

1 MOT
2 MICHAEL P. KIMBRELL, ESQUIRE
3 Nevada Bar No. 7776
4 MICHAEL P. KIMBRELL, LTD
5 3470 East Russell Road, Suite 250
6 Las Vegas, NV 89120
7 Telephone: (702) 471-7001
8 Fax: (702) 446-0493
9 Attorney for Defendant
10 **DENISE NICHOLS**

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

10 RIGHTHAVEN LLC, a Nevada)
11 Limited Liability Company,)
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CIVIL ACTION NO.: 2:10-CV-01672-GMN-LRL
**MOTION TO DISMISS COMPLAINT UNDER
FRCP 12 (b) (6) FAILURE TO STATE A
CLAIM UPON WHICH JUDGEMENT CAN
WHICH BE GRANTED**

PLAINTIFF,
v.
DENISE NICHOLS,
DEFENDANT.

COMES NOW the defendant, **DENISE NICHOLS** by and through her counsel,
MICHAEL P. KIMBRELL, ESQ., and moves this court to dismiss the complaint served
upon Defendant for the reasons that follow:

1. The Complaint, which has been served upon her, does not list her as a party.
2. Nor does it contain any reference to her.
3. No claim is stated against her. Therefore, it should be dismissed against her as a putative defendant.

Defendant’s motion for dismissal of complaint is based on the Points and Authorities attached hereto.

DATED this 11th day of April, 2011.

1 Respectfully submitted,

2 /s/ Michael P. Kimbrell
3 MICHAEL P. KIMBRELL, ESQ.
4 Counsel for Defendant
5 DENISE NICHOLS

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **FACTUAL BACKGROUND**

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9 Plaintiff served a Summons and Complaint upon Defendant March 23, 2011. Said
10 Complaint, attached, contains no reference to Defendant by name, reference, or implication.
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12 FRCP 12 (b) (6), and 12 © states in pertinent part:

13 (6) failure to state a claim upon which relief can be granted; and FRCP 12 (b) (e):

14 Motion For a More Definite Statement

15 A party may move for a more definite statement of a pleading to which a responsive
16 pleading is allowed but which is so vague or ambiguous that the party cannot
17 reasonably prepare a response. The motion must be made before filing a responsive
18 pleading and must point out the defects complained of and the details desired. If the
19 court orders a more definite statement and the order is not obeyed within 14 days after
20 notice of the order or within the time the court sets, the court may strike the pleading
21 or issue any other appropriate order.
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24 In the case at hand, the Complaint contains no reference by name or title or occupation that
25 can be reasonably be deduced to ensnare Defendant or provide even a theoretical guess as to
26 how Defendant is supposed to respond.

27 **CONCLUSIONS OF LAW**

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Based on the foregoing argument and the common sense application of justice,
Defendant prays for a dismissal of this defective complaint.

/s/ Michael P. Kimbrell
MICHAEL P. KIMBRELL, ESQ.
Nevada Bar No. 7776
MICHAEL P. KIMBRELL, LTD.
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Las Vegas, NV 89120
(702) 471-7001
Attorney for Defendant
DENISE NICHOLS

ORDER

IT IS THEREFORE ORDERED that the **MOTION TO DISMISS COMPLAINT UNDER FRCP 12 (b) (6) FAILURE TO STATE A CLAIM UPON WHICH JUDGEMENT CAN WHICH BE GRANTED MOTION TO DISMISS COMPLAINT UNDER FRCP 12 (b) (6) FAILURE TO STATE A CLAIM UPON WHICH JUDGEMENT CAN WHICH BE GRANTED.**

DATED ____ day of _____, 2011.

UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P. 5(b), and Section IV of the District of Nevada Electronic Filing Procedures, I certify that I am an employee of MICHAEL P. KIMBRELL, LTD., and on **April 11, 2011** the service of following document, **MOTION TO DISMISS**

COMPLAINT UNDER FRCP 12 (b) (6) FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, By serving the following parties as set forth

below:

Electronically through CM/ECF;

By depositing a copy in the United States Mail postage prepaid;

By facsimile transmission.

/

DATED this 11th day of April 2011

Shawn A. Mangano, Esq.
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shawn@manganolaw.com
9960 West Cheyenne Avenue
Suite 170
Las Vegas, Nevada 89129-7701
Attorney for Plaintiff
RIGHTHAVEN LLC

/S/ Michael P. Kimbrell
An employee of
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DENISE NICHOLS