

Snell & Wilmer

LLP
LAW OFFICES
3883 HOWARD HUGHES PARKWAY, SUITE 1100
LAS VEGAS, NEVADA 89169
(702)784-5200

1 D. NEAL TOMLINSON, ESQ.
Nevada Bar No. 6851
2 WAYNE GROSS, ESQ. (has complied with LR IA 10-2)
California Bar No. 138828
3 MICHAEL D. STEIN, ESQ.
Nevada Bar No. 4760
4 BRIAN R. REEVE, ESQ.
Nevada Bar No. 10197
5 SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
6 Las Vegas, Nevada 89169
Telephone (702) 784-5200
7 Facsimile (702) 784-5252

8 WILL KEMP, ESQ.
Nevada Bar No. 1205
9 KEMP, JONES & COULTHARD LLP
3800 Howard Hughes Parkway, 17th floor
10 Las Vegas, Nevada 89169
Telephone (702) 385-6000
11 Facsimile (702) 385-6001

12 *Attorneys for Defendant Frias Management, LLC*

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 THEODORE TRAPP, on his own behalf and
16 on behalf of all others similarly situated.

CASE NO. 2:09-CV-00995-LDG-PAL

17 **Plaintiff,**

18 vs.

19 BIG POPPA’S, LLC, a Nevada limited
liability company d/b/a BADDA BING
20 MEN’S CLUB; SKY TOP VENDING,
INC., a Nevada corporation d/b/a CAN
21 CAN ROOM; LA FUENTE, INC., a
Nevada corporation d/b/a CHEETAH’S;
22 C.P. FOOD AND BEVERAGE, INC., a
Nevada corporation d/b/a CLUB
23 PARADISE; DÉJÀ VU SHOWGIRLS OF
LAS VEGAS, LLC, a Nevada limited
24 liability company d/b/a DÉJÀ VU
SHOWGIRLS; PALOMINO CLUB, INC.,
25 a Nevada corporation d/b/a PALOMINO
CLUB; SHAC, LLC, a Nevada corporation
26 d/b/a SAPPHIRE; K-KEL, INC., a Nevada
corporation d/b/a SPEARMINT RHINO;
27 D.2801 WESTWOOD, INC., a Nevada
corporation d/b/a TREASURES; LITTLE
28 DARLINGS OF LAS VEGAS, LLC, a

**DEFENDANT FRIAS MANAGEMENT,
LLC’S MOTION TO DISMISS**

1 Nevada limited liability company d/b/a
2 LITTLE DARLINGS; O.G. ELIADES,
3 A.D., LLC, a Nevada limited liability
4 company d/b/a OLYMPIC GARDENS ;
5 LAS VEGAS ENTERTAINMENT, LLC, a
6 Nevada limited liability company d/b/a
7 LARRY FLYNT’S HUSTLER CLUB;
8 MICHAEL A. SALTMAN d/b/a MINXX;
9 RICK’S LAS VEGAS; FRIAS
10 MANAGEMENT, LLC, a Nevada limited
11 liability company d/b/a ACE CAB
12 COMPANY and A-NORTH LAS VEGAS
13 CAB; WESTERN CAB COMPANY, a
14 Nevada corporation d/b/a WESTERN CAB
15 COMPANY and WESTERN LIMOUSINE;
16 NEVADA CHECKER CAB
17 CORPORATION, a Nevada corporation
18 d/b/a NEVADA CHECKER CAB
19 COMPANY; NEVADA STAR CAB
20 CORPORATION, a Nevada corporation
21 d/b/a STAR CAB COMPANY; NEVADA
22 YELLOW CAB CORPORATION, a
23 Nevada corporation d/b/a YELLOW CAB
24 COMPANY; LUCKY CAB COMPANY
25 OF NEVADA, a Nevada corporation d/b/a
26 LUCKY TRANS; SUN CAB, INC., a
27 Nevada corporation d/b/a NELLIS CAB
28 COMPANY; CLS NEVADA, LLC, a
Nevada limited liability company d/b/a
CLS TRANSPORTATION LAS VEGAS;
ON DEMAND SEDAN SERVICES, LLC,
a Nevada limited liability company d/b/a
ODS LIMOUSINES and ODS
CHAUFFEURED TRANSPORTATION;
BLS LIMOUSINE SERVICE OF LAS
VEGAS INC.; DESERT CAB, INC., a
Nevada corporation d/b/a DESERT CAB
COMPANY and ODYSSEY LIMOUSINE;
BELL TRANS A NEVADA
CORPORATION, a Nevada corporation
d/b/a BELL TRANS; TONY CHONG, an
individual; and DOE EMPLOYEES 1-
1000;

Defendants.

Defendant FRIAS MANAGEMENT, LLC (“Frias”), by and through its counsel, SNELL & WILMER L.L.P., hereby moves to dismiss Plaintiff THEODORE TRAPP’s Class Action Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

This Motion is based on the following Memorandum of Points and Authorities, all

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

pleadings and papers on file herein, and any oral argument the Court may entertain.

DATED this 31st day of July, 2009.

SNELL & WILMER L.L.P.

/S/ D. Neal Tomlinson, Esq.
D. NEAL TOMLINSON, ESQ.
WAYNE GROSS, ESQ.
MICHAEL D. STEIN, ESQ.
BRIAN R. REEVE, ESQ.
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Ste. 1100
Las Vegas, Nevada 89169

WILL KEMP, ESQ.
KEMP, JONES & COULTHARD LLP
3800 Howard Hughes Parkway, 17th floor
Las Vegas, Nevada 89169

Attorneys for Defendant Frias Management, LLC

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION7

II. FACTUAL BACKGROUND.....8

III. LEGAL STANDARD FOR MOTION TO DISMISS9

IV. ARGUMENT10

A. Plaintiff Cannot Be a Class Representative Because He Fails to State a Claim10

B. Plaintiff Has Failed to State a Nevada Civil RICO Claim11

1. The unidentified taxicab driver’s statements are protected by the First Amendment11

2. Nevada civil RICO claims must be pleaded with particularity13

3. Elements of a Nevada civil RICO claim14

a. Requirements for bringing a private cause of action under Nevada RICO14

b. Injury requirements for Nevada civil RICO claim15

4. As the only purported class representative, Plaintiff’s failure to state a Nevada civil RICO claim renders his complaint ripe for dismissal16

a. The Driver Defendants’ alleged violations of NRS 207.400 1(c), (d) and (h) have not been plead with specificity16

b. Plaintiff has failed to state a claim for the predicate act of obtaining money or property through false pretenses17

c. Plaintiff has failed to satisfy the injury requirements for a Nevada civil RICO claim.....19

C. Plaintiff’s Deceptive Trade Practices Claims Should Be Dismissed19

1. Plaintiff’s claims under NRS 598.0915 should be dismissed20

2. Plaintiff’s claims under NRS 598.0923 should be dismissed21

a. Plaintiff’s claim under NRS 598.0923(2) is ripe for dismissal21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

b. **Plaintiff’s claim under NRS 598.0923(3) is ripe
for dismissal**22

V. CONCLUSION23

TABLE OF AUTHORITIES

Cases

Allum v. Valley Bank of Nevada, 109 Nev. 280, 282, 849 P.2d 297 (1993)15, 19

Bell Atlantic Corporation v. Twombly, 550 U.S. 544, 127 S. Ct. 1955 (2007)9, 17

Comwest, Inc. v. American Operator Services, Inc.,
765 F. Supp. 1467, 1471 (C.D. Cal. 1991) 14

Consejo de Desarrollo Economico de Mexicali, A.C. v. United States,
482 F.3d 1157, 1168 (9th Cir. 2007)22

Cowen v. Bank United of Texas, FSB, 70 F.3d 937, 941 (7th Cir. 1995)10

Dodds v. American Broadcasting Co., 145 F.3d 1053, 1065 (9th Cir. 1998)11

DuPont v. Wyly, 61 F.R.D. 615, 630 (D. Del. 1973)10

Erwin v. State of Nevada, 111 Nev. 1535, 1538, 908 P.2d 1367, 1369 (1995)22

George v. Morton, 2007 WL 680788 (D. Nev. 2007).....20

Hale v. Burkhardt, 104 Nev. 632, 637, 764 P.2d 866, 869 (1988)13, 15

Haynes v. Alfred A. Knopf, Inc., 8 F.3d 1222, 1227 (7th Cir. 1993)11

Hockey v. Medhekar, 30 F. Supp.2d 1209, 1213 (N.D. Cal. 1998)14

Knievel v. ESPN, 393 F.3d 1068, 1075 (9th Cir. 2005)11

Lieboe v. State Farm Mut. Auto Ins. Co., 350 F.3d 1018, 1022 (9th Cir. 2003)10

Moore v. Kayport Package Exp., Inc., 885 F.2d 531, 541 (9th Cir. 1989)13, 18

Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001)9

Neubronner v. Milken, 6 F.3d 666, 672 (9th Cir. 1993)14

Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin,
418 U.S. 264, 284, 41 L. Ed. 2d 745, 94 S. Ct. 2770 (1974)12

Smith v. Pennington, 352, F.3d 884, 896 (4th Cir. 2003)10

Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001)10

Standing Comm. on Discipline of the United States Dist. Court v. Yagman,
55 F.3d 1430 (9th Cir. 1995)12

Swartz v. KPMG LLP, 476 F.3d 756, 764-65 (9th Cir. 2007)13, 16, 18

Underwager v. Channel 9 Australia, 69 F.3d 361, 366 (9th Cir. 1995)11

Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1103 (9th Cir. 2003)13, 20

Yourish v. California Amplifier, 191 F.3d 983, 993 (9th Cir. 1999)14

Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1169 (3d Cir. 1987)10

Statutes & Regulations

NRS 706.8846.....8, 21-24

NRS 598.092320-23

NRS 598.091520-21

NRS 207.400 1(c).....11, 14, 16

NRS 207.400 1(d).....11, 14, 16

NRS 207.400 1(h)..... 11, 14, 16-17

NRS 207.390 15

NRS 205.380 15, 17

NRS 207.36015

NRS 41.600.....19-20

NAC 706.552 8, 21-24

Rules of Civil Procedure

Fed. R. Civ. P. 12(b)(6)7, 9

Fed. R. Civ. P. 9(b)7-8, 13-14, 16-18, 20-21

Fed. R. Civ. P. 2310

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In his 41-page Complaint, Plaintiff spews out hundreds of generic (and sometimes contradictory¹) allegations against Frias and dozens of other Las Vegas businesses in hopes that sheer volume and shock-value will be enough to survive Rule 9(b) and 12(b)(6) scrutiny. It is not. Plaintiff’s failure to allege basic, particularized facts supporting his serious allegations warrants immediate dismissal.

It is well-settled that where a purported class representative fails to state a claim, his complaint must be dismissed. Despite all of the generalized allegations about how the purported kickback scheme works and the thousands of people who have been allegedly injured by it, Plaintiff has failed to allege any particularized facts demonstrating (1) that as a purported class representative, he himself has a claim for relief against Frias or any of the other Driver Defendants; and (2) that Frias has anything to do with the alleged scheme. In fact, Plaintiff’s Complaint does not allege a single act of wrongdoing by Frias or any of its drivers. Hence, dismissal is appropriate. This lawsuit is a prime example of why the federal courts and the Nevada Supreme Court require particularized pleading in RICO actions to weed out frivolous suits.

The “Allegations as to the Named Plaintiff” section of the Complaint², which is tucked away in the middle of the Complaint and is only a page and-a-half long, demonstrates that Plaintiff has no claim for relief against Frias and that he is simply attempting to bootstrap himself into a lawsuit. The allegations as to the named Plaintiff fail to state some of the most basic information required in a civil RICO action. For example, Plaintiff fails to state the identity of the taxicab company and driver that he hired, what was false about the driver’s statements and why they are false, that Plaintiff was injured as a result of the driver’s statements, and that his injuries flowed from and were proximately caused by the driver’s statements. Plaintiff’s habit of

¹ For example, Plaintiff alleges that the kickback scheme referred to in the Complaint is pervasive and permeates the manner in which the Driver Defendants conduct their business. (See Compl. at ¶¶56, 89.) Plaintiff also alleges, however, that “Only a small percentage of taxi and limousine drivers in Las Vegas are involved in the illegal actions described in this Complaint.” (See Compl. at ¶59.)

² See Compl. at 15.

1 lumping all of the “Driver Defendants” together throughout the Complaint, instead of specifying
2 the wrongful conduct of each Defendant, is also fatal. Moreover, Plaintiff’s allegations “on
3 information and belief” do not satisfy the particularity requirements of Rule 9(b) in a civil RICO
4 action because Plaintiff fails to state the factual basis for the belief.

5 Plaintiff’s claims under the Nevada Deceptive Trade Practices Act also fail for a variety of
6 reasons. First, Plaintiff’s broad allegations do not pass muster under Rule 9(b)’s heightened
7 pleading requirements. Further, Plaintiff’s failure specifically to allege that Frias was involved in
8 any fraudulent conduct is more than enough to merit dismissal. Plaintiff’s claim under NRS
9 598.0923(3) should also be dismissed because, as Plaintiff himself recognizes, NRS 706.8846 and
10 NAC 706.552 do not apply to Frias.

11 The theory upon which Plaintiff’s lawsuit is based is also faulty. Plaintiff surmises that
12 Frias somehow benefits from drivers’ tips or gratuities when in reality nothing could be further
13 from the truth. Under the terms of Frias’ collective bargaining agreement with its drivers, Frias
14 never receives a penny of its drivers’ tips or gratuities. Any tips or gratuities received by a driver,
15 regardless of the source, are the driver’s sole property. Accordingly, there is no incentive for
16 Frias to conspire with other taxicab companies or permit its drivers to break the law. In fact,
17 diverting customers in exchange for kickbacks harms Frias because it takes its drivers away from
18 their regular routes from which Frias earns money. Both the Nevada Taxicab Authority and Frias
19 understand the negative consequences associated with the conduct alleged in the Complaint and,
20 for this reason, actively engage in strict anti-diversion training.

21 **II. FACTUAL BACKGROUND**

22 According to Plaintiff’s Complaint, on or about January 17, 2009, Plaintiff allegedly
23 entered into an unidentified taxicab at Caesar’s Palace. (See Compl. at ¶¶63-64.) Plaintiff alleges
24 that he told the driver (also unidentified) that he wanted to go to Play it Again Sam, resulting in
25 Plaintiff and the driver chit-chatting about other adult entertainment cabarets in town. (Id. at
26 ¶¶65-66.) During the conversation, the driver allegedly opined that “There are better clubs than
27 Play it Again Sam,” “The girls are better at other clubs,” “Play it Again Sam is kinda sketchy,”
28 and “I’ll take you to a better club.” (Id. ¶66) Plaintiff alleges that the driver’s statements

1 deceived him into believing that Play it Again Sam was an undesirable club. (*Id.* at ¶68) Plaintiff
2 asserts that due to the driver’s statements, he allowed the driver to take him Spearmint Rhino, a
3 different adult entertainment establishment, where “on information and belief” the driver
4 allegedly received a kickback from Spearmint Rhino for allegedly diverting Plaintiff from Play it
5 Again Sam. (*Id.* at ¶¶70-71.)

6 Plaintiff asserts that the driver made the statements to Plaintiff so that Plaintiff would pay
7 a larger cab fare and resultant tip and so that the driver could receive a kickback, which was
8 allegedly partly paid for out of the increased cover charge at Spearmint Rhino. (*Id.*) Based on
9 these allegations and one innocuous experience, Plaintiff has initiated a class action against over
10 two dozen adult entertainment cabarets and transportation companies under Nevada’s RICO
11 statute and Deceptive Trade Practices Act for allegedly being part of an extravagant kickback
12 conspiracy to deceive and divert customers from their intended destinations. Plaintiff’s
13 Complaint is entirely without merit and should be summarily dismissed.

14 **III. LEGAL STANDARD FOR MOTION TO DISMISS**

15 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a complaint.
16 Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). To withstand dismissal under Rule
17 12(b)(6), a complaint’s “[f]actual allegations must be enough to raise a right to relief above the
18 speculative level,” and a plaintiff’s obligation to provide the grounds of its entitlement to relief
19 requires more than “labels and conclusions” or a “formulaic recitation” of the elements of the
20 cause of action. Bell Atlantic Corporation v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1964-65
21 (2007). To state a valid claim, a plaintiff is required to allege either direct or inferential
22 allegations respecting all the material elements to sustain recovery under some viable legal
23 theory. *Id.* at 1969. Thus, “a complaint must be dismissed if it does not plead ‘enough facts to
24 state a claim to relief that is plausible on its face.’” *Id.* at 1974. While a court is typically
25 required to accept the allegations in a complaint as true when considering a motion to dismiss, a
26 court is not required to accept as true “allegations that are merely conclusory, unwarranted
27 deductions of fact, or unreasonable inferences.” Sprewell v. Golden State Warriors, 266 F.3d
28 979, 988 (9th Cir. 2001).

1 **IV. LEGAL ARGUMENT**

2 **A. Plaintiff Cannot Be a Class Representative Because He Fails to State a Claim**

3 It is well-settled that in order for a plaintiff to be a class representative, he must state a
4 claim upon which relief can be granted. See e.g. Lieboe v. State Farm Mut. Auto Ins. Co., 350
5 F.3d 1018, 1022 (9th Cir. 2003) (explaining that if a purported class representative has no claim,
6 then she cannot represent others who may have such a claim, “and her bid to serve as a class
7 representative must fail”); Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1169 (3d Cir.
8 1987) (stating that “to be a class representative on a particular claim, the plaintiff himself must
9 have a cause of action on that claim”); Cowen v. Bank United of Texas, FSB, 70 F.3d 937, 941
10 (7th Cir. 1995) (ruling that where a named plaintiff’s claim lacks merit, the named plaintiff will
11 ordinarily be disqualified from being a class representative); DuPont v. Wyly, 61 F.R.D. 615, 630
12 (D. Del. 1973) (stating that if a named plaintiff cannot demonstrate he has suffered a wrong, he
13 cannot be a member of a class seeking redress and therefore is not an appropriate party to
14 represent it).

15 A purported class representative’s failure to state a claim violates the “typicality”
16 requirement under Fed. R. Civ. P. 23 and defeats class certification. See Smith v. Pennington,
17 352, F.3d 884, 896 (4th Cir. 2003) (holding that the district court did not abuse its discretion in
18 denying class certification where the purported class representative failed to state a claim because
19 the purported class representative’s position was not typical of members of the class.)

20 As demonstrated more fully below, Plaintiff has failed to state a claim upon which relief
21 can be granted and therefore cannot maintain a class action. While Plaintiff makes a number of
22 general allegations regarding a purported kickback scheme involving all of the Defendants, which
23 he apparently gleaned from a television news story and read about in a book³, the allegations
24 Plaintiff sets forth with respect to his own experience in Las Vegas do not give rise to a claim for
25 relief. Accordingly, dismissal is appropriate.

26
27
28

³ See Compl. at ¶¶57-58.

1 **B. Plaintiff Has Failed to State a Nevada Civil RICO Claim**

2 Plaintiff’s Fourth, Sixth and Eighth counts against the “Driver Defendants⁴” allege
3 violations of Nevada’s RICO statute, Chapter 207 of the Nevada Revised Statutes. Specifically,
4 Plaintiff alleges that the Driver Defendants violated NRS 207.400 1(c), NRS 207.400 1(d), and
5 NRS 207.400 1(h). Plaintiff has failed to state a claim under these sections, ignores the fact that
6 the unidentified driver’s statements are protected by the First Amendment and has failed to
7 adhere to the particularized pleading requirement for RICO claims in Nevada warranting
8 dismissal.

9 **1. The unidentified taxicab driver’s statements are protected by the First
10 Amendment**

11 A statement is not actionable if it cannot reasonably be interpreted as stating actual facts
12 that are provably false.⁵ Dodds v. American Broadcasting Co., 145 F.3d 1053, 1065 (9th Cir.
13 1998); Haynes v. Alfred A. Knopf, Inc., 8 F.3d 1222, 1227 (7th Cir. 1993) (explaining that a
14 statement is not actionable if the speaker “is expressing a subjective view, an interpretation, a
15 theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable
16 facts.”) When determining whether a statement can reasonably be interpreted as a factual
17 assertion, a court must examine the “totality of the circumstances in which it was made.”
Underwager v. Channel 9 Australia, 69 F.3d 361, 366 (9th Cir. 1995).

18 First, a court must look at the statement in its broad context, which includes the general
19 tenor of the entire work, the subject of the statements, the setting, and the format of the work.
20 Any statement can be parsed or set forth in a limited context that could be interpreted incorrectly.
21 Without context, content is misleading. Knievel v. ESPN, 393 F.3d 1068, 1075 (9th Cir.
22 2005)(citing Underwager, 69 F.3d at 366.) Second, a court must turn to the specific context and
23 content of the statements, analyzing the extent of figurative or hyperbolic language used and the
24 reasonable expectations of the audience in that particular situation. Knievel, 393 F.3d at 1075.
25 Finally, the court must inquire whether the statement itself is sufficiently factual to be susceptible

26 _____
27 ⁴ Plaintiff’s nomenclature is misplaced because Frias is not a taxicab or limousine driver; rather, Frias is a limited
liability company involved in the transportation industry.

28 ⁵ Although the cases cited herein deal with the cause of action for defamation, the same principles apply to any cause
of action based on speech.

1 of being proved true or false. Id. The context in which the statement appears is paramount in a
2 court’s analysis, and in some cases it can be dispositive. Id.

3 A speaker's use of "loose, figurative" language can also determine whether his or her
4 statement can reasonably be interpreted as a factual allegation. In Standing Comm. on Discipline
5 of the United States Dist. Court v. Yagman, 55 F.3d 1430 (9th Cir. 1995), the Ninth Circuit held
6 that an attorney could not be sanctioned for accusing a district judge of being "dishonest" because
7 the other terms the attorney used to describe the judge -- "ignorant," "ill-tempered," "buffoon,"
8 "sub-standard human," and "right-wing fanatic" -- made it clear that the attorney intended only to
9 signal his general contempt for the judge, rather than to accuse him of corruption. Id. at 1440; see
10 also Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin, 418 U.S. 264, 284,
11 41 L. Ed. 2d 745, 94 S. Ct. 2770 (1974) (holding that the use of the word "traitor" could not be
12 reasonably interpreted as a representation of fact because it was used "in a loose, figurative sense
13 to demonstrate the union's strong disagreement with the views of those workers who oppose
14 unionization").

15 Here, Plaintiff has alleged that the unidentified taxicab driver made the following
16 statements: (1) “There are better clubs than Play it Again Sam”; (2) “There are better clubs”; (3)
17 “The girls are better at other clubs”; (4) “Play it Again Sam is kinda sketchy”; and (5) “I’ll take
18 you to a better club.” (See Compl. at ¶66.)

19 Looking at the totality of the circumstances, none of the alleged statements made by the
20 unidentified taxi driver are false representations of *fact*. Rather, each alleged statement is simply
21 the driver’s *opinion* or *viewpoint*, which is not objectively verifiable. The context in which the
22 statements allegedly were made supports this conclusion. Plaintiff alleges that the driver made
23 the foregoing statements to him in a taxicab during his conversation with the driver about Las
24 Vegas adult entertainment establishments. Using loose and vague language, like “better⁶ clubs,”
25 “better⁷ girls,” and “kinda sketchy⁸,” the driver simply gave Plaintiff his opinion. While there

26 ⁶ Plaintiff fails to describe what the driver meant by “better clubs” – i.e. better in terms of cover price, location,
27 quality of liquor, quality of entertainers, ambiance, etc.?

28 ⁷ Plaintiff fails to articulate what the driver meant by “better girls” – i.e. better in terms of appearance, ability,
demeanor, personality, etc.?

⁸ It is unclear what “kinda sketchy” even means.

1 may be some who disagree with the driver’s assessment of Play if Again Sam or any other adult
2 entertainment establishment, that does not mean his opinions are “false representations.”

3 **2. Nevada civil RICO claims must be plead with particularity**

4 The Nevada Supreme Court has held, as a matter of substantive law, that Nevada civil
5 RICO claims must be plead with specificity. Hale v. Burkhardt, 104 Nev. 632, 637, 764 P.2d
6 866, 869 (1988). Particularized pleading in Nevada civil RICO actions is necessary to weed-out
7 frivolous claims, prevent the “overenthusiastic” use of RICO, and enable the RICO defendant to
8 prepare a defense against a treble damages claim. Id. at 637-38. Thus, regardless of whether a
9 plaintiff asserts fraud as part of a Nevada civil RICO action, the plaintiff is still required to plead
10 his civil RICO claims with specificity. Where a plaintiff asserts a state civil RICO claim in
11 federal court that is grounded in fraud, however, then Fed. R. Civ. P. 9(b) is triggered and the
12 RICO claim must be plead with specificity. Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1103
13 (9th Cir. 2003).

14 Here, the predicate acts underlying Plaintiff’s civil RICO claims are obtaining money or
15 property through *false pretenses*. Plaintiff’s civil RICO claims are therefore fraud-based claims
16 triggering Rule 9(b). Thus, not only is Plaintiff required to plead his RICO claims with
17 specificity under Nevada substantive law, he is also required to plead his RICO claims with
18 specificity under Federal Rule of Civil Procedure 9(b) since the predicate acts underlying his
19 RICO claims are based in fraud. Id.

20 Rule 9(b) requires that “the pleader state the time, place, and specific content of the false
21 representations as well as the identities of the parties to the misrepresentation.” Moore v. Kayport
22 Package Exp., Inc., 885 F.2d 531, 541 (9th Cir. 1989). This means that Rule 9(b) “does not allow
23 a complaint to merely lump multiple defendants together but ‘require[s] plaintiffs to differentiate
24 their allegations when suing more than one defendant ... and inform each defendant separately of
25 the allegations surrounding his alleged participation in the fraud.’” Swartz v. KPMG LLP, 476
26 F.3d 756, 764-65 (9th Cir. 2007); see also Kayport Package, 885 F.2d at 541 (a complaint must
27 attribute specific conduct to individual defendants). Thus, where multiple defendants are
28 involved, “a plaintiff *must*, at a minimum, ‘identif[y] the role of [each] defendant[] in the alleged

1 fraudulent scheme.” Id. (emphasis added).

2 In addition to the foregoing requirements, the plaintiff must also “set forth what is false or
3 misleading about a statement, and why it is false.” Yourish v. California Amplifier, 191 F.3d
4 983, 993 (9th Cir. 1999). In other words, as part of the circumstances constituting the fraud, the
5 plaintiff must explain “why the disputed statement was untrue or misleading when made.” Id.

6 Allegations made “on information and belief” do not satisfy Rule 9(b)’s particularity
7 requirement unless the complaint sets forth the factual basis for the belief. See Neubronner v.
8 Milken, 6 F.3d 666, 672 (9th Cir. 1993); Comwest, Inc. v. American Operator Services, Inc., 765
9 F. Supp. 1467, 1471 (C.D. Cal. 1991). Moreover, a plaintiff cannot plead “fraud by hindsight;”
10 instead, he must set forth why a statement was false or misleading when made.” Hockey v.
11 Medhekar, 30 F. Supp.2d 1209, 1213 (N.D. Cal. 1998).

12 3. Elements of a Nevada civil RICO claim

13 a. Requirements for bringing a private cause of action under Nevada 14 RICO

15 Plaintiff alleges that he is entitled to bring a civil class action under Nevada RICO against
16 the Driver Defendants for violations of NRS 207.400 1(c), NRS 207.400 1(d), and NRS 207.400
17 1(h). These provisions provide, in pertinent part, as follows:

18 1. It is unlawful for a person:

19 . . .

20 (c) Who is employed by or associated with any enterprise to
conduct or participate, directly or indirectly, in:

21 (1) The affairs of the enterprise through racketeering
activity; or

22 (2) Racketeering activity through the affairs of the
23 enterprise

24 (d) Intentionally to organize, manage, direct, supervise or
25 finance a criminal syndicate.

26 . . .

27 (h) To conspire to violate any of the provisions of this section.

28 NRS 207.400 1(c), (d), (h).

1 The term “racketeering activity,” as set forth in NRS 207.400, is a key component of
2 RICO and is defined as:

3 engaging in at least two crimes related to racketeering that have the
4 same or similar pattern, intents, results, accomplices, victims or
5 methods of commission, or are otherwise interrelated by
6 distinguishing characteristics and are not isolated incidents, if . . .
7 the last of the incidents occurred within 5 years after a prior
8 commission of a crime related to racketeering.

9 NRS 207.390. The term “crime related to racketeering” means “the commission of, attempt to
10 commit or conspiracy to commit” any of the crimes listed in NRS 207.360. The crimes set forth
11 in NRS 207.360 are commonly referred to as “predicate acts” or “predicate crimes.” See Allum
12 v. Valley Bank of Nevada, 109 Nev. 280, 283 (1993); Hale, 104 Nev. at 636-37. Thus, part of
13 adequately stating a Nevada civil RICO claim is being able to state a claim for the underlying
14 predicate acts. See Hale, 104 Nev. at 636.

15 Plaintiff alleges that the Driver Defendants engaged in the predicate act of obtaining
16 money or property through false pretenses. See NRS 207.360(26). A false pretense is “a
17 representation of some fact or circumstance which is not true and is calculated to mislead; it may
18 consist of any words or actions intended to deceive.” Hale, 104 Nev. at 637. The elements for
19 obtaining money or property through false pretenses are (1) intent to defraud; (2) a false
20 representation; (3) reliance on a false representation; and (4) the victim was defrauded. Id. at
21 639; see also NRS 205.380. This alleged crime necessarily requires an element of fraud, and
22 therefore a plaintiff must plead with specificity. Hale, 104 Nev. at 637-38.

23 b. Injury requirements for Nevada civil RICO claim

24 In addition to the requirements above, the Nevada Supreme Court has held that for a
25 plaintiff to succeed on a Nevada civil RICO claim, three conditions must be met: (1) the
26 plaintiff’s injury must flow from the defendant’s violation of a predicate act; (2) the injury must
27 be proximately caused by the defendant’s violation of a predicate act; and (3) the plaintiff must
28 not have participated in the commission of predicate act. Allum, 109 Nev. at 283.

///

///

1 **4. As the Only Purported Class Representative, Plaintiff’s Failure to**
2 **State a Nevada Civil RICO Claim Renders His Complaint Ripe for**
3 **Dismissal**

4 This Court should dismiss Plaintiff’s Complaint because, as the sole purported class
5 representative, Plaintiff has failed to state a civil RICO claim with sufficient particularity.

6 a. The Driver Defendants’ alleged violations of NRS 207.400 1(c), (d)
7 and (h) have not been plead with specificity

8 Plaintiff’s Nevada civil RICO claims are based on violations of NRS 207.400 1(c), (d),
9 and (h). Plaintiff’s allegations with respect to these violations provide nothing more than a
10 formulaic recitation of the elements of the statute, which is not enough under even the general
11 pleading standards in Rule 8(a). Moreover, Plaintiff’s failure to differentiate his allegations and
12 attribute specific conduct to individual Defendants does not satisfy the strictures of Rule 9(b).

13 With respect to the purported violations of NRS 207.400 1(c) in Count IV, Plaintiff
14 alleges that the Driver Defendants conducted the affairs of an “association-in-fact enterprise” but
15 fails to state what role Frias plays in the enterprise, what “affairs” Frias allegedly conducted on
16 behalf of the enterprise, and how Frias conducted such affairs. Without these facts, Plaintiff fails
17 to state a claim. Moreover, it is clear from the statute that the “affairs of the enterprise” is
18 something different than “racketeering activity,” so any argument that Frias conducted the affairs
19 of the enterprise by engaging in racketeering activity is misplaced.

20 Count VI of Plaintiff’s Complaint under NRS 207.400 1(d), which makes it unlawful for a
21 person “Intentionally to organize, manage, direct, supervise or finance a criminal syndicate,”
22 doesn’t pass muster for many of the same reasons as mentioned above. Plaintiff’s broad
23 allegations that all Driver Defendants have violated this section ignores Rule 9(b), which requires
24 Plaintiff to “inform each defendant separately of the allegations surrounding his alleged
25 participation in the fraud” and to “identify[y] the role of [each] defendant[] in the alleged
26 fraudulent scheme.” Swartz, 476 F.3d at 764-65. Plaintiff has not alleged specific facts
27 concerning Frias or identified what role Frias has played in the alleged criminal syndicate – *i.e.*
28 whether Frias organized, manages, directs, supervises or finances the syndicate, how they go
 about engaging in these activities, and whether their purported actions are undertaken with the

1 appropriate state of mind. Plaintiff’s omission of such fundamental assertions makes it
2 impossible for Frias to prepare a defense to these frivolous claims.

3 Count VIII of Plaintiff’s Complaint under NRS 207.400 1(h), which makes it unlawful for
4 any person to conspire to violate any of the provision of this section, is also defective. Plaintiff
5 alleges that the Driver Defendants intentionally agreed and conspired with the Club Defendants to
6 “engage in countless acts of alleged wrongful conduct” including obtaining money or property
7 through false pretenses. (See Compl. at ¶133) Plaintiff also alleges that the Driver Defendants
8 “committed the acts alleged herein pursuant to and in furtherance of that agreement and furthered
9 the conspiracy by cooperating, encouraging, ratifying, participating in, and adopting the acts of
10 the Club Defendants.” (See Compl. at ¶134)

11 Plaintiff’s allegations consist of nothing more than formulaic labels and conclusions,
12 which fail to differentiate one Defendant’s alleged acts or role in the purported conspiracy from
13 another’s. Twombly, 550 U.S. at 545. Plaintiff doesn’t identify what the “countless acts of
14 wrongful conduct” are; what role Frias plays in the alleged conspiracy; how long Frias has been a
15 part of the alleged conspiracy; whether Frias has cooperated, encouraged, ratified, participated in
16 or adopted the acts of the Club Defendants and how it has allegedly done this; and what
17 provisions of NRS 207.400 the Defendants have allegedly conspired to violate. Without more
18 specific allegations, Frias has been prejudiced in their ability to adequately respond to Plaintiff’s
19 generalized claims. The only adequate remedy is dismissal.

20 b. Plaintiff has failed to state a claim for the predicate act of obtaining
21 money or property through false pretenses

22 In order to state a valid RICO claim, Plaintiff was required to detail the facts and
23 circumstances surrounding the violation of the predicate acts. According to the Complaint, the
24 predicate acts underlying each of Plaintiff’s civil RICO counts against Frias and the other Driver
25 Defendants are multiple acts of violating NRS 205.380, obtaining money or property through
26 false pretenses. Under Rule 9(b), Plaintiff’s failure to state the facts and circumstances
27 surrounding the alleged predicate acts with particularity is fatal.

28 ///

1 One of the basic requirements under Rule 9(b) is to state the identity of the parties to the
2 misrepresentation. Kayport Package, 885 F.2d at 541. Plaintiff failed to state the identity of the
3 taxi company that he purportedly hired to take him to Play it Again Sam or the identity of the
4 driver. (See Compl. at ¶¶63-73.) As a result, neither Frias nor any of the other Driver Defendants
5 know whether Plaintiff took one of their cabs or spoke to one of their drivers, which makes it
6 impossible for Frias or any of the other Driver Defendants adequately to respond to Plaintiff's
7 allegations. Plaintiff cannot be permitted to prosecute a lawsuit against Frias simply because it is
8 in the transportation industry doing business in Clark County. Further, Plaintiff's failure to
9 identify the cab company and driver discussed in paragraphs 63-73 raises the possibility that
10 Plaintiff took a cab from a company that has not been named in this lawsuit. Because of this
11 distinct (and very real) possibility, Plaintiff's suit must not be permitted to go forward.

12 Plaintiff's Complaint also fails to set forth the specific content of the alleged false
13 representations and to explain what is false or misleading about the statements, and why they are
14 false. This is a fundamental requirement of any allegation of fraud. The reason Plaintiff omitted
15 these key allegations is clear: Plaintiff cannot objectively verify a person's opinion and therefore
16 cannot demonstrate why the statements are false.⁹ For this reason, the Court should dismiss
17 Plaintiff's Complaint with prejudice. No amendment can cure this defect.

18 Plaintiff's Complaint should also be dismissed because: (1) he inappropriately lumped all
19 of the Driver Defendants together when describing the predicate acts (see ¶¶88-90) instead of
20 describing the specific conduct of each Defendant, including Frias, as required by Swartz and
21 Kayport Package; and (2) Plaintiff's allegations "on information and belief" do not satisfy the
22 particularity requirements under Rule 9(b) since he does not set forth the factual basis for his
23 belief.¹⁰

24 ///

25 _____
26 ⁹ Indeed, Plaintiff noticeably made no attempt to allege that the girls at Play it Again Sam are actually *better* than the
27 girls at Spearmint Rhino, that Play it Again Sam is *not* a sketchy establishment, or that Spearmint Rhino is in fact a
worse establishment than Play it again Sam.

28 ¹⁰ For example, Plaintiff alleges "on information and belief" that the unidentified taxicab driver obtained a kickback
from Spearmint Rhino, which "on information and belief" was in the amount of approximately \$100. Plaintiff
provides no facts supporting this belief.

1 c. Plaintiff has failed to satisfy the injury requirements for a Nevada
2 civil RICO claim

3 Plaintiff's Complaint does not satisfy all of the injury requirements set forth by the
4 Nevada Supreme Court in Allum. As a preliminary matter, Plaintiff does not even allege that he
5 was in fact injured by the unidentified taxicab driver's statements; instead, Plaintiff simply asserts
6 that the driver's statements were made *for the purpose of* inducing Plaintiff into paying a larger
7 cab fare and resultant tip and *for the purpose of* diverting Plaintiff to a club that charges an
8 increased cover charge, which is applied toward the kickback to the driver. Noticeably, Plaintiff
9 never states that, due to the driver's statements, (1) he *in fact* paid a larger cab fare than he would
10 have paid had he gone to Play it Again Sam; (2) that he *in fact* paid a larger tip to the driver than
11 he would have paid had he gone to Play it Again Sam; and (3) that he *in fact* paid more to
12 Spearmint Rhino in the form of a cover charge than he would have paid had he gone to Play it
13 Again Sam. These omissions are critical because it is entirely possible that Spearmint Rhino is
14 *closer* to Caesar's Palace than Play it Again Sam, which would have resulted in Plaintiff paying
15 *less* of a cab fare and *less* of a resultant tip, and that Spearmint Rhino's cover charge is *less* than
16 Play it Again Sam's cover charge. In short, Plaintiff has not alleged that he was actually injured
17 by the driver's statements, and in fact, could have saved money by going to Spearmint Rhino
18 instead of Play it Again Sam.

19 Plaintiff has also failed to demonstrate that his "injury" was proximately caused by Frias.
20 Under Allum, Plaintiff must show that his injury was proximately caused *by the defendant's*
21 violation of the predicate act. 109 Nev. at 283. Here, Plaintiff has not alleged that his "injury"
22 was proximately caused by Frias' alleged violation of the predicate act. According to the
23 Complaint, Plaintiff was purportedly injured as a result of some unidentified taxi company's
24 driver's statements. This fundamental omission alone is enough to support dismissal of the
25 Complaint.

26 ///

27 ///

28

1 **C. Plaintiff’s Deceptive Trade Practices Claims Should Be Dismissed**

2 In Count IX of the Complaint, Plaintiff alleges that he is entitled to relief under NRS
3 41.600 as a result of Defendants’ alleged violations of the Nevada Deceptive Trade Practices Act,
4 NRS Chapter 598. (See Compl. at ¶139.) Nevada Revised Statute 41.600 provides that a victim
5 of “consumer fraud” may assert a private cause of action. Consumer fraud includes a deceptive
6 trade practice as defined in NRS 598.0915 to 598.0925. See NRS 41.600. Plaintiff alleges that
7 Defendants have violated NRS 598.0915 and NRS 598.0923.

8 **1. Plaintiff’s claims under NRS 598.0915 should be dismissed**

9 Plaintiff’s Complaint alleges that Defendants have violated NRS 598.0915(1), (5), (8), and
10 (15). This section provides, in pertinent part:

11 A person engages in a ‘deceptive trade practice’ if, in the course of
12 his business or occupation, he:

13 (1) Knowingly passes off goods or services for sale or lease as
14 those of another person.

15 . . .

16 (5) Knowingly makes a false representation as to the characteristics,
17 ingredients, uses, benefits, alterations or quantities of goods or
18 services for sale or lease or a false representation as to the
19 sponsorship, approval, status, affiliation or connection of a person
20 therewith.

21 . . .

22 (8) Disparages the goods, services or business of another person by
23 false or misleading representation of fact.

24 . . .

25 (15) Knowingly makes any other false representation in a transaction.

26 Under Ninth Circuit law, where allegations of fraudulent conduct form the basis of a
27 claim, the claim is considered to be “grounded in fraud” and must satisfy Rule 9(b)’s particularity
28 requirement. Vess, 317 F.3d at 1103-04. This Court has applied Rule 9(b)’s particularity
requirements to alleged violations of the Nevada Deceptive Trade Practices Act. See George v.
Morton, 2007 WL 680788 (D. Nev. 2007). Each of the above subsections alleges fraudulent
conduct and therefore Plaintiff’s allegations must satisfy Rule 9(b)’s heightened pleading

1 standards.

2 Plaintiff has failed to state with particularity any of the facts or circumstances giving rise
3 to the fraudulent conduct delineated in NRS 598.0915. Specifically, the Complaint does not say:

- 4 • which subsections Frias specifically violated,
- 5 • when Frias violated a particular subsection,
- 6 • how Frias violated them,
- 7 • what Frias specifically said, and
- 8 • against whom Frias committed the alleged violations.

9 In short, Plaintiff did not make a single specific allegation with respect to Frias or any other
10 Defendant, as required by Rule 9(b). As stated above, lazily alleging that the “Driver
11 Defendants” violated NRS 598.0915 does not comply with Rule 9(b); Plaintiff must set forth the
12 specific conduct of each Defendant. Plaintiff did not do this. Accordingly, the Court should
13 dismiss Plaintiff’s deceptive trade practices claims under NRS 598.0915.

14 **2. Plaintiff’s claims under NRS 598.0923 should be dismissed**

15 Plaintiff alleges that the Driver Defendants violated subsections 2 and 3 of NRS 598.0923.
16 These provisions provide:

17 A person engages in a “deceptive trade practice” when in the course
of his business or occupation he knowingly:

18 . . .

19 2. Fails to disclose a material fact in connection with the sale or
20 lease of goods or services.

21 3. Violates a state or federal statute or regulation relating to the
22 sale or lease of goods or services.

22 . . .

23 According to Plaintiff, the Driver Defendants have violated NRS 598.0923(2) because they fail to
24 disclose the actual nature of their services and, that they are receiving illegal kickbacks. Plaintiff
25 asserts that the Driver Defendants have violated NRS 598.0923(3) because the Driver Defendants
26 are in violation of NRS 706.8846 and NAC 706.552.¹¹

27 _____
28 ¹¹ Plaintiff’s Complaint also asserts that Defendant Clubs are in violation of Clark County Ordinance 8.20.297. This Ordinance has been repealed and is no longer in effect.

1 a. Plaintiff’s claim under NRS 598.0923(2) is ripe for dismissal

2 Plaintiff’s allegation under NRS 598.0923(2) is grounded in fraud because it alleges that
3 the Driver Defendants failed to disclose “the actual nature of their services” and that they “are
4 receiving large illegal kickbacks for delivering customers to certain clubs.” Rule 9(b) therefore
5 applies.

6 Plaintiff has failed to state a claim under NRS 598.0923(2) with particularity. Plaintiff
7 has not alleged any specific instances in which Frias failed to disclose material facts to a
8 customer. Nor has Plaintiff alleged when Frias committed the violation, what goods or services
9 they were selling, what each of them specifically said to a customer, or who the customer was that
10 Frias allegedly deceived. Plaintiff’s vague allegations against the “Driver Defendants” does not
11 pass muster.

12 b. Plaintiff’s claim under NRS 598.0923(3) is ripe for dismissal

13 The Court should dismiss Plaintiff’s claim under NRS 598.0923(3) because NRS
14 706.8846 and NAC 706.552 are explicitly directed to “drivers” and, as Plaintiff has alleged, Frias
15 is not a driver.

16 Nevada Revised Statute 706.8846 provides that: “With respect to a passenger’s
17 destination, *drivers* shall not: (2) Convey or attempt to convey any passenger to a destination
18 other than the one directed by the passenger.” (emphasis added) The language of NAC 706.552
19 builds upon the requirements set forth in the Nevada Revised Statutes and further provides that:
20 “A taxicab *driver* shall, in addition to the requirements of NRS 706.8849: (3) Not accept, directly
21 or indirectly, a gratuity or any form of compensation from any person for diverting or attempting
22 to divert a prospective customer from any commercial establishment.”

23 The rules of statutory construction are clear. It is well-established that “[w]here the
24 language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is
25 no room for construction, and the courts are not permitted to search for its meaning beyond the
26 statute itself.” Erwin v. State of Nevada, 111 Nev. 1535, 1538, 908 P.2d 1367, 1369 (1995); see
27 also Consejo de Desarrollo Economico de Mexicali, A.C. v. United States, 482 F.3d 1157, 1168
28 (9th Cir. 2007) (stating that if the plain meaning of the statute is unambiguous, that meaning is

1 controlling and courts need not examine legislative history as an aid to interpretation unless “the
2 legislative history clearly indicates that Congress meant something other than what it said”).

3 The statutory language at issue in both provisions clearly sets forth that it is directed to the
4 actions of drivers. By explicitly choosing to use the words “driver shall not,” the meaning is clear
5 and unambiguous, and applies to taxicab drivers, not to their respective employers.¹² Thus, any
6 allegations pertaining to violations of NRS 706.8846 or NAC 706.552 cannot proceed against
7 Frias because, as alleged in the Complaint, Frias is not a taxicab or limousine driver; rather, Frias
8 is a limited liability company.

9 Plaintiff appears to recognize this distinction because his Complaint subtly alleges that
10 “Driver Defendants *who operate taxi cabs* are in violation of N.R.S. § 706.8846[.]” (See Compl.
11 at ¶149 (emphasis added).) In paragraph 150 of the Complaint, Plaintiff similarly alleges that
12 “Driver Defendants *who operate taxi cabs* are also in violation of N.A.C. § 706.552[.]” (See
13 Compl. at ¶150 (emphasis added).) Finally, in paragraph 151 Plaintiff states “By violating N.R.S.
14 § 706.8846 and N.A.C. § 706.552, Driver Defendants *who are taxi cab drivers* are committing a
15 deceptive trade practice as defined by N.R.S. § 598.0923(3).” (See Compl. at ¶151 (emphasis
16 added).) Based on the plain language of the statute and the specific allegations in the Complaint,
17 Plaintiff’s claim under NRS 598.0923(3) doesn’t apply to Frias and therefore should be
18 dismissed.

19 **V. CONCLUSION**

20 Based on the foregoing, Frias respectfully requests that the Court dismiss Plaintiff’s
21 Complaint with prejudice for failure to state a claim upon which relief can be granted. Plaintiff
22 has failed to state a Nevada civil RICO claim because (1) he did not set forth specific facts
23 supporting the claim as required by Nevada substantive law and Rule 9(b); (2) the unidentified
24 driver’s statements are protected under the First Amendment as mere opinion; and (3) Plaintiff
25 has not set forth the injury requirements for a Nevada civil RICO claim. In addition, Plaintiff has
26 failed to state a claim under the Nevada Deceptive Trade Practices Act because he has not plead

27 ///

28 ¹² Indeed, NRS Chapter 706 expressly differentiates between “drivers” and “certificate holders.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

his claims with specificity and NRS 706.8846 and NAC 706.552 do not apply to Frias. For all of these reasons, dismissal is appropriate.

DATED this 31st day of July, 2009.

SNELL & WILMER L.L.P.

/S/ D. Neal Tomlinson, Esq.
D. NEAL TOMLINSON, ESQ.
WAYNE GROSS, ESQ.
MICHAEL D. STEIN, ESQ.
BRIAN R. REEVE, ESQ.
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Ste. 1100
Las Vegas, Nevada 89169

WILL KEMP, ESQ.
KEMP, JONES & COULTHARD LLP
3800 Howard Hughes Parkway, 17th floor
Las Vegas, Nevada 89169

Attorneys for Defendant Frias Management, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of Snell & Wilmer, L.L.P., and that on the 31st day of July, 2009, I electronically transmitted the **DEFENDANT FRIAS MANAGEMENT, LLC’S MOTION TO DISMISS** to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all attorneys of record in this matter.

/s/ Brandy Miller
An employee of Snell & Wilmer L.L.P.

10139069