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8 *Attorneys for Plaintiffs*
 9 *MGM Resorts International,*
 10 *Mirage Resorts, Incorporated, and*
 11 *Mandalay Resort Group*

11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF NEVADA**

13 MGM RESORTS INTERNATIONAL, a
 Delaware corporation; MIRAGE RESORTS,
 14 INCORPORATED, a Nevada corporation; and
 15 MANDALAY RESORT GROUP, a Nevada
 corporation,

16 Plaintiffs,

17 v.

18 JOHN DOES 1-10,

19 Defendants.

Case No.: 2:17-cv-01101-APG-GWF

JONATHAN W. FOUNTAIN'S
MOTION TO WITHDRAW AS COUNSEL
FOR PLAINTIFFS

3993 Howard Hughes Pkwy, Suite 600
 Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

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1 Pursuant to District of Nevada Local Rule LR IA 11-6(b) and Rule 1.16 of the Nevada
2 Rules of Professional Conduct, I, Jonathan W. Fountain, hereby move the Court for entry of an
3 order: (1) granting leave for me to withdraw from representing Plaintiffs MGM Resorts
4 International, Mirage Resorts, Incorporated, and Mandalay Resort Group (together “MGM
5 Resorts”); and (2) directing the Clerk of the Court to remove me from the CM/ECF service list
6 for this case.

7 **STATEMENT OF FACTS**

8 This trademark infringement action was filed on April 20, 2017. (ECF No. 1, Compl.)
9 On June 27, 2017, Plaintiffs moved the court for leave to serve subpoenas to identify the
10 presently unknown defendants. (ECF No. 5, Mot. for Leave to Serve Subpoenas.) The motion
11 is pending. On July 25, 2017, the undersigned informed Lewis Roca Rothgerber Christie LLP
12 of his resignation from further employment with the firm.

13 **LEGAL STANDARDS**

14 District of Nevada Local Rule LR IA 11-6 governs attorney appearances, substitutions,
15 and withdrawals. It states the following:

16 **LR IA 11-6. APPEARANCES, SUBSTITUTIONS, AND WITHDRAWALS**

- 17 (a) A party who has appeared by attorney cannot while so represented appear
18 or act in the case. This means that once an attorney makes an appearance
19 on behalf of a party, that party may not personally file a document with
20 the court; all filings must thereafter be made by the attorney. An attorney
21 who has appeared for a party must be recognized by the court and all the
22 parties as having control of the client’s case, however, the court may hear
23 a party in open court even though the party is represented by an attorney.
- 24 (b) No attorney may withdraw after appearing in a case except by leave of the
25 court after notice has been served on the affected client and opposing
26 counsel.
- 27 (c) A stipulation to substitute attorneys must be signed by the attorneys and
28 the represented client and be approved by the court. Except where
accompanied by a request for relief under subsection (e) of this rule, the
attorney’s signature on a stipulation to substitute the attorney into a case
constitutes an express acceptance of all dates then set for pretrial
proceedings, trial, or hearings, by the discovery plan or any court order.
- (d) Discharge, withdrawal, or substitution of an attorney will not alone be

1 reason for delay of pretrial proceedings, discovery, the trial, or any hearing
2 in the case.

- 3 (e) Except for good cause shown, no withdrawal or substitution will be
4 approved if it will result in delay of discovery, the trial, or any hearing in
5 the case. Where delay would result, the papers seeking leave of the court
6 for the withdrawal or substitution must request specific relief from the
7 scheduled discovery, trial, or hearing. If a trial setting has been made, an
8 additional copy of the moving papers must be provided to the clerk for
9 immediate delivery to the assigned district judge, bankruptcy judge, or
10 magistrate judge.

11 In addition, Rule 1.16 of the Nevada Rules of Professional Conduct governs the
12 termination of representation. It states the following:

- 13 (a) Except as stated in paragraph (c), a lawyer shall not represent a client or,
14 where representation has commenced, shall withdraw from the
15 representation of a client if:

- 16 (1) The representation will result in violation of the Rules of
17 Professional Conduct or other law;
18 (2) The lawyer's physical or mental condition materially impairs the
19 lawyer's ability to represent the client; or
20 (3) The lawyer is discharged.

- 21 (b) Except as stated in paragraph (c), a lawyer may withdraw from
22 representing a client if:

- 23 (1) Withdrawal can be accomplished without material adverse effect
24 on the interests of the client;
25 (2) The client persists in a course of action involving the lawyer's
26 services that the lawyer reasonably believes is criminal or
27 fraudulent;
28 (3) The client has used the lawyer's services to perpetrate a crime or
fraud;
(4) A client insists upon taking action that the lawyer considers
repugnant or with which the lawyer has fundamental disagreement;
(5) The client fails substantially to fulfill an obligation to the lawyer
regarding the lawyer's services and has been given reasonable
warning that the lawyer will withdraw unless the obligation is
fulfilled;

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2 (6) The representation will result in an unreasonable financial burden
3 on the lawyer or has been rendered unreasonably difficult by the
4 client; or

5 (7) Other good cause for withdrawal exists.

6 (c) A lawyer must comply with applicable law requiring notice to or
7 permission of a tribunal when terminating representation. When ordered to
8 do so by a tribunal, a lawyer shall continue representation notwithstanding
9 good cause for terminating the representation.

10 (d) Upon termination of representation, a lawyer shall take steps to the extent
11 reasonably practicable to protect a client's interests, such as giving
12 reasonable notice to the client, allowing time for employment of other
13 counsel, surrendering papers and property to which the client is entitled
14 and refunding any advance payment of fee or expense that has not been
15 earned or incurred. The lawyer may retain papers relating to the client to
16 the extent permitted by other law.

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18 **ARGUMENT**

19 The Court should grant leave to withdraw because the legal standards for withdrawal are
20 easily satisfied. First, with respect to LR IA 11-6(b), I have informed MGM Resorts of my
21 resignation from Lewis Roca Rothgerber Christie LLP and my intent to withdraw. In addition,
22 this motion has been served on Defendant. Second, with respect to LR 11-6(e), no delay of
23 discovery, trial, or any hearing in the case will result as Michael J. McCue will continue on as
24 MGM Resorts' lead counsel. Third, with respect to Nevada Rule of Professional Conduct
25 1.16(b)(1), adequate grounds for withdrawal exist because withdrawal can be accomplished
26 without material adverse effect to the interests of MGM Resorts as Michael J. McCue is
27 continuing on as MGM Resorts' counsel. Fourth, Rule 1.16(c) is satisfied because, through this
28 motion, I am complying with the Court's rules and procedures for withdrawal. Fifth, Rule
1.16(d) is satisfied because, again, Michael J. McCue is continuing on as MGM Resorts' lead
counsel.

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1 **CONCLUSION**

2 For the foregoing reasons, the Court should enter an order: (1) granting me leave to
3 withdraw as counsel for MGM Resorts; and (2) directing the Clerk of the Court to remove me
4 from the CM/ECF service list for this case.

5 Dated: this 27th day of July, 2017

6 Respectfully submitted,

7 LEWIS ROCA ROTHGERBER CHRISTIE LLP

8 By: /s/ Jonathan W. Fountain

9 Michael J. McCue

Jonathan W. Fountain

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15 *Attorneys for Plaintiffs*

MGM Resorts International,

16 *Mirage Resorts, Incorporated, and*

Mandalay Resorts Group

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18 **IT IS SO ORDERED:**

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21 _____
UNITED STATES MAGISTRATE JUDGE

22 DATED: 7/28/2017 _____