

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 69060

GENEVA M. SIMMONS, an Individual

Appellant,

v.

JESUS M. BRIONES, an Individual

Respondent.

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Tracie K. Lindeman
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court, Clark County
The Honorable Rob Bare, District Court Judge
District Court Case No. A-14-706955-J

RESPONDENT'S ANSWERING BRIEF

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6

7 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
8

9 GENEVA M. SIMMONS;

10 Appellant,

11 v.

12 JESUS MANUEL BRIONES,

13 Respondent.

Supreme Court No. : 69060

District Court No.: A-14-706955-J

District Court Dept. : XXXII

**RESPONDENT JESUS MANUEL
BRIONES' NRAP 26.1 DISCLOSURE**

14 **N.R.A.P. 26.1 DISCLOSURE**
15

16 I, Cliff W. Marcek, the undersigned counsel of record, certify that the
17 following are persons and entities as described in Nevada Rules of Appellate
18 Procedure (N.R.A.P.) 26.1(a) and must be disclosed. These representations
19 are made in order that the judges of this court may evaluate possible
20 disqualification or recusal.
21

22 i. There exists no parent corporation for Respondent.
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- 1 ii. Further, there is no publicly held corporation or company which
2 owns ten (10%) percent or more of Respondent (or Respondent's
3 stock).
4
5 iii. There are no law firms, aside from CLIFF W. MARCEK, P.C.,
6 expected to appear in this Court on behalf of Respondent.
7
8 iv. Law firms having previously appeared on behalf of Respondent
9 are:
10 Eduardo G. San Miguel, CHTD., as Respondent's counsel during
11 Clark County Eighth Judicial District Court proceedings Case
12 No. A-11-645923-C.
13
14 v. No Respondent in this matter uses a synonym.

15 Dated this 3 day of June, 2016.

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STATEMENT OF THE CASE

The Appellant has described the case history in her brief, and the Respondent will not restate it here. However, the respondent adds the following.

This case arose out of an all too common traffic collision that occurred on August 20, 2010 in Las Vegas, Nevada. (AA 00001-AA00008) Mr. Briones was entering the parking lot at the Main Street Station when Geneva Simmons backed out of her parking spot, causing the collision. (AA 00009) As a result, Mr. Briones was hurt, and he filed a Civil Complaint for Money Damages. (AA 00008-AA00012) Geneva Simmons, who was insured by GEICO Insurance Company, was defended by the GEICO Staff Counsel in Las Vegas. (AA00013-00016)

It is important to note that the letter written to the Department of Motor Vehicles on September 4, 2013 in an effort to get the DMV to suspend Mr. Briones' license was written by the staff counsel for GEICO Insurance. (AA 00117) GEICO Insurance is the real party in interest and the Respondent doubts Ms. Simmons is even aware of all the actions taken by GEICO Insurance, including this appeal. For the purpose to accurately reflect the parties in this case, the Appellant will be referred to as either "Ms. Simmons", "the Appellant", or "GEICO Insurance."

SUMMARY OF THE ARGUMENT

Nevada's Motor Vehicles: Insurance and Financial Responsibility law mandates that owners and operators of motor vehicles have liability insurance to operate a vehicle on the roads of Nevada. This law advances an important public policy to see that people are compensated if they are hurt or their property damaged by someone carelessly driving a car. The law creates disincentives to people who operate motor vehicles without insurance. It goes so far as to impose the power of the state to revoke one's driving privileges if he causes a crash, damaging someone without insurance. GEICO Insurance, in violation of the plain meaning of the statute and the ruling from two judges, filed this appeal to use the power of the state to revoke Mr. Briones's driver's license for non-payment of costs and attorney's fees for not exceeding an offer of judgment at trial.

Both the ALJ and district court properly determined that a judgment for attorney's fees and costs was not a "judgment" as defined under the statute. A judgment for attorney's fees and costs were awarded to Ms. Simmons because Mr. Briones failed to beat the arbitration award by 20 percent. This judgment did not arise out of a motor vehicle accident; therefore, does not fall within the definition of "judgment" under the statute.

1 Respondent does not believe the statute is ambiguous. However, when a
2 statute is ambiguous and subject to more than one interpretation, courts look
3 to the legislature's intent. NRS 485.035 entitled "Judgment" defines judgment,
4 and states:
5

6 Any judgment which becomes final . . . upon a cause of action
7 arising out of the ownership maintenance or use of any motor
8 vehicle for damages including damages for care and loss of
9 services because of an injury to or destruction of property
10 including the loss of use thereof or upon any cause of action on
11 agreement of settlement for such damages.

12 GEICO Insurance contends that the above definition includes all
13 judgments and not just judgments for damages from motor vehicle accidents.
14 This interpretation is inconsistent with the statutory scheme in Chapter 485.
15 The ALJ and the district court applied the statute as a whole and held that
16 "judgment" as defined under NRS 485.035 was not intended to include civil
17 judgments such as a judgment for attorney's fees.
18

19 Many other states have statutes like the Nevada Statute, and not one
20 state has interpreted its almost identical statute as GEICO Insurance does in
21 this case. GEICO Insurance left no stone unturned and canvassed the statutes
22 of almost every state in the Union, and has not found one court that interprets
23 the statute as it would like. The purpose of NRS 485 was to encourage, if not
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1 require, owners and operators of motor vehicles to purchase liability insurance
2 for any future damages that may arise out of an accident.
3

4 The Administrative Law Judge's decision to rescind the suspension and
5 the district court's denial of Ms. Simmons' Petition for Judicial Review were
6 proper and should be affirmed.
7

8 STANDARD OF REVIEW

9
10 This is an appeal from the District Court's denial of a petition for
11 judicial review of an administrative decision. The Administrative Law Judge
12 and the District Court interpreted Nevada's Motor Vehicles: Insurance and
13 Financial Responsibility Statutes to mean that a judgment of attorney's fees
14 and costs is not a "judgment" as defined under NRS 485.035 and, therefore, is
15 not a judgment that can lead to suspension of driving privileges under NRS
16 485.302 for nonpayment of judgment. "When reviewing a district court's
17 denial of a petition for judicial review of an agency decision, this court
18 engages in the same analysis as the district court to determine whether the
19 agency's decision was arbitrary or capricious and, thus, an abuse of the
20 agency's discretion." *Rio All Suite Hotel Casino v. Phillips*, 240 P.3d 2, 4 2010
21 Nev. LEXIS 38, 126 Nev. Adv. Rep. 34 (Nev. 2010). "When the issue is one
22 of statutory construction, which is a question of law, it is reviewed de novo,
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1 without deference to the district court's conclusions." *S. Nev. Homebuilders*
2 *Ass'n v. Clark County*, 121 Nev. 446,449, 117 P.3d 171, 173 (2005). The
3 Court has a duty to interpret statutes as a whole "harmoniously with one
4 another in accordance with the general purpose of those statutes." *Id.*
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6

7 ARGUMENT

8 **I. THE ALJ AND DISTRICT COURT PROPERLY INTERPRETED NEVADA'S** 9 **MOTOR VEHICLES: INSURANCE AND FINANCIAL RESPONSIBILITY** 10 **STATUTES.**

11 Chapter 485 of the Nevada Revised Statutes is entitled "Motor
12 Vehicles: Insurance and Financial Responsibility," (hereafter referred to as the
13 "Compulsory Insurance Law")¹ was enacted to ensure individuals would
14 practice safety and financial responsibility while operating motor vehicles. As
15 the title suggests, the legislation was designed to require liability insurance to
16 compensate people for injuries or property damage caused by careless
17 operation of a motor vehicle. GEICO Insurance's effort to rename portions of
18 Chapter 485 the "Unsatisfied Judgment Statutes," is truly a venture into
19 Orwellian logic and misrepresents the intent of the statute. (App Opening
20 Brief page vi lines 6-8).
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24 ¹ The Respondent will use this name because that is how the Nevada Supreme
25 Court referred to it in *Department of Motor Vehicles v. Lawler*, 101 Nev. 616
26 (1985).
27
28

1 Under NRS 485.302, which states, in part, “[t]he Department shall,
2 upon receipt of a certified copy of a judgment, suspend the license . . . of any
3 person against whom the judgment was rendered except as provided in this
4 section and NRS 485.305”.

5
6 NRS 485.035 entitled “Judgment” defines judgment, and states:

7 Any judgment which becomes final . . . upon a cause of action
8 arising out of the ownership maintenance or use of any motor
9 vehicle for damages including damages for care and loss of
10 services because of an injury to or destruction of property
11 including the loss of use thereof or upon any cause of action on
12 agreement of settlement for such damages.

13 These two provisions are part of a broader statutory plan designed to
14 create incentives for people to have insurance and disincentives for those who
15 do not². NRS 485.185 entitled “Insurance Required” sets out the insurance
16 liability limits any person must possess when operating a vehicle in the state
17 to protect against “. . . tort liabilities arising from the maintenance and use of a
18 motor vehicle.” (Emphasis added.) NRS 485.187 entitled Unlawful Acts Fine
19 and Penalties and defines what is unlawful including operating a vehicle
20 without insurance.

21 As stated by the Nevada Supreme Court:
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24

25 _____
26 ² Mr. Briones had liability insurance.
27
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1 NRS 485.185 is a compulsory insurance law. It requires owners
2 of motor vehicles, which are or should be registered in Nevada to
3 continuously maintain insurance, self-insurance or security
4 sufficient to satisfy tort liabilities from the maintenance or use of
5 motor vehicles. The purpose of this law, as far as possible, is to
6 assure that motor vehicles have continuous liability insurance.
7 *Nationwide Mut. Ins. Co. v. Liberty Mut. Ins. Co.*, 401 N.Y.S.2d
8 675 (N.Y.Sup.Ct. 1976). Anyone who drives an uninsured
9 vehicle, which is or should be registered in Nevada, violates NRS
10 485.185. *Department of Motor Vehicles v. Lawlor*, 101 Nev. 616,
11 618 (1985).

12 The plain language of Chapter 485 is to require liability insurance to
13 compensate people who are injured or whose property has been damaged by
14 someone negligently operating a motor vehicle. It is **not** designed for
15 insurance companies to suspend someone's license for a civil judgment for
16 attorney's fees because the injured Plaintiff did not exceed the arbitration
17 award at trial. This is a grotesque misuse of the statutory scheme and is an
18 effort to use the power of the state to deter people from bringing lawful claims
19 for injuries to people upon the roads of Nevada.

20 **1. The Judgment for Attorney's Fees and Costs are not a**
21 **"judgment" under NRS 485.035.**

22 The definition of judgment under the meaning of the Compulsory
23 Insurance law refers to "any judgment...upon a cause of action arising out of
24 the ownership, maintenance or use of any motor vehicle for damages..."
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1 The hearing officer found that the Judgment for Attorney's Fees and
2 Costs that was entered was not a "judgment" as contemplated by NRS 485
3 because it was not ". . . upon a cause of action arising out of the ownership . .
4 .or use of a motor vehicle for damages including damages for case, loss of
5 services because of injury to or destruction of property." (AA0203)
6

7 The hearing officer easily distinguished that the judgment for attorney's
8 fees and costs for the insurance company was not the type of judgment
9 contemplated by Chapter 485.
10

11 Further, the Honorable Rob Bare of the Eighth Judicial District Court
12 held that, "NRS Chapter 485 is to require liability insurance to compensate
13 people who are injured or whose property has been damaged by someone
14 negligently operating a motor vehicle and it does not pertain to a judgment for
15 attorney's fees because the plaintiff did not exceed the arbitration award at
16 trial." (AA0278).
17

18 Judgment as defined by NRS 485.035 refers to judgments stemming
19 from a cause of action arising out of the ownership, maintenance or use of any
20 motor vehicle for damages. The judgment of attorney's fees and costs, while
21 the ultimate result of a case that involved a motor vehicle collision, actually
22 resulted from Respondent's inability to exceed the arbitration award at trial.
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1 Appellant argues that judgment as defined in NRS 485 should include
2 any judgments no matter what. However, this interpretation is wrong. NRS
3 485 was enacted to ensure operators of motor vehicles within Nevada obtain
4 liability insurance, even just the minimum requirements, so that in the event of
5 an accident, the injured person can be indemnified. "The purpose of this law,
6 as far as possible, is to assure that motor vehicles have continuous liability
7 insurance." *Nationwide Mut. Ins. Co. v. Liberty Mut. Ins. Co.*, 401 N.Y.S.2d
8 675 (N.Y.Sup. Ct. 1976).

9
10 Both the ALJ and the district court have interpreted that the statute does
11 not apply to judgments of attorney's fees and costs. The district court held that
12 reading the statute as a whole, did not include a judgment of attorney's fees
13 and costs and properly rescinded Mr. Briones' driving privilege suspension.

14
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16 **2. Statutory Interpretation Looks to the Legislature's Intent**
17 **and Should be Read as a Whole When Determining that**
18 **Intent.**

19 "Where the statutory language is ambiguous or otherwise does not
20 speak to the issue before us, we will construe it according to that which
21 'reason and public policy would indicate the legislature intended.'" *Salas v.*
22 *Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511 (2000) (quoting
23 *State Dep't Mtr. Vehicles v. Vezeris*, 102 Nev. 232, 236, 720 P.2d 1208, 1211
24 (1986)). "The intent of the legislature is the controlling factor in statutory
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1 interpretation." *Cleghorn v. Hess*, 109 Nev. 544, 548 853 P.2d 1260 (1993).
2 This court looks to the "context and spirit of the law" or the "causes which
3 induced the legislature to enact it" to determine the meaning of words in a
4 statute. *Hardy Cos. v. SNMARK, LLC*, 245 P.3d 1149, 1153, 2010 Nev.
5 LEXIS 52, 126 Nev. Adv. Rep. 49. "If a statute is susceptible to more than
6 one natural or honest interpretation, it is ambiguous." *Banegas v. State Indus.*
7 *Ins. Sys.*, 117 Nev. 222, 225, 19 P.3d 245 (2001)
8

9 Nevada's Compulsory Insurance Law was enacted to ensure owners and
10 operators had insurance coverage for any future damages they might incur in
11 the event of an accident. NRS 485.035 is a financial responsibility law. A
12 financial responsibility law operates in two ways. "The first of these—the
13 'security suspension' section—attempts to impose financial responsibility for
14 past accidents. The second—the certification section—attempts to insure
15 financial responsibility in the event of future accidents." 1 I. Schermer,
16 *Automobile Liability Insurance* § 15.01 (2d ed.1985). A financial
17 responsibility act also "provides leverage for the collection of damages from
18 financially irresponsible persons." *Chase v. State Farm Mut. Auto. Ins.*, 131
19 Ariz. 461, 641 P.2d 1305, 1307 (Ariz.App.1982).
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24 Appellant applies a very broad and inaccurate interpretation of the
25 statute to apply to any judgment awarded to any party. The intent of the
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1 statutes was to ensure that individuals awarded judgments for injuries to
2 person and property arising from a motor vehicle collision, and "provide
3 leverage for the collection of damages from financially irresponsible persons."
4 *Department of Motor Vehicles v. Lawler*, 101 Nev. 616, 619, 707 P.2d 1140,
5 1142 (1985) (quoting *Chase v. State Farm Mut. Auto Ins.*, 641 P.2d 1305,
6 1307 (Ariz. App. 1982)). Financially irresponsible persons generally refer to
7 individuals who do not have insurance and, therefore, no ability to pay
8 damages in the event of a collision. Mr. Briones had liability insurance and
9 the judgment against him was not for injuries and property damage arising
10 from the maintenance, ownership, or operation of a motor vehicle.

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14 **a. Similar Statutory Schemes in Other States Are**
15 **Distinguishable From the Facts of This Case**

16 Many other states have similar statutory schemes enacted into state law
17 regarding motor vehicle financial responsibility rules. However, no state has
18 interpreted their statutes consistent with GEICO Insurance's erroneous
19 interpretation. Appellant's exhaustive research into other states statutory
20 schemes regarding motor vehicle financial responsibility shows that no state,
21 with almost identical statutes as Nevada's, has interpreted the statute as
22 GEICO Insurance would like the Court to here.
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1 Appellant cites to authority from other states and argues the DMV
2 should revoke Mr. Briones' driving privilege and registration because he did
3 not pay the judgment entered against him, a judgment that arose only because
4 Mr. Briones did not obtain a judgment 20 percent in excess of the arbitration
5 award.
6

7 Appellant argues that this case is similar to *MacQuarrie v. McLaughlin*,
8 294 F.Supp. 176 (D.Mass. 1969), where the owner of a vehicle lent his car to
9 a friend who struck a car driven by Balch, causing property damage to Balch's
10 vehicle. *Id.* at 177. Balch obtained a judgment against both the driver of the
11 vehicle and the owner MacQuarrie. *Id.* Upon nonpayment of the judgment,
12 Balch requested that the motor vehicle registrar revoke MacQuarrie's license.
13 *Id.* MacQuarrie argued that the statute was unconstitutional and violated his
14 equal protection and due process rights. *Id.* The court states that "the
15 provisions of Mass.G.L. c. 90§22A exposes the driver's license of one who
16 does not insure against property damage to revocation if he fails to satisfy a
17 judgment against him for such liability." *Id.* The Court in held that "we see no
18 constitutional impediment to compelling him to guarantee his agent's due care
19 when the offered alternative, or escape, is the purchase of property damage
20 insurance." *Id.* at 178. Further, the court stated that "prior to revocation of a
21 license under Mass.G.L.c. §22A the Registrar of Motor Vehicles must be
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1 satisfied that a judgment has been entered against the individual as a
2 defendant in an action to recover damages for injury to property arising out of
3 the use, operation or maintenance on the ways of the Commonwealth of a
4 motor vehicle." *Id.*

5
6 This case is distinguishable in many ways. Mr. Briones was the plaintiff
7 in a case where he was not the at-fault party. Even if he was found to be 50
8 percent liable for cash damages³, he was the injured party that sought relief
9 from the defendant in his case. Unlike *MacQuarrie*, Mr. Briones had
10 automobile insurance at the time the collision occurred. If the court should
11 follow similar statutory schemes like Appellant suggests, then Mr. Briones'
12 license should not be revoked because the judgment for attorney's fees and
13 costs entered against him were not to recover damages for injury to property
14 but resulted from the fact that Mr. Briones' award from the short trial verdict
15 did not exceed the prior arbitration award.
16

17
18 Appellant also cites *Wilfong v. Wilkins*, 70 N.C.App. 127, 318 S.E.2d
19 540 (1984), where Wilfong owned two vehicles, that were both insured under
20 her name. *Id.* at 128. Her estranged husband, Carpenter, drove one of the
21 vehicles when he either negligently or intentionally collided with the other
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24 ³ Assuming arguendo, that the Compulsory Insurance Law could be construed
25 in such tortured a manner, GEICO would be entitled to nothing unless
26 Respondent was more than 50% at fault. (NRS 41.141).
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1 vehicle, damaging both vehicles. *Id.* Wilfong sued Carpenter and obtained a
2 judgment against him, but when it remained unsatisfied Wilfong requested the
3 Department of Motor Vehicles suspend his driving privileges. *Id.* The
4 Commissioner of the Department of Motor Vehicles declined to suspend
5 Carpenter's driving privileges because he was covered under Wilfong's
6 insurance. *Id.* However, the trial court decided and the court of appeals
7 affirmed, that Carpenter's driving privileges should be suspended because
8 proof of financial responsibility in this case was not required because the
9 relevant statute did not apply when no injury or damage occurs. *Id.* at 130.

12 In *Wilfong*, Carpenter was the only party involved in the collision. He
13 drove one vehicle, either negligently or intentionally, into Wilfong's second
14 vehicle. The only damage was property damage to the two vehicles. This case
15 is distinguishable because Mr. Briones was the driver of his own vehicle when
16 Appellant crashed into him. He was injured and required medical care and
17 physical therapy. The Administrative Law Judge's decision to rescind Mr.
18 Briones' suspension and the Eighth Judicial District Court's denial of Ms.
19 Simmons' Petition for Judicial Review was proper.
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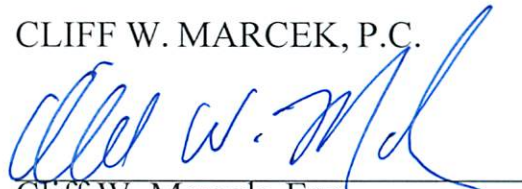
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8 CONCLUSION

9 For the reasons set forth above, Mr. Briones respectfully requests that
10 this Court affirm the district court's decision and deny Appellant's request to
11 remand the matter to district court with instructions to remand the matter to
12 the Nevada Department of Motor Vehicles Administrative Law Judge to
13 suspend Mr. Briones' driving privilege and registration.
14

15 Dated this 3 day of June, 2016.
16

17
18 CLIFF W. MARCEK, P.C.

19 

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CERTIFICATE OF COMPLIANCE

1
2
3 1. I hereby certify that this Brief complies with the formatting
4 requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P.
5 32(a)(5), and the type style requirements of N.R.A.P. 32(a)(6), because:

6 [X] This Brief has been prepared in a proportionally spaced
7 typeface using Microsoft Office Word 2007 in Times New
8 Roman font, size fourteen (14).

9
10 [] This Brief has been prepared in a monospaced typeface using
11 _____ with _____.

12
13 2. I further certify that this Brief complies with the page- or type-
14 volume limitations of N.R.A.P. 32(a)(7) because, excluding the parts of the
15 Brief exempted by N.R.A.P. 32(a)(7)(C), it is either:

16
17 [] Proportionately spaced, has a typeface of 14 points or more,
18 and contains _____ words; or

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20 [] Monospaced, has 10.5 or fewer characters per inch, and
21 contains _____ words or _____ lines of text; or

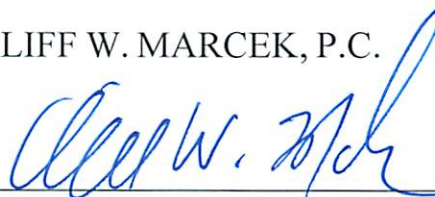
22 [X] Does not exceed 30 pages.

23 3. Finally, I hereby certify that I have read this Appellate Brief, and
24 to the best of my knowledge, information, and belief, it is not frivolous or
25 interposed for any improper purpose. I further certify that this Brief complies
26

1 with all applicable Nevada Rules of Appellate Procedure, in particular
2 N.R.A.P. 28(e)(1), which requires every assertion in the Brief regarding
3 matters in the record to be supported by a reference to the page and volume
4 number, if any, of the transcript or appendix where the matter relied on is to
5 be found. I understand that I may be subject to sanctions in the event that the
6 accompanying Brief is not in conformity with the requirements of the Nevada
7 Rules of Appellate Procedure.
8

9
10 Dated this 3 day of June, 2016.

11
12 CLIFF W. MARCEK, P.C.

13
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CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ.P. 5(b), I certify that I am an employee of CLIFF W. MARCEK, Esq. and that on this 3 of June, 2016, I caused the above and foregoing document, **RESPONDENT'S ANSWERING BRIEF**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to EDCR 7.26, to be sent **via facsimile and/or electronic transmission**; and/or
- ☐ to be hand-delivered;

to the attorney(s) and/or party(ies) listed below at the address and/or facsimile number indicated below:

Dennis L. Kennedy, Esq.
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