IN THE SUPREME COURT OF THE STATE OF NEVADA

MDC RESTAURANTS, LLC, a Nevada limited liability company; LAGUNA RESTAURANTS LLC, a Nevada limited liability company; and INKA LLC, a Nevada limited liability company,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA in and for the County of Clark and THE HONORABLE TIMOTHY WILLIAMS, District Judge,

Respondents,

and

PAULETTE DIAZ, an individual; LAWANDA GAIL WILBANKS, an individual; SHANNON OLSZYNSKI, an individual; and CHARITY FITZLAFF, an individual, all on behalf of themselves and all similarly-situated individuals

Real Parties in Interest.

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Case No.: 68523

Eighth Judicial District Court
Case No.: A701633

COLLINS KWAYISI, *et al.*,

Appellants,

vs.

WENDY'S OF LAS VEGAS, INC., an Ohio Corporation; and CEDAR ENTERPRISES, INC., an Ohio Corporation,

Respondents.

Case No.: 68754

United States District Court
Case No.: 2:14-cv-00729-GMN-VCF

STATE OF NEVADA, *ex rel.* OFFICE OF THE LABOR COMMISSIONER; and SHANNON CHAMBERS in her official capacity as Labor Commissioner of Nevada, Appellants, vs. CODY C. HANCOCK, an individual Respondent,	**Case No.: 68770** First Judicial District Court Case No.: 14 OC 00080 1B
ERIN HANKS, *et al.*, Appellants, vs. BRIAD RESTAURANT GROUP, LLC, a New Jersey Limited Liability Company, Respondent.	**Case No.: 68845** United States District Court Case No.: 2:14-cv-00786-GMN-PAL

RESPONDENT CODY HANCOCK'S ANSWERING BRIEF IN NEVADA SUPREME COURT CASE NO. 68770

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N.R.A.P. 26.1 DISCLOSURE

Pursuant to N.R.A.P. 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in N.R.A.P. 26.1(a) that must be disclosed.

Dated this 29th day of December, 2015.

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN. LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

The district court below invalidated two of the Nevada Labor Commissioner's administrative regulations purporting to implement and enforce article XV, section 16 of the Nevada Constitution (the "Minimum Wage Amendment" or the "Amendment"), because they violated the terms of the Constitution and therefore exceeded the authority of the Commissioner to promulgate.

As the Court knows, this suit challenging agency regulations does not exist in a vacuum. Currently, there are more than a dozen cases pending before Nevada state and federal courts alleging that employers failed to provide qualifying health insurance benefits to their workers while paying them less than the full, upper-tier minimum hourly wage.[1] Most of them allege that the benefits plans made available by employers are of such low quality with regards to coverage that they are basically worthless, and do not meet the Minimum Wage Amendment's mandate that they be

[1] *See Tyus et al. v. Wendy's of Las Vegas, Inc. et al.*, D. Nev., Case No. 2:14-cv-00729-GMN-VCF; *Hanks et al. v. Briad Restaurant Group, LLC*, D. Nev., Case No. 2:14-cv-00786-GMN-PAL; *Diaz et al. v. MDC Restaurants, LLC et al.*, Eighth Judicial District Court, Case No. A701633; *Gemma v. Boyd Gaming Corporation et al.*, Eighth Judicial District Court, Case No. A703790; *Leoni et al. v. Terrible Herbst, Inc.*, Eighth Judicial District Court, Case No. A704428; *Lopez et al. v. Landry's Inc. et al.*, Eighth Judicial District Court, Case No. A706449; *Perera v. Western Cab Company*, Eighth Judicial District Court, Case No. A707425; *Smith v. Dee Lee. Inc. d/b/a/ Marie Callender's Restaurant*, Eighth Judicial District Court, Case No. A710226; *Neidecker et al. v. Nevada Restaurant Services, Inc.*, Eighth Judicial District Court, Case No. A713709; *Gonzalez-Garcia et al. v. Firefly Westside, LLC et al.*, Eight Judicial District Court, Case No. A717966; *Skadowski et al. v. Run Restaurants, LLC et al.*, Eight Judicial District Court, Case No. A716660; *Nagy-Szakal v. Nevada Restaurant Services, Inc.*, Eighth Judicial District Court, Case No. A716354; *Perry v. Terrible Herbst, Inc.*, Nevada Supreme Court, Case No. 68030; *Williams v. District Court (Claim Jumper Acquisition Co., LLC)*, Nevada Supreme Court, Case No. 66629; *MDC Restaurants, LLC v. District Court (Diaz)*, Nevada Supreme Court, Case No. 67631.

"health insurance" under state and federal law, or that by including tips and gratuities in their calculations, premium costs exceed the constitutional maximum prescribed under the Amendment. A further component of these actions has been the establishment, through discovery, of the incredibly low rates of acceptance and enrollment in employer-offered benefits plans being used by employers to justify paying down to $7.25 per hour. In the case underlying the consolidated matter of *Kwayisi v. Wendy's of Las Vegas, Inc.* (*Tyus et al. v. Wendy's of Las Vegas, Inc. et al.*, D. Nev. Case No. 2:14-cv-00729-GMN-VCF), for example, more than 98.3% of current employees being paid less than $8.25 per hour rejected the defendant's health insurance; only ten out of approximately 600 sub-minimum wage Wendy's employees in Nevada have accepted the insurance.[2] This is largely because the coverage is of very poor quality. There is little coverage beyond drugstore-level care, there are no out-of-pocket maximums, and the plans do not satisfy the Affordable Care Act's requirements regarding minimum essential benefits—meaning even those employees who enroll still have to purchase real, comprehensive health insurance on the state exchange or pay the tax penalty imposed by the Internal Revenue Service.[3]

This is the context for the current suit to invalidate regulations which have played a central role in permitting this situation to develop—a situation in which employees statewide, including Respondent, are being paid a sub-minimum wage

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[2] *See Tyus et al. v. Wendy's of Las Vegas, Inc. et al.*, *supra*, Mot. for P.S.J. on Liability as to Plaintiff Collins Kwayisi's First Claim for Relief, ECF Doc. 48, at 3 n. 3.

[3] *See Tyus et al. v. Wendy's of Las Vegas, Inc. et al.*, *supra*, Opp. to Mot. for P.S.J. on the Pleadings Pursuant to F.R.C.P. 12(c) with Respect to Punitive Damages, ECF Doc. 45, at 5-6; *see also Diaz et al. v. MDC Restaurants, LLC et al.*, *supra*, Pl. Reply to Opp. to Mot. for P.S.J. at 18-20 (filed Jun. 6, 2015).

without seeing any of the benefits that were intended by the Minimum Wage Amendment. This Court should affirm the district court's decision and order.

I. STATEMENT OF THE ISSUES

Appellants' rendering of the issues in this appeal veers from the central questions. Properly stated, those questions are:

1. Does N.A.C. 608.104(2) violate the Minimum Wage Amendment by permitting employers to include tips and gratuities in figuring "gross taxable income from the employer" for purposes of determining the Amendment's ten-percent cap on employee health insurance premiums; and,

2. Does N.A.C. 608.100(1) violate the Minimum Wage Amendment by permitting an employer to pay the lower-tier hourly wage rate where it has only offered health insurance to the employee, but the employee has not accepted the benefit?

II. STATEMENTS OF THE CASE AND OF RELEVANT FACTS

Respondent concurs in Appellants' Statement of the Case and Statement of Relevant Facts.

III. ARGUMENT

A. Standard Of Review

Respondent agrees that this Court's review of the district court's order is *de novo*. *Hernandez v. Bennett-Haron*, 128 Nev. Adv. Op. 54, 287 P.3d 305, 310 (2012). Respondent notes, as well, that the Labor Commissioner's interpretation of the Minimum Wage Amendment is due no deference, and that the district court's review of the challenged regulation was also *de novo*. Joint Appendix ("JA") II, 0409. *See also State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000) ("[A] court will not hesitate to declare a regulation invalid when the regulation violates the constitution, conflicts with existing statutory provisions or exceeds the statutory authority of the agency or is otherwise arbitrary and

capricious.").

The Commissioner is charged with enforcing—not altering or finally interpreting—the labor laws of this state, and may only adopt regulations which enable her to carry out such enforcement. N.R.S. 607.160; *Nevada Attorney for Injured Workers v. Nevada Self-Insurers Ass'n*, 126 Nev. 74, 83, 225 P.3d 1265, 1271 (2010) (quoting *Jerry's Nugget v. Keith*, 111 Nev. 49, 54, 888 P.2d 921, 924 (1995)) ("We have established that 'administrative regulations cannot contradict the statute they are designed to implement.'"). *See also Roberts v. State*, 104 Nev. 33, 37, 752 P.2d 221, 223 (1988) ("Administrative regulations cannot contradict or conflict with the statute they are intended to implement."). Neither will courts defer to an agency's interpretation of a statute or constitutional provision if the regulation "conflicts with existing statutory provisions or exceeds the statutory authority of the agency." *Nevada Attorney for Injured Workers*, 126 Nev. at 83, 225 P.3d at 1271.[4]

B. Standards Of Constitutional Interpretation

When interpreting a statute or a constitutional provision, courts first look to the plain language of the statute, giving every word, phrase, and sentence its usual, natural, and ordinary import and meaning. *See McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). Courts assume that the language employed by a provision's drafters was intentional and its ordinary meaning accurately expresses the drafters' purpose. *See, e.g., Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175, 129 S. Ct. 2343, 2350 (2009). In other words, every presumption is

[4] *See also Clark County Soc. Serv. Dept. v. Newkirk*, 106 Nev. 177, 179-80, 789 P.2d 227, 228 (1990), in which this Court invalidated a county regulation limiting welfare benefits because it contradicted its statutory mandate: "[A]dministrative regulation obviously cannot countermand the statutory mandate. 'Administrative regulations cannot contradict or conflict with the statute they are intended to implement.'" *Id*. (quoting *Roberts v. State, supra*, 104 Nev. at 37, 752 P.2d at 223).

made against an error in the text by a provision's drafters. Courts also construe each sentence, phrase, and word of a statute or constitutional provision to give meaning to all of its parts. *Bd. of Cty. Comm'rs of Clark Cty. v. CMC of Nevada, Inc.*, 99 Nev. 739, 744, 670 P.2d 102, 105 (1983); *see also Arguello v. Sunset Station, Inc.*, 127 Nev. Adv. Op. 29, 252 P.3d 206, 210 (2011) ("Under well-established canons of statutory interpretation, we must not render any of the phrases of [a statute] superfluous").

The Amendment is a remedial act of the people. *Terry v. Sapphire Gentlemen's Club*, 130 Nev. Adv. Op. 87, 336 P.3d 951, 954 (2014), *reh'g denied* (Jan. 22, 2015). Where a statute or constitutional provision is remedial in nature, courts will liberally construe it to ensure the intended benefit reaches the intended beneficiaries. *See, e.g., Washoe Med. Ctr., Inc. v. Reliance Ins. Co.*, 112 Nev. 494, 496, 915 P.2d 288, 289 (1996); *Colello v. Adm'r of Real Estate Div. of State of Nev.*, 100 Nev. 344, 347, 683 P.2d 15, 17 (1984) ("Statutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained."). *See also Terry*, 336 P.3d at 954 ("Particularly where, as here, remedial statutes are in play, a putative employer's self-interested disclaimers of any intent to hire cannot control the realities of an employer relationship."). Under the liberal construction of remedial measures, this Court must resolve any ambiguities in favor of the persons the Amendment was designed to protect—the minimum wage employee, not the business owners that employ them.

Interpreting a constitutional amendment by referendum such as this one may require a court to inquire into the drafters' and voters' intent as gleaned from the history, policy, and purpose of the constitutional provision. *See Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518, 608 (2014), *reh'g denied* (Sept. 24, 2014) ("The goal of constitutional interpretation is to determine the public understanding of a legal text leading up to and in the period after its enactment or

ratification."); *see also City of Sparks v. Sparks Mun. Court*, 129 Nev. Adv. Op. 38, 302 P.3d 1118, 1126 (2013) ("In the face of [an] ambiguity, we look beyond the language of the provision to determine the intent of the voters in approving the amendment[.]"). Courts determine the drafters' and voters' intent by construing the statute in a manner that conforms to reason and public policy. *See Nevada Attorney for Injured Workers*, 126 Nev. at 83, 225 P.3d at 1271. Courts should use the authors' construction contemporaneous with the provision's drafting and passage rather than any post hoc construction. *See* Ronald D. Rotunda & John E. Nowak, 6 Treatise on Const. L. § 23.32 (cited with approval by *Strickland v. Waymire*, 126 Nev. 230, 234, 235 P.3d 605, 608 (2010)).

The principle of constitutional supremacy provides that a constitutional amendment is the supreme law of the land and controlling over conflicting statutes or regulations addressing the same issue. *See Thomas*, *supra*, 327 P.3d at 521 (constitutional supremacy prevents Nevada legislature—and even more so Nevada agencies or regulators—from "creating exceptions to the rights and privileges protected by Nevada's constitution"). A constitution must not be construed according to statutes or regulations; statutes or regulations instead must be construed consistent with a constitution. *See Foley v. Kennedy*, 110 Nev. 1295, 1300, 885 P.2d 583, 586 (1994).

C. The District Court's Order Is Legally And Logically Consistent

Despite the exchange of three dispositive briefs per side on all aspects of the case, Appellants appear not to fully understand the district court's order, calling it "internally inconsistent" and lacking in any "discernible basis in logic, linguistics, or law" on a facial basis. App. Br. at 9, 10. It was never argued below, however, that it was somehow impossible, logically, for Appellants to lose both questions that were brought before the district court. Of course, it was not impossible, and the order is both coherent and consistent.

The district court was asked first to determine whether, pursuant to the Minimum Wage Amendment, employers could include tips and gratuities in establishing the maximum allowable premium cost to employees to whom the employer wished to pay the lower-tier hourly wage. Its answer was clear and direct: Unambiguously, a full and fair reading of "gross taxable income from the employer" means employees' income *from the employer*, which cannot include tips paid by the general public as gratuities to an employers' workers. This was a ruling regarding one of the necessary requirements of the "health benefits" employers had to observe in order to pay employees below the upper-tier minimum wage—that it have "a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer." Nev. Const. art. XV, § 16(A). The court's determination on the tip issue was totally apart from the question of whether the insurance needed to be provided or offered, accepted or rejected

On *that* question, the district court determined that "the Minimum Wage Amendment requires that employees actually receive qualified health insurance" in order to pay the lower-tier wage. JA II, 0414. Whether one has to provide or merely to offer the insurance is in no way pre-determined by how one determines the *allowable cost* of health insurance, which is one of the aspects that makes it "qualified health insurance" at all.

Theoretically, the district court could have ruled in a combination of ways, without contradiction. It could have said that an employer could include tips in its premium costs calculations, but had to *actually provide* insurance in order to take the benefit of paying a dollar less to its workers. It could have said tips were fine to include, but all one has to do is *offer* the required benefit. It could have said no to tip inclusion, but that *offering* the insurance was sufficient. None of those rulings, on their faces, would have been foreclosed by the logic of the suit itself, as Appellants appear to argue. The fact that the court determined that tips were to be excluded and

employers needed to *actually provide* insurance, similarly, is not inconsistent. Appellants attempt to sow confusion on this point.

D. There Is No "Draftsman's Error" In The Amendment

Appellants also attempt to sow doubt as to the language of the Minimum Wage Amendment itself, that perhaps it does not mean what it says. Because the Amendment was adopted as a popular initiative, this argument goes, it is somehow more susceptible to the kind of textual error this Court may correct. App. Br. at 14-15. But this Court has never said that legal provisions, whether statutes or constitutional amendments, adopted by initiative were somehow weaker when subject to interpretation, or that their drafters meant what they wrote any less than members of the Legislature when drafting statutes.

Appellants do more than nod to the doctrine in their brief, but they did not raise the possibility of scrivener's error below. The doctrine has no application here in any event. Scrivener's error is a rarely-employed judicial approach, and courts generally will only find such error "where on the very face of the statute it is clear to the reader" that a clear mistake of expression has been made. Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law*, 20 (1997). As Justice Scalia famously wrote, "the *sine qua non* of any 'scrivener's error' doctrine … is that the meaning genuinely intended but inadequately expressed must be absolutely clear; otherwise we might be rewriting the [rule] rather than correcting a technical mistake." *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 82, 115 S. Ct. 464, 474 (1994) (Scalia, J., dissenting).

Appellants cannot here argue that drafters clearly intended Appellants' construction of the Amendment, but that that result is here frustrated by obvious error. Nor can they argue that the Amendment makes no grammatical or logical sense on its

face.[5] The parties have different readings of its text, certainly, but at no point do Appellants contend that the Amendment *as written* cannot make logical sense and necessarily leads to absurd results that could not have been intended. Instead, they argue that if the Court imputes a scrivener's error—that if "$5.15 if an employer *provides* …" was *supposed* to read "$5.15 if an employer *offers* …"—it can reach Appellants' interpretation of the text. Respondent's reading of the Amendment may produce a result of which Appellant, and the business interests represented by *amici curiae*, disfavor, but it is not an absurd result. That the drafters of the Minimum Wage Amendment intended minimum wage employees to receive the benefit of low-cost health insurance in exchange for a lower hourly wage level is not only not absurd, it is compelled by a fair reading of the constitutional text.

E. N.A.C. 608.104(2)'s Inclusion Of Tips And Gratuities In An Employer's Calculation Of Permissible Health Insurance Premium Costs Directly Violates The Nevada Constitution

The Minimum Wage Amendment establishes a ten-percent premium cost cap for insurance in order to qualify employers to pay the lower minimum wage rate—a cap effective not just for employees, but for all their dependents as well. *See* Nev. Const. art. XV, § 16(A). The plain language of the Amendment makes it abundantly clear that the cost cap applies at ten-percent of the gross compensation *paid by the employer*. *See id*. The Commissioner's regulations, however, permit the employer to

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[5] In the one case relied upon by Appellants, *People v. Skinner*, 39 Cal. 3d 765, 704 P.2d 752 (1985), a fairly obvious drafting error was discerned: "The inadvertent use of 'and' where the purpose or intent of a statute seems clearly to require 'or' is a familiar example of a drafting error which may properly be rectified by judicial construction." *Id.*, 39 Cal. 3d at 775. The fact that the statute subjected to judicial construction in *Skinner* was adopted as a ballot initiative was incidental; *Skinner* does not stand for the principle that popularly-enacted measures are somehow more susceptible to scrivener's error than legislative enactment, and it is inaccurate for Appellants to suggest that it does.

include an employee's tips from customers in calculating the percentage the employee may be forced to pay for qualifying health insurance. *See* N.A.C. 608.104.

The common and everyday meanings of "tips," "gratuities," and "wages" underscore the plain-language interpretation offered by Respondent. As discussed more fully below, the Amendment provides that "[t]ips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by [the Amendment]." Nev. Const. art. XV, § 16(A). "Tip" is defined as a "gratuity" or a "gift or small sum given for a service performed or anticipated." *Merriam-Webster's Dictionary and Thesaurus* at 1079 (Merriam-Webster, Inc. 2006). "Gratuity," in turn, is defined as "something given voluntarily or beyond obligation." *Id.* at 472.

Put simply, in the service industry employment context and operating under common understanding, customers are not employers, and customers leave the tips. Consequently, tips do not come "from the employer." It is the employer—the one who controls and pays wages—and the employee—the one who is controlled and receives wages—that the Amendment addresses in capping the cost of qualifying health insurance. The Amendment does not state, contemplate, or even imply the involvement of any party or income outside of this relationship in its ten-percent cost-cap provision. Rather, it states in straightforward fashion that qualifying insurance cannot cost the employee (the hourly wage payee) any more than ten-percent of his/her income "**from the employer**" (the hourly wage payor). Nev. Const. art. XV, § 16 (emphasis supplied). It does not say, "from the place of employment," or "from *that job*," or "*but for* the employment with that employer," or any other such formulation. It says exactly what it says: "from the employer.

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Nevertheless, the Commissioner's regulations, in instructing employers how to calculate that ten-percent share, play loosely with the Amendment. In N.A.C. 608.102(3), the regulations states:

> The share of the cost of the premium for the health insurance plan paid by the employee must not exceed 10 percent of the gross taxable income of the employee **attributable to the employer** under the Internal Revenue Code, as determined pursuant to the provisions of NAC 608.104.

N.A.C. 608.102(3) (emphasis supplied). The invention and insertion of the phrase "attributable to the employer" diverges from the constitutional text, and misreads its import. N.A.C. 608.104(2) then goes on to state that:

> As used in this section, "gross taxable income of the employee attributable to the employer" means the amount specified on the Form W-2 issued by the employer to the employee and includes, without limitation, tips, bonuses or other compensation as required for purposes of federal individual income tax.

N.A.C. 608.104(2). But as described below, every W-2 issued by a Nevada employer includes the express dollar figure that an employer has paid to an employee, excluding tips and gratuities. The amount upon which the ten percent cap is to be figured under the Amendment is therefore obvious and knowable, and N.A.C. 608.104's misdirection away form that figure is unlawful.

1. The imagined "necessity" of resort to federal tax law

Appellants' argument on resort to federal tax law on tips and gratuities immediately rings false. They go to great lengths to persuade the Court that tips are wages "earned in connection with employment," or are "income attributable to the employer." App. Br. at 20-21. But each of those is a wishful leap beyond the constitutional text, which establishes "gross taxable income from the employer" as the applicable standard for figuring the ten percent cap. Nev. Const. art. XV, § 16(A). The language of the Amendment could not be plainer, and Appellants' (and *amici's*) struggle to recast that language makes for strained reading.

A lot of space in the Opening Brief (and in the briefs of *amici*) is devoted to

establishing that tips and gratuities constitute income upon which a Nevada employee must pay federal income taxes. App. Br. at 4, 20-22. Respondent, however, does not contest that obvious legal fact, and in fact grants it without reservation. What is contested is Appellant's argument that because tips are *income to the employee* that they necessarily also constitute *income from the employer*, as required by the Amendment.

In her defense of the challenged regulation, the Commissioner truncates the phrase "gross taxable income from the employer" in order to focus solely upon "gross taxable income," a subtraction from the text that the Commissioner then asserts triggers resort to federal tax law. But there is nothing in Nevada or federal law that directs such a reading. There is no reference to such a reading in the Amendment itself; clearly it takes an act of interpretation to construct such a triggering and such resort. The fact that Nevada has no personal income tax does not mean that the phrase "gross taxable income from the employer" is somehow unintelligible in this state. That the federal government, rather than the State of Nevada, is doing the taxing on an employee's income earned in Nevada has no bearing of an interpretation of the constitutional text. The Commissioner's creation of the concept in N.A.C. 608.102(3) of "gross taxable income of the employee attributable to the employer" finds no support in the Amendment itself, and establishes, unlawfully, a type of "but-for employment with the employer" standard that does not withstand textual scrutiny. Instead, such a justification over-complicates the constitutional text in support of a post-hoc defense of the challenged regulation.

The Labor Commissioner's federal-tax rationalization of N.A.C. 608.104(2) is entirely *post-hoc*. There is nothing in the record below to suggest that this was ever a contemporary rationale for permitting tips to be included in the allowable premium cost chargeable to minimum wage employees under the Amendment. This, alone, may not defeat the argument, but it does reveal it—nearly a decade after the regulation's

promulgation—as a recent concoction responsive to the underlying lawsuit. It is the sort of under-fire rationalization disfavored by this Court's precedents. *See* Rotunda & Nowak, § 23.32 ; *Strickland*, 126 Nev. at 234.

What does defeat the Labor Commissioner's position, and what acts as contemporary evidence of the agency's understanding of the Amendment at the time N.A.C. 608.104(2) was promulgated, is N.A.C. 608.104(1)(a), which provides the Commissioner's directions to employer on calculating the ten-percent threshold:

> 1. To determine whether the share of the cost of the premium of the qualified health insurance paid by the employee does not exceed 10 percent of the gross taxable income of the employee attributable to the employer, an employer may:
>
> (a) For an employee for whom the employer has issued a Form W-2 for the immediately preceding year, divide the ***gross taxable income of the employee paid by the employer*** into the projected share of the premiums to be paid by the employee for the health insurance plan for the current year[.]

N.A.C. 608.104(1)(a).[6] (emphasis supplied).

If there was a clear opportunity to state the Commissioner's contemporary understanding that "gross taxable income from the employer" actually meant *all gross taxable income earned <u>but for</u> employment by the employer*, this would have been it. Instead, N.A.C. 608.104(1)(a) is faithful to the text of the Amendment, and recognizes that premium costs under the constitutional text are measured by the wages emanating *from the employer*. In other words, this appeal is an opportunity for the Court to correct an obvious internal inconsistency in the Commissioner's regulations;

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[6] This has the paradoxical—and problematic, for Appellants and *amici curiae*—result that if employers have been hewing to the administrative regulations all this time, they ought to have been following N.A.C. 608.104(1)(a)'s direction to calculate the ten percent figure on amounts "paid by the employer." Of this, we hear nothing, however, either in the briefing of *amici* or in that of the opposing parties in the consolidated actions.

N.A.C. 608.104(1) and 608.104(2) cannot stand together, and 608.104(2)'s embellishment of the constitutional text must fail.

This was among the reasons why Respondent provided an example W-2 form for the district court. *See* Ap. Br. at 22 n. 4; JA II, 0354. Below, the Commissioner had argued that it would be exceedingly difficult for an employer to determine how much it had paid, from its own coffers, to a minimum wage employee, and therefore employers had to rely upon all taxable income regardless of source. JA II, 0255. As Respondent demonstrated, however, that figure is not only ascertainable, it is annually ascertained and reported to the Internal Revenue Service in Box 3 of an employee's yearly W-2 form. JA II, 0354. Appellant has righty abandoned that argument on appeal, but its vestiges persist. The Commissioner references the process laid out in N.A.C. 608.104(1), but fails to note for the Court the Commissioner's own regulatory language directing employers to use the amount of money "paid by the employer" to figure the ten-percent premium cap. The notion that "gross taxable income from the employer" found in the Amendment was always clearly meant to include monies paid to employees from sources other than the employer is thus directly belied by the Commissioner herself (himself at the time, herself at present).

Again, no one is arguing that tips and gratuities provided to employees by consumers are not taxable income under the Internal Revenue Code. Those amounts are, however, merely a subset of an employee's gross taxable income, which the IRS helpfully breaks out on employee tax information. They are a subset that the Amendment excludes, plainly, from allowable premium calculations, if an employer is going to pay below the upper-tier minimum hourly wage. The argument is over the *source* of income that can form the basis of calculating maximum premium costs under the Minimum Wage Amendment. If, as the Commissioner notes, courts are to give constructions that "prevent any clause, sentence, or word from being superfluous, void, or insignificant," she has failed to resolve appropriately the term "from the

employer" in the Amendment. App. Br. at 5. Focusing upon an expansive notion of "gross taxable income" rather than "from the employer" is an impermissible liberty with the language and command of the provisions of the Amendment, and renders N.A.C. 608.104(2) invalid.

2. Appellants invent an argument regarding "disparities"

Appellants' concern for "disparities" potentially created by an interpretation of the Amendment disallowing the inclusion of tips in the ten percent premium cap calculation is inauthentic. In the first instance, this is a policy argument outside the purview of the Labor Commissioner and useful, if at all, only if the Court perceives ambiguity in the constitutional text. Secondly, the argument either invents "disparities" where none exist or have existed for decades in Nevada and therefore would have been known to the drafters of the Amendment (and the voters who overwhelmingly approved) to the extent that they form no legitimate disparities concerning the Labor Commissioner at all.

Nevada is not a tip-credit state. Some states, and the federal Fair Labor Standards Act, 29 U.S.C. § 203(m)(2), permit a credit to be taken against wages in the amount of tips and gratuities earned by the employee, for purposes of ensuring the employee receives the minimum wage rate set by law. Nevada is not, and has never been, among those states. N.R.S. 608.160 makes it "unlawful for any person to … [a]pply as a credit toward the payment of the statutory minimum hourly wage established by any law of this State any tips or gratuities bestowed upon the employees of that person." N.R.S. 608.160(1)(b). The Amendment here carries the same prohibition: "Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section." Nev. Const. art. XV, § 16(A).

Indeed, both the Amendment and N.R.S. 608.160 comport with the long Nevada tradition of excluding tips as credit against minimum wage, beginning in

1939. *See, e.g.*, N.R.S. 608.160; *Jane Roe Dancer I-VII v. Golden Coin, Ltd.*, 124 Nev. 28, 33, 176 P.3d 271, 275 (2008) ("[Nevada's wage and hour law] has established a higher minimum wage than that required under the FLSA by prohibiting a tip credit."). Here, by promulgating N.A.C. 608.104(2), the Commissioner has, by fiat, established a tip credit against the allowable premium costs permitted by the Constitution, with no basis or authority to do so, and now for the first time defends the regulation on the basis that the Amendment favors tipped employees over non-tipped workers.

Here is the news-flash, however: it is better to be a tipped minimum wage employee in Nevada than a non-tipped minimum wage employee, because one presumably makes more money per hour with tips. It has always been thus in this state. Tipped employees already receive a benefit that non-tipped employees do not—they are not subject to a tip-credit reduction in their wages against the minimum wage, and while they may be subject to equitable tip-pooling policies in the workplace, tips and gratuities belong to the employee. The Labor Commissioner does not get to decide by regulation that tipped employees in Nevada have it good enough already, and does not get to act to eliminate an imagined disparity under the Minimum Wage Amendment's terms concerning qualification to pay the subminimum hourly wage.[7]

3. Any possible ambiguity favors Respondent

The language of the Amendment does not appear to allow for multiple reasonable interpretations on this question. But assuming, for sake of argument, that the ten-percent provision's language is ambiguous, N.A.C. 608.104(2) still fails

[7] Respondent demonstrated below that the difference between inclusion or exclusion of tips in the example tipped employee's allowable premium costs for health insurance amounted to a **137% increase** in monthly costs over that of a non-tipped employee. JA II, 0342. "Disparity" is in the eye of the beholder.

because it contradicts the Minimum Wage Amendment's policy and purpose, as well as voters' intent.

The liberal construction of remedial measures alone is sufficient to resolve the instant question. Indeed, the necessarily liberal construction requires that the Court construe the Amendment as limiting the income subject to the ten-percent calculation of an employee's cost to the hourly wage paid by the employer. To read the Amendment any other way—thereby allowing employers to cost-shift based on gratuities left by consumers—would benefit the employer over the employee and violate well-established rules of statutory construction.

The regulation's inclusion of tips in the ten-percent calculation is an income-syphoning windfall for the employer in a number of ways. Most obviously, it allows employers to pay a smaller share of the offered insurance—if any at all—by charging employees more for health insurance premiums. The more tips an employee receives, the more the employer can escape paying for that employee's insurance, and shift that burden onto the employee who, let us recall, is already being paid a dollar less for every hour worked.

Employers also improperly benefit from the ebb and flow of gratuities under the current regulatory scheme. It is uncontestable that the amount of tips an employee receives from customers is in constant flux, but that a minimum wage employee's wages are firmly set and that the employer controls the hours worked by every employee. Yet N.A.C. 608.104(a) and (d) direct employers to use the previous year's tips, or even the past four weeks' tips for new employees, purportedly to project the entire next year's tips and cost of insurance allocable to the employee. *See* N.A.C. 608.104(a), (d). Because insurance premiums are fixed annually, the tip projection N.A.C. 608.104 permits could have employees paying far more than ten-percent of their *actual* tips—on top of ten-percent of their hourly wage—for their health insurance, all while already receiving a reduced hourly wage.

Furthermore, it was the voters' intent that the ten-percent provision's calculation be limited to the hourly wage paid by the employer. The voters who enacted the Amendment are "presumed to know the state of the law in existence related to the subject upon which they vote." *See Sengel v. IGT*, 116 Nev. 565, 573, 2 P.3d 258, 262-63 (2000) (quoting *Smith v. State*, 38 Nev. 477, 481, 151 P. 512, 513 (1915)). At both times that the voters approved the measure, Nevada's statutes defined "employer" as "every person having control or custody of any employment, place of employment or any employee." N.R.S. 608.011. Thus, when the initiative limited the income exposed to the ten-percent calculation to the "income from the employer," this Court presumes that the voters knew who they meant, that the calculations and consequences flowing from that were intended, and that the Amendment excluded gratuities from the buying public.

Because the Minimum Wage Amendment is a remedial measure, the Court construes it liberally so that it falls in line with its discernible policy and purpose. The stated policy of the Amendment is to protect minimum wage earners and their incomes, and to incentivize provision of comprehensive, low-cost health insurance to the state's lowest-paid workers. The Commissioner's reading of the ten-percent provision is not in line with these priorities and purposes, and thus N.A.C. 608.104(2) is invalid.

F. The Minimum Wage Amendment Mandates Provision Of Health Benefits To Employees Paid Less Than $8.25 Per Hour, Rather Than Mere Offering Of Benefits, And Therefore The District Court Properly Invalidated N.A.C. 608.100(1)

1. The Amendment's plain language

As with the tip issue, Appellants try to create interpretive fog where the constitutional text is clear regarding provision of health benefits to employees. The pertinent language of the Minimum Wage Amendment is read as follows:

> Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and

> fifteen cents ($5.15) per hour worked, if the employer ***provides health benefits as described herein***, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide ***such benefits***.

Nev. Const. art. XV, § 16(A)(emphasis supplied). The commands of these initial clauses are that 1) employers must pay not less than the hourly rates outlined in this section, and 2) employers may pay at the lower hourly rate if they provide certain health benefits to their employees—those benefits "described herein." The term "described herein" refers to the type of health benefits that, helpfully, the Amendment goes on to delineate in the very next sentence. "Described herein" does not—as Appellants argue—modify the verb "provide;" it modifies "health benefits," and announces the immediately-forthcoming description of the benefits that must be provided in order to pay employees a dollar less per hour. This is made even clearer by last words of this portion: an employer must pay the full upper-tier minimum wage if it "does not provide such benefits." The term "such benefits" can only mean those benefits just mentioned, and about to be described in the succeeding passage of the text of the Amendment.

The next sentence of the Amendment does, in fact, describe therein the health benefits that must be provided in order to take advantage of the lower hourly rate:

> Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer.

Nev. Const. art. XV, § 16(A). The requirements here are plain. Many things can be "health benefits," but to qualify an employer to pay the lower-tier wage rate, the health benefits that the Amendment requires be provided must be 1) <u>health insurance</u>, meaning it must meet standards set out in law (of which there are many) for employer-provided health insurance; 2) it must be <u>made available</u> (i.e., offered) to the employee and all the employee's dependents; and, 3) its premiums may not cost the employee more than <u>ten percent</u> of his or her gross taxable income from the employer. These are

the benefits "described herein;" these are "such benefits" as can qualify an employer—if *provided* to the employee—to pay the lower-tier minimum hourly wage.

There is no confusion here. Appellants even state expressly that the "offering" clause of the Amendment sets out the basic elements that employers' health benefits must contain in order to pay employees at the subminimum wage level. App. Br. at 10 ("[H]ealth benefits must be (1) actual health insurance; (2) must be made available to the employee; (3) must provide coverage for the employee and dependents; and (4) must satisfy the 10 percent cost cap."). So both parties understand and agree that the Amendment's third sentence sets out the requirements for the health benefits that may qualify an employer to pay the lower-tier wage rate; that is its function, grammatically and substantively.

The disagreement arises because Appellants understand the use of the word "offering" ("*Offering* health benefits within the meaning of this section …") to alter, define, or otherwise control the meaning of "provide" in the previous clause ("… if the employer *provides* health benefits as described herein …"). In their rendering, "offering" replaces "provide" as the key command of the constitutional text, and is the only step necessary to activate eligibility to pay the lower-tier wage rate to employees. But "offering" does not carry the weight to which Appellants assign it; instead, it directs the steps and requirements necessary *in order to provide* the required health benefits.

The term "provide" or "provides" is used to indicate at which level an employer must pay its minimum wage employees, depending upon whether the health benefits actually have been provided. The term *offering* is employed subsequently, to indicate the requirements of what the thing *provided* must include. The terms are not synonymous or interchangeable. They are different terms, and they are sequential. Employers must *provide* health benefits in order to qualify to pay employees below the upper-tier wage, and *offering* such benefits—making them available, as health

insurance at a specific capped cost—is a natural and necessary predicate to complying with the command to provide them. "Offering," in that reading, does not define "provide"—nor should it, because the two are not linguistically synonymous—but merely directs the requirements that must culminate in provision of the benefits offered. The purpose of the clause beginning "[o]ffering health benefits," is not to dilute or otherwise offend the basic command of the text, which is to *provide*. An employer may *offer* one, three, or half a dozen different health benefits plans that meet the requirements of the Amendment, but to take advantage of the privilege of paying up to $1.00 less as an hourly minimum wage, those benefits must be *provided*.

2. The basic bargain of the Minimum Wage Amendment

Here is how the Amendment was supposed to function: Employers choose whether it is better to pay every employee at least $8.25 per hour, currently, or to pay employees down to $7.25 per hour but provide those employees and their dependents with health insurance, at a capped premium cost to the employee of ten percent of what the employer paid the worker in wages. That cap meant that employers had to weigh the possibility that health insurance premiums might run above the ten percent of wages figure, leaving them responsible for overages. Employees either receive the insurance and up to a dollar less in pay, or the full $8.25 hourly wage. That was the fundamental meaning and function of the provision.

N.A.C. 608.100(1), however, establishes a loophole that benefits employers mightily, by permitting an employer to reduce employees' wages all the way down to $7.25 per hour from $8.25 merely by making qualifying health benefits available to employees. In other words, in Appellants' version, the employer receives the benefit of the Amendment—a dollar off for every hour worked—whether or not the employee receives anything in exchange for the loss of that hourly dollar. This cannot be squared with the text or policy of the constitution.

Appellants, for their part, agree that there is, in fact, a bargain inherent in the

Minimum Wage amendment. App. Br. at 16 ("The amendment does indeed reflect an inherent bargain …"). They merely cast it in meaner and less-remedial terms: "The administrative regulations construe that bargain to be that an employee must receive either higher wages or access to affordable employer-provided health insurance." *Id*. This is the heart of the matter, essentially. Respondent believes the bargain was the potential trade between actual wages out of his pocket in exchange for affordable health insurance. Appellants read employees out of the "bargain" entirely: employers get to select the benefits plans; employers control the working conditions and terms that make those plans useful or not to employees; and the minute the employer has decided to "make available" the benefit plan, the employee has already lost the dollar per hour in wages—frankly, not only without accepting the benefit, but without ever needing even to consider doing so. The Labor Commissioner's version of the Amendment's "bargain" is consummated only by one side. It is an offer with no need for acceptance; it is worse than a contract of adhesion, because it lacks even the take-it-or-leave-it quality of those bargains. The employee cannot leave it, once the employer has decided he or she has already taken it.

In the Commissioner's version the purposes and benefits of the Amendment are thwarted, and employees (the obvious intended beneficiaries of the provision) who reject insurance plans offered by their employer receive neither the low-cost health insurance envisioned by the Minimum Wage Amendment, nor the raise in wages its passaged explicitly promised them. $7.25 per hour is already the federal minimum wage rate that every employer in Nevada must pay employees anyway. The fundamental operation of the Minimum Wage Amendment, fairly construed, demands that employees not be left with none of the benefits of its enactment, whether they be the higher wage rate or the promised low-cost health insurance for themselves and their families.

An employer must do more than merely offer health benefits to an employee in order to qualify for paying the employee the lower-tier wage. Any other construction turns the incentives embodied by the Amendment to encourage employers to provide qualifying health plans to their employees or else pay higher wages to those employees, on their heads. The district court made clear that N.A.C. 608.100(1) offends these basic principles, and is therefore invalid.

3. Respondent incorporates additional arguments already made in the briefing in the consolidated actions

Rather than re-state further the arguments already made to this Court in this consolidated set of actions, Respondent incorporates and directs the Court's attention to Appellant's Opening Brief in *Hanks et al. v. Briad Restaurant Group, LLC*, Nev. Sup. Ct. Case No. 68845, at 5-15, and Appellant's Opening Brief in *Kwayisi et al. v. Wendy's of Las Vegas, Inc.*, Nev. Sup. Ct. Case No. 68754, at 5-15. Therein, Respondent adopts the arguments stemming from dictionary and thesaurus sources, Nevada code provisions, and examples of contemporary usages and understandings of the text of the Minimum Wage Amendment, as well as the basic canonical tenet that the use of "provide" by the drafters in one place means that the use of offering" in a subsequent location indicates a different concept.

In conclusion, even if this Court were to perceive ambiguity on the central textual question of *provide versus offering* (as the district court discussed in its order), the meaning of the Minimum Wage Amendment insist that the lower-tier wage level have some meaning, that employees receive something for their loss of a dollar per hour worked. The enormous, employer-friendly loophole that the Labor Commissioner's regulation opens up is, plainly, that employers may aggrandize to themselves the benefit of saving a large portion of their wage bill, at no cost to themselves, while the minimum-wage worker is assured of receiving neither the raise in wages established by the Amendment nor its alternative promise of affordable

health insurance. There is no rationale under which such an about-face in the meaning and impact of a popularly-enacted constitutional provision is within the power of an unelected agency head to create or maintain. As the district court determined, N.A.C. 608.100(1) invalid, as it impermissibly delimits and denies the benefits of the Minimum Wage Amendment to Respondent and to similarly-situated low-wage workers.

IV. *AMICI CURIAE*

The contributions of the various *amici curiae* do not add much to the Court's understanding of the issues at stake in this appeal, unfortunately, other than to reiterate their support for an interpretation of the Minimum Wage Amendment that bolsters their respective financial bottom lines. Respondents will note that a minimum wage worker making $7.25 per hour, working 25 hours a week (as employers keep hours below thirty per week to avoid the mandates of the Affordable Care Act) makes $181.25 per week in gross wages from the employer. At the proper $8.25 wage level per hour, that figure rises only to $206.25 a week.

Beyond that, *amici* repeat endlessly that tip and gratuities are, in fact, income to the employee—a point readily conceded, but which does nothing to establish that they are income from the employer. *Amicus* Briad Restaurant Group, LLC launches an argument that, due to tip-pooling arrangements, gratuities actually do come from the employer—an entirely wrongheaded approach that evinces fundamental misunderstanding of tip-sharing in Nevada, as well as the cases interpreting N.R.S. 608.160. Briad Am. Br. at 7-10. *Amici* Landry's and Dotty's argue that "from," as in "from the employer," does not actually mean "from" at all, a point that in a stretch may support a finding of ambiguity (which itself redounds to Respondent's favor in the end) but hardly establishes that tips paid by the general public constitute income from the employer. Landry's/Dotty's Am. Br. at 10-13.

One line of argument, however, deserves more direct rebuttal, as it forms either a misrepresentation or, at least, a basic misunderstanding of current practice among minimum wage employers in Nevada. The joint brief of the Nevada Resort Association and the Las Vegas Metropolitan Chamber of Commerce asserts, as one basis for asserting that the constitutional command to *provide* health benefits to sub-$8.25 employees should be understood to mean merely requiring the *offering* those benefits, that employers "incur significant fixed administrative costs in purchasing group health insurance for their employees and often enter into multi-year agreements in order to provide such insurance." Joint Amicus Br. at 11. The problem, as they see it, if employees must accept the benefit in order to be paid at the subminimum wage level, is that they envision employers paying for group health insurance but thereafter receiving "no corresponding benefit of being able to pay at the lower-tier rate." *Id.* This argument is defeated by the fact that Nevada minimum wage employers presently offer health benefits plans that cost them nothing at all.[8] All the cost is borne by employees, and all the benefits of the lower wage rate flow to the employer.

Furthermore, going to *amici's* argument that the invalidation of the subject regulations will undercut the Amendment's "parallel policy goal of promoting widespread availability of health insurance for Nevada employees," in every currently-pending case counsel is aware of the offered benefits plans do not meet—

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[8] *See Tyus et al. v. Wendy's of Las Vegas, Inc. et al., supra*, Exhibit 5 to Response to Mot. for S.J., ECF Doc. 60-5, at 115:7-10:

> Q: Currently what does the SRC cost Wendy's or Cedar to offer to its employees? What's the cost to you?
>
> A: Nothing. The employee pays the premium.

See also Pl. Mot. for P.S.J. on Liability as to Plaintiff Paulette Diaz's First Claim for Relief in MDC Restaurants, LLC's Appendix, Nev. Sup. Ct. Case No. 68523, consolidated with this action, at Vol. 1, 059.

and are clearly marked as not meeting—the minimum requirements of the Affordable Care Act.[9] This means that the employees, whom *amici* appear to champion with this argument, have to go out and purchase insurance on the state exchange, or pay the I.R.S. penalty, even if they accept their employer's benefits plan. This circumstance accounts for the miserable employee enrollment rate for employer-offered benefits plans by minimum wage workers, which in the specific cases just cited runs as low as two percent.[10] *Amici* either do not know, or know but do not care to highlight, this sorry state of affairs when they make their policy assertions.

V. CONCLUSION

The district court properly invalidated N.A.C. 608.100(1) and 608.104(2), because they do not comport with the Minimum Wage Amendment either textually or for reasons based on context, logic, and public policy. For the foregoing reasons, this Court should affirm the decision below.

Respectfully submitted this 29th day of December, 2015.

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[9] *See Tyus et al. v. Wendy's of Las Vegas, Inc. et al., supra*, Response to Mot. for S.J., ECF Doc. 60, at 9.

[10] *See* page 2, supra.

CERTIFICATE OF COMPLIANCE

1. I certify that this Brief complies with the formatting requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P. 32(a)(5) and the type style requirements of N.R.A.P. 32(a)(6) because it has been prepared in a proportionally spaced typeface, size 14, Times New Roman.

2. I further certify that this Brief complies with the type-volume limitations of N.R.A.P. 32(a)(7) because, excluding the parts of the Brief exempted by N.R.A.P. 32(a)(7)(C), it contains 9,182 words.

3. Finally, I hereby certify that I have read this 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 N.R.A.P. 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 this 29th day of December, 2015.

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CERTIFICATE OF SERVICE

STATE OF NEVADA, COUNTY OF CLARK

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Clark, State of Nevada My business address is 3556 E. Russell Road, 2nd Floor, Las Vegas, Nevada 89120-2234.

On December 29, 2015, I served true copies of the following document(s) described as **RESPONDENT CODY HANCOCK'S ANSWERING BRIEF** on the interested parties in this action as follows:

BY CM/ECF: Pursuant to N.E.F.R., the above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing (CM/ECF) system.

BY U.S. MAIL: I enclosed the document(s) listed above in a sealed envelope or package addressed to the persons at the addresses listed below and placed the envelopes for collection and mailing, following our ordinary business practices. I am readily familiar with Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on December 29, 2015, at Las Vegas, Nevada.

By: */s/ Dannielle Fresquez*
Dannielle Fresquez, an Employee of
WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN. LLP