

**James R. Gillen**  
Attorney at Law  
State Bar No. 68137  
4300 Promenade Way, Suite 118  
Marina del Rey, California 90292-6279  
(310) 827-2001  
Fax (310) 827-4293

**David E. Klein, Esq.**  
**Law Offices of David E. Klein**  
State Bar No. 61739  
9819 Regent Street, Suite 9  
Los Angeles, CA 90034  
Telephone/Facsimile: 310/558-0858

Attorneys for Plaintiffs  
DORIS HEMSLEY; ALICE WOODS; ALLEN WOODS; GEORGIA FROST;  
PAULETTE FROST; ROSE MARIE USHER; ORLANDO USHER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

DORIS HEMSLEY, an individual; ALICE  
WOODS, an individual; ALLEN WOODS, an  
individual; GEORGIA FROST, an individual;  
PAULETTE FROST, an individual; ROSE  
MARIE USHER, an individual; ORLANDO  
USHER, an individual,

Plaintiffs,

vs.

COLUMBUS DAVIS, JR, an individual;  
JOSE ARTURO ARGUETA-CERANO, an  
individual; GOLD & SILVER CHARTER  
BUS COMPANY; GOLD & SILVER  
TRAVEL, INC.; HEBARAGI AND LEMI  
BUS, INC.; JEAN DEVELOPMENT  
COMPANY dba GOLD STRIKE HOTEL  
AND GAMBLING HALL; ELSINORE  
DEVELOPMENT CO. dba NEVADA  
LANDING HOTEL & CASINO; DINA  
AUTOBUS, business form unknown;  
MOTOR COACH INDUSTRIES  
INTERNATIONAL, INC., a foreign

CASE NO. BCVBS08259  
[Lead Case No.: BCV07252]

*Assigned for All Purposes to:  
Honorable Christopher J. Warner  
Department S2*

**PLAINTIFF DORIS HEMSLEY, ET.  
AL., SEPARATE STATEMENT OF  
DISPUTED FACTS (“PSSDF”)  
PRECLUDING JEAN DEVELOPMENT  
COMPANY dba GOLD STRIKE  
HOTEL AND GAMBLING HALL’S  
MOTION FOR SUMMARY  
JUDGMENT /ADJUDICATION**

**DATE :** AUGUST 11, 2005  
**TIME :** 9:30 A.M.  
**DEPT :** S-2

corporation; and DOES 1 through 100,  
inclusive,  
Defendants.

HEBARAGI & LEMI BUS, INC., and JOSE  
ARTURO ARGUETA-CERNA,

Cross-Complainants,

vs.

LAMAR ELLIOTT; P.V. HOLDING  
CORPORATION; COLUMBUS DAVIS JR.;  
GOLD & SILVER CHARTER BUS INC., a  
California Corporation; JOSEPH ARTHUR  
RODRIGUEZ; VICTORIA RODRIGUEZ;  
NANCY KAY REBHOLTZ; MOTOR  
COACH INDUSTRIES MEXICO, S.A. de  
C.V., f/k/a DINA AUTOBUSES, S.A. de  
C.V.; JEAN DEVELOPMENT COMPANY;  
STATE OF CALIFORNIA, and ROES 1  
through 100, inclusive,

Cross-Defendants.

AND ALL RELATED CROSS-ACTIONS.

NGO HU SO, NA LU,

Plaintiffs,

vs.

JOSE ARTURO ARGUETA-CERNA,  
HEBARAGI/LEMI BUS, INC.,  
COLUMBUS DAVIS JR., GOLD &  
SILVER CHARTER BUS LINES, INC.  
AND DOES 1 TO 10, INCLUSIVE,

Defendants.

**Submitted With:**

1. Plaintiff's Opposition and Response to Gold Strike's Separate Statement of Undisputed Facts;
2. Plaintiff's Opposition to Gold Strike's Motion for Summary Judgment;
3. Plaintiff's Evidentiary Objections to Declaration of Marla Diloreanu;
4. Declarations of James R. Gillen, Esq., Forensic Accountant Richard McCay, Doris Hemsley, Orlando Usher, Rose Marie Usher, Georgia Frost, Paulette Frost, Alice Woods, Exhibits;
5. Notice of Lodging of Deposition Transcripts;
6. Appendix of Federal Authorities.

Complaint Filed: March 9, 2004

Discovery Cut-Off: None.

Motion Cut-Off: None.

Trial Date: **August 22, 2004**

*(So v. Cerna, Case No. BCVBS08246)*

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

Plaintiff Doris Hemsley et al., hereby submit Plaintiff's Separate Statement of Disputed Material Facts (hereafter "PSSDF"), in Opposition to Gold Strike's Summary Judgment/Adjudication Motion.

<u><b>DISPUTED MATERIAL FACTS:</b></u>	<u><b>SUPPORTING EVIDENCE:</b></u>
<p>1. Jean/Gold Strike Operated a "Bus Program" acting as a common carrier back in March 8, 9, 20003, which allowed tour bus companies from California to offer discounted group rates, free rooms and meals to California tour bus passengers wishing to travel to Las Vegas.</p>	<p>1. (<b>"A. All bookings must be made at the bus office only . . ."</b>) (See Exh.1, "Gold Strike Bus Program Rules", ¶1.) ("I saw that Gold Strike and Four Queens advertized with fliers, transportation charges of \$30.00 per person to go to the Gold Strike or Four Queens. <b>This price was so cheap, I took advantage of it, because I wanted to obtain cheap transportation to Las Vegas, Nevada.</b> Renting a car or paying for gas for a trip to Las Vegas and back, would have costed much more, and I would not have been able to afford that.) ("Declaration of Doris Hemsley ¶1, 2.) (See also Declarations of Usher, Frost and Woods ¶2.) (<b>"The price of the 'Champagne Tour' was \$27.50 Round trip . . .between Las Vegas and the Los Angeles area . . . the evidence here is substantial that some people purchase the tour merely to obtain transportation.</b> (See <i>Las Vegas Hacienda, Inc. v. C.A.B.</i> (1962 9<sup>th</sup> Circ.) 298 F.2d 430, 435.) (Applying U.S. Supreme Court <i>stare decisis</i>, <b>proving existence of higher "common carrier" duty owed by Las Vegas Casino, when it provided cheap transportation to and from California by use of a third party carrier.</b>) (See also <i>Buck v. Standard Oil Co. of Cal.</i> (1958) 157 Cal.App.2d 230, 239.) (See also Declarations of Orlando and Rose Marie Usher, Georgia and Paulette Frost, Alice Woods, ¶2.)</p>
<p>2. On March 8, 9, 2003, the "Gold Strike Bus Program" office paid Gold &amp; Silver a "Subsidy", which made it feasible for Columbus Davis Jr., and Gold &amp; Silver Bus, to offer discounted group rates, free rooms and meals at the Gold Strike, to California tour bus passengers for lower than their fair market value.</p>	<p>2. ("Exh.1.") ("Q. Yeah. And that was -- that way that was -- that was the sure-fire way to figure that out, wouldn't you agree? <b>A. Our subsidy is based on the amount of people arriving, so yes.</b> (May 26, 2005 Deposition Transcript of Marla Diloreanu, 66:17-21.) ("Q: You've informed us that the <b>Gold Strike Casino was subsidizing Gold &amp; Silver Bus Company by a commission payment by bringing passengers to the</b></p>

	<p>casino; isn't that correct? <b>A. Yes</b>".)(May 26, 2005 Deposition Transcript of Marla Diloreanu, 154:8-12.) ("Tour bus companies participating in the Four Queens' and Gold Strike 'Bus Programs' were able to sell their tour bus tickets for lower than their fair market value, as part of a tour bus "package", because the tour bus companies would be paid a "subsidy" or "commission", and also received free rooms and meals for their drivers. ." (See Declaration of Richard McCay¶7.)</p>
<p>3. Gold &amp; Silver Bus and Gold Strike entered into a Bus Program contract on or about 1997.</p>	<p>3. (See July 8, 2003 Deposition Transcript of Marla Diloreanu, 13:1-13; July 7, 2003 Deposition Transcript of Columbus Davis Jr., 11:6-18, 21:3-24.)</p>
<p>4. Gold &amp; Silver Bus was required by Gold Strike under the Bus Program contract, to list Gold Strike as an additional insured, which is evidence of ownership and control.</p>	<p>4.(See July 8, 2003 Deposition Transcript of Marla Diloreanu, 13:1-13; July 7, 2003 Deposition Transcript of Columbus Davis Jr., 11:6-18, 21:3-24.) (See also "Exh.1", ¶V, A; "Exh.2.") <b>Thus, the fact of insurance may tend to prove ownership of an automobile (Perry v. A. Paladini (1928) 89 Cal.App. 275, 285), or employment of a person covered by the policy (Mullanix v. Basich (1945) 67 Cal.App.2d 675, 682.) (See 11 So. Cal. L. Rev. 431; 21 So. Cal. L. Rev. 239; 1 McCormick 5th, §201; 4 A.L.R.2d 776; and see also Turner v. Mannon (1965) 236 Cal.App.2d 134, 140.)</b></p>
<p>5. From 1998-2003, Gold Strike "subsidized" Gold &amp; Silver Bus approximately \$838,351.00.</p>	<p>5. (See July 8, 2003 Deposition Transcript of Marla Diloreanu, 10:14 through p.11:10.)</p>
<p>6. Gold Strike Hotel &amp; Casino marketed its "Bus Program" in California on its internet web site back in March of 2003.</p>	<p>6. (See Exh.4, A, B.)"Q. All right. And for No. 15, we left a <b>space for the home page of Jean Development Internet site? A. Yes.</b> MR. KENNY: For 2003. MR. GILLEN: For 2003. (Whereupon, Exhibit No. 15 was marked for identification.) <b>BY MR. GILLEN: Q.</b> Do you know if that web page has changed from 2003 to the present? <b>A. I don't know.</b>" (See May 26, 2005 Deposition Transcript of Marla Diloreanu, 37: 17-25; 38:1-4.) <b>The web page clearly indicates the Gold Strike offers "Tour Bus" Packages right on the front page!</b> (Gillen Dec.¶4.)</p>

<p>7. Gold Strike Hotel &amp; Casino marketed their “Bus Program” in California by use of fliers prior to and during March of 2003.</p>	<p>7. (“Declaration of Doris Hemsley ¶ 2, 3.) (See also Declarations of Usher, Frost and Woods ¶2.) (See also Exh.5, A, B, C.)</p>
<p>8. Gold Strike Hotel &amp; Casino marketed its Bus Program in California by use of magazine an newspaper advertising prior to and during March of 2003 and offered “free” ADA certified “shuttle service”.</p>	<p>8. (See Exh.6, A, B, C, D.) (“Okay. That wasn't a request that was made by Gold Strike to the bus operators? <b>A. I don't understand.</b> Q. The question is, ma'am, isn't it a fact that Gold Strike requested the bus operators, the drivers, to tell their bus passengers we have a shuttle service being offered by the casino, please use it? <b>A. There is a letter in the packet that informs them that there is shuttle service available for their passengers and it would be better for them to use that than to try to walk, yes.</b> Q. Okay. Those shuttles were ADA certified? <b>A. Yes.</b>” (May 26, 2005 Deposition Transcript of Marla Diloreanu, 214:1-18.) <b>“Tour and Travel Group rates available · Tour Busses Welcome Call (800) 628-6682 for more information. Ask for the Tour and Travel Department.”</b> (Declaration of James Gillen, “Exh.6, A”.)</p>
<p>9. “Marketing” and “advertising” have the same meaning and are interchangeable words. (“<b>mar-ket-ing</b> (-in) <i>n.</i> all business activity involved in moving of goods [or services] from producer to consumer, including, <b>advertising</b>, packaging, etc.” [Emphasis.] (See Websters New World Dictionary (2004) p.880.; (“<b>ad-ver-tis-ing</b> 1 printed or broadcast matter that advertises; . . .” (See Websters New World Dictionary (2004) p.20.)</p>	<p>9. (“Q. All right. And for No. 15, we left a <b>space for the home page of Jean Development Internet site?</b> <b>A. Yes.</b> MR. KENNY: For 2003. MR. GILLEN: For 2003. (Whereupon, Exhibit No. 15 was marked for identification.) <b>BY MR. GILLEN: Q.</b> Do you know if that web page has changed from 2003 to the present? <b>A. I don't know.</b>” (See May 26, 2005 Deposition Transcript of Marla Diloreanu, 37: 17-25; 38:1-4.)</p>
<p>10. Circumstantial evidence indicates that casino tours were within the course and scope of the Bus Program Contract between Columbus Davis Jr., Gold &amp; Silver Bus and Gold Strike, therefore, reasonable inferences can be drawn that Gold Strike knew in advance that there would be a “second stop” at another casino on March 9, 2003, as part of the “tour.”</p>	<p>10. “Tour” is defined as: “2 a long trip, as for sightseeing” (See Websters New World Dictionary. (2002) p.1513. Gold Strike operated a “tour bus program” (See “Exh.1”) The Gold Strike Tour Bus Program differentiated between “first stops” and “second stops” as part of the casino tours. (“All stops must be first on your itinerary.”) (“<b>8 Hour First Stop \$24.00 p/p 6 Hour First Stop \$18.00 p/p</b>”, etc.” (See also “Exh.1”, Bus Program Rules p.6.) (See April 26, 2005 Deposition Transcript of Doris Hemsley, p.41:15-23.) (“Q: Earlier you testified that you -- that Edna Bailey</p>

	<p>had informed you that you would be going to the <b>Gold Strike Hotel and the Four Queens Hotel</b>; is that correct? A: Yes.”) (See April 26, 2005 Deposition Transcript of Doris Hemsley, 139:12-16.) (See also Declaration of Doris Hemsley ¶4, Woods, Usher, Frost ¶4.; Davis ¶5.) (“Q: in this particular situation, Mr. Davis’s company bought an overnight trip, did an overnight with Gold Strike Casino. At that time he was paid a commission for that overnight stay because he claimed it was a first stop – A: Correct. Q: --Trip? A: Correct. <b>Q: Now after that, were there any restrictions placed on Mr. Davis in regards to making a second stop? A: By our company? Q: Yes. A: No there is not.</b> (See May 26, 2005 Declaration of Marla Diloreanu, 101:24-25, 102:1-13.) “. . . That does not mean you may <b>spend the night at a casino the night before and then stop at our casino first on the second day.</b>” (“Exh.1”, Bus Program Rules p.1:¶B,1, “Integrity of Stops”). “A <b>turn around</b> means that <b>we must be your only casino stop.</b>” (“Exh.1”, Bus Program Rules p.2:¶B,2, “Integrity of Stops”). “<b>If our Property is your first stop.</b>” (“Exh.1”, Bus Program Rules p.2:¶B,3, “Integrity of Stops”). Obviously there is overwhelming evidence that Gold Strike knew the Gold &amp; Silver Bus would be touring other casinos as part of the March 8, 9, 2003 tour. In fact, Gold Strike jointly advertized casino tours with Gold &amp; Silver Bus Company and other casinos. (Declaration of Doris Hemsley ¶2.) (Declaration of Doris Hemsley ¶2.) (See “<b>Gold Strike/Gold &amp; Silver Fliers</b>”, Declaration of James Gillen in Opposition to Gold Strike’s Motion for Summary Judgment, “Exh.5”, A, B.) Davis had to notify Gold Strike of his itinerary in advance. (“<b>A. All bookings must be made at the bus office only . . .</b>”) (See Exh.1, “Gold Strike Bus Program Rules”, ¶1.) <b>In ruling on a motion for summary judgment or summary adjudication, the court must “consider all of the evidence” and all of the “inferences” reasonably drawn therefrom (Ca. Civ. Pro. § 437c(c)) and must view such evidence and such inferences “in the light most favorable to the opposing party.” (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 843. (““Where the intervening act is reasonably foreseeable, the chain of causation is not broken, and the original actor remains liable.” Eads v. Marks, 39 Cal.2d 807, 812.)</b></p>
<p>11. (1) Gold Strike had a common carrier relationship with all passengers, including Plaintiffs, on the “Gold Strike Bus Program” on March 8, 9, 2003 because on March 9, 2003, Gold Strike was in the business of transporting the general public (e.g., the Bus Program.)</p>	<p>11. (CACI 901) (“Q: When you took passengers to the Gold Strike, did you consider to be -- yourself to be an employee of theirs? A: A business agreement, working relationship. Abide the rules and... Q Abide by the Bus Program Rules. A Right.” (“Deposition Transcript of Columbus Davis Jr., Vol.III”, 600:4-10.) (“A. All bookings must be made at the bus office only . . .”) (See Exh.1, “Gold Strike Bus Program Rules”,</p>

	<p>¶1.) (“The price of the ‘Champagne Tour’ was \$27.50 Round trip . . .between Las Vegas and the Los Angeles area . . . the evidence here is substantial that some people purchase the tour merely to obtain transportation. (See <i>Las Vegas Hacienda, Inc. v. C.A.B.</i> (1962 9<sup>th</sup> Circ.) 298 F.2d 430, 435.) (Applying U.S. Supreme Court <i>stare decisis</i>, proving existence of higher “common carrier” duty owed by Las Vegas Casino, when it provided cheap transportation to and from California by use of a third party carrier.) (See also <i>Buck v. Standard Oil Co. of Cal.</i> (1958) 157 Cal.App.2d 230, 239.) (See also Declarations of Orlando and Rose Marie Usher, Georgia and Paulette Frost, Alice Woods, ¶2.) (“Q. All right. I'm just trying to initially get, does the tour bus drive up to the front of the hotel? Was that generally where they stopped? A. They pull up to the north entrance 18 of the hotel, correct. Q. The north entrance. How many entrances are there to the hotel, the Gold Strike Hotel? A. There is three main entrances.”) (May 26, 2005 Deposition Transcript of Marla Diloreanu 63:13-21.)</p>
<p>12. (2) Gold Strike had a common carrier relationship with all passengers, including Plaintiffs, on the “Gold Strike Bus Program” on March 8, 9, 2003 because Gold Strike maintained a regular place of business the - “Bus Program Tour and Travel Office” - and also maintains a “designated” tour bus area for the purpose of transporting passengers and their property to and from Gold Strike.</p>	<p>12. (CACI 901) (“A. All bookings must be made at the bus office only . . .”) (See1, “Gold Strike Bus Program Rules”, ¶1.) (“Q. All right. I'm just trying to initially get, does the tour bus drive up to the front of the hotel? Was that generally where they stopped? A. They pull up to the north entrance 18 of the hotel, correct. Q. The north entrance. How many entrances are there to the hotel, the Gold Strike Hotel? A. There is three main entrances.”) (May 26, 2005 Deposition Transcript of Marla Diloreanu 63:13-21.) (“Q. How many people work in the tour and travel department at Jean Development? A. Approximately eight. Q. And you're their supervisor, ma'am? A. Yes, I am. Q. All right. And is that -- is the tour and travel department, is that an appropriate name to call it, the tour and travel department? A. Yes, it is. Q. Is that -- does that have offices in either of the casinos or is it off the casino properties? A. They're in the casino.” (May 26, 2005 Deposition</p>

	<p>Transcript of Marla Diloreanu 43:12-25.)  Q. All right. I'm just trying to initially get, does the tour bus drive up to the front of the hotel? Was that generally where they stopped? A. They pull up to the north entrance 18 of the hotel, correct. Q. The north entrance. How many entrances are there to the hotel, the Gold Strike Hotel? A. There is three main entrances. (May 26, 2005 Deposition Transcript of Marla Diloreanu 63:13-21.) (“Q: Now, in regards to the bus parking, the bus driver was directed to park in a specific area in the parking lot; isn't that correct? A. All buses, commissioned or noncommissioned, are instructed to park in the designated area. (May 26, 2005 Deposition Transcript of Marla Diloreanu 156:1-13.) (“A . . . They're all required to park in the designated parking.” (May 26, 2005 Deposition Transcript of Marla Diloreanu 157:1-7.) (“The price of the ‘Champagne Tour’ was \$27.50 Round trip . . .between Las Vegas and the Los Angeles area . . . the evidence here is substantial that some people purchase the tour merely to obtain transportation. (See <i>Las Vegas Hacienda, Inc. v. C.A.B.</i> (1962 9<sup>th</sup> Circ.) 298 F.2d 430, 435.) (Applying U.S. Supreme Court <i>stare decisis</i>, proving existence of higher “common carrier” duty owed by Las Vegas Casino, when it provided cheap transportation to and from California by use of a third party carrier.) (See also <i>Buck v. Standard Oil Co. of Cal.</i> (1958) 157 Cal.App.2d 230, 239.) (See also Declarations of Orlando and Rose Marie Usher, Georgia and Paulette Frost, Alice Woods, ¶2.)</p>
<p>13. (3) Gold Strike had a common carrier relationship with all passengers, including Plaintiffs, on the “Gold Strike Bus Program” on March 8, 9, 2003 because on March of 2003 and the previous months before, Gold Strike advertised its Bus Program services and goods to the general public [Web Site].</p>	<p>13. (CACI 901) (See also PSSDF No’s.6-9.) “Q. All right. And for No. 15, we left a space for the home page of Jean Development Internet site? A. Yes. MR. KENNY: For 2003. MR. GILLEN: For 2003. (Whereupon, Exhibit No. 15 was marked for identification.) BY MR. GILLEN: Q. Do you know if that web page has changed from 2003 to the present? A. I don't know.” (See May 26, 2005 Deposition Transcript of Marla Diloreanu, 37: 17-25; 38:1-4.) (“The price of the</p>

	<p>‘Champagne Tour’ was \$27.50 Round trip . . . between Las Vegas and the Los Angeles area . . . the evidence here is substantial that some people purchase the tour merely to obtain transportation. (See <i>Las Vegas Hacienda, Inc. v. C.A.B.</i> (1962 9<sup>th</sup> Circ.) 298 F.2d 430, 435.) (Applying U.S. Supreme Court <i>stare decisis</i>, proving existence of higher “common carrier” duty owed by Las Vegas Casino, when it provided cheap transportation to and from California by use of a third party carrier.) (See also <i>Buck v. Standard Oil Co. of Cal.</i> (1958) 157 Cal.App.2d 230, 239.) (See also Declarations of Orlando and Rose Marie Usher, Georgia and Paulette Frost, Alice Woods, ¶2.)</p>
<p>14. (4) On March 8, 9, 2003, Gold Strike charged a standard fees for its services, which also included a set-off commission subsidy to allow cheap transportation of gamblers to Gold Strike to increase traffic.</p>	<p>14. (CACI 901) (“Q: You said the cost was \$30.00 per trip? A: Yes.”) (See “April 26, 2005 Deposition Transcript of Doris Hemsley”, 28:10-11.) (“Come &amp; Join Supreme Guild With Gold &amp; Silver Charter to Gold Strike Hotel &amp; Casino With Buffet 2nd Day Lady Luck 4 Hrs. . . . Cost \$30.00 - Per Per.” [Emphasis.] “Exh.5”.) (“The price of the ‘Champagne Tour’ was \$27.50 Round trip . . . between Las Vegas and the Los Angeles area . . . the evidence here is substantial that some people purchase the tour merely to obtain transportation. (See <i>Las Vegas Hacienda, Inc. v. C.A.B.</i> (1962 9<sup>th</sup> Circ.) 298 F.2d 430, 435.) (Applying U.S. Supreme Court <i>stare decisis</i>, proving existence of higher “common carrier” duty owed by Las Vegas Casino, when it provided cheap transportation to and from California by use of a third party carrier.) (See also <i>Buck v. Standard Oil Co. of Cal.</i> (1958) 157 Cal.App.2d 230, 239.) (See also Declarations of Orlando and Rose Marie Usher, Georgia and Paulette Frost, Alice Woods, ¶2.)</p>
<p>15. Columbus Davis Jr., and Gold &amp; Silver Bus shared in the costs of rooms, which were based upon a standard rate under the Tour Bus Program.</p>	<p>15. (CACI 901) (Declaration of Doris Hemsley ¶2.) (See also Exh.1, ¶ II, G.) (“Q. Now, I wanted to get back to under the general policies, and I asked you earlier, what was the value per room of the rooms that were booked on this tour</p>

	<p>per room in March 8 of 2003, approximately? A. Are you asking me what the bus company was charged for the rooms? Q. Yes, ma'am. A. I believe it was approximately \$14 per room." (May 26, 2005 Deposition Transcript of Marla Diloreanu, 173:16-25.) ("The price of the 'Champagne Tour' was \$27.50 Round trip . . . between Las Vegas and the Los Angeles area . . . the evidence here is substantial that some people purchase the tour merely to obtain transportation. (See <i>Las Vegas Hacienda, Inc. v. C.A.B.</i> (1962 9<sup>th</sup> Circ.) 298 F.2d 430, 435.) (Applying U.S. Supreme Court <i>stare decisis</i>, proving existence of higher "common carrier" duty owed by Las Vegas Casino, when it provided cheap transportation to and from California by use of a third party carrier.) (See also <i>Buck v. Standard Oil Co. of Cal.</i> (1958) 157 Cal.App.2d 230, 239.) (See also Declarations of Orlando and Rose Marie Usher, Georgia and Paulette Frost, Alice Woods, ¶2.)</p>
<p>16. Plaintiffs were known by Gold Strike as the Bailey Group.</p>	<p>16. ("Q. And then Exhibit No. 14 is a Rooming List for Hotel Gold Strike and it says 3/8 through 9/03. See that where it says the Bailey Group? A. Yes, I do." (May 26, 2005 Deposition Transcript of Marla Diloreanu, 99:9-16.)</p>
<p>17. As per the <u>Four Queens and Gold Strike Bus Program Rules</u>, the March 8, 9, 2003 tour bus trip was booked in advance and Plaintiffs knew well in advance that they would be going to Four Queens on March 9, 2003, after their first stop at Gold Strike, on March 8, 2003.</p>	<p>17. (See April 26, 2005 Deposition Transcript of Doris Hemsley, p.41:15-23.) ("Q: Earlier you testified that you - - that Edna Bailey had informed you that you would be going to the Gold Strike Hotel and the Four Queens Hotel; is that correct? A: Yes.") (See April 26, 2005 Deposition Transcript of Doris Hemsley, 139:12-16.) (See also Declaration of Doris Hemsley ¶4, Woods, Usher, Frost ¶4.; Davis ¶5.)</p>
<p>18. On March 8, 2003, when the Gold &amp; Silver Bus first pulled up in front of the Gold Strike <u>designated passenger drop off area</u>, a Gold Strike employee came on board the Gold &amp; Silver Bus and instructed Plaintiffs to wear name badges, which were emblazoned with the</p>	<p>18. ("Q: And what did the assistant do when they got on the bus? A: They gave us a card to put into the machine, they said, and play with, when we are playing the machines.") (See April 26, 2005 Deposition Transcript of Doris Hemsley, 44:6-9.) (See April 26, 2005</p>

<p>names "Gold Strike" and "Gold &amp; Silver Bus" and these were handed to Plaintiffs by said Gold Strike employee.</p>	<p>Deposition Transcript of Doris Hemsley, p.37:8-13.) "During our March 8, 9, 2003 tour bus trip, Columbus Davis Jr., announced to myself and the Bailey Group, the Group I was with, that we would be going first to Gold Strike Hotel, on March 8, 2003, and then to Four Queens Hotel on March 9, 2003. When the Bailey Group was at Four Queens and Gold Strike, Columbus Davis Jr., and other uniformed agents and employees of both Gold Strike Hotel and Four Queens Hotel instructed me and the Bailey group, that we were required to wear identification badges. The Gold Strike identification badge I was required by Mr. Davis and Gold Strike employees to wear, was imprinted with "Gold Strike", right next to the name "Gold &amp; Silver." (Declaration of Doris Hemsley ¶13.) (See also Declaration of Doris Hemsley ¶16, Woods, Usher, Frost ¶13-4.)</p>
<p>19. While at Gold Strike on March 8, Gold Strike required Plaintiffs use electronic gambling cards with the name "Gold &amp; Silver Bus" and "Gold Strike" upon them.</p>	<p>19. ("Q: Okay you mentioned that you were given a card which you were instructed to insert into the machines that you used while you were at Gold Strike Hotel &amp; Casino? A: Yes. The card had "Gold Strike " on it, and it also said "Gold &amp; Silver Bus on it." (See April 5, 2005 Deposition Transcript of Georgia Therese Frost, p.205:19-23.)("Q: Do you have a player's card for Gold Strike? A: Yes Q: Did you use it on your trip? A Yes. machines." (See "April 26, 2005 Deposition Transcript of Doris Hemsley", 38:20-23.)("Q. Okay. Well, do you know when -- if you're playing a slot machine, is this a particular card that is like a credit card, the size of a credit card? A. You put it into the machine, yes. Q. All right. And that tracks how many times you play that machine? A. It tracks the coin in, yes. Q. How much you gambled and whatever you won or lost; correct? A. It records all transactions on that machine at that point.") (May 26, 2005 Deposition Transcript of Marla Diloreanu, 84:9-16.) ("Q: And what did the assistant do when they got on the bus? A: They gave us a card to put into the machine, they said, and play with, when we are playing the machines.") (See April 26, 2005 Deposition Transcript of Doris Hemsley, 44:6-9.) (See April 26, 2005</p>

	Deposition Transcript of Doris Hemsley, p.37:8-13.)
<p>20. (1) On March 8 and 9th, 2003, Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents because Gold Strike intentionally or carelessly created the impression that Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents by allowing Columbus Davis Jr., and Gold &amp; Silver Bus Company to hand out handbills with the name Gold &amp; Silver and Gold Strike upon them.</p>	<p>20. (CACI 3709) ("Prior to my March 9, 2003 injuries, I saw that Gold Strike and Four Queens advertized with fliers, transportation charges of \$30.00 per person to go to the Gold Strike or Four Queens. This price was so cheap, I took advantage of it, because I wanted to obtain cheap transportation to Las Vegas, Nevada. Renting a car or paying for gas for a trip to Las Vegas and back, would have costed much more, and I would not have been able to afford that.") (Declaration of Doris Hemsely ¶2.) (Declaration of Doris Hemsely ¶2.) (See "Gold Strike/Gold &amp; Silver Fliers", Declaration of James Gillen in Opposition to Gold Strike's Motion for Summary Judgment, "Exh.5", A, B.)</p>
<p>21. (2) On March 8 and 9th, 2003, Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents because Gold Strike intentionally or carelessly created the impression that Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents by making Plaintiffs wear identification badges with the logos and names "Gold &amp; Silver Bus" and "Gold Strike Hotel and Casino."</p>	<p>21. (CACI 3709) (Declaration of Doris Hemsely ¶3.) (Declarations of Woods, Usher, Frost ¶3.) ("Q Now, the hosts were kind of people who were customer service people on behalf of the casino that helped your passengers use the slot machines and use the table games, correct? A Again, at some casinos, yeah. Q All right. Well, I want to know specifically at Gold Strike. Were the same responsibilities that you observed casino hosts perform at the Gold Strike Casino, were you doing the same thing? MR. KENNY: Objection. Vague, incomplete hypothetical. BY MR. GILLEN: Q Go – MS. SEGAL: Misstates the evidence. BY MR. GILLEN: Q Go ahead, sir A I would walk around, make sure they had their badges and stuff on, because that's important for the play, for them, the ease of the identity. Make sure the are somewhere like this, and make sure some of them don't have it out of sight where when they pass by they can't see them. They need to be in view of the sight, on their shoulder, or somewhere, where if a casino -- from -- somebody from the bus program walk around and monitor them, they need to be able to see it. Sometimes people take them, put them on their legs and things. They might not look at the leg, so they like for it to be</p>

	<p>displayed where they can see it. Q Thank you, sir. What I'm asking, sir, you were doing the same type of work that a casino host was doing while you were on the casino property; isn't that correct? A I had-".) (See June 7, 2003 Deposition Transcript of Columbus Davis Jr. Vol.III 817:10-25, 818:1-18.)</p>
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22. (3) On March 8 and 9th, 2003, Columbus Davis Jr., and Gold & Silver Bus were Gold Strike's apparent employees and agents because Gold Strike intentionally or carelessly created the impression that Columbus Davis Jr., and Gold & Silver Bus were Gold Strike's apparent employees and agents because Columbus Davis Jr. supervised Plaintiffs along with Gold Strike Employees while at the Gold Strike.

22. (CACI 3709) ("Q: Did Columbus tell you the rules? A: Yes. Q: What did Columbus tell you? A: That we should come back on the bus to get the keys for the room." (See April 26, 2005 Deposition Transcript of Doris Hemsley, p.36: 7-11.) ("I had personal knowledge that Gold & Silver and Columbus Davis Jr., were responsible for holding my hotel room key and also for supervising and instructing me and other tour bus passengers while we gambled at both casinos. Columbus Davis Jr., also claimed that he was "responsible" for my safety. It appeared at all times that Four Queens Hotel and Gold Strike Hotel had appointed Columbus Davis Jr., as my care taker for my trips to and from Four Queens Hotel and Casino.") (Declarations of Woods, Usher, Frost ¶4.) (Declaration of Doris Hemsley ¶5.)("Q. And, furthermore, the agency states in paragraph 1: "The agency is responsible for the passenger's actions while on our property." See that very last sentence? A. Yes, I do. Q. And in the particular instance on March 8, 2003, Gold & Silver was responsible for passengers while passengers were on the casino's property; isn't that a fact, ma'am? A. That is what our policy states, yes.") [Emphasis.] (See May 26, 2005 Deposition Transcript of Marla Diloreanu, 186:16-25.) ("Q Now, the hosts were kind of people who were customer service people on behalf of the casino that helped your passengers use the slot machines and use the table games, correct? A Again, at some casinos, yeah. Q All right. Well, I want to know specifically at Gold Strike. Were the same responsibilities that you observed casino hosts perform at the Gold Strike Casino, were you doing the same thing? MR. KENNY: Objection. Vague, incomplete hypothetical. BY MR. GILLEN: Q Go – MS. SEGAL: Misstates the evidence. BY MR. GILLEN: Q Go ahead, sir A I would walk around, make sure they had their badges and stuff on, because that's important for the play, for them, the ease of the identity. Make sure they are somewhere like this, and make sure some of them don't have it out of sight where when they pass by they can't see them. They need to be in view of the sight, on their shoulder, or somewhere, where if a casino -- from -- somebody from the bus program walk around and monitor them, they need to be able to see it. Sometimes people take them, put them on their legs and things. They might not look at the leg, so they like for it to be displayed where they can see it. Q Thank you, sir. What I'm asking, sir, you were doing the same type of work that a casino host was

<p>23. (4) On March 8 and 9th, 2003, Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents because Gold Strike intentionally or carelessly created the impression that Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents by having Columbus Davis Jr., act as the person responsible for checking Plaintiffs in and passing out hotel room keys to Plaintiffs.</p>	<p>23. (CACI 3709) ("Q: Did you eventually get your room key? A: Yes. . . And where did you get it from? A: Columbus. Q: Where at? A: At the door." (See April 26, 2005 Deposition Transcript of Doris Hemsley, p.38:4-13; Q: On Sunday morning, did you turn in your room key? A: Yes. Q: Who did you turn it into? A: Columbus." (See April 26, 2005 Deposition Transcript of Doris Hemsley, p.41:5-8.) ("Q. Now, the individual keys to the room, now we're talking about what I would assume are computer card keys to the rooms; correct? A. Correct. Q. Like credit cards? A. Correct. Q. All right. Now, those room keys will be given either to the tour bus driver or the tour bus guide? A. Correct. Q. And they in turn would give the keys to the passengers individually; correct? A. Correct. (May 26, 2005 "Deposition Transcript of Marla Diloreanu", 129:5-18.) ("Exh.1" "Bus Program Contract" ¶ III,A-D.) ("Q. If passengers in fact purchased hotel rooms, would that void the commission that the bus operator might have been entitled to? A. If we were made aware of it, they would be deducted from the count. Q. Okay. A. They would not be paid for that passenger.") (May 26, 2005 "Deposition Transcript of Marla Diloreanu", 120:18-25.)</p>
<p>24. (5) On March 8 and 9th, 2003, Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents because Gold Strike intentionally or carelessly created the impression that Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents by having special Tour Bus Promotional Rates.</p>	<p>24. (CACI 3709) ("Exh.1" "Bus Program Contract" p.6.) (Exh.5, A, B.) ("I first met Defendant Columbus Davis Jr., at Gold Strike Hotel &amp; Casino about a year before the March 9, 2003 tour bus collision in which I was injured and upon which this case is based. When I first met Columbus Davis Jr., at Gold Strike Hotel, Columbus Davis Jr., explained to me that he could get me special rates, free rooms and meals, for myself, my family and my friends, at the Gold Strike Hotel and also at Four Queen, but only if I booked my tour bus tours through him and Gold &amp; Silver Bus, because he had a "business arrangement" with Four Queens Hotel and Gold Strike Hotel." (See Declaration of Doris Hemsely ¶2.)</p>

<p>25. (6) On March 8 and 9th, 2003, Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents because Gold Strike intentionally or carelessly created the impression that Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents by having a Web Site that says "Tour Busses."</p>	<p>25. (CACI 3709) (See Exh.4, A-B.) "Q. All right. And for No. 15, we left a space for the home page of Jean Development Internet site? A. Yes. MR. KENNY: For 2003. MR. GILLEN: For 2003. (Whereupon, Exhibit No. 15 was marked for identification.) BY MR. GILLEN: Q. Do you know if that web page has changed from 2003 to the present? A. I don't know." (See May 26, 2005 Deposition Transcript of Marla Diloreanu, 37: 17-25; 38:1-4.)</p>
<p>26. (7) On March 8 and 9th, 2003, Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents because Gold Strike intentionally or carelessly created the impression that Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents by having a "Tour and Travel Office" at the Gold Strike.</p>	<p>26. (CACI 3709) ("Exh.1.I.A.", p.8.)</p>
<p>27. (8) On March 8 and 9th, 2003, Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents because Gold Strike intentionally or carelessly created the impression that Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike's apparent employees and agents by controlling the Gold &amp; Silver Tour Bus itself while at the Gold Strike.</p>	<p>27. (CACI 3709) ("So the bus driver could not leave the property while his group was on the property; is that correct? A. No. The bus may not leave the property. Q. I see, okay. The bus driver could leave the property but the bus couldn't; correct? A. The bus needed to remain on property, yes. Q. Why is that, ma'am? A. To help ensure that the group is still on property." (May 26, 2005 Deposition Transcript of Marla Diloreanu, 159:7-11.) ("Q. Well, the one way that you ensure the passengers remain on the property is to control the bus? A. That is one means, yes.") (May 26, 2005 Deposition Transcript of Marla Diloreanu, 162:21-24.) "So the bus driver could not leave the property while his group was on the property; is that correct? A. No. The bus may not leave the property. Q. I see, okay. The bus driver could leave the property but the bus couldn't; correct? A. The bus needed to remain on property, yes. Q. Why is that, ma'am? A. To help ensure that the group is still on property." (May 26, 2005 Deposition Transcript of Marla Diloreanu,</p>

	<p>159:7-11.) (“Q. Well, the one way that you ensure the passengers remain on the property is to control the bus? A. That is one means, yes.”) (May 26, 2005 Deposition Transcript of Marla Diloreanu, 162:21-24.) As Plaintiffs departed the Gold &amp; Silver Bus to enter the Gold Strike Hotel, an agent of Gold Strike handed Plaintiffs meal coupons while Plaintiffs were on the Gold &amp; Silver Bus. (PSSDF No. ) (See April 26, 2005 Deposition Transcript of Doris Hemsley, p.34:10-20; 35:14-19.)</p>
<p>28. (9) On March 8 and 9th, 2003, Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike’s apparent employees and agents because Gold Strike intentionally or carelessly created the impression that Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike’s apparent employees and agents because as Plaintiffs departed the Gold &amp; Silver Bus to enter the Gold Strike Hotel, an agent of Gold Strike boarded the Bus and handed Plaintiffs name badges that were imprinted with the words “Gold &amp; Silver” and “Gold Strike.”</p>	<p>28. (CACI 3709) (See April 26, 2005 Deposition Transcript of Doris Hemsley, p.37:8-13.) (“Q: Okay you mentioned that you were given a card which you were instructed to insert into the machines that you used while you were at Gold Strike Hotel &amp; Casino? A: Yes. The card had “Gold Strike ” on it, and it also said “Gold &amp; Silver Bus on it.” (See April 5, 2005 Deposition Transcript of Georgia Therese Frost, p.205:19-23.)</p>
<p>29. (10) On March 8 and 9th, 2003, Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike’s apparent employees and agents because Gold Strike intentionally or carelessly created the impression that Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike’s apparent employees and agents because when Plaintiff Hemsley met Columbus Davis</p>	<p>29. (“Q: How did you originally come in contact with Mr. Davis for that trip? A: I went to Gold Strike and a friend that he has come with me. So he would tell me and bring Mr. Davis to me and tell me about his bus.”; See April 26, 2005 Deposition Transcript of Doris Hemsley, p.23:18-22.) (“It appeared at all times that Four Queens Hotel and Gold Strike Hotel had appointed Columbus Davis Jr., as</p>
<p>30. (11) Plaintiffs reasonably believed that Columbus Davis Jr., and Gold &amp; Silver Bus were Gold Strike’s apparent employees and agents because it is reasonable to believe that Columbus Davis Jr.’s joint supervision of Plaintiffs, the fact that Davis told Plaintiffs that he worked for Gold Strike Hotel prior to the incident, his bus logo appearing on the Gold Strike ID badges, players club cards, coupled with the handbills, indicated that Gold Strike was either a principal, co-venture, joint venture or in partnership with Columbus Davis Jr., and Gold &amp; Silver Bus.</p>	<p>30. (CACI 3709) (See PSSDF No.1-26.) (“When the Bailey Group was at Four Queens and Gold Strike, Columbus Davis Jr., and other agents of both Gold Strike Hotel and Four Queens Hotel instructed me and the Bailey group, that we were required to wear identification badges.” (Declaration of Doris Hemsley ¶6.) (“It appeared at all times that Four Queens Hotel and Gold Strike Hotel had appointed Columbus Davis Jr., as my care taker for my trips to and from Four Queens Hotel and Casino.” (Declaration of Doris Hemsley ¶5.) (“Q. It was also true that Gold Strike controlled the activity of the bus driver while he was on the property; he was not allowed to drink alcohol; isn’t that correct? A. Correct.” (See “May 26, 2005 Deposition Transcript of Marla Diloreanu”, 207:10-14.) (“Q. He [Columbus Davis Jr.] had to make sure that</p>

	<p>they were of legal gambling age, 21? A. His company should be responsible for that, yes. (See "May 26, 2005 Deposition Transcript of Marla Diloreanu", 232:1-4.) When Plaintiff Hemsley met Columbus Davis Jr., for the first time, Davis was working at Gold Strike Hotel and Casino. ("Q: How did you originally come in contact with Mr. Davis for that trip? A: I went to Gold Strike and a friend that he has come with me. So he would tell me and bring Mr. Davis to me and tell me about his bus."; See April 26, 2005 Deposition Transcript of Doris Hemsley, p.23:18-22.) ("Q Now, the hosts were kind of people who were customer service people on behalf of the casino that helped your passengers use the slot machines and use the table games, correct? A Again, at some casinos, yeah. Q All right. Well, I want to know specifically at Gold Strike. Were the same responsibilities that you observed casino hosts perform at the Gold Strike Casino, were you doing the same thing? MR. KENNY: Objection. Vague, incomplete hypothetical. BY MR. GILLEN: Q Go – MS. SEGAL: Misstates the evidence. BY MR. GILLEN: Q Go ahead, sir A I would walk around, make sure they had their badges and stuff on, because that's important for the play, for them, the ease of the identity. Make sure they are somewhere like this, and make sure some of them don't have it out of sight where when they pass by they can't see them. They need to be in view of the sight, on their shoulder, or somewhere, where if a casino -- from -- somebody from the bus program walk around and monitor them, they need to be able to see it. Sometimes people take them, put them on their legs and things. They might not look at the leg, so they like for it to be displayed where they can see it. Q Thank you, sir. What I'm asking, sir, you were doing the same type of work that a casino host was doing while you were on the casino property; isn't that correct? A I had-".) (See June 7, 2003 Deposition Transcript of Columbus Davis Jr. Vol.III 817:10-25, 818:1-18.)</p>
<p>31. (12) Plaintiffs were harmed because they reasonably relied on Davis' and the Casino's express and implied representations that Gold Strike would hire a safe and sane tour bus driver and also would provide a safe bus, which had been inspected properly. However, Mr. Davis was under a psychological disability and the tour bus nor Davis had ever been inspected or checked by Four Queens or Gold Strike for compliance with the law or safety. In fact, the seats on the tour bus were unsafe and came</p>	<p>31. (CACI 3709) ("Q: The trip that you did when you were the bus driver, at that time when you were the bus driver, you were under a psychiatric disability from the Social Security department; isn't that -- the Department of Social Security; is that correct? A: Correct. Q All right." (See June 2, 2005 Deposition Transcript of Columbus Davis Jr., Volume II, 220:21-25, 221:1-6.) ("Q: Since you began working at Gold Strike Hotel, to your knowledge was there ever any safety inspections conducted of the tour busses</p>

<p>uprooted from the bus floor, causing serious injuries to Plaintiffs.</p>	<p>that arrived at Gold Strike Hotel A: I have no idea . . . Ms. Segal: There is no such person.” (See May 25, 2005 Deposition Transcript of Kotula, 18:4-14.) (“Q: Did the seats have seatbelts? A: No.” (March 31, 2005 Deposition Transcript of Orlando Usher, 41:19-21.)“ . . . therefore, the question of negligence and proximate causation for failure to equip the vehicle with seatbelts is a triable issue of fact for the jury.” (<i>Greyhound Lines, Inc. v. Super.Ct. (Chisefski)</i> (1970) 3 Cal.App.3d 356, 359-360.) (Q: Okay. So the seats were detached or– A: If the seat’s on top of people– MR.GILLEN: No. Just answer the question. He wants to know if they were detached. Be responsive. THE WITNESS: Yeah. That one was detached. That one was definitely detached . . . I got – me and my wife, I got people on top of me and a seat on top of them. [Emphasis.] (March 31, 2005 Deposition Transcript of Orlando Usher, 207:1-14.) “I relied upon the express and implied representations of Four Queens and Gold Strike, that they were the same company, or at least responsible for the Gold &amp; Silver Bus and Columbus Davis Jr., and that Columbus Davis Jr., was their agent, responsible for my safety and the safety of the Bailey party on behalf of Gold Strike and Four Queens. Otherwise, I would not have purchased tickets from Gold &amp; Silver Bus Company or Columbus Davis Jr.” (See Declarations of Woods, Usher, Frost ¶¶9:5-9.) (Declaration of Doris Hemsley ¶12.)</p>
<p>32. When Plaintiffs arrived at Gold Strike Hotel on March 8, 2003, Plaintiff were required to stay on the Gold &amp; Silver Bus, while an agent of Gold Strike came on board the bus and counted the passengers.</p>	<p>32. (See April 26, 2005 Deposition Transcript of Doris Hemsley, p.33:2-5; 34:1-8.)</p>
<p>33. Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike’s actual employees and agents because Gold Strike had the right to control how Columbus Davis Jr., and Gold &amp; Silver Bus performed their work, rather than just the right to specify the result. It does not</p>	<p>33. (See CACI 3704.) (See also PSSDF No.1-30.) (“Q. It was also true that Gold Strike controlled the activity of the bus driver while he was on the property; he was not allowed to drink alcohol; isn’t that correct? A. Correct.” (See “May 26, 2005 Deposition Transcript of Marla Diloreanu”,</p>

<p>matter whether Gold Strike actually exercised the right to control, because it definitely existed. Therefore, Gold &amp; Silver and Columbus Davis Jr., were definitely Gold Strike's employees/agents.</p>	<p>207:10-14.) ("Q. He [Columbus Davis Jr.] had to make sure that they were of legal gambling age, 21? A. His company should be responsible for that, yes. (See "May 26, 2005 Deposition Transcript of Marla Diloreanu", 232:1-4.) (See CACI 3704.) ("Q. Okay. That's what I'm saying. The bus itself, Gold Strike had control over that bus once it came up on the property; isn't that a fact? A. Our policy says that the bus is to remain on property, that is correct. (See "May 26, 2005 Deposition Transcript of Marla Diloreanu", 206:1-9; See also 207:1-25.) ("So the bus driver could not leave the property while his group was on the property; is that correct? A. No. The bus may not leave the property. Q. I see, okay. The bus driver could leave the property but the bus couldn't; correct? A. The bus needed to remain on property, yes. Q. Why is that, ma'am? A. To help ensure that the group is still on property." (May 26, 2005 Deposition Transcript of Marla Diloreanu, 159:7-11.) ("Q. Well, the one way that you ensure the passengers remain on the property is to control the bus? A. That is one means, yes.") (May 26, 2005 Deposition Transcript of Marla Diloreanu, 162:21-24.)(See also Plaintiff's Opposition to Gold Strike's Separate Statement, PSSDF in Opposition to Gold Strike's Motion for Summary Judgment, Plaintiff's Opposition to Gold Strike's Motion for Summary Judgment/Adjudication.)</p>
<p>34. (a) Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike's actual employees and agents because Gold Strike supplied Columbus Davis Jr., and Gold &amp; Silver Bus equipment, in the form of handbills, gambling cards, free rooms, meals, subsidies, and name badges emblazoned with the names Gold &amp; Silver and Gold Strike Hotel. 2003.</p>	<p>34. (See CACI 3704.) ("One driver and one escort from bus will be given free meal each trip." ("Exh.1", Tour Bus Program Rules, p.3 ¶VI, A.) ("Gold Strike Bus Program Rules", "Exh.1.") (See also PSSDF No.7.) ("Declaration of Doris Hemsley ¶1, 2.) (See also Declarations of Usher, Frost and Woods ¶2.) ("Declaration of Doris Hemsley ¶ 2, 3.) (See also Declarations of Usher, Frost and Woods ¶2.) (See also PSSF No.1.) (See also Exh.5, A, B, C.)</p>
<p>35. (a)(1) Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike's</p>	<p>35. (See CACI 3704.) ("I first met Defendant Columbus Davis Jr., at Gold</p>

<p>actual employees and agents because Gold Strike supplied the casinos themselves as a place of work for Davis.</p>	<p>Strike Hotel &amp; Casino about a year before the March 9, 2003 tour bus collision in which I was injured and upon which this case is based. When I first met Columbus Davis Jr., at Gold Strike Hotel, Columbus Davis Jr., explained to me that he could get me special rates, free rooms and meals, for myself, my family and my friends, at the Gold Strike Hotel and also at Four Queen, but only if I booked my tour bus tours through him and Gold &amp; Silver Bus, because he had a “business arrangement” with Four Queens Hotel and Gold Strike Hotel.” (See Declaration of Doris Hemsely ¶2.) (“Q. He [Columbus Davis Jr.] had to make sure that they were of legal gambling age, 21? A. His company should be responsible for that, yes. (See “May 26, 2005 Deposition Transcript of Marla Diloreanu”, 232:1-4.) (See CACI 3704.) (“Q. Okay. That's what I'm saying. The bus itself, Gold Strike had control over that bus once it came up on the property; isn't that a fact? A. Our policy says that the bus is to remain on property, that is correct. (See “May 26, 2005 Deposition Transcript of Marla Diloreanu”, 206:1-9; See also 207:1-25.) (“So the bus driver could not leave the property while his group was on the property; is that correct? A. No. The bus may not leave the property. Q. I see, okay. The bus driver could leave the property but the bus couldn't; correct? A. The bus needed to remain on property, yes. Q. Why is that, ma'am? A. To help ensure that the group is still on property.” (May 26, 2005 Deposition Transcript of Marla Diloreanu, 159:7-11.) (“Q. Well, the one way that you ensure the passengers remain on the property is to control the bus? A. That is one means, yes.”) (May 26, 2005 Deposition Transcript of Marla Diloreanu, 162:21-24.) (See also Plaintiff's Opposition to Gold Strike's Separate Statement, PSSDF in Opposition to Gold Strike's Motion for Summary Judgment, Plaintiff's Opposition to Gold Strike's Motion for Summary Judgment/Adjudication.) (“B. One driver and one escort from each bus will be given a free meal each trip.”) (“Exh.1”, “Bus Program Rules”, p.3¶VI(B).)</p>
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<p>36. (b) Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike and Four Queen's actual employees and agents because Columbus Davis Jr., and Gold &amp; Silver Bus were paid by the amount of hours, "coin in" and type of stop, rather than by the job itself, which makes Columbus Davis Jr., and Gold &amp; Silver Bus Company <u>stakeholders in a gaming venture.</u></p>	<p>36. (" . . . We are paying for passengers who have come here to gamble . . . If you want to bring non preferred passengers you certainly may do so . . . as they will not be counted or paid for. ) [Emphasis in original.] (See "Exh.1" p.2:¶D.) This indicates a sharing of gambling profits. (See Declaration of Richard McCay ¶14.) (See also PSSDF No.44-58.) ("Q. If passengers in fact purchased hotel rooms, would that void the commission that the bus operator might have been entitled to? A. If we were made aware of it, they would be deducted from the count. Q. Okay. A. They would not be paid for that passenger.") (May 26, 2005 "Deposition Transcript of Marla Diloreanu", 120:18-25.) ("Q: So for Mr. Davis to receive a commission on this trip, then he had to make this stop at Gold Strike Casino his first stop then; correct? A. Correct.") (See May 26, 2005 Deposition Transcript of Marla Diloreanu, 101:10-14.)</p>
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<p>37. (c) Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike's actual employees and agents because the work being done by Columbus Davis Jr., was part of the regular business of the Gold Strike Bus Program.</p>	<p>37. (See CACI 3704.) (Exh. "Bus Program Rules.) ("Q Now, the hosts were kind of people who were customer service people on behalf of the casino that helped your passengers use the slot machines and use the table games, correct? A Again, at some casinos, yeah. Q All right. Well, I want to know specifically at Gold Strike. Were the same responsibilities that you observed casino hosts perform at the Gold Strike Casino, were you doing the same thing? MR. KENNY: Objection. Vague, incomplete hypothetical. BY MR. GILLEN: Q Go – MS. SEGAL: Misstates the evidence. BY MR. GILLEN: Q Go ahead, sir A I would walk around, make sure they had their badges and stuff on, because that's important for the play, for them, the ease of the identity. Make sure they are somewhere like this, and make sure some of them don't have it out of sight where when they pass by they can't see them. They need to be in view of the sight, on their shoulder, or somewhere, where if a casino -- from -- somebody from the bus program walk around and</p>
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	<p>monitor them, they need to be able to see it. Sometimes people take them, put them on their legs and things. They might not look at the leg, so they like for it to be displayed where they can see it. Q Thank you, sir. What I'm asking, sir, you were doing the same type of work that a casino host was doing while you were on the casino property; isn't that correct? A I had-".) (See June 7, 2003 Deposition Transcript of Columbus Davis Jr. Vol.III 17:10-25, 818:1-18.) ("Q. He [Columbus Davis Jr.] had to make sure that they were of legal gambling age, 21? A. His company should be responsible for that, yes. Q. Okay. He had to make sure that they had proper identification on behalf of the casino? (See "May 26, 2005 Deposition Transcript of Marla Diloreanu", 232:1-4.)</p>
<p>38. (d) Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike's actual employees and agents because Gold Strike had an unlimited right to end the relationship with Columbus Davis Jr., and Gold &amp; Silver Bus Company.</p>	<p>38. (See CACI 3704.) ("Q. All right. All right. So this paragraph A under Integrity of Stops, A, that rule is not enforced? A. Under A, it says you may be permanently suspended. I understand that to mean that it is a possibility that you could be permanently suspended. It doesn't say you definitely will be permanently suspended.") (May 26, 2005 Deposition Transcript of Marla Diloreanu, 90:8-15.)</p>
<p>39. (e) Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike's actual employees and agents because the work being done by Columbus Davis Jr., and Gold &amp; Silver Bus was the only occupation or business of Columbus Davis Jr., and Gold &amp; Silver Bus.</p>	<p>39. (See CACI 3704.) ("Q You acted as if you owned the company. A: I took Peggy's place. I took her place.") (See June 1, 2005 Deposition Transcript of Columbus Davis Jr., Vol.I, 25:23-25.) ("Q: Okay. Did she give the ownership of the bus company to you, sir? A Yes.") (June 1, 2005 Deposition Transcript of Columbus Davis Jr., Vol.I 24:3-15.)</p>
<p>40. (f) Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike's actual employees and agents because the kind of work performed by Columbus Davis Jr., and Gold &amp; Silver Bus is usually done under the direction of a supervisor rather than by a specialist working without supervision.</p>	<p>40. (See CACI 3704.) ("Q. How many people work in the tour and travel department at Jean Development? A. Approximately eight. Q. And you're their supervisor, ma'am? A. Yes, I am.") (May 26, 2005 Deposition Transcript of Marla Diloreanu, 42:12-16.); Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike's actual employees and</p>

	<p>agents because the kind of work performed by Columbus Davis Jr., and Gold &amp; Silver Bus does not require specialized or professional skill, other than a drivers license, tax ID No., Social Security Card, signed contract, business license, ICC No., and Certificate of Insurance, all sent by a fax machine or mail. (PSSDF No.41.) (See CACI 3704.) (See "Exh.1", Bus Program Contract/Rules, p.8¶3-4.; See also "Exh.1", p.9.)</p>
<p>41. (g) Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike's actual employees and agents because the kind of work performed by Columbus Davis Jr., and Gold &amp; Silver Bus does not require specialized or professional skill, other than a drivers license, tax ID No., Social Security Card, signed contract, business license, ICC No., and Certificate of Insurance, all sent by a fax machine or mail.</p>	<p>41.(See CACI 3704.) (See "Exh.1", Bus Program Contract/Rules, p.8¶3-4.; See also "Exh.1", p.9.)</p>
<p>42. (h) Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike's actual employees and agents because the services performed by Columbus Davis Jr., and Gold &amp; Silver Bus have been ongoing since at least 1997 and are still being performed, which is a long period of time.</p>	<p>42. (See CACI 3704.) (See July 8, 2003 Deposition Transcript of Marla Diloreanu, 13:1-13; July 7, 2003 Deposition Transcript of Columbus Davis Jr., 11:6-18, 21:3-24.</p>

<p>43. (i) Columbus Davis Jr., and Gold &amp; Silver Bus Company were Gold Strike's actual employees and agents because Gold Strike Hotel and Columbus Davis Jr., and Gold &amp; Silver Bus acted as if they had an employer-employee relationship.</p>	<p>43. (See CACI 3704.) (e.g., free meals to driver, free food, rules to abide by or termination of relationship, Davis must supervise jointly with employees of Gold Strike jointly, etc. (See also, e.g., PSSDF No.1-39.)</p>
<p>44. A joint venture existed between Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because they combined their property, skill, and knowledge to carry out a single business undertaking - bringing gamblers from California to Las Vegas - and agreed to share control over the relationship, their profits, as well as losses.</p>	<p>44. (CACI 3712) (See PSSDF No.1-39.)</p>
<p>45. A joint venture existed between Gold Strike, Four Queens, Columbus Davis Jr., and Gold &amp; Silver bus, because it was understood by both Gold Strike and Four Queens that Columbus Davis Jr., would deliver passengers to Gold Strike first, for a "first stop" and then to Four Queens.</p>	<p>45. (CACI 3712) (See also PSSDF No.10.)</p>

<p>46. A joint venture existed between Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because if Columbus Davis Jr.'s passengers didn't gamble at all, Davis did not get paid, also known as a sharing of "profits" and "loss."</p>	<p>46. (CACI 3712) (" . . . We are paying for passengers who have come here to gamble . . . If you want to bring non preferred passengers you certainly may do so . . . as they will not be counted or paid for. ) [Emphasis in original.] (See "Exh.1" p.2:¶D.) This indicates a sharing of gambling profits. (See Declaration of Richard McCay ¶14.) (See also PSSDF No.44-58.) ("Q. If passengers in fact purchased hotel rooms, would that void the commission that the bus operator might have been entitled to? A. If we were made aware of it, they would be deducted from the count. Q. Okay. A. They would not be paid for that passenger.") (May 26, 2005 "Deposition Transcript of Marla Diloreanu", 120:18-25.) ("Q. So for Mr. Davis to receive a commission on this trip, then he had to make this stop at Gold Strike Casino his first stop then; correct? A. Correct.") (See May 26, 2005 Deposition Transcript of</p>
<p>47. A joint venture existed between Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because in order for Gold &amp; Silver to afford the cost of transporting the passengers, including Plaintiff, to the Casinos, the tour bus operators were subsidized by Gold Strike Hotel. Effectively, the Casinos themselves were sharing the losses of California tour bus companies, including Gold &amp; Silver Bus Company, in order to fill their Las Vegas Casinos with California</p>	<p>47. (CACI 3712) ("Based upon my expertise as an accountant, I have concluded that both Gold Strike and Four Queens were in effect, sharing in Gold &amp; Silver's losses when they subsidized the tour bus trips, which made it economically feasible for the California tour bus operators to deliver the gamblers to Las Vegas." (See McCay Dec.¶8.)</p>
<p>48. A joint venture existed between Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because it costs Gold Strike money to administer their Bus Program and the Bus Program would not be profitable for Gold Strike unless Gold Strike could be assured of a "first stop", in order to recover enough expected profits.</p>	<p>48. (See McCay Dec.¶8:1-3, ¶15:23-26, ¶18:11-15.) (CACI 3712)</p>
<p>49. A joint venture existed between</p>	<p>49. (See Exh. Gold Strike "Bus Program"</p>

<p>Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because at Gold Strike, Gold &amp; Silver's and Columbus Davis Jr.'s commissions would be deducted by \$5.00 per passenger per "free meal", a sharing of Gold Strike's business loss.</p>	<p>Web page.) "Q. All right. And for No. 15, we left a space for the home page of Jean Development Internet site? A. Yes. MR. KENNY: For 2003. MR. GILLEN: For 2003. (Whereupon, Exhibit No. 15 was marked for identification.) BY MR. GILLEN: Q. Do you know if that web page has changed from 2003 to the present? A. I don't know." (See May 26, 2005 Deposition Transcript of Marla Diloreanu, 37: 17-25; 38:1-4.)</p>
<p>50. A joint venture existed between Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because the Gold &amp; Silver Bus Company was required to insure any business loss of the Gold Strike.</p>	<p>50. (CACI 3712) ("Q. And this certificate of insurance had to be specific as to the Gold Strike Casino; isn't that correct? A. Correct. Q. They had to be a named insurer under the policy? A. They had to be a certificate holder, yes, and the certificate holder needed to be named as additionally insured.") (See May 26, 2005 Deposition Transcript of Marla Diloreanu, 165:6-10.)("Q Now, as part of doing business with Four Queens Hotel and Casino, just like doing business with the Gold Strike casino, did the Four Queens casino require you to have a policy of liability insurance while you were transporting passengers? A Correct.") (June 2, 2005 Deposition Transcript of Columbus Davis Jr.,258:25, 259:1-5.)</p>
<p>51. A joint venture existed between Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because Gold Strike Provided free rooms and meals to the tour bus companies, a loss to Gold Strike.</p>	<p>51. (CACI 3712) ("H. Complimentary driver's rooms are provided for the driver's use only. Any abuse of this privilege may result in disciplinary action, (See Exh.1 "Gold Strike Bus Program Rules" 4:H.) ("One driver and one escort from each bus will be given a free meal each trip.. ") (See Exh.1 "Gold Strike Bus Program Rules" VI.:B.) (See also Declaration of Richard McCay ¶8.)</p>
<p>52. A joint venture existed between Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because Gold Strike paid the tour bus companies based upon the number of hours gambled, not per the job, a clear indication of a sharing of the</p>	<p>52. (CACI 3712) (See McCay Dec.¶8:1-3, ¶15:23-26, ¶18:11-15.) ("... We are paying for passengers who have come here to gamble . . . If you want to bring non preferred passengers you certainly may do so . . as they will not be counted or paid for. ) [Emphasis in original.] (See</p>

<p>profits. The more hours gambled, the more "coin in", which is profit to Gold Strike.</p>	<p>"Exh.1" p.2:¶D.) This indicates a sharing of gambling profits (See also PSSDF No.44-58.) ("Q. If passengers in fact purchased hotel rooms, would that void the commission that the bus operator might have been entitled to? A. If we were made aware of it, they would be deducted from the count. Q. Okay. A. They would not be paid for that passenger.") (May 26, 2005 "Deposition Transcript of Marla Diloreanu", 120:18-25.)</p>
<p>53. A joint venture existed between</p>	<p>53. (CACI 3712) (See also "Exh.4, A"</p>
<p>54. A joint venture existed between Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because Columbus Davis Jr., and Gold &amp; Silver Bus were forced to share in Gold Strike's losses, by sharing the costs of "free" meals to the Tour Bus passengers. If the stop was four (4) hours, five (5) hours, or six (6) hours and a "free" buffet was provided to the Bus passengers, \$5.00 would be deducted from the drivers' commission per passenger.</p>	<p>54. (CACI 3712) (See "Exh.4,A") (See McCay Dec.¶8:1-3, ¶15:23-26, ¶18:11-15.)</p>
<p>55. A joint venture existed between Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because Columbus Davis Jr., and Gold &amp; Silver Bus were forced to share in Gold Strike's losses, because it was Gold Strike's policy that it shared the costs of passenger identification badges with Gold &amp; Silver Bus.</p>	<p>55. (See McCay Dec.¶16:28,1-5, ¶8:1-3, ¶15:23-26, ¶18:11-15.) ("Q. Now, tell me, ma'am, it says -- I was looking here, and you mentioned about it, it says: "Groups arriving without badges will be provided with badges by the casino at a charge (which would be deducted from the commission)." So if that occurs then, actually there is a penalty for that and then the cost of the badges are charged against the commission; correct? A. That is in our policy . . ." (See May 26, 2005 Deposition Transcript of Marla Diloreanu, 74:10-22.)</p>
<p>56. A joint venture existed between Gold Strike and Columbus Davis Jr., and Gold &amp; Silver bus, because Columbus Davis Jr., and Gold &amp; Silver Bus were forced to share in Gold Strike's profits and losses, because Gold &amp; Silver was</p>	<p>56. ("Q. Okay. So if something was broken, a radio clock or a chair was broken, then the tour bus company was responsible for the cost of the damage to the room; isn't that correct? A. Yes. Q. And I think you also mentioned that if something was taken from the room, then</p>

<p>responsible for sharing the costs of damage or theft of Gold Strike hotel rooms.</p>	<p>the tour bus company would be responsible for the theft of an object in the room; correct? A. Correct.” (See May 26, 2005 Deposition Transcript of Marla Diloreanu, 191:10-19.) (“McCay Dec.” ¶¶8:1-3, ¶¶15:23-26, ¶¶18:11-15.)</p>
<p>57. A partnership existed on March 8 and 9<sup>th</sup> between Gold Strike Hotel because a group of two or more persons - Gold &amp; Silver Bus and Gold Strike Hotel - own and operated a business in which all the partners agreed to share the profits and losses.</p>	<p>57. (See discussion supra at “Joint venture”) (PSSDF No.43-54.)</p>
<p>58. Both Gold Strike and Four Queens Hotel and Casino knew that Columbus Davis Jr., was traveling to Gold Strike Hotel on March 8, 2003 and then to Four Queens Hotel the following day, which was within the course and scope of Davis’ agency/employment relationship with Gold Strike and Four Queens Hotel and Casino.</p>	<p>58. (PSSDF No.43-54, 61.)</p>
<p>59. Both Gold Strike and Four Queens Hotel and Casino still do business with Columbus Davis Jr., on their prospective Bus Programs, which is evidence of wilful neglect.</p>	<p>59. (PSSDF No.43-54.) (“I have personal knowledge that Columbus Davis Jr., still books tours with both Four Queens and Gold Strike Hotel, even though Davis is psychologically disabled and in light of the fact that the Gold &amp; Silver Bus Company uses dangerous and unsafe tour busses.”) (“Declaration of James R. Gillen ¶ 7:17-20.)</p>
<p>60. Gold Strike breached its duty of care to Plaintiffs when it failed to make reasonable inspections for safety.</p>	<p>60. (“Q. Sure. What I'm trying to find out, was Gold Strike through its employees, were they all at all concerned about any safety issues pertaining to the buses themselves? A. No.” (May 26, 2005 Deposition Transcript of Marla Diloreanu, 111:2-6.)</p>
<p>61. It was within the course and scope of the Gold Strike Tour Bus Program that Gold &amp; Silver Bus would stop at other casinos both before and after any trip by Gold &amp; Silver Bus to Gold Strike, as part of the Tour Bus Program.</p>	<p>61. (“Q: in this particular situation, Mr. Davis’s company bought an overnight trip, did an overnight with Gold Strike Casino. At that time he was paid a commission for that overnight stay because he claimed <b>it was a first stop – A: Correct. Q: --Trip? A: Correct. Q: Now after that, were there any</b></p>

	<p><b>restrictions placed on Mr. Davis in regards to making a second stop? A: By our company? Q: Yes. A: No there is not.</b> (See May 26, 2005 Declaration of Marla Diloreanu, 101:24-25, 102:1-13.) “. . . That does not mean you may spend the night at a casino the night before and then stop at our casino first on the second day.” (“Exh.1”, Bus Program Rules p.1:¶B,1, “Integrity of Stops”.) “A turn around means that we must be your only casino stop.” (“Exh.1”, Bus Program Rules p.2:¶B,2, “Integrity of Stops”.) “If our Property is your first stop.” (“Exh.1”, Bus Program Rules p.2:¶B,3, “Integrity of Stops”.) Obviously there is overwhelming evidence that Gold Strike knew the Gold &amp; Silver Bus would be touring other casinos as part of the March 8, 9, 2003 tour.</p>
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DATED: July 25, 2005

**JAMES R. GILLEN**  
**Attorney at Law**

By \_\_\_\_\_  
**James R. Gillen, Trial Counsel for Plaintiffs**  
**DORIS HEMSLEY; ALICE WOODS; ALLEN WOODS;**  
**GEORGIA FROST; PAULETTE FROST; ROSE**  
**MARIE USHER; and ORLANDO USHER**