

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

2       DR. JOEL SLADE,

3                               Appellant,

4               v.

5       CAESARS ENTERTAINMENT  
6       CORPORATION, PARIS LAS VEGAS  
7       OPERATING COMPANY, LLC, d/b/a  
8       PARIS LAS VEGAS, and CAESARS  
8       ENTERTAINMENT OPERATING  
8       COMPANY, INC.

9                               Respondents.

**Supreme Court No. 62720**

EJDC No. A-12-665676-C

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10  
11                                       Appeal

12                               from the Eighth Judicial District Court  
13                               the Honorable Alan Earl, Judge

14                                       **RESPONDENTS' ANSWERING BRIEF**

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**RULE 26.1 DISCLOSURE**

The undersigned counsel of record certifies, pursuant to NRAP 26.1, that the following are persons and entities 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.

Respondent CAESARS ENTERTAINMENT CORPORATION is a Delaware corporation. There are no applicable parent corporations or any publicly held company/companies that own 10% of more stock of Respondent Caesars Entertainment Corporation.

Respondent PARIS LAS VEGAS OPERATING COMPANY, LLC is a Nevada limited liability company. There are no applicable parent corporations or any publicly held company/companies that own 10% of more stock of Respondent Paris Las Vegas Operating Company, LLC.

Respondent CAESARS ENTERTAINMENT OPERATING COMPANY, INC. is a Delaware corporation. Respondent Caesars Entertainment Operating Company, Inc. is a wholly-owned subsidiary of Caesars Entertainment Corporation and no other publicly traded company owns 10% or more of Caesars Entertainment Operating Company, Inc.'s stock.

Undersigned counsel further certifies that the law firm of Santoro Whitmire and Attorneys James E. Whitmire and Jason D. Smith are the law firm and attorneys who have appeared for Respondent in this action. The law firm of Santoro Whitmire, and attorneys James E. Whitmire and Jason D.

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1 Smith, are the only attorneys and firm expected to appear for Respondent in this  
2 Court.

3 DATED this 27 day of August, 2013.

4 SANTORO WHITMIRE

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13 *Caesars Entertainment Operating*  
14 *Company, Inc.*

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I.

**STATEMENT OF THE ISSUE ON APPEAL**

Respondents CAESARS ENTERTAINMENT CORPORATION., PARIS LAS VEGAS OPERATING COMPANY, LLC, and CAESARS ENTERTAINMENT OPERATING COMPANY, INC. (“Caesars” or “Respondents”) disagree with Appellant JOEL SLADE’s (“Appellant” or “Slade”) “Statement of Issues Presented for Appeal.” Slade’s “Statement of Issues” is argumentative, contains incorrect statements of the law and is otherwise imbedded with improper characterizations that incorrectly frame the issues for appeal. A balanced non-argumentative statement of the issues presented for review is set forth below:

- A. DID SLADE HAVE AN INDIVIDUALIZED RIGHT OF ACCESS TO CAESARS’ PRIVATE PROPERTY?
- B. STATED OTHERWISE, DID CAESARS HAVE THE LEGAL RIGHT TO EXCLUDE SLADE FROM THEIR PRIVATE PROPERTY?

This District Court answered these questions in favor of Caesars, concluded that Nevada law permits a private property owner to exclude any person for any reason, and accordingly granted Caesars’ Motion to Dismiss.

II.

**STATEMENT OF THE CASE**

Respondents Caesars disagree with Appellant Slade’s statement of the case. This case simply concerns the issue of whether a private property owner may restrict a particular individual’s access to its property.<sup>1</sup> Contrary to Slade’s assertion, the issues presented to the Court have been addressed before by various courts and the legislature.

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<sup>1</sup> The more discrete issue is whether the District Court erred in concluding that.

1 The Nevada Supreme Court has consistently held that a private property  
2 owner may exclude individuals from its property. Other courts within the Ninth  
3 Circuit and throughout the United States have also held that a private property  
4 owner has a right to exclude particular individuals from its premises. The  
5 Nevada legislature has also enacted laws preserving a private property owner's  
6 right to exclude particular individuals from its property.

7 As discussed more extensively below, there is no, as Slade suggests,  
8 "conflict between the actual law and the gaming industry's skewed perception  
9 of the law." There are also no open questions of law as suggested by Slade.  
10 Simply put, Slade's creative attempts to change the law should be rejected.

### 11 III.

#### 12 STATEMENT OF FACTS

13 Respondents Caesars disagree with Slade's "Statement of Facts." Most  
14 of the "Facts" articulated by Slade in his Opening Brief are legally irrelevant to  
15 this Appeal.<sup>2</sup> Other "Facts" are unduly argumentative and/or are legal  
16 conclusions cast in the form of factual allegations.<sup>3</sup> As discussed below, the  
17 relevant facts in this case are very simple.

18 1. Paris Las Vegas Operating Company, LLC (commonly known as  
19 Paris Las Vegas) occupies and controls private property, and is part of the  
20 Caesars corporate family.

21 2. Slade is a person who sought access to Respondents' gaming  
22 establishment, Paris Las Vegas. See generally AB at 5-7; JA 1-9 (Compl.).

23  
24  
25 <sup>2</sup> For example, the fact that Slade is a "licensed medical doctor and specialist"  
26 whose visits are "often in conjunction with symposiums" is legally irrelevant to  
27 this appeal. Equally irrelevant are Slade's gambling losses and Slade's  
28 contention that he has frequented Respondents' casinos since 1994 without  
incident and/or acting disorderly. Appellant's Opening Brief ("AB") at 5-6.

<sup>3</sup> See, e.g., AB 5-7 at ¶¶ 9-10 and JA at 1-9 (Compl.) at ¶¶ 8-9, 19-22, and 24-  
26.

1           3.     Slade was advised that he was not welcome in any of the various  
2     Caesars-related properties that he must refrain from entering any Caesars-  
3     related property and would be subject to trespass if he entered any such  
4     properties.

5           4.     It is uncontested that Slade was not excluded from Caesars'  
6     properties based on his race, color, creed, national origin, sex.

7           5.     After receiving notice that he was not welcome at Caesars'  
8     properties, Slade filed his Complaint asserting three claims for relief: (1) breach  
9     of the duty of public access; (2) declaratory relief; and (3) injunctive relief.

10          6.     Throughout the Complaint, Slade complained of his exclusion  
11     from the "casinos" and the "gaming premises" owned by  
12     Defendants/Respondents. See Joint Appendix ("JA") 1-9 (Compl.).  
13     Specifically, Slade asserts that Respondents have a duty to provide public  
14     access to him, specifically suggesting that there is an "affirmative duty of  
15     assuring access of the plaintiff to all casinos affiliated with Caesars." See JA 8  
16     (Compl. at ¶49). This is the prevailing theme of his Complaint.<sup>4</sup>

17          7.     Caesars filed a Motion to Dismiss Slade's Complaint, JA 18-26,  
18     contending that Nevada statutory law and case law do not contain such an  
19     affirmative right of access for an individual like Slade. Instead, as expressly  
20     stated in NRS 463.0129(3) and Nevada case law authorities, Caesars contended  
21     that the owners of private property (like the Respondents here, owners of  
22     Nevada gaming establishments) have the right to exclude any person for any  
23     reason. Id.

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26     <sup>4</sup> Starting with Slade's opposition to the Motion to Dismiss, but even more so  
27     now in his opening brief on appeal, Slade's arguments keep changing. Slade  
28     has now essentially attempted to re-state his claim on appeal as one primarily  
   focused on innkeeper issues, something that was not the premise of his  
   Complaint. This attempt to re-classify his case is improper.

8. The District Court, having considered all of Slade's arguments and the briefs of the parties, granted the Motion to Dismiss.

#### IV.

## STANDARD OF REVIEW

While this Court reviews a district court's order granting a motion to dismiss for failure to state a claim upon which relief may be granted de novo and accepts all *factual* allegations as true, a court does not assume the truth of legal conclusions merely because the plaintiff casts them in the form of factual allegations. Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003); Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). Accordingly, the legal conclusions contained in Slade's "Statement of Facts" and in the underlying Complaint should be disregarded.<sup>5</sup>

**V.**

## SUMMARY OF ARGUMENT

The District Court correctly concluded that a private property owner (such as Respondents) had the right to exclude Slade from its premises. First, Nevada Supreme Court case law has consistently held that a private property owner may exclude an individual from its premises. Second, case law throughout the United States has consistently held that a private property owner has a right to exclude. Third, Nevada Statutory law, embodied in NRS 463.0129(3), expressly provides that the statutory duty of Nevada gaming establishments to remain open to the general public does not abrogate or abridge any common law right of a gaming establishment to exclude any person for any reason.

Under no circumstances should the Court be persuaded to adopt Slade’s creative arguments, which, if accepted would result in a change of the law

<sup>5</sup> See, e.g., AB 5-7 at ¶¶ 9-10 and JA at 1-9 (Compl.) at ¶¶ 8-9, 19-22, and 24-26.

1 whereby virtually every individual would have a right of access to Nevada  
2 gaming establishments. For all of the reasons stated herein, the Court should  
3 affirm the District Court ruling below and, specifically, affirm the Order  
4 granting Caesars' Motion to Dismiss Slade's Complaint.

## 5 VI.

### 6 ARGUMENT

7 The "Argument" portion of this appellate brief is divided into two  
8 sections. First, Caesars will briefly discuss the existing law that unequivocally  
9 holds that a private property owner such as Caesars may exclude an individual  
10 such as Slade from its premises. Second, Respondents will briefly address and  
11 rebut the numerous flawed arguments contained in Slade's opening brief.

#### 12 A. RESPONDENTS HAD THE RIGHT TO EXCLUDE SLADE FROM 13 THEIR PROPERTIES.

14 The overwhelming weight of legal authority holds that a private property  
15 owner such as Respondents had the right to exclude an individual such as Slade  
16 from their property for good reason or no reason at all. This fundamental  
17 principle of law has been articulated by courts throughout Nevada. The  
18 principle has been articulated by courts outside of Nevada. In addition, the  
19 Nevada legislature has expressly reserved Caesars' right to exclude Slade from  
20 their property for good reason or no reason at all. Each of these sources of legal  
21 authority is discussed in more detail below.

#### 22 1. Case Law from Nevada Has Consistently Held that Individuals 23 Have No Particular Rights of Access to Private Property, 24 Whether Such Private Property is a Hotel or Otherwise.

25 Courts in Nevada have long recognized a private property owner's right  
26 to exclude individuals from its premises. The most recent discussion of a  
27 private property owner's right to exclude an individual was presented to the  
28 United States District Court, District of Nevada, in 2011. Then-Chief Judge

1 Roger L. Hunt succinctly discussed the common law rights of Nevada gaming  
2 establishments (as private property owners) to exclude and held as follows:

3 At common law, a proprietor of a privately-owned  
4 entertainment establishment may exclude whomever he  
5 wishes for any reason, or for no reason whatsoever.  
6 Marrone v. Wash. Jockey Club, 227 U.S. 633, 636, 33 S.  
7 Ct. 401, 57 L. Ed. 679 (1912). In addition, Nevada and  
8 California courts have long since established that the  
9 "right to exclude others" is a "fundamental element of  
10 private property ownership." S.O.C., Inc. v. Mirage  
11 Casino-Hotel, 117 Nev. 403, 23 P.3d 243, 249 (Nev.  
12 2001); Allred v. Harris, 14 Cal. App. 4th 1386, 18 Cal.  
13 Rptr. 2d 530, 533 (Cal. Ct. App. 1993). The same  
14 fundamental rights of private property ownership also  
15 extend to gaming establishments. As such, Nevada  
16 casinos are under no duty to admit all persons—  
17 including card counters—to play blackjack or any other  
18 game. See, e.g., Uston v. Nev. Gaming Comm'n, 103  
19 Nev. 824, 809 P.2d 52 (Nev. 1987) (refusing to hear  
20 plaintiff's appeal after a district court dismissed his suit  
21 based on his allegations of illegal exclusion from  
22 Nevada casinos because he was a card counter);  
23 Donovan v. Grand Victoria Casino & Resort, L.P., 934  
24 N.E.2d 1111, 1115-16 (Ind. 2010) (agreeing with this  
25 Court's holding in Uston v. Hilton Hotels Corp, 448 F.  
26 Supp. 116 (D. Nev. 1978), and finding that the  
27 overwhelming weight of authority emanating from  
28 gaming jurisdictions rejects the notion that state gaming  
regulation preempts a casino's right to arbitrarily  
exclude patrons); see also NRS § 463.151.

18 Franceschi v. Harrah's Entertainment, Inc., 2011 U.S. Dist. Ct. LEXIS 254, at  
19 \*11-12 (D. Nev., Jan. 3, 2011, C.J. Hunt) (emphasis added) (internal footnote  
20 omitted), dismissal *aff'd* by Franceschi v. Harrah's Entertainment, Inc., 472  
21 Fed. Appx. 615, 616 (9th Cir., March 28, 2012). Accord, Mattes v. Ballys Las  
22 Vegas, 227 Fed. Appx. 567, 568-69, 2007 WL 654619 at 1 (9th Cir. 2007)  
23 (holding that a blackjack player's expectation to be able to continue gambling  
24 would have been "legally insignificant as courts have regularly held that  
25 gamblers do not have" such rights).

26 Earlier decisions from the Nevada Supreme Court have clearly held that  
27 patrons have no "right of access to businesses, such as casinos, that are  
28 generally open to the public." Spilotro v. State, 99 Nev. 187, 194, 661 P.2d 467,

1 471-72 (1983). This conclusion of law directly supports Caesars' position, and  
2 is directly contrary to Slade's position in this case.<sup>6</sup>

3 In S.O.C., Inc. v. Mirage Casino-Hotel, 117 Nev. 403, 412, 23 P.3d 243,  
4 249 (2001), this Court held the "right to exclude others has been held to  
5 constitute a fundamental element of private property ownership" and  
6 "traditionally considered one of the most treasured strands in an owner's bundle  
7 of property rights."<sup>7</sup> This Court expressly stated that "private property does not  
8 lose its private nature because it is open to the public." Id. Accordingly, the  
9 S.O.C. decision is directly on-point for the proposition that a private property  
10 owner (like Respondents Caesars in this case) has the right to exclude particular  
11 individuals from their property.

12 In sum, Nevada law does not give Slade an individual right of access.  
13 The Court should follow S.O.C., Spilotro, and Franceschi, and hold that Slade  
14 does not have the rights of access he purports he has. As a result, the Court  
15 should affirm the trial court's Order of dismissal.

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21 <sup>6</sup> For example, in the District Court, Slade argued, at page 6 of his Opposition  
22 to Motion to Dismiss: "As shown below, policy considerations as well as legal  
23 principles determine that the proper result is that Nevada common law  
24 currently, and forever has, recognized the right of a patron to access to a  
25 business such as those operated by defendants, and the corollary duty of those  
26 businesses to not arbitrarily exclude public patrons."

27 <sup>7</sup> In S.O.C., this Court held that "handbillers" on sidewalks in front of the  
28 respective hotels. In this case, Slade is taking an even more extreme position to  
that taken by the plaintiff in S.O.C. in as much as Slade is not merely seeking  
the ability to walk on sidewalks outside of Defendants' properties; rather, his is  
brazenly arguing that he has the legal right to be within the four walls of  
Defendants' properties (not even as a registered guest) and that there is nothing  
that Defendants can do about unless and until Slade starts destroying property  
and/or creating some other sort of public disturbance.

1           **2.     Courts In Other Jurisdictions Have Held That a Private**  
2           **Property Owner Such As Defendants May Exclude Particular**  
3           **Individuals From Their Property.**

4           Courts in other jurisdictions have recognized that patrons have no  
5 individualized right of access to a private property owner's property. In  
6 Marrone v. Wash. Jockey Club, 227 U.S. 633, 636 (1912), the United States  
7 Supreme Court held that a proprietor of a privately-owned entertainment  
8 establishment may exclude whomever he wishes for any reason or no reason  
9 whatsoever.

10          In Brooks v. Chicago Downs Assoc., 791 F.2d 512 (7th Cir. 1986), the  
11 Seventh Circuit Court of Appeals held that that Illinois "follows the common  
12 law approach[,]" which provides an owner has the absolute right to exclude so  
13 long as exclusion is not because of race, creed, color, national origin, or sex, in  
14 the absence of any "explicit legislative directive" to the contrary. Id.

15          Accord, Uston v. Airport Casino, Inc., 564 F.2d 1216, 1216-17 (9th Cir.  
16 1977) (affirming dismissal of a gambler's complaint for failure to state a claim  
17 against a gaming establishment which excluded him from the property); Doug  
18 Grant, Inc. v. Greate Bay Casino Corp., 232 F.3d 173, 181 (3rd Cir. 2000)  
19 (holding that gamblers had no constitutionally-protected property interest in the  
20 opportunity to gamble); Husain v. Casino Control Comm'n, 265 Fed. Appx.  
21 130, 134, 2008 WL 449763 at 2 (3rd Cir. 2008); Wessendarp v. Berling, 2013  
22 U.S. Dist. LEXIS 93910, \*24-25 (S.D. Ohio 2013) (citing with approval the  
23 principle that "a private owner has the right to exclude an individual from its  
24 private property even when open to the public.").

25           **3.     Nevada Statutory Law Preserves the Right of Exclusion.**

26          Nevada statutory law supports the right of private property owners, such  
27 as Respondents (as owners of gaming establishments) to exclude any person for  
28 any reason from their premises. NRS 463.0129, entitled "Public policy of state



1 concerning gambling; license or approval revocable privilege,” provides, in  
2 pertinent part:

3 1. The Legislature hereby finds, and declares to be  
4 the public policy of this state, that:

5 (a) The gaming industry is vitally important to the  
6 economy of the State and the general welfare of the  
inhabitants.

7 (b) The continued growth and success of gaming is  
8 dependent upon public confidence and trust that licensed  
9 gaming and the manufacture, sale and distribution of  
gaming devices and associated equipment are conducted  
honestly and competitively...

10 (c) Public confidence and trust can only be maintained by  
11 strict regulation of all persons, locations, practices,  
12 associations and activities related to the operation of  
licensed gaming establishments, the manufacture, sale or  
distribution of gaming devices and associated equipment  
and the operation of inter-casino linked systems.

13 (d) All establishments where gaming is conducted and  
14 where gaming devices are operated, and manufacturers,  
15 sellers and distributors of certain gaming devices and  
16 equipment, and operators of inter-casino linked systems  
17 must therefore be licensed, controlled and assisted to  
18 protect the public health, safety, morals, good order and  
general welfare of the inhabitants of the State, to foster the  
stability and success of gaming and to preserve the  
competitive economy and policies of free competition of  
the State of Nevada.

19 (e) To ensure that gaming is conducted honestly,  
20 competitively and free of criminal and corruptive elements,  
21 all gaming establishments in this state must remain open to  
the general public and the access of the general public to  
gaming activities must not be restricted in any manner  
except as provided by the Legislature.

22 ...

23 3. This section does not:

24 (a) Abrogate or abridge any common - law right of a  
25 gaming establishment to exclude any person from gaming  
26 activities or eject any person from the premises of the  
establishment for any reason;

27 See NEV. REV. STAT. 463.0129 (emphasis added).<sup>8</sup>

28 <sup>8</sup> Pursuant to Nevada law, the “premises” are defined as the “land together with

1 In adopting NRS 463.0129, the Nevada legislature specifically reserved  
2 the ability of gaming establishments (like Caesars in this case) to exclude an  
3 individual for any reason pursuant to the common law. As discussed above, the  
4 existence of such common law right has been recognized by Nevada courts as  
5 well as other jurisdictions.

6 **4. Nevada Statutory Law Does Not Grant an Individualized**  
7 **Right of Access to Private Property.**

8 Nowhere in NRS 463.0129 is there a legislative declaration of an  
9 *individual's* right of public access (as Slade suggests). See NRS 463.0129; *cf.*  
10 AB at 37 (Slade “presents the quintessential person addressed by NRS  
11 463.0129.1(e) and is entitled to its protections.” (emphasis added)). While NRS  
12 Chapter 463 discusses the notion of gaming establishments being open to the  
13 *general public*, there is no language stating that such establishments shall  
14 remain open to every single individual who wants to enter the premises. In fact,  
15 the statute preserves the right to exclude particular individuals given that NRS  
16 463.0129(3)) reserves the right for those gaming establishments to exclude *an*  
17 *individual* for any reason.

18 **B. SLADE’S CREATIVE ATTEMPTS TO RE-STATE AND/OR**  
19 **CHANGE THE LAW SHOULD BE REJECTED**

20 As discussed in detail below, Slade’s appeal: (a) seeks a change of the  
21 law as opposed to a clarification of any open issue of law; (b) is based on a  
22 minority view from New Jersey that is directly opposite Nevada law; (c) is

23 \_\_\_\_\_ (continued)  
24 all buildings, improvements and personal property located thereon.” See  
25 Nevada Gaming Regulation 1.145. See also, Nevada Gaming Regulation  
26 28.090 (“the area within a licensed gaming establishment ... from which an  
27 excluded person is to be excluded is every portion of said gaming establishment  
28 including but not limited to the casino, rooms, theater, bar, pool, lounge,  
showroom and all other related facilities of said gaming establishment.  
(emphasis added)). The Gaming Regulations were issued pursuant to the  
Nevada Gaming Control Act. The “Act” as stated in Nevada Gaming  
Regulation 1.050 means “chapters 463, 463A, 463B, 464 and 465 of the  
Nevada Revised Statutes.”

1 based on a meandering discussion of Jim Crow laws and race discrimination  
2 issues that are not applicable in this case; and (d) would award every individual  
3 a right of access to Nevada gaming establishments.

4 **1. Slade's Reliance on New Jersey Law Should be Disregarded.**

5 Slade admits his position would require this Court to “eschew the current  
6 majority view,” which permits a private property owner the right to exclude  
7 individual persons from its premises for any reason. Slade calls the majority  
8 rule “decidedly tainted, not based on logic or evaluation of circumstances, and  
9 is actually a rule adopted to forward and foster the despicable goal of invidious  
10 discrimination.” See AB 20.<sup>9</sup> Slade then brazenly suggests that if the District  
11 Court’s ruling is affirmed, it would “perpetuate the badges of slavery.” See AB  
12 20-21. Slade’s position is ridiculous.

13 In his attempt to change the law, Slade heavily relies on New Jersey law  
14 and, specifically, the Uston v. Resorts Int’l Hotel, Inc. decision, 445 A.2d 370  
15 (N.J. 1982). AB 45. Uston is a New Jersey decision and sets forth the common  
16 law in New Jersey, not Nevada. The Uston court’s analysis is based upon New  
17 Jersey precedent and has no bearing on Nevada law. In fact, no Nevada case  
18 has cited Uston with any level of approval, and certainly not for the  
19 propositions which Slade asserts.

20 Critically, the Uston court held that New Jersey’s Casino Control Act  
21 *abrogated common law rights to exclude in certain instances.* See Uston, 445  
22 A.2d at 372 (“Any common law right [the casino] may have had to exclude  
23 Uston for these reasons is abrogated by the [Casino Control Act]”); *cf.* NEV.

24 <sup>9</sup> In his appeal, without directly saying so, Slade is telling this Court that  
25 Nevada’s legislature and the Nevada Supreme Court have developed law that is  
26 tainted, illogical, and meant to foster the despicable goal of invidious  
27 discrimination. Slade’s incendiary claims, and his attempt to dramatize and  
28 inflame this case into something that it is not is nothing more than the strategic  
and creative attempt to have this Court depart from long-standing and well-  
settled precedent from Nevada (and numerous other jurisdictions) that private  
property owners have the right to exclude an individual for any reason.

1 REV. STAT. 463.0129(3). The finding in Uston is *expressly contradictory* to the  
2 Nevada Gaming Control Act, at NRS 463.0129(3), which statutorily recognizes  
3 and reserves an exclusionary right.

4 Further, Uston represents New Jersey's departure from the majority rule  
5 which "disregard[s] the common law right of access and permit[s] the owner of  
6 an entertainment enterprise to exercise an absolute right of exclusion" (at least  
7 in the context of the casino industry). See Hoagburg v. Harrah's Marino Hotel  
8 Casino, 585 F.Supp. 1167, 1173 (D. N.J. 1984). at 1173; see also Brooks v.  
9 Chicago Downs Ass'n, Inc., 791 F.2d 512, 516-517 ("We also choose not to  
10 follow the arguable – but not clear – abandonment of the common law rule in  
11 New Jersey in [Uston]."). Thus, for any avoidance of doubt, Slade is simply  
12 incorrect to suggest that the common law rule is as stated in New Jersey. AB  
13 45. It is not, and Slade's citation to New Jersey's Uston decision is not  
14 dispositive of this appeal as Slade suggests.

15 **2. At Common Law, Private Property Owners Had the Right to**  
16 **Exclude an Individual from Their Property**<sup>10</sup>

17 Slade is simply incorrect in contending that there was no right to exclude  
18 at common law. In Franceschi, Judge Hunt noted:

19 At common law, a proprietor of a privately-owned  
20 entertainment establishment may exclude whomever he  
21 wishes for any reason, or for no reason whatsoever.  
22 Marrone v. Wash. Jockey Club, 227 U.S. 633, 636, 33  
23 S. Ct. 401, 57 L. Ed. 679 (1912). In addition, Nevada  
24 and California courts have long since established that  
25 the "right to exclude others" is a "fundamental element  
26 of private property ownership." S.O.C., Inc. v. Mirage  
27 Casino-Hotel, 117 Nev. 403, 23 P.3d 243, 249 (Nev.

28 <sup>10</sup> Slade's apparent suggestion that the common law is fixed as of some  
historical date is illogical, as well as contrary to the very statute repeatedly cited  
by Slade. See, e.g. AB at 9 (n. 3) and 16-25. NRS 1.030 provides that the  
common law of England is applicable only so long as it is not inconsistent with  
the laws of the State of Nevada. See NEV. REV. STAT. 1.030. For all of the  
reasons set forth herein, the laws of the State of Nevada are inconsistent with  
the legal authorities cited by Slade and, as a result, Slade's purported common  
law theories are inaccurate.

2001); Allred v. Harris, 14 Cal. App. 4th 1386, 18 Cal. Rptr. 2d 530, 533 (Cal. Ct. App. 1993).

Franceschi v. Harrah's Entertainment, Inc., 2011 U.S. Dist. Ct. LEXIS 254, at \*11-12 (D. Nev., Jan. 3, 2011, C.J. Hunt) (emphasis added) (internal footnote omitted), *dismissal aff'd* by Franceschi v. Harrah's Entertainment, Inc., 472 Fed. Appx. 615, 616 (9th Cir., March 28, 2012).

Accord, Xuli Zhang v. Regan, 2011 U.S. Dist. LEXIS 40616, \* 15 (E.D. Va. 2011) (discussing the common law right for private parties to exclude individuals from private property and citing (at n.9) 3 William Blackstone, Commentaries on the Law of England, 209-10 (1768) to support the principle).<sup>11</sup>

In sum, the common law of the 1800s, and as it exists in Nevada (and elsewhere) now, permits a private property owner to exclude an individual from the premises for any reason.

<sup>11</sup> Other jurisdictions have similarly upheld the common law right of a premises owner to exclude patrons without reason or justification so long as the exclusion was not based on race, creed, color or national origin. Even New Jersey, prior to its abandonment of the common law rule (majority view) in favor of the minority position, clearly acknowledged the common law right of exclusion. For example, In Shubert v. Nixon Amusement Co., 83 N.J.L. 101, 83 A. 369 (Sup. Ct. 1912), the New Jersey Supreme Court dismissed a suit for damages resulting from plaintiff's ejection from defendants' theater. Noting that plaintiff made no allegation of exclusion on the basis of race, color or previous condition of servitude, the Court concluded:

In view of the substantially uniform approval of, and reliance on, the decision in Wood v. Leadbitter, in our state adjudications, it must fairly be considered to be adopted as part of our jurisprudence, and whatever views may be entertained as to the natural justice or injustice of ejecting a theater patron without reason after he has paid for his ticket and taken his seat, we feel constrained to follow that decision as the settled law.

Id. Accord, Uston v. Resorts Int'l Hotel, Inc., 89 N.J. 163, 171-2, 445 A.2d 370, 374 (1982) ("[a]t one time, an absolute right of exclusion prevailed in this state, . . . [in] deference to the noted English precedent of Wood v. Leadbitter . . ."); Madden v. Queens County Jockey Club, 296 N.Y. 249, 72 N.E.2d 697 (1947); People v. Licata, 28 N.Y.2d 113, 268 N.E.2d 787 (1971).

1           **3.     Slade's Efforts to Distinguish S.O.C. and Spilotro are**  
2           **Unavailing.**

3           The Court should reject Slade's efforts to avoid the legal principles  
4 recognized in S.O.C. and Spilotro. The fundamental premise of S.O.C. and  
5 Spilotro is that the "right to exclude others has been held to constitute a  
6 fundamental element of private property ownership" and "traditionally  
7 considered one of the most treasured strands in an owner's bundle of property  
8 rights." The distinctions Slade attempts to draw are meaningless.

9           The fact that First Amendment freedom of speech principles may have  
10 been at issue in S.O.C. does not weaken the application of S.O.C. in this case.<sup>12</sup>  
11 In reality, the fact a right to exclude was found in (a) the sidewalk context and  
12 (b) where freedom of speech principles existed actually bolsters Caesars'  
13 arguments in this case, which has nothing to do with First Amendment  
14 principles and/or sidewalks. Put another way, it would be absurd for a right of  
15 exclusion to be found in S.O.C. (which involved First Amendment principles in  
16 an area *outside* the hotel/casino), but not in this case (which does not involve  
17 First Amendment principles and which deals with an area *inside* the  
18 hotel/casino).<sup>13</sup>

19       <sup>12</sup> The S.O.C. Court held that the Mirage was entitled to exclude handbillers  
20 (allegedly exercising their First Amendment rights) from the privately-owned  
21 property (sidewalks). Here, Slade does not have any similar Constitutional  
22 right upon which to base his alleged right of access. Stated another way,  
23 Slade's purported rights are far less than any which could be asserted under the  
24 Constitution and, even so, the Nevada Supreme Court (in S.O.C.) upheld the  
25 private property owner's right to exclude. S.O.C., 117 Nev. at 413-14 (see  
26 also, S.O.C., 117 Nev. at 411 and 413, "Privately owned property does not lose  
27 its private nature because the public traverses on it." and "private property held  
28 open to the public does not, in and of itself, create a public right to access.").

25       <sup>13</sup> Equally unavailing is Slade's attempts to argue that S.O.C. was "effectively  
26 overruled" by Venetian Casino Resort, LLC v. Local Joint Exec. Bd. Of Las  
27 Vegas, 257 F.3d 937 (9th Cir. 2001). Slade's discussion of the Venetian  
28 involves what amounts to be an apples-to-oranges comparison of cases. In  
Venetian, the Court specifically found, in a case dealing with First Amendment  
rights (ones not at issue in the instant appeal) that the sidewalks in front of the  
Venetian were determined to be "the archetype of a traditional public forum"  
including, among other reasons, because the sidewalk at issue was dedicated to

1 Similarly, Slade's attempt to avoid the Spilotro decision is unavailing. In  
2 Spilotro, a patron of Nevada gaming establishments (just like Slade in this case)  
3 filed an action alleging his deprivation of "access to public places." Spilotro,  
4 99 Nev. at 194, 661 P.2d at 471-72. In response, the Nevada Supreme Court  
5 stated that his "contentions are meritless" and went on to expressly hold that  
6 individuals "do not have [ ] constitutional rights of access to businesses, such as  
7 casinos, that are generally open to the public." Id. (emphasis added).

8 Slade's suggestion that Spilotro "is even further removed from the  
9 present case than the S.O.C." decision is meritless. Slade asserted a "breach of  
10 the duty of public access" based upon his exclusion from Nevada gaming  
11 establishments (including the argument that the casinos must be open to the  
12 general public). See generally AB; JA 1-9 (Compl.). The District Court found  
13 no such duty of public access. JA 111-12 (Order). The Nevada Supreme Court,  
14 in Spilotro, found that the plaintiff had no right of public access to Nevada  
15 casinos. Spilotro, 99 Nev. at 194, 661 P.2d at 471-72. Thus, the Spilotro  
16 decision is on-point for the direct issue in this case.

17 In conclusion, both S.O.C. and Spilotro are relevant and on-point case  
18 law for purposes of supporting Nevada's common law that a private property  
19 owner may exclude an individual for any reason.

20 **4. Slade's Statutory Construction Arguments and Interpretation**  
21 **of NRS 463 Are Incorrect.**

22 The notion that Slade's reading of the statute (as mandating an individual  
23 right of access) is "the only conclusion to be drawn from the statute" is absurd.

24 \_\_\_\_\_ (continued)  
25 public use and was the only means of access for the general public to walk on  
the east side of Las Vegas Boulevard in front of the Venetian property.  
Venetian, 257 F.3d at 944-47.

26 In this case, there is no such public dedication or an "only means of access"  
27 issue. Here, Slade complains of a private property owner's exercise of a lawful  
28 right to exclude him from inside the hotel/casino. JA 1-9 (Compl.). Thus,  
Slade's may not properly compare this case to Venetian.

1 AB 40. To accept Slade's reading of the statute as granting every person an  
2 unfettered right of access not only violates fundamental property rights as noted  
3 in S.O.C., but such argument also violates a fundamental and basic principle of  
4 statutory construction that "no part of a statute should be rendered nugatory, nor  
5 any language turned to surplusage." Miller v. State, 113 Nev. 722, 725, 941  
6 P.2d 456, 458 (1997).

7 Slade's interpretation of NRS 463.0129 as mandating a per se right of  
8 access would renders the exclusionary right set forth in NRS 463.0129(3)  
9 nugatory. Put another way, if Slade's interpretation of NRS 463.0129 gives  
10 him an unlimited right of access, the exclusionary rights for "any reason" set  
11 forth in NRS 463.0129(3) would become meaningless.

12 The correct reading of the statute is that NRS 463.0129(1)(e) sets forth  
13 the general duty of a gaming establishment to remain open to the general  
14 public. NRS 463.0129(3), which is not inconsistent with the earlier language in  
15 subsection 1(e), provides that nothing in the statute abrogates or abridges any  
16 common law right of a gaming establishment to exclude a particular individual  
17 "for any reason." NRS 463.0129(3).<sup>14</sup>

18 In sum, Caesars' argument is quite simple: while NRS 463.0129(1)(e)  
19 sets forth the duty for gaming establishments to remain open to the *general*  
20 *public*, NRS 463.0129(3) reserves the right for those gaming establishments to  
21 exclude *an individual* for any reason. Nothing in that argument runs afoul of  
22 statutory construction principles. Nor does such argument make new law or  
23 alter existing law. Accordingly, the Court should disregard Slade's various  
24 arguments concerning the interpretation of NRS 463.0129 as they are  
25 misplaced.

26 <sup>14</sup> As discussed in more detail herein, New Jersey's Casino Control Act (its  
27 gaming statutory act) abrogated all common law rights to exclude). See Section  
28 VI.B.1, above. As a result, Slade's references to New Jersey law regarding  
rights to exclude are entirely off-base.



1           **5.     The Case Is NOT About Innkeeper Laws, Slade’s Efforts to**  
2           **Transform the Case Is Transparent and Improper, and Even if**  
3           **this Was an Innkeeper Case, Slade’s Arguments Still Fail.**

4           **a.     Slade’s Original Complaint Did Not Raise Innkeeper**  
5           **Issues.**

6           When Slade filed his Complaint, the fundamental premise of his case was  
7           that he had an individualized right of access to Nevada gaming establishments  
8           and, Caesars, by excluding him, breached a duty of public access to him. See  
9           JA 1-9.<sup>15</sup> The word ‘innkeeper’ is found once in his entire Complaint, and it is  
10          found in a paragraph purporting to be a legal conclusion (that is, the paragraph,  
11          paragraph 25(c) of the Complaint, has absolutely nothing to do with the *facts* of  
12          this case). Id., at JA 5 (§ 25(c)). Slade never once mentions “innkeeper” in the  
13          claims for relief section of his Complaint. JA 1-9. Given that Slade’s case has  
14          nothing to do with innkeeper issues, it is no coincidence that the Complaint has  
15          no factual reference to anything related to innkeepers but is replete with  
16          references to the “casinos” or “gaming premises.”

17          **b.     The Innkeeper Issue is a New Theory Raised by Slade.**

18          In opposing the motion to dismiss at the District Court level, and now in  
19          his opening brief on appeal, Slade’s case has transformed to one premised on  
20          innkeeper laws. See JA 27-59 (Opp’n) and AB. No doubt, this evolution of his  
21          arguments is a reactionary response and a creative attempt to breathe life into  
22          his case. However, the Court should see through his transparent attempt to  
23          avoid the result that Slade fails to articulate a valid legal claim that he, as an  
24          individual, has a right of access to Nevada gaming establishments.

25  
26  
27          <sup>15</sup> Consistent with this reality, Slade’s Complaint is littered with references to  
28          the “casino,” the “gaming premises,” Slade’s play, and his “gambling.” Id., JA  
1-9 (§§ 9-10, 12, 14, 19, 22, 23, 42, 43, 46-50).

1                   **c.     Slade’s Innkeeper Argument Should be Rejected.**

2           This case has nothing to do with access or eviction from a hotel room.  
3   However, even if it had been such a case, Caesars would still have the right of  
4   exclusion. First, Slade has not cited to this Court one Nevada statute or case  
5   supporting his purported innkeeper duty arguments. Despite the more than one  
6   page long string cite of cases regarding the “universal[ ]” innkeeper duties,  
7   Slade cannot point this Court to one Nevada decision supporting Slade’s  
8   arguments. This is telling considering the plethora of casinos and hotels in  
9   Nevada.

10           Second, Slade’s innkeeper duty argument claiming that he has unfettered  
11   access to Caesars’ property is at complete odds with Nevada’s innkeeper  
12   statute. Nevada’s innkeeper statute is set forth in NRS Chapter 651. The  
13   statute makes it unlawful to deny access to certain classes of individuals.  
14   Pursuant to NRS 651.070, “[a]ll persons are entitled to the full and equal  
15   enjoyment of the goods, services, facilities, privileges, advantages and  
16   accommodations of any place of public accommodation, without discrimination  
17   or segregation on the ground of race, color, religion, national origin, disability,  
18   sexual orientation, sex, gender identity or expression.” NRS 651.070 discusses  
19   the rights, duties and liabilities of persons “training or accompanied by service  
20   animals, service animal in training or police dog.” NRS 651.090 provides for  
21   civil actions for violations of those previous sections.

22           By enacting the innkeeper statute, the legislature identified only a limited  
23   set of protected classes; namely, race, color, religion, national origin, disability,  
24   sexual orientation, sex, gender identity or expression, and those accompanied  
25   by a service animal or police dog. Slade falls into none of these protected  
26   classes! Accordingly, it was not unlawful for Caesars to deny access to Slade.  
27   Moreover, Slade’s attempt to argue that he has an unfettered right of access to  
28   Caesars’ properties would, on a *de facto* basis, elevate himself into a protected

1 class that the Nevada legislature has not recognized. Accordingly, there is yet  
2 another basis why Slade's manufactured arguments should be rejected.

3 **6. Slade's NRS 1.030 Argument Should Be Rejected.**

4 Knowing that there is no case in Nevada recognizing a duty of access  
5 claim and/or common law breach of innkeeper duty claim, Slade attempts to  
6 engraft such a claim into Nevada law by making a generalized reference to NRS  
7 1.030. Slade then ostensibly relies upon cases from other jurisdiction and/or  
8 England to support his argument. In essence, Slade attempt to "weld together"  
9 or "splice together" a common law tort. Slade's attempt should be rejected by  
10 the Court.

11 As a threshold matter, NRS 1.030 (which is not cited in full by Slade)  
12 actually states:

13 The common law of *England as far as it is not*  
14 *repugnant to or in conflict* with the Constitution and  
15 laws of the United States, or the constitution and laws of  
this State.

16 Id. (emphasis added). Thus, the common law of England (even if it could be  
17 read as Slade suggests) is only applicable so long as it is not inconsistent with  
18 the laws of the State of Nevada. Here, the common law theory asserted by  
19 Slade is inconsistent with/repugnant to several different Nevada laws.

20 **a. Plaintiffs' common law claim is repugnant to NRS 207.200.**

21 NRS 207.200 provides:

22 1. Unless a greater penalty is provided pursuant to  
23 NRS 200.207, any person who, under circumstances not  
24 amounting to a burglary:

25 (a) Goes upon the land or into any building of another  
26 with intent to vex or annoy the owner or occupant  
thereof, or the commit any unlawful act; or

27 (b) Willfully goes or remains upon any land or in any  
28 building after having been warned by the owner or  
occupant thereof not to trespass, is guilty of a  
misdemeanor.

1 NRS 207.200 is clear and concise: “any person who . . . remains upon any land  
2 or in any building after having been warned . . . not to trespass is guilty of a  
3 misdemeanor.” NRS 207.200 necessarily pertains to a specific person, at a  
4 specific location, after a specific event has occurred (being warned not to  
5 trespass). NRS 207.200 is a very specific statute that applies in this case. Put  
6 another way, Slade’s entire “common law” theory is repugnant to and  
7 inconsistent with this very clear statute.

8 **b. Slade’s common law claim is repugnant to NRS 651.**

9 As discussed herein, NRS Chapter 651 is a statute that limits innkeeper  
10 liabilities and which defines those instances in which a suit may be pursued for  
11 breach of a duty. More particularly, one will find that specific statutory claims  
12 exist for violation of NRS 651.030, 651.040, 651.090 (which applies to NRS  
13 651.070, which prohibits denial of public accommodation on the basis of race,  
14 color, religion and other protected classes).<sup>16</sup> Nowhere within Chapter 651 is  
15 there any enabling language that establishes a tort cause of action for an  
16 eviction. If such an action truly existed, the legislature certainly could have  
17 established such a claim. Thus, Slade’s common law claim is inconsistent with  
18 and repugnant to NRS Chapter 651.

19 **c. Slade’s Common Law Claim is Repugnant to NRS 463.0129**  
20 **and Relevant Case Law that provides broad Exclusionary**  
21 **Rights to Gaming Operators.**

22 NRS 463.0129 and Nevada case law cited herein unequivocally stands  
23 for the proposition that a gaming operator has a broad right to exclude patrons  
24 so long as the exclusion is not based on a protected class such as race, color or

25 <sup>16</sup> NRS 651.070, which is contained in the same chapter as NRS 651.020,  
26 creates a statutory cause of action for certain violations so long as an  
27 administrative remedy with the Nevada Equal Rights Commission is exhausted.  
28 This particular portion of the statute has not been relied upon by Slade, nor  
could it, as the exclusion of Slade had nothing to do with race, gender, sexual  
orientation or any other protected class.

1 creed. No matter how many different ways Slade attempts to argue around the  
2 issue, both NRS 463.0129 and Nevada cases have repeatedly upheld a gaming  
3 operator's right to exclude individuals from its premises so long as the  
4 exclusion is not based on some protected class. In sum, these provisions must  
5 be read in harmony with one another, and Slade's attempts to "thread the  
6 needle" and create a cause of action that protects anyone who seeks access to a  
7 Nevada gaming establishment should be rejected. That "common law" theory  
8 is inconsistent and repugnant to Nevada law.

9 **7. Slade's Public Amusement and Race-Based Arguments Should**  
10 **be Rejected.**

11 In his Opening Brief, Slade attempts to use ancient law regarding "public  
12 amusements" as a means to make non-Nevada, outdated, and inapposite case  
13 law somehow relevant to this appeal. See AB 14-25. Caesars challenged Slade  
14 (at the District Court level) to cite one Nevada case since its inception where a  
15 court called or held that Nevada gaming establishments are "public  
16 amusements" (the legal term of art to which Slade so repeatedly refers), and he  
17 could not do so then. See AB. He once again fails to cite any authority for the  
18 proposition that a Nevada gaming establishment is a "public amusement."

19 Similarly, the considerably lengthy arguments within Slade's brief  
20 regarding the Civil Rights cases, "Jim Crow perspectives," and the history of  
21 racial segregation authorities have no bearing on the issue of this appeal.  
22 Suffice it to say, Caesars strenuously disagrees that this Court's affirmation of  
23 the District Court ruling would constitute Nevada "pretend[ing]" that the  
24 common law did not address a private property owner's right to exclude an  
25 individual for any reason. AB 25. This characterization of the Court's options  
26 in this appeal is creative, yet woefully misplaced.

27 Unlike Slade's attempt to splice together certain arguments to support his  
28 position, Caesars has cited numerous cases wherein Nevada gaming

1 establishments' rights to exclude an individual for any reason have been  
2 affirmed. Moreover, Caesars has cited numerous other cases recognizing a  
3 private property owner's right to exclude individuals from their property for any  
4 reason.

5 **8. Slade's Alleged "Other Concerns" Lack Merit and Are**  
6 **Belied By Case Law and Practical Realities of**  
7 **Competitive Market Forces.**

8 Slade concludes his brief with a section entitled "other concerns," which  
9 has no more merit than any other section of his brief which advocates a change  
10 in the existing common law in Nevada (which also constitutes the majority  
11 view).

12 Initially, Slade is manufacturing an argument by suggesting that the  
13 District Court was "preoccupied" with a question regarding something more  
14 than a "mere arbitrary exclusion," which is how Slade presents his exclusion in  
15 this case. See generally AB; AB 44; JA 97-111 (Hearing Tr.); 112-13 (Order).  
16 Nothing in the Order (and, nothing in the hearing transcript) demonstrates the  
17 Court relied in any way upon its question (or Slade's answer) as the basis for its  
18 decision. Id. Slade's suggestion that the District Court "extrapolated facts" is  
19 pure conjecture and speculation and, as a result, should be ignored.

20 Next, Slade again attempts to make this case into something it is not by  
21 discussing the "ridiculous" example of the "parade of horrors." AB 45-46.  
22 While this entire discussion seems odd within Slade's opening brief, Slade's  
23 attempt to bootstrap in such hypotheticals as political events and otherwise is  
24 nonsense. To the extent Slade suggests that this Court's adherence to the  
25 majority rule and the common law right of private property owners to exclude  
26 an individual for any reason risks the potential for outrageous abuse, this  
27 purported risk has been succinctly and thoroughly reasoned by the Seventh  
28 Circuit Court of Appeals in Brooks, 791 F.2d at 518-519.

1 In Brooks, the court discussed policy considerations regarding the rights  
2 of access and exclusion, and addressed the argument of the alleged  
3 insidiousness of exclusion of certain individuals. The court noted that such  
4 concern was exaggerated given that “market forces would preclude any  
5 outrageous excesses such as excluding anyone with blond hair.” Id.

6 This rationale of Brooks is on-point and instructive here. Market forces  
7 will curb and/or guard against private property owners from making the sort of  
8 exaggerated decisions articulated by Slade. Stated another way, Slade’s  
9 suggestion that Caesars’ conduct is arbitrary and speculative suggestion that it  
10 will be subject to rampant abuse is illogical when considering the highly  
11 competitive casino industry in Nevada. As the Seventh Circuit identified,  
12 something as fundamental as market forces serves to curb arbitrary conduct by  
13 gaming properties because Caesars, for example, would be unable to maintain a  
14 business presence if it acted in the manner hypothetically manufactured by  
15 Slade. Slade’s wild surmise that “more and more tourists will choose New  
16 Jersey or another venue over Nevada” if this Court does not ignore its long-  
17 standing and well-settled common law and rule in Slade’s favor is simply  
18 nonsense and should be disregarded.<sup>17</sup>

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27 <sup>17</sup> Even if those market forces did not operate as envisioned in Brooks, it does  
28 not alter a Nevada gaming establishment’s right to exclude a patron from the  
premises for any reason.

1 CONCLUSION

2 Based upon the foregoing, Respondents Caesars respectfully request an  
3 order affirming the ruling of the District Court below and, specifically,  
4 affirming the Order granting Respondents Caesars' Motion to Dismiss Slade's  
5 Complaint.

6 DATED this 27 day of August, 2013.

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1                                    **RULE 28.2 ATTORNEY'S CERTIFICATE**

2            1.     I certify that this brief complies with the formatting requirements  
3 of NRAP 32(a)(4), The typeface requirements of NRAP 32(a)(5) and the type  
4 style requirements of NRAP 32(a)(6) because it has been prepared in a  
5 proportionally spaced typeface using Word in 14 point Times New Roman font.

6            2.     I further certify that this brief complies with the type-volume  
7 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted  
8 by NRAP 32(a)(7)(c), it is proportionately spaced, has a typeface of 14 points  
9 and contains 7,450 words.

10           3.     Finally, I certify that I have read this appellate brief, and to the best  
11 of my knowledge, information and belief, it is not frivolous or interposed for  
12 any improper purpose. I further certify that this brief complies with all  
13 applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),  
14 which requires every assertion in the brief regarding matters in the record to be  
15 supported by a reference to the page of the transcript or appendix where the  
16 matter relied on is to be found. I understand that I may be subject to sanctions  
17 in the event the accompanying brief is not in conformity with the requirements  
18 of the Nevada Rules of Appellate Procedure.

19           Dated this 27 day of August, 2013.

20                                    SANTORO WHITMIRE

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1 **CERTIFICATE OF SERVICE**

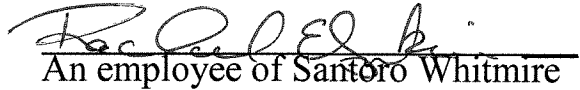
2 I hereby certify that I am an employee of Santoro Whitmire, and that on  
3 the 27<sup>th</sup> day of August, 2013, I caused to be served a true and correct copy of  
4 RESPONDENTS' ANSWERING BRIEF in the following manner:

5 ☒ (ELECTRONIC SERVICE) The above-referenced document was  
6 electronically filed on the date hereof and served through the Notice of  
7 Electronic Filing automatically generated by that Court's facilities.

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9 referenced document for mailing in the United States Mail, first class postage  
10 prepaid, at Las Vegas, Nevada, to:

11 Robert A. Nersesian, Esq.  
12 NERSESIAN & SANKIEWICZ  
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