Electronically Filed
02/10/2017 04:20:01 PM

CLERK OF THE COURT

NOAS
ROBERT O. KURTH, JR.
Nevada Bar No. 4659
KURTH LAW OFFICE
3420 North Buffalo Drive
Las Vegas, NV 89129
Tel: (702) 438-5810
Fax: (702) 459-1585
E-mail: kurthlawoffice@gmail.com
Attorney for Plaintiff

Electronically Filed
Feb 22 2017 02:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT

CLARK COUNTY NEVADA

ALEASHA REID PELKA, an individual,

Plaintiff,

vs.

COLE MT LAS VEGAS NV LLC; WAL-MART STORES INC. STORE #3473; WAL-MART STORES INC., DOES I-V; and ROE COMPANIES I-V, inclusive,

Defendants.

Case No. A-16-738328-C

Dept. XXXI

KURTH LAW OFFICE
3420 North Buffalo Drive
Las Vegas, NV 89129
(702) 438-5810

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the Plaintiff, ALEASHA REID PELKA ("ALEASHA"), by and through her counsel, Robert O. Kurth, Jr., of the KURTH LAW OFFICE, HEREBY APPEALS to the Supreme Court of the State of Nevada from the **Order Granting Defendants' Cole MT Las Vegas NV LLC and Walmart Stores, Inc. Motions to Dismiss Plaintiff's Complaint With Prejudice Under NRCP 12(B)5 and Joinders' Thereto filed on or about January 12, 2017,**

Docket 72423 Document 2017-06214

which was entered by the Honorable Joanna S. Kishner, of Dept. XXXI of the Eighth Judicial District Court, in and for Clark County, Nevada.

DATED this 10th day of February, 2017.

Respectfully Submitted by,
KURTH LAW OFFICE

ROBERT O. KURTH, JR.
Nevada Bar No. 4659
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of February, 2017, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** electronically via Electronic Service in accordance with EDCR 8.05, and I deposited a true and correct copy of such in a sealed envelope in the U.S. Mail, first class, postage prepaid, and addressed as follows:

Robert E. Schumacher, Esq.
Liane S. Binowitz, Esq.
GORDON & REES SCULLY MANSUKHANI LLP
300 South Fourth Street, Ste. 1550
Las Vegas, Nevada 89101
rschumacher@gordonrees.com
lbinowitz@gordonrees.com
Attorneys for Defendant, COLE MT LAS VEGAS NV LLC

Brenda H. Entzminger
Betsy C. Jefferis
PHILLIPS, SPALLAS & ANGSTADT LLC
504 South Ninth Street
Las Vegas, NV 89101
bentzminger@psalaw.net
bjefferis@psalaw.net
Attorneys for Defendant, WAL-MART STORES, INC.

/s/ Samantha Duome
An employee of **KURTH LAW OFFICE.**

KURTH LAW OFFICE
3420 North Buffalo Drive
Las Vegas, NV 89129
(702) 438-5810

DEPARTMENT 31

CASE SUMMARY

CASE NO. A-16-738328-C

Aleasha Pelka, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna S.**
Cole MT Las Vegas NV LLC, Defendant(s)	§	Filed on:	**06/13/2016**
	§	Cross-Reference Case Number:	**A738328**

CASE INFORMATION

Statistical Closures
01/12/2017 Motion to Dismiss by the Defendant(s)

Case Type: **Negligence - Premises Liability**

Case Flags: **Appealed to Supreme Court**

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-16-738328-C
Court	Department 31
Date Assigned	06/13/2016
Judicial Officer	Kishner, Joanna S.

PARTY INFORMATION

Plaintiff	**Pelka, Aleasha Reid**	**Kurth, Robert O.** *Retained* 702-438-5810(W)
Defendant	**Cole MT Las Vegas NV LLC**	
	Wal-Mart Stores Inc Removed: 01/12/2017 Dismissed	
	Wal-Mart Stores Inc Store 3473 Removed: 01/12/2017 Dismissed	

EVENTS & ORDERS OF THE COURT

DATE	EVENTS & ORDERS OF THE COURT	INDEX
06/13/2016	Complaint Filed By: Plaintiff Pelka, Aleasha Reid *Complaint*	
10/04/2016	Proof of Service Filed by: Plaintiff Pelka, Aleasha Reid *Proof of Service - Cole MT Las Vegas NV , LLC*	
10/04/2016	Proof of Service Filed by: Plaintiff Pelka, Aleasha Reid *Proof of Service - Wal-Mart Store Inc*	
10/10/2016	Motion to Dismiss Filed By: Defendant Wal-Mart Stores Inc *Defendant Walmart Stores, Inc.'s Motion to Dismiss for Failure to Comply with NRS11.190(4)(e)*	
10/11/2016	Initial Appearance Fee Disclosure Filed By: Defendant Wal-Mart Stores Inc *Defendant Walmart Stores, Inc.'s Initial Appearance Fee Disclosure*	

CASE SUMMARY

CASE NO. A-16-738328-C

10/11/2016	Certificate of Service Filed by: Defendant Wal-Mart Stores Inc *Certificate of Service*
10/26/2016	Opposition Filed By: Plaintiff Pelka, Aleasha Reid *Opposition to Defendant Wal-Mart Stores, Inc.'s Motion to Dismiss For Failure to Comply With NRS 11.190(4)(e)*
11/04/2016	Reply in Support Filed By: Defendant Wal-Mart Stores Inc *Defendant Wal-Mart Stores, Inc.'s Reply in Support of Its Motion to Dismiss for Failure to Comply with NRS 11.190(f)(e)*
11/08/2016	Initial Appearance Fee Disclosure Filed By: Defendant Cole MT Las Vegas NV LLC *Initial Appearance Fee Disclosure, Cole Mt Las Vegas NV, LLC*
11/08/2016	Motion to Dismiss Filed By: Defendant Cole MT Las Vegas NV LLC *Defendant Cole Mt Las Vegas NV, LLC's Motion to Dismiss Pursuant to NRCP 12(B)(5)*
11/15/2016	Joinder To Motion Filed By: Defendant Wal-Mart Stores Inc *Defendant Wal-Mart Stores Inc.'s Joinder to Defendant Cole MT Las Vegas NV LLC's Motion to Dismiss Pursuant to 12(B0(5)*
11/15/2016	**Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) **11/15/2016, 12/13/2016** Events: 10/10/2016 Motion to Dismiss *Defendant Walmart Stores, Inc.'s Motion to Dismiss for Failure to Comply with NRS11.190(4)(e)*
11/28/2016	Opposition to Motion to Dismiss Filed By: Plaintiff Pelka, Aleasha Reid *Opposition to Defendant Cole MT Las Vegas NV Motion to Dismiss Pursuant to NRCP 12(B)(5), and the Defenant Wal-Mart Stores Inc's Joinder*
11/30/2016	Transcript of Proceedings *Transcript of Proceedings: Defendant's motion to dismiss for failure to comply with NRS 11.190(4)(E) -- 11-15-16*
12/06/2016	Reply to Opposition Filed by: Defendant Cole MT Las Vegas NV LLC *Defendant Cold MT Las Vegas NV, LLC's Reply to Plaintiff's Opposition to Motion to Dismiss Pursuant to NRCP 12(b)(5)*
12/13/2016	**Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) Events: 11/08/2016 Motion to Dismiss *Defendant Cole Mt Las Vegas NV, LLC's Motion to Dismiss Pursuant to NRCP 12(B)(5)*
12/13/2016	**Joinder** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) *Defendant Wal-Mart Stores Inc.'s Joinder to Defendant Cole MT Las Vegas NV LLC's Motion to Dismiss Pursuant to 12(B0(5)*

CASE SUMMARY

CASE NO. A-16-738328-C

12/13/2016	**All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
01/06/2017	**Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.) *Status Check: On proposed FFCL*
01/12/2017	Order Granting Motion Filed By: Defendant Cole MT Las Vegas NV LLC *Order Granting Defendants' Cole MT Las Vegas NV, LLC and Wal-Mart Stores, Inc.'s Motions to Dismiss Plaintiff's Complaint with Prejudice under NRCP 12(B)5) and Joinders Thereto*
01/12/2017	**Order of Dismissal With Prejudice** (Judicial Officer: Kishner, Joanna S.) Debtors: Aleasha Reid Pelka (Plaintiff) Creditors: Cole MT Las Vegas NV LLC (Defendant), Wal-Mart Stores Inc Store 3473 (Defendant), Wal-Mart Stores Inc (Defendant) Judgment: 01/12/2017, Docketed: 01/23/2017
01/13/2017	Notice of Entry of Order Filed By: Defendant Cole MT Las Vegas NV LLC *Notice of Entry of Order Granting Defendants; Cole MT Las Vegas NV, LLC and Wal-Mart Stores, Inc.'s Motions to Dismiss Plaintiff's Complaint with Prejudice Under NRCP (B)(5) and Joinders Thereto*
02/10/2017	Notice of Appeal Filed By: Plaintiff Pelka, Aleasha Reid *Notice of Appeal*

DATE	FINANCIAL INFORMATION	
	Defendant Wal-Mart Stores Inc	
	Total Charges	223.00
	Total Payments and Credits	223.00
	Balance Due as of 2/15/2017	**0.00**
	Defendant Cole MT Las Vegas NV LLC	
	Total Charges	240.50
	Total Payments and Credits	240.50
	Balance Due as of 2/15/2017	**0.00**
	Plaintiff Pelka, Aleasha Reid	
	Total Charges	294.00
	Total Payments and Credits	294.00
	Balance Due as of 2/15/2017	**0.00**

DISTRICT COURT CIVIL COVER SHEET

A-16-738328-C

Clark County, Nevada

XXXI

Case No. .....
(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Aleasha Reid Pelka 600 Cranjin Park Drive Las Vegas, NV 89107 (702) 217-3626	Cole MT Las Vegas NV LLC Wal-Mart Stores Inc. Store # 3473 Wal-Mart Stores Inc.
Attorney (name/address/phone):	**Attorney (name/address/phone):**
Robert O. Kurth, Jr. 3420 N. Buffalo Drive Las Vegas, NV 89129 (702) 438-5810	

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

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant	**Negligence**	**Other Torts**
☐ Unlawful Detainer	☐ Auto	☐ Product Liability
☐ Other Landlord/Tenant	☒ Premises Liability	☐ Intentional Misconduct
Title to Property	☐ Other Negligence	☐ Employment Tort
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort
☐ Other Title to Property	☐ Medical/Dental	☐ Other Tort
Other Real Property	☐ Legal	
☐ Condemnation/Eminent Domain	☐ Accounting	
☐ Other Real Property	☐ Other Malpractice	

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	☐ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☐ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
☐ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		☐ Other Civil Matters

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

6/10/2016
Date

Signature of initiating party or representative

See other side for family-related case filings.

Electronically Filed
01/12/2017 03:04:41 PM

CLERK OF THE COURT

ORDG
ROBERT E. SCHUMACHER, ESQ.
Nevada Bar No. 7504
LIANE S. BINOWITZ, ESQ.
Nevada Bar No. 7482
GORDON & REES SCULLY MANSUKHANI LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101
Telephone: (702) 577-9330 / Facsimile: (702) 255-2858

Attorneys for Defendant
COLE MT LAS VEGAS NV LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ALEASHA REID PELKA, an individual,

Plaintiff,

v.

COLE MT LAS VEGAS NV LLC; WAL-MART STORES INC, STORE #3473; WAL-MART STORES INC., DOES I-V; and ROE COMPANIES I-V, inclusive,

Defendants.

Case No.: A-16-738328-C
Dept No.: XXXI

ORDER GRANTING DEFENDANTS' COLE MT LAS VEGAS NV LLC AND WALMART STORES, INC. MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE UNDER NRCP 12(B)5 AND JOINDERS' THERETO

Defendants Cole Mt Las Vegas NV LLC's and Walmart Stores, Inc.'s Motions to Dismiss under NRCP 12(b)(5) and the joinder thereto having come on for hearing on December 13, 2016, in Department XXXI, the Honorable Joanna Kishner presiding; Robert O. Kurth, Jr., Esq. appeared on behalf of Plaintiff Aleasha Reid-Pelka ("Plaintiff") ; Liane S. Binowitz, Esq. on behalf of Defendant Cole Mt Las Vegas NV LLC and Betsy C. Jefferis on behalf of Defendant Walmart Stores, Inc. (collectively, "Defendants");

The Court having considered the pleadings on file, the motions, oppositions and replies thereto and having heard oral argument from the parties, good cause appearing therefore, **THE COURT FINDS** as follows:

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☒ Motion to Dismiss by Deft(s)
☐ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

17-06-17 A09:33 IN

1. On Friday, June 10, 2016 Plaintiff submitted a Complaint ("Complaint") to the E-File System for negligence against Defendants for a personal injury sustained on June 10, 2014;

2. N.R.C.P.11 and E.D.C.R. 8.07 require every pleading be signed by counsel;

3. However, the Complaint that was submitted was neither physically nor electronically signed in compliance with N.R.C.P. 11 or E.D.C.R. 8.07 (a);

4. A cover sheet is not a "pleading" as contemplated by N.R.C.P. 7(a);

5. Pursuant to N.E.F.C.R. 8.07(b), the Complaint was properly rejected by the court clerk as it did not comply with applicable filing requirements and was therefore, not filed on June 10, 2016;

6. As a further result of Plaintiff's non-compliant submission, no filing fee was paid by Plaintiff or captured by the court clerk on June 10, 2016;

7. On Monday, June 13, 2016, Plaintiff's counsel received a rejection notice from the court clerk at approximately 4:35 a.m. and subsequently submitted a physically signed Complaint at approximately 8:53:57 a.m. which was accepted and accordingly, filed on June 13, 2016; at approximately 10:56:43 a.m.

8. While E.D.C.R. 8.10 (b) contemplates the occasional occurrence of technical problems that may arise with the E-Filing Service Provider and which may result in the Court deeming some submissions "filed" on the date of said submission, E.D.C.R. 8.10(c) specifically excludes complaints or other filings that initiate an action or proceeding and does not extend the time within which an action or proceeding must be filed;

9. On November 15, 2016, Plaintiff's counsel admitted in Court that he did not physically sign the Complaint submitted on June 10, 2016.

10. There was no clerical or E-Filing Service Provider error that caused or contributed to cause the rejection of the Complaint on June 10, 2016;

11. Under E.D.C.R 8.10(c), Plaintiff's June 10, 2016 submission of the Complaint was ineffectual to initiate the alleged cause of action against Defendants and such Complaint was hence, *void ab initio*;

12. NRS § 11.190(4)(E) mandates that personal injury lawsuits be filed within two (2) years from the date of injury;

13. Based on the allegations in the Complaint, Plaintiff allegedly sustained injury as the result of a June 10, 2014 incident;

14. Accordingly, under NRS§ 11.190(4)(E), Plaintiff's Complaint against Defendants for damages resultant therefrom was required to be filed by June 10, 2014;

15. Plaintiff's Complaint was filed on June 13, 2016;

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motions to Dismiss are hereby **GRANTED** with prejudice on the grounds that Plaintiff's Complaint was not filed within the statutorily two-year period mandated by NRS §11.090(4)(E) and as such, it failed to state a claim upon which relief may be granted against Defendants under N.R.C.P. 12(B)(5);

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint against Defendants is dismissed with prejudice, with each party to bear their own party's costs and attorney's fees.

IT IS SO ORDERED.

DATED this 16 day of January 2017.

JOANNA S. KISHNER

DISTRICT COURT JUDGE

DATED this 5th day of January 2017.

GORDON & REES SCULLY MANSUKHANI LLP

By: _____

ROBERT E. SCHUMACHER
Nevada Bar No. 7504
LIANE BINOWITZ
Nevada Bar No. 7482
300 S. Fourth Street, Suite 1550
Las Vegas, Nevada 89101
(702) 577-9300

Attorneys for Defendant
Cole MT Las Vegas NV LLC

///

Approved as to form and content:

DATED this 5th day of January 2017.

PHILLIPS SPALLAS & ANGSTADT

By: _____

BETSY C. JEFFERIS
Nevada Bar No. 12980
504 South Ninth Street
Las Vegas, Nevada 89101
(702) 938-1510

Attorneys for Defendant
Wal-Mart Stores, Inc.

Approved as to content and form:

DATED this ___ day of January 2017.

KURTH LAW OFFICE

By: _____

ROBERT O. KURTH
Nevada Bar No. 4569
3420 N. Buffalo Dr.
Las Vegas, Nevada 89129
(702) 9438-5810

Attorneys for Plaintiff

1127728/31033243v 1

Approved as to form and content:

DATED this ___ day of January 2017.

PHILLIPS SPALLAS & ANGSTADT

By: _____
BETSY C. JEFFERIS
Nevada Bar No. 12980
504 South Ninth Street
Las Vegas, Nevada 89101
(702) 938-1510

Attorneys for Defendant
Wal-Mart Stores, Inc.

Approved as to content and form:

DATED this 24 day of January 2017.

KURTH LAW OFFICE

By: _____
ROBERT O. KURTH
Nevada Bar No. 4569
3420 N. Buffalo Dr.
Las Vegas, Nevada 89129
(702) 9438-5810

Attorneys for Plaintiff

1127728/31033243v.1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of January, 2017, I served a true and correct copy the foregoing, ORDER GRANTING DEFENDANTS' COLE MT LAS VEGAS NV LLC AND WALMART STORES, INC. MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE UNDER NRCP 12(B)5 AND JOINDERS' THERETO, on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter to the following:

Robert O. Kurth, Esq.
Nevada Bar No. 4569
Kurth Law Office
3420 North Buffalo Drive
Las Vegas, NV 89129
Tel: (702) 438-5810/Fax: (702) 459-1585
kurthlawoffice@gmail.com
Attorneys for Plaintiff

Brenda H. Entzminger, Esq.
Nevada Bar No. 9800
Betsy C. Jefferis
Nevada Bar No. 12980
Phillips Spallas & Angstadt
504 South Ninth Street
Las Vegas, NV 89101
bentzminger@psalaw.net
bjefferis@psalaw.net
Tel: (702) 938-1510 Fax: (702) 938-1511

/s/ Claudia A. Morrill
An employee of GORDON & REES SCULLY MANSUKHANI LLP

1127728/31033243v.1

Electronically Filed
01/13/2017 12:32:53 PM

CLERK OF THE COURT

NEOJ
ROBERT E. SCHUMACHER, ESQ.
Nevada Bar No. 7504
LIANE S. BINOWITZ, ESQ.
Nevada Bar No. 7482
GORDON & REES SCULLY MANSUKHANI LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101
Telephone: (702) 577-9330 / Facsimile: (702) 255-2858

Attorneys for Defendant
COLE MT LAS VEGAS NV LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ALEASHA REID PELKA, an individual, Plaintiff, v. COLE MT LAS VEGAS NV LLC; WAL-MART STORES INC, STORE #3473; WAL-MART STORES INC., DOES I-V; and ROE COMPANIES I-V, inclusive, Defendants.	CASE NO.: A-16-738328-C DEPT. NO.: XXXI [ELECTRONIC FILING CASE] Hearing Date: December 13, 2016 Hearing Time: 9:30 a.m.

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' COLE MT LAS VEGAS NV LLC AND WAL-MART STORES, INC. MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE UNDER NRCP 12(B)(5) AND JOINDERS' THERETO

PLEASE TAKE NOTICE that an ORDER GRANTING DEFENDANTS' COLE MT LAS VEGAS NV, LLC AND WAL-MART STORES, INC. MOTIONS TO DISMISS PLAINTIFF'S

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

COMPLAINT WITH PREJUDICE UNDER NRCP 12(B)(5) AND JOINDERS' THERETO was filed on January 12, 2017, a copy of which is attached hereto.

DATED this 13th day of January 2017.

GORDON & REES SCULLY MANSUKHANI LLP

By: */s/ Liane S. Binowitz*
ROBERT E. SCHUMACHER
Nevada Bar No. 7504
LIANE BINOWITZ
Nevada Bar No. 7482
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101

Attorneys for Defendant
Cole MT Las Vegas NV LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of January, 2017, I served a true and correct copy the foregoing, NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' COLE MT LAS VEGAS NV, LLC AND WAL-MART STORES, INC. MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE UNDER NRCP 12(B)(5) AND JOINDERS' THERETO, on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter to the following:

Robert O. Kurth, Esq.
Nevada Bar No. 4569
Kurth Law Office
3420 North Buffalo Drive
Las Vegas, NV 89129
Tel: (702) 438-5810/Fax: (702) 459-1585
kurthlawoffice@gmail.com
Attorneys for Plaintiff

Brenda H. Entzminger, Esq.
Nevada Bar No. 9800
Betsy C. Jefferis
Nevada Bar No. 12980
Phillips Spallas & Angstadt
504 South Ninth Street
Las Vegas, NV 89101
bentzminger@psalaw.net
bjefferis@psalaw.net
Attorneys for Defendant Wal-Mart Stores, Inc.

/s/ Claudia A. Morrill
An employee of GORDON & REES SCULLY MANSUKHANI LLP

1127728/31130569v.1

Electronically Filed
01/12/2017 03:04:41 PM

CLERK OF THE COURT

ORDG
ROBERT E. SCHUMACHER, ESQ.
Nevada Bar No. 7504
LIANE S. BINOWITZ, ESQ.
Nevada Bar No. 7482
GORDON & REES SCULLY MANSUKHANI LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101
Telephone: (702) 577-9330 / Facsimile: (702) 255-2858

Attorneys for Defendant
COLE MT LAS VEGAS NV LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ALEASHA REID PELKA, an individual,

Plaintiff,

v.

COLE MT LAS VEGAS NV LLC; WAL-MART STORES INC, STORE #3473; WAL-MART STORES INC., DOES I-V; and ROE COMPANIES I-V, inclusive,

Defendants.

Case No.: A-16-738328-C
Dept No.: XXXI

ORDER GRANTING DEFENDANTS' COLE MT LAS VEGAS NV LLC AND WALMART STORES, INC. MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE UNDER NRCP 12(B)5 AND JOINDERS' THERETO

Defendants Cole Mt Las Vegas NV LLC's and Walmart Stores, Inc.'s Motions to Dismiss under NRCP 12(b)(5) and the joinder thereto having come on for hearing on December 13, 2016, in Department XXXI, the Honorable Joanna Kishner presiding; Robert O. Kurth, Jr., Esq. appeared on behalf of Plaintiff Aleasha Reid-Pelka ("Plaintiff") ; Liane S. Binowitz, Esq. on behalf of Defendant Cole Mt Las Vegas NV LLC and Betsy C. Jefferis on behalf of Defendant Walmart Stores, Inc. (collectively, "Defendants");

The Court having considered the pleadings on file, the motions, oppositions and replies thereto and having heard oral argument from the parties, good cause appearing therefore, **THE COURT FINDS** as follows:

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☒ Motion to Dismiss by Deft(s)
☐ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

11-06-17 A09:33 IN

1. On Friday, June 10, 2016 Plaintiff submitted a Complaint ("Complaint") to the E-File System for negligence against Defendants for a personal injury sustained on June 10, 2014;

2. N.R.C.P.11 and E.D.C.R. 8.07 require every pleading be signed by counsel;

3. However, the Complaint that was submitted was neither physically nor electronically signed in compliance with N.R.C.P. 11 or E.D.C.R. 8.07 (a);

4. A cover sheet is not a "pleading" as contemplated by N.R.C.P. 7(a);

5. Pursuant to N.E.F.C.R. 8.07(b), the Complaint was properly rejected by the court clerk as it did not comply with applicable filing requirements and was therefore, not filed on June 10, 2016;

6. As a further result of Plaintiff's non-compliant submission, no filing fee was paid by Plaintiff or captured by the court clerk on June 10, 2016;

7. On Monday, June 13, 2016, Plaintiff's counsel received a rejection notice from the court clerk at approximately 4:35 a.m. and subsequently submitted a physically signed Complaint at approximately 8:53:57 a.m. which was accepted and accordingly, filed on June 13, 2016; at approximately 10:56:43 a.m.

8. While E.D.C.R. 8.10 (b) contemplates the occasional occurrence of technical problems that may arise with the E-Filing Service Provider and which may result in the Court deeming some submissions "filed" on the date of said submission, E.D.C.R. 8.10(c) specifically excludes complaints or other filings that initiate an action or proceeding and does not extend the time within which an action or proceeding must be filed;

9. On November 15, 2016, Plaintiff's counsel admitted in Court that he did not physically sign the Complaint submitted on June 10, 2016.

10. There was no clerical or E-Filing Service Provider error that caused or contributed to cause the rejection of the Complaint on June 10, 2016;

11. Under E.D.C.R 8.10(c), Plaintiff's June 10, 2016 submission of the Complaint was ineffectual to initiate the alleged cause of action against Defendants and such Complaint was hence, *void ab initio*;

12. NRS § 11.190(4)(E) mandates that personal injury lawsuits be filed within two (2) years from the date of injury;

13. Based on the allegations in the Complaint, Plaintiff allegedly sustained injury as the result of a June 10, 2014 incident;

14. Accordingly, under NRS§ 11.190(4)(E), Plaintiff's Complaint against Defendants for damages resultant therefrom was required to be filed by June 10, 2014;

15. Plaintiff's Complaint was filed on June 13, 2016;

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motions to Dismiss are hereby **GRANTED** with prejudice on the grounds that Plaintiff's Complaint was not filed within the statutorily two-year period mandated by NRS §11.090(4)(E) and as such, it failed to state a claim upon which relief may be granted against Defendants under N.R.C.P. 12(B)(5);

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint against Defendants is dismissed with prejudice, with each party to bear their own party's costs and attorney's fees.

IT IS SO ORDERED.

DATED this 10 day of January 2017.

JOANNA S. KISHNER

DISTRICT COURT JUDGE

DATED this 5th day of January 2017.

GORDON & REES SCULLY MANSUKHANI LLP

By: _____

ROBERT E. SCHUMACHER
Nevada Bar No. 7504
LIANE BINOWITZ
Nevada Bar No. 7482
300 S. Fourth Street, Suite 1550
Las Vegas, Nevada 89101
(702) 577-9300

Attorneys for Defendant
Cole MT Las Vegas NV LLC

///

Approved as to form and content:

DATED this 5th day of January 2017.

PHILLIPS SPALLAS & ANGSTADT

By: _____

BETSY C. JEFFERIS
Nevada Bar No. 12980
504 South Ninth Street
Las Vegas, Nevada 89101
(702) 938-1510

Attorneys for Defendant
Wal-Mart Stores, Inc.

Approved as to content and form:

DATED this ___ day of January 2017.

KURTH LAW OFFICE

By: _____

ROBERT O. KURTH
Nevada Bar No. 4569
3420 N. Buffalo Dr.
Las Vegas, Nevada 89129
(702) 9438-5810

Attorneys for Plaintiff

1127728/31633243v 1

Approved as to form and content:

DATED this ___ day of January 2017.

PHILLIPS SPALLAS & ANGSTADT

By: _____
BETSY C. JEFFERIS
Nevada Bar No. 12980
504 South Ninth Street
Las Vegas, Nevada 89101
(702) 938-1510

Attorneys for Defendant
Wal-Mart Stores, Inc.

Approved as to content and form:

DATED this 24 day of January 2017.

KURTH LAW OFFICE

By: _____
ROBERT O. KURTH
Nevada Bar No. 4569
3420 N. Buffalo Dr.
Las Vegas, Nevada 89129
(702) 9438-5810

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of January, 2017, I served a true and correct copy the foregoing, ORDER GRANTING DEFENDANTS' COLE MT LAS VEGAS NV LLC AND WALMART STORES, INC. MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE UNDER NRCP 12(B)5 AND JOINDERS' THERETO, on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter to the following:

Robert O. Kurth, Esq.
Nevada Bar No. 4569
Kurth Law Office
3420 North Buffalo Drive
Las Vegas, NV 89129
Tel: (702) 438-5810/Fax: (702) 459-1585
kurthlawoffice@gmail.com
Attorneys for Plaintiff

Brenda H. Entzminger, Esq.
Nevada Bar No. 9800
Betsy C. Jefferis
Nevada Bar No. 12980
Phillips Spallas & Angstadt
504 South Ninth Street
Las Vegas, NV 89101
bentzminger@psalaw.net
bjefferis@psalaw.net
Tel: (702) 938-1510 Fax: (702) 938-1511

/s/ Claudia A. Morrill
An employee of GORDON & REES SCULLY MANSUKHANI LLP

1127728/31033243v.1

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **November 15, 2016**

A-16-738328-C Aleasha Pelka, Plaintiff(s)
vs.
Cole MT Las Vegas NV LLC, Defendant(s)

November 15, 2016 **9:30 AM** **Motion to Dismiss**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Jefferis, Betsy C.	Attorney
Kurth, Robert O.	Attorney

JOURNAL ENTRIES

- DEFENDANT WALMART STORES, INC.'S MOTION TO DISMISS FOR FAILURE TO COMPLY WITH NRS 11.190(4)(E)

Arguments by counsel. Court notes it will confirm with Clerk's Office before Ruling, in an abundance of caution. Ms. Jefferis requests opportunity to submit additional briefing. No objection by Mr. Kurth. Court will allow either party to provide simultaneous supplemental briefing; due by 5:00 pm on 12/6/16 (filed, served, courtesy copy to the Court). Per request of the parties, COURT ORDERED, matter CONTINUED for further oral argument on 12/13/16 at 9:30 am, to be heard with another motion currently set on that date.

CONTINUED TO: 12/13/16 9:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Premises Liability **COURT MINUTES** **December 13, 2016**

A-16-738328-C Aleasha Pelka, Plaintiff(s)
vs.
Cole MT Las Vegas NV LLC, Defendant(s)

December 13, 2016 **9:30 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

BINOWITZ, LIANE S., ESQ	Attorney
Jefferis, Betsy C.	Attorney
Kurth, Robert O.	Attorney

JOURNAL ENTRIES

- DEFENDANT COLE MT LAS VEGAS NV, LLC'S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5):
DEFENDANT WALMART STORES, INC.'S JOINDER TO DEFENDANT COLE MT LAS VEGAS NV, LLC'S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5):

Arguments by counsel. Court stated its findings, and ORDERED, Motion and Joinder thereto are GRANTED. Ms. Binowitz to prepare the Order, to include findings of fact and conclusions of law, circulating to all counsel for approval as to form and content in accordance with EDCR 7.21.

DEFENDANT WALMART STORES, INC.'S MOTION TO DISMISS FOR FAILURE TO COMPLY WITH NRS 11.190(4)(E):

Court notes Walmart Stores, Inc.'s Joinder to Cole MT Las Vegas NV, LLC's Motion to Dismiss was Granted as stated above.

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

ROBERT O. KURTH, JR.
3420 N. BUFFALO DR.
LAS VEGAS, NV 89129

DATE: February 15, 2017
CASE: A-16-738328-C

RE CASE: ALEASHA REID PELKA vs. COLE MT LAS VEGAS NV LLC; WAL-MART STORES INC. STORE #3473; WAL-MART STORES INC.

NOTICE OF APPEAL FILED: February 10, 2017

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☒ $250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☒ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANTS' COLE MT LAS VEGAS NC LLC AND WALMART STORES, INC. MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE UNDER NRCP 12(B)5 AND JOINDERS' THERETO; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' COLE MT LAS VEGAS NV LLC AND WAL-MART STORES, INC. MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE UNDER NRCP 12(B)(5) AND JOINDERS' THERETO; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

ALEASHA REID PELKA,

Plaintiff(s),

vs.

COLE MT LAS VEGAS NV LLC; WAL-MART STORES INC. STORE #3473; WAL-MART STORES INC.,

Defendant(s),

Case No: A-16-738328-C

Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 15 day of February 2017.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk