

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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Elizabeth A. Brown  
Clerk of Supreme Court

JACK LEAL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 83451

District Court No. 8th JD A-20-814369-W  
(Clark County)

**RESPONDENT'S APPENDIX**

**CHRONOLOGICAL INDEX**

**VOLUME 1**

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RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of February 2022.

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on February 2, 2022.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

JACK LEAL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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On Appeal from the Eighth Judicial  
District Court of the State of Nevada  
Case No. C322664

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**RESPONDENT'S ANSWERING BRIEF**

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## **JURISDICTION**

The Nevada Supreme Court and Nevada Court of Appeals have jurisdiction under Section 4 of Article 6 of the Nevada Constitution and NRS 177.015(3).

This is a direct appeal from a judgment of conviction and sentence. The district court sentenced Appellant Jack Leal (“Leal”) on August 17, 2017. The district court entered a written judgment of conviction on August 23, 2017. On September 22, 2017, Leal filed this appeal.

## **ROUTING STATEMENT**

Because this is a direct appeal from a judgment of conviction and sentence, it is presumptively assigned to the Court of Appeals under NRAP 17(b)(1).

## **STATEMENT OF ISSUES**

Whether the district court properly sentenced Leal because Leal obviously breached the guilty plea agreement and the State expressly retained the right to argue for a term of imprisonment?

Whether the district court correctly proceeded with sentencing because no conflict of interest existed, and even if it did, Leal forever waived it?

## **STATEMENT OF CASE**

Appellant Jack Leal (“Leal”) entered into a plea bargain with the State wherein he agreed to plead guilty to one count of Multiple Transactions Involving Fraud or Deceit in Course of Enterprise or Occupation, and to be jointly and

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severally liable for paying \$757,420 in “restitution in full at or before the time [Leal is] sentenced...” Appellant’s Appendix (AA) at 89-90. In exchange, the State agreed to dismiss one count of Racketeering and twelve counts of Theft in the Amount of \$3,500 or more and not oppose probation. AA 89-90. In the event that Leal failed to pay the restitution in full at or before his sentencing, the State expressly retained the right to argue for a term of imprisonment. AA 89.

Leal signed two conflict-of-interest waivers prior to his sentencing, consenting to dual representation of himself and his co-defendant, Jennifer Garcia (“Garcia”). AA 82, 100-102.

At the time set for sentencing, Leal and Garcia failed to pay full restitution as agreed in the Guilty Plea Agreement (GPA). AA 122. Leal’s attorney claimed a conflict of interest arose between Leal and Garcia after the initial arraignment, but before sentencing due to a no contact order that prevented Leal and Garcia from “working together.” AA 124. Recognizing that Leal and Garcia had executed two conflict-of-interest waivers, the district court proceeded with sentencing. AA 119. Due to Leal’s blatant breach of the GPA, Respondent-Appellee (“the State”) argued for a term of imprisonment for a maximum of one hundred eighty (180) months and a minimum of sixty (60) months with no objection by Leal or his attorney. AA 120. The district court sentenced Leal to a maximum of one hundred eighty (180) months

with a minimum parole eligibility of seventy-two (72) months in the Nevada Department of Corrections with zero days for time served. AA 140.

Because Leal breached the GPA by showing up to his sentencing without having paid the restitution in full, there was no need for the district court to investigate and examine an alleged breach by the State when Leal and his attorney did not object to the State arguing for a term of imprisonment and when Leal himself had already indisputably breached the plea agreement. In addition, the district court correctly proceeded with sentencing. While Leal's attorney claimed a conflict of interest arose between Leal and Garcia, no such conflict actually existed because the two co-defendants had agreed to be jointly and severally liable for the restitution. Even if a conflict of interest existed, Leal and Garcia forever waived any beforehand.

## **STATEMENT OF FACTS**

### **I. Complaint for Forfeiture and Notice of *Lis Pendens***

On September 30, 2016, Respondent-Appellee, the State of Nevada ("the State") filed an *in rem* action requesting the forfeiture of \$6,616.04 and \$150,489.13 from two Bank of America accounts opened under the name of Parcelnomics, LLC, and real property located at 1024 Santa Helena Avenue, Henderson, Nevada 89002 ("the Henderson property") purchased by Jessica Garcia ("Garcia") and transferred to 1024 Santa Helena Trust. AA 2-10. The State also filed a Notice of *Lis Pendens* on September 30, 2015. AA 11-12. As alleged in the Complaint for Forfeiture, Leal

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and Garcia, the managing members of Parcelnomics, falsely advertised, represented, and sold encumbered real property to victims and used the proceeds to purchase the Henderson property. AA 2-10.

## **II. Criminal Complaint**

On November 29, 2016, the State filed a Criminal Complaint against Leal, Parcelnomics, and Garcia charging all three defendants with one (1) count of Racketeering, a category B felony, twelve (12) counts of Theft in the Amount of \$3,500 or more, a category B Felony, and one (1) count of Multiple Transactions Involving Fraud or Deceit in Course of Enterprise or Occupation, a category B felony. AA 15-38. The State alleged that on or about March 1, 2015, through March 31, 2016, Leal and Garcia, as managing members of Parcelnomics, solicited prospective purchasers for several properties in Nevada (“the real properties”) on Zillow.com, Craigslist.org, and eBay.com. AA 15-38.

The State also alleged that Leal and Garcia, as managing members of Parcelnomics, knowingly and falsely represented that the titles for the real properties were not encumbered by liens or other security interests. AA 15-38. The State further alleged that Leal and Garcia, as managing members of Parcelnomics, unlawfully obtained \$886,800.00 from the sale of the real properties encumbered with liens and/or other security interests from their victims. AA 15-38. The Complaint alleged that upon conviction of the offenses charged, the State requested forfeiture of the

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real and personal property derived from the unlawful acts. AA 15-38. The State filed an Amended Criminal Complaint on December 27, 2016 clarifying the forfeiture amounts requested from the real and personal property derived from the unlawful acts. AA 40-62. The State took no action on the Complaint for Forfeiture due to the pending criminal proceedings against Leal and Garcia. AA 146.

### **III. First Conflict-of-Interest Waiver**

On April 11, 2017, Leal unconditionally waived his right to a preliminary hearing and filed an Unconditional Waiver of Preliminary Hearing and Conflict-of-Interest Waiver. AA 79-83. In the Conflict-of-Interest Waiver, Jason G. Weiner, Esq. (“Attorney Weiner”) disclosed that a conflict of interest may arise due to his dual representation of Leal and Garcia. AA 82. Despite this known risk, Leal “knowingly, intelligently, and voluntarily consent[ed] to dual representation...and [he] hereby waive[d] any right to later file an appeal or claim ineffective assistance of counsel based on a conflict-of-interest arising out of this dual representation.” AA 82.

At Leal’s initial arraignment, on April 20, 2017, Attorney Weiner requested a continuance and informed the hearing master the he was representing both defendants and had just filed conflict waivers in the justice court. AA 86. Upon inquiry from the hearing master, Leal confirmed that he waived conflicts for Attorney Weiner to represent him and Garcia. AA 86.

#### **IV. Guilty Plea Agreement**

On April 24, 2017, Leal appeared for his continued initial arraignment. AA 103-12. Leal executed a GPA in which he entered a plea of guilty to one (1) count of Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise or Occupation, in exchange for a dismissal of one (1) count of Racketeering, twelve (12) counts in the Criminal Complaint, and the State's agreement to not oppose probation. AA 88-93. Leal also agreed to pay restitution in the amount of \$757,420 to the eleven victims "at or before the time [he] [is] sentenced in the present case." AA 88-89. Leal agreed that he and Garcia were jointly and severally responsible for the restitution. AA 89. Leal further agreed that he would execute and file in the Clark County Recorder's Office a lien agreement and lien in favor of the State of Nevada, Office of the Attorney General, in the amount of \$600,314.83 against the Henderson property, with the proceeds of the sale from the Henderson property to be applied to any restitution owed. AA 89-90.

In the GPA, Leal acknowledged that should he "fail to pay restitution in full at or before the time [he] [is] sentenced in the present case, the State will retain the right to argue for the imposition of a term of imprisonment." AA 89. Leal also acknowledged that he understood the victims would be allowed to make impact statements at his sentencing. AA 90. Leal further acknowledged that despite any

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recommendations made by the State or his own attorney, the district court “is not obligated to accept the recommendation.” AA 91.

#### **V. Second Conflict-of-Interest Waiver**

Leal executed a second Conflict-of-Interest Waiver that the district court filed with the GPA. AA 100-02. In the second Conflict-of-Interest Waiver, Leal acknowledged that Attorney Weiner advised him of his right “to consult with independent counsel to review the potential conflict of interest posed by dual representation and the consequences of waiving the right to conflict free representation.” AA 100. Leal also acknowledged that if he chose not to seek advice of independent counsel, then he expressly waived his right to do so. AA 100. Leal further expressly waived his right to withdraw his guilty plea or to a mistrial as a result of his attorney’s potential and actual conflict of interest depriving him of his right to effective assistance of counsel arising from the dual representation. AA 100. Leal acknowledged that the “waiver of conflict is binding through trial, on appeal, and in habeas proceedings.” AA 100. In spite of the known risk to dual representation, Leal “knowingly, intelligently, and voluntarily” consented to dual representation of his attorney with his co-defendant. AA 101.

The hearing master acknowledged on the record that waiver was “in front of [her] where Mr. Jack Leal is agreeing that Mr. Weiner can also represent the co-defendant, and that there’s not a conflict of interest. Correct sir?” AA 111. Leal

replied “[c]orrect.” AA 111. During the plea canvass, the hearing master thoroughly canvassed Leal. AA 104-12. The hearing master reiterated the terms of the GPA, including the term where Leal agreed to be jointly and severally responsible for paying back the restitution in full with Garcia in the amount of \$757,420 at or before sentencing. AA 105. The hearing master also reiterated to Leal that should he fail to pay the restitution in full before his sentencing, the State expressly retained the right to argue for the imposition of a term of imprisonment. AA 105. After the hearing master thoroughly canvassed Leal, Leal entered a plea of guilty to one (1) count of Multiple Transactions Involving Fraud, a category B felony. AA 103-12. The hearing master accepted Leal’s plea as freely and voluntarily entered and set the matter for sentencing for the furthest date out—to allow Leal time to sell the Henderson property to pay restitution. AA 111-12. As Attorney Weiner explained, “if it’s not sold there is a penalty to my clients in terms of the State having RTA meaning the right to argue for imprisonment.” AA 112.

## **VI. Sentencing**

At the time set for sentencing, Leal and Garcia had not paid any restitution. AA 122. As a result, the State argued for a term of imprisonment and recommended sixty (60) to one hundred eighty (180) months based on eleven (11) victims and the three quarters of a million dollars stolen. AA 120. The State also argued that Leal had two prior felonies, one for forgery and one for theft by deception and possession



of a fraudulent ID. AA 120. The State further argued that Leal had done little to nothing to make restitution in the case when he had from April to August, the time between his initial arraignment and sentencing, to sell the Henderson property to pay the restitution. AA 120. According to the State, the first time Leal did anything was a week before his sentencing; and thus, Leal did nothing for four months. AA 121. Leal stated that he had issues with Garcia and a no contact order deterred contact for the past sixty (60) days, which caused the delay. AA 121. According to Leal, Garcia was in charge of the property sale and he assumed she was selling the house. AA 121. Upon questioning by the district court, Leal explained that he transferred the title to the house from the trust to himself because Garcia had “nothing done to this point,” and claimed “[t]he restitution – I mean there should be no issue with it. I have a copy of the title policy I’ve got. No liens; the property’s free and clear.” AA 121-22. Due to Leal’s representation that the Henderson property had “no liens,” the State pointed out that the house had two liens. AA 121-22. Leal also claimed that he “had no idea [the restitution] wasn’t taken care of or paid” and “[a]s far as the situation that happened, we were under the assumption that – we didn’t explain it correctly,...what we were selling.” AA 122. When the district court asked where the \$750,000.00 went, Leal stated that it went into purchasing the Henderson property he just put on the market. AA 122-23.

In regards to the alleged conflict of interest, Attorney Weiner stated that the

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dispute between Leal and Garcia “began after the change of plea but before sentencing.” AA 124. Attorney Weiner also stated that he had contacted the bar ethics hotline who recommended he withdraw. AA 124. Attorney Weiner further stated that he would “make that motion.” AA 124. The district court asked Attorney Weiner what the purported conflict of interest was between Leal and Garcia. AA 124. Attorney Weiner explained that “[t]hey were supposed to be working together. Then they had a no contact order so they couldn’t. So they’re now basically pointing at each other saying this is – She’s saying this is his fault, he’s saying that’s her fault. That’s an antagonistic defense.” AA 124. AA 124-25. The district court explained that “it’s not a defense to the case...because if it says why the...restitution wasn’t paid and this is joint and several which means if one...doesn’t pay the other owes the full amount...” AA 124-25.

## **VII. Victim Impact Statements**

Since the State filed a Notice of Intent to Present Victim Impact Statements on August 11, 2017, three (3) of the victims spoke at Leal’s sentencing, Irene Segura (“Segura”), Luis Palafox for Lena Palafox (“Palafox”), and LoryLee Plancarte (“Plancarte”). AA 114-15, 128-36. Segura stated that Leal and Garcia stole her grandson’s college fund by scamming them with two worthless properties. AA 129. Palafox stated that his wife paid \$60,000.00 for one property, but now they are renting property and living check to check. AA 132-33. Plancarte spoke and stated

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that she “was told her property was free and clear from a bankruptcy sale” and found out when they went to refinance that there was a mortgage on the property. AA 135. Plancarte also stated that she had not seen any restitution. AA 136. Attorney Weiner responded to the victim impact statements. AA 137-39. Despite the State’s request, the district court sentenced Leal to imprisonment for a maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months, with zero (0) days credit for time served. AA 140-41.

### **SUMMARY OF ARGUMENT**

The district court properly sentenced Leal after he failed to pay the restitution in full at or before his sentencing. Because Leal is obviously to blame for the breach of the GPA, an evidentiary hearing to determine blameworthiness is unnecessary. *Villalpando v. State*, 107 Nev. 465, 468, 814 P.2d 78, 80 (1991). In order for the State to not oppose probation, Leal needed to pay the restitution in full at or before his sentencing. AA 89. While Leal may have needed to sell the Henderson property to obtain the money to pay full restitution, the GPA did not require Leal to sell the Henderson property to pay the restitution. AA 89-90. Instead, the GPA allowed for any proceeds from the sale of the Henderson property to be applied to any restitution owed. AA 90. As such, the language in the GPA clearly left the means of paying restitution to Leal’s discretion. AA 89. Rather than take the four (4) months between his initial arraignment and sentencing to sell the real property, Leal waited six (6)

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days before sentencing to start the process of putting the Henderson property on the market to pay the restitution already past due. As it was obvious Leal was to blame for the breach of the GPA, the State was released from its promise to not oppose probation. As the State argued for a term of imprisonment in accordance with the terms of the GPA, without objection by Leal or his counsel, the Court should find that the district court did not commit plain error at sentencing.

Additionally, the district court did not abuse its discretion in proceeding with Leal's sentencing because no conflict of interest existed. While Leal claims that the district court erred in denying Attorney Weiner's motion to withdraw as counsel, EDCR 7.40(b)(2) requires counsel of record to withdraw by written motion. The record reflects that a bench conference occurred prior to Leal's sentencing where Attorney Weiner may have made an oral motion to withdraw as counsel, but the record later contradicts this allegation for Attorney Weiner informed the district court that "[he] did. [He] will make that motion" effectively indicating that he would file a motion to withdraw as counsel in the future. AA 124.

Nonetheless, no conflict of interest existed to warrant withdrawal of counsel because Leal and Garcia agreed to be jointly and severally liable for restitution. AA 89. As the district court indicated, the fact that Leal and Garcia are going to blame each other for the unpaid restitution does not create a conflict of interest since both agreed to pay the restitution in full. AA 125. Even if there was a conflict of interest,

Leal knowingly, intelligently, and voluntarily embraced a potentially conflicted dual representation. *Ryan v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 419, 430, 168 P.3d 703, 710 (2007). Leal signed a conflict-of-interest waiver in the justice court and a conflict-of-interest waiver in district court at his initial arraignment wherein he waived any actual or potential conflict from the dual representation of him and Garcia. AA 79-83; 100-102. As a result, Leal forever waived any actual or potential conflict of interest at his initial arraignment.

Based on the foregoing, the judgment of conviction should be affirmed.

## **ARGUMENT**

### **I. Standard of Review**

This Court reviews unpreserved breach-of-plea allegations for plain error. The defendant's failure to object to the prosecutor's comments at sentencing "may be considered as evidence of the defendant's understanding of the terms of a plea agreement." *Sullivan v. State*, 115 Nev. 383, 387 n. 3, 990 P.2d 1258, 1260 n. 3 (1999); *see also Puckett v. United States*, 556 U.S. 129, 143 (2009) (holding unpreserved breach-of-plea-allegations are subject to plain-error review).

Additionally, this Court reviews a district court's denial of a defendant's request to substitute counsel for an abuse of discretion. *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004).

## **II. The District Court Properly Sentenced Leal Because Leal Obviously Breached the Guilty Plea Agreement, and the State Retained the Right to Argue for Imprisonment.**

The district court properly sentenced Leal because Leal clearly violated the GPA. Contract principles apply when analyzing a written plea agreement. If a defendant breaches the plea agreement first, the appropriate remedy pursuant to the terms of the plea agreement is that the State may argue for imprisonment. *See State v. Crockett*, 110 Nev. 838, 842-45, 877 P.2d 1077, 1078-81 (1994) (applying contract principles in analyzing a written plea agreement); *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) (“[W]hen a contract is clear on its face, it will be construed from the written language and enforced as written.”) (citations omitted). When, as here, the defendant is obviously to blame for the breach of the GPA, an evidentiary hearing to determine blameworthiness is unnecessary. *Villalpando v. State*, 107 Nev. 465, 468, 814 P.2d 78, 80 (1991).

In this case, the State did not breach the GPA.<sup>1</sup> The State was no longer required to not oppose probation when Leal failed to pay the restitution in full at or

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<sup>1</sup> When the State enters into a plea agreement, it “is held to ‘the most meticulous standards of both promise and performance’” with respect to both the terms and the spirit of the plea bargain. *Van Buskirk v. State*, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting *Kluttz v. Warden*, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)). “In practice, it is the criminal defendant, not the State, who actually controls whether the State will be allowed to argue for a particular sentence.” *Sparks v. State*, 121 Nev. 107, 113, 110 P.3d 486, 489 (2005). If the defendant claims the State improperly breached the plea agreement, the appropriate remedy would be

before his sentencing. In the GPA, Leal expressly agreed and understood that as a condition to the State not opposing probation, he had a duty to pay the restitution of seven hundred fifty-seven thousand four hundred twenty dollars (\$757,420) in full at or before his sentencing. AA 88-89. Leal also agreed and understood that he and Garcia were jointly and severally responsible for paying the restitution. AA 89. Leal acknowledged these terms in the GPA and during the plea canvass. AA 88-99, 103-12. Leal also twice acknowledged and agreed that if he did not pay the restitution in full at or before his sentencing, the State retained the right to argue for a term of imprisonment. AA 104-06. At the time set for sentencing, Leal and Garcia had not paid the restitution. AA 122-23. As such, Leal's blatant and obvious breach of the GPA released the State from its obligation of not opposing probation. Thus, the State properly argued for a term of imprisonment in accordance with the terms of the GPA without any objection by Attorney Weiner or Leal.

In *Sparks*, a case Leal attempts to distinguish, the defendant, while on probation for a theft offense, was arrested and charged with two counts of drug related offenses. *Id.* at 109, 110 P.3d at 487. At his initial appearance, the defendant agreed to waive his right to a preliminary hearing and agreed to a plea bargain where he would enter a plea of guilty to the reduced drug charge and the State would agree

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specific performance of the agreement. *Citti v. State*, 107 Nev. 89, 92-93, 807 P.2d 724, 727 (1991).

to make no recommendation at sentencing. *Id.*, 110 P.3d at 487. The written plea agreement also contained a FTA clause that released the State from its promise to recommend or refrain from recommending a particular sentence if the defendant failed to appear for a scheduled sentencing or committed an additional criminal offense prior to sentencing. *Id.*, 110 P.3d at 487. After the defendant failed to appear for his scheduled sentencing and was arrested on additional charges, the State asserted its right under the FTA clause and argued that the sentence imposed should run consecutive to the defendant's sentence for the theft offense. *Id.*, 110 P.3d at 487. On appeal, the defendant in *Sparks* argued that 1) the FTA clause was not valid because it deviated from the standard form agreement set forth in NRS 174.063; 2) the FTA clause is void under Nevada law because it contravenes the court's holdings in *Gamble v. State* and *Villalpando v. State*; 3) the FTA clause is void because it is an unconscionable contractual provision surreptitiously included in the agreement by the State without his consent; and 4) the FTA provision is unconscionable because it gives the State the unilateral right to withdraw. *Id.* at 109-13, 110 P.3d at 487-90. The Nevada Supreme Court concluded that the FTA clause in the plea agreement was lawful and enforceable. *Id.*, 110 P.3d at 490. The Nevada Supreme Court also concluded that the State did not breach the plea agreement in arguing for consecutive sentences after the defendant violated the FTA clause and affirmed the judgment of conviction. *Id.*, 110 P.3d at 490.



Like the defendant in *Sparks*, Leal is obviously to blame for breaching the GPA. At sentencing, Leal had not paid the restitution in full.<sup>2</sup> AA 122. Because Leal agreed that he and Garcia were jointly and severally responsible for paying the restitution in full, Leal should have ensured that the restitution had been paid in full at or before his sentencing rather than “assume” Garcia had paid it. AA 89. As the terms of the GPA did not require the sale of the Henderson property to pay the restitution, Leal could have paid the restitution through any lawful means.<sup>3</sup> AA 88-99. Although Leal contends that he could not sell the Henderson property because of the State’s *Lis Pendens*, this contention fails because Leal was still able to transfer title to himself and list it on the market six (6) days before his sentencing even with the *Lis Pendens*. AA 121-22. The Henderson property also had two liens from Republic Waste. AA 122-23. If Leal did not have the funds to pay the restitution in full without selling the Henderson property, the time to object to this specific term

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<sup>2</sup> The GPA required payment in full not partial payment at or before sentencing. AA 88-89. Nonetheless, Leal’s contentions that he made “good faith efforts” to pay the restitution in full are belied by his own actions and statements at sentencing in addition to the victim impact statements of Segura, Palafox, and Plancarte. AA 128-36. Leal waited six (6) days before his sentencing when he had four (4) months between his initial arraignment and sentencing to transfer title and list the Henderson property for sale to pay the restitution. AA 122.

<sup>3</sup> Leal’s contention that the State misrepresented the worth of the Henderson property at sentencing to undermine Leal’s efforts to pay the restitution is misguided. The State had information, outside of the record, that appraised the Henderson property for significantly less than the listing price.

was before he signed the GPA and entered his guilty plea.<sup>4</sup> *Id.* at 112, 110 P.3d at 489 (“[W]e note that the proper time for [the defendant] to object to a particular term in the written plea agreement was prior to signing the agreement and entering his guilty plea in the district court.”). Leal and Attorney Weiner also did not object to the State’s recommendation of a term of imprisonment. Further, Leal acknowledged in the GPA and during the plea canvass that the district court determines the sentence within the limits prescribed by statute and is not obligated to accept any recommendation. AA 91, 108. In exercising that discretion, the district court actually sentenced Leal to imprisonment for a maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months when the State argued for less. AA 120, 140-41. Thus, the Court, like in *Sparks*, should find that the State did not breach the GPA and affirm the judgment of conviction.

Conversely, in *Gamble*, the defendant appealed the district court’s denial of his petition for writ of habeas corpus (post-conviction) after the prosecutor had not kept his promise in the plea bargain rendering his plea involuntary. *Gamble*, 95 Nev. at 905-06, 604 P.2d at 337. The defendant agreed to stipulate to the revocation of his probation and enter a plea of guilty to a new offense in exchange for the State

---

<sup>4</sup> To the extent Leal’s arguments are construed as to mean the State made Leal’s performance impossible, the defense of impossibility does not apply to unforeseen contingencies that the promisor should have foreseen and provided for in the contract. *See Nebaco, Inc. v. Riverview Realty Co.*, 87 Nev. 55, 58, 482 P.2d 305, 307 (1971).

agreeing not to file more charges and recommend that the sentences for his probation revocation and new offense run concurrently. *Id.*, 604 P.2d at 337. The district court canvassed the defendant who entered a plea of guilty to the new offense. *Id.*, 604 P.2d at 337. A month later, the district court held a probation revocation hearing, revoked the defendant's probation, and sentenced the defendant to a ten-year prison term. *Id.* at 337. A different public defender and prosecutor appeared at the probation revocation and neither made any reference to the plea negotiations. *Id.* at 337. At his sentencing hearing, the parties did not understand why the probation revocation hearing occurred and the district court continued the sentencing. *Id.*, 604 P.2d at 337. A month later, at the continued sentencing hearing, the prosecutor represented that the defendant "refused" to stipulate to the revocation of his probation and recommended the maximum sentence on the new offense to run consecutive to the defendant's sentence imposed as a result of his probation revocation. *Id.* at 337. The district court imposed a sentence based on the prosecution's recommendation. *Id.* at 337. On appeal, the Nevada Supreme Court stated that "there is not the slightest indication that appellant was ever presented with a stipulation to revoke his probation by the prosecution, nor that one was requested by the prosecution of either of appellant's defense counsel. *Id.*, 604 P.2d at 337. The Nevada Supreme Court reversed and remanded to the district court for an evidentiary hearing to determine whether the breach of the plea bargain occurred because the defendant refused to

stipulate to the probation revocation or because of the prosecutions' miscommunication. *Id.* at 909, 604 P.2d at 338.

Similarly, in *Villalpando*, the defendant appealed his sentencing after the prosecution recommended a prison sentence rather than probation after the defendant failed to appear for his sentencing. 107 Nev. at 465-66, 814 P.2d at 78-9. On appeal, the Nevada Supreme determined that the defendant's appearance at his sentencing became an implied condition of the plea agreement based on the judge's warning that the defendant's appearance at sentencing was a condition of the plea agreement. *Id.*, 814 P.2d at 78-9. The Nevada Supreme Court applying *Gamble* determined that the defendant's failure to appear at his sentencing caused the breakdown of the plea agreement and because the defendant was obviously to blame an evidentiary hearing to determine blameworthiness was unnecessary. *Id.* at 468, 814 P.2d at 80. Due to the defendant's blameworthiness, the Nevada Supreme Court did not permit the defendant to withdraw his plea. *Id.*, 814 P.2d at 78-9. Instead, the Nevada Supreme Court found that if the defendant is to remain bound by his guilty plea, so too is the prosecution to remain bound by its promise to recommend probation. *Id.*, 814 P.2d at 80. The Nevada Supreme Court reversed and remanded the case to the district court for specific performance. *Id.*, 814 P.2d at 78-9.

Unlike the defendant in *Gamble*, it is abundantly clear that Leal is to blame for the breach of the GPA because Leal showed up to his sentencing without having

paid the restitution in full, which Leal expressly agreed and understood that he had a duty pay in order to obtain the benefit of the bargain. AA 122. Thus, the district court did need to conduct an evidentiary hearing. Also, unlike in *Gamble* and *Villalpando*, where counsel failed to put in writing the stipulation to revoke probation and the requirement that the defendant appear at sentencing to receive the benefit of the plea negotiations, the GPA expressly and specifically advised Leal that if he showed up to his sentencing without having paid the restitution in full, the State retained the right to argue for a term of imprisonment. AA 88-99, 103-12. Leal acknowledged these terms during the plea canvass and in the GPA. AA 88-99, 103-12. Accordingly, unlike the defendants in *Gamble* and *Villalpando*, the record reflects Leal knew, as a condition of his plea, that he had a joint and several responsibility to pay the restitution in full at or before his sentencing to obtain the benefit of the State not opposing probation. Thus, the Court, unlike in *Gamble* and *Villalpando*, should affirm the judgment of conviction.

**III. The District Court Correctly Proceeded with Sentencing Because No Conflict of Interest Existed, and Even if It Did, Leal Forever Waived It.**

Contrary to Leal’s assertions, the record does not clearly reflect that Attorney Weiner moved to withdraw as counsel of record for Leal. AA 124. According to the record, Attorney Weiner stated that Bar Counsel instructed him to withdraw and “[h]e did. [He] will make that motion” effectively indicating that he would file a motion to withdraw in the future. AA 124.

Eighth Judicial District Court Rule 7.40 provides, in pertinent part, as follows:

(b) Counsel in any case may be changed *only*:

(2) When no attorney has been retained to replace the attorney withdrawing, by order of the court, granted upon *written* motion, and

(i) If the application is made by the attorney, the attorney must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and the telephone number, or last known telephone number, at which the client may be reached and the attorney must serve a copy of the application upon the client and all other parties to the action or their attorneys, or

...

*(c) No application for withdrawal or substitution may be granted if a delay of the trial or of the hearing of any other matter in the case would result.*

EDCR 7.40. [Emphasis added].

Even assuming Attorney Weiner made an oral motion to withdraw during the bench conference, his request fails to comply with EDCR 7.40(b)(2). Thus, the district court did not err in proceeding with sentencing because Attorney Weiner failed to move to withdraw in accordance with EDCR 7.40(b)(2).

Even if Attorney Weiner had moved to withdraw in accordance with EDCR 7.40(b)(2), there was no conflict of interest to warrant withdrawal. The district court's denial of a motion to withdraw as counsel is reviewed for an abuse of discretion. *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004) (reviewing the district court's denial of a motion for substitution of counsel for abuse of

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discretion). In reviewing a denial of a motion to substitute counsel, the three factors considered by the Nevada Supreme Court are: (1) the extent of the conflict between the defendant and his or her counsel, (2) the timeliness of the motion and the extent to which it will result in inconvenience or delay, and (3) the adequacy of the court's inquiry into the defendant's complaints. *Id.*, 102 P.3d at 576 (quoting *United States v. Moore*, 159 F.3d 1154, 1158-59 (9th Cir. 1998)).

Here, the mere fact that Leal and Garcia did not pay the restitution prior to sentencing did not create a conflict of interest. At sentencing, Attorney Weiner argued that a conflict of interest arose between Garcia and Leal because they were supposed to be "working together" and now they are pointing at each other with her "saying this is his fault, he's saying that's her fault." AA 124. In the GPA, Leal agreed to be jointly and severally liable for the restitution with Garcia. AA 89. "Under the common law, liability was joint and several where two or more tortfeasors caused injury through their combined or concurrent tortious conduct...Thus, any one of several tortfeasors whose compoment contributed to a plaintiff's injuries could be tapped for the *entire* amount of damages." *Buck by Buck v. Greyhound Lines, Inc.*, 105 Nev. 756, 763, 783 P.2d 437, 441 (1989) (citing Prosser, *Law of Torts*, 5th Ed. (1984), p. 328). [Emphasis added]. The record also reflects that Leal never personally objected to Attorney Weiner's continued representation. Accordingly, Leal agreed that he owed the entire amount of

restitution at or before his sentencing even if Garcia did not pay any of the restitution. Based on the foregoing, the district court did not abuse its discretion because (1) the record does not clearly reflect that Attorney Weiner moved to withdraw; (2) even if he did, it was at the time of the sentencing and no conflict of interest existed; and (3) the district court sufficiently inquired into the alleged conflict. Under the factors considered in *Young*, the Court should find the district court did not abuse its discretion and affirm the judgment of conviction.

Even assuming a conflict of interest existed, Leal knowingly, intelligently, and voluntarily forever waived conflict-free representation prior to his sentencing. Nevada Rule of Professional Conduct 1.7 prohibits lawyers from engaging in dual representation if the representation involves a concurrent conflict of interest or a significant risk that the dual representation will materially limit the lawyer's ability to represent one or both clients. *Ryan v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 419, 430, 168 P.3d 703, 710 (2007). However, there is no per se rule against dual representation. *Id.* at 426, 168 P.3d at 708 (citing *Holloway*, 435 U.S. at 482-83). Even if a concurrent conflict of interest exists, a lawyer may represent a client if each affected client gives informed consent in writing. *Id.*, 168 P.3d at 710 (citing RPC 1.7(b)(4)). If the defendant knowingly, intelligently, and voluntarily waives the right to conflict-free representation, the conflict of interest is



forever waived and binding on the defendant throughout trial, on appeal, and in habeas proceedings. *Id.* at 428-29, 168 P.3d at 709-10.

In *Ryan*, a non-indigent defendant filed a writ of mandamus after the district court denied her request for substitution of counsel with an attorney whose partner was representing her codefendant. *Id.* at 422, 168 P.3d at 705. Both defendants were accused of murdering their roommate, stuffing her body in the trunk of their Jaguar, and setting the car on fire to cover up the alleged crimes. *Id.*, 168 P.3d at 705. The Nevada Supreme Court concluded that the district court must honor a criminal defendant's voluntary, knowing, and intelligent waiver of conflict-free representation so long as the conflicted representation will not interfere with the administration of justice. *Id.*, 168 P.3d at 705. The Nevada Supreme Court also concluded that for a waiver of conflict-free representation to be effective, the defendant must specifically waive the right to a mistrial as a result of her attorney's potential or actual conflict of interest depriving her of the right to effective assistance of counsel arising from the dual representation. *Id.*, 168 P.3d at 705. The Nevada Supreme Court also concluded that before engaging in dual representation, the attorney must advise the criminal defendant of her right to consult with independent counsel to review the potential conflicts of interest posed by the dual representation and if so chooses not to do so, then the defendant must expressly waive her right to do so before the defendant's waiver of conflict-free representation can be valid. *Id.*,

168 P.3d at 705. The Nevada Supreme Court granted the defendant's petition and issued a writ directing the district court to canvass both defendants to determine whether they knowingly, intelligently, and voluntarily waive their right to conflict-free representation. *Id.*, 168 P.3d at 705.

As indicated by the court in *Ryan*, Leal signed two conflict-of-interest waivers before his sentencing to show that he knowingly, intelligently, and voluntarily waived his right to conflict-free representation. AA 79-83; 100-102. In the second conflict-of-interest waiver, Leal expressly waived his right to a mistrial due to an actual or potential conflict of interest depriving him of the right to effective assistance of counsel arising from the dual representation as instructed by the court in *Ryan*. AA 100. Also, as instructed by the court in *Ryan*, the second conflict-of-interest waiver provided that Leal's attorney advised him of his right to consult with independent counsel to review the potential conflicts of interest posed by the dual representation and if he chose not to do so, then Leal expressly waived his right to do so. AA 100. Leal further acknowledged that the waiver of conflict was binding throughout trial, on appeal, and in habeas proceedings. AA 100. As the second conflict-of-interest waiver incorporated the language mandated by the Nevada Supreme Court in *Ryan*, any actual or potential conflict that arose at sentencing was forever waived beforehand. Thus, any actual or potential conflict that occurred after Leal's initial arraignment but before his sentencing had been forever waived.

Accordingly, the Court should find that the conflict-of-interest waivers establish that Leal knowingly, intelligently, and voluntarily forever waived his right to conflict-free representation and affirm the judgment of conviction.

Leal relies on *Clark v. State*, 108 Nev. 324, 831 P.2d 1374 (1992) to support his argument that the district court abused its discretion by denying Attorney Weiner's alleged motion to withdraw due to a conflict of interest. However, *Clark* is factually and legally distinguishable from the instant case. In *Clark*, the defendant filed a petition for writ of habeas corpus (post-conviction) alleging that his trial counsel deprived him of his constitutional right to the effective assistance of counsel. 108 Nev. at 325, 831 P.2d at 1375. Trial counsel agreed to represent the defendant for \$10,000.00 at his first-degree murder trial. *Id.*, 831 P.2d at 1375. The defendant and trial counsel agreed that the fee would come from the proceeds of a personal injury settlement handled by trial counsel's firm on behalf of the defendant. *Id.*, 831 P.2d at 1375. When an overlooked medical lien for \$4,785.05 resulted in the lien holder filing a complaint against the defendant and the trial counsel's firm, trial counsel filed a cross-claim against the defendant and obtained a default judgment in the amount of \$5,600.00. *Id.*, 831 P.2d at 1375. After the district court held a hearing to address trial counsel's actions and the technical conflict of interest, the district court denied relief and found no resultant prejudice to the defendant. *Id.* at 326, 831 P.2d at 1376. The Nevada Supreme Court conclusively presumed prejudice to the

defendant under the specific facts of the case, and reversed the decision of the district court and vacated the defendant's conviction. *Id.* at 327, 831 P.2d at 1377.

Unlike the actual conflict between the defendant and trial counsel in *Clark*, the alleged conflict with Leal stemmed from Attorney Weiner's representation of Leal and Garcia, between co-defendants, which makes the facts of this case more analogous to *Ryan*. Also, unlike the defendant in *Clark*, Leal signed two conflict-of-interest waivers wherein he knowingly, intelligently, and voluntarily waived his right to conflict-free representation. AA 79-83; 100-102. Further, unlike the defendant's claim of ineffective assistance of counsel in *Clark*, Leal expressly waived his right to withdraw his guilty plea due to Attorney Weiner's potential or actual conflict of interest deriving him of his right to effective assistance of counsel in the second conflict-of-interest waiver and acknowledged his understanding that the terms of the waiver would be binding throughout trial, on appeal, and in habeas proceedings. AA 100; *See also Ryan*, 123 Nev. at 710, 168 P.3d at 429 (“[T]he defendant cannot subsequently seek a mistrial arising out of the conflict that he waived and ‘cannot [subsequently] be heard to complain that the conflict he waived resulted in ineffective assistance of counsel.’”) (quoting *Gomez v. Ahitow*, 29 F.3d 1128, 1135 (7th Cir. 1994)). The record reflects that Attorney Weiner argued on behalf of Leal at his sentencing despite the alleged conflict of interest. AA 124-28,

137-39. Thus, the Court should find this case legally and factually distinguishable from *Clark* and affirm the judgment of conviction.

### **CONCLUSION**

For the foregoing reasons, Respondent respectfully requests that this Court affirm the judgment of conviction.

RESPECTFULLY SUBMITTED this 19th day of March, 2018.

ADAM PAUL LAXALT  
Attorney General

By: /s/Ashley Balducci  
Ashley Balducci (Bar No. 12687)  
Deputy Attorney General

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, 14 pt. Times New Roman type style.

I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 7,087 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: March 19, 2018.

ADAM PAUL LAXALT  
Attorney General

By: /s/ Ashley Balducci  
Ashley Balducci (Bar No. 12687)  
Deputy Attorney General

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on March 19, 2018.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

/s/ M. Landreth  
An employee of the Office of the Attorney General

**STATE 00037**



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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JACK LEAL,  
Appellant,  
vs.  
STATE OF NEVADA,  
Respondent.

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S. CT. CASE NO.: 74050  
Electronically Filed  
Apr 20 2018 11:00 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
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**STATE 00038**

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JACK LEAL, Appellant, vs. STATE OF NEVADA, Respondent.	       	S. CT. CASE NO.: 74050  <b>APPELLANT’S NRAP 26.1(a) DISCLOSURE</b>
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The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

**Attorney of record for Appellant:** Lester M. Paredes III, Esq.

**Corporation:** No publicly held company associated with this corporation.

**Law Firm(s) appearing in District Court:** Mueller Hinds & Associates, Chtd.

Dated this 19<sup>th</sup> day of April, 2018

By:

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**STATE 00039**

## CERTIFICATE OF COMPLIANCE

I hereby certify that this Appellant's Reply Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), has been prepared in a proportionately spaced typeface using Times New Roman in the font size of 14 and the body of the brief contains 1,107 words.

I further certify that I have read this Appellant's Reply Brief and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the Nevada Rules of Appellate Procedure.

Dated this 19<sup>th</sup> day of April, 2018

/s/ Lester M. Paredes III, Esq.

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Attorney for Appellant

**STATE 00040**

**CERTIFICATE OF SERVICE**

I hereby certify that service of the foregoing **APPELLANT’S REPLY BRIEF** was made this 19th of April, 2018, upon the appropriate parties hereto by electronic filing using the ECF system which will send a notice of electronic filing to the following and/or by facsimile transmission to:

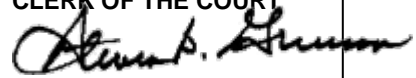
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STATE 00041



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8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 STATE OF NEVADA,  
11 Plaintiff,  
12 vs.  
13 JACK LEAL,  
14 Defendant.

Case No.: C-17-322664-2  
Dept. No.: XVII

Hearing Date: April 26, 2018  
Hearing Time: 8:30 AM

15  
16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR BAIL PENDING APPEAL**

17 ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Chief Deputy  
18 Attorney General, Michael C. Kovac, hereby submits the State's Opposition to Defendant's Motion for  
19 Bail Pending Appeal. This opposition is made and based upon the pleadings on file, the following  
20 memorandum of points and authorities, and any oral arguments the Court may allow.

21 Dated this 23<sup>rd</sup> day of April, 2018.

22 SUBMITTED BY:  
23 ADAM PAUL LAXALT  
24 Attorney General

25 By: /s/ Michael C. Kovac  
26 MICHAEL C. KOVAC (Bar No. 11177)  
27 Chief Deputy Attorney General

28 **STATE 00042**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **FACTS AND RELEVANT PROCEDURAL HISTORY**

3 On September 30, 2016, the State filed in the Eighth Judicial District Court a complaint for  
4 forfeiture against, *inter alia*, property located at 1024 Santa Helena Avenue, Henderson, NV 89002 (case  
5 number A-16-744347-C). Appellant’s Appendix (“AA”), at 2-10. The request for forfeiture was based  
6 on the fact that the home constituted the proceeds – or replacement of the proceeds – of fraudulent real  
7 estate transactions. Id.

8 On November 29, 2016, the State initiated the present, related criminal proceedings by filing a  
9 criminal complaint in the Las Vegas Township Justice Court (case number 16F19220ABC). Id., at 15-  
10 38. The complaint for forfeiture and the criminal complaint were both based on the same fraudulent real  
11 estate transactions. Id. Thus, under NRS 179.1173(2), the forfeiture proceedings were automatically  
12 stayed. On April 11, 2017, the criminal case was bound over to District Court. Id., at 14, 69-72, 79-80.

13 On April 24, 2017, Defendant JACK LEAL and his codefendant/estranged wife, JESSICA  
14 GARCIA, pled guilty to the charge of Multiple Transactions Involving Fraud or Deceit in the Course of  
15 an Enterprise or Occupation, a category B felony, in violation of NRS 205.377, a crime punishable by a  
16 term of imprisonment not to exceed 20 years. Id., at 103-12. The charges stem from LEAL and GARCIA  
17 selling various parcels of real estate to various victims on the false representation that said parcels were  
18 not subject to any security interests. Id., at 97-99. LEAL and GARCIA fleeced their victims of \$757,420.  
19 Id., at 88.

20 At that same time the plea was being entered, and while being represented by attorney Jason  
21 Weiner, LEAL and GARCIA expressly and effectively waived any potential conflict of interest Weiner  
22 may have in his representation of them both. Id., at 100-12.

23 The terms of the guilty plea agreement provided, *inter alia*, that:

24 6. Should I, JACK LEAL, pay restitution in full at or before the time I am sentenced in the  
25 present case, the State will not oppose the imposition of a term of probation not to exceed a term of five  
26 years, with a suspended 36- to-90 month term of imprisonment;

27 7. Should I, JACK LEAL, fail to pay restitution in full at or before the time I am sentenced  
28 in the present case, the State will retain the right to argue for the imposition of a term of imprisonment.

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1 Id., at 89.

2 Immediately following the entry of plea, the undersigned Deputy met with Weiner, LEAL, and  
3 GARCIA in the hallway outside of the courtroom where the plea was entered. At that time, the  
4 undersigned Deputy stressed the importance of quickly doing what needed to be done in order to get the  
5 restitution paid prior to sentencing – with special attention being paid to the sale of a home owned by  
6 LEAL and GARCIA (through a trust) that would likely satisfy the restitution requirement (the same home  
7 that is the subject of the above-mentioned forfeiture proceedings). As part of the guilty plea agreements,  
8 LEAL and GARCIA agreed to “execute and file in the Clark County Recorder’s Office a lien agreement  
9 and lien in favor of the State of Nevada, Office of the Attorney General, in the amount of \$600,314.83  
10 against the home located at 1024 Santa Helena Avenue, Henderson, Nevada 89002, assessor parcel  
11 number 179-33-710-056, legally described as MISSION HILLS EST AMD PLAT BOOK 17 PAGE 12,  
12 LOT 223 & LOT 223A, with the proceeds of the sale of said home to be applied to my restitution  
13 requirements,” in order to provide the State with assurances that any proceeds from the sale would, in  
14 fact, be applied toward the restitution obligations of LEAL and GARCIA. Id., at 89-90.

15 Nearly four months passed, and the undersigned Deputy heard nothing from LEAL, GARCIA, or  
16 Weiner until approximately one week prior to sentencing, at which point Weiner requested a continuance  
17 of the sentencing hearing so that his clients could sell the home at 1024 Santa Helena Avenue and pay  
18 restitution with the proceeds. The State rejected the request, noting that LEAL and GARCIA failed to  
19 even execute the lien required under the terms of their GPAs, let alone make any legitimate effort to sell  
20 the home.

21 Weiner made vague statements about unidentified issues holding up the sale. The undersigned  
22 Deputy informed Weiner that he was well aware of the issues his clients were having, including the  
23 following:

- 24 1. LEAL had no intention of complying with the terms of the guilty plea agreement and made no  
25 legitimate effort to do so;
- 26 2. In March of 2017, GARCIA was arrested in Florida on felony heroin and misdemeanor battery  
27 charges (In July of 2017, GARCIA entered a nolo contendere plea to the heroin charge, and the  
28 adjudication was withheld);

**STATE 00044**

1 3. In June of 2017, GARCIA entered a guilty plea for another misdemeanor battery charge in a  
2 separate Florida case; and

3 4. Soon after that, GARCIA, in yet another Florida case, was convicted on charges of battery and  
4 “contempt of court violate injunction protection domestic vio.”

5 On or about August 16, 2017 – *the day before the sentencing hearing* – Weiner informed the  
6 undersigned Deputy that LEAL had (finally) filed the lien required under the terms of the GPA. While  
7 there is no reason to doubt that Weiner sincerely believed that to be true, it was actually another of  
8 LEAL’s lies. In reality, according to a Deputy District Attorney representing the Recorder’s Office (who  
9 called the undersigned Deputy the day of, or day after, LEAL’s sentencing), the day prior to sentencing,  
10 LEAL attempted to file the lien; however, he did not have all of the necessary documentation, and an  
11 employee of the Recorder’s Office informed him that the lien filing was suspended. LEAL informed that  
12 same employee that he would not be correcting the filing because he was returning to Florida the  
13 following day.

14 On August 17, 2017, LEAL appeared for his sentencing hearing. At that hearing, LEAL proved  
15 himself to be a conman through and through. First, LEAL lied to this Court and stated that the property  
16 at 1024 Santa Helena Avenue was free of any liens (the exact type of misrepresentation that landed him  
17 in this mess in the first place). Id., at 122. Second, LEAL lied to this Court and stated that he properly  
18 filed a lien against that property and in favor of the State, as required by the terms of the plea agreement.  
19 Id. As explained above, at the time LEAL made that false statement to this Court, he was well aware that  
20 his attempted filing (which took place one day prior to sentencing) was suspended.

21 Fortunately, this Court was not the latest victim of LEAL’s lies, as LEAL was sentenced to a 72-  
22 to 180-month term of imprisonment. Id., at 138. A day after the sentencing, the Recorder’s Office  
23 accepted documentation from the undersigned Deputy and lifted the suspension on the lien required under  
24 the terms of LEAL’s GPA.<sup>1</sup>

25 ///

26  
27 <sup>1</sup> Garcia failed to appear for sentencing. The Court issued a bench warrant for her arrest. Subsequently,  
28 Garcia was apprehended in Florida and transported to Clark County, Nevada. Her sentencing is presently  
scheduled for May 8, 2018.

**STATE 00045**



1 Following his conviction, LEAL filed a frivolous appeal, arguing two issues:

2 (1) “The District Court erred by permitting the state to breach the plea agreement without holding  
3 an evidentiary hearing under *Gamble v. State*, 95 Nev. 904 (1979), etc., to determine blame  
4 for the breach.”

5 (2) “The District Court erred by denying Motion to Withdraw Counsel with an unwaivable  
6 conflict under *Clark v. State*, 108 Nev. 324 (1992).”

7 LEAL now moves for bail pending appeal. Motion.

8 ARGUMENT

9 “Bail may be allowed pending appeal or certiorari unless it appears that the appeal is frivolous or  
10 taken for delay.” NRS 178.488(1). When faced with a motion for bail pending appeal, the Court is to  
11 consider:

12 (1) “whether the appeal is frivolous or taken for delay”; and

13 (2) “whether the applicant’s release may pose a risk of flight or danger to the community.”

14 *Bergna v. State*, 120 Nev. 869, 877 (2004). The Nevada Supreme Court has explained that “[t]he nature  
15 and quality of the evidence adduced at trial and the circumstances of the offense are highly relevant  
16 considerations in evaluating these factors.” *Id.* Additionally, “evaluation of these concerns may  
17 encompass a wide range of information, including the applicant’s prior criminal record, attempted  
18 escapes from confinement, community associations, and employment status.” *Id.*

19 An applicant “who faces a substantial term of imprisonment will shoulder a heavy burden to  
20 demonstrate, not only that the appeal is not frivolous, nor taken for delay, but also that his or her release  
21 will not pose a risk of flight or danger to the community.” *Id.* Here, LEAL most certainly cannot satisfy  
22 that heavy burden.

23 *I. Factor no. 1 – whether the appeal is frivolous or taken for delay.*

24 LEAL’s appeal is clearly frivolous, as his two arguments are based on events that simply did not  
25 take place.

26 With respect to LEAL’s first issue on appeal, contrary to LEAL’s contentions otherwise, the State  
27 clearly did not breach the term of the plea agreement. Under the terms of the plea agreement, should  
28

1 LEAL fail to have restitution paid at the time of sentencing, the State would have the right to argue for  
2 imprisonment. That is exactly what happened.

3 LEAL comically argues: “To both require the sale of a property to pay restitution and at the same  
4 time require that a lien by placed on the same property is akin to requiring a defendant to appear at a  
5 sentencing hearing while blockading them in their home.” Motion at 9:11-9:14. First, the terms of the  
6 guilty plea agreement did not require the sale of the property at 1024 Santa Helena Avenue. Second,  
7 LEAL’s suggestion that the State’s lien on the property prevented its sale is utterly absurd. LEAL did not  
8 even attempt to record the lien until the day after sentencing. Moreover, as explained above, the lien  
9 filing was suspended until after LEAL’s sentencing. Further, if anyone knows how to sell an encumbered  
10 property, it is LEAL; that is exactly why he is in the mess he presently finds himself. Thus, there is clearly  
11 no merit to LEAL’s suggestion that the lien requirement made it impossible for LEAL to sell the property  
12 prior to the date of his sentencing.<sup>2</sup>

13 LEAL makes much of his supposed good faith efforts to pay restitution. Whether LEAL made  
14 any such good faith efforts is irrelevant. The terms of the guilty plea agreement require the payment of  
15 restitution, not good faith efforts to pay restitution. Through no fault of the State, LEAL failed to satisfy  
16 his restitution obligation. Thus, the State was free argue for a term of imprisonment.

17 LEAL’s second appellate argument – that the District Court erred in denying his trial court  
18 attorney’s motion to withdraw as counsel – is equally unavailing. LEAL specifically argues that an  
19 unwaivable conflict existed under NRCP 1.7(b)(3) because LEAL and GARCIA “had been required to  
20 pay restitution, but it was not paid due to [GARCIA’s] malfeasance and domestic violence restraining  
21 order against her.” Motion at 11:11-11:13. On appeal, the Nevada Supreme Court will be reviewing any  
22 such denial for an abuse of discretion. *Young v. State*, 120 Nev. 963, 968 (2004).

23 As a preliminary matter, it must be noted that LEAL’s trial attorney did not file a **written** motion  
24 to withdraw as trial counsel, as required under EDCR 7.40. Additionally, any motion made the day of  
25 sentencing would be barred under EDCR 7.40(c), which provides: “No application for withdrawal or

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26 <sup>2</sup> Even if LEAL had filed the lien in a timely manner, it certainly would have made no impact upon any  
27 sale of the property. The lien was in the amount of \$600,314.83. If the property is truly worth in excess  
28 of a million dollars as LEAL contends, there would be no reason for the lien to have any effect whatsoever  
on the buyer, as the lien would be paid off in its entirety when any such sale would be completed.

1 substitution may be granted if a delay of the trial or of the hearing of any other matter in the case would  
2 result.” Moreover, even if it is determined that trial counsel properly moved to withdraw, any such motion  
3 was properly denied on the merits.

4 The failure of LEAL and GARCIA to pay restitution did not create any conflict, let alone an  
5 unwaivable one. They were both responsible for payment of the restitution, regardless of whether they  
6 were willing and able to work together to get it paid. No amount of excuses would have relieved LEAL  
7 of that obligation. As explained above, the State did not prevent LEAL from repaying his victims. And  
8 it makes no difference whether GARCIA prevented him from doing so; even if we are to assume (for the  
9 sake of argument) that fact to be true, the terms of the guilty plea agreement do not provide LEAL with  
10 any relief on that basis.

11 LEAL’s trial attorney could have jumped up and down, yelling and screaming about how  
12 GARCIA supposedly wronged LEAL. It would have been all for naught, as any such claim affords LEAL  
13 no relief from his obligations.

14 Finally, even if a conflict existed, LEAL knowingly and effectively waived it in conformance  
15 with the requirements established in *Ryan v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123  
16 Nev. 419 (2007).<sup>3</sup> AA, at 100-02. LEAL ignores the clearly applicable opinion of *Ryan* and instead relies  
17 upon *Clark v. State*, 108 Nev. 324 (1992) – a case that has absolutely nothing to do with dual  
18

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19  
20 <sup>3</sup> In *Ryan*, the Nevada Supreme Court explained, in pertinent part:

21 [W]hen a non-indigent criminal defendant’s choice of counsel results in dual or multiple  
22 representation of clients with potentially conflicting interests, the defendant may waive  
23 the right to conflict-free counsel. An attorney or firm attempting to engage in dual or  
24 multiple representation of two or more criminal defendants must advise the defendants of  
25 their right to seek independent counsel to advise them on the potential conflict of interest.  
26 If the defendants choose not to seek the advice of independent counsel, they must  
27 expressly waive their right to do so, or their waiver of conflict-free representation will be  
28 ineffective. When a defendant knowingly, intelligently, and voluntarily waives the right  
to conflict-free representation, the district court must accept the waiver. **Once the district  
court accepts the waiver, the defendant cannot subsequently seek a mistrial arising  
out of the conflict he waived and cannot subsequently claim that the conflict he  
waived resulted in ineffective assistance of counsel.**

123 Nev., at 430-31 (emphasis added). LEAL’s waiver satisfies these requirements. AA, at 100-02.

**STATE 00048**

1 representation of codefendants – in support of his claim that this Court erred in denying his trial attorney’s  
2 supposed motion to withdraw.

3 *II. Factor no. 2 – whether the applicant’s release may pose a risk of flight or danger to the*  
4 *community.*

5 As noted above, in determining whether applicant’s release may pose a risk of flight or danger to  
6 the community, the Court may consider a number of factors, including:

- 7 (A) The circumstances of the offense;
- 8 (B) The applicant’s criminal history;
- 9 (C) The applicant’s community associations; and
- 10 (D) The applicant’s employment status.

11 Here, evaluation of these factors clearly supports the conclusion that LEAL’s release would pose a serious  
12 risk of both flight and danger to the community.

13 A. The circumstances of the offense.

14 In the present case, LEAL stole a total of \$757,420<sup>4</sup> from eleven victims. In his Motion, LEAL  
15 contends that he “essentially sold the properties as is and did not tell [the victims] that they were  
16 encumbered, as opposed to misrepresenting them as unencumbered.” Motion 4:14-4:15. That is a flat out  
17 lie. LEAL, knowing that these properties were encumbered, sold these properties while knowingly and  
18 intentionally – and in some cases personally – falsely telling the victims that these properties were free  
19 and clear of any security interests.

20 In doing so, LEAL left his victims’ finances and lives in ruins. He wrecked retirement plans. He  
21 wiped out a grandchild’s college savings. LEAL’s victims continue to suffer as a result of his greed.

22 Now, LEAL wants to reenter society and continue his life as if he did no wrong, all while his  
23 victims try to scrap their lives back together. The filing of his frivolous appeal does not undue all of the  
24 damage LEAL has caused while running his criminal enterprise.

25 ///

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27 \_\_\_\_\_  
28 <sup>4</sup> In his motion, LEAL incorrectly contends that the restitution total is \$694,420.

1           B. The applicant's criminal history.

2           LEAL is a conman. In 2008, in Berwyn, Illinois, LEAL was convicted of felony Theft by  
3 Deception. A week later, in Lyons, Illinois, LEAL again was convicted of felony Theft by Deception. He  
4 finds himself back in the criminal justice system in the present matter as a result of his fraudulent conduct.  
5 In other words, LEAL is a habitually fraudulent felon within the meaning of the term set forth in NRS  
6 207.014. LEAL has two misdemeanor convictions out of Illinois for the crime of Resist Peace Officer  
7 (2003 and 2006). Given this history, there is no reason to believe that, if released from custody, LEAL  
8 would begin to abide by the law.

9           C. The applicant's community associations.

10           In his Motion, LEAL states: "If permitted by the Court, Applicant would testify that he moved to  
11 Clark County in 2013 and has lived here since." If he so testified, he would be committing perjury.  
12 According to his PSI, LEAL's address is in Apopka, Florida. Additionally, as explained above, after  
13 LEAL was informed that he would have to return to the Clark County Recorder's Office to lift the  
14 suspension on his lien filing, LEAL stated that he was returning to Florida the following day.

15           To the extent that LEAL has resided in Nevada, his community associations can only be described  
16 as deplorable. He ran his criminal enterprise in Nevada with his coconspirator/wife, GARCIA, who has  
17 an impressive rap sheet of her own. Also associated with LEAL's criminal enterprise was Jacory  
18 Williams, an upstanding individual who (at last check) has an active warrant issued out of California for  
19 charges stemming from him pimping out his underage niece. Williams was also previously convicted for  
20 making/passing a false check.

21           Aside from directing his criminal enterprise here in Nevada, LEAL's connections to Nevada  
22 appear to be tenuous, at best. In a phone call made from CCDC after LEAL was sentenced, LEAL directed  
23 an associate to retrieve a vehicle LEAL parked near the courthouse – along with \$25,000 cash LEAL left  
24 in the car. Combining that fact with the fact that LEAL had already expressed that he would be returning  
25 to Florida after his sentencing, it is clear that there is a high risk LEAL would flee Nevada if given the  
26 opportunity.

27           D. The applicant's employment status.

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**STATE 00050**

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Aside from running a criminal enterprise, it appears that LEAL has no ability and/or willingness to maintain gainful employment.

**CONCLUSION**

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion for Bail Pending Appeal.

Dated this 23<sup>rd</sup> day of April, 2018.

SUBMITTED BY:  
ADAM PAUL LAXALT  
Attorney General

By: /s/ Michael C. Kovac  
MICHAEL C. KOVAC (Bar No. 11177)  
Chief Deputy Attorney General

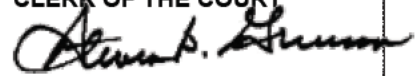
1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that  
3 on April 23, 2018, I filed the foregoing document via this Court’s electronic filing system. Parties that  
4 are registered with this Court’s EFS will be served electronically. The following parties are not registered  
5 and therefore, a prepaid postage copy of this document has been placed in the U.S. mail.

6 Craig Muller, Esq.  
7 600 South Eighth Street  
8 Las Vegas, NV 89101  
9 *Attorney for Jack Leal*

10 /s/ A. Reber  
11 A. Reber, an employee of  
12 the office of the Nevada Attorney General  
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**STATE 00052**



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8 DISTRICT COURT  
9 CLARK COUNTY NEVADA

10 JACK LEAL, ) Case No.: C-17-322664-2  
11 ) Petitioner, ) Department 17  
12 vs. )  
13 JERRY HOWELL, WARDEN, SOUTHERN )  
DESERT CORRECTIONAL CENTER, )  
14 Respondents. )

15  
16 ANSWER TO POST-CONVICTION PETITION FOR WRIT OF  
17 HABEAS CORPUS

18 Respondents, by and through counsel, Aaron D. Ford, Attorney General of The State of Nevada,  
19 and Michael J. Bongard, Senior Deputy Attorney General, hereby submit their answer to Petitioner Jack  
20 Leal's (Leal) Petition for Writ of Habeas Corpus (Post-conviction).

21 Respondents base this answer upon the pleadings, the legal authorities, and the pleadings on file  
22 in this case.

23 PROCEDURAL HISTORY

24 **I. Justice Court Proceedings, Las Vegas Township Justice Court<sup>1</sup>**

25 On November 29, 2016, the State filed a criminal complaint charging Leal with one count of  
26 Racketeering, 12 counts of Theft in the Amount of \$3500 or More, Fraud or Deceit in the Course of

27 <sup>1</sup> Respondents believe that all documents with the exception of the appellate briefing, are in the  
28 district court record. Respondents attach as exhibits the appellate briefing and the documents central to  
resolution of the claim in the petition.

STATE 00053



1 Enterprise or Occupation, and one count of Multiple Transactions Involving Fraud or Deceit in the  
2 Course of an Enterprise and Occupation. The State filed an amended complaint on December 27, 2016,  
3 containing the same charges.

4 On April 11, 2017, Leal unconditionally waived his preliminary hearing, which included a  
5 conflict of interest waiver.

6 **II. District Court Proceedings, Eighth Judicial District Court**

7 On April 18, 2017, the State filed a criminal information charging Leal with one count of  
8 Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise and Occupation. On  
9 April 20, 2017, the parties continued the matter until April 24, 2017.

10 On April 24, 2017, the parties filed a guilty plea agreement in open court and appeared for entry  
11 of plea. Leal executed a second conflict of interest waiver. Leal pled guilty to the charge in the  
12 information and agreed to jointly and severally pay restitution in the amount of \$757,420.

13 The parties appeared for sentencing on August 17, 2017. The Court sentenced Leal to a  
14 maximum term of one hundred eighty (180) months in the Nevada Department of Corrections, with a  
15 minimum term of seventy-two (72) months. The clerk filed the judgment of conviction on August 23,  
16 2017.

17 Leal filed a notice of appeal on September 14, 2017.

18 **III. Direct Appeal Proceedings, Nevada Court of Appeals**

19 Leal filed his opening brief on February 1, 2018. (Exhibit 1). On appeal, Leal raised the  
20 following claims:

- 21 A. Did the District Court err by failing to hold an evidentiary hearing  
22 or inquire into the nature and materiality of the alleged breach of  
23 the guilty plea agreement?  
24 B. Did the District Court err by denying Appellant's motion to  
25 withdraw counsel due to an unwaiveable concurrent conflict of  
26 interest?

26 *Id.* at 1.

27 The State filed the answer brief on March 20, 2018. (Exhibit 2). Leal filed the reply brief on  
28 April 20, 2018. (Exhibit 3).

**STATE 00054**

1 On September 11, 2018, the Nevada Court of Appeals Affirmed Leal’s conviction.

2 Leal filed a petition for review by the Nevada Supreme Court on October 2, 2018. (Exhibit 4).

3 The Nevada Supreme Court denied rehearing on November 28, 2018. (Exhibit 5).

4 Remittitur issued December 24, 2018.

5 **IV. State Habeas Corpus Proceedings, Eighth Judicial District Court**

6 On March 21, 2019, Leal filed his post-conviction state habeas corpus petition. In his petition,  
7 Leal raises the following claims:

8 A. Mr. Leal’s conviction and sentence are invalid under the 6<sup>th</sup> and  
9 14<sup>th</sup> Federal Constitutional Amendment guarantees of Due  
10 Process and Equal Protection, and under the law of Article 1 of  
11 the Nevada Constitution because the original information failed to  
12 put the petitioner on notice of the charges;

11 B. Mr. Leal’s conviction and sentence are invalid under the 6<sup>th</sup> and  
12 14<sup>th</sup> Federal Constitutional Amendment guarantees of Due  
13 Process and Equal Protection, and under the law of Article 1 of  
14 the Nevada Constitution because prior counsel’s performance fell  
15 below an objective standard of reasonableness as is mandated by  
16 *Strickland [v. Washington]*, 466 U.S. 668 (1984).

15 1.) Petitioner’s criminal counsel’s assistance was ineffective,  
16 because prior counsel’s performance fell below an  
17 objective standard of reasonableness as is mandated by  
18 *Strickland*, by failing to obtain a conflict waiver;

17 2.) Petitioner’s criminal counsel’s assistance was ineffective,  
18 because prior counsel’s performance fell below an  
19 objective standard of reasonableness as is mandated by  
20 *Strickland*, by coercing petitioner into entering a plea.

20 PWHC.

21 The matter is currently set for a hearing before the Court on May 7, 2019. Respondents submit  
22 their reply to the petition.

23 **ARGUMENT AND LAW**

24 **I. Applicable Law**

25 Nevada law governs state habeas corpus proceedings. *McConnell v. State*, 212 P.3d 307, 309  
26 (Nev. 2009).

27 By statute, habeas corpus proceedings permit a person to challenge that his conviction or  
28 sentence violate the Constitution of the United States or the Constitution of the State of Nevada. NRS

STATE 00055

1 34.724(1). To the extent they do not conflict with habeas corpus statutes, the Nevada Rules of Civil  
2 Procedure apply to habeas corpus proceedings. NRS 34.780. Appointment of counsel in habeas corpus  
3 proceedings lies with the discretion of the court. NRS 34.750. A court determines the propriety and  
4 necessity of discovery or an evidentiary hearing. NRS 34.770.

5 A court may dismiss a petition if the petition is untimely, contains claims that could have been  
6 litigated in previous proceedings, or if the petitioner unduly delays in filing a petition. NRS 34.800,  
7 NRS 34.810, NRS 34.726

8 **II. Leal's First Claim is Subject to Dismissal Pursuant to NRS 34.810**

9 **A. Leal's First Claim**

10 In his first claim, Leal alleges "the original indictment failed to put the petitioner on notice of  
11 the charges." PWHC at 6.

12 Pursuant to NRS 34.810(1)(a), the claim is not properly before the Court.

13 **B. NRS 34.810**

14 Leal's substantive claim is not properly before the Court. The relevant statute reads:

15 1. The court shall dismiss a petition if the court determines that:

16 (a) The petitioner's conviction was upon a plea of guilty or guilty but  
17 mentally ill and the petition is not based upon an allegation that the plea  
18 was involuntarily or unknowingly entered or that the plea was entered  
19 without effective assistance of counsel.

20 ...

21 → unless the court finds both cause for the failure to present the grounds  
22 and actual prejudice to the petitioner.

23 NRS 34.810(1)(a) and (b).

24 **C. Leal's Claim(A) is Subject to Dismissal**

25 Leal's first claim challenging the indictment addresses a count (racketeering) to which Leal  
26 never pled. The amended petition failed to address how the language in the racketeering count affects  
27 his conviction and sentence. Additionally, Leal's first claim fails to allege he entered an unknowing or  
28 involuntary plea, or that Leal entered his plea without the effective assistance of counsel.

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1 This Court must apply NRS 34.810(1) to Leal's first claim. The Nevada Supreme Court  
2 previously held, "Application of the statutory procedural default rules to post-conviction habeas  
3 petitions is mandatory." *State v. Eighth Judicial Dist. Court ex rel. County of Clark (Riker)*, 121 Nev.  
4 225, 231, 112 P.3d 1070, 1074 (2005), citing *State v. Haberstroh*, 119 Nev. 173, 180, 69 P.3d 676, 681  
5 (2003).

6 Respondents request the Court find Leal's first claim procedurally defaulted and dismiss the  
7 claim.

### 8 **III. Leal's *Strickland* Claims are Meritless**

#### 9 **A. *Strickland v. Washington***

10 When reviewing a claim of ineffective assistance of counsel, the Nevada Supreme Court has  
11 held:

12 A claim that counsel provided constitutionally inadequate representation  
13 is subject to the two-part test established by the Supreme Court in  
14 *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674  
15 (1984). To prevail on a claim of ineffective assistance of trial or appellate  
16 counsel, a defendant must demonstrate (1) that counsel's performance  
17 was deficient and (2) that counsel's deficient performance prejudiced the  
18 defense. *Id.* at 687. A court need not consider both prongs of the  
19 *Strickland* test if a defendant makes an insufficient showing on either  
20 prong. *Id.* at 697. "A claim of ineffective assistance of counsel presents a  
21 mixed question of law and fact, subject to independent review." *Evans v.*  
22 *State*, 117 Nev. 609, 622, 28 P.3d 498, 508 (2001).

19 *McConnell v. State*, 212 P.3d 307, 313 (Nev. 2009).

20 In *Strickland*, the Court wrote, "The benchmark for judging any claim of ineffectiveness must  
21 be whether counsel's conduct so undermined the proper functioning of the adversarial process that the  
22 trial cannot be relied on as having produced a just result." 466 U.S. at 686.

23 Discussing the deficient conduct prong of *Strickland*, the Court stated, "This requires showing  
24 that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the  
25 defendant by the Sixth Amendment." *Id.* at 687. Prejudice is demonstrating that the results of the  
26 proceedings are not reliable. *Id.* "[D]efects in assistance that have no probable effect upon the trial's  
27 outcome do not establish a constitutional violation." *Mickens v. Taylor*, 535 U.S. 162, 166 (2002).

28 The defendant bears the burden of demonstrating both deficient conduct and prejudice. *Id.*

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1           **B.     Leal’s First *Strickland* Claim is Meritless**

2                   **1.)     The first claim**

3           Leal’s first *Strickland* claim B(1) alleges, “Petitioner’s Criminal Counsel’s assistance was  
4 ineffective, because prior counsel’s performance fell below an objective standard or reasonableness as  
5 is mandated by *Strickland*, by failing to obtain a conflict waiver.” PWHC at 9.

6                   **2.)     The record**

7           The record at the change of plea hearing reflects that Leal executed a waiver of conflict in the  
8 district court, which included the acknowledgment of the “right to consult with independent counsel  
9 review the potential conflict of interest posed by dual representation and the consequences of waiving  
10 the right to conflict free representation.” (Exhibit 6). The waiver reflects that Leal executed the waiver  
11 on April 20, 2017, prior to the entry of plea. *Id.* Leal previously executed a waiver of conflict in the  
12 justice court. (Exhibit 7).

13                   **3.)     The relevant law**

14           A defendant possesses a right to representation that is free from conflicts of interest. *Wood v.*  
15 *Georgia*, 450 U.S. 261, 271 (1981). There is an automatic reversal “only where defense counsel is  
16 forced to represent [a] codefendant over his timely objection, unless the trial court has determined that  
17 there is no conflict.” *Mickens v. Taylor*, 535 U.S. at 168, *citing Holloway v. Arkansas*, 435 U.S. 475,  
18 488 (1978).

19           Where no party objects to the multiple representation, and where the interests of the defendants  
20 appear aligned, a defendant must demonstrate “a conflict of interest actually affected the adequacy of  
21 his representation.” *Mickens*, at 168, *citing Cuyler v. Sullivan*, 446 U.S. 335, 348-49 (1980).

22           The Nevada Supreme Court notes, “[T]he right to retain one’s own counsel may clash with the  
23 right to conflict-free representation, and the presumption in favor of the right to retain the counsel of  
24 one’s choice.” *Ryan v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 419, 426, 168 P.3d  
25 703, 708 (2007). Noting the fact defendants can waive conflicts, the Nevada Supreme Court discussed  
26 the requirements of a knowing waiver. The Court stated, “If the attorney fails to advise criminal  
27 defendants of their right to see the advice of independent counsel, the clients’ waivers of conflict free  
28 representation are ineffective unless and until the attorney advises the clients to seek the advice of

STATE 00058

1 independent counsel and the clients do so or expressly waive the right to do so.” *Id.* at 430, 168 P.3d at  
2 711.

3 **4.) Leal failed to establish a *Strickland* violation**

4 The record in this case reflects that Leal executed a waiver of conflict that included advice to  
5 review the potential conflict with independent counsel. (Exhibit 6). Leal executed this waiver prior to  
6 the entry of his plea. *Id.* The waiver of conflict included waiver of the right to withdraw his guilty plea  
7 as a result of potential or actual conflict of interest. *Id.* The waiver also included an acknowledgment of  
8 the risks, including “the possibility of inconsistent pleas.” *Id.*

9 Based upon the record in this case, Leal executed a waiver in justice court. In district court, Leal  
10 executed a second waiver of conflict before the entry of his plea. The district court waiver included a  
11 recognition that inconsistent pleas may result, and that inconsistent pleas are not a valid basis for  
12 withdrawal of his plea. Leal’s waiver also reflected an acknowledgment of the right to review the  
13 waiver with independent counsel. Finally, Leal’s petition fails to allege facts supporting a claim that an  
14 actual conflict of interest existed at the time of plea or at sentencing.

15 If Leal’s waiver of justice court was deficient, the district court waiver cured any defect under  
16 *Ryan*.

17 Respondents request the Court find that Leal’s claim B(1) failed to demonstrate a *Strickland*  
18 violation based upon an actual conflict of interest, or that counsel was deficient for failing to obtain a  
19 conflict waiver. Finally, Leal failed to demonstrate prejudice under *Strickland* by demonstrating that the  
20 outcome of the proceedings would have changed had trial counsel handled the conflict differently, or if  
21 Leal retained separate counsel.

22 **C. Leal’s Second *Strickland* Claim is Meritless**

23 In his second *Strickland* claim, B(2), Leal alleges that trial counsel coerced him into pleading  
24 guilty. PWHC at 11. In support of the claim, Leal alleges:

25 It was well known throughout this case, that the co-defendant, who was  
26 represented by the same attorney that represented Petitioner, without a  
27 viable conflict waiver in-place, visited domestic violence upon the  
28 Petitioner. Thus, we have a situation where counsel knows his client is  
literally beating his other client, and yet continues to represent both. All  
the while without any type of waiver. Clearly, clearly this is in violation  
of *Strickland*. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052

STATE 00059

(1984). Petitioner was coerced by his own attorney into accepting a faulty plea agreement.

PWHC at 11.

Leal's second claim fails to evidence a *Strickland* violation that his attorney coerced him into pleading guilty. Leal's petition presents no facts that trial counsel knew of the alleged domestic violence. Leal's petition presents no evidence that his counsel knew that Leal's partner inflicted domestic violence upon Leal in order to force Leal to plead guilty. There is no evidence the cause of the domestic violence was to force Leal to enter a plea. Finally, there is no evidence that Leal's counsel either directed or condoned the domestic violence at issue. Claims unsupported by facts or the record do not warrant relief or an evidentiary hearing. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Conversely, the plea agreement in this case reflected Leal received no promises of a particular plea. Leal also acknowledged that the plea was in his best interest, and that he voluntarily signed the agreement, that he was not under duress or coercion, or promised anything not in the agreement. (Exhibit 8). Leal also stated during the plea canvass that he pled guilty of his own free will and no one forced him to plead guilty. (Exhibit 9 at 5). Finally, Leal acknowledged that he read and understood the plea agreement, that counsel was present to answer any questions, and that he was satisfied with the services of his attorney. *Id.* at 6.

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**CONCLUSION**

The relevant Nevada authority compels dismissal of Claim A of Leal’s state habeas corpus petition. The record in this case fails to support a *Strickland* violation based upon Claim B(1) or Claim B(2). Respondents request the Court deny Leal’s state habeas petition.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of April, 2019.

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**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that this pleading filed in the Eighth Judicial District Court does not contain the social security number of any person.

DATED: April 23, 2019.

AARON D. FORD  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on April 23, 2019, I filed the foregoing document via this Court’s electronic filing system. Parties that are registered with this Court’s EFS will be served electronically.

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/s/ D. Simon  
D. Simon, an Employee of  
the office of the Nevada Attorney General

# EXHIBIT 1

# EXHIBIT 1

## APPELLANT'S OPENING BRIEF

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK LEAL,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

S. CT. CASE NO.: 74050  
DIST. CT. CASE NO.: C332664  
Electronically Filed  
Feb 01 2018 10:09 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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IN THE SUPREME COURT OF THE STATE OF NEVADA

---

JACK LEAL,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

---

S. CT. CASE NO.:74050

DIST. CT. CASE NO.: C322664

**NRAP 26.1(a) DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

**Attorney of record for Appellant:** Lester M. Paredes III, Esq.

**Corporation:** No publicly held company associated with this corporation

///

**Law Firm(s) appearing in District Court:** Mueller Hinds & Associates, Chtd.

Dated this 1st day of February, 2018,

By:

/s/ Lester M. Paredes III, Esq.

Lester M. Paredes III, Esq.

Nevada Bar Number 11236

Attorney for Appellant

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this Appellant's Fast Track Statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), has been prepared in a proportionately spaced typeface using Times New Roman in font size 14, and the body of the brief contains 4,162 words.

I further certify that I have read this Appellant's Opening Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the Nevada Rules of Appellate Procedure. Dated this 1st day of February, 2018.

By:

/s/ Lester M. Paredes III, Esq. \_\_\_\_\_

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Attorney for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that service of the foregoing **APPELLANT'S OPENING BRIEF** was made this 1st of February, 2018, upon the appropriate parties hereto by electronic filing using the ECF system which will send a notice of electronic filing to the following and/or by facsimile transmission to:

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## I. JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear this case pursuant to NRAP 4(b) and NRS 177.015(3).

## II. ROUTING STATEMENT

This appeal is presumptively retained by the Supreme Court under NRAP 17(a)(13) as it involves questions of first impression involving the United States Constitution or Nevada Constitutions due to the unique nature of the facts in this case, i.e.:

- the State signed a Guilty Plea Agreement, hereinafter “GPA,” with Appellant and then acted either negligently or in bad faith to prevent Appellant from performing that agreement;
- the district court did not allow Appellant to show a valid reason for nonperformance of the GPA;
- the district court failed to conduct any inquiry or investigation into the conflict of interest between Appellant and his attorney, letting a conflicted attorney represent Appellant through the sentencing hearing, rather than appointing independent counsel.

Furthermore, under NRAP 17(a)(14), this case raises matters of public importance in that the manner in which the State impedes the performance of a

criminal defendant under a GPA to the detriment of victims and their restitution. Thus, this case is raising “as a principle issue a question of statewide public importance...” and provides the Supreme Court with jurisdiction.

Given NRAP 17, jurisdiction over this case should be retained by the Nevada Supreme Court.

### III. STATEMENT OF THE ISSUES

A. DID THE DISTRICT COURT ERR BY FAILING TO HOLD AN EVIDENTIARY HEARING OR INQUIRE INTO THE NATURE AND MATERIALITY OF THE ALLEGED BREACH OF THE GUILTY PLEA AGREEMENT?

B. DID THE DISTRICT COURT ERR BY DENYING APPELLANT’S MOTION TO WITHDRAW COUNSEL DUE TO AN UNWAIVEABLE CONCURRENT CONFLICT OF INTEREST?

#### IV. STATEMENT OF THE CASE

Appellant made the mistake of buying encumbered properties and selling them as-is to prospective buyers, *caveat emptor*. (See Appellant's Appendix, hereinafter "AA," at 122.) For that, Appellant was facing over a dozen criminal charges and accepted a plea to one of them and agreed to pay everything back. (Compare AA at 15-38 (Criminal Complaint), with AA at 97-99 (Information).)

After Appellant entered the GPA, the question of whether Appellant would receive probation depended on the payment of restitution to the accusers, unconflicted counsel, and a sober or dispassionate evaluation of the law and facts by the judge. However, Appellant was prevented from paying restitution by the State, had counsel with an unwaivable conflict of interest, and a judge that did not apply the proper law to this case.

Appellant was making good faith efforts to pay the restitution, but due to factors outside of his control, i.e., the actions of his codefendant, and factors within the control of the State, their placing a lien on the real property and failing to serve the civil complaint on Appellant such that he could stipulate to the taking of

the property by the State, Appellant was prevented from paying the restitution. Therefore, Appellant did not breach the GPA and the State should not have had the right to argue.

Although Appellant is entitled to unconflicted counsel and cannot waive this type of conflict, i.e., the clients are pointing the finger at the other for the failure to pay the restitution, the court permitted counsel to continue representing both based on a mistake of law. Appellant's counsel raised this issue before the court, but the court relied on the fact that they pay the restitution jointly and severally as a resolution of the conflict, without taking into account that Appellant needed a lawyer that could fully probe and offer the nature of the cofedendant's to the court for its consideration, i.e., why the codefendant was ordered to have no contact with Appellant and how that affected their ability to sell the property, etc. The court should have stayed the proceedings and at least evaluated the nature of the conflict and its impact on a full-throated defense of Appellant.

The key to Appellant getting a fair hearing commensurate with his actual culpability depended on his ability to pay restitution, neutralizing the testimony of the victims that could have been made whole. The court should have stayed the proceedings to allow Appellant to finish selling the property, making the victims whole and allowing Appellant a good faith chance at staying out of prison. However, Appellant was denied a fair sentencing hearing under the Due Process

Clause of the Fifth and Fourteenth Amendments to the United States Constitution before a neutral magistrate where the judge became angry, the State to breach the terms of the GPA, and Appellant complied in good faith with the terms of the GPA..

Appellant seeks to have a new sentencing hearing before a different judge in which he is permitted to continue to make good faith efforts, with the help of the State, to sell the property and distribute the funds to the victims.

## V. FACTS AND PROCEDURAL HISTORY

Appellant made a huge mistake and took responsibility for selling the properties, but added that he “didn’t explain it correctly, I guess, what we were selling. We did transfer title to them. We did sell them the properties. It wasn’t as if we just took their money and ran and –.” (AA at 122.) Appellant essentially sold the properties as is and did not tell them that they were encumbered, as opposed to misrepresenting them as unencumbered. (See id.)

### A. Civil Complaint for Forfeiture, A-16-744347-C

This case started in September, 2016, with a District Court Civil Complaint for Forfeiture of money and property, AA at 1-10, and Notice of Lis Pendens. (AA at 11-12.) The action was *in rem* and the State did not make Appellant a party to the lawsuit. (See AA at 2, 3.) The State acknowledged that Appellant,



along with Jessica Garcia, 1024 Santa Helena Trust and/or Parcelnomics, LLC, may have an ownership interest in the contested property. (Id. at 3.) According to the Civil Complaint, a search warrant had issued on Sep. 2, 2016 authorizing the seizure of \$6,616.04 from an account ending in 5085, and \$150,489.13 from an account ending in 9635. (Id. at 3.) The State failed to serve the Civil Complaint on Appellant or any interested party. (See id. at 142 (Order for Dismissal, A-16-744347-C) (Sep. 7, 2017). The State moved the court, ex parte, to reopen the case and that was granted. (See id. at 145-148 (Ex Parte Motion and Order Reopening Case and Staying Proceedings).)

## **B. Criminal Complaint, Indictment and Guilty Plea Agreement**

The first Criminal Complaint was filed Sep. 30, 2016, AA 15-38, alleging fourteen counts of criminal conduct ranging from theft to racketeering, and 14 counts of criminal forfeiture. (AA at 15-38.) Appellant waived his right to a preliminary hearing on April 11, 2017, AA at 79-83, an Information was filed on April 18, 2017, charging one count of Multiple Transactions Involving Fraud or Deceit in Course of Enterprise or Occupation, NRS 205.377, AA at 97-99 and filed a GPA on April 24, 2017. (AA at 88-102.)

The GPA set forth eleven victims that were owed restitution totaling \$694,420, excluding anything already recovered which would be forfeited to the State. (AA at 88-89.) Appellant was required to pay restitution in full prior to sentencing, jointly and severally with codefendant Jessica Garcia. (AA at 89.) The State would not oppose probation and a suspended sentence of 36 to 90 months in prison if the restitution was paid, but would regain the right to argue if not. (AA at 89.) The \$157,105.17 the State seized was to be applied to the restitution balance. (AA at 89.) Appellant also agreed to execute and file a lien in favor of the State of Nevada, Office of the Attorney General in the amount of \$600,314.83 against the home located at 1024 Santa Helena Ave., Henderson, NV 89002, with the proceeds of the sale to be applied against the restitution requirements. (AA at 89-90.)

The GPA Appellant signed waived the right to appeal except based on “reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.” (AA at 92.) Attached to the GPA was a Conflict-of-Interest Waiver, signed by Appellant and his attorney and a copy of “Rule 1.7. Conflict of Interest: Current Clients.” (AA 100-102.)

## C. Sentencing Hearing

At the first setting for the sentencing hearing on August 17, 2017 the State argued to the court for a sentence of imprisonment of 60 to 180 months in prison. (AA at 120.) The State never explained to the court that the right to argue was predicated on the failure of Appellant to pay restitution. (Id.) The facts according to the State was that Appellant and his codefendant bought encumbered properties and then fraudulently sold them to the victims by misrepresenting them as unencumbered. (AA at 120.) The State also argued that Appellant had done nothing until a week before sentencing and that the property is valued at \$580,000 but on the market for 1.2 million dollars. (See AA at 120-121.)

### a. Conflict of Interest

At the beginning of the sentencing hearing, Mr. Weiner, then-attorney for Appellant and his codefendant Jessica Garcia, raised a conflict of interest issue at a bench conference and on the record:

The – well, as an initial matter, Your Honor, just to address what we discussed at the bench, the ongoing conflict waivers – the dispute between [the codefendants] began after the change of plea but before sentencing. If you want to put on the record, I contacted the bar ethics hotline. They recommended that I withdraw based on what’s going on here. I did. I will make that motion. I do undersand that the Court’s

going to insist that we go forward today and that's certainly the Court's right to do but –

The Court: Well, is the conflict the fact that your client thought that Ms. Garcia was going to pay this off? Is that the conflict?

Mr. Wiener: Well, no, it wasn't that they were paying it off. They were supposed to be working together. Then they had a no contact order so they couldn't. So they're now basically pointing at each other saying this is – she's saying this is his fault, he's saying that's her fault. That's an antagonistic defense. I mean I should not be –

The Court: Well, it's – that related – it's not a defense to the case –

Mr. Weiner: Well—

The Court: - because if it says why –

Mr. Weiner: - in terms of sentencing.

The Court: -- restitution wasn't paid and this is joint and several which means if one –

Mr. Weiner: Correct.

The Court: doesn't pay the other owes the full amount. ...

(AA at 124-1125.)

### **b. Appellant's Good Faith Efforts to Pay Restitution**

With respect to Appellant's good faith efforts to pay restitution, there was no dispute that Appellant had recorded a lien in the State's favor for over \$600,000. (AA at 121.) Appellant had relied on his codefendant to work on selling the property at first, but had since intervened, the home was valued by the assessor at over one-million dollars. (*Id.*) Further, codefendant Jessica Garcia was subject to a domestic violence no contact order with respect to Appellant and that was the cause for the delay. (AA at 121-122, 124.) Appellant had even presented the State with a

letter from the real estate agent showing that the property had been actively marketed. (AA at 126.)

### c. Victim Impact Statements and Court's Reaction

The victim impact statements were powerful and moving given the absence of the restitution. For example, Irene Segura testified that the money taken was for her orphaned grandson's college fund. (AA at 128.) Ms. Segura explained to the court that twelve years ago she gave a victim impact statement at the sentencing of the murderers of her son and the father of her grandson. (AA at 128.) The money was saved for her grandson's college fund because she "scrimped and saved and cut back on every possible expense" she could think of including dining out, vacations and getting a new car. (AA at 129.)

It is apparent from the transcript that the Court became angry with Appellant. The court informed a representative from the Department of Parole and Probation, "P &P," that the program they use to make recommendation was "broken," that Appellant had time to sell the house but they "stabbed [the victims] in the back and I'm not standing for it." (AA at 137-138.) The court then pronounced the sentence against codefendant Garcia for whom he issued a no bail bench warrant for failing to appear, "if she's here within a week she may get the similar sentence. If

she's out and about and trying to avoid prosecution that's going to tell me she's not taking this serious and I'm going to max her out. I'm not mad --

Mr. Weiner: Understood, Your honor.

The Court: -- at you, Counsel. You did your job. You got 11 felonies down to 1 so I mean you should be commended because you did a good job for them but these people need to pay the price.

(AA at 138-139.)

The Court entered a Judgment of Conviction, AA at 140-141, sentencing Appellant to 72-180 months in prison with zero days credit for time served. (AA at 141.) This appeal follows.

## VI. SUMMARY OF THE ARGUMENT

A. The District Court Erred by Permitting the State to Breach the Plea Agreement without Holding an Evidentiary Hearing under *Gamble v. State*, 95 Nev. 904 (1979), etc., to Determine Blame for the Breach

B. The District Court Erred by Denying Motion to Withdraw Counsel with an Unwaivable Conflict under *Clark v. State*, 108 Nev. 324 (1992)

## VII. ARGUMENT

### A. The District Court Erred by Permitting the State to Breach the Plea Agreement without Holding an Evidentiary Hearing under *Gamble v. State*, 95 Nev. 904 (1979), etc., to Determine Blame for the Breach

The State and Appellant entered into an agreement which contained the following clauses:

6. Should I, Jack Leal, pay restitution in full at or before the time I am sentenced in the present case, the State will not oppose the imposition of a term or probation not to exceed a term of five years, with a suspended 36-to-90 month term of imprisonment;

7. Should I, Jack Leal, fail to pay restitution in full at or before the time I am sentenced in the present case, the State will retain the right to argue for the imposition of imprisonment.

(AA at 89:18-22.) At the first sentencing hearing, the State argued for imprisonment, falsely accusing Appellant of doing nothing to pay the restitution when in fact Appellant had been trying to sell a piece of property that the State had already tied up the property in civil litigation. See supra.

This Court held in Gamble v. State, 95 Nev. 905 (1979) and Villalpando v. State, 107 Nev. 465 (1991), held that an evidentiary hearing is required where the State alleges a defendant breached the agreement unless the defendant is “obviously to blame” for the breach of the agreement. See Sparks v. State, 121 Nev. 107, 111

(2005) (citations omitted). “When the State enters into a plea agreement, it is held to the most meticulous standards of both promise and performance with respect to both the terms and the spirit of the plea bargain.” See Sparks v. State, 121 Nev. 107, 110 (2005) (citations omitted).

In Sparks, the defendant entered into a guilty plea agreement that gave the State the full right to argue if he either committed a new criminal offense or failed to appear at his sentencing hearing. Id. The defendant in Sparks did not offer a reason for the apparent breach of the agreement, instead argued that the clause was unenforceable; the Supreme Court of Nevada disagreed and affirmed the judgment of conviction.

Here and unlike in Sparks, Appellant made good faith efforts to pay the restitution before the imposition of sentence, gave reasons why the sale of the property had not been completed to that end and rebutted the State’s claim that Appellant was not asking a good faith asking price for the home valued at seven figures. (See, generally, AA at 118-139.) Appellant complied with all the terms as best as he could and was hindered by his co-defendant and the actions of the State, i.e., requiring the placement of the lien on the property and the initiation of the lawsuit. (Id.)

The State’s actions in this case are particularly troubling. To both require the sale of a property to pay restitution and at the same time require that a lien be placed



on the same property is akin to requiring a defendant to appear at a sentencing hearing while blockading them in their home.

The case should be remanded for an evidentiary hearing to determine whether Appellant is to blame for the failure to pay the restitution and whether that constitutes a material breach. The State could have given Appellant more time, removed the lien or offered to allow Appellant to transfer title under the civil case that the State had started and noticed a lis pendens. Instead, the State misrepresented to the court the reasons for failing to pay the restitution and insisted on imposing a prison sentence. (Compare AA at 121 (“And the house is on the market. It’s valued about [sic] \$580,000. That’s what the last recorder entry notes and they have it on the market for 1.2 million dollars. Now they dropped it to one million dollars. There’s no real effort to make restitution in this case.”), and AA at 122 (“Defense counsel sent me the title assessment just yesterday and it shows a bunch of liens on this property.”), with AA at 125 (“We have a print out from the Clark County Assessor’s website for the 2017-2018 year that values the property at \$1,032,044.00), and AA at 122 (“There’s two Republic garbage -- Republic Waste [indiscernable] for \$256.00 each. I have a copy of it right here from Fidelity Title.”) The lower court, perhaps blinded by its anger, (see AA at 139 “I’m not mad --... at you Counsel. You did your job. ... These people need to pay the price.”), did not meticulously hold the State to

its end of the bargain and require them to make a showing that Appellant's good faith efforts were insufficient under the letter or spirit of the guilty plea agreement.

**B. The District Court Erred by Denying Motion to Withdraw Counsel with an Unwaivable Conflict under Clark v. State, 108 Nev. 324 (1992)**

Counsel for Appellant moved the court to withdraw based on a conflict of interest at the sentencing hearing. (AA at 124.) At the time, counsel for Appellant was also counsel for his codefendant. (*Id.*) Given that Appellant and his codefendant were accused as coconspirators in a fraudulent scheme, it is not apparent how such a conflict could have been waived in the first place, much less at sentencing after Appellant's codefendant failed to cooperate to pay the restitution and had a been involved in a domestic violence incident with Appellant.

Nevada Rules of Professional Conduct, Rule 1.7, provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client;  
or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

- (3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) Each affected client gives informed consent, confirmed in writing.

NRPC 1.7 (2006).

Here, under NRPC 1.7(a), the conflict of interest clearly existed prior to and through sentencing. The concurrent conflict of interest existed from the inception of the case because there was a “significant risk the representation” of Appellant would be materially limited by the lawyer’s responsibilities to Appellant’s codefendant, i.e., Appellant and Appellant’s codefendant could at trial point the finger at the other as to who misrepresented unencumbered status of the properties that were sold.

Whether the waiver was proper prior to sentencing turns on the actual defenses of the parties, but by the time Appellant was sentenced, the conflict had ripened into an unwaivable conflict under NRPC 1.7(b)(3). At sentencing, Appellant and his codefendant had been required to pay restitution, but it was not paid due to Appellant’s codefendant’s malfeasance and domestic violence restraining order against her. In order to explain why he could not pay restitution, Appellant needed zealous counsel to point out that the failure was due to circumstances outside of his control including the actions of his codefendant. However, he did not have unconflicted counsel and zealous representation.

At sentencing, counsel for Appellant and his codefendant, was in an awkward place. He could not throw Appellant’s codefendant under the proverbial bus by, for

instance, showing the court evidence of that codefendant's domestic violence against Appellant. Counsel was told by bar counsel to move to withdraw but the court ignored the mandate of bar counsel and substituted its own flawed judgment for that of experienced ethics professionals. This was an abuse of discretion. See Wilmes v. Reno Mun. Ct., 59 P.3d 1197, 118 Nev. 831 (2002) (district attorney representing municipal court in mandamus action not an abuse of discretion).

Every defendant has the constitutional right to assistance of counsel unhindered by conflicting interests. U.S. Const. Amend. VI; Hollaway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173 (1978); Clark v. State, 108 Nev. 324, 326 (1992). In Clark, the Court found that where an actual conflict of interest which adversely affects a lawyer's performance will result in a presumption of prejudice to the defendant. Id. (citations omitted). The Clark, the court found that the lower court erred by requiring the appellant to show he was prejudiced by his lawyer's conflict of interest.

The court abused its discretion by denying Appellant's motion to withdraw due to a conflict of interest. The case should be remanded for a new sentencing hearing with either a reasonable time to close the sale of the million dollar home, or to permit the State to seize the property and sell it for restitution per their civil complaint for forfeiture.

## VIII. CONCLUSION

For the foregoing reasons, the convictions of Appellant must be vacated and the case remanded for further proceedings.

Dated: February 1, 2018

By:

/s/ Lester M. Paredes III, Esq.  
Lester M. Paredes III, Esq.  
Nevada Bar Number 11236  
Attorney for Appellant

## **CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with all applicable rules of the Nevada Rules of Appellate Procedure, particularly NRAP 28(e), which requires every assertion in the brief regarding matters of record to be supported by a reference in the page of the transcript or appendix where the matter relied on is to be found.

Dated this 1<sup>st</sup> day of February, 2018.

By:

/s/ Lester M. Paredes III, Esq.  
Lester M. Paredes III, Esq.  
Nevada Bar Number 11236  
Attorney for Appellant

# EXHIBIT 2

## EXHIBIT 2

RESPONDENT'S ANSWERING  
BRIEF

Case No. 74050

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

JACK LEAL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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On Appeal from the Eighth Judicial  
District Court of the State of Nevada  
Case No. C322664

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**RESPONDENT'S ANSWERING BRIEF**

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**STATE 00093**



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## **JURISDICTION**

The Nevada Supreme Court and Nevada Court of Appeals have jurisdiction under Section 4 of Article 6 of the Nevada Constitution and NRS 177.015(3).

This is a direct appeal from a judgment of conviction and sentence. The district court sentenced Appellant Jack Leal (“Leal”) on August 17, 2017. The district court entered a written judgment of conviction on August 23, 2017. On September 22, 2017, Leal filed this appeal.

## **ROUTING STATEMENT**

Because this is a direct appeal from a judgment of conviction and sentence, it is presumptively assigned to the Court of Appeals under NRAP 17(b)(1).

## **STATEMENT OF ISSUES**

Whether the district court properly sentenced Leal because Leal obviously breached the guilty plea agreement and the State expressly retained the right to argue for a term of imprisonment?

Whether the district court correctly proceeded with sentencing because no conflict of interest existed, and even if it did, Leal forever waived it?

## **STATEMENT OF CASE**

Appellant Jack Leal (“Leal”) entered into a plea bargain with the State wherein he agreed to plead guilty to one count of Multiple Transactions Involving Fraud or Deceit in Course of Enterprise or Occupation, and to be jointly and

severally liable for paying \$757,420 in “restitution in full at or before the time [Leal is] sentenced...” Appellant’s Appendix (AA) at 89-90. In exchange, the State agreed to dismiss one count of Racketeering and twelve counts of Theft in the Amount of \$3,500 or more and not oppose probation. AA 89-90. In the event that Leal failed to pay the restitution in full at or before his sentencing, the State expressly retained the right to argue for a term of imprisonment. AA 89.

Leal signed two conflict-of-interest waivers prior to his sentencing, consenting to dual representation of himself and his co-defendant, Jennifer Garcia (“Garcia”). AA 82, 100-102.

At the time set for sentencing, Leal and Garcia failed to pay full restitution as agreed in the Guilty Plea Agreement (GPA). AA 122. Leal’s attorney claimed a conflict of interest arose between Leal and Garcia after the initial arraignment, but before sentencing due to a no contact order that prevented Leal and Garcia from “working together.” AA 124. Recognizing that Leal and Garcia had executed two conflict-of-interest waivers, the district court proceeded with sentencing. AA 119. Due to Leal’s blatant breach of the GPA, Respondent-Appellee (“the State”) argued for a term of imprisonment for a maximum of one hundred eighty (180) months and a minimum of sixty (60) months with no objection by Leal or his attorney. AA 120. The district court sentenced Leal to a maximum of one hundred eighty (180) months

with a minimum parole eligibility of seventy-two (72) months in the Nevada Department of Corrections with zero days for time served. AA 140.

Because Leal breached the GPA by showing up to his sentencing without having paid the restitution in full, there was no need for the district court to investigate and examine an alleged breach by the State when Leal and his attorney did not object to the State arguing for a term of imprisonment and when Leal himself had already indisputably breached the plea agreement. In addition, the district court correctly proceeded with sentencing. While Leal's attorney claimed a conflict of interest arose between Leal and Garcia, no such conflict actually existed because the two co-defendants had agreed to be jointly and severally liable for the restitution. Even if a conflict of interest existed, Leal and Garcia forever waived any beforehand.

## **STATEMENT OF FACTS**

### **I. Complaint for Forfeiture and Notice of *Lis Pendens***

On September 30, 2016, Respondent-Appellee, the State of Nevada ("the State") filed an *in rem* action requesting the forfeiture of \$6,616.04 and \$150,489.13 from two Bank of America accounts opened under the name of Parcelnomics, LLC, and real property located at 1024 Santa Helena Avenue, Henderson, Nevada 89002 ("the Henderson property") purchased by Jessica Garcia ("Garcia") and transferred to 1024 Santa Helena Trust. AA 2-10. The State also filed a Notice of *Lis Pendens* on September 30, 2015. AA 11-12. As alleged in the Complaint for Forfeiture, Leal

and Garcia, the managing members of Parcelnomics, falsely advertised, represented, and sold encumbered real property to victims and used the proceeds to purchase the Henderson property. AA 2-10.

## **II. Criminal Complaint**

On November 29, 2016, the State filed a Criminal Complaint against Leal, Parcelnomics, and Garcia charging all three defendants with one (1) count of Racketeering, a category B felony, twelve (12) counts of Theft in the Amount of \$3,500 or more, a category B Felony, and one (1) count of Multiple Transactions Involving Fraud or Deceit in Course of Enterprise or Occupation, a category B felony. AA 15-38. The State alleged that on or about March 1, 2015, through March 31, 2016, Leal and Garcia, as managing members of Parcelnomics, solicited prospective purchasers for several properties in Nevada (“the real properties”) on Zillow.com, Craigslist.org, and eBay.com. AA 15-38.

The State also alleged that Leal and Garcia, as managing members of Parcelnomics, knowingly and falsely represented that the titles for the real properties were not encumbered by liens or other security interests. AA 15-38. The State further alleged that Leal and Garcia, as managing members of Parcelnomics, unlawfully obtained \$886,800.00 from the sale of the real properties encumbered with liens and/or other security interests from their victims. AA 15-38. The Complaint alleged that upon conviction of the offenses charged, the State requested forfeiture of the



real and personal property derived from the unlawful acts. AA 15-38. The State filed an Amended Criminal Complaint on December 27, 2016 clarifying the forfeiture amounts requested from the real and personal property derived from the unlawful acts. AA 40-62. The State took no action on the Complaint for Forfeiture due to the pending criminal proceedings against Leal and Garcia. AA 146.

### **III. First Conflict-of-Interest Waiver**

On April 11, 2017, Leal unconditionally waived his right to a preliminary hearing and filed an Unconditional Waiver of Preliminary Hearing and Conflict-of-Interest Waiver. AA 79-83. In the Conflict-of-Interest Waiver, Jason G. Weiner, Esq. (“Attorney Weiner”) disclosed that a conflict of interest may arise due to his dual representation of Leal and Garcia. AA 82. Despite this known risk, Leal “knowingly, intelligently, and voluntarily consent[ed] to dual representation...and [he] hereby waive[d] any right to later file an appeal or claim ineffective assistance of counsel based on a conflict-of-interest arising out of this dual representation.” AA 82.

At Leal’s initial arraignment, on April 20, 2017, Attorney Weiner requested a continuance and informed the hearing master the he was representing both defendants and had just filed conflict waivers in the justice court. AA 86. Upon inquiry from the hearing master, Leal confirmed that he waived conflicts for Attorney Weiner to represent him and Garcia. AA 86.

#### **IV. Guilty Plea Agreement**

On April 24, 2017, Leal appeared for his continued initial arraignment. AA 103-12. Leal executed a GPA in which he entered a plea of guilty to one (1) count of Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise or Occupation, in exchange for a dismissal of one (1) count of Racketeering, twelve (12) counts in the Criminal Complaint, and the State's agreement to not oppose probation. AA 88-93. Leal also agreed to pay restitution in the amount of \$757,420 to the eleven victims "at or before the time [he] [is] sentenced in the present case." AA 88-89. Leal agreed that he and Garcia were jointly and severally responsible for the restitution. AA 89. Leal further agreed that he would execute and file in the Clark County Recorder's Office a lien agreement and lien in favor of the State of Nevada, Office of the Attorney General, in the amount of \$600,314.83 against the Henderson property, with the proceeds of the sale from the Henderson property to be applied to any restitution owed. AA 89-90.

In the GPA, Leal acknowledged that should he "fail to pay restitution in full at or before the time [he] [is] sentenced in the present case, the State will retain the right to argue for the imposition of a term of imprisonment." AA 89. Leal also acknowledged that he understood the victims would be allowed to make impact statements at his sentencing. AA 90. Leal further acknowledged that despite any

recommendations made by the State or his own attorney, the district court “is not obligated to accept the recommendation.” AA 91.

#### **V. Second Conflict-of-Interest Waiver**

Leal executed a second Conflict-of-Interest Waiver that the district court filed with the GPA. AA 100-02. In the second Conflict-of-Interest Waiver, Leal acknowledged that Attorney Weiner advised him of his right “to consult with independent counsel to review the potential conflict of interest posed by dual representation and the consequences of waiving the right to conflict free representation.” AA 100. Leal also acknowledged that if he chose not to seek advice of independent counsel, then he expressly waived his right to do so. AA 100. Leal further expressly waived his right to withdraw his guilty plea or to a mistrial as a result of his attorney’s potential and actual conflict of interest depriving him of his right to effective assistance of counsel arising from the dual representation. AA 100. Leal acknowledged that the “waiver of conflict is binding through trial, on appeal, and in habeas proceedings.” AA 100. In spite of the known risk to dual representation, Leal “knowingly, intelligently, and voluntarily” consented to dual representation of his attorney with his co-defendant. AA 101.

The hearing master acknowledged on the record that waiver was “in front of [her] where Mr. Jack Leal is agreeing that Mr. Weiner can also represent the co-defendant, and that there’s not a conflict of interest. Correct sir?” AA 111. Leal

replied “[c]orrect.” AA 111. During the plea canvass, the hearing master thoroughly canvassed Leal. AA 104-12. The hearing master reiterated the terms of the GPA, including the term where Leal agreed to be jointly and severally responsible for paying back the restitution in full with Garcia in the amount of \$757,420 at or before sentencing. AA 105. The hearing master also reiterated to Leal that should he fail to pay the restitution in full before his sentencing, the State expressly retained the right to argue for the imposition of a term of imprisonment. AA 105. After the hearing master thoroughly canvassed Leal, Leal entered a plea of guilty to one (1) count of Multiple Transactions Involving Fraud, a category B felony. AA 103-12. The hearing master accepted Leal’s plea as freely and voluntarily entered and set the matter for sentencing for the furthest date out—to allow Leal time to sell the Henderson property to pay restitution. AA 111-12. As Attorney Weiner explained, “if it’s not sold there is a penalty to my clients in terms of the State having RTA meaning the right to argue for imprisonment.” AA 112.

## **VI. Sentencing**

At the time set for sentencing, Leal and Garcia had not paid any restitution. AA 122. As a result, the State argued for a term of imprisonment and recommended sixty (60) to one hundred eighty (180) months based on eleven (11) victims and the three quarters of a million dollars stolen. AA 120. The State also argued that Leal had two prior felonies, one for forgery and one for theft by deception and possession

of a fraudulent ID. AA 120. The State further argued that Leal had done little to nothing to make restitution in the case when he had from April to August, the time between his initial arraignment and sentencing, to sell the Henderson property to pay the restitution. AA 120. According to the State, the first time Leal did anything was a week before his sentencing; and thus, Leal did nothing for four months. AA 121. Leal stated that he had issues with Garcia and a no contact order deterred contact for the past sixty (60) days, which caused the delay. AA 121. According to Leal, Garcia was in charge of the property sale and he assumed she was selling the house. AA 121. Upon questioning by the district court, Leal explained that he transferred the title to the house from the trust to himself because Garcia had “nothing done to this point,” and claimed “[t]he restitution – I mean there should be no issue with it. I have a copy of the title policy I’ve got. No liens; the property’s free and clear.” AA 121-22. Due to Leal’s representation that the Henderson property had “no liens,” the State pointed out that the house had two liens. AA 121-22. Leal also claimed that he “had no idea [the restitution] wasn’t taken care of or paid” and “[a]s far as the situation that happened, we were under the assumption that – we didn’t explain it correctly,... what we were selling.” AA 122. When the district court asked where the \$750,000.00 went, Leal stated that it went into purchasing the Henderson property he just put on the market. AA 122-23.

In regards to the alleged conflict of interest, Attorney Weiner stated that the

dispute between Leal and Garcia “began after the change of plea but before sentencing.” AA 124. Attorney Weiner also stated that he had contacted the bar ethics hotline who recommended he withdraw. AA 124. Attorney Weiner further stated that he would “make that motion.” AA 124. The district court asked Attorney Weiner what the purported conflict of interest was between Leal and Garcia. AA 124. Attorney Weiner explained that “[t]hey were supposed to be working together. Then they had a no contact order so they couldn’t. So they’re now basically pointing at each other saying this is – She’s saying this is his fault, he’s saying that’s her fault. That’s an antagonistic defense.” AA 124. AA 124-25. The district court explained that “it’s not a defense to the case...because if it says why the...restitution wasn’t paid and this is joint and several which means if one...doesn’t pay the other owes the full amount...” AA 124-25.

## **VII. Victim Impact Statements**

Since the State filed a Notice of Intent to Present Victim Impact Statements on August 11, 2017, three (3) of the victims spoke at Leal’s sentencing, Irene Segura (“Segura”), Luis Palafox for Lena Palafox (“Palafox”), and LoryLee Plancarte (“Plancarte”). AA 114-15, 128-36. Segura stated that Leal and Garcia stole her grandson’s college fund by scamming them with two worthless properties. AA 129. Palafox stated that his wife paid \$60,000.00 for one property, but now they are renting property and living check to check. AA 132-33. Plancarte spoke and stated

that she “was told her property was free and clear from a bankruptcy sale” and found out when they went to refinance that there was a mortgage on the property. AA 135. Plancarte also stated that she had not seen any restitution. AA 136. Attorney Weiner responded to the victim impact statements. AA 137-39. Despite the State’s request, the district court sentenced Leal to imprisonment for a maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months, with zero (0) days credit for time served. AA 140-41.

### **SUMMARY OF ARGUMENT**

The district court properly sentenced Leal after he failed to pay the restitution in full at or before his sentencing. Because Leal is obviously to blame for the breach of the GPA, an evidentiary hearing to determine blameworthiness is unnecessary. *Villalpando v. State*, 107 Nev. 465, 468, 814 P.2d 78, 80 (1991). In order for the State to not oppose probation, Leal needed to pay the restitution in full at or before his sentencing. AA 89. While Leal may have needed to sell the Henderson property to obtain the money to pay full restitution, the GPA did not require Leal to sell the Henderson property to pay the restitution. AA 89-90. Instead, the GPA allowed for any proceeds from the sale of the Henderson property to be applied to any restitution owed. AA 90. As such, the language in the GPA clearly left the means of paying restitution to Leal’s discretion. AA 89. Rather than take the four (4) months between his initial arraignment and sentencing to sell the real property, Leal waited six (6)

days before sentencing to start the process of putting the Henderson property on the market to pay the restitution already past due. As it was obvious Leal was to blame for the breach of the GPA, the State was released from its promise to not oppose probation. As the State argued for a term of imprisonment in accordance with the terms of the GPA, without objection by Leal or his counsel, the Court should find that the district court did not commit plain error at sentencing.

Additionally, the district court did not abuse its discretion in proceeding with Leal's sentencing because no conflict of interest existed. While Leal claims that the district court erred in denying Attorney Weiner's motion to withdraw as counsel, EDCR 7.40(b)(2) requires counsel of record to withdraw by written motion. The record reflects that a bench conference occurred prior to Leal's sentencing where Attorney Weiner may have made an oral motion to withdraw as counsel, but the record later contradicts this allegation for Attorney Weiner informed the district court that "[he] did. [He] will make that motion" effectively indicating that he would file a motion to withdraw as counsel in the future. AA 124.

Nonetheless, no conflict of interest existed to warrant withdrawal of counsel because Leal and Garcia agreed to be jointly and severally liable for restitution. AA 89. As the district court indicated, the fact that Leal and Garcia are going to blame each other for the unpaid restitution does not create a conflict of interest since both agreed to pay the restitution in full. AA 125. Even if there was a conflict of interest,



Leal knowingly, intelligently, and voluntarily embraced a potentially conflicted dual representation. *Ryan v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 419, 430, 168 P.3d 703, 710 (2007). Leal signed a conflict-of-interest waiver in the justice court and a conflict-of-interest waiver in district court at his initial arraignment wherein he waived any actual or potential conflict from the dual representation of him and Garcia. AA 79-83; 100-102. As a result, Leal forever waived any actual or potential conflict of interest at his initial arraignment.

Based on the foregoing, the judgment of conviction should be affirmed.

## **ARGUMENT**

### **I. Standard of Review**

This Court reviews unpreserved breach-of-plea allegations for plain error. The defendant's failure to object to the prosecutor's comments at sentencing "may be considered as evidence of the defendant's understanding of the terms of a plea agreement." *Sullivan v. State*, 115 Nev. 383, 387 n. 3, 990 P.2d 1258, 1260 n. 3 (1999); *see also Puckett v. United States*, 556 U.S. 129, 143 (2009) (holding unpreserved breach-of-plea-allegations are subject to plain-error review).

Additionally, this Court reviews a district court's denial of a defendant's request to substitute counsel for an abuse of discretion. *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004).

## **II. The District Court Properly Sentenced Leal Because Leal Obviously Breached the Guilty Plea Agreement, and the State Retained the Right to Argue for Imprisonment.**

The district court properly sentenced Leal because Leal clearly violated the GPA. Contract principles apply when analyzing a written plea agreement. If a defendant breaches the plea agreement first, the appropriate remedy pursuant to the terms of the plea agreement is that the State may argue for imprisonment. *See State v. Crockett*, 110 Nev. 838, 842-45, 877 P.2d 1077, 1078-81 (1994) (applying contract principles in analyzing a written plea agreement); *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) (“[W]hen a contract is clear on its face, it will be construed from the written language and enforced as written.”) (citations omitted). When, as here, the defendant is obviously to blame for the breach of the GPA, an evidentiary hearing to determine blameworthiness is unnecessary. *Villalpando v. State*, 107 Nev. 465, 468, 814 P.2d 78, 80 (1991).

In this case, the State did not breach the GPA.<sup>1</sup> The State was no longer required to not oppose probation when Leal failed to pay the restitution in full at or

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<sup>1</sup> When the State enters into a plea agreement, it “is held to ‘the most meticulous standards of both promise and performance’” with respect to both the terms and the spirit of the plea bargain. *Van Buskirk v. State*, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting *Kluttz v. Warden*, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)). “In practice, it is the criminal defendant, not the State, who actually controls whether the State will be allowed to argue for a particular sentence.” *Sparks v. State*, 121 Nev. 107, 113, 110 P.3d 486, 489 (2005). If the defendant claims the State improperly breached the plea agreement, the appropriate remedy would be

before his sentencing. In the GPA, Leal expressly agreed and understood that as a condition to the State not opposing probation, he had a duty to pay the restitution of seven hundred fifty-seven thousand four hundred twenty dollars (\$757,420) in full at or before his sentencing. AA 88-89. Leal also agreed and understood that he and Garcia were jointly and severally responsible for paying the restitution. AA 89. Leal acknowledged these terms in the GPA and during the plea canvass. AA 88-99, 103-12. Leal also twice acknowledged and agreed that if he did not pay the restitution in full at or before his sentencing, the State retained the right to argue for a term of imprisonment. AA 104-06. At the time set for sentencing, Leal and Garcia had not paid the restitution. AA 122-23. As such, Leal's blatant and obvious breach of the GPA released the State from its obligation of not opposing probation. Thus, the State properly argued for a term of imprisonment in accordance with the terms of the GPA without any objection by Attorney Weiner or Leal.

In *Sparks*, a case Leal attempts to distinguish, the defendant, while on probation for a theft offense, was arrested and charged with two counts of drug related offenses. *Id.* at 109, 110 P.3d at 487. At his initial appearance, the defendant agreed to waive his right to a preliminary hearing and agreed to a plea bargain where he would enter a plea of guilty to the reduced drug charge and the State would agree

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specific performance of the agreement. *Citti v. State*, 107 Nev. 89, 92-93, 807 P.2d 724, 727 (1991).

to make no recommendation at sentencing. *Id.*, 110 P.3d at 487. The written plea agreement also contained a FTA clause that released the State from its promise to recommend or refrain from recommending a particular sentence if the defendant failed to appear for a scheduled sentencing or committed an additional criminal offense prior to sentencing. *Id.*, 110 P.3d at 487. After the defendant failed to appear for his scheduled sentencing and was arrested on additional charges, the State asserted its right under the FTA clause and argued that the sentence imposed should run consecutive to the defendant's sentence for the theft offense. *Id.*, 110 P.3d at 487. On appeal, the defendant in *Sparks* argued that 1) the FTA clause was not valid because it deviated from the standard form agreement set forth in NRS 174.063; 2) the FTA clause is void under Nevada law because it contravenes the court's holdings in *Gamble v. State* and *Villalpando v. State*; 3) the FTA clause is void because it is an unconscionable contractual provision surreptitiously included in the agreement by the State without his consent; and 4) the FTA provision is unconscionable because it gives the State the unilateral right to withdraw. *Id.* at 109-13, 110 P.3d at 487-90. The Nevada Supreme Court concluded that the FTA clause in the plea agreement was lawful and enforceable. *Id.*, 110 P.3d at 490. The Nevada Supreme Court also concluded that the State did not breach the plea agreement in arguing for consecutive sentences after the defendant violated the FTA clause and affirmed the judgment of conviction. *Id.*, 110 P.3d at 490.

Like the defendant in *Sparks*, Leal is obviously to blame for breaching the GPA. At sentencing, Leal had not paid the restitution in full.<sup>2</sup> AA 122. Because Leal agreed that he and Garcia were jointly and severally responsible for paying the restitution in full, Leal should have ensured that the restitution had been paid in full at or before his sentencing rather than “assume” Garcia had paid it. AA 89. As the terms of the GPA did not require the sale of the Henderson property to pay the restitution, Leal could have paid the restitution through any lawful means.<sup>3</sup> AA 88-99. Although Leal contends that he could not sell the Henderson property because of the State’s *Lis Pendens*, this contention fails because Leal was still able to transfer title to himself and list it on the market six (6) days before his sentencing even with the *Lis Pendens*. AA 121-22. The Henderson property also had two liens from Republic Waste. AA 122-23. If Leal did not have the funds to pay the restitution in full without selling the Henderson property, the time to object to this specific term

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<sup>2</sup> The GPA required payment in full not partial payment at or before sentencing. AA 88-89. Nonetheless, Leal’s contentions that he made “good faith efforts” to pay the restitution in full are belied by his own actions and statements at sentencing in addition to the victim impact statements of Segura, Palafox, and Plancarte. AA 128-36. Leal waited six (6) days before his sentencing when he had four (4) months between his initial arraignment and sentencing to transfer title and list the Henderson property for sale to pay the restitution. AA 122.

<sup>3</sup> Leal’s contention that the State misrepresented the worth of the Henderson property at sentencing to undermine Leal’s efforts to pay the restitution is misguided. The State had information, outside of the record, that appraised the Henderson property for significantly less than the listing price.

was before he signed the GPA and entered his guilty plea.<sup>4</sup> *Id.* at 112, 110 P.3d at 489 (“[W]e note that the proper time for [the defendant] to object to a particular term in the written plea agreement was prior to signing the agreement and entering his guilty plea in the district court.”). Leal and Attorney Weiner also did not object to the State’s recommendation of a term of imprisonment. Further, Leal acknowledged in the GPA and during the plea canvass that the district court determines the sentence within the limits prescribed by statute and is not obligated to accept any recommendation. AA 91, 108. In exercising that discretion, the district court actually sentenced Leal to imprisonment for a maximum of one hundred eighty (180) months with a minimum parole eligibility of seventy-two (72) months when the State argued for less. AA 120, 140-41. Thus, the Court, like in *Sparks*, should find that the State did not breach the GPA and affirm the judgment of conviction.

Conversely, in *Gamble*, the defendant appealed the district court’s denial of his petition for writ of habeas corpus (post-conviction) after the prosecutor had not kept his promise in the plea bargain rendering his plea involuntary. *Gamble*, 95 Nev. at 905-06, 604 P.2d at 337. The defendant agreed to stipulate to the revocation of his probation and enter a plea of guilty to a new offense in exchange for the State

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<sup>4</sup> To the extent Leal’s arguments are construed as to mean the State made Leal’s performance impossible, the defense of impossibility does not apply to unforeseen contingencies that the promissor should have foreseen and provided for in the contract. *See Nebaco, Inc. v. Riverview Realty Co.*, 87 Nev. 55, 58, 482 P.2d 305, 307 (1971).

agreeing not to file more charges and recommend that the sentences for his probation revocation and new offense run concurrently. *Id.*, 604 P.2d at 337. The district court canvassed the defendant who entered a plea of guilty to the new offense. *Id.*, 604 P.2d at 337. A month later, the district court held a probation revocation hearing, revoked the defendant's probation, and sentenced the defendant to a ten-year prison term. *Id.* at 337. A different public defender and prosecutor appeared at the probation revocation and neither made any reference to the plea negotiations. *Id.* at 337. At his sentencing hearing, the parties did not understand why the probation revocation hearing occurred and the district court continued the sentencing. *Id.*, 604 P.2d at 337. A month later, at the continued sentencing hearing, the prosecutor represented that the defendant "refused" to stipulate to the revocation of his probation and recommended the maximum sentence on the new offense to run consecutive to the defendant's sentence imposed as a result of his probation revocation. *Id.* at 337. The district court imposed a sentence based on the prosecution's recommendation. *Id.* at 337. On appeal, the Nevada Supreme Court stated that "there is not the slightest indication that appellant was ever presented with a stipulation to revoke his probation by the prosecution, nor that one was requested by the prosecution or either of appellant's defense counsel. *Id.*, 604 P.2d at 337. The Nevada Supreme Court reversed and remanded to the district court for an evidentiary hearing to determine whether the breach of the plea bargain occurred because the defendant refused to

stipulate to the probation revocation or because of the prosecutions' miscommunication. *Id.* at 909, 604 P.2d at 338.

Similarly, in *Villalpando*, the defendant appealed his sentencing after the prosecution recommended a prison sentence rather than probation after the defendant failed to appear for his sentencing. 107 Nev. at 465-66, 814 P.2d at 78-9. On appeal, the Nevada Supreme determined that the defendant's appearance at his sentencing became an implied condition of the plea agreement based on the judge's warning that the defendant's appearance at sentencing was a condition of the plea agreement. *Id.*, 814 P.2d at 78-9. The Nevada Supreme Court applying *Gamble* determined that the defendant's failure to appear at his sentencing caused the breakdown of the plea agreement and because the defendant was obviously to blame an evidentiary hearing to determine blameworthiness was unnecessary. *Id.* at 468, 814 P.2d at 80. Due to the defendant's blameworthiness, the Nevada Supreme Court did not permit the defendant to withdraw his plea. *Id.*, 814 P.2d at 78-9. Instead, the Nevada Supreme Court found that if the defendant is to remain bound by his guilty plea, so too is the prosecution to remain bound by its promise to recommend probation. *Id.*, 814 P.2d at 80. The Nevada Supreme Court reversed and remanded the case to the district court for specific performance. *Id.*, 814 P.2d at 78-9.

Unlike the defendant in *Gamble*, it is abundantly clear that Leal is to blame for the breach of the GPA because Leal showed up to his sentencing without having



paid the restitution in full, which Leal expressly agreed and understood that he had a duty pay in order to obtain the benefit of the bargain. AA 122. Thus, the district court did need to conduct an evidentiary hearing. Also, unlike in *Gamble* and *Villalpando*, where counsel failed to put in writing the stipulation to revoke probation and the requirement that the defendant appear at sentencing to receive the benefit of the plea negotiations, the GPA expressly and specifically advised Leal that if he showed up to his sentencing without having paid the restitution in full, the State retained the right to argue for a term of imprisonment. AA 88-99, 103-12. Leal acknowledged these terms during the plea canvass and in the GPA. AA 88-99, 103-12. Accordingly, unlike the defendants in *Gamble* and *Villalpando*, the record reflects Leal knew, as a condition of his plea, that he had a joint and several responsibility to pay the restitution in full at or before his sentencing to obtain the benefit of the State not opposing probation. Thus, the Court, unlike in *Gamble* and *Villalpando*, should affirm the judgment of conviction.

**III. The District Court Correctly Proceeded with Sentencing Because No Conflict of Interest Existed, and Even if It Did, Leal Forever Waived It.**

Contrary to Leal's assertions, the record does not clearly reflect that Attorney Weiner moved to withdraw as counsel of record for Leal. AA 124. According to the record, Attorney Weiner stated that Bar Counsel instructed him to withdraw and "[h]e did. [He] will make that motion" effectively indicating that he would file a motion to withdraw in the future. AA 124.

Eighth Judicial District Court Rule 7.40 provides, in pertinent part, as follows:

(b) Counsel in any case may be changed *only*:

(2) When no attorney has been retained to replace the attorney withdrawing, by order of the court, granted upon *written* motion, and

(i) If the application is made by the attorney, the attorney must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and the telephone number, or last known telephone number, at which the client may be reached and the attorney must serve a copy of the application upon the client and all other parties to the action or their attorneys, or

...

*(c) No application for withdrawal or substitution may be granted if a delay of the trial or of the hearing of any other matter in the case would result.*

EDCR 7.40. [Emphasis added].

Even assuming Attorney Weiner made an oral motion to withdraw during the bench conference, his request fails to comply with EDCR 7.40(b)(2). Thus, the district court did not err in proceeding with sentencing because Attorney Weiner failed to move to withdraw in accordance with EDCR 7.40(b)(2).

Even if Attorney Weiner had moved to withdraw in accordance with EDCR 7.40(b)(2), there was no conflict of interest to warrant withdrawal. The district court's denial of a motion to withdraw as counsel is reviewed for an abuse of discretion. *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004) (reviewing the district court's denial of a motion for substitution of counsel for abuse of

discretion). In reviewing a denial of a motion to substitute counsel, the three factors considered by the Nevada Supreme Court are: (1) the extent of the conflict between the defendant and his or her counsel, (2) the timeliness of the motion and the extent to which it will result in inconvenience or delay, and (3) the adequacy of the court's inquiry into the defendant's complaints. *Id.*, 102 P.3d at 576 (quoting *United States v. Moore*, 159 F.3d 1154, 1158-59 (9th Cir. 1998)).

Here, the mere fact that Leal and Garcia did not pay the restitution prior to sentencing did not create a conflict of interest. At sentencing, Attorney Weiner argued that a conflict of interest arose between Garcia and Leal because they were supposed to be "working together" and now they are pointing at each other with her "saying this is his fault, he's saying that's her fault." AA 124. In the GPA, Leal agreed to be jointly and severally liable for the restitution with Garcia. AA 89. "Under the common law, liability was joint and several where two or more tortfeasors caused injury through their combined or concurrent tortious conduct... Thus, any one of several tortfeasors whose compoment contributed to a plaintiff's injuries could be tapped for the *entire* amount of damages." *Buck by Buck v. Greyhound Lines, Inc.*, 105 Nev. 756, 763, 783 P.2d 437, 441 (1989) (citing Prosser, *Law of Torts*, 5th Ed. (1984), p. 328). [Emphasis added]. The record also reflects that Leal never personally objected to Attorney Weiner's continued representation. Accordingly, Leal agreed that he owed the entire amount of

restitution at or before his sentencing even if Garcia did not pay any of the restitution. Based on the foregoing, the district court did not abuse its discretion because (1) the record does not clearly reflect that Attorney Weiner moved to withdraw; (2) even if he did, it was at the time of the sentencing and no conflict of interest existed; and (3) the district court sufficiently inquired into the alleged conflict. Under the factors considered in *Young*, the Court should find the district court did not abuse its discretion and affirm the judgment of conviction.

Even assuming a conflict of interest existed, Leal knowingly, intelligently, and voluntarily forever waived conflict-free representation prior to his sentencing. Nevada Rule of Professional Conduct 1.7 prohibits lawyers from engaging in dual representation if the representation involves a concurrent conflict of interest or a significant risk that the dual representation will materially limit the lawyer's ability to represent one or both clients. *Ryan v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 419, 430, 168 P.3d 703, 710 (2007). However, there is no per se rule against dual representation. *Id.* at 426, 168 P.3d at 708 (citing *Holloway*, 435 U.S. at 482-83). Even if a concurrent conflict of interest exists, a lawyer may represent a client if each affected client gives informed consent in writing. *Id.*, 168 P.3d at 710 (citing RPC 1.7(b)(4)). If the defendant knowingly, intelligently, and voluntarily waives the right to conflict-free representation, the conflict of interest is

forever waived and binding on the defendant throughout trial, on appeal, and in habeas proceedings. *Id.* at 428-29, 168 P.3d at 709-10.

In *Ryan*, a non-indigent defendant filed a writ of mandamus after the district court denied her request for substitution of counsel with an attorney whose partner was representing her codefendant. *Id.* at 422, 168 P.3d at 705. Both defendants were accused of murdering their roommate, stuffing her body in the trunk of their Jaguar, and setting the car on fire to cover up the alleged crimes. *Id.*, 168 P.3d at 705. The Nevada Supreme Court concluded that the district court must honor a criminal defendant's voluntary, knowing, and intelligent waiver of conflict-free representation so long as the conflicted representation will not interfere with the administration of justice. *Id.*, 168 P.3d at 705. The Nevada Supreme Court also concluded that for a waiver of conflict-free representation to be effective, the defendant must specifically waive the right to a mistrial as a result of her attorney's potential or actual conflict of interest depriving her of the right to effective assistance of counsel arising from the dual representation. *Id.*, 168 P.3d at 705. The Nevada Supreme Court also concluded that before engaging in dual representation, the attorney must advise the criminal defendant of her right to consult with independent counsel to review the potential conflicts of interest posed by the dual representation and if so chooses not to do so, then the defendant must expressly waive her right to do so before the defendant's waiver of conflict-free representation can be valid. *Id.*,

168 P.3d at 705. The Nevada Supreme Court granted the defendant's petition and issued a writ directing the district court to canvass both defendants to determine whether they knowingly, intelligently, and voluntarily waive their right to conflict-free representation. *Id.*, 168 P.3d at 705.

As indicated by the court in *Ryan*, Leal signed two conflict-of-interest waivers before his sentencing to show that he knowingly, intelligently, and voluntarily waived his right to conflict-free representation. AA 79-83; 100-102. In the second conflict-of-interest waiver, Leal expressly waived his right to a mistrial due to an actual or potential conflict of interest depriving him of the right to effective assistance of counsel arising from the dual representation as instructed by the court in *Ryan*. AA 100. Also, as instructed by the court in *Ryan*, the second conflict-of-interest waiver provided that Leal's attorney advised him of his right to consult with independent counsel to review the potential conflicts of interest posed by the dual representation and if he chose not to do so, then Leal expressly waived his right to do so. AA 100. Leal further acknowledged that the waiver of conflict was binding throughout trial, on appeal, and in habeas proceedings. AA 100. As the second conflict-of-interest waiver incorporated the language mandated by the Nevada Supreme Court in *Ryan*, any actual or potential conflict that arose at sentencing was forever waived beforehand. Thus, any actual or potential conflict that occurred after Leal's initial arraignment but before his sentencing had been forever waived.

Accordingly, the Court should find that the conflict-of-interest waivers establish that Leal knowingly, intelligently, and voluntarily forever waived his right to conflict-free representation and affirm the judgment of conviction.

Leal relies on *Clark v. State*, 108 Nev. 324, 831 P.2d 1374 (1992) to support his argument that the district court abused its discretion by denying Attorney Weiner's alleged motion to withdraw due to a conflict of interest. However, *Clark* is factually and legally distinguishable from the instant case. In *Clark*, the defendant filed a petition for writ of habeas corpus (post-conviction) alleging that his trial counsel deprived him of his constitutional right to the effective assistance of counsel. 108 Nev. at 325, 831 P.2d at 1375. Trial counsel agreed to represent the defendant for \$10,000.00 at his first-degree murder trial. *Id.*, 831 P.2d at 1375. The defendant and trial counsel agreed that the fee would come from the proceeds of a personal injury settlement handled by trial counsel's firm on behalf of the defendant. *Id.*, 831 P.2d at 1375. When an overlooked medical lien for \$4,785.05 resulted in the lien holder filing a complaint against the defendant and the trial counsel's firm, trial counsel filed a cross-claim against the defendant and obtained a default judgment in the amount of \$5,600.00. *Id.*, 831 P.2d at 1375. After the district court held a hearing to address trial counsel's actions and the technical conflict of interest, the district court denied relief and found no resultant prejudice to the defendant. *Id.* at 326, 831 P.2d at 1376. The Nevada Supreme Court conclusively presumed prejudice to the

defendant under the specific facts of the case, and reversed the decision of the district court and vacated the defendant's conviction. *Id.* at 327, 831 P.2d at 1377.

Unlike the actual conflict between the defendant and trial counsel in *Clark*, the alleged conflict with Leal stemmed from Attorney Weiner's representation of Leal and Garcia, between co-defendants, which makes the facts of this case more analogous to *Ryan*. Also, unlike the defendant in *Clark*, Leal signed two conflict-of-interest waivers wherein he knowingly, intelligently, and voluntarily waived his right to conflict-free representation. AA 79-83; 100-102. Further, unlike the defendant's claim of ineffective assistance of counsel in *Clark*, Leal expressly waived his right to withdraw his guilty plea due to Attorney Weiner's potential or actual conflict of interest deriving him of his right to effective assistance of counsel in the second conflict-of-interest waiver and acknowledged his understanding that the terms of the waiver would be binding throughout trial, on appeal, and in habeas proceedings. AA 100; *See also Ryan*, 123 Nev. at 710, 168 P.3d at 429 (“[T]he defendant cannot subsequently seek a mistrial arising out of the conflict that he waived and ‘cannot [subsequently] be heard to complain that the conflict he waived resulted in ineffective assistance of counsel.’”) (quoting *Gomez v. Ahitow*, 29 F.3d 1128, 1135 (7th Cir. 1994)). The record reflects that Attorney Weiner argued on behalf of Leal at his sentencing despite the alleged conflict of interest. AA 124-28,



137-39. Thus, the Court should find this case legally and factually distinguishable from *Clark* and affirm the judgment of conviction.

### CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the judgment of conviction.

RESPECTFULLY SUBMITTED this 19th day of March, 2018.

ADAM PAUL LAXALT  
Attorney General

By: /s/Ashley Balducci  
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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, 14 pt. Times New Roman type style.

I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 7,087 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: March 19, 2018.

ADAM PAUL LAXALT  
Attorney General

By: /s/ Ashley Balducci  
Ashley Balducci (Bar No. 12687)  
Deputy Attorney General

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on March 19, 2018.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

/s/ M. Landreth

An employee of the Office of the Attorney General

# EXHIBIT 3

## EXHIBIT 3

### APPELLANT'S REPLY BRIEF

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JACK LEAL,  
Appellant,

vs.

STATE OF NEVADA,  
Respondent.

S. CT. CASE NO.: 74050  
Electronically Filed  
Apr 20 2018 11:00 a.m.  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JACK LEAL,  
Appellant,

vs.

STATE OF NEVADA,  
Respondent.

S. CT. CASE NO.: 74050

**APPELLANT'S NRAP 26.1(a)  
DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

**Attorney of record for Appellant:** Lester M. Paredes III, Esq.

**Corporation:** No publicly held company associated with this corporation.

**Law Firm(s) appearing in District Court:** Mueller Hinds & Associates, Chtd.

Dated this 19<sup>th</sup> day of April, 2018

By:

/s/ Lester M. Paredes III, Esq.  
Lester M. Paredes III, Esq.  
Nevada Bar Number 11236  
Attorney for Appellant

## CERTIFICATE OF COMPLIANCE

I hereby certify that this Appellant's Reply Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), has been prepared in a proportionately spaced typeface using Times New Roman in the font size of 14 and the body of the brief contains 1,107 words.

I further certify that I have read this Appellant's Reply Brief and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the Nevada Rules of Appellate Procedure.

Dated this 19<sup>th</sup> day of April, 2018

/s/ Lester M. Paredes III, Esq.  
Lester M. Paredes III, Esq.  
Nevada Bar Number 11236  
Attorney for Appellant



**CERTIFICATE OF SERVICE**

I hereby certify that service of the foregoing **APPELLANT'S REPLY BRIEF** was made this 19th of April, 2018, upon the appropriate parties hereto by electronic filing using the ECF system which will send a notice of electronic filing to the following and/or by facsimile transmission to:

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# EXHIBIT 4

## EXHIBIT 4

### APPELLANT'S PETITION FOR REVIEW

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JACK LEAL,  
Appellant,  
vs.  
STATE OF NEVADA,  
Respondent.

S. CT. CASE NO.: 74050  
Electronically Filed  
Oct 02 2018 10:09 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
**APPELLANT'S PETITION  
FOR REVIEW**

Appellant, JACK LEAL, by and through the law firm of MUELLER, HINDS & ASSOC., CHTD., hereby files this Petition for Review by the Supreme Court under NRAP 40B. This Petition is made based on the following memorandum of points and authorities and any subsequent pleadings and arguments.

Dated this 28<sup>th</sup> day of September, 2018

/s/ Lester M. Paredes III, Esq.  
Lester M. Paredes III, Esq.  
Nevada Bar Number 11236  
Attorney for Appellant

## **MEMORANDUM OF POINTS AND AUTHORITIES**

The succinct and precise basis for this Petition is as follows:

- 1) Appellant was accused at sentencing of materially breaching the guilty plea agreement at sentencing for failing to pay the restitution in full, but Appellant was not at fault, objected, proffered the reasons and the lower court should have held an evidentiary hearing to determine the nature and cause of the alleged breach under Gamble v. State, 95 Nev. 904 (1979), et al. The Court of Appeals denied this claim and erred in doing so, contradicting the holding of Gamble v. State, 95 Nev. 904 (1979).
- 2) At sentencing, Appellant's counsel moved to withdraw due to a current, material and fatal conflict of interest. Petitioner's attorney represented Appellant and his codefendant through their entry of the guilty plea agreement, but subsequently, Appellant's codefendant was ordered by the court to stay away from Appellant due to her attack on Appellant, thereby impeding both Appellant and codefendant from selling the co-owned property they were going to use to pay the restitution in full. The Court of Appeals found that such a motion need to be filed in accordance with EDCR 7.40(b), the restitution was joint and several and that the waiver of conflicts of interest included any "potential" conflicts. This is, of course,

an absurd result and at odds with common sense and Petitioner's right to due process.

**A. Factual Statement**

Appellant made the mistake of buying encumbered properties and selling them as-is to prospective buyers, *caveat emptor*. For that, Appellant was facing over a dozen criminal charges and accepted a plea to one of them and agreed to pay everything back and if so, the State would not oppose probation.

At the beginning of the sentencing hearing, Mr. Weiner, then-attorney for Applicant and his codefendant Jessica Garcia, raised a conflict of interest issue at a bench conference and on the record:

The – well, as an initial matter, Your Honor, just to address what we discussed at the bench, the ongoing conflict waivers – the dispute between [the codefendants] began after the change of plea but before sentencing. If you want to put on the record, I contacted the bar ethics hotline. They recommended that I withdraw based on what's going on here. I did. I will make that motion. I do understand that the Court's going to insist that we go forward today and that's certainly the Court's right to do but –

The Court: Well, is the conflict the fact that your client thought that Ms. Garcia was going to pay this off? Is that the conflict?

Mr. Wiener: Well, no, it wasn't that they were paying it off. They were supposed to be working together. Then they had a no contact order so they couldn't. So they're now basically pointing at each other saying this is – she's saying this is his fault, he's saying that's her fault. That's an antagonistic defense. I mean I should not be –

The Court: Well, it's – that related – it's not a defense to the case –

Mr. Weiner: Well—

The Court: - because if it says why –

Mr. Weiner: - in terms of sentencing.

The Court: -- restitution wasn't paid and this is joint and several which means if one –  
Mr. Weiner: Correct.  
The Court: doesn't pay the other owes the full amount. ...

With respect to Applicant's good faith efforts to pay restitution, there was no dispute that Applicant had recorded a lien in the State's favor for over \$600,000. Applicant had relied on his codefendant to work on selling the property at first, but had since intervened, the home was valued by the assessor at over one-million dollars. Further, codefendant Jessica Garcia was subject to a domestic violence no contact order with respect to Applicant and that was the cause for the delay. Applicant had even presented the State with a letter from the real estate agent showing that the property had been actively marketed.

## **B. Argument**

### **a. The District Court Erred by Permitting the State to Breach the Plea Agreement without Holding an Evidentiary Hearing under *Gamble v. State*, 95 Nev. 904 (1979), etc., to Determine Blame for the Breach**

At the first sentencing hearing, the State argued for imprisonment, falsely accusing Appellant of doing nothing to pay the restitution when in fact Appellant had been trying to sell a piece of property that the State had already tied up the property in civil litigation.

This Court held in *Gamble v. State*, 95 Nev. 905 (1979) and *Villalpando v. State*, 107 Nev. 465 (1991), held that an evidentiary hearing is required where the

State alleges a defendant breached the agreement unless the defendant is “obviously to blame” for the breach of the agreement. See Sparks v. State, 121 Nev. 107, 111 (2005) (citations omitted). “When the State enters into a plea agreement, it is held to the most meticulous standards of both promise and performance with respect to both the terms and the spirit of the plea bargain.” See Sparks v. State, 121 Nev. 107, 110 (2005) (citations omitted).

In Sparks, the defendant entered into a guilty plea agreement that gave the State the full right to argue if he either committed a new criminal offense or failed to appear at his sentencing hearing. Id. The defendant in Sparks did not offer a reason for the apparent breach of the agreement, instead argued that the clause was unenforceable; the Supreme Court of Nevada disagreed and affirmed the judgment of conviction.

Here and unlike in Sparks, Appellant made good faith efforts to pay the restitution before the imposition of sentence, gave reasons why the sale of the property had not been completed to that end and rebutted the State’s claim that Appellant was not asking a good faith asking price for the home valued at seven figures. Appellant complied with all the terms as best as he could and was hindered by his co-defendant and the actions of the State, i.e., requiring the placement of the lien on the property and the initiation of the lawsuit.

The State's actions in this case are particularly troubling. To both require the sale of a property to pay restitution and at the same time require that a lien be placed on the same property is akin to requiring a defendant to appear at a sentencing hearing while blockading them in their home.

The district court, perhaps blinded by its anger, ("I'm not mad --... at you Counsel. You did your job. ... These people need to pay the price."), did not meticulously hold the State to its end of the bargain and require them to make a showing that Appellant's good faith efforts were insufficient under the letter or spirit of the guilty plea agreement.

**b. The District Court Erred by Denying Motion to Withdraw Counsel with an Unwaivable Conflict under Clark v. State, 108 Nev. 324 (1992)**

Counsel for Appellant moved the court to withdraw based on a conflict of interest at the sentencing hearing. At the time, counsel for Appellant was also counsel for his codefendant. Given that Appellant and his codefendant were accused as coconspirators in a fraudulent scheme, it is not apparent how such a conflict could have been waived in the first place, much less at sentencing after Appellant's codefendant failed to cooperate to pay the restitution and had a been involved in a domestic violence incident with Appellant.

Nevada Rules of Professional Conduct, Rule 1.7, provides:



(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) Each affected client gives informed consent, confirmed in writing.

NRPC 1.7 (2006).

Here, under NRPC 1.7(a), the conflict of interest clearly existed prior to and through sentencing. The concurrent conflict of interest existed from the inception of the case because there was a "significant risk the representation" of Appellant would be materially limited by the lawyer's responsibilities to Appellant's codefendant, i.e., Appellant and Appellant's codefendant could at trial point the finger at the other as to who misrepresented unencumbered status of the properties that were sold.

Whether the waiver was proper prior to sentencing turns on the actual defenses of the parties, but by the time Appellant was sentenced, the conflict had ripened into an unwaivable conflict under NRPC 1.7(b)(3). At sentencing, Appellant and his codefendant had been required to pay restitution, but it was not paid due to

Appellant's codefendant's malfeasance and domestic violence restraining order against her. In order to explain why he could not pay restitution, Appellant needed zealous counsel to point out that the failure was due to circumstances outside of his control including the actions of his codefendant. However, he did not have unconflicted counsel and zealous representation.

At sentencing, counsel for Appellant and his codefendant, was in an awkward place. He could not throw Appellant's codefendant under the proverbial bus by, for instance, showing the court evidence of that codefendant's domestic violence against Appellant. Counsel was told by bar counsel to move to withdraw but the court ignored the mandate of bar counsel and substituted its own flawed judgment for that of experienced ethics professionals. This was an abuse of discretion. See Wilmes v. Reno Mun. Ct., 59 P.3d 1197, 118 Nev. 831 (2002) (district attorney representing municipal court in mandamus action not an abuse of discretion).

Every defendant has the constitutional right to assistance of counsel unhindered by conflicting interests. U.S. Const. Amend. VI; Hollaway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173 (1978); Clark v. State, 108 Nev. 324, 326 (1992). In Clark, the Court found that where an actual conflict of interest which adversely affects a lawyer's performance will result in a presumption of prejudice to the defendant. Id. (citations omitted). The Clark, the court found that the lower court

erred by requiring the appellant to show he was prejudiced by his lawyer's conflict of interest.

The court abused its discretion by denying Appellant's motion to withdraw due to a conflict of interest. The case should be remanded for a new sentencing hearing with either a reasonable time to close the sale of the million dollar home, or to permit the State to seize the property and sell it for restitution per their civil complaint for forfeiture.

**I. CONCLUSION**

The Court of Appeals erroneously and in conflict with the United States Constitution, prior decisions of this Court, denied Appellant/Petitioner relief and the Court should grant this Petition for Review.

Dated this 28<sup>th</sup> day of September, 2018

By:

/s/ Lester M. Paredes III, Esq.  
Lester M. Paredes III, Esq.  
Nevada Bar Number 11236  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that service of the foregoing **APPELLANT'S PETITION FOR REVIEW** was made this 28th of September, 2018, upon the appropriate parties hereto by electronic filing using the ECF system which will send a notice of electronic filing to the following and/or by facsimile transmission to:

STEVEN S. OWENS, ESQ.  
Chief Deputy District Attorney  
Nevada Bar No. 4352  
200 S. Third Street  
P.O. Box. 552212  
Las Vegas, NV 89155  
[Steven.Owens@clarkcountyda.com](mailto:Steven.Owens@clarkcountyda.com)  
**(702) 382-5815-Fax**  
Counsel for Respondent

ADAM P. LAXALT, ESQ.  
Nevada Attorney General  
Nevada Bar #12426  
100 North Carson Street  
Carson City, Nevada 89701  
[Adam.Laxalt@ag.nv.gov](mailto:Adam.Laxalt@ag.nv.gov)  
**(702) 486-3768-Fax**  
Counsel for Respondent

By:

/s/ Lester M. Paredes III, Esq.  
Lester M. Paredes III, Esq.  
Nevada Bar Number 11236

# EXHIBIT 5

## EXHIBIT 5

ORDER DENYING PETITION FOR  
REVIEW

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK LEAL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74050

FILED

NOV 28 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.

It is so ORDERED.<sup>1</sup>

Douglas, C.J.  
Douglas

Pickering, J.  
Pickering

Parraguirre, J.  
Parraguirre

Cherry, J.  
Cherry

Hardesty, J.  
Hardesty

Stiglich, J.  
Stiglich

cc: Hon. Michael Villani, District Judge  
Mueller Hinds & Associates  
Attorney General/Carson City  
Attorney General/Las Vegas  
Clark County District Attorney  
Eighth District Court Clerk

<sup>1</sup>The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.

# EXHIBIT 6

## EXHIBIT 6

### CONFLICT OF INTEREST WAIVER

### CONFLICT-OF-INTEREST WAIVER

I, Jack Leal, am a defendant in the case of *State of Nevada v. Jack Leal*. I acknowledge that attorney Jason. G. Weiner, Esq. of the Weiner Law Group, LLC, will be representing both myself and my co-defendant in the above-stated case. I understand that this dual-representation may result in a conflict-of-interest wherein my attorney will be precluded from taking certain actions, including actions that would be beneficial to my individual case, because he is obligated to protect both my interests and the interests of my co-defendant simultaneously. This possibility has been fully and completely explained to me by my attorney who has additionally provided a copy of NRPC 1.7 (attached) which delineates his responsibilities.

Jason. G. Weiner, Esq. , has advised me of my right to consult with independent counsel to review the potential conflict of interest posed by dual representation and the consequences of waiving the right to conflict free representation. If I choose not to seek advice of independent counsel then I expressly waive my right to do so.

I hereby waive my right to withdraw my guilty plea or to a mistrial as a result of Jason. G. Weiner, Esq.'s potential or actual conflict of interest depriving me of my right to effective assistance of counsel arising from the dual representation.

I understand that joint representation presents a number of risks including: the possibility of inconsistent pleas; factually inconsistent alibis; conflicts in testimony; difference in degree of involvement in the crime; tactical admission of evidence; the calling, cross-examination. And impeachment of witnesses; strategy in final argument; and the possibility of guilt by association.

I understand that this waiver of conflict is binding throughout trial, on appeal, and in habeas proceedings.



In spite of the known risk, I hereby knowingly, intelligently, and voluntarily consent to dual representation wherein attorney Jason G. Weiner, Esq. of the Weiner Law Group will represent both me and my co-defendant in the above-stated case.

Dated this 20<sup>th</sup> day of April, 2017

  
\_\_\_\_\_  
JACK LEAL

**Rule 1.7. Conflict of Interest: Current Clients**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) Each affected client gives informed consent, confirmed in writing.

  
Initial

# EXHIBIT 7

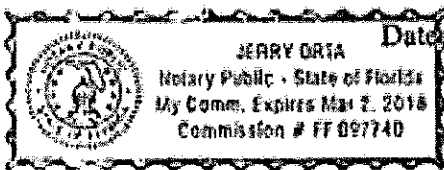
## EXHIBIT 7

### CONFLICT OF INTEREST WAIVER

**CONFLICT-OF-INTEREST WAIVER**

I, Jack Leal, am a defendant in the case of *State of Nevada v. Jack Leal*, Case Number 16F19220B. I acknowledge that attorney Jason G. Weiner, Esq. of the Weiner Law Group, LLC, will be representing both myself and my co-defendant in the above-stated case. I understand that this dual-representation may result in a conflict-of-interest wherein my attorney will be precluded from taking certain actions, including actions that would be beneficial to my individual case, because he is obligated to protect both my interests and the interests of my co-defendant simultaneously. This possibility has been fully and completely explained to me by my attorney who has additionally provided a copy of NRPC 1.7 (attached) which delineates his responsibilities.


In spite of the known risk, I hereby knowingly, intelligently, and voluntarily consent to dual representation wherein attorney Jason G. Weiner, Esq. of the Weiner Law Group will represent both me and my co-defendant in the above-stated case and I do hereby waive any right to later file an appeal or claim ineffective assistance of counsel based on a conflict-of-interest arising out of this dual representation.



Dated this 10<sup>th</sup> day of April, 2017

  
SIGNATURE

SUBSCRIBED AND SWORN TO  
before me this 10 day of April, 2017.

  
NOTARY PUBLIC

**Rule 1.7. Conflict of Interest: Current Clients.**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) The representation of one client will be directly adverse to another client; or
- (2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) The representation is not prohibited by law;
- (3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) Each affected client gives informed consent, confirmed in writing.

  
Initial

# EXHIBIT 8

## EXHIBIT 8

### GUILTY PLEA AGREEMENT

APR 24 2017

BY, Kristen Brown  
KRISTEN BROWN, DEPUTY

1 GPA  
ADAM PAUL LAXALT  
2 Attorney General  
Michael C. Kovac Bar No. 11177  
3 Senior Deputy Attorney General  
Chelsea Kallas Bar No. 13902  
4 Deputy Attorney General  
Office of the Attorney General  
5 555 E. Washington Ave., Ste. 3900  
Las Vegas, Nevada 89101-1068  
6 P: (702) 486-3420  
F: (702) 486-2377  
7 mkovac@ag.nv.gov  
Attorneys for the State of Nevada

8  
9 DISTRICT COURT  
CLARK COUNTY, NEVADA

10  
11 STATE OF NEVADA,  
12 Plaintiff,

Case No.: C-17-322664-2  
Dept. No.: 17

13 v.

14 JACK LEAL,  
15 Defendant.

16  
17 GUILTY PLEA AGREEMENT

18 I hereby agree to plead guilty to: MULTIPLE TRANSACTIONS INVOLVING FRAUD OR  
19 DECEIT IN THE COURSE OF AN ENTERPRISE OR OCCUPATION, a CATEGORY B Felony, in  
20 violation of NRS 205.377, as more fully alleged in the charging document attached hereto as Exhibit "1."

21 My decision to plead guilty is based upon the plea agreement in this case which is as follows:

22 1. I, JACK LEAL, will enter a plea of GUILTY to MULTIPLE TRANSACTIONS  
23 INVOLVING FRAUD OR DECEIT IN THE COURSE OF AN ENTERPRISE OR OCCUPATION, in  
24 violation of NRS 205.377, as alleged in Count One of the Criminal Information attached hereto as Exhibit  
25 "1";

26 2. I, JACK LEAL, will pay restitution to the named and unnamed victims in the total amount  
27 of seven hundred fifty-seven thousand four hundred twenty dollars (\$757,420) as follows:

28 i. \$70,000 to LoryLee Plancarte;

C-17-322664-2  
GPA  
Guilty Plea Agreement  
4643783 STATE 00156



- 1           ii.   \$75,000 to Edelyn Rudin;
- 2           iii.   \$37,500 to Chatty Becker;
- 3           iv.   \$57,500 to Irene Segura;
- 4           v.    \$98,620 to Lih-Ling Yang;
- 5           vi.    \$90,300 to Lina Palafox;
- 6           vii.   \$85,000 to Adilson Gibellato;
- 7           viii.   \$50,000 to Juan Eloy Ramirez;
- 8           ix.    \$115,000 to Catherine Wyngarden;
- 9           x.     \$25,000 to Shahram Bozorgnia; and
- 10          xi.    \$53,500 to Tat Lam.

11           3.     Should any of the named victims have previously recovered any of their losses, they shall  
12 not be entitled to restitution covering any such sum; instead, the portion of the restitution covering said  
13 sum shall instead be forfeited to the State of Nevada, Office of the Attorney General;

14           4.     I, JACK LEAL, shall pay the restitution in full at or before the time I am sentenced in the  
15 present case;

16           5.     I, JACK LEAL, and my co-conspirator, JESSICA GARCIA, are jointly and severally  
17 responsible for said restitution;

18           6.     Should I, JACK LEAL, pay restitution in full at or before the time I am sentenced in the  
19 present case, the State will not oppose the imposition of a term of probation not to exceed a term of five  
20 years, with a suspended 36- to-90 month term of imprisonment;

21           7.     Should I, JACK LEAL, fail to pay restitution in full at or before the time I am sentenced in  
22 the present case, the State will retain the right to argue for the imposition of a term of imprisonment;

23           8.     I, JACK LEAL, agree that the \$157,105.17 seized in relation to the present case shall be  
24 forfeited to the State of Nevada, Office of the Attorney General, with said money to be applied to my  
25 restitution requirements;

26           9.     I, JACK LEAL, will execute and file in the Clark County Recorder's Office a lien  
27 agreement and lien in favor of the State of Nevada, Office of the Attorney General, in the amount of  
28 \$600,314.83 against the home located at 1024 Santa Helena Avenue, Henderson, Nevada 89002, assessor

**STATE 00157**



1 parcel number 179-33-710-056, legally described as MISSION HILLS EST AMD PLAT BOOK 17 PAGE  
2 12 LOT 223 & LOT 223A, with the proceeds of the sale of said home to be applied to my restitution  
3 requirements;

4 10. I, JACK LEAL, will pay all fees and costs imposed by the Court;

5 11. I, JACK LEAL, will submit to any and all terms and conditions imposed by the Division of  
6 Parole and Probation, if granted probation;

7 12. I understand that, pursuant to NRS 176.015(3), victims so desiring will be allowed to make  
8 impact statements; and

9 13. I understand and agree that, if I fail to interview with the Department of Parole and  
10 Probation, fail to appear at any subsequent hearings in this case, or an independent judge or magistrate, by  
11 affidavit review or other satisfactory proof, confirms probable cause against me for new criminal charges,  
12 including reckless driving or DUI, but excluding minor traffic violations, that the State will have the  
13 unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to  
14 which I am pleading guilty, including the use of any prior convictions I may have to increase my sentence  
15 as a habitual criminal to five (5) to twenty (20) years, life without the possibility of parole, life with the  
16 possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of  
17 parole after ten (10) years. Otherwise, I am entitled to receive the benefits of these negotiations as stated  
18 in the plea agreement.

#### 19 CONSEQUENCES OF THE PLEA

20 I understand that by pleading guilty I admit the facts that support all the elements of the offense(s)  
21 to which I now plead as set forth in Exhibit "1."

22 I understand that as a consequence of my plea of guilty the Court must sentence me to  
23 imprisonment in the Nevada Department of Corrections for a minimum term of not less than one year and  
24 a maximum term of not more than 20 years. The minimum term of imprisonment may not exceed forty  
25 percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to \$10,000.  
26 I understand the law requires me to pay an Administrative Assessment Fee.

27 I understand that, if appropriate, I will be ordered to make restitution to the victim(s) of the  
28 offense(s) to which I am pleading guilty and to the victim(s) of any related offense(s) being dismissed or

STATE 00158

1 not prosecuted pursuant to this agreement. I will also be ordered to reimburse the State of Nevada for any  
2 expenses related to my extradition, if any.

3 I understand that I am eligible for probation for the offense(s) to which I am pleading guilty. I  
4 further understand that, except as otherwise provided by statute, the question of whether I receive  
5 probation is in the discretion of the sentencing judge.

6 I also understand that I must submit to blood and/or saliva tests under the direction of the Division  
7 of Parole and Probation to determine genetic markers and/or secretor status.

8 I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve  
9 the sentences concurrently, the sentencing judge has the discretion to order the sentences served  
10 concurrently or consecutively.

11 I understand that information regarding charges not filed, dismissed charges, or charges to be  
12 dismissed pursuant to this agreement may be considered by the judge at sentencing.

13 I have not been promised or guaranteed any particular sentence by anyone. I know that my  
14 sentence is to be determined by the Court within the limits prescribed by statute. I understand that if my  
15 attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not  
16 obligated to accept the recommendation.

17 I understand the Division of Parole and Probation will prepare a report for the sentencing judge  
18 prior to sentencing. This report will include matters relevant to the issue of sentencing, including my  
19 criminal history. This report may contain hearsay information regarding my background and criminal  
20 history. My attorney and I will each have the opportunity to comment on the information contained in the  
21 report at the time of sentencing. Unless the Attorney General has specifically agreed otherwise, the  
22 Attorney General may also comment on this report.

23 I understand if the offense to which I am pleading guilty was committed while I was incarcerated  
24 on another charge or while I was on probation or parole that I am not eligible for credit for time served  
25 toward the instant offense(s).

26 I understand that if I am not a United States citizen, this criminal conviction will likely result in  
27 serious negative immigration consequences including but not limited to: removal from the United States  
28 through deportation; an inability to reenter the United States; the inability to gain United States citizenship

**STATE 00159**

1 or legal residency; an inability to renew and/or retain any legal residency status; and/or an indeterminate  
2 term of confinement, with the United States Federal Government based on my conviction and immigration  
3 status. Regardless of what I have been told by an attorney, no one can promise me that this conviction will  
4 not result in negative immigration consequences and/or impact my ability to become a United States  
5 citizen and/or legal resident.

#### 6 WAIVER OF RIGHTS

7 By entering my plea of guilty, I understand that I am waiving and forever giving up the following  
8 rights and privileges:

9 1. The constitutional privilege against self-incrimination, including the right to refuse to  
10 testify at trial, in which event the prosecution would not be allowed to comment to the jury about my  
11 refusal to testify.

12 2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive  
13 pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an  
14 attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a  
15 reasonable doubt each element of the offense charged.

16 3. The constitutional right to confront and cross-examine any witnesses who would testify  
17 against me.

18 4. The constitutional right to subpoena witnesses to testify on my behalf.

19 5. The constitutional right to testify in my own defense.

20 6. The right to appeal the conviction, with the assistance of an attorney, either appointed or  
21 retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that  
22 challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS  
23 174.035.

#### 24 VOLUNTARINESS OF PLEA

25 I have discussed the elements of all the original charges against me with my attorney and I  
26 understand the nature of the charges against me.

27 I understand the State would have to prove each element of the charges against me at trial.

28 I have discussed with my attorney any possible defenses, defense strategies and circumstances

STATE 00160

1 which might be in my favor.

2 All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly  
3 explained to me by my attorney.

4 I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial  
5 would be contrary to my best interest.

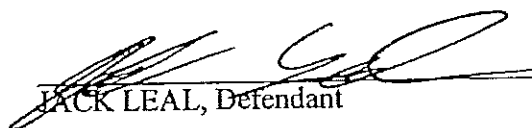
6 I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting  
7 under duress or coercion or by virtue of any promises of leniency, except for those set forth in this  
8 agreement.

9 I am not now under the influence of any intoxicating liquor, a controlled substance or other drug  
10 which would in any manner impair my ability to comprehend or understand this agreement or the  
11 proceedings surrounding my entry of this plea.


12 My attorney has answered all my questions regarding this guilty plea agreement and its  
13 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

14 DATED this 21<sup>st</sup> day of April, 2017

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JACK LEAL, Defendant

AGREED TO BY:

  
Michael C. Kovac  
Senior Deputy Attorney General

**CERTIFICATE OF DEFENSE COUNSEL**

1  
2 I, the undersigned, as the attorney for JACK LEAL named herein and as an officer of the court  
3 hereby certify that:

4 1. I have fully explained to JACK LEAL the allegations contained in the charges to which  
5 guilty pleas are being entered.

6 2. I have advised JACK LEAL of the penalties for each charge and the restitution that JACK  
7 LEAL may be ordered to pay.

8 3. I have inquired of JACK LEAL facts concerning JACK LEAL's immigration status and  
9 explained to JACK LEAL that if JACK LEAL is not a United States citizen any criminal conviction will  
10 most likely result in serious negative immigration consequences including but not limited to:

- 11 a. The removal from the United States through deportation;
- 12 b. An inability to reenter the United States;
- 13 c. The inability to gain United States citizenship or legal residency;
- 14 d. An inability to renew and/or retain any legal residency status; and/or
- 15 e. An indeterminate term of confinement with the United States Federal Government  
16 based on his/her conviction and immigration status.

17 Moreover, I have explained that regardless of what JACK LEAL may have been told by any  
18 attorney, no one can promise JACK LEAL that this conviction will not result in negative immigration  
19 consequences and/or impact JACK LEAL's ability to become a United States citizen and/or legal resident.

20 4. All pleas of guilty offered by JACK LEAL pursuant to this agreement are consistent with  
21 all the facts known to me, and are made with my advice to JACK LEAL and are in the best interest of  
22 JACK LEAL:

23 ///

24 ///

25 ///

26 ///

27 ///

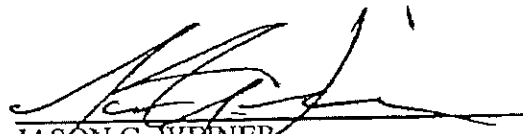
28 ///

**STATE 00162**

1 5. To the best of my knowledge and belief JACK LEAL:

- 2 a. Is competent and understands the charges and the consequences of pleading guilty as  
3 provided in this agreement.  
4 b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily.  
5 c. Was not under the influence of intoxicating liquor, a controlled substances or other drug  
6 at the time of the execution of this agreement.

7  
8  
9 DATED this 27<sup>th</sup> day of April, 2017

10  
11   
12 JASON G. WEINER  
13 Attorney for JACK LEAL  
14  
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28

# EXHIBIT 1

STATE 00164

  
CLERK OF THE COURT

1 INFM  
ADAM PAUL LAXALT  
2 Attorney General  
Michael C. Kovac (Bar No. 11177)  
3 Senior Deputy Attorney General  
Chelsea Kallas Bar No. 13902  
4 Deputy Attorney General  
Office of the Attorney General  
5 555 E. Washington Ave., Ste. 3900  
Las Vegas, Nevada 89101-1068  
6 P: (702) 486-3420  
F: (702) 486-2377  
7 mkovac@ag.nv.gov  
*Attorneys for the State of Nevada*

8  
9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11  
12 STATE OF NEVADA,

13 Plaintiff,

14 v.

15 JACK LEAL, and JESSICA GARCIA

16 Defendant(s).

Case No.: C-17-322664-2

Dept. No.: 17

17  
18 **INFORMATION**

19 ADAM PAUL LAXALT, Attorney General for the State of Nevada, in the name and by the  
20 authority of the State of Nevada, informs the Court: JACK LEAL and JESSICA GARCIA have  
21 committed the crime(s) of one (1) count of MULTIPLE TRANSACTIONS INVOLVING FRAUD OR  
22 DECEIT IN THE COURSE OF AN ENTERPRISE AND OCCUPATION, a category "B" felony in  
23 violation of NRS 205.377.

24 All of the acts alleged herein have been committed or completed on or between about March 1,  
25 2015 and March 31, 2016, by the above-named Defendant(s), within the County of Clark, State of Nevada,  
26 in the following manner:

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STATE 00165



1 **COUNT 1**  
2 **MULTIPLE TRANSACTIONS INVOLVING FRAUD OR DECEIT IN COURSE OF**  
3 **ENTERPRISE OR OCCUPATION**  
4 **Category "B" Felony - NRS 205.377**

5 The Defendant(s), **JACK LEAL** and **JESSICA GARCIA**, in the County of Clark, State of  
6 Nevada, did, in the course of an enterprise or occupation, knowingly and with the intent to defraud,  
7 engaged in an act, practice or course of business or employed a device, scheme or artifice which operated  
8 or would have operated as a fraud or deceit upon a person by means of a false representation or omission  
9 of a material fact that: (a) the person knew to be false or omitted; (b) the person intended another to rely  
10 on; and (c) resulted in a loss to any person who relied on the false representation or omission, in at least  
11 two transactions that had the same or similar pattern, intents, results, accomplices, victims or methods of  
12 commission, or were otherwise interrelated by distinguishing characteristics and were not isolated  
13 incidents within 4 years and in which the aggregate loss or intended loss was more than \$650, to wit:

14 On or about March 1, 2015 through March 31, 2016, in and through the course of a real estate  
15 enterprise known as **PARCELNOMICS, LLC** (d/b/a **INVESTMENT DEALS**), Defendants knowingly and  
16 with the intent to defraud, obtained thousands of dollars from **LoryLee Plancarte**, **Edelyn Rubin**, **Chatty**  
17 **Becker**, **Irene Segura**, **Lih-Ling Yang**, **Lina Palafox**, **Juan Eloy Ramirez**, **Catherine Wyngarden**, **Shahram**  
18 **Bozorgnia**, **Tat Lam**, and **Adilson Gibellato** by means of knowingly and falsely representing to said  
19 individuals that the titles to properties being sold to them by the defendants were not encumbered by liens  
20 or other security interests, intending that said individuals rely on said misrepresentations, and resulting in a  
21 loss of more than \$650.00.

22 All of which constitutes the crime of **MULTIPLE TRANSACTIONS INVOLVING FRAUD OR**  
23 **DECEIT IN THE COURSE OF AN ENTERPRISE AND OCCUPATION**, a category "B" felony in  
24 violation of **NRS 205.377**.

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**STATE 00166**

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All of which is contrary to the form, force and effect of the statutes in such cases made and provided,  
and against the peace and dignity of the state of Nevada.

DATED this 18<sup>th</sup> day of April, 2017.

SUBMITTED BY  
ADAM PAUL LAXALT  
Attorney General

By: /s/ MICHAEL C. KOVAC  
Michael C. Kovac (Bar No. 11177)  
Senior Deputy Attorney General  
*Attorneys for the State of Nevada*

### CONFLICT-OF-INTEREST WAIVER

I, Jack Leal, am a defendant in the case of *State of Nevada v. Jack Leal*. I acknowledge that attorney Jason. G. Weiner, Esq. of the Weiner Law Group, LLC, will be representing both myself and my co-defendant in the above-stated case. I understand that this dual-representation may result in a conflict-of-interest wherein my attorney will be precluded from taking certain actions, including actions that would be beneficial to my individual case, because he is obligated to protect both my interests and the interests of my co-defendant simultaneously. This possibility has been fully and completely explained to me by my attorney who has additionally provided a copy of NRPC 1.7 (attached) which delineates his responsibilities.

Jason. G. Weiner, Esq. , has advised me of my right to consult with independent counsel to review the potential conflict of interest posed by dual representation and the consequences of waiving the right to conflict free representation. If I choose not to seek advice of independent counsel then I expressly waive my right to do so.


I hereby waive my right to withdraw my guilty plea or to a mistrial as a result of Jason. G. Weiner, Esq.'s potential or actual conflict of interest depriving me of my right to effective assistance of counsel arising from the dual representation.

I understand that joint representation presents a number of risks including: the possibility of inconsistent pleas; factually inconsistent alibis; conflicts in testimony; difference in degree of involvement in the crime; tactical admission of evidence; the calling, cross-examination. And impeachment of witnesses; strategy in final argument; and the possibility of guilt by association.

I understand that this waiver of conflict is binding throughout trial, on appeal, and in habeas proceedings.

In spite of the known risk, I hereby knowingly, intelligently, and voluntarily consent to dual representation wherein attorney Jason G. Weiner, Esq. of the Weiner Law Group will represent both me and my co-defendant in the above-stated case.

Dated this 20<sup>th</sup> day of April, 2017

  
\_\_\_\_\_  
JACK LEAL

**Rule 1.7. Conflict of Interest: Current Clients**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) Each affected client gives informed consent, confirmed in writing.

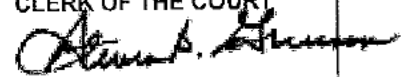
  
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# EXHIBIT 9

## EXHIBIT 9

RECORDER'S TRANSCRIPT OF  
HEARING RE: ARRAIGNMENT  
CONT.

STATE 00171



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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

)

CASE NO. C-17-322664-2

9

Plaintiff,

)

DEPT. XVII

10

vs.

)

(ARRAIGNMENT HELD IN DEPT. LLA)

11

JACK LEAL,

)

12

)

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Defendant.

)

14

BEFORE THE HONORABLE JENNIFER L. HENRY, HEARING MASTER  
MONDAY, APRIL 24, 2017

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16

**RECORDER'S TRANSCRIPT OF HEARING RE:  
ARRAIGNMENT CONTINUED**

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APPEARANCES:

20

For the State:

MICHAEL KOVAC, ESQ.,

Senior Deputy Attorney General

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For the Defendant:

JASON WEINER, ESQ.,

Attorney at Law

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RECORDED BY: KIARA SCHMIDT, COURT RECORDER

STATE 00172

1 MONDAY, APRIL 24, 2017

2 \* \* \* \* \*

3 P R O C E E D I N G S

4  
5 THE CLERK: Jack Leal, C322664-2.

6 THE COURT: All right. And, counsels, can I get  
7 both of your appearances for the record?

8 MR. WEINER: Your Honor, Jason Weiner, Bar  
9 No. 7555, on behalf of Jack Leal.

10 MR. KOVAC: Good afternoon. Michael Kovac, Bar  
11 No. 11177, for the State of Nevada.

12 THE COURT: Thank you.

13 Sir, you're going to be pleading guilty to multiple  
14 transactions involving fraud or deceit in the course of an  
15 enterprise or occupation, that would be a category B felony.

16 You agree to pay restitution to the named and  
17 unnamed victims in the total amount of \$757,420 as follows:

18 That would be \$70,000 to LoryLee Plancarte; \$75,000  
19 to Edelyn Rubin; \$37,500 to Chatty Becker; \$57,500 to Irene  
20 Segura; \$98,620 to Lih-Ling Yang; \$90,300 to Lina Palafox;  
21 \$85,000 to Adilson Gibellato; \$50,000 to Juan Eloy Ramirez;  
22 \$115,000 to Catherine Wyngardner -- Wyngarden. Sorry,  
23 Catherine Wyngarden; \$25,000 to Shahram Bozorgnia; and  
24 \$53,500 to Tat Lam.

25 Should the named victims have previously recovered



1 any of their losses, they should not be entitled to  
2 restitution covering any such sum, instead, the portion of  
3 the restitution covering said sum shall be forfeited to the  
4 State of Nevada, Office of the Attorney General.

5           You agree to pay restitution in full on or before  
6 the time that you're sentenced in this case, that you and  
7 your co-conspirator, Jessica Garcia, are jointly and  
8 severally responsible for the restitution, that should you  
9 pay restitution in full at or before the time you're  
10 sentenced in the present case the State will not oppose the  
11 imposition of a term of probation not to exceed five years  
12 with a suspended 36 to 90 months term of imprisonment.

13           If you fail to pay restitution in full at or before  
14 the time you are sentenced in the present case, the State  
15 will retain the right to argue for the imposition of a term  
16 of imprisonment.

17           You agree that the \$157,105.17 seized in relation  
18 to the present case shall be forfeited to the State of  
19 Nevada, Office of the Attorney General, and said money shall  
20 be applied to your restitution requirements, that you will  
21 execute and file in the Clark County Recorder's office a  
22 lien agreement and lien in favor of the State of Nevada,  
23 Office of the Attorney General, in the amount of \$600,314.83  
24 against the home located at 1024 Santa Helena Avenue,  
25 Henderson, Nevada, 89002, assessor's parcel number

1 179-33-710-065[sic].

2 MR. WEINER: 056, your Honor, 056.

3 THE COURT: Oh, I'm sorry, 056. That would be 179-  
4 33-710-056, legally described as Mission Hills EST AMD Plat  
5 Book 17 Page 12 Lot 223 & Lot 223A, with the proceeds of the  
6 sale of the home to be applied to any restitution  
7 requirements. You will pay all fees and costs imposed by  
8 the Court. You will submit to any of the terms and  
9 conditions of the Division of Parole and Probation if  
10 probation is granted, and that you understand that victims  
11 may make impact statements.

12 Is that correct, State?

13 MR. KOVAC: That's correct, your Honor.

14 THE COURT: Counsel, correct.

15 MR. WEINER: That is correct, your Honor.

16 THE COURT: I apologize. I was doing really well  
17 this morning.

18 Sir, is that your understanding of the agreement  
19 and negotiation?

20 THE DEFENDANT: Yes, it is.

21 THE COURT: So what is your true, full name?

22 THE DEFENDANT: Jack Leal.

23 THE COURT: And how old are you?

24 THE DEFENDANT: Thirty-two.

25 THE COURT: How far did you go in school?

1 THE DEFENDANT: Some college.

2 THE COURT: Okay. So do you read, write, and  
3 understand the English language?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you currently taking any medication  
6 or do you have a medical condition that would cause you not  
7 to understand the terms of this guilty plea agreement or  
8 these proceedings today?

9 THE DEFENDANT: No.

10 THE COURT: Do you understand that you're being  
11 charged with multiple transactions involving fraud or deceit  
12 in the course of an enterprise or occupation, that would be  
13 a category B felony?

14 THE DEFENDANT: Yes.

15 THE COURT: And how do you plead to that, guilty or  
16 not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: Is anybody forcing you to plead guilty?

19 THE DEFENDANT: No.

20 THE COURT: Are you pleading guilty of your own  
21 free will?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand as a consequence of  
24 pleading guilty this Court must sentence you to time in the  
25 Nevada Department of Corrections for a period of not less

1 than one year, not more than 20 years, fine you up to  
2 \$10,000 and have you pay an administrative assessment fee?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that this is a  
5 probationable offense?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that sentencing will  
8 be strictly up to the Court so nobody can promise you  
9 probation, leniency, or special treatment?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay, sir. I do have the original  
12 guilty plea in front of me. Did you read it?

13 THE DEFENDANT: Yes.

14 THE COURT: And did you understand it?

15 THE DEFENDANT: Yes.

16 THE COURT: Was your attorney present with you to  
17 answer any questions you had on this guilty plea agreement?

18 THE DEFENDANT: Yes.

19 THE COURT: Were you satisfied with his services?

20 THE DEFENDANT: Yes.

21 THE COURT: Did you sign this agreement?

22 THE DEFENDANT: Yes.

23 THE COURT: I'm going to show you page six. Is  
24 this your signature?

25 THE DEFENDANT: Yes.

1 THE COURT: And did you sign this document freely  
2 and voluntarily?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that by pleading  
5 guilty you're giving up the constitutional rights that are  
6 listed in this agreement?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand if you're not a U.S.  
9 citizen you could be deported based upon your guilty plea?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you discuss your case and your  
12 rights with your attorney?

13 THE DEFENDANT: Yes.

14 THE COURT: And did you have any questions  
15 regarding those rights or this negotiation?

16 THE DEFENDANT: No.

17 THE COURT: Are you pleading guilty because on or  
18 between March the 1<sup>st</sup> of the year 2015 and March the 31<sup>st</sup> of  
19 the year 2016, in Clark County, Nevada, you and Jessica  
20 Garcia did, in the course of an enterprise or occupation,  
21 knowingly and with the intent to defraud, engage in an act,  
22 practice, or course of business, or employed a device,  
23 scheme, or artifice which operated or would have operated as  
24 a fraud or deceit upon a person by means of a false  
25 representation or omission of a material fact that, A, the

1 person knew to be false or omitted or, B, the person  
2 intended another to rely on and, C, resulted in a loss to  
3 any person who relied on the false representation or  
4 omission in at least two transactions that had the same or  
5 similar pattern, intents, results, accomplices, victims, or  
6 methods of commission, or were otherwise interrelated by  
7 distinguishing characteristics and were not isolated  
8 incidents within four years in which the aggregate loss or  
9 intended loss was more than \$650, that being, on or between  
10 March the 1<sup>st</sup> of 2015 and March the 31<sup>st</sup> of 2016 that in and  
11 through the course of a real estate enterprise known as  
12 Parcelnomics, LLC, doing business as Investment Deals, you  
13 knowingly and with the intent to defraud obtained thousands  
14 of dollars from LoryLee Plancarte, Edelyn Rubin, Chatty  
15 Becker, Irene Segura, Lih-Ling Yang, Lina Palafox, Juan  
16 Eloy Ramirez, Catherine Wyngardner -- Wyngarden, I'm sorry,  
17 Catherine Wyngarden, Shahram Bozorgnia, Tat Lam, and Adilson  
18 Gibellato, by means of knowingly and falsely representing to  
19 said individuals that the titles to properties being sold to  
20 them by you were not encumbered by liens or other security  
21 interests, intending that said individuals rely on the  
22 misrepresentations and resulting in a loss of more than  
23 \$650; is that true?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. This Court will accept your

1 plea as being freely and voluntarily entered today.

2 And, counsel, I do need you to approach and sign  
3 the certificate of counsel.

4 MR. WEINER: Yeah, that's what I was kind of  
5 leaning forward to see.

6 THE COURT: Sir, I am going to refer you to Parole  
7 and Probation for what's called a presentence investigation  
8 report. You do have 48 hours from now to report for that  
9 interview, and then you're ordered to come back for  
10 sentencing on the following date.

11 THE CLERK: August 15<sup>th</sup>, 8:30, Department 17.

12 THE COURT: And, for the record, I do have the  
13 conflict of interest waiver in front of me where Mr. Jack  
14 Leal is agreeing that Mr. Weiner can also represent the  
15 co-defendant, and that there's not a conflict of interest.  
16 Correct, sir?

17 THE DEFENDANT: Correct.

18 THE COURT: Yes. Thank you.

19 He gave me the conflict of waiver without a cover  
20 page. Can we just attach it to the GPA?

21 THE CLERK: That's what -- it should have been on  
22 both of them.

23 THE COURT: Okay.

24 MR. WEINER: And I'm sorry --

25 THE COURT: Here --

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MR. WEINER: What was the --

THE COURT: Here was his then.

MR. WEINER: In terms of the sentencing date, your Honor, I'm going to ask for the longest date we can get as part of the plea requires the house to be sold.

THE COURT: Yeah.

MR. WEINER: And if it's not sold there is a penalty to my clients in terms of the State having RTA.

THE COURT: I would agree.

THE CLERK: Okay. So now instead of the 15<sup>th</sup> you want the 17<sup>th</sup> because that's as far out as I can go.

MR. WEINER: Okay. And I'm sorry, what was that date, Madam Clerk?

THE CLERK: So it's going to be August 17<sup>th</sup>, 8:30, Department 17.

MR. WEINER: Thank you.

(Whereupon, the proceedings concluded.)

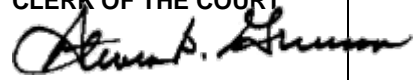
\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Kiara Schmidt, Court Recorder/Transcriber





**RPLY**  
JOSEPH Z. GERSTEN, ESQ.  
Nevada Bar No.: 13876  
The Gersten Law Firm PLLC  
9680 W Tropicana Avenue # 120  
Las Vegas, NV 89147  
Telephone (702) 857-8777  
joe@thegerstenlawfirm.com  
*Attorney for Petitioner*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JACK LEAL,  
  
Petitioner,

Case No.: **C-17-322664-2**  
Dept. No.: **XVII**

vs.

JERRY HOWELL, Warden, Southern  
Desert Correctional Center

**Evidentiary Hearing Requested  
(Not a Death Penalty Case)**

Respondent.

**AMENDED REPLY TO STATE'S ANSWER TO PETITION FOR WRIT  
OF HABEAS CORPUS (POST-CONVICTION)**

**COMES NOW**, the Petitioner, **JACK LEAL**, by and through his attorney,  
**JOSEPH Z. GERSTEN, ESQ.**, of **THE GERSTEN LAW FIRM PLLC**, and  
hereby submits this **REPLY TO STATE'S ANSWER TO PETITION FOR  
WRIT OF HABEAS CORPUS (POST-CONVICTION)**. This Reply is made  
and based upon the pleadings attached hereto, the papers and pleadings on file  
herein, together with arguments of counsel adduced at the time of hearing  
on this matter.

///

///

**STATE 00182**

**THE GERSTEN LAW FIRM PLLC**  
9680 W Tropicana Avenue # 120  
Las Vegas, NV 89147  
Tel (702) 857-8777 | Fax (702) 857-8767

1 ///

2 DATED this 3rd day of May 2019.

3 By Joseph Z. Gersten  
4 JOSEPH Z. GERSTEN, ESQ.  
5 Nevada Bar No.: 13876  
6 9680 W Tropicana Avenue # 120  
7 Las Vegas, NV 89147  
8 Telephone (702) 857-8777  
9 joe@thegerstenlawfirm.com  
10 *Attorney for Petitioner*

11 **ARGUMENT AND LAW**

12 **A. MR. LEAL’S CONVICTION AND SENTENCE ARE INVALID UNDER**  
13 **THE 6TH AND 14TH FEDERAL CONSTITUTIONAL AMENDMENT**  
14 **GUARANTEES OF DUE PROCESS AND EQUAL PROTECTION AND**  
15 **UNDER THE LAW OF ARTICLE 1 OF THE NEVADA CONSTITUTION**  
16 **BECAUSE THE ORIGINAL INFORMATION FAILED TO PUT THE**  
17 **PETITIONER ON NOTICE OF THE CHARGES.**

18 As previously stated, Mr. Leal’s conviction and sentence are invalid under  
19 the 6th and 14th federal constitutional amendment guarantees of due process  
20 and equal protection and under the law of Article 1 of the Nevada constitution  
21 because the original indictment failed to put the petitioner on notice of the  
22 charges. See Information, attached hereto as Exhibit A. Contrary to the State’s  
23 Opposition, Mr. Leal pled to a charge of Multiple Transactions Involving Fraud  
24 or Deceit in the Course of an Enterprise and Occupation. Id. This was the  
25 charge in the information. Id.

26 As also previously noted, NRS 173.075, provides, in part: “The indictment  
27 or information ... must be a plain, concise and definite written statement of the  
28 essential facts constituting the offense charged.” NRS 173.075. An information,

1 standing alone, must contain: (1) each and every element of the crime charged  
2 and (2) the facts showing how the defendant allegedly committed each element  
3 of the crime charged. State v. Hancock, 114 Nev. 161 (1998); see also United  
4 States v. Hooker, 841 F.2d 1225, 1230 (4th Cir.1988). Simply put, the  
5 Information in this case does not contain each and every element of the crime  
6 charged and the facts showing how the defendant allegedly committed each  
7 element of the crime charged. Id. The Information lumps Leal and Garcia  
8 together, making it “very difficult to decipher who is alleged to have done what.”  
9 State v. Hancock, 114 Nev. 161 (1998).

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13 Moreover, the count is defective. Again, NRS 205.377, requires two or  
14 more transactions. That was not the case here. Again, this Court should  
15 conclude that Count I is not clear, definite, and concise as it does not clearly  
16 specify which portion of NRS 205.377 the respondent conspired to violate. As  
17 well, it does not specify which respondent made which false or untrue  
18 statements or material omissions to which victims. Id.

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21 The States’ reliance on NRS 34.810 is similarly misplaced. NRS 34.810  
22 allows dismissal based on whether a “petitioner’s conviction was upon a plea of  
23 guilty or guilty but mentally ill and the petition is not based upon an allegation  
24 that the plea was involuntarily or unknowingly entered or that the plea was  
25 entered without effective assistance of counsel.” Id. However, that is exactly  
26 what Mr. Leal is alleging here. By not having an Information that adequately  
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1 delineates each and every element of the crime charged and the facts showing  
2 how the defendant allegedly committed each element of the crime charged, Mr.  
3 Leal's plea was clearly involuntarily or unknowingly entered into and that the  
4 plea was entered without effective assistance of counsel. Id.

5  
6 As a result, Mr. Leal's conviction and sentence are invalid under the 6th  
7 and 14th federal constitutional amendment guarantees of due process and equal  
8 protection and under the law of Article 1 of the Nevada constitution because the  
9 original indictment failed to put the petitioner on notice of the charges and he  
10 should be released and the charges dismissed.be dismissed.

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13 **B. MR. LEAL'S CONVICTION AND SENTENCE ARE INVALID UNDER**  
14 **THE 6TH AND 14TH FEDERAL CONSTITUTIONAL AMENDMENT**  
15 **GUARANTEES OF DUE PROCESS AND EQUAL PROTECTION AND**  
16 **UNDER THE LAW OF ARTICLE 1 OF THE NEVADA CONSTITUTION**  
17 **BECAUSE PRIOR COUNSEL'S PERFORMANCE FELL BELOW AN**  
18 **OBJECTIVE STANDARD OF REASONABLENESS AS IS MANDATED**  
19 **BY STRICKLAND, 466 U.S. 668, 104 S. CT. 2052 (1984).**

20 Again, Mr. Leal's conviction and sentence are invalid under the 6th and  
21 14th federal constitutional amendment guarantees of Due Process and Equal  
22 Protection and under the law of Article 1 of the Nevada Constitution because  
23 prior counsel's performance fell below an objective standard of reasonableness as  
24 is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052 (1984).

25 In this case, Mr. Leal's counsel made a series of errors which fell below  
26 minimum standards of representation, undermined confidence in the trial  
27 outcome, and deprived Mr. Leal of fundamentally fair proceedings.  
28

1 1. PETITIONER'S CRIMINAL COUNSEL'S ASSISTANCE WAS INEFFECTIVE,  
2 BECAUSE PRIOR COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE  
3 STANDARD OF REASONABLENESS AS IS MANDATED BY STRICKLAND, BY  
4 FAILING TO OBTAIN A MEANINGFUL CONFLICT WAIVER.

5 Petitioner's Criminal Counsel's assistance was ineffective, because prior  
6 counsel's performance fell below an objective standard of reasonableness as is  
7 mandated by Strickland, by failing to obtain a meaningful conflict waiver.  
8 Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). A review of the  
9 documents in this matter bear this out. The Information was dated April 24,  
10 2017. See Exhibit 8, State's Opposition. The Guilty Plea Agreement was dated  
11 by Mr. Leal on April 24, 2017. Id. The purported conflict waiver was dated  
12 April 20, 2017. See Exhibit 6, State's Opposition. However, Defense Counsel  
13 appeared in the underlying Justice Court case for both parties on December 27,  
14 2016. See Leal ROA, attached hereto as Exhibit B and Garcia ROA attached  
15 hereto as Exhibit D. It is difficult to believe that this Court would consider  
16 that waiver to be timely and/or knowingly that Defense Counsel was  
17 representing both Defendants for a period of four (4) months without a  
18 waiver and consider effective assistance.

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22 As noted previously, in this case, Mr. Leal was not advised of his right to  
23 consult with independent counsel nor advised on the potential conflict of interest  
24 and the consequences of waiving the right to conflict-free representation in any  
25 meaningful way. Repeatedly, Criminal Counsel charged ahead representing  
26 Garcia, with little or no regard to Mr. Leal. This can be seen with clarity in the  
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1 disparity of punishments negotiated, i.e., a gross misdemeanor for the co-  
2 defendant and a felony for Mr. Leal.

3  
4 Thus, Petitioner's Criminal Counsel's assistance was ineffective, for  
5 failing to obtain a conflict waiver in a timely fashion, and delivering the  
6 Petitioner up to the State, while protecting the co-defendant.

7  
8 As a result, Mr. Leal's conviction and sentence are invalid under the 6th  
9 and 14th federal constitutional amendment guarantees of Due Process and  
10 Equal Protection and under the law of Article 1 of the Nevada Constitution  
11 because prior counsel's performance fell below an objective standard of  
12 reasonableness as is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052  
13 (1984), and he should be released and the charges dismissed.

14  
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17 **2. PETITIONER'S CRIMINAL COUNSEL'S ASSISTANCE WAS INEFFECTIVE,**  
18 **BECAUSE PRIOR COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE**  
19 **STANDARD OF REASONABLENESS AS IS MANDATED BY STRICKLAND, BY**  
20 **COERCING PETITIONER INTO ENTERING A PLEA.**

21 Petitioner's Criminal Counsel's assistance was ineffective, because prior  
22 counsel's performance fell below an objective standard of reasonableness as is  
23 mandated by Strickland, by coercing Petitioner into entering a plea. 466 U.S.  
24 668, 104 S. Ct. 2052 (1984). Petitioner's Criminal Counsel, in league with  
25 Petitioner's co-defendant, coerced Petitioner into pleading guilty. It was well  
26 known throughout this case, that the co-defendant, who was represented by the  
27 same attorney that represented Petitioner, without a viable conflict waiver in-  
28

1 place, visited domestic violence upon the Petitioner. Thus, we have a situation  
2 where counsel knows his client is literally beating his other client, and yet  
3 continues to represent both.

4 Now the State is trying to say there is no evidence of this. Yet all one has  
5 to do is review the State's **OPPOSITION TO DEFENDANT'S MOTION FOR BAIL**  
6 **PENDING APPEAL**, previously filed in this case to note that the State themselves  
7 identified multiple instances of domestic violence being visited by Defendant Garcia as  
8 against Mr. Leal. See State's Opposition to Defendant's Motion For Bail Pending Appeal,  
9 attached hereto as Exhibit C, pp 3-4, lns 21 – 4. Thus, it is quite disingenuous of the State to  
10 claim a lack of evidence, when they themselves have tried to use this same evidence as a  
11 sword in prior pleadings.

12 Furthermore, Mr. Leal attaches the online docket sheets for Defendant  
13 Garcia's Florida domestic cases, demonstrating a pattern of visiting domestic  
14 violence upon Mr. Leal. See Garcia FL Records attached hereto as Exhibit E.  
15 As Mr. Weiner, Petitioner's criminal counsel also represented Garcia, it  
16 strains credulity that the State would now claim that Weiner had no knowledge of  
17 this.

18 All the while this was happening without any type of waiver. Again,  
19 clearly, clearly this is in violation of Strickland. Strickland v. Washington, 466  
20 U.S. 668, 104 S. Ct. 2052 (1984); see also Machibroda v. United States, 368 U.S.  
21 487 (1962); Walker v. Johnston, 312 U. S. 275 (1945); Waley v. Johnston, 316 U.  
22 S. 101 (1942); Shelton v. United States, 356 U. S. 26 (1958), *reversing* 246 F.2d  
23 571 (1957) (A guilty plea, if induced by promises or threats which deprive it of

1 the character of a voluntary act, is void. A conviction based upon such a plea is  
2 open to collateral attack.)

3 Thus, Petitioner’s Criminal Counsel’s assistance was ineffective, for  
4 coercing Petitioner, while protecting the co-defendant.  
5

6 As a result, Mr. Leal’s conviction and sentence are invalid under the 6th  
7 and 14th federal constitutional amendment guarantees of Due Process and  
8 Equal Protection and under the law of Article 1 of the Nevada Constitution  
9 because prior counsel’s performance fell below an objective standard of  
10 reasonableness as is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052  
11 (1984), and he should be released and the charges dismissed.  
12

13 **3. PETITIONER’S CRIMINAL COUNSEL’S ASSISTANCE WAS INEFFECTIVE,**  
14 **BECAUSE PRIOR COUNSEL’S PERFORMANCE FELL BELOW AN OBJECTIVE**  
15 **STANDARD OF REASONABLENESS AS IS MANDATED BY STRICKLAND, BY NOT**  
16 **INFORMING THE COURT OF DEFENDANT’S JOINT PLEA/PACKAGE DEAL.**

17 Petitioner’s Criminal Counsel’s assistance was ineffective, because prior  
18 counsel’s performance fell below an objective standard of reasonableness as is  
19 mandated by Strickland, by not informing the Court of Defendant’s joint  
20 plea/package deal allowing the coercion of the Defendant to continue.  
21

22 Mr. Leal pled along with his co-defendant pursuant to a “package deal”  
23 plea agreement. Under such agreements, several confederates plead together,  
24 and the government gives them a volume discount-a better deal than each could  
25 have gotten separately. Consistent with the package nature of the agreement,  
26 defendants' fates are often bound together: If one defendant backs out, the deal's  
27  
28



1 off for everybody. This may well place additional pressure on each of the  
2 participants to go along with the deal despite misgivings they might have. Mr.  
3 Leal had such doubts but was being coerced and battered by his co-defendant  
4 and ignored by his counsel.  
5

6 It appears during the canvass of Mr. Leal, the prosecutor apparently  
7 failed to alert the district judge to the fact the agreement was a package deal.  
8 As a result, The District Court accepted Leal's assurance that the guilty plea  
9 was voluntary and entered it accordingly.  
10

11 This is problematic. It appears the District Court had no reason to believe  
12 that Leal had entered a package deal. See, e.g., United States v. Daniels, 821  
13 F.2d 76, 80 (1st Cir.1987). As a result, it appears the court made no inquiry into  
14 whether the codefendants or Weiner pressured Leal to go along. While package  
15 deal plea agreements are not per se impermissible, they pose an additional risk  
16 of coercion not present when the defendant is dealing with the government  
17 alone. See United States v. Wheat, 813 F.2d 1399, 1405 (9th Cir.1987), *aff'd*, 486  
18 U.S. 153, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988); United States v. Castello, 724  
19 F.2d 813, 814-15 (9th Cir.), *cert. denied*, 467 U.S. 1254, 104 S.Ct. 3540, 82  
20 L.Ed.2d 844 (1984). Quite possibly, one defendant will be happier with the  
21 package deal than his codefendant(s); looking out for his own best interests, the  
22 lucky one may try to force his codefendant(s) into going along with the deal. The  
23 Supreme Court has therefore observed that tying defendants' plea decisions  
24  
25  
26  
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28

1 together “might pose a greater danger of inducing a false guilty plea by skewing  
2 the assessment of the risks a defendant must consider.” Bordenkircher v.  
3 Hayes, 434 U.S. 357, 364 n. 8, 98 S.Ct. 663, 668 n. 8, 54 L.Ed.2d 604  
4 (1978) (dictum). The 9<sup>th</sup> Circuit in turn, has recognized that “the trial court  
5 should make a more careful examination of the voluntariness of a plea when [it  
6 might have been] induced by ... threats or promises” from a third  
7 party. Castello, 724 F.2d at 815. They have made it clear that prosecutors must  
8 alert the district court to the fact that codefendants are entering a package deal.  
9 United States v. Caro, 997 F.2d 657 (1993).

12  
13 In this case, because the District Court was not aware of the package  
14 nature of the deal, its voluntariness inquiry was not the “more careful  
15 examination” of voluntariness that precedents require when a plea bargain is  
16 conditioned on the cooperation of more than one defendant. Castello, 724 F.2d at  
17 815. Whether a plea is voluntary and intelligent is the touchstone for  
18 determining whether substantial rights have been violated in the acceptance of a  
19 guilty plea. Carter v. McCarthy, 806 F.2d 1373, 1375 (9th Cir.1986), *cert.*  
20 *denied*, 484 U.S. 870, 108 S.Ct. 198, 98 L.Ed.2d 149 (1987).

23  
24 Here, as in Caro, the failure to investigate whether codefendant or Weiner  
25 pressured Leal into signing on to the agreement could well have affected his  
26 decision to enter the plea. United States v. Caro, 997 F.2d 657 (1993).  
27 Voluntariness is therefore called into question, and it cannot be shown that the  
28

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1 error was harmless. Id. As in Caro, this matter should have a “full hearing on  
2 [Leal's] motion.” United States v. Caro, 997 F.2d 657 (1993). Castello, 724 F.2d  
3 at 815. Specifically, the court should determine whether Leal entered his plea  
4 because of threats or pressures from his codefendant.  
5

6 As a result, Mr. Leal’s conviction and sentence are invalid under the 6th  
7 and 14th federal constitutional amendment guarantees of Due Process and  
8 Equal Protection and under the law of Article 1 of the Nevada Constitution  
9 because prior counsel’s performance fell below an objective standard of  
10 reasonableness as is mandated by Strickland, 466 U.S. 668, 104 S. Ct. 2052  
11 (1984), and he should be released and the charges dismissed.  
12  
13

14 **WHEREFORE**, Petitioner prays that this Court grant Petitioner relief to  
15 which Petitioner may be entitled in this proceeding.  
16

17  
18 DATED this 3<sup>rd</sup> day of May 2019.

19 By Joseph Z. Gersten  
20 JOSEPH Z. GERSTEN, ESQ.  
21 Nevada Bar No.: 13876  
22 9680 W Tropicana Avenue # 120  
23 Las Vegas, NV 89147  
24 Telephone (702) 857-8777  
25 joe@thegerstenlawfirm.com  
26 *Attorney for Petitioner*  
27  
28

STATE 00192

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**CERTIFICATE OF SERVICE BY MAIL**

1  
2 I, Joseph Gersten, Esq., hereby certify, pursuant to N.R.C.P. 5(b), that on  
3 this 3<sup>rd</sup> day of the month of May of the year 2019, I mailed a true and correct  
4 copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS**  
5  
6 addressed to:

7 **JERRY HOWELL**  
8 Warden, Southern Desert Correctional Center  
9 20825 Cold Creek Road  
10 PO Box 208  
11 Indian Springs, NV 89070-0208

12 **STEVEN WOLFSON**  
13 Clark County District Attorney  
14 200 Lewis Ave  
15 Las Vegas, NV 89101

16 **AARON FORD**  
17 Nevada Attorney General  
18 100 North Carson Street  
19 Carson City, Nevada 89701

20 By Joseph Z. Gersten  
21 An Employee of the Gersten Law Firm PLLC  
22  
23  
24  
25  
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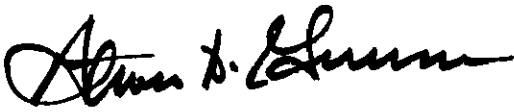
**STATE 00193**

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# EXHIBIT A

**STATE 00194**



CLERK OF THE COURT

1 **INFM**  
2 **ADAM PAUL LAXALT**  
3 Attorney General  
4 Michael C. Kovac (Bar No. 11177)  
5 Senior Deputy Attorney General  
6 Chelsea Kallas Bar No. 13902  
7 Deputy Attorney General  
8 Office of the Attorney General  
9 555 E. Washington Ave., Ste. 3900  
10 Las Vegas, Nevada 89101-1068  
11 P: (702) 486-3420  
12 F: (702) 486-2377  
13 mkovac@ag.nv.gov  
14 *Attorneys for the State of Nevada*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

12 STATE OF NEVADA,

13 Plaintiff,

14 v.

15 **JACK LEAL, and JESSICA GARCIA**

16 Defendant(s).

Case No.: C-17-322664-2

Dept. No.: 17

18 **INFORMATION**

19 ADAM PAUL LAXALT, Attorney General for the State of Nevada, in the name and by the  
20 authority of the State of Nevada, informs the Court: **JACK LEAL** and **JESSICA GARCIA** have  
21 committed the crimes(s) of one (1) count of **MULTIPLE TRANSACTIONS INVOLVING FRAUD OR**  
22 **DECEIT IN THE COURSE OF AN ENTERPRISE AND OCCUPATION**, a category "B" felony in  
23 violation of NRS 205.377.

24 All of the acts alleged herein have been committed or completed on or between about March 1,  
25 2015 and March 31, 2016, by the above-named Defendant(s), within the County of Clark, State of Nevada,  
26 in the following manner:

27 ///

28 ///

**COUNT 1**  
**MULTIPLE TRANSACTIONS INVOLVING FRAUD OR DECEIT IN COURSE OF**  
**ENTERPRISE OR OCCUPATION**  
**Category "B" Felony - NRS 205.377**

The Defendant(s), **JACK LEAL** and **JESSICA GARCIA**, in the County of Clark, State of Nevada, did, in the course of an enterprise or occupation, knowingly and with the intent to defraud, engaged in an act, practice or course of business or employed a device, scheme or artifice which operated or would have operated as a fraud or deceit upon a person by means of a false representation or omission of a material fact that: (a) the person knew to be false or omitted; (b) the person intended another to rely on; and (c) resulted in a loss to any person who relied on the false representation or omission, in at least two transactions that had the same or similar pattern, intents, results, accomplices, victims or methods of commission, or were otherwise interrelated by distinguishing characteristics and were not isolated incidents within 4 years and in which the aggregate loss or intended loss was more than \$650, to wit:

On or about March 1, 2015 through March 31, 2016, in and through the course of a real estate enterprise known as **PARCELNOMICS, LLC** (d/b/a **INVESTMENT DEALS**), Defendants knowingly and with the intent to defraud, obtained thousands of dollars from LoryLee Plancarte, Edelyn Rubin, Chatty Becker, Irene Segura, Lih-Ling Yang, Lina Palafox, Juan Eloy Ramirez, Catherine Wyngarden, Shahram Bozorgnia, Tat Lam, and Adilson Gibellato by means of knowingly and falsely representing to said individuals that the titles to properties being sold to them by the defendants were not encumbered by liens or other security interests, intending that said individuals rely on said misrepresentations, and resulting in a loss of more than \$650.00.

All of which constitutes the crime of **MULTIPLE TRANSACTIONS INVOLVING FRAUD OR DECEIT IN THE COURSE OF AN ENTERPRISE AND OCCUPATION**, a category "B" felony in violation of NRS 205.377.

///

///

///

///

///

1 All of which is contrary to the form, force and effect of the statutes in such cases made and provided,  
2 and against the peace and dignity of the state of Nevada.

3 DATED this 18<sup>th</sup> day of April, 2017.

4 SUBMITTED BY

5 ADAM PAUL LAXALT  
6 Attorney General

7 By: /s/ MICHAEL C. KOVAC  
8 Michael C. Kovac (Bar No. 11177)  
9 Senior Deputy Attorney General  
10 *Attorneys for the State of Nevada*



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# **EXHIBIT B**

**STATE 00198**

## REGISTER OF ACTIONS

### CASE No. 16F19220B

State of Nevada vs. LEAL, JACK

§  
§  
§  
§  
§  
§  
§

Case Type: **Felony**  
 Date Filed: **11/29/2016**  
 Location: **JC Department 7**

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**RELATED CASE INFORMATION**


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**Related Cases**

16F19220A (Multi-Defendant Case)  
 16F19220C (Multi-Defendant Case)

---

**PARTY INFORMATION**


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Defendant **LEAL, JACK**

**Lead Attorneys**  
**Jason G. Weiner, ESQ**  
*Retained*  
 702-202-0500(W)

State of Nevada  
Nevada

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**CHARGE INFORMATION**


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**Charges: LEAL, JACK**

Charges: LEAL, JACK	Statute	Level	Date
1. Racketeering [53190]	207.400	Felony	03/01/2015
2. Theft, \$3500+ [55991]	205.0835.4	Felony	06/01/2015
3. Theft, \$3500+ [55991]	205.0835.4	Felony	09/20/2015
4. Theft, \$3500+ [55991]	205.0835.4	Felony	08/01/2015
5. Theft, \$3500+ [55991]	205.0835.4	Felony	08/01/2015
6. Theft, \$3500+ [55991]	205.0835.4	Felony	03/01/2015
7. Theft, \$3500+ [55991]	205.0835.4	Felony	08/01/2015
8. Theft, \$3500+ [55991]	205.0835.4	Felony	09/21/2015
9. Theft, \$3500+ [55991]	205.0835.4	Felony	03/05/2015
10.Theft, \$3500+ [55991]	205.0835.4	Felony	04/13/2016
11.Theft, \$3500+ [55991]	205.0835.4	Felony	09/28/2015
12.Theft, \$3500+ [55991]	205.0835.4	Felony	03/09/2015
13.Theft, \$3500+ [55991]	205.0835.4	Felony	04/16/2015
14.Fraud/deceit in course of enterprise/occup [55110]	205.377	Felony	03/01/2015

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**EVENTS & ORDERS OF THE COURT**


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**DISPOSITIONS**

04/11/2017 **Disposition** (Judicial Officer: Bennett-Haron, Karen P.)

1. Racketeering [53190]  
Waiver of Preliminary Hearing - Bound Over to District Court
2. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
3. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
4. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
5. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
6. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
7. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
8. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
9. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
10. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
11. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
12. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court

**STATE 00199**

13. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court  
14. Fraud/deceit in course of enterprise/occup [55110]  
Waiver of Preliminary Hearing - Bound Over to District Court

**OTHER EVENTS AND HEARINGS**

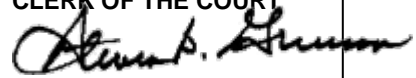
11/28/2016 **Multi-Defendant Case**  
11/28/2016 **CTRACK Track Assignment JC07**  
11/29/2016 **Criminal Complaint**  
11/29/2016 **Summons Issued**  
11/29/2016 **Request for Summons**  
12/14/2016 **Summons Returned**  
*Not deliverable as addressed; Unable to forward.*  
12/19/2016 **Notice of Confirmation of Counsel**  
12/27/2016 **Initial Appearance (7:30 AM)** (Judicial Officers Pro Tempore, Judge, Hua, Jeannie)  
*No bail posted*  
Result: Matter Heard  
12/27/2016 **Counsel Confirms as Attorney of Record**  
*J. Weiner, Esq*  
12/27/2016 **Amended Criminal Complaint**  
*Filed in open court*  
12/27/2016 **Initial Appearance Completed**  
*Defense Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint*  
12/27/2016 **Motion to Continue - Defense**  
*for negotiations - Motion granted*  
12/27/2016 **Minute Order - Department 07**  
02/07/2017 **Negotiations (8:00 AM)** (Judicial Officer Bennett-Haron, Karen P.)  
*No bail posted*  
Result: Matter Heard  
02/07/2017 **Motion to Continue - Defense**  
*for negotiations - Motion granted*  
02/07/2017 **Continued For Negotiations**  
02/07/2017 **Minute Order - Department 07**  
03/07/2017 **Negotiations (8:00 AM)** (Judicial Officer Bennett-Haron, Karen P.)  
*No bail posted*  
Result: Matter Heard  
03/07/2017 **Continued by Stipulation of Counsel**  
03/07/2017 **Stipulation**  
*filed in open court*  
03/07/2017 **Continued For Negotiations**  
03/07/2017 **Notify**  
*Attorney General/clm via email*  
03/07/2017 **Minute Order - Department 07**  
04/04/2017 **Negotiations (8:00 AM)** (Judicial Officer Bennett-Haron, Karen P.)  
*No bail posted*  
Result: Matter Heard  
04/04/2017 **Motion to Continue - Defense**  
*to file a corrected Waiver - motion granted*  
04/04/2017 **Minute Order - Department 07**  
04/11/2017 **Status Check (8:00 AM)** (Judicial Officer Bennett-Haron, Karen P.)  
*No bail posted*  
Result: Bound Over  
04/11/2017 **Waiver**  
*of Unconditional Bindover filed in open court*  
04/11/2017 **Unconditional Bind Over to District Court**  
*Defendant unconditionally waives right to Preliminary Hearing. Defendant Bound Over to District Court as Charged. Defendant to Appear in the Lower Level Arraignment Courtroom A.*  
04/11/2017 **Case Closed - Bound Over**  
04/11/2017 **District Court Appearance Date Set**  
*Apr 20 2017 10:00AM: No bail posted*  
04/11/2017 **Minute Order - Department 07**  
04/11/2017 **Certificate, Bindover and Order to Appear**  
04/11/2017 **Amended Certificate, Bind Over and Order to Appear**

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# EXHIBIT C

STATE 00201



1 **OPPM**  
2 ADAM PAUL LAXALT  
3 Attorney General  
4 Michael C. Kovac (Bar No. 11177)  
5 Chief Deputy Attorney General  
6 State of Nevada  
7 Office of the Attorney General  
8 555 E. Washington Ave., Ste. 3900  
9 Las Vegas, Nevada 89101-1068  
10 P: (702) 486-3420  
11 F: (702) 486-0660  
12 [mkovac@ag.nv.gov](mailto:mkovac@ag.nv.gov)  
13 *Attorneys for the State of Nevada*

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 STATE OF NEVADA,  
11 Plaintiff,  
12 vs.  
13 JACK LEAL,  
14 Defendant.

Case No.: C-17-322664-2  
Dept. No.: XVII

Hearing Date: April 26, 2018  
Hearing Time: 8:30 AM

15  
16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR BAIL PENDING APPEAL**

17 ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Chief Deputy  
18 Attorney General, Michael C. Kovac, hereby submits the State's Opposition to Defendant's Motion for  
19 Bail Pending Appeal. This opposition is made and based upon the pleadings on file, the following  
20 memorandum of points and authorities, and any oral arguments the Court may allow.

21 Dated this 23<sup>rd</sup> day of April, 2018.

22 SUBMITTED BY:

23 ADAM PAUL LAXALT  
24 Attorney General

25 By: /s/ Michael C. Kovac  
26 MICHAEL C. KOVAC (Bar No. 11177)  
27 Chief Deputy Attorney General

28 **STATE 00202**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **FACTS AND RELEVANT PROCEDURAL HISTORY**

3 On September 30, 2016, the State filed in the Eighth Judicial District Court a complaint for  
4 forfeiture against, *inter alia*, property located at 1024 Santa Helena Avenue, Henderson, NV 89002 (case  
5 number A-16-744347-C). Appellant’s Appendix (“AA”), at 2-10. The request for forfeiture was based  
6 on the fact that the home constituted the proceeds – or replacement of the proceeds – of fraudulent real  
7 estate transactions. Id.

8 On November 29, 2016, the State initiated the present, related criminal proceedings by filing a  
9 criminal complaint in the Las Vegas Township Justice Court (case number 16F19220ABC). Id., at 15-  
10 38. The complaint for forfeiture and the criminal complaint were both based on the same fraudulent real  
11 estate transactions. Id. Thus, under NRS 179.1173(2), the forfeiture proceedings were automatically  
12 stayed. On April 11, 2017, the criminal case was bound over to District Court. Id., at 14, 69-72, 79-80.

13 On April 24, 2017, Defendant JACK LEAL and his codefendant/estranged wife, JESSICA  
14 GARCIA, pled guilty to the charge of Multiple Transactions Involving Fraud or Deceit in the Course of  
15 an Enterprise or Occupation, a category B felony, in violation of NRS 205.377, a crime punishable by a  
16 term of imprisonment not to exceed 20 years. Id., at 103-12. The charges stem from LEAL and GARCIA  
17 selling various parcels of real estate to various victims on the false representation that said parcels were  
18 not subject to any security interests. Id., at 97-99. LEAL and GARCIA fleeced their victims of \$757,420.  
19 Id., at 88.

20 At that same time the plea was being entered, and while being represented by attorney Jason  
21 Weiner, LEAL and GARCIA expressly and effectively waived any potential conflict of interest Weiner  
22 may have in his representation of them both. Id., at 100-12.

23 The terms of the guilty plea agreement provided, *inter alia*, that:

24 6. Should I, JACK LEAL, pay restitution in full at or before the time I am sentenced in the  
25 present case, the State will not oppose the imposition of a term of probation not to exceed a term of five  
26 years, with a suspended 36- to-90 month term of imprisonment;

27 7. Should I, JACK LEAL, fail to pay restitution in full at or before the time I am sentenced  
28 in the present case, the State will retain the right to argue for the imposition of a term of imprisonment.

**STATE 00203**

1 Id., at 89.

2 Immediately following the entry of plea, the undersigned Deputy met with Weiner, LEAL, and  
3 GARCIA in the hallway outside of the courtroom where the plea was entered. At that time, the  
4 undersigned Deputy stressed the importance of quickly doing what needed to be done in order to get the  
5 restitution paid prior to sentencing – with special attention being paid to the sale of a home owned by  
6 LEAL and GARCIA (through a trust) that would likely satisfy the restitution requirement (the same home  
7 that is the subject of the above-mentioned forfeiture proceedings). As part of the guilty plea agreements,  
8 LEAL and GARCIA agreed to “execute and file in the Clark County Recorder’s Office a lien agreement  
9 and lien in favor of the State of Nevada, Office of the Attorney General, in the amount of \$600,314.83  
10 against the home located at 1024 Santa Helena Avenue, Henderson, Nevada 89002, assessor parcel  
11 number 179-33-710-056, legally described as MISSION HILLS EST AMD PLAT BOOK 17 PAGE 12,  
12 LOT 223 & LOT 223A, with the proceeds of the sale of said home to be applied to my restitution  
13 requirements,” in order to provide the State with assurances that any proceeds from the sale would, in  
14 fact, be applied toward the restitution obligations of LEAL and GARCIA. Id., at 89-90.

15 Nearly four months passed, and the undersigned Deputy heard nothing from LEAL, GARCIA, or  
16 Weiner until approximately one week prior to sentencing, at which point Weiner requested a continuance  
17 of the sentencing hearing so that his clients could sell the home at 1024 Santa Helena Avenue and pay  
18 restitution with the proceeds. The State rejected the request, noting that LEAL and GARCIA failed to  
19 even execute the lien required under the terms of their GPAs, let alone make any legitimate effort to sell  
20 the home.

21 Weiner made vague statements about unidentified issues holding up the sale. The undersigned  
22 Deputy informed Weiner that he was well aware of the issues his clients were having, including the  
23 following:

- 24 1. LEAL had no intention of complying with the terms of the guilty plea agreement and made no  
25 legitimate effort to do so;
- 26 2. In March of 2017, GARCIA was arrested in Florida on felony heroin and misdemeanor battery  
27 charges (In July of 2017, GARCIA entered a nolo contendere plea to the heroin charge, and the  
28 adjudication was withheld);

**STATE 00204**

1 3. In June of 2017, GARCIA entered a guilty plea for another misdemeanor battery charge in a  
2 separate Florida case; and

3 4. Soon after that, GARCIA, in yet another Florida case, was convicted on charges of battery and  
4 “contempt of court violate injunction protection domestic vio.”

5 On or about August 16, 2017 – *the day before the sentencing hearing* – Weiner informed the  
6 undersigned Deputy that LEAL had (finally) filed the lien required under the terms of the GPA. While  
7 there is no reason to doubt that Weiner sincerely believed that to be true, it was actually another of  
8 LEAL’s lies. In reality, according to a Deputy District Attorney representing the Recorder’s Office (who  
9 called the undersigned Deputy the day of, or day after, LEAL’s sentencing), the day prior to sentencing,  
10 LEAL attempted to file the lien; however, he did not have all of the necessary documentation, and an  
11 employee of the Recorder’s Office informed him that the lien filing was suspended. LEAL informed that  
12 same employee that he would not be correcting the filing because he was returning to Florida the  
13 following day.

14 On August 17, 2017, LEAL appeared for his sentencing hearing. At that hearing, LEAL proved  
15 himself to be a conman through and through. First, LEAL lied to this Court and stated that the property  
16 at 1024 Santa Helena Avenue was free of any liens (the exact type of misrepresentation that landed him  
17 in this mess in the first place). Id., at 122. Second, LEAL lied to this Court and stated that he properly  
18 filed a lien against that property and in favor of the State, as required by the terms of the plea agreement.  
19 Id. As explained above, at the time LEAL made that false statement to this Court, he was well aware that  
20 his attempted filing (which took place one day prior to sentencing) was suspended.

21 Fortunately, this Court was not the latest victim of LEAL’s lies, as LEAL was sentenced to a 72-  
22 to 180-month term of imprisonment. Id., at 138. A day after the sentencing, the Recorder’s Office  
23 accepted documentation from the undersigned Deputy and lifted the suspension on the lien required under  
24 the terms of LEAL’s GPA.<sup>1</sup>

25 ///

26  
27 <sup>1</sup> Garcia failed to appear for sentencing. The Court issued a bench warrant for her arrest. Subsequently,  
28 Garcia was apprehended in Florida and transported to Clark County, Nevada. Her sentencing is presently  
scheduled for May 8, 2018.



1 Following his conviction, LEAL filed a frivolous appeal, arguing two issues:

2 (1) “The District Court erred by permitting the state to breach the plea agreement without holding  
3 an evidentiary hearing under *Gamble v. State*, 95 Nev. 904 (1979), etc., to determine blame  
4 for the breach.”

5 (2) “The District Court erred by denying Motion to Withdraw Counsel with an unwaivable  
6 conflict under *Clark v. State*, 108 Nev. 324 (1992).”

7 LEAL now moves for bail pending appeal. Motion.

8 ARGUMENT

9 “Bail may be allowed pending appeal or certiorari unless it appears that the appeal is frivolous or  
10 taken for delay.” NRS 178.488(1). When faced with a motion for bail pending appeal, the Court is to  
11 consider:

12 (1) “whether the appeal is frivolous or taken for delay”; and

13 (2) “whether the applicant’s release may pose a risk of flight or danger to the community.”

14 *Bergna v. State*, 120 Nev. 869, 877 (2004). The Nevada Supreme Court has explained that “[t]he nature  
15 and quality of the evidence adduced at trial and the circumstances of the offense are highly relevant  
16 considerations in evaluating these factors.” *Id.* Additionally, “evaluation of these concerns may  
17 encompass a wide range of information, including the applicant’s prior criminal record, attempted  
18 escapes from confinement, community associations, and employment status.” *Id.*

19 An applicant “who faces a substantial term of imprisonment will shoulder a heavy burden to  
20 demonstrate, not only that the appeal is not frivolous, nor taken for delay, but also that his or her release  
21 will not pose a risk of flight or danger to the community.” *Id.* Here, LEAL most certainly cannot satisfy  
22 that heavy burden.

23 *I. Factor no. 1 – whether the appeal is frivolous or taken for delay.*

24 LEAL’s appeal is clearly frivolous, as his two arguments are based on events that simply did not  
25 take place.

26 With respect to LEAL’s first issue on appeal, contrary to LEAL’s contentions otherwise, the State  
27 clearly did not breach the term of the plea agreement. Under the terms of the plea agreement, should  
28

1 LEAL fail to have restitution paid at the time of sentencing, the State would have the right to argue for  
2 imprisonment. That is exactly what happened.

3 LEAL comically argues: “To both require the sale of a property to pay restitution and at the same  
4 time require that a lien by placed on the same property is akin to requiring a defendant to appear at a  
5 sentencing hearing while blockading them in their home.” Motion at 9:11-9:14. First, the terms of the  
6 guilty plea agreement did not require the sale of the property at 1024 Santa Helena Avenue. Second,  
7 LEAL’s suggestion that the State’s lien on the property prevented its sale is utterly absurd. LEAL did not  
8 even attempt to record the lien until the day after sentencing. Moreover, as explained above, the lien  
9 filing was suspended until after LEAL’s sentencing. Further, if anyone knows how to sell an encumbered  
10 property, it is LEAL; that is exactly why he is in the mess he presently finds himself. Thus, there is clearly  
11 no merit to LEAL’s suggestion that the lien requirement made it impossible for LEAL to sell the property  
12 prior to the date of his sentencing.<sup>2</sup>

13 LEAL makes much of his supposed good faith efforts to pay restitution. Whether LEAL made  
14 any such good faith efforts is irrelevant. The terms of the guilty plea agreement require the payment of  
15 restitution, not good faith efforts to pay restitution. Through no fault of the State, LEAL failed to satisfy  
16 his restitution obligation. Thus, the State was free argue for a term of imprisonment.

17 LEAL’s second appellate argument – that the District Court erred in denying his trial court  
18 attorney’s motion to withdraw as counsel – is equally unavailing. LEAL specifically argues that an  
19 unwaivable conflict existed under NRCP 1.7(b)(3) because LEAL and GARCIA “had been required to  
20 pay restitution, but it was not paid due to [GARCIA’s] malfeasance and domestic violence restraining  
21 order against her.” Motion at 11:11-11:13. On appeal, the Nevada Supreme Court will be reviewing any  
22 such denial for an abuse of discretion. *Young v. State*, 120 Nev. 963, 968 (2004).

23 As a preliminary matter, it must be noted that LEAL’s trial attorney did not file a **written** motion  
24 to withdraw as trial counsel, as required under EDCR 7.40. Additionally, any motion made the day of  
25 sentencing would be barred under EDCR 7.40(c), which provides: “No application for withdrawal or

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26 <sup>2</sup> Even if LEAL had filed the lien in a timely manner, it certainly would have made no impact upon any  
27 sale of the property. The lien was in the amount of \$600,314.83. If the property is truly worth in excess  
28 of a million dollars as LEAL contends, there would be no reason for the lien to have any effect whatsoever  
on the buyer, as the lien would be paid off in its entirety when any such sale would be completed.

1 substitution may be granted if a delay of the trial or of the hearing of any other matter in the case would  
2 result.” Moreover, even if it is determined that trial counsel properly moved to withdraw, any such motion  
3 was properly denied on the merits.

4 The failure of LEAL and GARCIA to pay restitution did not create any conflict, let alone an  
5 unwaivable one. They were both responsible for payment of the restitution, regardless of whether they  
6 were willing and able to work together to get it paid. No amount of excuses would have relieved LEAL  
7 of that obligation. As explained above, the State did not prevent LEAL from repaying his victims. And  
8 it makes no difference whether GARCIA prevented him from doing so; even if we are to assume (for the  
9 sake of argument) that fact to be true, the terms of the guilty plea agreement do not provide LEAL with  
10 any relief on that basis.

11 LEAL’s trial attorney could have jumped up and down, yelling and screaming about how  
12 GARCIA supposedly wronged LEAL. It would have been all for naught, as any such claim affords LEAL  
13 no relief from his obligations.

14 Finally, even if a conflict existed, LEAL knowingly and effectively waived it in conformance  
15 with the requirements established in *Ryan v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123  
16 Nev. 419 (2007).<sup>3</sup> AA, at 100-02. LEAL ignores the clearly applicable opinion of *Ryan* and instead relies  
17 upon *Clark v. State*, 108 Nev. 324 (1992) – a case that has absolutely nothing to do with dual  
18

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19 <sup>3</sup> In *Ryan*, the Nevada Supreme Court explained, in pertinent part:  
20

21 [W]hen a non-indigent criminal defendant’s choice of counsel results in dual or multiple  
22 representation of clients with potentially conflicting interests, the defendant may waive  
23 the right to conflict-free counsel. An attorney or firm attempting to engage in dual or  
24 multiple representation of two or more criminal defendants must advise the defendants of  
25 their right to seek independent counsel to advise them on the potential conflict of interest.  
26 If the defendants choose not to seek the advice of independent counsel, they must  
27 expressly waive their right to do so, or their waiver of conflict-free representation will be  
28 ineffective. When a defendant knowingly, intelligently, and voluntarily waives the right  
to conflict-free representation, the district court must accept the waiver. **Once the district  
court accepts the waiver, the defendant cannot subsequently seek a mistrial arising  
out of the conflict he waived and cannot subsequently claim that the conflict he  
waived resulted in ineffective assistance of counsel.**

123 Nev., at 430-31 (emphasis added). LEAL’s waiver satisfies these requirements. AA, at 100-02.

**STATE 00208**

1 representation of codefendants – in support of his claim that this Court erred in denying his trial attorney’s  
2 supposed motion to withdraw.

3 *II. Factor no. 2 – whether the applicant’s release may pose a risk of flight or danger to the*  
4 *community.*

5 As noted above, in determining whether applicant’s release may pose a risk of flight or danger to  
6 the community, the Court may consider a number of factors, including:

- 7 (A) The circumstances of the offense;
- 8 (B) The applicant’s criminal history;
- 9 (C) The applicant’s community associations; and
- 10 (D) The applicant’s employment status.

11 Here, evaluation of these factors clearly supports the conclusion that LEAL’s release would pose a serious  
12 risk of both flight and danger to the community.

13 A. The circumstances of the offense.

14 In the present case, LEAL stole a total of \$757,420<sup>4</sup> from eleven victims. In his Motion, LEAL  
15 contends that he “essentially sold the properties as is and did not tell [the victims] that they were  
16 encumbered, as opposed to misrepresenting them as unencumbered.” Motion 4:14-4:15. That is a flat out  
17 lie. LEAL, knowing that these properties were encumbered, sold these properties while knowingly and  
18 intentionally – and in some cases personally – falsely telling the victims that these properties were free  
19 and clear of any security interests.

20 In doing so, LEAL left his victims’ finances and lives in ruins. He wrecked retirement plans. He  
21 wiped out a grandchild’s college savings. LEAL’s victims continue to suffer as a result of his greed.

22 Now, LEAL wants to reenter society and continue his life as if he did no wrong, all while his  
23 victims try to scrap their lives back together. The filing of his frivolous appeal does not undue all of the  
24 damage LEAL has caused while running his criminal enterprise.

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>4</sup> In his motion, LEAL incorrectly contends that the restitution total is \$694,420.

1           B. The applicant's criminal history.

2           LEAL is a conman. In 2008, in Berwyn, Illinois, LEAL was convicted of felony Theft by  
3 Deception. A week later, in Lyons, Illinois, LEAL again was convicted of felony Theft by Deception. He  
4 finds himself back in the criminal justice system in the present matter as a result of his fraudulent conduct.  
5 In other words, LEAL is a habitually fraudulent felon within the meaning of the term set forth in NRS  
6 207.014. LEAL has two misdemeanor convictions out of Illinois for the crime of Resist Peace Officer  
7 (2003 and 2006). Given this history, there is no reason to believe that, if released from custody, LEAL  
8 would begin to abide by the law.

9           C. The applicant's community associations.

10           In his Motion, LEAL states: "If permitted by the Court, Applicant would testify that he moved to  
11 Clark County in 2013 and has lived here since." If he so testified, he would be committing perjury.  
12 According to his PSI, LEAL's address is in Apopka, Florida. Additionally, as explained above, after  
13 LEAL was informed that he would have to return to the Clark County Recorder's Office to lift the  
14 suspension on his lien filing, LEAL stated that he was returning to Florida the following day.

15           To the extent that LEAL has resided in Nevada, his community associations can only be described  
16 as deplorable. He ran his criminal enterprise in Nevada with his coconspirator/wife, GARCIA, who has  
17 an impressive rap sheet of her own. Also associated with LEAL's criminal enterprise was Jacory  
18 Williams, an upstanding individual who (at last check) has an active warrant issued out of California for  
19 charges stemming from him pimping out his underage niece. Williams was also previously convicted for  
20 making/passing a false check.

21           Aside from directing his criminal enterprise here in Nevada, LEAL's connections to Nevada  
22 appear to be tenuous, at best. In a phone call made from CCDC after LEAL was sentenced, LEAL directed  
23 an associate to retrieve a vehicle LEAL parked near the courthouse – along with \$25,000 cash LEAL left  
24 in the car. Combining that fact with the fact that LEAL had already expressed that he would be returning  
25 to Florida after his sentencing, it is clear that there is a high risk LEAL would flee Nevada if given the  
26 opportunity.

27           D. The applicant's employment status.

28  
**STATE 00210**

1 Aside from running a criminal enterprise, it appears that LEAL has no ability and/or willingness  
2 to maintain gainful employment.

3 **CONCLUSION**

4 For the foregoing reasons, the State respectfully requests that the Court deny Defendant's  
5 Motion for Bail Pending Appeal.

6 Dated this 23<sup>rd</sup> day of April, 2018.

7  
8 SUBMITTED BY:  
9 ADAM PAUL LAXALT  
10 Attorney General

11 By: /s/ Michael C. Kovac  
12 MICHAEL C. KOVAC (Bar No. 11177)  
13 Chief Deputy Attorney General  
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STATE 00211

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that  
3 on April 23, 2018, I filed the foregoing document via this Court’s electronic filing system. Parties that  
4 are registered with this Court’s EFS will be served electronically. The following parties are not registered  
5 and therefore, a prepaid postage copy of this document has been placed in the U.S. mail.

6 Craig Muller, Esq.  
7 600 South Eighth Street  
8 Las Vegas, NV 89101  
9 *Attorney for Jack Leal*

10 /s/ A. Reber  
11 A. Reber, an employee of  
12 the office of the Nevada Attorney General  
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# EXHIBIT D

**STATE 00213**



# REGISTER OF ACTIONS

## CASE No. 16F19220C

State of Nevada vs. GARCIA, JESSICA

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Case Type: **Felony**  
 Date Filed: **11/29/2016**  
 Location: **JC Department 7**

### RELATED CASE INFORMATION

**Related Cases**

- 16F19220A (Multi-Defendant Case)
- 16F19220B (Multi-Defendant Case)

### PARTY INFORMATION

**Defendant**      **GARCIA, JESSICA**

**Lead Attorneys**  
**Jason G. Weiner, ESQ**  
*Retained*  
 702-202-0500(W)

**State of Nevada**      **State of Nevada**

### CHARGE INFORMATION

**Charges: GARCIA, JESSICA**

Charges	Statute	Level	Date
1. Racketeering [53190]	207.400	Felony	03/01/2015
2. Theft, \$3500+ [55991]	205.0835.4	Felony	06/01/2015
3. Theft, \$3500+ [55991]	205.0835.4	Felony	09/20/2015
4. Theft, \$3500+ [55991]	205.0835.4	Felony	08/01/2015
5. Theft, \$3500+ [55991]	205.0835.4	Felony	08/01/2015
6. Theft, \$3500+ [55991]	205.0835.4	Felony	03/01/2015
7. Theft, \$3500+ [55991]	205.0835.4	Felony	08/01/2015
8. Theft, \$3500+ [55991]	205.0835.4	Felony	09/21/2015
9. Theft, \$3500+ [55991]	205.0835.4	Felony	03/05/2015
10. Theft, \$3500+ [55991]	205.0835.4	Felony	08/13/2016
11. Theft, \$3500+ [55991]	205.0835.4	Felony	09/28/2015
12. Theft, \$3500+ [55991]	205.0835.4	Felony	03/09/2015
13. Theft, \$3500+ [55991]	205.0835.4	Felony	04/16/2015
14. LEWDNESS WITH A MINOR UNDER 14	201.230	Felony	03/01/2015

### EVENTS & ORDERS OF THE COURT

**DISPOSITIONS**

04/11/2017	<p><b>Disposition</b> (Judicial Officer: Bennett-Haron, Karen P.)</p> <ul style="list-style-type: none"> <li>1. Racketeering [53190] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>2. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>3. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>4. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>5. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>6. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>7. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>8. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>9. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>10. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>11. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> <li>12. Theft, \$3500+ [55991] Waiver of Preliminary Hearing - Bound Over to District Court</li> </ul>
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**STATE 00214**

- 13. Theft, \$3500+ [55991]  
Waiver of Preliminary Hearing - Bound Over to District Court
- 14. LEWDNESS WITH A MINOR UNDER 14  
Waiver of Preliminary Hearing - Bound Over to District Court

**OTHER EVENTS AND HEARINGS**

- 11/28/2016 **Multi-Defendant Case**
- 11/28/2016 **CTRACK Track Assignment JC07**
- 11/29/2016 **Criminal Complaint**
- 11/29/2016 **Summons Issued**
- 11/29/2016 **Request for Summons**
- 12/19/2016 **Notice of Confirmation of Counsel**
- 12/27/2016 **Initial Appearance (7:30 AM)** (Judicial Officers Pro Tempore, Judge, Hua, Jeannie)  
*No bail posted*  
Result: Matter Heard
- 12/27/2016 **Counsel Confirms as Attorney of Record**  
*J. Weiner, Esq*
- 12/27/2016 **Amended Criminal Complaint**  
*Filed in open court*
- 12/27/2016 **Initial Appearance Completed**  
*Defense Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint*
- 12/27/2016 **Motion to Continue - Defense**  
*for negotiations - Motion granted*
- 12/27/2016 **Continued For Negotiations**
- 12/27/2016 **Minute Order - Department 07**
- 02/07/2017 **Negotiations (8:00 AM)** (Judicial Officer Bennett-Haron, Karen P.)  
*No bail posted*  
Result: Matter Heard
- 02/07/2017 **Motion to Continue - Defense**  
*for negotiations - Motion granted*
- 02/07/2017 **Continued For Negotiations**
- 02/07/2017 **Minute Order - Department 07**
- 03/07/2017 **Negotiations (8:00 AM)** (Judicial Officer Bennett-Haron, Karen P.)  
*No bail posted*  
Result: Matter Heard
- 03/07/2017 **Continued by Stipulation of Counsel**
- 03/07/2017 **Stipulation**  
*filed in open court*
- 03/07/2017 **Continued For Negotiations**
- 03/07/2017 **Notify**  
*Attorney General/clm via email*
- 03/07/2017 **Minute Order - Department 07**
- 04/04/2017 **Negotiations (8:00 AM)** (Judicial Officer Bennett-Haron, Karen P.)  
*No bail posted*  
Result: Matter Heard
- 04/04/2017 **Motion to Continue - Defense**  
*to file a corrected Waiver - Motion granted*
- 04/04/2017 **Minute Order - Department 07**
- 04/11/2017 **Status Check (8:00 AM)** (Judicial Officer Bennett-Haron, Karen P.)  
*No bail posted*  
Result: Bound Over
- 04/11/2017 **Waiver**  
*of Unconditional Bindover filed in open court*
- 04/11/2017 **Unconditional Bind Over to District Court**  
*Defendant unconditionally waives right to Preliminary Hearing. Defendant Bound Over to District Court as Charged. Defendant to Appear in the Lower Level Arraignment Courtroom A.*
- 04/11/2017 **Case Closed - Bound Over**
- 04/11/2017 **District Court Appearance Date Set**  
*Apr 20 2017 10:00AM: No bail posted*
- 04/11/2017 **Minute Order - Department 07**
- 04/18/2017 **Certificate, Bindover and Order to Appear**

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# **EXHIBIT E**

**STATE 00216**



Search Help

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Case Number	Filed Date	County	Case Type	Status	Contested	Jury Trial
512017DR003522DRAXWS [2017DR003522DRAXWS]	06/28/2017	PASCO	Domestic Relations/Family 46- E	CLOSED	No	No

Filing Date	Description	Active	Contested	Judgment Date
06/28/2017	Domestic Violence	NO	NO	-

Party Name	Party Type	Attorney	Bar ID
STEARNS, JAMES R	JUDGE		
STEARNS, JAMES R	JUDGE AT DISPOSITION		
LEAL, JACK	PLAINTIFF		
GARCIA, JESSICA	DEFENDANT		

**Dockets**

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Doc #	Action Date	Description
17	07/13/2017	Judge: STEARNS , JAMES R Assigned
18	07/10/2017	Order OF REASSIGNMENT
16	07/06/2017	Order Setting Hearing Returned Served 062917 BY PCSO TO JESSICA LEE GARCIA
14	06/29/2017	Order Of Dismissal REC 2 PGS
15	06/29/2017	Case Status set to CLOSED
1	06/28/2017	Case 512017DR003522DRAXWS Filed with Clerk on 6/28/2017
2	06/28/2017	Judge: Assigned
3	06/28/2017	Civil Cover Sheet
4	06/28/2017	Information Sheet
5	06/28/2017	Petition for Injunction for Protection Against Domestic Violence



*Paula S. O'Neil, Ph.D.*  
Clerk & Comptroller Pasco County, Florida



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Case Number	Filed Date	County	Case Type	Status	Contested	Jury Trial
512017DR003522DRAXWS [2017DR003522DRAXWS]	06/28/2017	PASCO	Domestic Relations/Family 46-E	CLOSED	No	No

Filing Date	Description	Active	Contested	Judgment Date
06/28/2017	Domestic Violence	NO	NO	-

Party Name	Party Type	Attorney	Bar ID
STEARNS, JAMES R	JUDGE		
STEARNS, JAMES R	JUDGE AT DISPOSITION		
LEAL, JACK	PLAINTIFF		
GARCIA, JESSICA	DEFENDANT		

**Dockets**

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Doc #	Action Date	Description
6	06/28/2017	Uniform Child Custody Jurisdiction Act
7	06/28/2017	Financial Affidavit
8	06/28/2017	Petitioners Notice Of Social Security Number Confi
9	06/28/2017	Notice Of Related Cases
10	06/28/2017	Petitioners Waiver Or Non Waiver
11	06/28/2017	Supplemental Information Regarding Parties Form per A.O. No.2016-030 PA/PI-CIR
12	06/28/2017	Order Denying Injunction Hearing Set 071117 @9:00AM 2B ISSD PCSO
13	06/28/2017	Order of Cases Judicially Noticed





# Paula S. O'Neil, Ph.D.

Clerk & Comptroller Pasco County, Florida



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Case Number	Filed Date	County	Case Type	Status	Contested	Jury Trial
512017DR004050DRAXWS [2017DR004050DRAXWS]	08/01/2017	PASCO	Domestic Relations/Family 46-E	CLOSED	No	No

Filing Date	Description	Active	Contested	Judgment Date
08/01/2017	Domestic Violence	NO	NO	-

Party Name	Party Type	Attorney	Bar ID
WESTINE, LAURALEE GANSON	JUDGE		
WESTINE, LAURALEE GANSON	JUDGE AT DISPOSITION		
LEAL, JACK	PLAINTIFF		
GARCIA, JESSICA	DEFENDANT		

### Dockets

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Doc #	Action Date	Description
1	08/01/2017	Case 512017DR004050DRAXWS Filed with Clerk on 8/1/2017
2	08/01/2017	Judge: Assigned
3	08/01/2017	Information Sheet
4	08/01/2017	Civil Cover Sheet
5	08/01/2017	Petition for Injunction for Protection Against Domestic Violence
6	08/01/2017	Uniform Child Custody Jurisdiction Act
7	08/01/2017	Financial Affidavit
8	08/01/2017	Supplemental Information Regarding Parties Form per A.O. No.2016-030 PA/PI-CIR
9	08/01/2017	Petitioners Notice Of Social Security Number Confi
10	08/01/2017	Petitioners Waiver Or Non Waiver





*Paula S. O'Neil, Ph.D.*

Clerk & Comptroller Pasco County, Florida



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Case Number	Filed Date	County	Case Type	Status	Contested	Jury Trial
512017DR004050DRAXWS [2017DR004050DRAXWS]	08/01/2017	PASCO	Domestic Relations/Family 46-E	CLOSED	No	No

Filing Date	Description	Active	Contested	Judgment Date
08/01/2017	Domestic Violence	NO	NO	-

Party Name	Party Type	Attorney	Bar ID
WESTINE, LAURALEE GANSON	JUDGE		
WESTINE, LAURALEE GANSON	JUDGE AT DISPOSITION		
LEAL, JACK	PLAINTIFF		
GARCIA, JESSICA	DEFENDANT		

 **Dockets**

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Doc #	Action Date	Description
11	08/01/2017	Notice Of Related Cases
12	08/01/2017	Order Denying Injunction No Hearing Set
13	08/01/2017	Order of Cases Judicially Noticed
14	08/01/2017	Case Status set to CASE VOIDED
15	08/01/2017	Case Status set to CLOSED

