of the Subject Incident.

24. Upon information and belief, on April 09, 2021, Decedent was driven by Brian Blake, a non-party, to Subject Neighborhood for an employee meeting

25. Upon information and belief, on April 09, 2021, once the employee meeting ended, a Client that was not a resident or guest of Defendant Avila HOA's property approached Decedent and accused her of stealing his wallet.

26. Upon information and belief, on April 09, 2021, Client shot Decedent ("Subject Incident").

27. On April 09, 2021, Decedent passed away at University Medical Center.

28. As a direct and proximate result of the negligence of the Defendant, Plaintiffs suffered damages in excess of $15,000.

29. As a direct and proximate result of Defendant's negligence, Plaintiffs have had to retain the services of the law offices of the NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

/ / /

/ / /

/ / /

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

FIRST CAUSE OF ACTION

(Negligent Security)

30. Plaintiffs repeat and reallege each and every allegation contained in paragraphs hereinabove as though fully set forth herein.

31. At all times relevant hereto, Defendant Pink was in control of the Employer Premises and had and/or assumed a non-delegable duty to maintain the Employer Premises for the care, safety, and protection of those persons present on said Premises, including Claimant.

32. At all times relevant hereto, Defendant Pink failed to provide adequate security personnel at the Subject Premises while a meeting took place, resulting in the Subject Incident.

33. At all times relevant hereto, Defendant Avila HOA was in control of the gated neighborhood and was responsible for security of residents and guests.

34. At all times relevant hereto, Defendant Avila HOA did not provide adequate security for residents and guests under their agreement with the property owners living in the neighborhood governed by the HOA.

35. That Defendants' failure to provide adequate security breached their duty of care to Decedent, which resulted in her death.

36. Defendants manifested reckless disregard for the safety of Decedent by failing to provide security where the Subject Incident occurred at the time of the Subject Incident.

37. Defendants' breach of this duty of care was the legal and proximate cause of each of the Decedent's death.

38. As a further direct and proximate result of Defendants' negligence, Plaintiffs suffered damages in excess of $15,000.00.

39. As a direct and proximate result of Defendants' negligence, Plaintiffs have had to retain the services of the law offices of the NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorneys' fees incurred therein.

/ / /

/ / /

/ / /

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

SECOND CAUSE OF ACTION

(Wrongful Death)

40. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs hereinabove as though fully set forth herein.

41. Plaintiff Brian and Plaintiff Sadie are heirs or personal representatives of Decedent.

42. Defendants caused Decedent's death by wrongful act or neglect as described hereinabove.

43. Therefore, under NRS 41.085 and NRS 41.100, Plaintiffs may maintain an action for damages against Defendants, or, if Defendants are dead, against their personal representative.

44. As a direct and proximate result of the actions or omissions of Defendants, Plaintiff Sadie and Plaintiff Brian suffered grief, sorrow, loss of a child, past and future loss of companionship, past and future loss of society, past and future loss of comfort, past and future loss of services, and funeral and burial related expenses, all in a sum in excess of excess of $15,000.00.

45. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs are entitled to punitive damages per NRS 42.005 and 42.007 in an amount to be determined by a jury.

/ / /

/ / /

/ / /

46. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs have had to retain the services of Nettles | Morris to pursue this action and are entitled to recover costs of suit and reasonable attorneys' fees incurred herein.

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. General damages in excess of $15,000.00 for Plaintiffs;
2. Special damages in excess of $15,000.00 for Plaintiffs;
3. For Punitive damages to be determined by the jury of Plaintiffs;
4. For pre- and post-judgment interest as permitted by law;
5. For costs and attorneys' fees as permitted by law; and
6. For such other and further relief as the Court deems necessary and proper.

DATED this 4th day of May, 2022.

NETTLES | MORRIS

/s/ Wesley H. LeMay, Jr.

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. McLEOD, ESQ.
Nevada Bar No. 8185
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Attorneys for Plaintiff

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

Exhibit 3

Exhibit 3

Exhibit 3

AFFT
Christian Morris Trial Attorneys
Victoria R. Allen, Esq.
2250 Corporate Cir., #390
Henderson , NV 89074
State Bar No.: 15005
Attorney(s) for: Plaintiff(s)

Electronically Filed
10/26/2023 12:36 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Teresa Mason and Janice Gonzalez, as Co-Special Administrators of the Estate of Candice Sade Cooks; et al.
Plaintiff(s)
vs
Pink Dragon Entertainment, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; et al.
Defendant(s)

Case No.: **A-22-852100-C**
Dept. No.: **27**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Clinton Terry Turney**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to D.I.P. Investment Corp; Second Amended Complaint** on the **17th** day of **October**, **2023** and served the same on the **19th** day of **October**, **2023** at **9:18AM** by serving the **Defendant**, **D.I.P. Investment Corp., a domestic corporation** by personally delivering and leaving a copy at **Cogency Global Inc.; 321 W. Winnie Ln., #104, Carson City, NV 89703** with **Itzel Larson** pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 25th day of October, 2023.

Clinton Terry Turney # R-2022-04093
Legal Process Service License # 604
WorkOrderNo **2305844**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

Electronically Filed
12/13/2023 4:16 PM
Steven D. Grierson
CLERK OF THE COURT

RIS

Jason D. Smith, Esq.
Nevada Bar No. 9691
E-mail: jsmith@nevadafirm.com
John J. Pictum III, Esq.
Nevada Bar No. 15979
E-mail: jpictum@nevadafirm.com
HOLLEY DRIGGS
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
Attorneys for Defendant D.I.P. Investment Corp.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA

Teresa Mason and Janice Gonzalez, as Co-Special Administrators of the Estate of Candice Sade Cooks; Sadie Blake and Brian Blake Jr., by and through their natural parent, Brian Blake, Plaintiffs, v. Pink Dragon Entertainment, L.L.C., a Domestic Limited Liability Company d/b/a/ Pink Dragon Entertainment; D.I.P. Investment Corp., a domestic corporation; Doe Individuals 1 through 10; Roe Corporations 11 through 20; and ABC limited liability companies 21 through 30, inclusive, Defendants.	Case No: A-22-852100-C Dept. No: 27 **REPLY IN SUPPORT OF MOTION TO DISMISS**

Defendant D.I.P. Investment Corp. ("***D.I.P.***") by and through its counsel of record, Jason D. Smith, Esq., and John J. Pictum III, Esq., of the law firm Holley Driggs, hereby submits its reply brief ("***Reply***") in support of its prior motion to dismiss ("***Motion***") Plaintiff Teresa Mason and Janice Gonzales, as Co-Special Administrators of the Estate of Candice Sade Cooks ("***Estate of Candice Cooks***"); Sadie Blake and Brian Blake Jr., by and through their natural parent, Brian Blake ("***Sadie***" and "***Brian***") (together with the Estate of Candice Cooks "***Plaintiffs***") complaint for failure to state a claim upon which relief can be granted and in response to Plaintiffs' opposition brief ("***Opposition***") thereto.

Case Number: A-22-852100-C

HOLLEY DRIGGS

This Reply is based upon the papers and pleadings on file in this action, the memorandum of points and authorities, and any argument made during the hearing on this matter.

Dated: December 13, 2023.

HOLLEY DRIGGS

/s/ Jason D. Smith

Jason D. Smith, Esq.
Nevada Bar No. 9691
E-mail: jsmith@nevadafirm.com
John J. Pictum III, Esq.
Nevada Bar No. 15979
E-mail: jpictum@nevadafirm.com
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
Attorneys for Defendant D.I.P. Investment Corp.

HOLLEY DRIGGS

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiffs' claims are time barred against D.I.P. pursuant to NRS 11.190(4). And because Plaintiffs cannot rely upon Rule 15(c), nor Rule 10(a), to relate their claims against D.I.P. back to the date of the original complaint, D.I.P. should be dismissed from this suit.

II. LEGAL ARGUMENT

A. D.I.P. should be dismissed from this suit because Plaintiffs do not dispute that their claims are untimely under NRS 11.190(4)

Nowhere within Plaintiffs' Opposition do they dispute that their claims against D.I.P. are untimely under NRS 11.190(4). *See generally* Pls.' Opp. to Mot. to Dismiss. In fact, Plaintiffs' opposition does not mention NRS 11.190(4) one time. Accordingly, because Plaintiffs' claims are untimely pursuant to NRS 11.190(4), the Court should dismiss those claims with prejudice against D.I.P. *See Holcomb Condo. Homeowners' Ass'n, Inc*, 129 Nev. at 186, 300 P.3d at 128 (holding that dismissal for failure to state a claim is appropriate where the claim is time-barred by the statute of limitations).

B. D.I.P. should be dismissed from this suit because Plaintiffs' complaint does not relate back under Rule 15(c)

i. Plaintiffs cannot stipulate around Rule 15(c) without the consent of the proper defendant

Plaintiffs attempt to use their stipulation to substitute Avila for D.I.P. as a way around the requirements of Rule 15(c). *See* Pls.' Opp. to Mot. to Dismiss at p. 4:15-22; Stipulation and Order to Amend Compl. to Substitute Defendant, Dismiss Defendant, and Amend Case Caption, on file herein. But Plaintiffs' argument is belied by the language of Rule 15(c) itself, which mandates that a plaintiff cannot substitute one defendant for another after the statute of limitations period has ended unless it can establish that the new defendant (the one that is being substituted into the action) "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity" within the original time period for serving the complaint under Rule 4(e). *See* NRCP 15(c)(2)(B).

///

HOLLEY DRIGGS

Absent from Rule 15(c) is any language that would allow a plaintiff to stipulate to the relation back of a complaint without the proper defendant's consent. This makes sense given the fact that if a plaintiff could simply stipulate to dismiss an improper defendant with a proper one and have only the improper defendant consent to the relation back, Rule 15(c) would be meaningless. Therefore, Plaintiffs' arguments that the stipulation allows relation back fails as a result of the Rule's plain language and, thus, should not be considered by this Court. Therefore, dismissal is appropriate because Plaintiffs cannot demonstrate that their complaint relates back under Rule 15(c).

ii. Plaintiffs misinterpret Rule 15(c)'s requirements and misconstrue federal cases to avoid dismissal

Plaintiffs' opposition further misinterprets the relation back standard under Rule 15(c). Instead of relying upon the language of the Rule, and the relevant Nevada Supreme Court precedent interpreting the Rule, Plaintiffs attempt to persuade this Court by using a single case to support their proposition that dismissal is inappropriate, and the complaint relates back under Rule 15. That case is *Krupski v. Costsa Crociere S.p.A.*, 560 U.S. 538, 548 (2010). But that case is factually distinguishable from the case at hand. And looking at federal law on this point actually strengthens D.I.P.'s arguments as to why dismissal is appropriate. Accordingly, the Court should hold that Plaintiffs' claims are untimely are do not relate back under Rule 15(c), therefore dismissing D.I.P. from this action.

Krupski is a seminal holding by the United States Supreme Court interpreting FRCP 15(c)'s relation back rule. The facts of *Krupski* are important when analyzing the Court's decision because those facts establish why the present case is distinguishable. Wanda Krupski was on a cruise ship when she fell and fractured her leg. *See id.* at 541. When she returned home, she sued the cruise ship for her injuries. *Id.* at 542. Although the facts surrounding her decision to sue the wrong entity--Costa Cruise Lines N.V.—are detailed, the fact of the matter is this: Costa Cruise Lines N.V. (the wrong entity) was the marketing arm of Costa Crociere S.p.A. (the correct entity), both entities shared a unity of interest, and both entities were aware of Krupski's injuries and lawsuit prior to the time expiring for serving the complaint under Rule 4(m). *See id.* at 555-556. Based on these

HOLLEY DRIGGS

facts, the *Krupski* Court held that a late amendment adding Costa Crociere S.p.A. properly related back under FRCP 15(c). *See id.*

Here, however, the facts are extremely different. Plaintiffs' complaint makes absolutely no showing that D.I.P. was aware of the claims within the original time to serve the complaint under Rule 4(m). *See generally* Compl., on file herein. Furthermore, Plaintiffs' complaint makes no representation that the previously designated defendants—Avila—shares any ownership interest with D.I.P. such that D.I.P. should have been aware of the suit prior to the running of the statute of limitations under NRS 11.190(4). Instead, Plaintiffs' argument is that D.I.P. should have known that it was the proper party to this suit because "[a] shooting and subsequent murder investigation on [D.I.P.'s] property should be sufficient to establish that [D.I.P.] knew or should have known it would be a party to this litigation but for the mistake as to its identity." *See* Pl.'s Opp. to Mot. to Dismiss at 11:5-17. Plaintiffs cite absolutely ***zero*** authority to support this proposition. *See id.* D.I.P.'s Motion is based upon the four corners of the complaint and Plaintiffs cannot rely upon conjecture or material outside of their pleading in an effort to oppose a timely Rule 12 motion[1]. Plaintiffs' conjecture about D.I.P.'s alleged knowledge (which D.I.P. does not accept) necessarily requires this Court to impute knowledge onto a party without any establishment of notice—constructive or actual. That is not the legal standard and demonstrates the fallacy of Plaintiffs' position in its Opposition.[2]

In fact, taking Plaintiffs' argument to its logical conclusion would render Rule 15(c) meaningless. For example, a woman is injured at Target. A year and a half later, the woman sues Wal-Mart for her injuries. A year later, the woman realizes her mistake and seeks to amend her complaint to substitute Target for Wal-Mart by way of a stipulation with Wal-Mart (who, of

[1] It is a well-settled proposition that a court's review of a Rule 12(b)(5) motion to dismiss is limited to the contents of the complaint. *See, e.g., G.K. Las Vegas Ltd. P'Ship v. Simon Prop. Group, Inc.*, 460 F. Supp. 2d 1222, 1234-35 (D. Nev. 2006). The court is "bound by the four corners" of the complaint. *See United States v. Lyle*, 7442 F.3d. 434, 436 (9th Cir. 2014).

[2] Additionally, this argument fails to consider that realize its alleged error when drafting its first amended complaint. Thus, after the first amended complaint, it waited 10 months to suddenly learn of the location of the crime. Therefore, Plaintiffs' failure to properly investigate prior to alleging liability for a murder resulted in prejudice to both Avila and DIP

HOLLEY DRIGGS

course, would agree to dismissal to end its participation in the litigation). There is no evidence that Target knew the woman was injured at Target or filed suit prior to the limitations period ends. But under Plaintiffs' proposed rule, that would not matter because as soon as the injury occurred, Target was on notice of the litigation. This hypothetical leads to an absurd result that flies in the face of Rule's language and Court precedent. This Court should likewise disregard this illogical position taken by Plaintiffs.

The present case is analogous to the Nevada Supreme Court's decision in *Walker v. New Castle Corp*., 134 Nev. 1027, 431 P.3d 55 (Order of Affirmance) (2018). In *Walker*, a couple was visiting the Excalibur Hotel and Casino, when a man working on the premises dropped a metal object on Marvina Walker's foot causing her personal injury. *See id.* at *1. Two days prior to the expiration of the two-year statute of limitations for Walker's personal injury claim, she sued New Castle Corp. d/b/a Excalibur Hotel and Casino, MGM Resorts International Global Gaming Development, LLC, and MGM Resorts Limited, LLC, and Doe defendants for negligence and negligent hiring. *See id.* After the two-year statute of limitations expired, Walker filed an amended complaint adding MGM's independent contractor, Thyssenkrupp Elevator Corporation ("***TKE***") as a party. *See id.*

In response to the amended complaint, TKE moved to dismiss itself as a party because of the expiration of the statute of limitations. *See id.* Walker opposed this motion on the basis that MGM had not yet filed a responsive pleading in the case and TKE was a necessary party under NRCP 19 and NRCP 20 such that relation back was permitted under NRCP 15. *See id.* The district court granted TKE's motion and dismissed TKE from the suit. *See id.*

Walker then appealed to the district court's order dismissing TKE from the suit, arguing that when analyzing a Rule 12 motion, all facts alleged in the complaint are presumed true and all inferences are drawn in favor of the complainant. *Id.* at *2. However, the Nevada Supreme Court did not find her arguments persuasive. *Id.* And instead, the Court held that Walker failed to demonstrate that TKE had actual notice of Walker's filing of the lawsuit against MGM prior to the statute of limitations' expiration. *Id.* And without demonstrating that TKE had actual notice of the

HOLLEY DRIGGS

suit prior to the statute of limitation's expiration, Walker could not satisfy the requirements of relation back under NRCP 15(c). *See id.* (citing *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979) ("[A] proper defendant may be brought into the action after the statute of limitations has run if the proper defendant (1) receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to its prejudice by the amendment." (emphasis added)). Therefore, the Supreme Court affirmed the district court's order dismissing TKE from the suit.

Here, Plaintiffs have failed to allege that D.I.P had any knowledge of the original complaint filed in May of 2022, just as in *Walker*. And because Plaintiffs cannot establish that critical fact, Rule 15(c) does not operate as a shield to permit relation back via conjecture in an Opposition brief. Therefore, the Court should dismiss Plaintiffs' claims against D.I.P. with prejudice because: (1) they are untimely under NRS 11.190(4); and (2) the second amended complaint cannot relate back to the date of the original complaints filing.

C. Rule 10(a) does not apply to this action

i. Plaintiffs did not amend their complaint pursuant to Rule 10(a), therefore, this Rule does not apply

Plaintiffs argue that even if relation back is inappropriate under Rule 15(c), Plaintiffs are still able to add D.I.P. as a defendant by substituting it for a properly pled Roe Corporation pursuant to Rule 10(a). *See* Pls.' Opp. to Mot. to Dismiss at pp. 12-13. But that argument is belied by Plaintiffs' own actions. Here, Plaintiffs' stipulation unequivocally states they were amending their complaint in the following manner: "D.I.P. INVESTMENT CORP. ***substituted in place*** of AVILA PARK HOMEWOENERS ASSOCIATION . . . ." *See* Stipulation and Order to Amend Compl. to Substitute Defendant, Dismiss Defendant, and Amend Case Caption, on file herein (emphasis added). Thus, although Rule 10(a) does allow—under certain circumstances which are not present here—a plaintiff to substitute properly pled Roe Corporations, that is not what Plaintiffs did in this case.

ii. Plaintiff cannot meet Rule 10(a)'s requirements

Plaintiffs argue that under Rule 10(a), they have met the requirements for relation back

HOLLEY DRIGGS

because: (1) they properly pled fictitious Roe Corporations in the complaint; (2) the complaint provides a basis for naming the Roe Corporations; and (3) they acted diligently in identifying the reason why the Roe Corporations (like D.I.P.) were not named. *See id.* at p.14. However, Plaintiffs' arguments fail because of Nevada Supreme Court precedent. Therefore, the Court should dismiss D.I.P. from the instant action with prejudice.

To relate back under Rule 10(a), the plaintiff must satisfy a three-part test. First, the plaintiff must plead "fictitious or doe defendants in the caption of the complaint." *Nurenberger Hercules-Werke GMBH v. Virostek*, 822 P.2d 1100, 1105-06 (1991). Second, the plaintiff must set forth in the complaint "the basis for naming defendants by other than their true identity, and clearly specifying the connection between the intended defendants and the conduct, activity, or omission upon which the cause of action is based." *Id.* Finally, the plaintiff must exercise "reasonable diligence in ascertaining the true identity of the intended defendants and promptly move[e] to amend the complaint in order to substitute the action for the fictional." *Id.* Factors bearing on reasonable diligence include, but are not limited to, "whether the party unreasonably delayed amending the pleadings to reflect the true identity of a defendant once it became known, whether the plaintiff utilized judicial mechanisms such as discovery to inquire into a defendant's true identity, and whether a defendant concealed its identity or otherwise obstructed the plaintiff's investigation as to its identity." *Sparks v. Alpha Tau Omega Fraternity Inc.*, 255 P.3d 238, 243 (2011) (citations and internal quotation marks omitted).

There is no dispute that Plaintiffs properly pled Roe Corporations in their operative complaint prior to the second amended complaint. *See* First Am. Compl. What is fatal to Plaintiffs' Rule 10(a) analysis, however, is that this is not a case where—at the time the complaint and first amended complaint were filed—Plaintiffs were completely unaware of the name of the property owner.

Plaintiffs' first amended complaint describes the incident taking place at "1800-1860 N. Decatur Boulevard, Las Vegas, Nevada 89108." *See id.* at ¶ 20. And the first amended complaint further establishes that Avila is the owner of that property. *See id.* at ¶¶ 20-21, 30-31. Thus,

HOLLEY DRIGGS

Plaintiffs' operative complaint unequivocally alleges that the incident in question took place on Avila's property—not D.I.P.'s. This is critical to the Court's analysis under the second prong of Rule 10(a) because of the requirement that Plaintiffs' complaint outline "the basis for naming defendants by other than their true identity, and clearly specifying the connection between the intended defendants and the conduct, activity, or omission upon which the cause of action is based." *See Nurenberger*, 822 P.2d at 1105-06.

Here, in pleading Roe Corporations, Plaintiffs' second amended complaint states:

> 16. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITYY COMPANIES Defendant is responsible, negligently, or in some other actionable manner, for the events and happenings herein after referred to, and caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged.
>
> 17. On information and belief, DOES/ROE CORPORATIONS/ ABC LIMITED LIABILITY COMPANIES Defendant was involved in the initiation, approval, support or execution of the wrongful acts upon which this litigation is premised, or of similar action against Plaintiff of which Plaintiff is presently unaware.

See First. Am. Compl. at ¶¶ 16-17. Typically, D.I.P. understands that this might satisfy Rule 10(a). But taking the language from ¶¶ 16-17 of the first amended complaint—together with the statements that the injury took place at Avila's property—it is illogical to conclude that Plaintiffs' pleading of Roe Corporations can cover a situation like this. Plaintiffs' first amended complaint does not establish that they could not identify the name of the true property owner because of some "conduct, activity, or omission." *See Nurenberger*, 822 P.2d at 1105-06. Instead, Plaintiffs identified the location of the alleged incident, named the owner of that property, and proceeded with litigation against that property owner. Therefore, Plaintiffs cannot rely upon Rule 10(a) to overcome the failure this late in the game.

Accordingly, the Court should read Plaintiffs' first amended complaint entirely—not just the pleading of Roe Corporations. In doing so, the Court should conclude that Plaintiffs do not meet Rule 10(a)'s second prong because the first amended complaint does not establish that Roe Corporations were alleged because it could not identify the name of the true property owner

HOLLEY DRIGGS

because of some "conduct, activity, or omission."

III. CONCLUSION

The Motion presents a simple procedural issue for this Court. Plaintiffs' claims against D.I.P. are subject to a two-year statute of limitation pursuant to NRS 11.190(4). But Plaintiffs did not bring their claims against D.I.P. until 185-days after the two-year limitations period expired—rendering their claims time barred. Additionally, any attempt by Plaintiffs to use Rule 15(c) to relate its second amended complaint back to the date of the original complaint is fruitless as Plaintiffs cannot establish that D.I.P. had actual knowledge of the original complaint before the statute of limitations expired. And, Plaintiffs' attempts to shoehorn the amendment as one under NRCP 10(a) fails because that is simply not what Plaintiffs did in this case.

Accordingly, the Court should dismiss D.I.P. from this instant case with prejudice.

Dated: December 13, 2023.

HOLLEY DRIGGS

/s/ Jason D. Smith

Jason D. Smith, Esq.
Nevada Bar No. 9691
E-mail: jsmith@nevadafirm.com
John J. Pictum III, Esq.
Nevada Bar No. 15979
E-mail: jpictum@nevadafirm.com
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
Attorneys for Defendant D.I.P. Investment Corp.

HOLLEY DRIGGS

HOLLEY DRIGGS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 13th day of November December, and pursuant to NRCP 5(b), Administrative Order 14-21, and NEFCR 9, a true and correct copy of the foregoing **MOTION TO DISMISS** was filed and served electronically through with the Clerk of the Court using the Court's eFileNV system to the following:

Christian M. Morris, Esq.
Victoria R. Allen, Esq.
Sarah Disalvo, Esq.
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Email: christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com

Attorneys for Plaintiffs

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Boulevard, Suite 120
Las Vegas, Nevada 89102
Email: info@lbclawgroup.com

Attorneys for Defendant Pink Dragon Entertainment, LLC

/s/ Marissa Vallette
An employee of HOLLEY DRIGGS

Electronically Filed
4/29/2025 8:47 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF CANDICE SADE COOKS, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., Defendants.	CASE#: A-22-852100-C DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF,

DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 20, 2023

RECORDER'S TRANSCRIPT OF HEARING: DEFENDANT D.I.P. INVESTMENT CORP.'S MOTION TO DISMISS; PLAINTIFFS' MOTION TO EXTEND DISCOVERY DEADLINE DATES AND TRIAL (SECOND REQUEST)

APPEARANCES:

For the Plaintiffs:	VICTORIA R. ALLEN, ESQ.
For Defendant D.I.P. Investment Corp.:	JASON D. SMITH, ESQ.
For Defendant Pink Dragon Entertainment, LLC:	ANDREW P. DUNNING, ESQ. - via Bluejeans -

RECORDED BY: KENDAL LEMING, COURT RECORDER

Las Vegas, Nevada, Wednesday, December 20, 2023

[Case called at 10:03 a.m.]

THE COURT: So it looks like we have one matter at 10:00 o'clock and that would be the Estate of Candice Sade Cooks vs. Pink Dragon Entertainment. Let's -- when we're ready let's take appearances starting first with the Plaintiff.

MS. ALLEN: Good morning, Your Honor. Tori Allen on behalf of the Plaintiffs.

THE COURT: Thank you.

MR. PICTUM: Good morning, Your Honor. John Pictum on behalf of D.I.P. Investment Corp.

THE COURT: Thank you.

MR. SMITH: Jason Smith, Your Honor, on behalf of the same Defendant.

THE COURT: Thank you. All right.

Defendant, this was your motion to dismiss and then we also have a motion to extend discovery deadlines, which we'll take up or not depending on the outcome of the motion, first motion.

MR. PICTUM: Great. Good morning, Your Honor.

THE COURT: Okay. Mr. Pictum?

MR. PICTUM: Good morning, Your Honor. And thank you for letting us be here today. As you're aware this is on Defendant D.I.P. Investment Corp's motion to dismiss. On a macro level, Your Honor, without, you know, diving too much into the briefs and

regurgitating everything that we've put in there, there's -- there's three main topics that I want to hit.

The first one is that the statute of limitations in this action has clearly expired. The second is that under Rule 15(c), plaintiff cannot demonstrate that relation back is appropriate in this matter. And the third is that the record shows and demonstrates that plaintiffs did not amend their complaint pursuant to Rule 10(a) and therefore that argument should not be considered and should not allow any amendment.

If at any time the Court wants me to move on from any of these topics, please feel free to let me know or if you have any questions for me, I'm happy to answer those questions right away as well.

THE COURT: You're the only thing set at 10:00 o'clock.

MR. PICTUM: Okay. Fair -- fair enough.

THE COURT: I'm kind of coming to the end of this part of my career and I don't want you to leave the courtroom, either side, thinking you haven't been heard .

MR. PICTUM: Fair enough. Thank you, Your Honor.

So first and foremost, Your Honor, my first topic is that the statute of limitations is expired. Under NRS 11.190 subsection (4) there's a two year statute of limitations for somebody that's been injured or for a wrongful death claim to be brought.

Here in this action there's no real dispute that the statute of limitations is expired for claims being brought against D.I.P.

Investment Corp. The injury in this action took place on April 9th, 2021. The original complaint was filed within that limitations period on May 4th, 2022.

However, the first time that my client was made aware or knew of this action was not until the second amended complaint was filed, which was six months after the limitations expired, or on October 11th, 2023.

So just looking at the face of NRS 11.190 subsection (4) and the face of the complaint it's clear that the statute of limitations has expired here.

Now, in plaintiffs' opposition there's an argument that the October 6th, 2023, stip and order that was entered that dismisses Avila Park Homeowners Association, which was the wrong entity for D.I.P. Investment Corporation, operates as some sort of avenue or bypass to this statute of limitations argument.

But, Your Honor, that argument is belied by one simple fact that my client was not a party to that stipulation and order. And in allowing that stipulation and order to operate as a bypass to the statute of limitations, it essentially affects our client's, my client's substantive rights in defending this action, which would be inappropriate in this matter.

And so because the -- it's clear that the statute of limitations has expired here. The only real way that plaintiffs' claims against D.I.P. Investment Corporation can proceed is through Rule 15(c)'s relation back mechanism.

And under that test there's two things that plaintiff needs to establish to establish relation back. Under the first, under Rule 15(c)(1), plaintiff must show that the amended complaint that's either adding a claim or here adding the defendant, arises out of the same transaction or occurrence as the original complaint.

There's no real dispute that that is what's happened here. The complaints on their face allege the same exact thing, but where plaintiffs falls short is under Rule 15(c)(2).

Under 15(c)(2) plaintiff must establish that within the time to serve the complaint under Rule 4(e) that they can establish that number one, D.I.P. had notice not of potential litigation, but notice of this action such that it would not be prejudiced in defending the matter.

And number two, that D.I.P. knew or should have known that because it was on notice that but for the mistaken identity it would have been the proper party. Here, Your Honor, there is no showing in the opposition that either of those things took place.

In plaintiffs' opposition they cite a United States Supreme Court case that they argue bolsters their position and strengthens their argument. However, in looking at that case and looking at the analysis of that case it actually strengthens D.I.P.'s argument.

That case is *Krupski vs. Costa Crociere*. And in that case, again, at a very macro level, Ms. Krupski was hurt on a cruise line. Upon returning to port she sued what she thought to be the correct entity, which was Costa Cruise Lines N.V., proceeded throughout

litigation and discovery. But after the limitations period expired she then brought -- amended her complaint to bring the claims against Costa Crociere.

By the time the case got to the Supreme Court, the United States Supreme Court looked at that and analyzed it and said that the Federal Rule 15(c)'s test was met, but that it was met because there was one distinguishing factor there and it was that Costa Cruise Lines, which was the wrong entity that was sued, and Costa Crociere had a unity of interest.

They were essentially one and the same because Costa Cruise Lines was the marketing arm for Costa Crociere. So by the time that Costa Cruise Lines, the wrong entity that was actually named in the suit, had notice of the action, Costa Crociere also had notice of the action and should have known that they were the proper party under Rule 15(c)(2).

So, Your Honor, that case is very distinguishable from the case that we have here where plaintiffs filed a complaint against Avila Homeowners Park Association [sic], which is a complete separate property owner from D.I.P. Investment Corporation and there is no unity of interest that's ever been alleged or established between these two different property owners.

Where my client is -- we argue that this case is very analogous to the Nevada Supreme Court case *Walker v. New Castle*, where Ms. Walker was walking through the Excalibur. A metal object fell, hit her. She was injured. She brought claims against

MGM and Excalibur, later tried to amend her complaint after the limitations period to bring in New Castle, which was the contractor working that dropped the metal.

And the Nevada Supreme Court said, you know, hold on, sorry, you have never made a showing that New Castle was on notice of this action prior to the limitations period expiring and upheld the motion to dismiss on that.

And so with that, Your Honor, we argue that relation back is inappropriate and therefore, because the statute of limitations have expired, and because there is no relation back, D.I.P. Investment Corporation should be dismissed from this action.

And finally, as it pertains to Rule 10(a), very simple. If you look at the stipulation and order that was entered in October of this year and you look at the face of that stipulation and order, it does something very specific. And what it does is, it takes a one-for-one. It takes Avila Homeowners Park Association [sic] and substitutes it for D.I.P. Investment Corporation.

It does not substitute a Roe corporation or a Doe corporation for D.I.P. Investment Corporation. In fact, the complaint, the first amended complaint, and the second amended complaint all still list the same Roe and Doe corporations. There has never been an amendment that is added or that has substituted my client for a Roe or Doe corporation.

And so without, I don't even believe that the Court needs to go into the *Nurenberger* test under Rule 10(a) because under the

face of that stipulation and order it's clear that's not what happened. It was a one-for-one substitution from Avila to D.I.P. Investment Corporation and therefore Rule 10(a) does not apply.

And so with that, Your Honor, I would just, again, like to summarize that the statute of limitations here has expired. Plaintiffs cannot show that Rule 15(c) can operate as a relation back to the claims to the original date of the complaint, and Rule 10(a) really has no effect here because no amendment was ever made according to Rule 10(a).

And unless the Court has any questions for me, I rest.

THE COURT: I don't. Thank you.

MR. PICTUM: Thank you.

Opposition, please.

MS. ALLEN: Thank you, Your Honor.

I think the most important issue to determine in this case is prejudice to D.I.P. and in this case there isn't going to be any prejudice to D.I.P. And I will recognize this was not necessarily thoroughly briefed in our opposition, and I'd be happy to do supplemental briefing if the Court requires it.

But the fact is D.I.P. is going to remain in this case despite the outcome of today. Because two of the plaintiffs are minor children, one of whom is 8, one of whom is 10.

And so even going off of the oldest child's statute of limitations, under NRS 11.250 they're under the age of 18. They are considered legally, you know, there's a disability so to speak.

And so the statute of limitations for those plaintiffs does not run until after they turn 18, which would be at least going off of the oldest child another 8 years. I have copies of the children's birth certificates if the Court would like?

THE COURT: You're an officer of the Court.

MS. ALLEN: And so the fact is that really what the argument today is about is the -- whether the estate's claim should survive. Because if the children's claims are dismissed, we have a right to just refile and then move to consolidate once we get that filed in.

With respect to the estate, the case they cited under 15(c), I'm sorry, the case we cited under 15(c), it's that, you know, under *Costello* it should be liberally construed to allow relation back.

I think they undermine the fact that it was amended, 15(c) was amended in 2019, so many of the cases that they cite to are prior to that amendment and prior to the Court, the Supreme Court looking at the federal rules and adopting that approach.

And the fact is, a murder happened on their property. Somebody died. They are a sophisticated entity. They have filed lawsuits before. They have been parties to lawsuits. They should know, realistically if somebody dies on your property they have security -- it could be expected that somebody could file a lawsuit.

And with respect to the *Krupski* case, there -- some language in there, I think, is incredibly important with respect to the term "mistake" right? The Court says that there would be -- mistake

essentially comes down to that there would have been no reasonable strategy associated with suing a defendant that was legally unable to provide relief; right?

And so there is no benefit to plaintiffs suing the wrong person. It is the mistake that they believed the property where the incident happened was one location. Upon retaining discovery from the police department they determined that the actual location where the shooting occurred was right across the street.

The information that they had prior to, obviously, the only person who was there is now deceased. The children don't know. The parents don't necessarily know. They were just given a general location. And so that was what they reasonably believed to be the location.

Upon learning that that location was not correct, we timely moved to amend. We dismissed the property -- the improper party and we got the amended complaint on.

And so given the facts of this case, the defendants and who they are, it should be expected that they reasonably should have known that this case would have been filed but for the error, misconception or misunderstanding of the plaintiffs.

With respect to the NRCP 10(a), all causes of action were pled against all defendants, Doe included. If the Court believes that we didn't properly remove a Doe defendant, we're happy to, you know, amend to remove a Doe defendant. But the fact is we did properly plead Doe defendants. We alleged all causes of action

against those Doe defendants.

When we amended the complaint we essentially substituted in for a Doe defendant and we did also take out the improperly named party.

And so there is no prejudice at the end of the day to these defendants. They received timely notice once we learned of the mistake. They reasonably should have known that a lawsuit was potential based on the facts of what happened. And again, with respect to the children's claims they're going to be in this case.

So there's no prejudice because they're -- it's just -- it's going to be a matter of are they going to be defending against just the minors' claims or are they going to be defending against the minors and the estate's claim.

THE COURT: Thank you.

And the reply, please?

MR. PICTUM: Sure. First, Your Honor, as it pertains to the -- to the new argument that NRS 11.250 operates as some sort of shield or some sort of mechanism where the children can still bring claims, that argument was never briefed and is not before the Court. And under the Nevada Supreme Court's holding in *Old Aztec* should not be considered at this time.

THE COURT: Would you want a chance to additionally brief that issue? Because I want to consider it.

MR. PICTUM: Your -- if Your Honor wants to consider the issue, obviously we're not going to -- we're not opposed to

submitting supplemental briefing. I just wanted to make the Court aware that that was never considered and has never been briefed before the Court and so should not be considered at this juncture of time.

Also, Your Honor, at this time plaintiffs have amended their complaint not once, but twice. So the duty to investigate the facts surrounding the complaint is not on the defendants.

It's on the -- it's on the plaintiffs, his or herself. That fact investigation and discovery into a specific location, although we dispute that that location is even proper with D.I.P. Investment Corp., which is obviously an issue that we would have to take later down the road if this motion is not granted.

That's not on our client. Rule 15(c) is very clear. It's not should we know that litigation is coming. It's do we know that an action has been filed under 15(c)(2). So the argument that future litigation is possible because of an injury at a property, although might be compelling, that's not what the Rule requires.

The Rule requires notice of the action itself. And, you know, Your Honor, my client is aware of the facts of this case. They're terrible, they're gruesome. It's horrible. But again, that's not what's to be considered at this point. What's to be considered is just the pure mechanism of the procedure of what happened here and whether or not the statute of limitations has expired.

And finally, as it pertains to prejudice, Your Honor, clearly there would be prejudice to my client and trying to litigate and

figure out what happened in a case that injury has almost -- it'll be almost three years now since the date of the injury, which again, we dispute that even happened on our property.

But of course there would be prejudice there and there'd be extreme prejudice in trying to defend against an action where the statute of limitations has even ran. That's what the statute of limitations period is there for.

And finally, there's no real prejudice to the plaintiffs in D.I.P. being dismissed from this complaint. Pink Dragon Entertainment is still a party to this suit. They still have a mechanism for recovery. And so they will still have a day, plaintiffs will still have their day in Court. They're not -- the courthouse doors are not being shut. Justice is not being shut out from them. They still can recover from -- from whatever injuries they're alleging.

And with that, Your Honor, if there's no questions, I'll rest.

THE COURT: Good enough. Can you meet a Monday at 5:00 p.m. deadline to file a supplement with regard to the --

MR. PICTUM: On -- on --

THE COURT: -- the estate and statute of limitations issue?

MR. PICTUM: On this Monday, Christmas, Your Honor?

THE COURT: Oh, it's Christmas. Oh, how did I miss that? Oh.

MS. ALLEN: And you have such a festive bouquet too.

THE COURT: Sorry, guys. Life kind of goes on you know? Let's see. Obviously, I'm not going to make you file a brief --

MR. PICTUM: Okay.

THE COURT: -- on Christmas. All right. So -- so let's say, okay, all right, so any brief will be due on the 29th. And it'll be on my chambers calendar on the 8th of January.

MR. PICTUM: Okay.

THE COURT: So the matter will be taken under advisement with regard to that issue. But I can tell you I'm leaning to denying the motion to dismiss. But I give you the chance to brief that issue.

MR. PICTUM: Thank you. So it be the 29th at 5:00 p.m.; correct?

THE COURT: Correct.

MR. PICTUM: Okay.

THE COURT: Yeah. And then I'll make sure and rule on that on the 8th.

MR. PICTUM: Thank you, Your Honor.

THE COURT: All right.

Now let's take up the other motion, which I'll also have to take under consideration. But let's go ahead and argue that today. And that would be the motion to extend discovery.

MS. ALLEN: I mean, at this point obviously we've been trying to get a proper party in. There's certain limitations we've had on discovery.

And again, obviously depending on the outcome of whatever Your Honor decides for the motion to dismiss, we would

obviously need to continue deadlines should that motion -- should their motion be denied.

We have a right to get discovery. Plaintiffs have already produced multiple 16.1 disclosures. We produced our expert disclosures. I don't believe Pink Dragon did produce an expert disclosure.

But we're moving forward at this point. We just need to get what we believe is another proper defendant in. And since we haven't been able to get discovery related to them, obviously we would need to extend.

THE COURT: Good enough.

Did you have an opposition?

MR. SMITH: Good morning, Your Honor. Jason Smith on behalf of D.I.P. If the motion to dismiss is denied we clearly need a fair opportunity to defend ourselves. We do have a number of substantive issues that we'll bring up to the Court. I don't know if that would be a substantive motion to dismiss or if we have to file an answer and get into this stuff.

But I just want the record to be clear that we dispute very heavily the facts as they've been alleged against our client and we would need a fair opportunity.

I don't know what the trial schedule looks like admittedly. But if there's an expert witness, I think there were two expert witnesses disclosed by the plaintiff. We certainly would need time to do preliminary written discovery, take whatever fact depositions

we need that would be in a normal discovery phase.

And I would assume that the plaintiffs would not have any objection to that because you can't throw us in at the last minute and then expect us to be ready for trial, bang, bang.

The other two parties have been litigating for a long time and here we are potentially as the new defendant. So whatever the Court's ruling is, without proposing a schedule standing here to defeat our pending motion to dismiss we just have to have a fair chance to defend ourselves. This is a serious case where, I believe, they're requesting quite a bit of damages and we want to make sure we have a full and fair defense.

THE COURT: Thank you.

The reply, please?

MS. ALLEN: Well, I don't know. I know Mr. Dunning is on the line. I don't know if he wanted to address it, but I'm happy to provide a response.

THE COURT: Mr. Dunning, you didn't make an appearance. Would you like to do that?

MR. DUNNING: For this matter, yes, Your Honor. I was auditing the prior hearing; Andrew Dunning, 13864, for defendant Pink Dragon Entertainment. I don't have anything novel to add. I believe that the motion is contingent on the Court's deci- [audio break] --

THE COURT: Okay. Very good.

MR. DUNNING: -- move depending on the dismissal.

THE COURT: Okay. All right. I didn't cut you off.

MR. DUNNING: That's all, Your Honor.

THE COURT: Thank you.

And in reply, you may be brief.

MS. ALLEN: I don't really have much to say in reply other than, you know, again, it just depends on the outcome of the decision. We'd be happy to work with both sets of defense counsel --

THE COURT: Great.

MS. ALLEN: -- to come up with new schedule should the Court grant it.

THE COURT: And I cut you off. Sorry. So the motion to extend discovery then will be deferred and set over under UA until the 8th of January so that I can make sure to review the submission from Mr. Pictum with regard to that statute of limitations issue.

All right, guys. Thank you both.

MR. SMITH: And, Your Honor, this case is not in business court case? This will just be randomly reassigned to another civil department upon Your Honor's --

THE COURT: No. It is not a business court case. They're going to have judges cover my calendar until there's a --

MR. SMITH: Senior judges. I apologize.

THE COURT: -- until there's an appointment.

MR. SMITH: Got you. Okay.

THE COURT: Okay? Thank you all.

MR. SMITH: Thank you, Your Honor.

MS. ALLEN: Congratulations on your retirement.

THE COURT: Thank you both. Thanks everybody. Happy Holiday.

[Hearing concluded at 10:24 a.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.

Petra Ziros
Transcriber

Electronically Filed
12/29/2023 11:09 AM
Steven D. Grierson
CLERK OF THE COURT

SUPP

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
T: (702) 434-8282
F: (702) 434-1488
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; D.I.P. INVESTMENT CORP., a domestic corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendant.	CASE NO.: A-22-852100-C DEPT NO.:27 **SUPPLEMENT TO PLAINTIFFS' OPPOSITION TO D.I.P. INVESTMENT CORP.'S MOTION TO DISMISS REGARDING THE STATUTE OF LIMITATIONS FOR MINORS' CLAIMS**

Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE ("Plaintiffs"), by and through their counsel,

Case Number: A-22-852100-C

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

Christian M. Morris, Esq., Victoria R. Allen, Esq., and Sarah E. DiSalvo, Esq., of CHRISTIAN MORRIS TRIAL ATTORNEYS, hereby submit the following *Supplement to Plaintiffs' Opposition to D.I.P. Investment Corp.'s Motion to Dismiss Regarding the Statute of Limitations for Minors' Claims*.

This Supplement is based on the pleadings and papers on file, the Memorandum of Points and Authorities contained herein, and any oral argument as may be allowed by counsel at the time of any hearing on this matter.

DATED this 29th day of December, 2023.

CHRISTIAN MORRIS TRIAL ATTORNEYS



CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
2250 Corporate Circle, Suite 390
Henderson, Nevada 89014
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case arises from the tragic murder of Candice Cooks ("Decedent") which occurred when she was shot and killed at a property owned and operated by D.I.P. Investment Corp. ("DIP"). Plaintiffs Sadie Blake and Brian Blake Jr. (collectively "Minor Plaintiffs") are both minors and bringing claims by and through their natural parent Brian Blake. As the Minor Plaintiffs are under the age of 18 (Minor Plaintiffs were born in 2013 and 2015), based on Nevada law, the statute of limitations has not run on their claims against DIP and dismissal based on the statue of limitations for their claims is not factually or legally appropriate. Plaintiffs respectfully maintain that amendment is reasonable and justified based on the circumstances to maintain all claims including those of Minor Plaintiffs and the Estate of Candance Sade Cooks ("Cooks Estate") as set forth in the prior briefing, but at a minimum, dismissal is entirely contrary to Nevada law for Minor Plaintiffs' individual claims.

II.

RELEVANT FACTS

Plaintiffs' Complaint specifically alleges that Sadie Blake and Brian Blake Jr. are minors and are each an heir of decedent as defined by NRS 41.085 and entitled to bring wrongful death claims in their individual capacity by and through their natural father. *See* ***Complaint*** **at ¶¶ 5-11; 41-44, attached hereto as Exhibit 1**. Minor Plaintiffs have yet to reach the age of eighteen and the statue of limitations for their individual claims has not begun to run.

III.

LEGAL ARGUMENT

The statute of limitations for Minor Plaintiffs' claims has not started to run because Nevada law tolls the statute of limitations for minors until they reach the age of 18, except under rare circumstances which do not apply to this litigation. *See* NRS 11.250 (noting that being under the age of 18 is a "disability" which "shall not be a part of the time limited for the commencement of the action"). Here, as Minor Plaintiffs are still under the age of 18 dismissal

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

of any claims against DIP based on the statute of limitations is not proper or reasonable under Nevada law.

The statute of limitations for personal injury or wrongful death actions is two years from the date of the injury unless further limited by a specific statute. NRS 11.190(4)(e). Nevada law recognizes and specifically provides for the tolling of the statute of limitations for claims of minors, until they reach the age of 18, at which point the statute of limitations begins to run. *See* NRS 11.250; *Ash Springs Dev. Corp. v. O'Donnell*, 95 Nev. 846, 848, 603 P.2d 698, 699 (1979) (noting the statute of limitations was tolled under NRS 11.250 when an individual was injured at the age of 15 and had potential personal injury claims); *Harrison v. Rodriguez*, 101 Nev. 297, 298-99, 701 P.2d 1015, 1016 (1985) (noting the statute of limitations was tolled under NRS 11.250(1) when a minor was hit by a car while riding her bike, but at the age of 18 the time to file claims began to run and eventually expired before the minor filed any claims).

Even more, the Nevada Supreme Court has explicitly held that NRS 11.250(1) specifically suspends the statute of limitations for minors who are heirs entitled to bring wrongful death claims. *See Parker v. Chrysler Motors Corp*., 88 Nev. 560, 562, 502 P.2d 111, 112 (1972) (finding wrongful death claims are individual in nature and for minors "[i]t is equally clear that the running of the statute of limitations is suspended during the period of their minority"). *See also Bruce v. Vance*, No. 2:07-cv-00363-BES-RJJ, 2008 U.S. Dist. LEXIS 144601, at *7 (D. Nev. Sep. 9, 2008) (specifically noting the individual nature of wrongful death claims and that "the Nevada Supreme Court has held that the running of the two year statute of limitations for wrongful death is suspended during the period of minority of children of the decedent").

The application of NRS 11.250(1) to suspend the deadline for filing claims is not without limitation, as the Nevada Legislature has explicitly required that for professional malpractice claims involving minors "[i]f the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of the child's disability" NRS 41A.097(5).

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

In contrary in this case, Minor Plaintiffs' claims are not barred due to the statute of limitations, which has not begun to run because neither Minor Plaintiffs have reached the age of 18 at this time. **Exhibit 1 at 5-11**. As Nevada law makes clear, the statute of limitation is paused for Minor Plaintiffs' claims, including wrongful death claims, until they reach the age of 18, which has not yet occurred. ***Id***. *See also Parker*, 88 Nev. at 562, 502 P.2d at 112. As a result, Minor Plaintiffs' claims are not barred by any statute of limitations and there is no relevant law that establishes or requires that Minor Plaintiffs' representative must bring their claims within a specific period of time that has expired. The claims at issue here are not for professional negligence or medical malpractice, and therefore, Minor Plaintiffs' are not yet required to have filed claims within a specified time limit in light of NRS 11.250(1), which tolls the statute of limitations. **Exhibit 1**. *See also* NRS 41A.097(5). Accordingly, Minor Plaintiffs' claims cannot and should not be dismissed based on DIP's argument that the statute of limitations has run, all claims are time barred, and it cannot be added as a party based on any amendment. *See* ***Defendant's Motion to Dismiss*** **at 8:13-18**.

Plaintiffs already extensively briefed why amendment is fair and reasonable to permit all claims to proceed, but it is worth briefly noting that Minor Plaintiffs and the Cooks Estate are offered different recovery under NRS 41.085, which means it is not a fair or reasonable compromise to permit individual wrongful death claims to proceed but not those of the estate. Specifically, under NRS 41.085, Minor Plaintiffs can recover for "pecuniary damages for the person's grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering or disfigurement of the decedent." NRS 41.085(4). Yet, the estate can recover "special damages, such as medical expenses, which the decedent incurred or sustained before the decedent's death, and funeral expenses," but more importantly also "penalties, including, but not limited to, exemplary or punitive damages, that the decedent would have recovered if the decedent had lived[.]" NRS 41.085(5).

Thus, based on Nevada law, it is not fair or adequate remedy to find that Minor Plaintiffs' claims are not barred by the statute of limitations while the claims of the estate are barred by the statute of limitations. Plaintiffs respectfully maintain that based on the

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

circumstances and facts of this case, all claims should proceed against DIP. Yet, it is worth noting that Minor Plaintiffs, who are the only heirs to the Cooks Estate, will not be in the same position merely because they can bring their own individual wrongful death claims. **Exhibit 1 at 5-11**. To that end, Minor Plaintiffs will be prejudiced if the claims against the estate cannot proceed to litigation, even if their individual claims can proceed.

IV.

CONCLUSION

In short, DIP's request for dismissal is not reasonable or justified based on the mistake that occurred as to the actual location of the shooting and all claims should proceed, but at a minimum, Minor Plaintiffs' claims cannot be dismissed based on the statute of limitations, which has not run for their claims because they are still minors. As a result, DIP cannot escape liability in its entirety, and based on the facts and circumstances of this case DIP should not escape liability from any claims at all.

WHEREFORE, Plaintiffs respectfully requests this Court DENY the instant motion seeking dismissal and permit all claims against DIP to proceed to discovery so that all claims can be decided based on the merits, and not dismissed due to a mistake or confusion as to the exact location of the shooting and murder of Decedent.

DATED this 29th day of December, 2023.

CHRISTIAN MORRIS TRIAL ATTORNEYS



CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
2250 Corporate Circle, Suite 390
Henderson, Nevada 89014
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CERTIFICATE OF E-SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 8.02, I hereby certify that on the 29th day of December, 2023, a true and correct copy of the foregoing **SUPPLEMENT TO PLAINTIFFS' OPPOSITION TO D.I.P. INVESTMENT CORP.'S MOTION TO DISMISS REGARDING THE STATUTE OF LIMITATIONS FOR MINORS' CLAIMS** was served to the following parties by electronic transmission through the Odyssey eFileNV system and/or mailed via US mail:

Jason D. Smith, Esq.
John J. Pictum III, Esq.
HOLLY DRIGGS
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Attorneys for Defendant
D.I.P. Investment Corp.

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Blvd., Ste. 120
Las Vegas, NV 89102
Attorney for Defendant
Pink Dragon Entertainment, LLC

/s/ Laura Edwards
An employee of CHRISTIAN MORRIS TRIAL ATTORNEYS

Exhibit 1

Exhibit 1

Exhibit 1

Electronically Filed
5/4/2022 1:03 PM
Steven D. Grierson
CLERK OF THE COURT

COMP

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. MCLEOD, ESQ.
Nevada Bar No. 8185
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@nettlesmorris.com
alexandra@nettlesmorris.com
wesley@nettlesmorris.com
Attorneys for Plaintiffs

CASE NO: A-22-852100-C
Department 27

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendant.	CASE NO.: DEPT NO.: **COMPLAINT**

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

Case Number: A-22-852100-C

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, by and through their counsel, Christian M. Morris, Esq., Alexandra B. McLeod, Esq., and Wesley H. LeMay, Esq., of NETTLES | MORRIS, and for her causes of action against Defendants, PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, complains and alleges as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The Eighth Judicial District Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds $15,000.00.

GENERAL ALLEGATIONS

2. CANDICE SADE COOKS ("Decedent") at all relevant times described herein was a resident of Clark County, Nevada.

3. Plaintiff, TERESA MASON ("Plaintiff Teresa"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

4. Plaintiff, JANICE GONZALEZ ("Plaintiff Janice"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

5. Plaintiff, SADIE BLAKE ("Plaintiff Sadie"), is and at all relevant times was, a minor residing in Clark County, Nevada.

6. Plaintiff, BRIAN BLAKE, JR. ("Plaintiff Blake"), is and at all relevant times was, a minor residing in Clark County, Nevada.

7. At all times relevant herein, Plaintiff Sadie and Plaintiff Blake are the children of Decedent.

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

8. At all times relevant herein, BRIAN BLAKE is the natural father of Plaintiff Sadie and Plaintiff Blake.

9. Plaintiff Sadie is an heir of Decedent within the meaning of NRS 41.085.

10. Plaintiff Blake is an heir of Decedent within the meaning of NRS 41.085.

11. Plaintiff Sadie and Plaintiff Blake are each entitled to a one-half share of Decedent CANDANCE SADE COOKS' estate pursuant NRS 134.090.

12. Plaintiff Teresa, Plaintiff Janice, Plaintiff Sadie, Plaintiff Blake and Decedent collectively referred to as "Plaintiffs."

13. Defendant, PINK DRAGON ENTERTAINMENT, L.L.C. d/b/a Pink Dragon Entertainment ("Defendant Pink"), is, and at all relevant times, was a domestic limited-liability company doing business in Clark County, Nevada.

14. Defendant, AVILA PARK HOMEOWNERS ASSOCIATION ("Defendant Avila HOA"), is, and at all relevant times, was a domestic nonprofit company doing business in Clark County, Nevada.

15. Defendant Pink and Defendant Avila HOA hereinafter referred to as "Defendants."

16. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant is responsible, negligently, or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged.

17. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant was involved in the initiation, approval, support or execution of the wrongful acts upon which this litigation is premised, or of similar actions against Plaintiff of which Plaintiff is presently unaware.

18. That on or about April 09, 2021, Defendant Pink owned, controlled and/or operated the property located at 4200 W. Russell Road, Las Vegas, Nevada, commonly known as "Pink Dragon Entertainment", which was (hereinafter, "Employer Premises").

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

19. Upon information and belief, Defendant Avila HOA was responsible for governing, securing, and monitoring the housing development where the Employer Premises is located.

20. Upon information and belief, Decedent was an employee of Defendant Pink and was present for an employee meeting at the Employer Premises.

21. Upon information and belief, at all relevant times relevant hereto, Avila Park is located at 1800-1860 N. Decatur Boulevard, Las Vegas, Nevada 89108 ("Subject Neighborhood").

22. Upon information and belief, at all relevant times relevant hereto, Defendant Avila HOA was authorized to regulate the Subject Neighborhood and provide security for residents and guests.

23. Upon information and belief, the Employer Premises was active and in good standing with Defendant Avila HOA at the time of the Subject Incident.

24. Upon information and belief, on April 09, 2021, Decedent was driven by Brian Blake, a non-party, to Subject Neighborhood for an employee meeting

25. Upon information and belief, on April 09, 2021, once the employee meeting ended, a Client that was not a resident or guest of Defendant Avila HOA's property approached Decedent and accused her of stealing his wallet.

26. Upon information and belief, on April 09, 2021, Client shot Decedent ("Subject Incident").

27. On April 09, 2021, Decedent passed away at University Medical Center.

28. As a direct and proximate result of the negligence of the Defendant, Plaintiffs suffered damages in excess of $15,000.

29. As a direct and proximate result of Defendant's negligence, Plaintiffs have had to retain the services of the law offices of the NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

/ / /

/ / /

/ / /

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

FIRST CAUSE OF ACTION

(Negligent Security)

30. Plaintiffs repeat and reallege each and every allegation contained in paragraphs hereinabove as though fully set forth herein.

31. At all times relevant hereto, Defendant Pink was in control of the Employer Premises and had and/or assumed a non-delegable duty to maintain the Employer Premises for the care, safety, and protection of those persons present on said Premises, including Claimant.

32. At all times relevant hereto, Defendant Pink failed to provide adequate security personnel at the Subject Premises while a meeting took place, resulting in the Subject Incident.

33. At all times relevant hereto, Defendant Avila HOA was in control of the gated neighborhood and was responsible for security of residents and guests.

34. At all times relevant hereto, Defendant Avila HOA did not provide adequate security for residents and guests under their agreement with the property owners living in the neighborhood governed by the HOA.

35. That Defendants' failure to provide adequate security breached their duty of care to Decedent, which resulted in her death.

36. Defendants manifested reckless disregard for the safety of Decedent by failing to provide security where the Subject Incident occurred at the time of the Subject Incident.

37. Defendants' breach of this duty of care was the legal and proximate cause of each of the Decedent's death.

38. As a further direct and proximate result of Defendants' negligence, Plaintiffs suffered damages in excess of $15,000.00.

39. As a direct and proximate result of Defendants' negligence, Plaintiffs have had to retain the services of the law offices of the NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorneys' fees incurred therein.

/ / /

/ / /

/ / /

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

SECOND CAUSE OF ACTION

(Wrongful Death)

40. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs hereinabove as though fully set forth herein.

41. Plaintiff Brian and Plaintiff Sadie are heirs or personal representatives of Decedent.

42. Defendants caused Decedent's death by wrongful act or neglect as described hereinabove.

43. Therefore, under NRS 41.085 and NRS 41.100, Plaintiffs may maintain an action for damages against Defendants, or, if Defendants are dead, against their personal representative.

44. As a direct and proximate result of the actions or omissions of Defendants, Plaintiff Sadie and Plaintiff Brian suffered grief, sorrow, loss of a child, past and future loss of companionship, past and future loss of society, past and future loss of comfort, past and future loss of services, and funeral and burial related expenses, all in a sum in excess of excess of $15,000.00.

45. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs are entitled to punitive damages per NRS 42.005 and 42.007 in an amount to be determined by a jury.

/ / /

/ / /

/ / /

46. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs have had to retain the services of Nettles | Morris to pursue this action and are entitled to recover costs of suit and reasonable attorneys' fees incurred herein.

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. General damages in excess of $15,000.00 for Plaintiffs;
2. Special damages in excess of $15,000.00 for Plaintiffs;
3. For Punitive damages to be determined by the jury of Plaintiffs;
4. For pre- and post-judgment interest as permitted by law;
5. For costs and attorneys' fees as permitted by law; and
6. For such other and further relief as the Court deems necessary and proper.

DATED this 4th day of May, 2022.

NETTLES | MORRIS

/s/ Wesley H. LeMay, Jr.

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. McLEOD, ESQ.
Nevada Bar No. 8185
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Attorneys for Plaintiff

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
(702) 434-8282 / (702) 434-1488 (fax)

Electronically Filed
12/29/2023 2:05 PM
Steven D. Grierson
CLERK OF THE COURT

SUPPL

Jason D. Smith, ESQ.
Nevada Bar No. 9691
E-mail: jsmith@nevadafirm.com
John J. Pictum III, ESQ.
Nevada Bar No. 15979
E-mail: jpictum@nevadafirm.com
HOLLEY DRIGGS
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
Attorneys for Defendant D.I.P. Investment Corp.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA

TERESA MASON AND JANICE GONZALEZ, as Co-Special Administrators of the Estate of Candice Sade Cooks; SADIE BLAKE AND BRIAN BLAKE JR., by and through their natural parent, Brian Blake, Plaintiffs, v. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a/ Pink Dragon Entertainment; D.I.P. INVESTMENT CORP., a domestic corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	Case No: A-22-852100-C Dept. No: 27 **D.I.P. INVESTMENT CORP.'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO DISMISS** **Hearing Date: December 20, 2023** **Hearing Time: 10:00 a.m.**

Defendant D.I.P. Investment Corp. ("***D.I.P.***") by and through its counsel of record, Jason D. Smith, Esq., and John J. Pictum III, Esq., of the law firm Holley Driggs, hereby submits this supplemental brief in support of D.I.P.'s Motion to Dismiss Plaintiff Teresa Mason and Janice Gonzales, as Co-Special Administrators of the Estate of Candice Sade Cooks ("***Estate of Candice Cooks***"); Sadie Blake and Brian Blake Jr., by and through their natural parent, Brian Blake ("***Sadie***" and "***Brian***") (together with the Estate of Candice Cooks "***Plaintiffs***") Complaint for failure to state a claim upon which relief can be granted.

Case Number: A-22-852100-C

HOLLEY DRIGGS

This Motion is based upon the papers and pleadings on file in this action, the memorandum of points and authorities, and any argument made during the hearing on this matter.

Dated: December 29, 2023.

HOLLEY DRIGGS

/s/ Jason D. Smith

Jason D. Smith, Esq.
Nevada Bar No. 9691
E-mail: jsmith@nevadafirm.com
John J. Pictum III, Esq.
Nevada Bar No. 15979
E-mail: jpictum@nevadafirm.com
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
Attorneys for Defendant D.I.P. Investment Corp.

MEMORANDUM OF POINTS & AUTHORITIES

I. LEGAL ARGUMENT

A. The Court Should Not Consider Plaintiffs' New Argument

The Court heard arguments on D.I.P.'s motion to dismiss on December 20, 2023. At that hearing, Plaintiffs, ***for the first time***, argued that even if the statute of limitations prohibits the Estate of Candice Cooks from bringing claims against D.I.P. (which it does), NRS 11.250 tolls the statute of limitations for Sadie's and Brian's claims as they are minor children under the age of 18. Thus, Plaintiffs argued that D.I.P. will be a party to this action whether or not the Estate of Candice Cooks' claims are time bared. As noted by D.I.P. at the December 20, 2023 hearing, this argument was ***never*** raised by Plaintiffs in their opposition. *See* Opp. to Mot. to Dismiss, on file herein. And to raise this new argument for the very first time at the hearing is tantamount to trial by ambush.[1] If Plaintiffs wanted to advance this theory for avoiding their statute of limitations problem, then

[1] Additionally, Plaintiffs filed their own Supplemental Brief, dated December 29, 2023, which is improper and should not be considered by this Court. At the December 20, 2023, hearing, the Court granted D.I.P. permission to file a supplemental brief in response to Plaintiffs' new argument (lodged for the first time at the hearing) regarding NRS 11.250. But Plaintiffs did not request and did not receive leave of Court to file this improper Supplemental Brief. Indeed, this is another example of Plaintiffs raising new arguments that should not be considered by this Court. D.I.P. reserves its rights to file an emergency motion to strike Plaintiffs' improper surreply.

HOLLEY DRIGGS

Plaintiffs should have raised it in their opposition—not ***for the first time*** at the hearing. Thus, any argument pertaining to NRS 11.250 should not be considered by the Court. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983-84 (1981).

B. Even If Plaintiffs New Argument Is Considered, The Court Should Still Grant D.I.P.'s Motion To Dismiss Because Sadie and Blake Have No Direct Claims That Can Be Tolled By NRS 11.250

At the hearing, Plaintiffs made no arguments to advance their misplaced relation back arguments and all but expressly conceded that dismissal is appropriate for the claims brought by the Estate of Candice Cooks due to those claims being untimely under NRS 11.190(4) (and because there is no relation back under Rule 15(c)). Thus, the only remaining question for the Court (based upon the brand new argument from Plaintiffs) is whether NRS 11.250 tolls the statute of limitations for Sadie's and Blake's claims until they reach the age of 18. The answer to that question is unequivocally no.

The Second Amended Complaint states:

> 9. Plaintiff Sadie is an heir of the Decedent within the meaning of NRS 41.085.
>
> 10. Plaintiff Black is an heir of Decedent within the meaning of NRS 41.085.
>
> 11. Plaintiff Sadie and Plaintiff Blake are each entitled to a one-half share of Decedent CANDICE COOK'S estate pursuant to NRS 134.090.

See Compl. at ¶¶ 9-11; First Am. Compl. at ¶¶ 9-11; and Second Am. Compl. at ¶¶ 9-11. Thus, it is clear from the four corners of the Second Amended Complaint that Sadie's and Blake's recovery is contingent on their status as surviving heirs of their mother, Candice Cooks. Indeed, NRS 134.090 states: "If the decedent leaves no surviving spouse, but there is a child or children, ***the estate***, if there is only one child, all goes to that child. If there is more than one child, ***the estate*** all goes to the children of the decedent, to share and share alike." (emphasis added). The plain language of the statute and the express nature of Brian's and Sadie's allegations in the operative complaint make clear that Sadie and Blake did not assert and have no direct claims against D.I.P.

HOLLEY DRIGGS

Instead, Sadie's and Blake's claims are derivative or contingent claims of the Estate of Candice Cooks' claims; and as noted throughout D.I.P.'s papers, the Estate's claims are time barred by NRS 11.190(4).

For the avoidance of doubt, any party advancing an argument about tolling of a statute of limitations bears the burden to establish such exception to a statute of limitations. *See, e.g., O'Connor v. Boeing N. Am.,* 311 F.3d 1139, 1150 (9th Cir.2002). In fact, the following passage from American Jurisprudence shows why this Plaintiffs' after-the-fact, hail mary argument from must fail:

> Litigants face a considerable burden to demonstrate that equitable tolling of a statute of limitations applies, and the burden for such relief rests on the party seeking it.[4] A litigant seeking equitable tolling must establish that (1) he or she has been pursuing his or her rights diligently, and (2) some extraordinary circumstance stood in his or her way and prevented timely filing. Ordinarily, to benefit from equitable tolling, a plaintiff must demonstrate that he or she exercised reasonable diligence in investigating and bringing his or her claim. The plaintiff also must demonstrate that, despite his or her diligence, the defendant concealed its wrongdoing such that the plaintiff could not discover the facts that form the basis for the claim. A plaintiff seeking equitable tolling of a statute of limitations must prove that his or her failure to meet a requirement in filing his or her pleading is not attributable to a larger failure to act diligently in pursuing his or her judicial remedies during the statutory period.
>
> A plaintiff seeking equitable tolling of a statute of limitations must set forth in the complaint particularized allegations that the defendant actively misled the plaintiff. An equitable tolling argument cannot be made for the first time in a motion for reconsideration.

51 Am. Jur. 2d. Limitations of Actions § 157 (Oct. 2023). Here, nothing in Plaintiffs' Complaint sets forth direct claims by Brian or Sadie and, more importantly, nothing meets the foregoing authorities to show Plaintiffs met their burden for any tolling of the statute of limitations.

Therefore, the only party with direct claims in this action is the Estate of Candice Cooks. And because those direct claims are time barred under NRS 11.190(4) and there is no relation back under Rule 15(c), it logically follows that Sadie and Blake have no claims to be tolled by NRS 11.250. Accordingly, the Court should grant the motion to dismiss because Sadie and Blake did not assert and have no direct claims against D.I.P. that can be tolled under NRS 11.250.

HOLLEY DRIGGS

C. Plaintiffs' Case Continues Even If D.I.P. Is Dismissed

D.I.P. is cognizant that the facts and allegations in this action are tragic for Candice Cooks and her family. D.I.P. strenuously disputes that these facts implicate D.I.P., however (including because Ms. Cooks was committing at least one crime during the time of the incident – an issue that will be fully developed should D.I.P. be forced to remain in this case). The nature of the underlying facts, however, has no bearing on the Court's statute of limitations analysis. The only facts that are relevant are the procedural facts surrounding the expiration of the statute of limitations and the failure to demonstrate relation back under Rule 15(c).

Once D.I.P. is dismissed from the action, the courthouse doors are not closed to Plaintiffs, and they will still have their proverbial day in court. Pink Dragon Entertainment ("***Pink Dragon***")—Candice Cooks' alleged employer at the time of the injury—is still a party to the action. As such, Plaintiffs may still maintain causes of action and seek recovery for any alleged injury against Pink Dragon.

II. CONCLUSION

D.I.P. should be dismissed from this action. The claims brought by the Estate of Candice Cooks (the only party with direct claims in this action) are time barred under NRS 11.190(4) and there is no relation back under Rule 15(c). Sadie's and Blake's claims are contingent upon and/or derivative of the claims brought by the Estate of Candice Cooks, thus, NRS 11.250 does not toll the statute of limitations for those claims.

Accordingly, the Court should grant D.I.P.'s motion and dismiss it from this action with prejudice.

Dated December 29, 2023.

HOLLEY DRIGGS

/s/ Jason D. Smith

Jason D. Smith, Esq.
Nevada Bar No. 9691
E-mail: jsmith@nevadafirm.com
John J. Pictum III, Esq.
Nevada Bar No. 15979
E-mail: jpictum@nevadafirm.com

300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912

Attorneys for Defendant D.I.P. Investment Corp.

HOLLEY DRIGGS

HOLLEY DRIGGS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 29th day of December 2023, and pursuant to NRCP 5(b), Administrative Order 14-21, and NEFCR 9, a true and correct copy of the foregoing **SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO DISMISS** was filed and served electronically through with the Clerk of the Court using the Court's eFileNV system to the following:

Christian M. Morris, Esq.
Victoria R. Allen, Esq.
Sarah Disalvo, Esq.
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Email: christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com

Attorneys for Plaintiffs

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Boulevard, Suite 120
Las Vegas, Nevada 89102
Email: info@lbclawgroup.com

Attorneys for Defendant Pink Dragon Entertainment, LLC

/s/ Marissa Vallette
An employee of HOLLEY DRIGGS

Electronically Filed
1/22/2024 10:31 AM
Steven D. Grierson
CLERK OF THE COURT

NEOJ
Jason D. Smith, Esq.
Nevada Bar No. 9691
John J. Pictum III, Esq.
Nevada Bar No. 15979
HOLLEY DRIGGS
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
E-mail: jsmith@nevadafirm.com
jpictum@nevadafirm.com
Attorneys for Defendant D.I.P. Investment Corp.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

Teresa Mason and Janice Gonzalez, as Co-Special Administrators of the Estate of Candice Sade Cooks; Sadie Blake and Brian Blake Jr., by and through their natural parent, Brian Blake,

Plaintiffs,

v.

Pink Dragon Entertainment, L.L.C., a Domestic Limited Liability Company d/b/a/ Pink Dragon Entertainment; D.I.P. Investment Corp., a domestic corporation; Doe Individuals 1 through 10; Roe Corporations 11 through 20; and ABC limited liability companies 21 through 30, inclusive,

Defendants.

Case No: A-22-852100-C
Dept. No: 27

NOTICE OF ENTRY OF ORDER GRANTING D.I.P. INVESTMENT CORP.'S MOTION TO DISMISS

PLEASE TAKE NOTICE that on January 22, 2024 the Court entered an Order Granting D.I.P. Investment Corp.'s Motion to Dismiss, a copy of which is attached hereto.

DATED this 22nd day of January 2024.

HOLLEY DRIGGS

/s/ Jason D. Smith
Jason D. Smith, Esq.
Nevada Bar No. 9691
E-mail: jsmith@nevadafirm.com
John J. Pictum III, Esq.
Nevada Bar No. 15979
E-mail: jpictum@nevadafirm.com
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101

Case Number: A-22-852100-C

HOLLEY DRIGGS

Telephone: (702) 791-0308
Facsimile: (702) 791-1912

Attorneys for Defendant D.I.P. Investment Corp.

HOLLEY DRIGGS

HOLLEY DRIGGS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 22nd day of January 2024, and pursuant to NRCP 5(b), Administrative Order 14-21, and NEFCR 9, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING D.I.P. INVESTMENT CORP.'S MOTION TO DISMISS** was filed and served electronically through with the Clerk of the Court using the Court's eFileNV system to the following:

Christian M. Morris, Esq.
Victoria R. Allen, Esq.
Sarah Disalvo, Esq.
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Email: christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com

Attorneys for Plaintiffs

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Boulevard, Suite 120
Las Vegas, Nevada 89102
Email: info@lbclawgroup.com

Attorneys for Defendant Pink Dragon Entertainment, LLC

/s/ Marissa Vallette
An employee of HOLLEY DRIGGS

ELECTRONICALLY SERVED
1/22/2024 10:02 AM

Electronically Filed
01/22/2024 10:00 AM
CLERK OF THE COURT

OGM
Jason D. Smith, Esq.
Nevada Bar No. 9691
John J. Pictum III, Esq.
Nevada Bar No. 15979
HOLLEY DRIGGS
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
E-mail: jsmith@nevadafirm.com
jpictum@nevadafirm.com
Attorneys for Defendant D.I.P. Investment Corp.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

Teresa Mason and Janice Gonzalez, as Co-Special Administrators of the Estate of Candice Sade Cooks; Sadie Blake and Brian Blake Jr., by and through their natural parent, Brian Blake, Plaintiffs, v. Pink Dragon Entertainment, L.L.C., a Domestic Limited Liability Company d/b/a/ Pink Dragon Entertainment; D.I.P. Investment Corp., a domestic corporation; Doe Individuals 1 through 10; Roe Corporations 11 through 20; and ABC limited liability companies 21 through 30, inclusive, Defendants.	Case No: A-22-852100-C Dept. No: 27 **ORDER GRANTING D.I.P. INVESTMENT CORP.'S MOTION TO DISMISS**

This matter came before the Court on Defendant D.I.P. Investment Corp.'s ("***D.I.P.***") Motion to Dismiss Plaintiff Teresa Mason and Janice Gonzales, as Co-Special Administrators of the Estate of Candice Sade Cooks ("***Estate of Candice Cooks***"); Sadie Blake and Brian Blake Jr., by and through their natural parent, Brian Blake ("***Sadie***" and "***Brian***") (collectively together with the Estate of Candice Cooks "***Plaintiffs***") complaint for failure to state a claim upon which relief can be granted on December 20, 2023, at 10:00 a.m. in Department 27 of the Eighth Judicial District Court, County of Clark, before the Honorable Judge Nancy Allf. Victoria R. Allen, Esq., appeared on behalf of Plaintiffs and Jason D. Smith, Esq., and John J. Pictum III, Esq., appeared on behalf of D.I.P.

Case Number: A-22-852100-C

HOLLEY DRIGGS

HOLLEY DRIGGS

FINDINGS OF FACT & CONCLUSIONS OF LAW

I. FINDINGS OF FACT

Plaintiffs' original complaint was filed on May 4, 2022. *See* Compl. In that complaint, Plaintiffs allege that on April 9, 2021, Candice Cooks ("***Cooks***") drove to an apartment complex to meet up with an individual (that was not a resident of the apartment complex) for a "client meeting." *See* Compl. at ¶¶ 22-23. During this "client meeting", Cooks was acting as an employee of Pink Dragon Entertainment L.L.C. ("***Pink Dragon***"). *See id.* at ¶¶ 23-24. The original complaint further alleges that the apartment complex that Cooks drove to that night was located at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108, and was owned and operated by Avila Park Homeowners Association ("***Avila***"). *See id.*at ¶ 23.

Once Cooks' "client meeting" concluded, the individual Cooks met up with accused her of stealing his wallet. *See id.* And when she attempted to leave the apartment complex, that individual shot her; and she was later pronounced dead at University Medical Center of Southern Nevada. *See id.* at ¶¶ 24-25. Finally, the original complaint alleges that Cooks death and injuries were a "direct and proximate cause" of Avila's negligence. *See id.* At ¶27. Thus, the original complaint names Pink Dragon (Cooks' employer) and Avila (the alleged property owner of the apartment complex where Cooks was shot).

On December 22, 2022, the Court entered a stipulation signed by counsel for Plaintiffs and Avila. *See* Stipulation to Amend Compl., on file herein. In that stipulation, Avila agreed to allow Plaintiffs to file its first amended complaint that clarified factual details of the April 9, 2021, incident. *See id.*

On October 6, 2023, the Court entered a second stipulation agreed upon by counsel for Plaintiffs, Avila, and Pink Dragon. *See* Stipulation and Order to Amend First Am. Compl., on file herein. This second stipulation states that "discovery has indicated D.I.P. INVESTMENT CORP. is the properly named Defendant to this action." *See id* at ¶ 2. Therefore, Plaintiffs, Avila, and Pink Dragon agreed to substitute D.I.P. in place of Avila. *See id.* at ¶ 3.

On October 11, 2023, Plaintiffs filed their second amended complaint. *See* Second Am. Compl. In this second amended complaint, the factual allegations remain the same except for the location of the apartment complex that Cooks allegedly held her "client meeting." Thus, instead of alleging that the "client meeting" and shooting happened at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108, Plaintiffs now allege that it took place at the "Diamondhead Apartments located at 1799 N. Decatur Blvd. and 1813 N. Decatur Blvd., Las Vegas, Nevada 89108." *Compare* First Am. Compl. at ¶ 21 *with* Second Am. Compl. at ¶ 20.

II. CONCLUSIONS OF LAW

A. Motion to Dismiss Standard

A party may assert by motion the defense that the plaintiff failed to state a claim upon which relief may be granted. Nev. R. Civ. P. 12(b)(5). Pursuant to Rule 12(b)(5), dismissal of a claim is appropriate if it appears with certainty that a plaintiff can prove no set of facts which would entitle him or her to relief under the claim. *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985). A court should dismiss a claim if it lacks a cognizable legal theory or if there are insufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1122 (9th Cir. 2008). Put simply, a complaint must contain some "set of facts, which, if true, would entitle [the plaintiff] to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). In the event that a plaintiff's claims are barred by the statute of limitations, a Rule 12(b)(5) motion is appropriate. *See Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture, LLC*, 129 Nev. 181, 186, 300 P.3d 124, 128 (2013) (holding that dismissal for failure to state a claim is appropriate where the claim is time-barred by the statute of limitations).

B. Plaintiff's Claims Against D.I.P. Are Untimely Pursuant to NRS 11.190(4)

Plaintiff's original complaint was filed eleven months before the statute of limitations expired, on May 4, 2022. *See* Compl. Within that complaint, Plaintiff alleges that "[O]n or about April 9, 2021" Cooks drove to an apartment complex (located at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108) to meet up with an individual (that was not a resident of the apartment

HOLLEY DRIGGS

complex) for a "client meeting." *See* Compl. at ¶¶ 22-23. The complaint further alleges that the apartment complex was owned and operated by Avila Park Homeowners Association ("***Avila***"). *See id.*at ¶ 23.

After the "client meeting", the complaint alleges that when Cooks was leaving the apartment complex, the individual she met with accused her of stealing his wallet. *See id.* And when she attempted to leave the apartment complex, the individual shot her; and she was later pronounced dead at University Medical Center of Southern Nevada. *See id.* at ¶¶ 24-25. Finally, the original complaint alleges that Cooks death and injuries were a "direct and proximate cause" Avila's negligence. *See id.* at ¶27.

Nearly eighteen months after filing its original complaint, Plaintiffs now allege they have discovered that this incident purportedly did not happen on Avila's property—but rather at a property owned by D.I.P.; and thus, are now seeking to bring the same claims they originally asserted against Avila against D.I.P. *See* Second Am. Compl. But the statute of limitations for these claims expired on April 9, 2023. *See* NRS 11.190(4) (requiring a plaintiff to bring any action to recover damages for the wrongful death or injuries resulting from the negligence of another within two-years of the date of the death or injury). Therefore, the only mechanism for Plaintiffs' claims to survive is through relation back under Rule 15(c), or through Rule 10(a). But because neither of those Rules are applicable to this action. The Court must grant D.I.P.'s motion.

C. Plaintiff's Second Amended Complaint Does Not Relate Back To The Date of The Original Complaint

Under Rule 15, a plaintiff cannot substitute one defendant for another after the statute of limitations period has ended unless it can establish that the new defendant (the one that is being substituted into the action) "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." NRCP 15(c)(2)(B); *see also Walker v. New Castle Corp*., 134 Nev. 1027, 431 P.3d 55 (Order of Affirmance) (2018) (citing *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979) ("[A] proper defendant may be brought into the action after the statute of limitations has run if the proper defendant (1) receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to its

HOLLEY DRIGGS

prejudice by the amendment." (emphasis added)). Here, the Court finds that Plaintiffs have not established the requirements necessary to satisfy the Rules relation back mechanism. For example, Plaintiffs have not shown that D.I.P. received actual notice of this action prior to the statute of limitations expiring. Therefore, the Court finds that relation back is has not been established under Rule 15.

D. Rule 10(a) Does Not Apply To This Action

Plaintiffs argue that even if relation back is inappropriate under Rule 15(c), Plaintiffs are still able to add D.I.P. as a defendant by substituting it for a properly pled Roe Corporation pursuant to Rule 10(a). *See* Pls.' Opp. to Mot. to Dismiss at pp. 12-13. But that argument is belied by a review of the record.

Here, Plaintiffs' stipulation unequivocally states they were amending their complaint in the following manner: "D.I.P. INVESTMENT CORP. ***substituted in place*** of AVILA PARK HOMEWOENERS ASSOCIATION . . . ." *See* Stipulation and Order to Amend Compl. to Substitute Defendant, Dismiss Defendant, and Amend Case Caption, on file herein (emphasis added). Thus, although Rule 10(a) does allow a plaintiff to substitute properly pleaded Roe Corporations, that is not the actions that Plaintiffs pursued in this action. Therefore, the Court finds that Rule 10(a) does not apply to this action.

E. Sadie And Blake Have Not Plead Any Direct Claims Tollable By NRS 11.250

The Second Amended Complaint states:

> 9. Plaintiff Sadie is an heir of the Decedent within the meaning of NRS 41.085.
>
> 10. Plaintiff Black is an heir of Decedent within the meaning of NRS 41.085.
>
> 11. Plaintiff Sadie and Plaintiff Blake are each entitled to a one-half share of Decedent CANDICE COOK'S estate pursuant to NRS 134.090.

See Second Am. Compl. at ¶¶ 9-11. Thus, it is clear from the four corners of the second amended complaint that Sadie's and Blake's recovery is contingent on their status as surviving heirs of their mother, Candice Cooks. Indeed, NRS 134.090 states: "If the decedent leaves no surviving spouse, but there is a child or children, ***the estate***, if there is only one child, all goes to that child. If there

HOLLEY DRIGGS

is more than one child, ***the estate*** all goes to the children of the decedent, to share and share alike." (emphasis added). The plain language of the statute and the express nature of Brian's and Sadie's allegations in the operative complaint make clear that Sadie and Blake did not assert any direct claims against D.I.P. Instead, Sadie's and Blake's claims are derivative or contingent claims of the Estate of Candice Cooks' claims, which are time barred under NRS 11.190. *See supra*.

Therefore, the only party with direct claims in this action is the Estate of Candice Cooks. And because those direct claims are time barred under NRS 11.190(4) and there is no relation back under Rule 15(c), and there was no substitution under Rule 10(a), it logically follows that Sadie and Blake have no claims to be tolled by NRS 11.250. Accordingly, dismissal is appropriate.

III. CONCLUSION

Considering the above, the Court hereby GRANTS Defendant D.I.P.'s motion to dismiss without prejudice.

Dated this 22nd day of January, 2024

875 5E9 5D2F 7A40
Michael Villani
District Court

FOR JUDGE NANCY ALLF

GD

HOLLEY DRIGGS

Respectfully Submitted By:

HOLLEY DRIGGS

/s/ Jason D. Smith

Jason D. Smith, Esq.
Nevada Bar No.: 9691
John J. Pictum III, Esq.
Nevada Bar No.: 15979
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Emails: jsmith@nevadafirm.com
jpictum@nevadafirm.com

Approved As To Form And Content:

CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/ Victoria Allen

Christian M. Morris, Esq.
Nevada Bar No.: 11218
Victoria Allen, Esq.
Nevada Bar No.: 15005
Sarah E. Disalvo, Esq.
Nevada Bar No.: 16398
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Emails: christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com

HOLLEY DRIGGS

From: Victoria Allen <Victoria@CMTrialAttorneys.com>
Sent: Friday, January 19, 2024 6:04 AM
To: John J. Pictum
Cc: Jason D. Smith; Marissa Vallette; Laura Edwards; Sarah DiSalvo; David Hales
Subject: Re: Estate of Candice Cooks v. Pink Dragon, et. al. re Draft Order Granting Motion to Dismiss
Attachments: 3069190.docx

You may affix my esignature to the proposed order and submit.

Regards,
Tori Allen, Esq.
Christian Morris Trial Attorneys

This email may contain CONFIDENTIAL AND/OR LEGALLY PRIVILEGED INFORMATION intended only for the use of the intended recipients identified above. If you are not the intended recipient of this email, you are hereby notified that any unauthorized review, use, dissemination, distribution, downloading, or copying of this communication is strictly prohibited. If you are not the intended recipient and have received this communication in error, please immediately notify us by reply email, delete the communication and destroy all copies.

From: John J. Pictum <jpictum@nevadafirm.com>
Sent: Thursday, January 18, 2024 12:00:00 PM
To: Victoria Allen <Victoria@CMTrialAttorneys.com>
Cc: Jason D. Smith <jsmith@nevadafirm.com>; Marissa Vallette <mvallette@nevadafirm.com>
Subject: Re: Estate of Candice Cooks v. Pink Dragon, et. al. re Draft Order Granting Motion to Dismiss

Victoria:

Just circling back with you on this. Have you had the opportunity to review?

It is my offices intention to submit this to the Court tomorrow at noon if we do not receive a response from your office. Please let me know.

Thanks,
John J. Pictum III
Attorney
Las Vegas Office
HOLLEY DRIGGS

Tel: 702.791.0308 | 300 S. 4th Street, Suite 1600, Las Vegas NV 89101
Tel: 775.851.8700 | Fax: 775.851.7681 800 S. Meadows Parkway, Suite 800, Reno NV 89521

www.nevadafirm.com

This email message (including any attachments): (a) may include privileged, confidential, proprietary and/or other protected information, (b) is sent based upon a reasonable expectation of privacy, and (c) is not intended for transmission to, or receipt by, unauthorized persons. If you are not the intended

1

recipient, please notify the sender immediately by telephone (702.791.0308) or by replying to this message and then delete the message and all copies or portions from your system. Thank you.

From: John J. Pictum
Sent: Friday, January 12, 2024 8:28 PM
To: victoria@CMtrialattorneys.com <victoria@CMtrialattorneys.com>
Cc: Jason D. Smith <jsmith@nevadafirm.com>
Subject: Estate of Candice Cooks v. Pink Dragon, et. al. re Draft Order Granting Motion to Dismiss

Victoria:

Per the Court's minute order (attached hereto), I have attached a draft order granting D.I.P.'s motion to dismiss consistent with the moving papers. Please let me know if, after your review, I have your permission to affix your electronic signature.

Thanks,

John J. Pictum III, Esq.
Attorney
Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 |
300 S. 4th Street, Suite 1600, Las Vegas NV 89101

Tel: 775.851.8700 | Fax: 775.851.7681
800 S. Meadows Parkway, Suite 800, Reno NV 89521

www.nevadafirm.com

This email message (including any attachments): (a) may include privileged, confidential, proprietary and/or other protected information, (b) is sent based upon a reasonable expectation of privacy, and (c) is not intended for transmission to, or receipt by, unauthorized persons. If you are not the intended recipient, please notify the sender immediately by telephone (702.791.0308) or by replying to this message and then delete the message and all copies or portions from your system. Thank you.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Candice Sade Cooks, Plaintiff(s) vs. Pink Dragon Entertainment, L.L.C., Defendant(s)	CASE NO: A-22-852100-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 1/22/2024

John Courtney	info@lbclawgroup.com
Tori Allen	victoria@cmtrialattorneys.com
Kerri Rowland	kerri@lbclawgroup.com
Laura Edwards	laura@cmtrialattorneys.com
Andrew Dunning	apd@lbclawgroup.com
Tiffany Pond	tiffanyp@cmtrialattorneys.com
Jason Smith	jsmith@nevadafirm.com
Jamie McInelly	jamie@cmtrialattorneys.com
John Pictum III	jpictum@nevadafirm.com

Electronically Filed
2/2/2024 9:12 PM
Steven D. Grierson
CLERK OF THE COURT

MRCN
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
T: (702) 434-8282
F: (702) 434-1488
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; D.I.P. INVESTMENT CORP., a domestic corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendant.	CASE NO.: A-22-852100-C DEPT NO.:27 **PLAINTIFFS' MOTION FOR CLARIFICATION AND RECONSIDERATION OF ORDER DISMISSING ALL CLAIMS AGAINST D.I.P. INVESTMENT CORP. WITHOUT PREJUDICE** **Hearing Requested** **INTENT TO APPEAR BY AUDIO/VISUAL**

Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE ("Plaintiffs"), by and through their counsel,

Case Number: A-22-852100-C

Christian M. Morris, Esq., Victoria R. Allen, Esq., and Sarah E. DiSalvo, Esq., of CHRISTIAN MORRIS TRIAL ATTORNEYS, hereby submit the following *Plaintiffs' Motion for Clarification and Reconsideration of Order Dismissing All Claims Against D.I.P. Investment Corp. Without Prejudice.*

This Motion is based on the pleadings and papers on file, the Memorandum of Points and Authorities contained herein, and any oral argument as may be allowed by counsel at the time of any hearing on this matter.

DATED this 2nd day of February, 2024.

CHRISTIAN MORRIS TRIAL ATTORNEYS



CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
2250 Corporate Circle, Suite 390
Henderson, Nevada 89014
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case arises from the tragic murder of Candice Cooks ("Decedent") which occurred at a property owned and operated by D.I.P. Investment Corp. ("DIP"). In the parking lot premises, Decedent was shot in the back suffering injuries that led to her eventual death, leaving her two minor children, Sadie Blake and Brian Blake Jr. ("Minor Plaintiffs"), without their mother. Due to the circumstances of Decedent's murder and police investigation, there was a mistake as to the premises where the shooting occurred, and Plaintiffs mistakenly named the wrong entity in place of DIP in the original Complaint and Amended Complaint. Upon uncovering the mistake through discovery, Plaintiffs sought leave to substitute DIP as the correct Defendant and owner of the premises where Decedent was actually shot—which DIP opposed claiming the statute of limitations had run on all claims and relation back was not possible.

On January 10, 2024, after full briefing and oral argument, this Court filed notice that "for good cause appearing and after review that Defendant D.I.P. Investment Corporation's Motion to Dismiss is hereby GRANTED without Prejudice, and only dismisses Defendant D.I.P. Investment Corporation." *See* ***January 9, 2024, Status Check, Filed on January 10, 2024,*** **attached hereto as Exhibit 1**. This Court instructed DIP to "prepare the appropriate order, consistent with their papers" to dismiss all claims, as to DIP only—the instructions did not provide any guidance as to this Court's rationale or why claims were dismissed without prejudice. ***Id***. Plaintiffs now respectfully request clarification and reconsideration of this Court's Order to prevent a manifest injustice and to address conclusions of fact and law that are clear error.

Critically, Minor Plaintiffs, in their individual capacity, brought claims against DIP for negligent security and wrongful death under NRS 41.085. *See* ***Plaintiffs' Second Amended Complaint,*** **attached hereto as Exhibit 2**. Under Nevada law, "NRS 41.085(4) creates an independent cause of action in the heirs that is distinct from both the decedent's claim and that of the estate" and "[t]he heirs' claims are derivative in the sense that they depend on the decedent's personal injury, but they are otherwise independent." *El Jen Med. Hosp., Inc. v. Tyler*, 535 P.3d

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

660, 668; 671 (Nev. 2023). Thus, any determination that "Sadie's and Blake's claims are **derivative or contingent claims of the Estate of Candice Cooks' claims**, which are time barred under NRS 11.190" is clearly erroneous and contrary to Nevada law—which means that dismissal of those claims based on the statute of limitations is contrary to Nevada law and will result in a manifest injustice. *See* ***Order Granting DIP Investment Corp.'s Motion to Dismiss*****, at 6:4-5, attached hereto as Exhibit 3**.

Reconsideration exists and is justified for "correcting manifest errors of law or fact, newly discovered or previously unavailable evidence, the need to prevent manifest injustice, or a change in controlling law." *AA Primo Builders, LLC v. Washington,* 126 Nev. 578, 582, 245 P.3d 1190, 1193 (Nev. 2010) (internal quotations omitted). In this case, clarification is reasonable and justified to determine to what extent Minor Plaintiff's claims are dismissed without prejudice; reconsideration is reasonable and justified to prevent a manifest injustice that will result if Minor Plaintiffs' viable and independent wrongful death claims, brought in their individual capacity, are dismissed based on a statute of limitations that has not run. Accordingly, Plaintiffs respectfully request that this Court reconsider its decision to dismiss Minor Plaintiffs' claims, which are independent and in no way contingent on any claims of Decedent's Estate, and provide clarification as how and why any claims are dismissed without prejudice.

II.

RELEVANT FACTS

On October 6, 2023, this Court granted leave for Plaintiffs to amend and correct the mistake as to the location of the shooting and owner of the premises to name DIP as a Defendant and ordering "such substitutions shall relate back to the filing of the original Complaint, for all purposes, including the statute of limitations." *See* ***Stipulation and Order to Amend Complaint to Substitute Defendant, Dismiss Defendant, and Amend Case Caption*****, attached hereto as Exhibit 4**.

Plaintiffs' Second Amended Complaint clearly includes claims specifically brought for and on behalf of the Estate of Candice Sade Cooks ("Cooks Estate"), and claims brought by Minor Plaintiffs in their individual capacity—the case caption alone makes such facts clear. **Exhibit 2**

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

at 1. The Second Amended Complaint specifically notes that Minor Plaintiffs are heirs within the meaning of NRS 41.085 and includes a separate and distinct allegation that Minor Plaintiffs are each entitled to a one-half share of the Cooks Estate. ***Id.* at ¶¶ 9-11**. Plaintiffs, which includes the Cooks Estate (by and through special administrators) as well as Minor Plaintiffs individually (by and through their natural father) brought claims against DIP for Negligent Security and Wrongful Death. *See generally* ***Id.***

The Second Amended Complaint specifically notes "Plaintiff Brian and Plaintiff Sadie are heirs or personal representatives of Decedent." ***Id.* at ¶ 39**. Further, Plaintiffs allege that "under NRS 41.085 and NRS 41.100, Plaintiffs may maintain an action for damages" due to the wrongful death of Decedent. ***Id.* at ¶ 41**. Finally, the Second Amended Complaint specifically notes "Plaintiff Sadie and Plaintiff Brian suffered grief, sorrow, loss of a parent, loss of support, past and future loss of companionship, past and future loss of society, past and future loss of comfort, past and future loss of services, and funeral and burial related expenses" due to the wrongful death of their mother, and seeking relief for such losses. ***Id.* at ¶ 42**.

The Order dismissing all claims against DIP notes that dismissal pursuant to 12(b)(5) is only appropriate where "it appears with certainty that a plaintiff can prove **no set of facts** which would entitle him or her to relief under the claim." **Exhibit 3 at 3:10-22** (emphasis added). The Order specifically provides that "it is clear from the four corners of the second amended complaint that Sadie's and Blake's recovery is contingent on their status as surviving heirs of their mother, Candice Cooks." ***Id.* at 5:24-27**. The Order never addresses wrongful death claims under NRS 41.085 or NRS 41.100; instead, it emphasizes legal standards for intestate succession under NRS 134.090. ***Id.* at 5:26-6:4**. The Order states "Sadie's and Blake's claims are derivative or contingent claims of the Estate of Candice Cooks' claims, which are time barred under NRS 11.190." ***Id.* at 6:4-5**. The Order finds that "the only party with direct claims in this action is the Estate of Candice Cooks." ***Id.* at 6:6**. The Order concludes "because those direct claims are time barred under NRS 11.190(4) and there is no relation back under Rule 15(c), and there was no substitution under Rule 10(a), it logically follows that Sadie and Blake have no claims to be tolled

by NRS 11.250"—which means dismissal of all claims is appropriate and required based on the statute of limitations. ***Id.* at 6:7-9**.

III.

RELEVANT LEGAL STANDARDS

Courts have the considerable discretion and authority to "mend, correct, resettle, modify, or vacate, as the case may be, an order previously made and entered on a motion in the progress of the cause or proceeding." *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975). District courts are free to revisit and reverse their own rulings upon the request of a party pursuant to NRCP 60, and EDCR 2.24, which requires such requests be brought within 14 days of entry of an order. *See* EDCR 2.24(b). Courts have inherent authority to reconsider prior orders, and a trial judge is granted great discretion in such matters. *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217, 606 P.2d 1095, 1097 (1980).

Reconsideration is appropriate where "there is a reasonable probability that the Court may have arrived at an erroneous conclusion or overlooked some important question[.]" *State v. Fitch*, 68 Nev. 422, 426, 233 P.2d 1070, 1072 (1951); *see also Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) (noting reconsideration is justified if "new issues of fact or law are raised supporting a ruling contrary to the ruling already reached"). A court may reconsider a previously decided issue if the decision is clearly erroneous or will result in manifest injustice. *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 941 P.2d 486, 489 citing *Little Earth of United Tribes, Inc. v. United States Dep't of Hous. & Urban Dev.*, 807 F.2d 1433, 1441 (8th Cir. 1986) (explaining reconsideration is justified if "the decision is clearly erroneous and works manifest injustice."); *see also AA Primo*, 126 Nev. at 582, 245 P.3d at 1193 (holding reconsideration is for "correcting manifest errors of law or fact, newly discovered or previously unavailable evidence, the need to prevent manifest injustice") (internal quotations omitted).

In Nevada, a judgment is "clearly erroneous" when, after a review of the totality of the evidence, the judge "is left with the definite and firm conviction that a mistake has been committed." *Unionamerica Mortgage & Equity Trs. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272-73 (1981) (citing *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Clear error

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

occurs if "the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but apprehension". *Samuel v. Carroll,* 505 F. Supp. 2d 256, 261 (D. Del. 2007) (quotation omitted).

Reconsideration based on clear error is supported by basic principles of justice and Nevada's stated policy favoring decisions made on the merits. *Masonry & Tile,* 113 Nev. at 741; *see also Arnold v. Kip,* 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007), *as amended* (Nov. 21, 2007). A motion for reconsideration "should direct attention to some controlling matter which the court has overlooked or misapprehended." *In re Ross*, 99 Nev. 657, 659, 668 P.2d 1089 (1983).

IV.

LEGAL ARGUMENT

Any determination that no set of facts would entitle Minor Plaintiffs to relief as requested in the Second Amended Complaint is clear error and not supported by Nevada law, because "NRS 41.085(4) creates an independent cause of action in the heirs that is distinct from both the decedent's claim and that of the estate" and "[t]he heirs' claims are derivative in the sense that they depend on the decedent's personal injury, but they are otherwise independent." *El Jen*, 535 P.3d at 668; 671. Thus, the clear allegations as to the nature of Minor Plaintiffs' injuries and damages, as well as request for relief under NRS 41.085 and NRS 41.100, establishes that Minor Plaintiffs have separate and individual wrongful death claims under Nevada law—entirely separate and distinct from the claims of the Cooks Estate—for which the statute of limitations is tolled by NRS 11.250. Thus, reconsideration is reasonable and justified as to dismissal of Minor Plaintiffs' claims. At the same time, if this Court is not inclined to reconsider its Order, Plaintiffs respectfully request clarification as to how and why all claims are dismissed without prejudice.

A. Minor Plaintiffs' claims are distinct from any claims of the Cooks Estate, and it is a manifest injustice to dismiss those claims as the statute of limitations has yet to run.

The plain language of NRS 41.085 specifically provides "[w]hen the death of any person, whether or not a minor, is caused by the wrongful act or neglect of another, the heirs of the decedent and the personal representatives of the decedent **may each maintain an action** for damages against the person who caused the death…" NRS 41.085(2) (emphasis added). Further,

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

the plain language of the statute also provides **"[a]n action brought by the heirs of a decedent** pursuant to subsection 2 and the cause of action of that decedent brought or maintained by the decedent's personal representatives **which arose out of the same wrongful act or neglect may be joined**." NRS 41.085(3) (emphasis added). Indeed, under Nevada law wrongful death claims by heirs and the estate that arise from the same wrongful conduct "may" be joined, but are not required to be joined and are not contingent or derivative of each other. *Id*.

Finally, the plain language of the statute provides different and exclusive remedies for the separate wrongful death claims of an estate and an heir. Specifically, "heirs may prove their respective damages" and "the court or jury may award each person pecuniary damages for the person's grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering or disfigurement of the decedent." NRS 41.085(4). In contrast, damages recoverable by the estate include "special damages, such as medical expenses, which the decedent incurred or sustained before the decedent's death, and funeral expenses" as well as "[a]ny penalties, including, but not limited to, exemplary or punitive damages…" NRS 41.085(5). The separate damages available to heirs and the estate are also subject to different treatment regarding any debts of the decedent's estate. *Id*.

In *El Jen*, the Nevada Supreme Court reaffirmed that wrongful death claims of an estate and claims of heirs are separate, distinct, and subject to different treatment under Nevada law. 535 P.3d at 671. In *El Jen*, a wife signed intake documents containing an arbitration agreement on behalf of her husband, who was incapacitated requiring long-term care, and eventually died due to injuries related to a fall at a care facility. *Id*. at 663. The arbitration agreement specifically claimed to bind all derivative claims by or through the admitted long-term care resident, "including that [of] any parent, spouse, child, guardian, executor[,] administrator, legal representative, or heir of the Resident." *Id*.

The district court determined that "the statutory heirs were not bound by the [arbitration] agreement, which they did not sign, and declined to compel arbitration of their claims." *Id*. The Nevada Supreme Court affirmed the district court decision noting "[t]he heirs' claims are derivative in the sense that they depend on the decedent's personal injury, but they are otherwise

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

independent" and cannot be compelled to arbitration based on an agreement signed by a decedent. *Id*. at 671. In reaching such a conclusion, the *El Jen* Court emphasized that NRS 41.085 permits the estate and heirs to each bring wrongful death claims, "giving statutory heirs a cause of action separate and distinct from that of the estate." *Id*. at 668, citing *Fernandez v. Kozar*, 107 Nev. 446, 449, 814 P.2d 68, 70 (1991) (holding that a "wrongful death action . . . creates an independent right in designated survivors for damages they sustain by reason of the decedent's death") (omission in original) (internal quotation marks omitted).

By extension, the *El Jen* Court emphasized that NRS 41.085 permits different damages for the estate and the heirs, which are subject to different conditions, implying that the claims and damages are separate and distinct. *Id*. at 668-669. Specifically, *El Jen* noted that heirs and not the estate can recover "for losses that the heirs suffered individually, such as 'grief or sorrow' and 'loss of probable support, companionship, society, comfort and consortium,' which are not liable for payment of the decedent's debts. *Id*. at 668 quoting NRS 41.085(4). As *El Jen* explained, Nevada law "provides statutory heirs with a separate and independent claim to compensate them for their personal losses resulting from the decedent's death." *Id*.

Ultimately, the *El Jen* Court reaffirmed and clarified that "Nevada's wrongful death statute **creates a separate cause of action in favor of a decedent's statutory heirs**" and that "[t]he heirs' claims are derivative in the sense that they depend on the decedent's personal injury, **but they are otherwise independent**." *Id*. at 671 (emphasis added).

In this case, the plain language of the allegations in the Second Amended Complaint and the plain language of NRS 41.085 establish that Minor Plaintiffs have separate, independent, individual, and distinct claims which are in no way derivative, dependent, or contingent on any claims of the Cooks Estate. As Minor Plaintiffs' wrongful death claims are an entirely separate cause of action based on their status as heirs, which are independent from any claims of the estate, the statute of limitations for Minor Plaintiffs' wrongful death claims is tolled under NRS 11.250. Thus, it was clear error to dismiss the claims of the Minor Plaintiffs.

The plain language of the Second Amended Complaint clearly considers and pleads individual wrongful death claims on behalf of Minor Plaintiffs. As a preliminary matter, Minor

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

Plaintiffs are listed individually as parties to this litigation in their individual capacity, which means they are not bringing claims solely as heirs of the estate. **Exhibit 2 at 1**. If Minor Plaintiffs only sought to obtain relief by and through the estate of the Decedent, there would be no purpose for including them individually as Plaintiffs in this litigation, because the special administrators have the power to pursue all claims for and on behalf of the estate for the exclusive benefit of all heirs pursuant to NRS 140.040. *See* ***Order Appointing Co-Special Administrators,*** **attached hereto as Exhibit 5**. Thus, Minor Plaintiffs are bringing claims in their individual capacity.

Further, Minor Plaintiffs are legal heirs of Decedent and specifically bring wrongful death claims pursuant to NRS 41.085, specifically requesting damages that are only available to heirs individually under NRS 41.085(4). Critically, the Second Amended Complaint explicitly provides "Plaintiff Sadie and Plaintiff Brian suffered grief, sorrow, loss of a parent, loss of support, past and future loss of companionship, past and future loss of society, past and future loss of comfort, past and future loss of services, and funeral and burial related expenses…" **Exhibit 2 at ¶ 42**. Indeed, only "heirs" are entitled to recover "pecuniary damages for the person's grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering or disfigurement of the decedent." NRS 41.085(4). Even more, the damages Minor Plaintiffs specifically identified are not identified as damages the estate can recover under NRS 41.085(5). Thus, the plain language of the Second Amended Complaint, exclusively requesting recovery of damages available only to the heirs individually, necessarily requires the determination that Minor Plaintiffs brought wrongful death claims in their individual capacity. The Order is clearly erroneous in asserting that "the only party with direct claims in this action is the Estate of Candice Cooks." **Exhibit 3 at 6:6**.

The Order finding that Minor Plaintiffs "did not assert any direct claims against D.I.P." and that "Sadie's and Blake's claims are derivative or contingent claims of the Estate of Candice Cooks' claims, which are time barred under NRS 11.190" is clearly erroneous based on *El Jen* and the allegations above. First, as previously explained, the plain language of the allegations necessarily requires a determination that Minor Plaintiffs brought claims in their individual capacity as heirs against DIP pursuant to NRS 41.085. At the same time, Nevada law makes it

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

explicitly clear that Minor Plaintiffs' individual wrongful death claims as heirs are not derivative of or contingent on the wrongful death claims of the Cooks Estate. *El Jen*, 535 P.3d at 671.

Critically, Minor Plaintiffs' wrongful death claims are independent and not derivative, dependent, or contingent on the claims of the Cook Estate as a matter of law. The Order is clearly erroneous in asserting that "Sadie's and Blake's claims are derivative or contingent claims of the Estate of Candice Cooks' claims…" **Exhibit 3 at 6:2-5**. The Nevada Supreme Court has explicitly rejected the idea that wrongful death claims of heirs are contingent on the wrongful death claims of the estate. *El Jen*, 535 P.3d at 671. Minor Plaintiffs' claim are "derivative in the sense that they depend on the decedent's personal injury, but they are otherwise independent"—Minor Plaintiffs claims are derivative of Decedent's death, not derivative of any claims of the Cooks Estate.

Once Minor Plaintiffs meet the definition of an "heir" as defined in NRS 41.085, they can bring their own individual and independent wrongful death claims with specific damages explicitly permitted only for heirs under NRS 41.085(4). The Order erroneously concludes that because Minor Plaintiffs' claims are derivative of their status as heirs under NRS 134.090, their claims are "derivative or contingent claims of the Estate of Candice Cooks' claims which are time barred under NRS 11.190." **Exhibit 3 at 5:24-6:5**. Nevada law is clear that Minor Plaintiffs claims derive from their status as heirs, but after establishing they are heirs pursuant to NRS 41.085(1), their wrongful death claims are independent and individual under Nevada law. *See* NRS 41.085(1). *See also El Jen*, 535 P.3d at 671.

In short, DIP has not and cannot establish that Minor Plaintiffs are not entitled to any relief under any set of facts based on the allegations in the Second Amended Complaint, considering their status as heirs entitled to bring wrongful death claims in their individual capacity based on NRS 41.085. The determination that "[t]he plain language of the statute and the express nature of Brian's and Sadie's allegations in the operative complaint make clear that Sadie and Blake did not assert any direct claims against D.I.P." is clearly erroneous based on the claim for damages explicitly reserved for heirs individually and not the estate, pursuant to NRS 41.085(4). *See and compare* NRS 41.085(4) and **Exhibit 2 at ¶ 42**. Further, the determination that Minor Plaintiffs can only recover based on the claims of the Cooks Estate is clearly erroneous and contrary to

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

Nevada law, as is the determination that Minor Plaintiffs "have no claims to be tolled by NRS 11.250." **Exhibit 3 at 6:4-9**.

The plain language of NRS 11.250 provides that the statute of limitations for Minor Plaintiffs' individual claims is tolled until they are 18 years old—which means the statute of limitations has yet to run on Minor Plaintiffs' individual wrongful death claims and will not do so for some time. Thus, it was clear error to dismiss Minor Plaintiff's wrongful death claims and they will suffer a manifest injustice if they are not permitted to bring their claims against DIP. *See Fernandez v. Kozar*, 107 Nev. 446, 449-50, 814 P.2d 68, 70 (1991) (finding that because the statute of limitations had not expired with respect to the heirs' wrongful death action there was no need for the second amended complaint alleging wrongful death to relate back to the original complaint).

B. As Minor Plaintiffs are the only heirs to the Cooks Estate it is a manifest injustice to dismiss the claims of the Cooks Estate based on a mistake as to the shooting location.

The plain language of the Second Amended Complaint notes that the Cooks Estate will be split between Minor Plaintiff's with each obtaining a one-half share. **Exhibit 2 at ¶ 11**. Thus, Minor Plaintiffs are the only parties who will be prejudiced if the claims of the Cooks Estate are dismissed. As the statute of limitations has not run for Minor Plaintiffs claims, and as Minor Plaintiffs are the only parties entitled to any share of the Cooks Estate, it would be a manifest injustice and extremely prejudicial to deny Minor Plaintiffs the opportunity to obtain damages specifically reserved for Decedent's estate. *See* NRS 41.085(5).

Critically, the only parties with any interest in the Cooks Estate are Minor Plaintiffs, for whom the statute of limitation on any and all claims is tolled until they reach the age of 18, pursuant to NRS 11.250. **Exhibit 2 at ¶ 11**. As a result, it is logical and reasonable that any claims of the estate—which are being brought specifically for and on behalf on Minor Plaintiffs only—should not be dismissed based on a mistake as to the location of the shooting that occurred and the statute of limitations. The damages available to Minor Plaintiffs alone, by and through the Cooks Estate include "special damages, such as medical expenses, which the decedent incurred or sustained before the decedent's death, and funeral expenses" and penalties including punitive

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

damages. *See* NRS 41.085(5). Consequently, Minor Plaintiffs will be unfairly denied specific forms of recovery for the wrongful death of their mother based on a reasonable mistake given the circumstances, even if the statute of limitations for their claims is tolled until they are 18 based on NRS 11.250.

It is a manifest injustice to deny Minor Plaintiffs any recovery for punitive damages or special damages incurred by Decedent prior to her death, especially when and if the statute of limitations for Minor Plaintiffs claims has yet to run. Thus, it is reasonable and fair to permit amendment to correct a mistake as to the location of the shooting and the party responsible for the premises where the shooting actually occurred, so that Minor Plaintiffs—who are the sole heirs entitled to any portion of the Cooks Estate—can recovery specific damages reserved for the Cooks Estate under Nevada law. **Exhibit 2 at ¶ 11**. It is a manifest injustice to deny Minor Plaintiffs relief requested based on the statute of limitations when and if the statute of limitations for their claims is tolled until they turn 18 years of age. *See* NRS 11.250. If this Court is not inclined to reconsider and amend its Order, Plaintiffs respectfully request clarification as to how and why claims against DIP are dismissed without prejudice and what procedural options exist to allow Plaintiffs to assert claims against DIP in the future.

C. If the Court will not reconsider its Order, Plaintiffs respectfully request clarification as to how and why claims against DIP are dismissed without prejudice.

The plain language of the Order and instruction to DIP to draft the Order states that Plaintiffs claims against DIP are dismissed without prejudice, but the meaning and significance of such a fact is not clear. Thus, Plaintiffs respectfully request clarification as to how and why claims against DIP are dismissed without prejudice to determine what procedural options exist to permit Plaintiffs to bring claims against DIP in the future.

Based on the plain language of the Order it is not clear if Plaintiffs are free to seek relief under NRCP 10(d) to amend to name properly designated DOE/ROE/ABC parties to add DIP as a party to this litigation. Critically, the Order explicitly notes that "although Rule 10(a) does allow a plaintiff to substitute properly pleaded Roe Corporations, that is not the actions that Plaintiffs pursued in this action" and Plaintiffs requested to substitute DIP in place of the improperly named

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

Defendant, and "[t]herefore, the Court finds that Rule 10(a) does not apply to this action." **Exhibit 3 at 5:10-17**. Implicit in the above determination is that Plaintiff can seek relief to amend and properly name DIP as a party to this litigation pursuant to NRCP 10(d), especially as all claims were dismissed without prejudice. ***Id.* at 6:11-12**.

The Nevada Supreme Court explained "NRCP 10(a) is a self-contained rule that is independent of NRCP 15(c) in its relation back effect." *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 882, 822 P.2d 1100, 1106 (1991) overruled on other grounds in *Costello v. Casler*, 127 Nev. 436, 254 P.3d 631, (2011). When ROE corporate defendants are properly alleged, they are "already parties in legal contemplation" and amendments to identify such parties under NRCP 10(a) automatically relate back. *Id*. at 882, 822 P.2d at 1106. Amendments under NRCP 10(a) "do not require that the intended defendant have actual notice of the institution of the action…because we have balanced the equities in favor of accountability and recompense over prejudice, the element concerning prejudice to the unnamed defendant is also inapplicable[.]" *Id*.

Plaintiffs request clarification as to if they are free to seek leave to amend and name DIP as a party pursuant to NRCP 10(a). The Order at issue does not make any factual findings that NRCP 10(a) does not apply or precludes adding DIP as a party. The Order merely notes that "although Rule 10(a) does allow a plaintiff to substitute properly pleaded Roe Corporations, that is not the actions that Plaintiffs pursued in this action." **Exhibit 3 at 14-16**. Thus, Plaintiffs request clarification as to if they are free to seek leave to amend to properly name DIP as a party to this litigation pursuant to NRCP 10.

Finally, if this Court is not inclined to amend the Order and permit claims brought by Minor Plaintiffs in their individual capacity, Plaintiffs respectfully request clarification as to if Minor Plaintiffs are free to bring claims against DIP in their individual capacity, especially as all claims were dismissed without prejudice. ***Id.* at 6:11-12**. Plaintiffs respectfully maintain that the plain language of the Second Amended Complaint clearly establishes that Minor Plaintiffs brought claims in their individual capacity against DIP, and the statute of limitations for those claims are tolled by NRS 11.250. Yet, if this Court does not agree, Plaintiffs respectfully request

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

clarification as to how and why all claims against DIP are dismissed without prejudice and if Plaintiff are free to file claims against DIP and then later move to consolidate the different legal actions.

Logically, if DIP's arguments and the conclusions of fact and law in the Order are taken at face value, Minor Plaintiffs can still bring individual wrongful death claims against DIP and the statute of limitations has not run on their claims. Assuming *arguendo* that the Second Amended Complaint does not contain any direct claims for relief by Minor Plaintiffs, which are tolled by NRS 11.250, Plaintiffs still have a statutory right to individual wrongful death claims against DIP as heirs, and the statute of limitations for those claims is tolled until Minor Plaintiffs reach18 years of age. *See* NRS 41.085. *See also El Jen*, 535 P.3d at 671. As a logical consequence, assuming all DIP's arguments and findings of fact and law in the Order as true, Minor Plaintiffs have yet to assert their individual wrongful death claims against DIP and the statute of limitations for those claims has not expired.

Thus, Plaintiffs respectfully request clarification as to if Minor Plaintiffs are free to file wrongful death claims against DIP in their individual capacity and seek to consolidate those claims with this litigation. Plaintiffs maintain that Nevada law is clear that Minor Plaintiff's wrongful death claims are not contingent upon or dependent upon any claims of the Cooks Estate, and the allegations in the Second Amended Complaint specifically request relief available only to Minor Plaintiffs alone as heirs bringing claims in their individual capacity pursuant to NRS 41.085. As a result, it is more efficient to permit those claims to remain and proceed in this litigation. Yet, if this Court is not inclined to amend the Order, Plaintiffs respectfully request clarification as to how and why all claims against DIP are dismissed with prejudice, specifically if Minor Plaintiffs can bring future claims against DIP in their individual capacity.

V.

CONCLUSION

In short, the findings of fact and conclusions of law in the Order are contrary to Nevada law and legal precedent and will result in a manifest injustice by dismissing Minor Plaintiffs' individual wrongful death claims even if the statute of limitations for those claims has not passed.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

Critically, Minor Plaintiffs are listed individually in the caption, and bring independent wrongful death claims in their individual capacity as permitted by Nevada law and seeking relief that is explicitly and exclusively reserved for the wrongful death claims of heirs brought independently and entirely separate from any relief requested by the Cooks Estate. *See* NRS 41.085. *See also El Jen*, 535 P.3d at 671. DIP has not and cannot establish that Minor Plaintiffs did not bring independent wrongful death claims in their individual capacity based on the plain language of the allegations and Nevada law.

Thus, the statute of limitations has not run on Minor Plaintiff's independent and individual wrongful death claims and a manifest injustice will result if Minor Plaintiffs claims against DIP are dismissed from this litigation. *See* NRS 11.250. If this Court is not inclined to amend its Order, Plaintiffs respectfully request clarification as to how and why claims against DIP are dismissed without prejudice and what procedural options Plaintiffs may or may not use to again bring claims against DIP.

WHEREFORE, Plaintiffs respectfully requests this Court amend its Order to permit all claims against DIP because the statute of limitations has not run on Minor Plaintiffs' wrongful death claims and it would be a manifest injustice to dismiss claims of the Cooks Estate, given that Minor Plaintiffs are the only parties entitled to a share of the proceeds from the Cooks Estate.

DATED this 2nd day of February, 2024.

CHRISTIAN MORRIS TRIAL ATTORNEYS



CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
2250 Corporate Circle, Suite 390
Henderson, Nevada 89014
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
702-434.8282 / 702-434.1488 (fax)

CERTIFICATE OF E-SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 8.02, I hereby certify that on the 2nd day of February, 2024, a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR CLARIFICATION AND RECONSIDERATION OF ORDER DISMISSING ALL CLAIMS AGAINST D.I.P. INVESTMENT CORP. WITHOUT PREJUDICE** was served to the following parties by electronic transmission through the Odyssey eFileNV system and/or mailed via US mail:

Jason D. Smith, Esq.
John J. Pictum III, Esq.
HOLLY DRIGGS
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Attorneys for Defendant
D.I.P. Investment Corp.

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Blvd., Ste. 120
Las Vegas, NV 89102
Attorney for Defendant
Pink Dragon Entertainment, LLC

/s/ Laura Edwards
An employee of CHRISTIAN MORRIS TRIAL ATTORNEYS

Exhibit 1

Exhibit 1

Exhibit 1

A-22-852100-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Other Negligence **COURT MINUTES** **January 09, 2024**

A-22-852100-C Estate of Candice Sade Cooks, Plaintiff(s)
vs.
Pink Dragon Entertainment, L.L.C., Defendant(s)

January 09, 2024 **3:00 AM** **Status Check**

HEARD BY: Allf, Nancy **COURTROOM:** No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- COURT FINDS after review that Defendant D.I.P. Investment Corporation s Motion to Dismiss was filed on November 9, 2023.

COURT FURTHER FINDS after review that Plaintiff s Opposition was filed on November 22, 2023.

COURT FURTHER FINDS after review that Defendant s Reply was filed on December 13, 2023.

COURT FURTHER FINDS after review that a Hearing on the Motion to Dismiss was held on December 20, 2023.

COURT FURTHER FINDS after review that the Matter was taken Under Advisement.

COURT FURTHER FINDS after review that Supplement to Plaintiff s Opposition was filed on December 29, 2023.

COURT FURTHER FINDS after review that Supplement to Defendant s Motion to Dismiss was filed

on December 29, 2023.

THEREFORE COURT ORDERS for good cause appearing and after review that Defendant D.I.P. Investment Corporation s Motion to Dismiss is hereby GRANTED without Prejudice, and only dismisses Defendant D.I.P. Investment Corporation.

Defendant to prepare the appropriate order, consistent with their papers, and submit to Department 27 Order in the Court Inbox.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 1/10/2024

Exhibit 2

Exhibit 2

Exhibit 2

Electronically Filed
10/11/2023 2:13 PM
Steven D. Grierson
CLERK OF THE COURT

SACOMP
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH DISALVO, ESQ.
Nevada Bar No. 16398
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
T: (702) 434-8282
F: (702) 434-1488
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; D.I.P. INVESTMENT CORP., a domestic corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendant.	CASE NO.: A-22-852100-C DEPT NO.:27 **SECOND AMENDED COMPLAINT**

Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by

Case Number: A-22-852100-C

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

and through their natural parent, BRIAN BLAKE, by and through their counsel, Christian M. Morris, Esq., Victoria R. Allen, Esq., Jamie N. McInelly, Esq. and Wesley H. LeMay, Esq., of CHRISTIAN MORRIS TRIAL ATTORNEYS, and for their causes of action against Defendants, PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; D.I.P. INVESTMENT CORP., a Domestic Corporation; ; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, complains and alleges as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The Eighth Judicial District Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds $15,000.00.

GENERAL ALLEGATIONS

2. CANDICE SADE COOKS ("Decedent") at all relevant times described herein was a resident of Clark County, Nevada.

3. Plaintiff, TERESA MASON ("Plaintiff Teresa"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

4. Plaintiff, JANICE GONZALEZ ("Plaintiff Janice"), is the Co-Special Administrator of the Estate of Candice Sade Cooks and resident of Clark County, Nevada.

5. Plaintiff, SADIE BLAKE ("Plaintiff Sadie"), is and at all relevant times was, a minor residing in Clark County, Nevada.

6. Plaintiff, BRIAN BLAKE, JR. ("Plaintiff Blake"), is and at all relevant times was, a minor residing in Clark County, Nevada.

7. At all times relevant herein, Plaintiff Sadie and Plaintiff Blake are the children of Decedent.

8. At all times relevant herein, BRIAN BLAKE is the natural father of Plaintiff Sadie and Plaintiff Blake.

9. Plaintiff Sadie is an heir of Decedent within the meaning of NRS 41.085.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

10. Plaintiff Blake is an heir of Decedent within the meaning of NRS 41.085.

11. Plaintiff Sadie and Plaintiff Blake are each entitled to a one-half share of Decedent CANDANCE SADE COOKS' estate pursuant NRS 134.090.

12. Plaintiff Teresa, Plaintiff Janice, Plaintiff Sadie, Plaintiff Blake and Decedent collectively referred to as "Plaintiffs."

13. Defendant, PINK DRAGON ENTERTAINMENT, L.L.C. d/b/a Pink Dragon Entertainment ("Defendant Pink"), is, and at all relevant times, was a domestic limited-liability company doing business in Clark County, Nevada.

14. Defendant, D.I.P. INVESTMENT CORP. ("Defendant D.I.P. Investment"), is, and at all relevant times, was a domestic nonprofit company doing business in Clark County, Nevada.

15. Defendant Pink and Defendant D.I.P. Investment hereinafter referred to as "Defendants."

16. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant is responsible, negligently, or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as hereinafter alleged.

17. On information and belief, DOES/ROE CORPORATIONS/ABC LIMITED LIABILITY COMPANIES Defendant was involved in the initiation, approval, support or execution of the wrongful acts upon which this litigation is premised, or of similar actions against Plaintiff of which Plaintiff is presently unaware.

18. That on or about April 9, 2021, Defendant Pink owned, controlled and/or operated the arts, entertainment, recreation business that operated out of 4200 W. Russell Road, Las Vegas, Nevada, commonly known as "Pink Dragon Entertainment".

19. Upon information and belief, Decedent was an employee and/or had a master/servant and/or employer/employee relationship with Defendant Pink at Pink Dragon Entertainment.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

20. Upon information and belief, at all relevant times relevant hereto, Defendant D.I.P. Investment owned, operated, managed, supervised, and/or otherwise controlled the residential community/apartment complex commonly known as Diamondhead Apartments, located at 1799 N. Decatur Boulevard and 1813 N. Decatur Boulevard, Las Vegas, Nevada 89108 ("Subject Neighborhood").

21. Upon information and belief, at all relevant times relevant hereto, Defendant D.I.P Investment was authorized to regulate the Subject Neighborhood and provide security for residents and guests, and was responsible for governing, securing, and monitoring the housing development where the Subject Neighborhood is located.

22. Upon information and belief, on April 9, 2021, Decedent was driven by a non-party to the Subject Neighborhood for an employee meeting arranged with Pink Dragon Entertainment.

23. Upon information and belief, on April 9, 2021, once the employee meeting ended, a Client that was not a resident or guest of Defendant D.I.P Investment's property approached Decedent and accused her of stealing his wallet.

24. Upon information and belief, on April 9, 2021, Client shot Decedent ("Subject Incident").

25. On April 9, 2021, Decedent passed away at University Medical Center.

26. As a direct and proximate result of the negligence of the Defendant, Plaintiffs suffered damages in excess of $15,000.

27. As a direct and proximate result of Defendant's negligence, Plaintiffs have had to retain the services of the law offices of the Christian Morris Trial Attorneys to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

FIRST CAUSE OF ACTION

(Negligent Security)

28. Plaintiffs repeat and reallege each and every allegation contained in paragraphs hereinabove as though fully set forth herein.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

29. At all times relevant hereto, Defendant Pink had and/or assumed a non-delegable duty to provide care, safety, and protection to its employees and/or those with whom it has a master/servant and/or employer/employee relationship, including Decedent.

30. At all times relevant hereto, Defendant Pink failed to provide care, safety, and protection through adequate security personnel at the Subject Neighborhood while a work meeting took place, resulting in the Subject Incident.

31. At all times relevant hereto, Defendant D.I.P Investment was in control of the gated neighborhood and was responsible for security of residents and guests.

32. At all times relevant hereto, Defendant D.I.P Investment did not provide adequate security for residents and guests of the Subject Neighborhood, including Decedent.

33. That Defendants' failure to provide adequate security breached their duty of care to Decedent, which resulted in her death.

34. Defendants manifested reckless disregard for the safety of Decedent by failing to provide security where the Subject Incident occurred at the time of the Subject Incident.

35. Defendants' breach of this duty of care was the legal and proximate cause of each of the Decedent's death.

36. As a further direct and proximate result of Defendants' negligence, Plaintiffs suffered damages in excess of $15,000.00.

37. As a direct and proximate result of Defendants' negligence, Plaintiffs have had to retain the services of the law offices of the Christian Morris Trial Attorneys to pursue this action and is entitled to recover costs of suit and reasonable attorneys' fees incurred therein.

SECOND CAUSE OF ACTION

(Wrongful Death)

38. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs hereinabove as though fully set forth herein.

39. Plaintiff Brian and Plaintiff Sadie are heirs or personal representatives of Decedent.

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

40. Defendants caused Decedent's death by wrongful act or neglect as described hereinabove.

41. Therefore, under NRS 41.085 and NRS 41.100, Plaintiffs may maintain an action for damages against Defendants, or, if Defendants are dead, against their personal representative.

42. As a direct and proximate result of the actions or omissions of Defendants, Plaintiff Sadie and Plaintiff Brian suffered grief, sorrow, loss of a parent, loss of support, past and future loss of companionship, past and future loss of society, past and future loss of comfort, past and future loss of services, and funeral and burial related expenses, all in a sum in excess of excess of $15,000.00.

43. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs are entitled to punitive damages per NRS 42.005 and 42.007 in an amount to be determined by a jury.

44. As a direct and proximate result of the actions or omissions of Defendants, Plaintiffs have had to retain the services of Christian Morris Trial Attorneys to pursue this action and are entitled to recover costs of suit and reasonable attorneys' fees incurred herein.

///

///

///

///

///

///

///

///

///

///

///

WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

1. General damages in excess of $15,000.00 for Plaintiffs;
2. Special damages in excess of $15,000.00 for Plaintiffs;
3. For Punitive damages to be determined by the jury of Plaintiffs;
4. For pre- and post-judgment interest as permitted by law;
5. For costs and attorneys' fees as permitted by law; and
6. For such other and further relief as the Court deems necessary and proper.

DATED this 11th day of October, 2023.

CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/ Victoria R. Allen

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH DISALVO, ESQ.
Nevada Bar No. 16398
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiffs

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
(702) 434-8282 / (702) 434-1488 (fax)

CERTIFICATE OF E-SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 8.02, I hereby certify that on the 11th day of October, 2023, a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** was served to the following parties by electronic transmission through the Odyssey eFileNV system and/or mailed via US mail:

D.I.P INVESTMENT CORP
c/o Cogency Global Inc.
321 W. Winnie Lane, #104
Carson City, NV 89703
Registered Agent for D.I.P. INVESTMENT CORP

John C. Courtney, Esq.
Andrew P. Dunning, Esq.
Sebastian F. Gajardo, Esq.
LBC LAW GROUP
3215 W. Charleston Blvd., Ste. 120
Las Vegas, NV 89102
Attorney for Defendant
Pink Dragon Entertainment, LLC

/s/ Laura Edwards
An employee of CHRISTIAN MORRIS TRIAL ATTORNEYS

Exhibit 3

Exhibit 3

Exhibit 3

ELECTRONICALLY SERVED
1/22/2024 10:02 AM

Electronically Filed
01/22/2024 10:00 AM
CLERK OF THE COURT

OGM
Jason D. Smith, Esq.
Nevada Bar No. 9691
John J. Pictum III, Esq.
Nevada Bar No. 15979
HOLLEY DRIGGS
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
E-mail: jsmith@nevadafirm.com
jpictum@nevadafirm.com
Attorneys for Defendant D.I.P. Investment Corp.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

Teresa Mason and Janice Gonzalez, as Co-Special Administrators of the Estate of Candice Sade Cooks; Sadie Blake and Brian Blake Jr., by and through their natural parent, Brian Blake, Plaintiffs, v. Pink Dragon Entertainment, L.L.C., a Domestic Limited Liability Company d/b/a/ Pink Dragon Entertainment; D.I.P. Investment Corp., a domestic corporation; Doe Individuals 1 through 10; Roe Corporations 11 through 20; and ABC limited liability companies 21 through 30, inclusive, Defendants.	Case No: A-22-852100-C Dept. No: 27 **ORDER GRANTING D.I.P. INVESTMENT CORP.'S MOTION TO DISMISS**

This matter came before the Court on Defendant D.I.P. Investment Corp.'s ("***D.I.P.***") Motion to Dismiss Plaintiff Teresa Mason and Janice Gonzales, as Co-Special Administrators of the Estate of Candice Sade Cooks ("***Estate of Candice Cooks***"); Sadie Blake and Brian Blake Jr., by and through their natural parent, Brian Blake ("***Sadie***" and "***Brian***") (collectively together with the Estate of Candice Cooks "***Plaintiffs***") complaint for failure to state a claim upon which relief can be granted on December 20, 2023, at 10:00 a.m. in Department 27 of the Eighth Judicial District Court, County of Clark, before the Honorable Judge Nancy Allf. Victoria R. Allen, Esq., appeared on behalf of Plaintiffs and Jason D. Smith, Esq., and John J. Pictum III, Esq., appeared on behalf of D.I.P.

Case Number: A-22-852100-C

HOLLEY DRIGGS

HOLLEY DRIGGS

FINDINGS OF FACT & CONCLUSIONS OF LAW

I. FINDINGS OF FACT

Plaintiffs' original complaint was filed on May 4, 2022. *See* Compl. In that complaint, Plaintiffs allege that on April 9, 2021, Candice Cooks ("***Cooks***") drove to an apartment complex to meet up with an individual (that was not a resident of the apartment complex) for a "client meeting." *See* Compl. at ¶¶ 22-23. During this "client meeting", Cooks was acting as an employee of Pink Dragon Entertainment L.L.C. ("***Pink Dragon***"). *See id.* at ¶¶ 23-24. The original complaint further alleges that the apartment complex that Cooks drove to that night was located at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108, and was owned and operated by Avila Park Homeowners Association ("***Avila***"). *See id.*at ¶ 23.

Once Cooks' "client meeting" concluded, the individual Cooks met up with accused her of stealing his wallet. *See id.* And when she attempted to leave the apartment complex, that individual shot her; and she was later pronounced dead at University Medical Center of Southern Nevada. *See id.* at ¶¶ 24-25. Finally, the original complaint alleges that Cooks death and injuries were a "direct and proximate cause" of Avila's negligence. *See id.* At ¶27. Thus, the original complaint names Pink Dragon (Cooks' employer) and Avila (the alleged property owner of the apartment complex where Cooks was shot).

On December 22, 2022, the Court entered a stipulation signed by counsel for Plaintiffs and Avila. *See* Stipulation to Amend Compl., on file herein. In that stipulation, Avila agreed to allow Plaintiffs to file its first amended complaint that clarified factual details of the April 9, 2021, incident. *See id.*

On October 6, 2023, the Court entered a second stipulation agreed upon by counsel for Plaintiffs, Avila, and Pink Dragon. *See* Stipulation and Order to Amend First Am. Compl., on file herein. This second stipulation states that "discovery has indicated D.I.P. INVESTMENT CORP. is the properly named Defendant to this action." *See id* at ¶ 2. Therefore, Plaintiffs, Avila, and Pink Dragon agreed to substitute D.I.P. in place of Avila. *See id.* at ¶ 3.

On October 11, 2023, Plaintiffs filed their second amended complaint. *See* Second Am. Compl. In this second amended complaint, the factual allegations remain the same except for the location of the apartment complex that Cooks allegedly held her "client meeting." Thus, instead of alleging that the "client meeting" and shooting happened at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108, Plaintiffs now allege that it took place at the "Diamondhead Apartments located at 1799 N. Decatur Blvd. and 1813 N. Decatur Blvd., Las Vegas, Nevada 89108." *Compare* First Am. Compl. at ¶ 21 *with* Second Am. Compl. at ¶ 20.

II. CONCLUSIONS OF LAW

A. Motion to Dismiss Standard

A party may assert by motion the defense that the plaintiff failed to state a claim upon which relief may be granted. Nev. R. Civ. P. 12(b)(5). Pursuant to Rule 12(b)(5), dismissal of a claim is appropriate if it appears with certainty that a plaintiff can prove no set of facts which would entitle him or her to relief under the claim. *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985). A court should dismiss a claim if it lacks a cognizable legal theory or if there are insufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1122 (9th Cir. 2008). Put simply, a complaint must contain some "set of facts, which, if true, would entitle [the plaintiff] to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). In the event that a plaintiff's claims are barred by the statute of limitations, a Rule 12(b)(5) motion is appropriate. *See Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture, LLC*, 129 Nev. 181, 186, 300 P.3d 124, 128 (2013) (holding that dismissal for failure to state a claim is appropriate where the claim is time-barred by the statute of limitations).

B. Plaintiff's Claims Against D.I.P. Are Untimely Pursuant to NRS 11.190(4)

Plaintiff's original complaint was filed eleven months before the statute of limitations expired, on May 4, 2022. *See* Compl. Within that complaint, Plaintiff alleges that "[O]n or about April 9, 2021" Cooks drove to an apartment complex (located at 1800-1860 N. Decatur Blvd., Las Vegas, Nevada 89108) to meet up with an individual (that was not a resident of the apartment

HOLLEY DRIGGS

complex) for a "client meeting." *See* Compl. at ¶¶ 22-23. The complaint further alleges that the apartment complex was owned and operated by Avila Park Homeowners Association ("***Avila***"). *See id.*at ¶ 23.

After the "client meeting", the complaint alleges that when Cooks was leaving the apartment complex, the individual she met with accused her of stealing his wallet. *See id.* And when she attempted to leave the apartment complex, the individual shot her; and she was later pronounced dead at University Medical Center of Southern Nevada. *See id.* at ¶¶ 24-25. Finally, the original complaint alleges that Cooks death and injuries were a "direct and proximate cause" Avila's negligence. *See id.* at ¶27.

Nearly eighteen months after filing its original complaint, Plaintiffs now allege they have discovered that this incident purportedly did not happen on Avila's property—but rather at a property owned by D.I.P.; and thus, are now seeking to bring the same claims they originally asserted against Avila against D.I.P. *See* Second Am. Compl. But the statute of limitations for these claims expired on April 9, 2023. *See* NRS 11.190(4) (requiring a plaintiff to bring any action to recover damages for the wrongful death or injuries resulting from the negligence of another within two-years of the date of the death or injury). Therefore, the only mechanism for Plaintiffs' claims to survive is through relation back under Rule 15(c), or through Rule 10(a). But because neither of those Rules are applicable to this action. The Court must grant D.I.P.'s motion.

C. Plaintiff's Second Amended Complaint Does Not Relate Back To The Date of The Original Complaint

Under Rule 15, a plaintiff cannot substitute one defendant for another after the statute of limitations period has ended unless it can establish that the new defendant (the one that is being substituted into the action) "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." NRCP 15(c)(2)(B); *see also Walker v. New Castle Corp*., 134 Nev. 1027, 431 P.3d 55 (Order of Affirmance) (2018) (citing *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979) ("[A] proper defendant may be brought into the action after the statute of limitations has run if the proper defendant (1) receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to its

HOLLEY DRIGGS

prejudice by the amendment." (emphasis added)). Here, the Court finds that Plaintiffs have not established the requirements necessary to satisfy the Rules relation back mechanism. For example, Plaintiffs have not shown that D.I.P. received actual notice of this action prior to the statute of limitations expiring. Therefore, the Court finds that relation back is has not been established under Rule 15.

D. Rule 10(a) Does Not Apply To This Action

Plaintiffs argue that even if relation back is inappropriate under Rule 15(c), Plaintiffs are still able to add D.I.P. as a defendant by substituting it for a properly pled Roe Corporation pursuant to Rule 10(a). *See* Pls.' Opp. to Mot. to Dismiss at pp. 12-13. But that argument is belied by a review of the record.

Here, Plaintiffs' stipulation unequivocally states they were amending their complaint in the following manner: "D.I.P. INVESTMENT CORP. ***substituted in place*** of AVILA PARK HOMEWOENERS ASSOCIATION . . . ." *See* Stipulation and Order to Amend Compl. to Substitute Defendant, Dismiss Defendant, and Amend Case Caption, on file herein (emphasis added). Thus, although Rule 10(a) does allow a plaintiff to substitute properly pleaded Roe Corporations, that is not the actions that Plaintiffs pursued in this action. Therefore, the Court finds that Rule 10(a) does not apply to this action.

E. Sadie And Blake Have Not Plead Any Direct Claims Tollable By NRS 11.250

The Second Amended Complaint states:

> 9. Plaintiff Sadie is an heir of the Decedent within the meaning of NRS 41.085.
>
> 10. Plaintiff Black is an heir of Decedent within the meaning of NRS 41.085.
>
> 11. Plaintiff Sadie and Plaintiff Blake are each entitled to a one-half share of Decedent CANDICE COOK'S estate pursuant to NRS 134.090.

See Second Am. Compl. at ¶¶ 9-11. Thus, it is clear from the four corners of the second amended complaint that Sadie's and Blake's recovery is contingent on their status as surviving heirs of their mother, Candice Cooks. Indeed, NRS 134.090 states: "If the decedent leaves no surviving spouse, but there is a child or children, ***the estate***, if there is only one child, all goes to that child. If there

HOLLEY DRIGGS

is more than one child, ***the estate*** all goes to the children of the decedent, to share and share alike." (emphasis added). The plain language of the statute and the express nature of Brian's and Sadie's allegations in the operative complaint make clear that Sadie and Blake did not assert any direct claims against D.I.P. Instead, Sadie's and Blake's claims are derivative or contingent claims of the Estate of Candice Cooks' claims, which are time barred under NRS 11.190. *See supra*.

Therefore, the only party with direct claims in this action is the Estate of Candice Cooks. And because those direct claims are time barred under NRS 11.190(4) and there is no relation back under Rule 15(c), and there was no substitution under Rule 10(a), it logically follows that Sadie and Blake have no claims to be tolled by NRS 11.250. Accordingly, dismissal is appropriate.

III. CONCLUSION

Considering the above, the Court hereby GRANTS Defendant D.I.P.'s motion to dismiss without prejudice.

Dated this 22nd day of January, 2024

875 5E9 5D2F 7A40
Michael Villani
District Court

FOR JUDGE NANCY ALLF

GD

HOLLEY DRIGGS

Respectfully Submitted By:

HOLLEY DRIGGS

/s/ Jason D. Smith

Jason D. Smith, Esq.
Nevada Bar No.: 9691
John J. Pictum III, Esq.
Nevada Bar No.: 15979
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Emails: jsmith@nevadafirm.com
jpictum@nevadafirm.com

Approved As To Form And Content:

CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/ Victoria Allen

Christian M. Morris, Esq.
Nevada Bar No.: 11218
Victoria Allen, Esq.
Nevada Bar No.: 15005
Sarah E. Disalvo, Esq.
Nevada Bar No.: 16398
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Emails: christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com

HOLLEY DRIGGS

From: Victoria Allen <Victoria@CMTrialAttorneys.com>
Sent: Friday, January 19, 2024 6:04 AM
To: John J. Pictum
Cc: Jason D. Smith; Marissa Vallette; Laura Edwards; Sarah DiSalvo; David Hales
Subject: Re: Estate of Candice Cooks v. Pink Dragon, et. al. re Draft Order Granting Motion to Dismiss
Attachments: 3069190.docx

You may affix my esignature to the proposed order and submit.

Regards,
Tori Allen, Esq.
Christian Morris Trial Attorneys

This email may contain CONFIDENTIAL AND/OR LEGALLY PRIVILEGED INFORMATION intended only for the use of the intended recipients identified above. If you are not the intended recipient of this email, you are hereby notified that any unauthorized review, use, dissemination, distribution, downloading, or copying of this communication is strictly prohibited. If you are not the intended recipient and have received this communication in error, please immediately notify us by reply email, delete the communication and destroy all copies.

From: John J. Pictum <jpictum@nevadafirm.com>
Sent: Thursday, January 18, 2024 12:00:00 PM
To: Victoria Allen <Victoria@CMTrialAttorneys.com>
Cc: Jason D. Smith <jsmith@nevadafirm.com>; Marissa Vallette <mvallette@nevadafirm.com>
Subject: Re: Estate of Candice Cooks v. Pink Dragon, et. al. re Draft Order Granting Motion to Dismiss

Victoria:

Just circling back with you on this. Have you had the opportunity to review?

It is my offices intention to submit this to the Court tomorrow at noon if we do not receive a response from your office. Please let me know.

Thanks,
John J. Pictum III
Attorney
Las Vegas Office
HOLLEY DRIGGS

Tel: 702.791.0308 | 300 S. 4th Street, Suite 1600, Las Vegas NV 89101
Tel: 775.851.8700 | Fax: 775.851.7681 800 S. Meadows Parkway, Suite 800, Reno NV 89521

www.nevadafirm.com

This email message (including any attachments): (a) may include privileged, confidential, proprietary and/or other protected information, (b) is sent based upon a reasonable expectation of privacy, and (c) is not intended for transmission to, or receipt by, unauthorized persons. If you are not the intended

1

recipient, please notify the sender immediately by telephone (702.791.0308) or by replying to this message and then delete the message and all copies or portions from your system. Thank you.

From: John J. Pictum
Sent: Friday, January 12, 2024 8:28 PM
To: victoria@CMtrialattorneys.com <victoria@CMtrialattorneys.com>
Cc: Jason D. Smith <jsmith@nevadafirm.com>
Subject: Estate of Candice Cooks v. Pink Dragon, et. al. re Draft Order Granting Motion to Dismiss

Victoria:

Per the Court's minute order (attached hereto), I have attached a draft order granting D.I.P.'s motion to dismiss consistent with the moving papers. Please let me know if, after your review, I have your permission to affix your electronic signature.

Thanks,

John J. Pictum III, Esq.
Attorney
Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 |
300 S. 4th Street, Suite 1600, Las Vegas NV 89101

Tel: 775.851.8700 | Fax: 775.851.7681
800 S. Meadows Parkway, Suite 800, Reno NV 89521

www.nevadafirm.com

This email message (including any attachments): (a) may include privileged, confidential, proprietary and/or other protected information, (b) is sent based upon a reasonable expectation of privacy, and (c) is not intended for transmission to, or receipt by, unauthorized persons. If you are not the intended recipient, please notify the sender immediately by telephone (702.791.0308) or by replying to this message and then delete the message and all copies or portions from your system. Thank you.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Candice Sade Cooks, Plaintiff(s) vs. Pink Dragon Entertainment, L.L.C., Defendant(s)	CASE NO: A-22-852100-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 1/22/2024

John Courtney	info@lbclawgroup.com
Tori Allen	victoria@cmtrialattorneys.com
Kerri Rowland	kerri@lbclawgroup.com
Laura Edwards	laura@cmtrialattorneys.com
Andrew Dunning	apd@lbclawgroup.com
Tiffany Pond	tiffanyp@cmtrialattorneys.com
Jason Smith	jsmith@nevadafirm.com
Jamie McInelly	jamie@cmtrialattorneys.com
John Pictum III	jpictum@nevadafirm.com

Exhibit 4

Exhibit 4

Exhibit 4

ELECTRONICALLY SERVED
10/6/2023 3:30 PM

Electronically Filed
10/06/2023 3:28 PM
CLERK OF THE COURT

SAO
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
SARAH E. DISALVO, ESQ.
Nevada Bar No. 16398
CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
T: (702) 434-8282
F: (702) 434-1488
christian@CMtrialattorneys.com
victoria@CMtrialattorneys.com
sarah@CMtrialattorneys.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment; AVILA PARK HOMEOWNERS ASSOCIATION, a domestic nonprofit corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	CASE NO.: A-22-852100-C DEPT NO.: 27 **STIPULATION AND ORDER TO AMEND COMPLAINT TO SUBSTITUTE DEFENDANT, DISMISS DEFENDANT, AND AMEND CASE CAPTION**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs, TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF

Case Number: A-22-852100-C

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR ("Plaintiffs") by and through their counsel of record Christian M. Morris, Esq., Victoria R. Allen, Esq., and Sarah E. DiSalvo, Esq. of CHRISTIAN MORRIS TRIAL ATTORNEYS, Defendant AVILA PARK HOMEOWNER'S ASSOCIATION by and through its counsel of record Timothy Hunter, Esq. of RAY LEGO & ASSOCIATES, and Defendant PINK DRAGON ENTERTAINMENT LLC by and through its counsel of record Andrew Dunning, Esq. of LBC LAW GROUP, hereby stipulate and agree to the following and request that this Court approve the same as an Order of the Court:

1. THE PARTIES HEREBY STIPULATE AND AGREE that Plaintiff's claims in the above-entitled action against AVILA PARK HOMEOWNER'S ASSOCIATION only be dismissed with prejudice, with each party to bear their own fees and costs.
2. THE PARTIES FURTHER STIPULATE AND AGREE that discovery has indicated D.I.P. INVESTMENT CORP. is the properly named Defendant to this action.
3. THE PARTIES FURTHER STIPULATE AND AGREE that Plaintiff's Complaint will be amended with D.I.P. INVESTMENT CORP. substituted in place of AVILA PARK HOMEOWNER'S ASSOCIATION, the location of the Subject Incident be amended to 1813 N. Decatur Blvd., and such substitutions shall relate back to the filing of the original *Complaint,* for all purposes, including the statute of limitations.
4. THE PARTIES FURTHER STIPULATE AND AGREE that the caption of this matter will be amended as follows and the Clerk of Court will update to the same:

TERESA MASON and JANICE GONZALEZ, as Co-Special Administrators of the ESTATE OF CANDICE SADE COOKS; SADIE BLAKE and BRIAN BLAKE, JR, by and through their natural parent, BRIAN BLAKE, Plaintiffs, vs. PINK DRAGON ENTERTAINMENT, L.L.C., a Domestic Limited Liability Company d/b/a Pink Dragon Entertainment;	CASE NO.: A-22-852100-C DEPT NO.:27

D.I.P. INVESTMENT CORP., a domestic corporation; DOE INDIVIDUALS 1 through 10; ROE CORPORATIONS 11 through 20; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive,

Defendant.

DATED this 6th day of October, 2023.

CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/Victoria R. Allen
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiff

DATED this 6th day of October, 2023.

RAY LEGO & ASSOCIATES

/s/Timothy Hunter
Timothy F. Hunter, Esq.
Nevada Bar No. 010622
7450 Arroyo Crossing Parkway, Suite 250
Las Vegas, Nevada 89113
Attorneys for Defendant,
Avila Park Homeowner's Association

DATED this 6th day of October, 2023.

LBC LAW GROUP

/s/Andrew Dunning
John C. Courtney, Esq.
Nevada Bar No. 11092
Andrew P. Dunning, Esq.
Nevada Bar No. 13864
Sebastian F. Gajardo, Esq.
Nevada Bar. No. 14874.
3215 W. Charleston Blvd., Ste. 120
Las Vegas, Nevada 89102
Attorney for Defendant
Pink Dragon Entertainment, LLC

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

ORDER

IT IS SO ORDERED.

Dated this 6th day of October, 2023

Nancy L Allf

225 D43 12B5 1D40
Nancy Allf
District Court Judge

Respectfully submitted by:
CHRISTIAN MORRIS TRIAL ATTORNEYS

/s/Victoria R. Allen

VICTORIA R. ALLEN, ESQ.
Nevada Bar No. 15005
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiff

CHRISTIAN MORRIS TRIAL ATTORNEYS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702.434.8282 / 702.434.1488 (fax)

Laura Edwards

From: Andrew Dunning <apd@lbclawgroup.com>
Sent: Friday, October 6, 2023 12:35 PM
To: Hunter, Timothy F; Victoria Allen; Tiffany Pond; John Courtney; Kerri R
Cc: Sarah DiSalvo; Laura Edwards; Berry, Nancy L
Subject: RE: Cooks v. Pink Dragon Entertainment, et al. -

I am. You may submit with my signature.

Thank you,

Andrew
--

Andrew P. Dunning, Esq.
Attorney
LBC LAW GROUP
Blakesley Courtney, P.C.
723 South 7th Street
Las Vegas, Nevada 89101
Ph: (702) 608-3030 / Fx: (702) 463-4443
Email: APD@LBCLawGroup.com
Website: www.LBCLawGroup.com

THE CONTENTS OF THIS EMAIL MESSAGE CONSTITUTE ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION ONLY FOR THE USE OF THE INTENDED RECIPIENT INDIVIDUAL OR ENTITY. IF THE READER OF THIS MESSAGE IS NOT ITS INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY OUR OFFICE AND ENSURE THAT ANY COPY(IES) IN YOUR POSSESSION ARE DESTROYED OR RETURNED TO US. THANK YOU.

From: Hunter, Timothy F <TFHUNTER@travelers.com>
Sent: Friday, October 6, 2023 11:20 AM
To: Victoria Allen <Victoria@CMTrialAttorneys.com>; Andrew Dunning <apd@lbclawgroup.com>; Tiffany Pond <tiffanyp@CMTrialAttorneys.com>; John Courtney <JCC@lbclawgroup.com>; Kerri R <kerri@lbclawgroup.com>
Cc: Sarah DiSalvo <Sarah@CMTrialattorneys.com>; Laura Edwards <laura@CMTrialAttorneys.com>; Berry, Nancy L <NBERRY@travelers.com>
Subject: RE: Cooks v. Pink Dragon Entertainment, et al. -

Andrew,

Are you good with the proposed stipulation?

Thanks, Tim

Timothy F. Hunter
Associate Managing Counsel
Ray Lego & Associates
W: 702.479.4371 F: 702.270.4602

Physical Address:
7450 Arroyo Crossing Pkwy.
Suite 250
Las Vegas, Nevada 89113

Mailing Address:
P.O. Box 64093
St. Paul, MN 55164-0093

Not a Partnership or Professional Corporation
All attorneys are Employees of The Travelers Indemnity Company
and its Property Casualty Affiliates

From: Hunter, Timothy F
Sent: Monday, October 2, 2023 4:00 PM
To: 'Victoria Allen' <Victoria@CMTrialAttorneys.com>; Andrew Dunning <apd@lbclawgroup.com>; Tiffany Pond <tiffanyp@CMTrialAttorneys.com>; John Courtney <JCC@lbclawgroup.com>; Kerri R <kerri@lbclawgroup.com>
Cc: Sarah DiSalvo <Sarah@CMTrialattorneys.com>; Laura Edwards <laura@CMTrialAttorneys.com>; Berry, Nancy L <NBERRY@travelers.com>
Subject: RE: Cooks v. Pink Dragon Entertainment, et al. -

Hey Victoria,

You can use my electronic signature on the Stipulation and Order to Amend Complaint to Substitute Defendant, Dismiss Defendant, and Amend Caption.

Thanks, Tim

Timothy F. Hunter
Associate Managing Counsel

Ray Lego & Associates
W: 702.479.4371 F: 702.270.4602

Physical Address:
7450 Arroyo Crossing Pkwy.
Suite 250
Las Vegas, Nevada 89113

Mailing Address:
P.O. Box 64093
St. Paul, MN 55164-0093

Not a Partnership or Professional Corporation
All attorneys are Employees of The Travelers Indemnity Company
and its Property Casualty Affiliates

From: Victoria Allen <Victoria@CMTrialAttorneys.com>
Sent: Friday, September 22, 2023 4:53 PM
To: Andrew Dunning <apd@lbclawgroup.com>; Hunter, Timothy F <TFHUNTER@travelers.com>; Tiffany Pond <tiffanyp@CMTrialAttorneys.com>; John Courtney <JCC@lbclawgroup.com>; Kerri R <kerri@lbclawgroup.com>
Cc: Sarah DiSalvo <Sarah@CMTrialattorneys.com>; Laura Edwards <laura@CMTrialAttorneys.com>; Berry, Nancy L <NBERRY@travelers.com>
Subject: [External] RE: Cooks v. Pink Dragon Entertainment, et al. -

Please see the proposed SAO to amend and dismiss attached. Let me know if you all have any changes or if we may affix your e-signatures and submit. Thanks and have a good weekend!

Warm regards,



TORI R. ALLEN, ESQ.
Attorney

Office Phone: 702.434.8282
Direct Phone: 702.935.2440
2250 Corporate Circle, Suite 390
Henderson, NV 89074

CHRISTIAN MORRIS
TRIAL ATTORNEYS

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Candice Sade Cooks, Plaintiff(s) vs. Pink Dragon Entertainment, L.L.C., Defendant(s)	CASE NO: A-22-852100-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 10/6/2023

Timothy Hunter, Esq.	TFHUNTER@travelers.com
Nancy Berry	NBERRY@travelers.com
Christine Shaddock	CSHADDOC@travelers.com
John Courtney	info@lbclawgroup.com
Tori Allen	victoria@cmtrialattorneys.com
Kerri Rowland	kerri@lbclawgroup.com
Laura Edwards	laura@cmtrialattorneys.com
Andrew Dunning	apd@lbclawgroup.com
Chris Gramentz BRC	BRCNVFIL@travelers.com
Tiffany Pond	tiffanyp@cmtrialattorneys.com

Jamie McInelly jamie@cmtrialattorneys.com

Exhibit 5

Exhibit 5

Exhibit 5

ELECTRONICALLY SERVED
3/4/2022 1:37 PM

Electronically Filed
03/04/2022 1:36 PM
CLERK OF THE COURT

ORDR
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. McLEOD, ESQ.
Nevada Bar No. 8185
ANDRÉA L. VIEIRA, ESQ.
Nevada Bar No. 15667
NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
christian@nettlesmorris.com
alexandra@nettlesmorris.com
andreav@nettlesmorris.com
Attorneys for Petitioner/Decedent

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of CANDICE SADE COOKS, Deceased.	CASE NO.: P-22-110921-E DEPT NO.: 26

ORDER APPOINTING CO-SPECIAL ADMINISTRATORS

Upon submission of a verified Petition for Appointment of Co-Special Administrators and for Issuance of Co-Special Letters of Special Administration, representing as follows:

1. Decedent, Candice Sade Cooks, died intestate on the 9th day of April 2021, in the County of Clark, State of Nevada.

2. That Decedent was a resident of Clark County, Nevada, at the time of her death.

NOW, THEREFORE, IT IS HEREBY ORDERED that Teresa Mason and Janice Gonzalez are appointed as Co-Special Administrators and that Co-Special Letters of Administration be issued, without bond, to the Petitioner, Teresa Mason and Janice Gonzalez, upon taking the oath of office, for the purpose of administering the estate in accordance with Nevada Revised Statutes Chapter 140.040 (see Exhibit A attached hereto).

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
702.434.8282 / 702.434.1488 (fax)

IT IS FURTHER ORDERED that all moneys received by this Estate will be placed in the attorney's trust account until further order by this Court.

IT IS FURTHER ORDERED that the settlements of any lawsuits affecting the Decedent's estate are subject to this court's approval.

DATED this _____ day of _____ 2022.

Dated this 4th day of March, 2022

DISTRICT COURT JUDGE

249 428 54C2 F014
Gloria Sturman
District Court Judge

Respectfully Submitted,

NETTLES | MORRIS

/s/ Andréa L. Vieira

CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. McLEOD, ESQ.
Nevada Bar No. 8185
ANDRÉA L. VIEIRA, ESQ.
Nevada Bar No. 15667
Attorneys for Petitioner/Decedent

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
702.434.8282 / 702.434.1488 (fax)

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
702.434.8282 / 702.434.1488 (fax)

EXHIBIT A

NRS 140.040 Powers, duties and immunity from liability for certain claims.

1. A special administrator shall:

(a) Collect and preserve for the executor or administrator when appointed all the goods, chattels and receivables of the decedent, and all incomes, rents, issues, profits, claims and demands of the estate.

(b) Take charge and management of the real property and enter upon and preserve it from damage, waste and injury.

2. A special administrator may:

(a) For all necessary purposes, commence, maintain or defend actions and other legal proceedings as a personal representative.

(b) Without prior order of the court, sell any perishable property of the estate, as provided in NRS 148.170.

(c) Exercise such other powers as have been conferred by the order of appointment.

(d) Obtain leave of the court to borrow money or to lease or mortgage real property in the same manner as an executor or administrator.

3. A special administrator is not liable:

(a) To any creditor on any claim against the estate; or

(b) For any claim against the decedent except a claim involving wrongful death, personal injury or property damage if the estate contains no assets other than a policy of liability insurance.

[Part 86:107:1941; 1931 NCL § 9882.86]—(NRS A 1971, 647; 1983, 668; 1999, 2276)

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of:	CASE NO: P-22-110921-E
Candice Cooks, Deceased	DEPT. NO. Department 26

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/4/2022

Christian Morris	christian@nettlesmorris.com
Sofia Reyes	sofia@nettlesmorris.com
Norma Chavarria	norma@nettlesmorris.com
Alexandra McLeod	alexandra@nettlesmorris.com
Andrea Moreno	andream@nettlesmorris.com