

RANDS, SOUTH & GARDNER  
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1 Case No.: CV12-10197

2 Dept.: C1

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5 **IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

6 **IN AND FOR THE COUNTY OF LANDER**

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8 MICHAEL MARKING and  
9 ELIZABETH FLEMING,

10 Plaintiffs,

11 vs.

12 AUSTIN ROPING CLUB,

13 Defendant.

14 **MOTION TO DISMISS**

15 COMES NOW Defendant, AUSTIN ROPING CLUB, by and through its counsel, RANDS,  
16 SOUTH & GARDNER, Brett K. South, Esq., and hereby files the instant Motion to Dismiss. This  
17 Motion is made pursuant to NRCP 41(e) and is supported by the following Points and Authorities,  
18 any affidavits attached thereto, the papers and pleadings on file herein and such further information  
19 as the Court may deem appropriate.

20 DATED this 20<sup>th</sup> day of March 2017.

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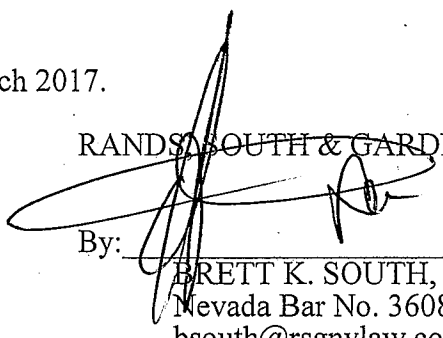
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RANDS, SOUTH & GARDNER



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1 **POINTS AND AUTHORITIES**

2 **I.**

3 **Introduction**

4 Plaintiffs filed their initial complaint on February 7, 2012. Thus, more than five (5) years  
5 have passed without Plaintiffs bring this matter to trial.

6 **II.**

7 **Argument**

8 The relevant portion of NRCP 41(e) provides as follows:

9 Any action heretofore or hereafter commenced shall be dismissed by  
10 the court in which the same shall have been commenced or to which  
11 it may be transferred on motion of any party, or on the court's own  
12 motion, after due notice to the parties, unless such action is brought  
to trial within 5 years after the plaintiff has filed the action, except  
where the parties have stipulated in writing that the time may be  
extended.

13 The purpose of NRCP 41(e) is to compel an expeditious determination of legitimate claims.  
14 *C.R. Fredrick, Inc. v. Nevada Tax Comm'n*, 98 Nev. 387, 649 P.2d 1372 (1982). A plaintiff has a  
15 duty to be sufficiently diligent to preclude the entry of a 41(e) dismissal. *Johnson v. Harbor* 94 Nev.  
16 524, 582 P.2d 800 (1978). Subsection (e) is clear and unambiguous and requires no construction  
17 other than its own language. *Thran v. First Judicial District Court*, 79 Nev. 176, 380 P.2d 297  
18 (1963). A dismissal is mandatory when a party moves to dismiss the action after five years has  
19 passed since the filing of the complaint and the case has not yet proceeded to trial. *Meredith v.*  
20 *Arden*, 92 Nev. 620, 555 P.2d 1241 (1976).

21 It has been over five years since Plaintiffs filed their initial complaint. Pursuant to the plain  
22 language of NRCP 41(e), dismissal of a complaint is mandatory if it is not brought to trial within five  
23 years after the date action is filed.

24 **III.**

25 **Conclusion**

26 Wherefore, based upon the foregoing, Defendant respectfully requests the Court to dismiss  
27 this matter pursuant to NRCP 41(e) for Plaintiffs' failure to bring this matter to trial within five years  
28 of the date the initial complaint was filed.

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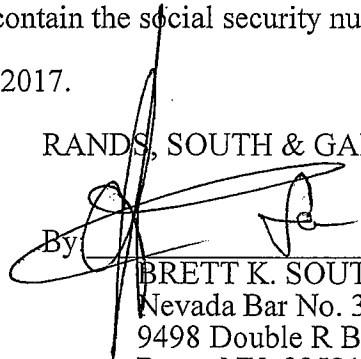
**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, MOTION TO DISMISS, filed in Case No. CV12-10197, does not contain the social security number of any person.

DATED this 20<sup>th</sup> day of March 2017.

RANDS, SOUTH & GARDNER

By   
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am employee of RANDS, SOUTH & GARDNER, and that on the 28th day of March 2017, I caused to be delivered via electronic transmission and I also deposited in the United States mail at Reno, Nevada, with first-class postage prepaid thereon, a true and correct copy of the foregoing **MOTION TO DISMISS**, addressed to the following party(ies)/counsel of record at his/her last known mailing address:

Michael Marking  
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(An employee of) RANDS, SOUTH & GARDNER