

EXHIBIT 6

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12
13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14 **IN AND FOR THE COUNTY OF WASHOE**

15 McDonald's of Keystone,

16 Petitioner,

17 vs.

18 The Board of Review for the Nevada
19 Department of Employment, Training and
20 Rehabilitation, Employment Security Division;
21 and, The Administrator of the Nevada
22 Department of Employment, Training and
23 Rehabilitation, Employment Security Division,

24 Respondent.

CASE NO.: CV15-00671

DEPT. NO.: 9

REPLY TO OPPOSITION TO
MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

20 **COMES NOW**, Respondent, Administrator, State of Nevada, Employment
21 Security Division (ESD), by and through counsel, Neil A. Rombardo, Esq., and hereby replies to
22 McDonald's of Keystone's Opposition to Motion to Dismiss Petition for Judicial Review for
23 failure to join an indispensable party in accordance with NRS 612.530(1), and as a consequence,
24 this Court lacks subject matter jurisdiction.

1 **3795**
2 NEIL A. ROMBARDO, ESQ.
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13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14 **IN AND FOR THE COUNTY OF WASHOE**

15 McDonald's of Keystone,

16 Petitioner,

17 vs.

18 The Board of Review for the Nevada
19 Department of Employment, Training and
20 Rehabilitation, Employment Security Division;
21 and, The Administrator of the Nevada
22 Department of Employment, Training and
23 Rehabilitation, Employment Security Division,

24 Respondent.

CASE NO.: CV15-00671


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REPLY TO OPPOSITION TO
MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

20 **COMES NOW**, Respondent, Administrator, State of Nevada, Employment
21 Security Division (ESD), by and through counsel, Neil A. Rombardo, Esq., and hereby replies to
22 McDonald's of Keystone's Opposition to Motion to Dismiss Petition for Judicial Review for
23 failure to join an indispensable party in accordance with NRS 612.530(1), and as a consequence,
24 this Court lacks subject matter jurisdiction.

1 This Reply is made and based upon all pleadings and papers on file herein; the
2 supporting Points and Authorities attached hereto; and upon such other and further evidence as
3 may be adduced at time of hearing on this Motion, if any.

4 **DATED** this 8th day of July, 2015.

5 
6 NEIL A. ROMBARDO, ESQ.
7 *Attorney for Respondent DETR/ESD*
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1 **POINTS AND AUTHORITIES IN SUPPORT OF REPLY TO**
2 **OPPOSITION TO MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

3 **ARGUMENT**

4 This Reply will track the arguments of the Petitioner's Opposition.

5 **A. Standard of Review**

6 Petitioner's committed a jurisdictional error and is now attempting to cure that
7 error by concocting an argument that lacks merit.

8 To begin with, Petitioner cites to the Federal Rules of Civil Procedure and Rule
9 12 of the Nevada Rules of Civil Procedure for the notion that "the court has at least two options"
10 when the jurisdictional grounds are less than sufficient. (Petitioner's Opposition p. 3-4.) ESD
11 does not refute that the FRCP and NRCP provide different options for the Court. The problem is
12 that FRCP does not apply at all to this case, and the NRCP does not apply to this case unless
13 NRS Ch. 612 and NRS Ch. 233B are silent.

14 The case before the Court is an administrative case based on the administrative
15 decision of the Administrator, which is appealed to a referee. *See* NRS 612.495. The referee's
16 decision is appealed to the Board of Review. *See* NRS 612.515. And, then, the Board's decision
17 is appealed to this court. *See* NRS 612.530. NRS 612.530 clearly delineates the appeal process
18 to the District Court under NRS Ch. 612. Where NRS Ch. 612 is silent, NRS Ch. 233B applies
19 to these proceedings. *See* NRS 233B.039. As a result, Petitioner is using the wrong law when it
20 cites to either FRCP and/or the NRCP.

21 The above analysis is supported by *Kame v. Employment Security Dept.*, 105 Nev.
22 22, 25, 769 P.2d 66, 68 (1989). In *Kame*, the petitioner argued that the "doctrine of equitable
23 tolling of statute of limitations" should apply because petitioner failed to meet the jurisdictional
24 time requirements in NRS 612.530(1). The Court rejected this argument because that doctrine

1 only applied to contested cases between parties, *i.e.*, employee suing employer. *Id.* at 24, 67-68.
2 In *Kame*, the Court analyzed NRS 612.530 and stated, “When a party seeks judicial review of an
3 *administrative decision*, strict compliance with the statutory requirements for such review is a
4 precondition to jurisdiction by the court of judicial review.” (Emphasis added.) *Id.* at 25, 68.
5 Citing to *Teepe v. Review Board of Indiana Emp. Sec. Div.*, 136 Ind. App. 331, 200 N.E.2d 538,
6 539 (1964). The Court further stated, “Noncompliance with the requirements is grounds for
7 dismissal of the appeal. Thus, the time period for filing a petition for judicial review of an
8 administrative decision is *mandatory and jurisdictional*.” (Emphasis added.) *Id.* It is clear in
9 *Kame* that a decision under NRS Ch. 612 is an administrative decision, the provisions of NRS
10 612.530(1) are mandatory and failure to comply with the provisions of NRS 612.530(1) divests
11 the Court of jurisdiction.

12 Petitioner also argues that it is undisputed that “the ex-employee’s name was
13 identified in the PJR.” (Pet. Opp. p. 4, l. 13) Petitioner asserts this argument as a vain attempt to
14 show compliance with NRS 612.530(1). However, Petitioner misrepresents the facts because it
15 *is disputed* whether the ex-employee’s name is in the Petition for Judicial Review (PJR). The
16 ex-employee is not named in the caption, her name appears nowhere within the PJR, and she is
17 not on the Certificate of Service. (See Petition for Judicial Review.) Thus, the ex-employee’s
18 name is not on the PJR, and as a result, the Petitioner failed to join an indispensable party.

19 NRS 612.530 is entitled “Judicial review of decision of Board of Review;
20 Commencement of action in district court; parties; service of petition; summary hearings;
21 appeals to Supreme Court,” and states, in pertinent part:

22 1. Within 11 days after the decision of the Board of Review
23 has become final, any party aggrieved thereby or the Administrator
24 may secure judicial review thereof by commencing an action in the
district court of the county where the employment which is the

1 basis of the claim was performed for the review of the decision, in
2 which action *any other party to the proceedings before the Board*
3 *of Review must be made a defendant.* (Emphasis added.)

4 During the course of the administrative hearings at the agency level, the claimant
5 and former employee, Jessica Gerry, was a party. In the Petition for Judicial Review filed on
6 April 13, 2015, the last day that a Petition could be filed under Nevada law, the Petitioner failed
7 to name their former employee, Jessica Gerry, as a party. This Court is obligated to follow
8 *Kame*, in which the Supreme Court held that the provisions of NRS 612.530(1) are jurisdictional
9 and failure to follow such provisions must lead to a dismissal. *Kame*, 105 Nev. at 26, 769 P.2d at
10 68 (1989)

11 **B. The filing of the PJR within 11 days does not satisfy the jurisdictional**
12 **requirement contained in NRS 612.530.**

13 Petitioner argues in its Opposition that *Washoe County v. Otto*, 128 Nev. ___, 282
14 P.3d 719 (2012) does not apply, and that the rules of statutory construction do not require the
15 naming of the ex-employee under NRS 612.530(1).

16 To begin with, *Otto* clearly applies to the current case. ESD does not dispute that
17 *Otto* involved the analysis of NRS 233B.120(2)(a). However, Petitioner fails to point out to the
18 Court that NRS 233B.120(2)(a) is strikingly similar to NRS 612.530(1) and is mandatory. NRS
19 233B.120(2)(a) states, “(2) Petitions for judicial review must: (b) Name as respondents the
20 agency and *all parties of record to the administrative proceeding.*” (Emphasis added.) NRS
21 612.530(1) states that in the judicial review “*any other party to the proceedings before the Board*
22 *of Review must be made a defendant.*” (Emphasis added.) In analyzing *Otto*, the Court relied on
23 *Kame* and quoted, “noncompliance with the requirements (for judicial review) is grounds for
24 dismissal.” *Otto*, 128 Nev. ___ at ___, 282 P.3d at 725 (2012). Thus, the Supreme Court’s

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1 analysis in *Otto* is clearly applicable to NRS Ch. 612 and consistent with that analysis is that the
2 PJR must be dismissed because this Court lacks jurisdiction.

3 With regard to the rules of statutory construction, ESD agrees with Petitioner that
4 NRS 612.530(1) is clear on its face, and it clearly states, “[A]ny other party to the proceedings
5 before the Board of Review *must* be made a defendant.” The plain meaning of the word “must”
6 is “to be obliged; be compelled.” Dictionary.com Unabridged based on the RANDOM HOUSE
7 DICTIONARY, © Random House, Inc. 2015. Therefore, Petitioner is obliged and/or compelled by
8 the statute to add the ex-employee name, and again, per *Kame* and *Otto*, Petitioner failed to meet
9 the legal requirements to impart jurisdiction on this Court.

10 **C. McDonald’s failure to name an indispensable party is not a technical**
11 **dereliction, it divests this Court of jurisdiction and the only order this**
12 **Court may enter is an order of dismissal.**

13 In the interest of judicial economy, ESD will not repeat itself by arguing *Kame*
14 and *Otto* again, but the Petitioner’s failure to properly plead this case divests the Court of
15 jurisdiction. Under such circumstances, the Nevada Supreme Court held in the case of *Scott v.*
16 *Nevada Employment Security Department*, 70 Nev. 555, 559, 278 P.2d 602 (1954), that if the
17 court lacks jurisdiction, it can only make one effective order, the order of dismissal.

18 **CONCLUSION**

19 Petitioner failed to meet the legal requirements of NRS 612.530(1), and as a
20 result, this Court lacks jurisdiction. The statutory deadline within which to file a new Petition for
21 Judicial Review naming the indispensable party, the ex-employee, has passed. As a result, the
22 Court should grant ESD’s motion and dismiss the Petitioner’s Petition for Judicial Review.

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AFFIRMATION Pursuant to NRS 239B.030:

The undersigned does hereby affirm that the preceding document does not contain confidential information; including, but not limited to: the Social Security number or employer identification number of any person or party.

RESPECTFULLY SUBMITTED this 8th day of July, 2015.


NEIL A. ROMBARDO, ESQ.
Attorney for Nevada ESD Respondents

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of
3 Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and
4 correct copy of the foregoing REPLY TO OPPOSITION TO MOTION TO DISMISS
5 PETITION FOR JUDICIAL REVIEW, by placing the same within an envelope upon which first
6 class postage was fully prepaid and affixed, which was thereafter sealed and deposited for
7 mailing with the United States Postal Service at Carson City, Nevada, addressed for delivery as
8 follows:

9 Charles Zeh, Esq.
10 575 Forest St., Suite 200
11 Reno, NV 89509

12 **DATED** this 8th day of July, 2015.

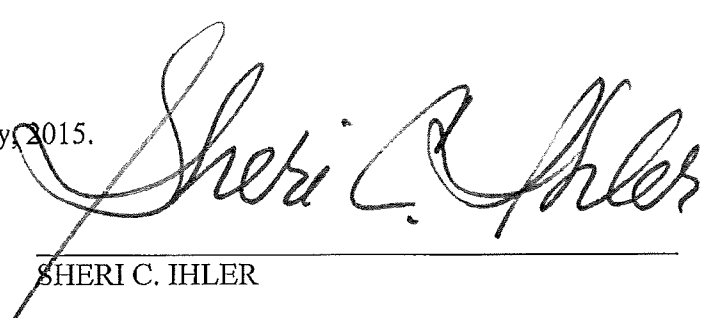
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14 _____
15 SHERI C. IHLER
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EXHIBIT 7

1 **3860**
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7
8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR THE COUNTY OF WASHOE**

10 McDonald's of Keystone,

11 Petitioner,

12 vs.

13 The Board of Review for the Nevada
Department of Employment, Training and
14 Rehabilitation, Employment Security Division;
and, The Administrator of the Nevada
15 Department of Employment, Training and
Rehabilitation, Employment Security Division,
16

Respondent.

CASE NO.: CV15-00671

DEPT. NO.: 9

17
18 **REQUEST FOR SUBMISSION**

19 **TO: THE CLERK OF THE ABOVE-ENTITLED COURT:**


20 It is hereby requested that ESD's Motion to Dismiss Petition for Judicial Review,
21 filed on June 2, 2015; the Petitioner's Opposition, filed on July 6, 2015; and ESD's Reply, filed
22 on July 8, 2015, and all other pertinent documents and pleadings on file herein be submitted to
23 the Court for consideration for purposes of entry of a Decision on said Motion without oral
24 argument.

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DATED this 8th day of July, 2015.


NEIL A. ROMBARDO, ESQ.
Attorney for Respondent DETR/ESD


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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and correct copy of the foregoing REQUEST FOR SUBMISSION, by placing the same within an envelope upon which first class postage was fully prepaid and affixed, which was thereafter sealed and deposited for mailing with the United States Postal Service at Carson City, Nevada, addressed for delivery as follows:

Charles Zeh, Esq.
575 Forest St., Suite 200
Reno, NV 89509

DATED this 8th day of July, 2015.



SHERI C. IHLER

EXHIBIT 8

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8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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14 Rehabilitation, Employment Security Division;
and, The Administrator of the Nevada
15 Department of Employment, Training and
Rehabilitation, Employment Security Division,

16 Respondent.

CASE NO.: CV15-00671

DEPT. NO.: 9

17
18 **OPPOSITION TO PETITIONER'S MOTION**
19 **TO AMEND PETITION FOR JUDICIAL REVIEW**


20 **COMES NOW**, Respondent, Administrator, State of Nevada, Employment
21 Security Division (ESD), by and through counsel, Neil A. Rombardo, Esq., and hereby files this
22 Opposition to Petitioner's Motion to Amend Petition for Judicial Review.

23 ///

24 ///

1 This Opposition is made and based upon all pleadings and papers on file herein;
2 the supporting Points and Authorities attached hereto; and upon such other and further evidence
3 as may be adduced at time of hearing on this Motion, if any.

4 **DATED** this 8th day of July, 2015.

5 
6 NEIL A. ROMBARDO, ESQ.
7 Attorney for Respondent DETR/ESD
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**POINTS AND AUTHORITIES
IN SUPPORT OF OPPOSITION TO PETITIONER'S
MOTION TO AMEND PETITION FOR JUDICIAL REVIEW**


In the interest of judicial economy, ESD will not repeat the arguments in its Motion to Dismiss the Petition for Judicial Review filed on June 2, 2015, and the Reply to Petitioner's Opposition to the Motion to Dismiss Petition for Judicial Review filed contemporaneously with this document. The Motion before the Court is an inappropriate attempt by the Petitioner to fix a fatal flaw – Petitioner's failure to comply with the statutory requirement of NRS 612.530(1). Petitioner's failure to comply with the mandatory provisions of NRS 612.530(1) prevents this Court from having jurisdiction. *See Washoe County v. Otto*, 128 Nev. ___, 282 P.3d 719 (2012) and *Kame v. Emp. Sec. Dept.*, 105 Nev. 22, 769 P.2d 66 (1989). Since the Court lacks jurisdiction it can only issue one effective order, an order of dismissal not an order permitting the Petitioner to amend its fatally defective Petition. *Scott v. Nevada Employment Security Department*, 70 Nev. 555, 559, 278 P.2d 602 (1954). Therefore, the Court must deny the Petitioner's Motion to Amend Petition for Judicial Review.

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AFFIRMATION Pursuant to NRS 239B.030:

The undersigned does hereby affirm that the preceding document does not contain confidential information; including, but not limited to: the Social Security number or employer identification number of any person or party.

RESPECTFULLY SUBMITTED this 8th day of July, 2015.


NEIL A. ROMBARDO, ESQ.
Attorney for Nevada ESD Respondents

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3 Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and
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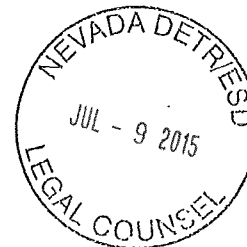
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14 SHERI C. IHLER
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6 Attorneys for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE

10 ***

11 McDonald's of Keystone,

Case No. CV15-00671

12 Petitioner,

Department No. 9

13 v.

14
15 The Board of Review for the Nevada
16 Department of Employment, Training and
17 Rehabilitation, Employment Security
18 Division; and, The Administrator of the
19 Nevada Department of Employment,
20 Training and Rehabilitation, Employment
21 Security Division,

22 Respondents.

21 McDONALD'S REPLY TO ADMINISTRATOR'S OPPOSITION TO McDONALD'S
22 MOTION TO AMEND PETITION FOR JUDICIAL REVIEW

23 I. Introduction

24 The administrator opposes the motion of McDonald's to amend its petition for judicial
25 review by adding as a party, the name of the ex-employee to the caption of the pleading. Since
26 the opposition is based upon and incorporates by reference the administrator's reply to
27 McDonald's opposition to the motion to dismiss the petition for judicial review, McDonald's
28 shall comment, accordingly.

1 **II. The Naming Requirement Is Not A Part Of the Jurisdictional Predicate of NRS**
2 **612.530(1) And, Therefore, the Court Is Free To Consider the Merits Of the Motion**
3 **To Amend the Pleading**

4 The administrator eschews comment on the merits of McDonald's motion to amend,
5 including the point that a motion to amend should be freely given and instead, bases the
6 opposition entirely upon the position that the jurisdictional requirement for filing a petition
7 contained in NRS 612.530(1) was not satisfied and, therefore, the Court is precluded from even
8 reaching the motion to amend. The opposition to the motion to amend is based primarily upon
9 the contention that NRS 612.530(1) and NRS 233B.120(2)(a) are strikingly similar statutes, that
10 the *Kame*¹ decision requires strict compliance with the jurisdictional requirements of statutes
11 allowing for the appeal of administrative rulings, and that since *Otto*² is based upon NRS
12 233B.120(2)(a), *Otto* requires rejection of the petition for judicial review in this case because the
13 ex-employee was not named in the caption of the petition for judicial review before the 11 days
14 for filing a petition for judicial review had expired and *Otto* found the naming requirement of
15 NRS 233B.120(2)(a) to be jurisdictional.

16 *Kame*, concededly, holds that strict compliance with the jurisdictional requirements of an
17 administrative appeal is required. This, however, only gets the administrator to first base. *Kame*
18 presumes the jurisdictional predicate in the first place. Here, the scope of the jurisdictional
19 requirement, itself, is at issue, and thus, *Kame* is not controlling on the specific issue before the
20 Court.

21 The administrator's opposition, thus, rises and falls with the bald assertion that NRS
22 612.530(1) and NRS 233B.120(2)(a), the statute at issue in *Otto*, are strikingly similar. To the
23 contrary, as explained in great detail in McDonald's opposition to the motion to dismiss, the two
24 statutes are strikingly dissimilar. The administrator asserts that NRS 612.530(1) states plainly
25 that the ex-employee "must" be made a party to the dispute. Without question, that statement is
26 contained in NRS 612.530(1). The problem for the administrator, however, is that this language

27 _____
28 ¹*Kame v. Employment Security Department*, 105 Nev. 22, 769 P.2d 66 (1989)

²*Washoe County v. Otto*, 128 Nev. ___, 282 P.3d 719 (2012)

1 is contained in a clause separate and apart from the jurisdictional requirement, itself. No time
2 requirement, therefore, applies to limit when the ex-employee must be named in the petition.
3 The word "must" refers only to the fact of naming, itself. It does not relate to when the ex-
4 employee must be named, unlike the juxtaposition of the term "must," as stated in NRS
5 233B.120(2)(a), where it aligns directly with each of the three requirements for filing an appeal
6 under NRS 233B.120(2)(a).

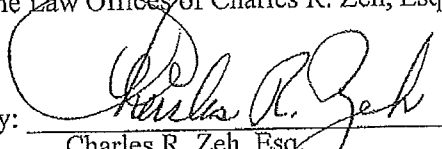
7 The comparison and contrast of the two statutes at issue, here, strongly argue that as is
8 plainly stated in NRS 612.530(1), the act of filing the petition, itself, satisfies the jurisdictional
9 requirement. Nothing more is required. The statute simply states: "Within 11 days after the
10 decision of the Board of Review has become final, any party aggrieved thereby... may secure
11 judicial review thereof by commencing an action...." NRS 612.530(1). This is the entirety of the
12 jurisdictional requirement. McDonald's met this requirement. The Court should correspondingly
13 be free to rule, therefore, on the merits of the motion to amend the petition for judicial review.

14 **AFFIRMATION PURSUANT TO NRS 239B.030**

15 The undersigned does hereby affirm that the preceding document does not contain the
16 social security number of any person.

17 Dated this 9th day of July, 2015.

The Law Offices of Charles R. Zeh, Esq.

18
19 By: 
20 Charles R. Zeh, Esq.
21 The Law Offices of Charles R. Zeh, Esq.
22 575 Forest Street, Suite 200
23 Reno, NV 89509


24 *Attorneys for petitioner McDonald's of Keystone*
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26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *McDonald's Reply to Administrator's Opposition to McDonald's Motion to Amend Petition for Judicial Review*, on those parties identified below by:

√	<p>Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada:</p> <p>The Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502</p> <p>Neil A. Rombardo, Esq. State of Nevada, Department of Employment, Training & Rehabilitation (DETR) Employment Security Division (ESD) 1340 South Curry Street Carson City, NV 89703</p>
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 9th day of July, 2015.

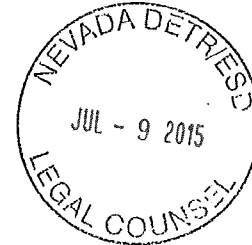

An employee of
The Law Offices of Charles R. Zeh, Esq.

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EXHIBIT 10

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10 *Attorneys for Petitioner*



11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**

13 ***

14 McDonald's of Keystone,

Case No. CV15-00671

15 Petitioner,

Department No. 9

16 v.

17 The Board of Review for the Nevada
18 Department of Employment, Training and
19 Rehabilitation, Employment Security
20 Division; and, The Administrator of the
21 Nevada Department of Employment,
22 Training and Rehabilitation, Employment
23 Security Division,

24 Respondents.

25 **REQUEST FOR SUBMISSION OF MOTION**

26 It is requested that the Petitioner's Motion to Amend Petition for Judicial Review, which
27 was filed on the 7th day of July, 2015, in the above-entitled matter be submitted to the Court
28 for decision.

The undersigned attorney certifies that a copy of this request has been mailed to all
counsel of record.

///

///

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 9th day of July, 2015.

The Law Offices of Charles R. Zeh, Esq.

By: 

Charles R. Zeh, Esq.
The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

Attorneys for petitioner McDonald's of Keystone

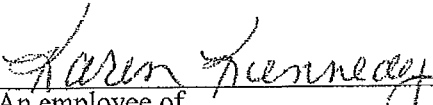
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *Request for Submission of Motion*, on those parties identified below by:

√	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada:
	The Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502
	Neil A. Rombardo, Esq. State of Nevada, Department of Employment, Training & Rehabilitation (DETR) Employment Security Division (ESD) 1340 South Curry Street Carson City, NV 89703
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 9th day of July, 2015.


An employee of
The Law Offices of Charles R. Zeh, Esq.

S:\Clients\McDonnlds\Gerry Jessica\Req for Submission.wpd

EXHIBIT 11

1 CODE: 3242

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE
5

6 MCDONALD'S OF KEYSTONE,

Case No. CV15-00671
Dept. No. 9

7
8 Petitioner,

9 vs.

10 THE BOARD OF REVIEW for NEVADA DEPT.
11 OF EMPLOYMENT, TRAINING and REHABILITATION,
12 EMPLOYMENT SECURITY DIVISION; and,
13 THE ADMINISTRATOR of the NEVADA DEPARTMENT
OF EMPLOYMENT, TRAINING and REHABILITATION,
EMPLOYMENT SECURITY DIVISION,

14 Respondents.
15 _____/

16 ORDER TO SET HEARING

17 The Court is in receipt of Petitioner's, MCDONALD'S OF KEYSTONE'S (hereinafter
18 "McDonald's"), *Petition for Judicial Review*, filed on April 13, 2015. On June 2, 2015,
19 Respondents, THE BOARD OF REVIEW for NEVADA DEPT. OF EMPLOYMENT, TRAINING
20 and REHABILITATION, EMPLOYMENT SECURITY DIVISION (hereinafter "the Board") and,
21 THE ADMINISTRATOR of the NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING
22 and REHABILITATION, EMPLOYMENT SECURITY DIVISION (hereinafter "the
23 Administrator"), filed a *Motion to Dismiss Petition for Judicial Review*. On July 6, 2015,
24 McDonald's filed an *Opposition to the Administrator's Motion to Dismiss*. On July 8, 2015, the
25 Administrator filed a *Reply to Opposition to Motion to Dismiss Petition for Judicial Review*.

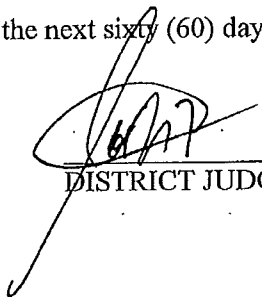
26 In addition to the above documents, the Court is also in receipt of McDonald's *Motion to*
27 *Amend Petition for Judicial Review*, and *Petitioner's Points and Authorities in Support of Motion to*
28 *Amend Petition for Judicial Review*, both filed on July 7, 2015. On July 8, 2015, McDonald's filed
an *Errata to Petitioner's Motion to Amend Petition for Judicial Review*. On July 8, 2015, the

1 Administrator filed an *Opposition to Petitioner's Motion to Amend Petition for Judicial Review*. On
2 July 9, 2015, McDonald's filed a *Reply to Administrator's Opposition to McDonald's Motion to*
3 *Amend Petition for Judicial Review*.

4 The Court believes a hearing would assist the Court in its decision on the above petitions,
5 motions, oppositions, and replies. Thus, the Court orders a hearing, wherein both parties shall
6 present oral arguments on McDonald's *Petition for Judicial Review* and the *Motion to Amend*
7 *Petition for Judicial Review* and any other motions ripe for judicial review at the time of the
8 hearing.

9 THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that counsel for the
10 parties shall meet and confer and, thereafter, contact Department Nines' Judicial Assistant within
11 fifteen (15) days to schedule a hearing to occur within the next sixty (60) days.

12 DATED: this 26 day of August, 2015.

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DISTRICT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of _____, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Further, I certify that on the 21st day of August, 2015, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

CHARLES ZEH, ESQ. for MCDONALDS OF KEYSTONE
NEIL ROMBARDO, ESQ. for DETR BOARD OF REVIEW

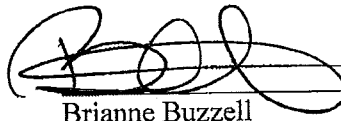

Brianne Buzzell
Judicial Assistant

EXHIBIT 12

1 Code No. 4185

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF WASHOE

5 THE HONORABLE SCOTT N. FREEMAN, DISTRICT JUDGE

6 -oOo-

7 MCDONALDS OF KEYSTONE,)

8 Plaintiff,)

9 vs.)

10 BOARD OF REVIEW/DETR,)

11 Defendant.)
12 _____)

Case No. CV15-00671

Dept. No. 9

13 TRANSCRIPT OF PROCEEDINGS

14 Oral Arguments

15 Tuesday, December 15, 2015

16 Reno, Nevada

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24 Reported By: SUSAN KIGER, CCR No. 343, RPR

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A P P E A R A N C E S

For the Plaintiff: The Law Offices of Charles R. Zeh, Esq.
BY: CHARLES R. ZEH, ESQ.
575 Forest Street
Suite 200
Reno, Nevada 89509

For the Defendant: JOSEPH L. WARD, JR.
Attorney at Law
1340 S. Curry Street
Carson City, Nevada 89703

1 RENO, NEVADA, TUESDAY, DECEMBER 15, 2015, 11:19 A.M.

2 -oOo-

3
4 THE COURT: We are on the record in CV15-00671,
5 McDonalds of Keystone versus the Board of Review of Nevada.
6 Appearances, please.

7 MR. ZEH: Charles Zeh on behalf of McDonalds, the
8 Petitioner.

9 THE COURT: Good morning.

10 MR. ZEH: Hi, how are you?

11 THE COURT: Welcome.

12 MR. ZEH: Nice to see you.

13 MR. WARD: Good morning, Your Honor.
14 Joseph L. Ward, Junior, counsel for the Employment Security
15 Division for the Nevada Department of Employment Training and
16 Rehabilitation.

17 THE COURT: Welcome.

18 MR. WARD: Thank you.

19 THE COURT: All right. This is the time set for a
20 Motion to Dismiss.

21 Interesting issue, whether the name that's been left
22 off the caption is jurisdictional or not. I'll hear from you.

23 MR. WARD: Thank you, Your Honor. The statute is
24 pretty clear. The language in the Otto case is also very

1 clear. The naming of all the parties which is required by
2 statute for administrative matters to get to judicial review
3 and get the subject matter of the District Court is required.
4 And the cases, including the Cane case cited in the Otto case,
5 require that all these statutes for the first subject matter
6 jurisdiction for judicial review purpose from administrative
7 matters must be strictly construed. I really don't have
8 anything else to add except that the statute in Otto was the
9 statute out of the Administrative Procedures Act virtually
10 identical to the statute in 612. It cited to the Cane case
11 that relied on the very same statute that's in front of this
12 Court. And respectfully, the Court has no jurisdiction and
13 really can do nothing but dismiss the matter, because the
14 appropriate steps weren't taken before the door closed.

15 THE COURT: It's one of those cases where if they
16 didn't put the name in within the 11 days, 11 days is
17 jurisdictional and your argument is that the case should be
18 dismissed.

19 MR. WARD: Exactly. The name of both parties is
20 mandatory and jurisdictional, and that's specifically required
21 by NRS 612.530.

22 THE COURT: Well, I saw that, and that's why I asked
23 for oral argument.

24 Mr. Zeh, I'm interested in your response.

1 MR. ZEH: Well, obviously, Your Honor, I slightly
2 disagree.

3 THE COURT: That's why I set it for oral argument
4 because you did.

5 MR. ZEH: Well, there is no dispute that the
6 jurisdictional requirements are to be strictly adhered to.
7 That's not the issue. The issue is what is the jurisdictional
8 requirement in this particular case, in this particular
9 statute? And I think the statute is clear on its face what it
10 says is within 11 days after the decision of the Board of
11 Review has become final, any party aggrieved thereby or the
12 administrator may secure judicial review thereby commencing an
13 action in the District Court. We did.

14 THE COURT: They hung their hat on the "all
15 defendants" aspect.

16 MR. ZEH: Right. And that is an after the comma.
17 The jurisdictional requirement is, at the first part of the
18 statute, is -- absolutely requires no reference to any other
19 part of the statute whatsoever. And it also does not talk
20 about the contents of the petition. It says, "commences an
21 action," and so we did. And eventually we are going to have
22 all the named defendants, and so we also filed a Motion to
23 Amend, add the Complainant -- or the Employment Security
24 applicant in this case. So we have that motion also before

1 you.

2 THE COURT: I saw that.

3 MR. ZEH: But it's all tied up with this particular
4 motion here.

5 THE COURT: Understood.

6 MR. ZEH: Now, they say that the Otto case, in
7 particular NRS 233B.130, supports their position. I think you
8 couldn't find a more disparate set of statutes between
9 NRS 233B.130 subsection 2 and 612.530 subsection 1 which is
10 our statute. And the reason why I say that, if you look at
11 subsection 2, first of all, it talks about the -- it says,
12 "The petition." It starts out with, "The petition." It
13 doesn't say action, it says petition. Then it guess on from
14 there, it says, "Petition for judicial review must, A, name as
15 respondents the agency and all parties of record to the
16 administrative proceeding.

17 "B, be instituted by filing a petition in the
18 District Court.

19 "And C, be filed within 30 days of the service of
20 the final decision of the agency."

21 Those are all in line and they are connected by the
22 word "and." The word "and" doesn't appear in subsection 1 of
23 NRS 612.530, either. And in addition, it's just talking about
24 commencing an action. It does not talk about the content of

1 the petition. Actually the content of the petition is even
2 addressed in the next section. So what we are saying and what
3 I believe subsection 1 of NRS 612.530 states is we had -- we
4 have satisfied the requirement because all the requirement is
5 to commence the action, which we did do. We filed it and
6 eventually we are going to have to name the other party.
7 Ridiculous or a novel situation about this, we don't even
8 serve the other parties and there's no time requirement
9 either, either to do it with dispatch. And the person who
10 serves the other party is the administrator in the action.

11 So you take comparing and contrasting, subsection 2
12 of 233B.130 could not be further from what we have in this
13 particular case.

14 THE COURT: Which obviously begs the question, how
15 come you didn't name that person initially? Because it might
16 also give you some relief, I don't know.

17 MR. ZEH: Well, we read the statute and saw what it
18 said. And so we did what we thought we were supposed to do.

19 THE COURT: You didn't think naming the actual
20 claimant in the caption --

21 MR. ZEH: Right. We attached a copy of the petition
22 for judicial review which has the claimant's name, but if we
23 came in here to argue this case without having taken care of
24 that business, you would be able to either continue the matter

1 or dismiss it. But in terms of the jurisdiction which
2 obviously has to be harshly enforced, even though it's
3 supposed to be harshly enforced, I don't think it should be a
4 trap for the unwary when we absolutely followed the plain
5 language of that clause which, as I said, is complete in and
6 of itself does not require the second part after the comma to
7 make any sense. Whereas in 612 point -- yeah 233B.130
8 subsection 2, everything is tied tightly together plainly
9 there. If the legislature had wanted us to do what they said
10 in 233B, they should have said it in 612. They didn't. So
11 comparing and contrasting and what they could have and should
12 have done, if that's what they wanted, we should have been
13 looking at 233B as the language in the way this statute was
14 written and it's not.

15 THE COURT: There's also a line of cases that said
16 Courts afford forfeiture.

17 MR. ZEH: That's my next statement.

18 THE COURT: I like to do things on the merits.

19 MR. ZEH: That was what I was going to also --

20 THE COURT: That's why I asked for oral argument. I
21 wanted to see what your explanation was, and I needed to ask
22 the question why. Sometimes, I've seen it all, when I was in
23 practice, sometimes you trust an associate and they miss it,
24 or --

1 MR. ZEH: That might happen.

2 THE COURT: -- or sometimes you take a look at the
3 statute and you think you complied with it. As I understand
4 it, your answer is you looked at the statute, you did the
5 appropriate preparation, it's just that in your opinion it
6 didn't comply with the original claimant. You thought you
7 were preserving your client's rights by how you captioned
8 initially, and now you're defending yourself on subject matter
9 jurisdiction dismissal.

10 MR. ZEH: Exactly.

11 THE COURT: I got it.

12 I'll hear your reply.

13 MR. WARD: The statute does say and respectfully
14 read as a whole in the entirety referring to the
15 administrative matter and of course deferring properly to the
16 administrative agencies, before you get a subject matter
17 jurisdiction for judicial review, it says, "in which action,
18 any other party to the proceeding before the Board of Review,
19 must be made a Defendant." And that simply wasn't done. When
20 you read the statute as a whole, this goes back even before
21 the statute was enacted in 1937. In 1909, there was a Nevada
22 Supreme Court opinion that basically said, quoting from a case
23 out of New York, this is in 1909, they had to rely on other
24 jurisdictions, "The requirement of a statute must be complied

1 with or jurisdiction cannot be acquired." And that's when
2 you've got a statute that basically spells out what must be
3 done to acquire jurisdiction.

4 Also, the Foster versus Lewis case, a 1962 case
5 basically says that statutory provisions for requiring
6 jurisdiction have to be strictly construed.

7 And more recently, a U.S. Supreme Court opinion
8 written by Justice O' Conner in 1989, Hallstrom versus
9 Tillamook County, that's a case where litigation went on for
10 over four years. The Federal Magistrate ruled in favor of the
11 plaintiff. The 9th Circuit turned it around and said
12 "Plaintiff, you made a procedural misstep and didn't provide,
13 as required by statute, what must be done to get
14 jurisdiction." And the U.S. Supreme Court affirmed the
15 9th Circuit and said, yeah, it may be a harsh consequence, but
16 when you're dealing with statutes that afford the subject
17 matter jurisdiction, there has to be strict construction and
18 you read the statute as a whole.

19 Thank you.

20 THE COURT: Submitted?

21 MR. WARD: Submitted.

22 THE COURT: All right. I appreciate it. Its
23 unique. When you're on the bench, you can't call up the
24 lawyers and ask questions. I have to bring you in for oral

1 argument. I appreciate both your time, your oral arguments
2 were both excellent, they answered my questions I needed. It
3 doesn't have to be a two-hour hearing to answer my questions
4 and I appreciate your time.

5 I wish you a happy holiday, Merry Christmas. I'll
6 issue an order for you. My practice in Department 9 when
7 you're brought in for oral argument, I get the decision out as
8 soon as possible when it's still in my mind. So I'll get you
9 a decision out as soon as possible. Thank you for coming in.
10 Happy holidays.

11 We'll be in recess.

12 (Proceedings concluded.)
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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, SUSAN KIGER, an Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, State of Nevada, DO HEREBY CERTIFY:

7 That I am not a relative, employee or
8 independent contractor of counsel to any of the parties, or a
9 relative, employee or independent contractor of the parties
10 involved in the proceeding, or a person financially interested
11 in the proceedings;

12 That I was present in Department No. 9 of the
13 above-entitled Court on December 15, 2015, and took verbatim
14 stenotype notes of the proceedings had upon the matter
15 captioned within, and thereafter transcribed them into
16 typewriting as herein appears;

17 That the foregoing transcript, consisting of
18 pages 1 through 12, is a full, true and correct transcription
19 of my stenotype notes of said proceedings.

20 DATED: At Reno, Nevada, this 18th day of
21 December, 2015.

22 /s/ Susan Kiger

23 SUSAN KIGER, CCR No. 343
24

EXHIBIT 13

1 **Code: 2540**
2 **Charles R. Zeh, Esq.**
3 **State Bar No. 001739**
4 **The Law Offices of Charles R. Zeh, Esq.**
5 **575 Forest Street, Suite 200**
6 **Reno, NV 89509**
7 **Phone: (775) 323-5700**
8 **Fax: (775) 786-8183**
9 **e-mail: crzeh@aol.com**

10 *Attorneys for Petitioner*

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**

13 ***

14 **McDonalds of Keystone,**

Case No. CV15-00671

15 **Petitioner,**

Department No. 9

16 **v.**

17 **The Board of Review for the Nevada**
18 **Department of Employment, Training and**
19 **Rehabilitation, Employment Security**
20 **Division; The Administrator of the Nevada**
21 **Department of Employment, Training and**
22 **Rehabilitation, Employment Security**
23 **Division; and, Jessica Gerry,**

24 **Respondents/Defendants.**

25 **NOTICE OF ENTRY OF ORDER**

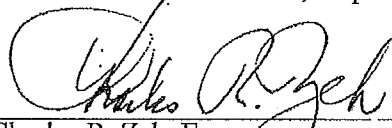
26 PLEASE TAKE NOTICE that the above-entitled court entered on the 17TH day of
27 December, 2015, the Order Granting Request to Proceed to Judicial Review, Denying Board of
28 Review of Nevada's Motion to Dismiss Petition for Judicial Review, and Granting Petitioner's
Motion to Amend Petition for Judicial Review, attached hereto as Exhibit 1.

The undersigned does hereby affirm that the preceding document does not contain the
social security number of any person.

///

1 DATED this 17th day of December, 2015. The Law Offices of Charles R. Zeh, Esq.

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By: 
Charles R. Zeh, Esq.
The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

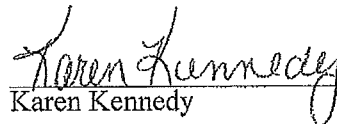
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *Notice of Entry of Order* on those parties identified below by:

✓	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada: Neil A. Rombardo, Esq. Joseph L. Ward, Esq. State of Nevada, Department of Employment, Training & Rehabilitation (DETR) Employment Security Division (ESD) 1340 South Curry Street Carson City, NV 89703 Renee Olson, Administrator Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 500 E. Third Street Carson City, NV 89713
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 17th day of December, 2015.


Karen Kennedy

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Exhibit List

1. Order Granting Request to Proceed to Judicial Review, Denying Board of Review of Nevada's Motion to Dismiss Petition for Judicial Review, and Granting Petitioner's Motion to Amend Petition for Judicial Review. 6 Page

FILED
Electronically
2015-12-17 02:31:08 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5283888

Exhibit 1

Exhibit 1

1 CODE: 3370
2
3

4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE
6

7 MCDONALDS OF KEYSTONE,

Case No. CV15-00671
Dept. No. 9

8 Petitioner,

9 vs.

10 THE BOARD OF REVIEW FOR THE NEVADA
11 DEPARTMENT OF EMPLOYMENT,
12 TRAINING AND REHABILITATION,
13 EMPLOYMENT SECURITY DIVISION; AND
14 THE ADMINISTRATOR OF THE NEVADA
15 DEPARTMENT OF EMPLOYMENT
16 TRAINING AND REHABILITATION,
17 EMPLOYMENT SECURITY DIVISION

18 Respondents.
19 /

20 ORDER GRANTING REQUEST TO PROCEED TO JUDICIAL REVIEW, DENYING
21 BOARD OF REVIEW OF NEVADA'S MOTION TO DISMISS PETITION FOR JUDICIAL
22 REVIEW, AND GRANTING PETITIONER'S MOTION TO AMEND PETITION FOR
23 JUDICIAL REVIEW

24 ///

25 This case came on for a hearing on December 15, 2015. At the time of the hearing, the
26 Court was in receipt of Petitioner, MCDONALDS OF KEYSTONE's *Petition for Judicial*
27 *Review* filed on April 13, 2015. Respondents, THE BOARD OF REVIEW FOR THE NEVADA
28 DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION,
EMPLOYMENT SECURITY DIVISION; AND THE ADMINISTRATOR OF THE
DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION,
EMPLOYMENT SECURITY DIVISION filed a *Motion to Dismiss Petition for Judicial Review*
on June 2, 2015. Petitioner filed an *Opposition to the Administrator's Motion to Dismiss* on July

1 6, 2015. Respondent filed a *Reply to Opposition to Motion to Dismiss Petition for Judicial*
2 *Review* on July 8, 2015.

3 Additionally, at the time of the hearing, the Court was in receipt of Petitioner's *Motion to*
4 *Amend Petition for Judicial Review* filed on July 7, 2015. Respondent filed an *Opposition to*
5 *Petitioner's Motion to Amend Petition for Judicial Review* on July 8, 2015. Petitioner filed a
6 *Reply to Administrator's Opposition to McDonald's Motion to Amend Petition for Judicial*
7 *Review* on July 9, 2015.

8 The issue before the Court on December 15, 2015 was whether a named party in a case
9 caption is a mandatory requirement under NRS 612.530(1) for this Court to have subject matter
10 jurisdiction over the case. Jessica Gerry's name was not included in the case caption of the
11 *Petition for Judicial Review*. She was an employee of McDonald's Keystone until October 12,
12 2013, and upon termination applied for employee benefits. Ms. Gerry was awarded
13 unemployment benefits by the Appeals Referee, which was subsequently affirmed by the Board
14 of Review.

15 DISCUSSION

16 A. Petition for Judicial Review and Motion to Dismiss

17 The Court grants Petitioner's request to proceed to a *Judicial Review* and simultaneously
18 denies Respondent's *Motion to Dismiss* for the following reasons:

19 Respondent moves the Court to dismiss Petitioner's *Petition for Judicial Review* on the
20 grounds that Petitioner did not fully comply with NRS 612.530(1) insofar as Petitioner's
21 *Petition* did not include Jessica Gerry as a party to the action in the case caption. Pursuant to
22 NRS 612.530(1),

23 Within 11 days after the decision of the Board of Review has become final, any
24 party aggrieved thereby or the Administrator may secure judicial review thereof
25 by commencing an action in the district court of the county where the
26 employment which is the basis of the claim was performed for the review of the
27 decision, in which action any other party to the proceedings before the Board of
28 Review must be made a defendant.

Respondent argues that the clause "in which action any other party to the proceedings before the
Board of Review must be made a defendant" is an additional mandatory requirement in order

1 for the Court to have subject matter jurisdiction over the case. Respondent asserts that the
2 statute must be strictly complied with pursuant to *Washoe County v. Otto*, which stated,

3 When a party seeks judicial review of an administrative decision, strict
4 compliance with the statutory requirements for such review is a precondition to
5 jurisdiction by the court of judicial review, and "[n]on compliance with the
requirements is grounds for dismissal."

6 282 P.3d 719, 725, 128 Nev. Adv. Op. 40 (2012) citing *Kame v. Employment Security Dep't*,
7 105 Nev. 22, 25, 769 P.2d 66, 68 (1989). Therefore, Respondent asserts, as *Otto* requires strict
8 compliance with the entire statute, this includes the requirement that all parties to the
9 proceeding before the Board of Review must be made a defendant. As Ms. Gerry was not a
10 named defendant, this Court does not have subject matter jurisdiction over the case.

11 The Court agrees that *Otto* and *Kame* both require strict compliance with statutory
12 requirements as a precondition to jurisdiction by the court of judicial review. However, the
13 Court disagrees with Respondent's interpretation of the statute. Based on a plain language
14 reading of the unambiguous statute, the disputed clause is not a jurisdictional requirement. The
15 Court agrees with Petitioner's argument that had the Legislature intended the clause to be a
16 jurisdictional requirement, NRS 612.530(1) would have been as "crystal clear" as the statute at
17 issue in *Otto*, NRS 233B.130(2), which undoubtedly linked all of the jurisdictional requirements
18 together under an alphabetical list:

19 2. Petitions for judicial review *must*:

20 (a) Name as respondents the agency and all parties of record to the administrative
proceeding;

21 (b) Be instituted by filing a petition in the district court in and for Carson City, in
22 and for the county in which the aggrieved party resides or in and for the county
where the agency proceeding occurred; and

23 (c) Be filed within 30 days after service of the final decision from the agency.

24 See *Otto*, 282 P.3d at 725 citing NRS 233B.130(2) (emphasis included).

25 Therefore, the Court GRANTS Petitioner's request to proceed to *Judicial Review* and
26 DENIES Respondent's *Motion to Dismiss*.

27 ///

28 ///

1 **B. Petitioner's Motion to Amend Petition for Judicial Review**

2 The Court grants Petitioner's *Motion to Amend Petition for Judicial Review*.

3 After a responsive pleading is filed, "a party may amend the party's pleading only by
4 leave of court or by written consent to the adverse party; and leave shall be freely given when
5 justice so requires." NRCP 15(a). *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828
6 (2000). "A motion for leave to amend pursuant to NRCP 15(a) is addressed to the sound
7 discretion of the trial court, and its action in denying such a motion will not be held to be error
8 in the absence of a showing of abuse of discretion." *Connell v. Carl's Air Conditioning*, 97 Nev.
9 436, 439, 634 P.2d 673, 675 (1981).

10 The Court finds it is in the interest of justice to grant Petitioner's request to amend.
11 Petitioner stated during the evidentiary hearing that he left Ms. Gerry's name off the *Petition* as
12 he believed the statute did not place a time limit on naming parties to the action. The Court
13 finds Petitioner made such a decision in good faith.

14 Therefore, the Court GRANTS Petitioner's *Motion to Amend Petition for Judicial*
15 *Review*.

16 **ACCORDINGLY**, and good cause appearing, the Court's order is as follows:

17 **THE COURT HEREBY GRANTS** Petitioner's request to proceed to a *Judicial*
18 *Review*.

19 **IT IS FURTHER ORDERED** Respondent's *Motion to Dismiss Petition for Judicial*
20 *Review* is **DENIED**.

21 **IT IS FURTHER ORDERED** Petitioner's *Motion to Amend Petition for Judicial*
22 *Review* is **GRANTED**.

23 **IT IS FURTHER ORDERED** that Respondent shall have thirty days, excluding any
24 Saturdays, Sundays, and non-judicial days, plus three days for mailing and e-filing within which
25 to file a response to the *Petition for Judicial Review*. The Court requires Petitioner to provide
26 any and all documents provided to the Appeals Referee and Board of Review.

27 **IT IS FURTHER ORDERED** that Petitioner shall have thirty days, excluding any
28 Saturdays, Sundays, and non-judicial days, plus three days for mailing and e-filing within which

1 to file any desired reply to the response to the *Petition for Judicial Review* and to submit this
2 matter to the Court for determination.

3 **IT IS FURTHER ORDERED** that after responsive papers have been filed and
4 submitted counsel for the parties shall meet and confer and, thereafter, contact Department
5 Nines' Judicial Assistant within fifteen (15) days to schedule a hearing to occur within the next
6 sixty (60) days.

7 **IT IS FURTHER ORDERED** if the Court sets a further evidentiary hearing, the
8 parties, their respective counsel, and witnesses must appear for the evidentiary hearing at which
9 witnesses may be called to testify. The parties and/or their counsel are responsible for arranging
10 for all the attendance of all witnesses necessary to prove the allegations or the defenses raised in
11 the Petition or related filings at the time scheduled for the evidentiary hearing. Witnesses may
12 be subpoenaed pursuant to NRS 50.165.

13
14 DATED this 17 day of December, 2015.

15
16 
17 _____
18 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of _____, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Further, I certify that on the 19th day of December 2015, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

CHARLES ZEH, ESQ. for MCDONALDS OF KEYSTONE
NEIL ROMBARDO, ESQ. for DETR BOARD OF REVIEW

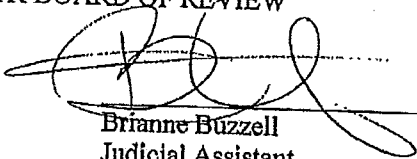
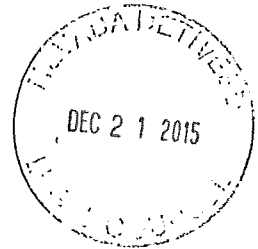

Brianne Buzzell
Judicial Assistant

EXHIBIT 14

1 Code: 1110
2 Charles R. Zeh, Esq.
3 State Bar No. 001739
4 The Law Offices of Charles R. Zeh, Esq.
5 575 Forest Street, Suite 200
6 Reno, NV 89509
7 Phone: (775) 323-5700
8 Fax: (775) 786-8183
9 e-mail: crzeh@aol.com



6 *Attorneys for Petitioner*

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 ***

11 McDonalds of Keystone,
12 Petitioner,
13 v.

Case No. CV15-00671
Department No. 9

15 The Board of Review for the Nevada
16 Department of Employment, Training and
17 Rehabilitation, Employment Security
18 Division; The Administrator of the Nevada
19 Department of Employment, Training and
20 Rehabilitation, Employment Security
21 Division; and, Jessica Gerry,
22 Respondents/Defendants.

21 **AMENDED PETITION FOR JUDICIAL REVIEW**

22 The petitioner, McDonalds of Keystone, by and through its attorney, Charles R. Zeh,
23 Esq., The Law Offices of Charles R. Zeh, Esq., hereby petitions this Court for judicial review of
24 the Decision rendered and issued by The Board of Review for the Nevada Department of
25 Employment, Training and Rehabilitation, Employment Security Division (Board) on March 20,
26 2015, regarding Docket Number: V-14-B-05213. A copy of the Board's decision is attached
27 hereto as Exhibit 1.

28 ///

1 The grounds upon which this review is sought are:

2 The Decision rendered by Board of Review prejudices substantial rights of the petitioner
3 because it is:

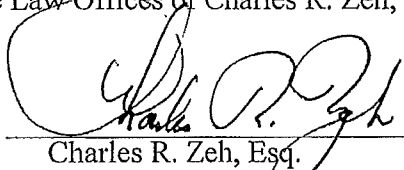
- 4 a. affected by error of law;
- 5 b. clearly erroneous in view of the reliable, probative and substantial evidence on the
6 whole record; and
- 7 c. arbitrary and capricious and based upon an abuse of discretion by the Board of
8 Review.

9 WHEREFORE, petitioner prays as follows:

- 10 1. The Court grants judicial review of the Board's Decision of March 20, 2015;
- 11 2. The Court vacate and set aside the decision issued by the Board of Review; and
- 12 3. For such other and further relief as the Court deems just and proper.

13 Dated this 17th day of December, 2015. The Law Offices of Charles R. Zeh, Esq.

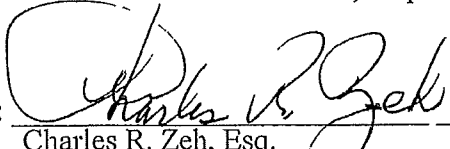
14

15 By: 
16 Charles R. Zeh, Esq.
17 The Law Offices of Charles R. Zeh, Esq.
18 575 Forest Street, Suite 200
19 Reno, NV 89509

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

22 The undersigned does hereby affirm that the preceding document does not contain the
23 social security number of any person.

24 DATED this 17th day of December, 2015. The Law Offices of Charles R. Zeh, Esq.

25 By: 
26 Charles R. Zeh, Esq.
27 The Law Offices of Charles R. Zeh, Esq.
28 575 Forest Street, Suite 200
Reno, NV 89509

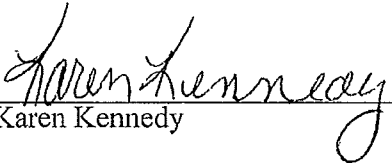
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *Amended Petition for Judicial Review* on those parties identified below by:

✓	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada: Neil A. Rombardo, Esq. Joseph L. Ward, Esq. State of Nevada, Department of Employment, Training & Rehabilitation (DETR) Employment Security Division (ESD) 1340 South Curry Street Carson City, NV 89703 Renee Olson, Administrator Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 500 E. Third Street Carson City, NV 89713
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 17th day of December, 2015.



Karen Kennedy

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Exhibit List

1. Board of Review Decision

1 page

Exhibit 1

Exhibit 1

Employment Security Division
Board of Review
1325 Corporate Blvd, Suite B
Reno, NV 89502
Tel: (775) 823-8670
Fax: (775) 888-1151



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2154795

<https://www.nvdelr.org>

BOARD OF REVIEW

In the Matter of:

MC DONALDS OF KEYSTONE
1547 S VIRGINIA #1
RENO, NV 89502

JESSICA GERRY
4055 GARDELLA AVE APT 1526
RENO, NV 89506

Docket Number: V-14-B-05213

Having reviewed the complete record and having considered the arguments presented by the parties:

I. The Board of Review adopts the FINDINGS OF FACT of the Appeals Referee as its FINDINGS OF FACT.

II. The Board of Review adopts the REASONS of the Appeals Referee as its REASONS.

DECISION:

The decision of the Appeals Referee is affirmed in all respects; the claimant is not disqualified under the provisions of Section 612.380 of the Nevada Revised Statutes (Voluntary Quit), and is entitled to benefits effective October 13, 2013 onward, if otherwise eligible and qualified.
This decision is unanimous.

BOARD OF REVIEW

/s/ KATIE JOHNSON, CHAIRPERSON

Date Decision is Mailed: 03/20/2015
Date Board's Decision is Final: 03/31/2015
Final Date for Appeal to Court: 04/13/2015

Appeal Rights: An appeal to the state district court of the county in which the work was performed must be filed on or before the "Final Date for Appeal to Court," as set forth Above (NRS 612.525 and 612.530).

SSN: [REDACTED] *SCJ*

Docket #V-14-B-05213

LET7721_04.0.0

EXHIBIT 1

1 Code: 3550
Charles R. Zeh, Esq.
2 State Bar No. 001739
The Law Offices of Charles R. Zeh, Esq.
3 575 Forest Street, Suite 200
Reno, NV 89509
4 Phone: (775) 323-5700
Fax: (775) 786-8183
5 e-mail: crzeh@aol.com

6 *Attorneys for Petitioner*

7
8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE

10 ***

11 McDonalds of Keystone,
12 Petitioner,
13 v.

Case No. _____

Department No. _____

14
15 The Board of Review for the Nevada
Department of Employment, Training and
16 Rehabilitation, Employment Security
Division; and, The Administrator of the
17 Nevada Department of Employment,
Training and Rehabilitation, Employment
18 Security Division,

19 Respondents.

20
21 PETITION FOR JUDICIAL REVIEW

22 The petitioner, McDonalds of Keystone, by and through its attorney, Charles R. Zeh,
23 Esq., The Law Offices of Charles R. Zeh, Esq., hereby petitions this Court for judicial review of
24 the Decision rendered and issued by The Board of Review for the Nevada Department of
25 Employment, Training and Rehabilitation, Employment Security Division (Board) on March 20,
26 2015, regarding Docket Number: V-14-B-05213. A copy of Board's decision is attached hereto
27 as Exhibit 1.

28 ///

1 The grounds upon which this review is sought are:
2 The Decision rendered by Board of Review prejudices substantial rights of the petitioner
3 because it is:
4 a. affected by error of law;
5 b. clearly erroneous in view of the reliable, probative and substantial evidence on the
6 whole record; and
7 c. arbitrary and capricious and based upon an abuse of discretion by the Board of
8 Review.

9 WHEREFORE, petitioner prays as follows:

- 10 1. The Court grants judicial review of the Board's Decision of March 20, 2015;
11 2. The Court vacate and set aside the decision issued by the Board of Review; and
12 3. For such other and further relief as the Court deems just and proper.

13 Dated this 13th day of April, 2015.

The Law Offices of Charles R. Zeh, Esq.

14
15 By: 

Charles R. Zeh, Esq.
The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

16
17
18
19 AFFIRMATION
20 Pursuant to NRS 239B.030

21 The undersigned does hereby affirm that the preceding document does not contain the
22 social security number of any person.

23 DATED this 13th day of April, 2015. .

The Law Offices of Charles R. Zeh, Esq.

24
25 By: 

Charles R. Zeh, Esq.
The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

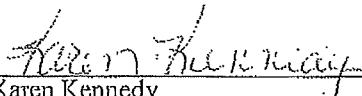
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *Petition for Judicial Review* on those parties identified below by:

✓	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada: The Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502 The Administrator of the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 13th day of April, 2015.


Karen Kennedy

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Jacqueline Bryant
Clerk of the Court
Transaction # 4904776 : melwood

Exhibit I

Exhibit I

Employment Security Division
Board of Review
1325 Corporate Blvd, Suite B
Reno, NV 89502
Tel (775) 823-8070
Fax (775) 886-1151



DETR
Nevada Department of Employment,
Training and Rehabilitation

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BOARD OF REVIEW

In the Matter of:

MC DONALDS OF KEYSTONE
1547 S VIRGINIA #1
RENO, NV 89502

JESSICA GERRY
4055 GARDELLA AVE APT 1526
RENO, NV 89506

Docket Number: V-14-B-05213

Date Decision is Mailed: 03/20/2015
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Appeal Rights: An appeal to the state district court of the county in which the work was performed must be filed on or before the "Final Date for Appeal to Court," as set forth Above (NRS 612.525 and 612.530).

SSN: [REDACTED] *JSR*

Having reviewed the complete record and having considered the arguments presented by the parties:

I. The Board of Review adopts the FINDINGS OF FACT of the Appeals Referee as its FINDINGS OF FACT.

II. The Board of Review adopts the REASONS of the Appeals Referee as its REASONS.

DECISION:

The decision of the Appeals Referee is affirmed in all respects; the claimant is not disqualified under the provisions of Section 612.380 of the Nevada Revised Statutes (Voluntary Quit), and is entitled to benefits effective October 13, 2013 onward, if otherwise eligible and qualified.
This decision is unanimous.

BOARD OF REVIEW

/s/ KATIE JOHNSON, CHAIRPERSON

Docket #V-14-B-05213

LET7721_84.0.0

EXHIBIT 2

1 **2305**
NEIL A. ROMBARDO, ESQ.
2 Nevada State Bar No. 6800
STATE OF NEVADA, Department of
3 Employment, Training & Rehabilitation (DETR)
Employment Security Division (ESD)
4 1340 South Curry Street
Carson City, NV 89703
5 Telephone No.: (775) 684-6317
Facsimile No.: (775) 684-6344
6 *Attorney for DETR/ESD*

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR THE COUNTY OF WASHOE**

10 McDonald's of Keystone,

11 Petitioner,

12 vs.

13 The Board of Review for the Nevada
Department of Employment, Training and
14 Rehabilitation, Employment Security Division;
and, The Administrator of the Nevada
15 Department of Employment, Training and
Rehabilitation, Employment Security Division,

16 Respondent.

CASE NO.: CV15-00671

DEPT. NO.: 9


18 **MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

19 **COMES NOW**, Respondent, Administrator, State of Nevada, Employment
20 Security Division (ESD), by and through counsel, Neil A. Rombardo, Esq., and respectfully
21 moves this Honorable Court for an Order Dismissing the Petition for Judicial Review for failure
22 to join an indispensable party in accordance with NRS 612.530(1); and as a consequence, this
23 Court's lack of subject matter jurisdiction.

24 ///

This Motion is made and based upon all pleadings and papers on file herein; the supporting Points and Authorities attached hereto; and upon such other and further evidence as may be adduced at time of hearing on this Motion, if any.

DATED this 2nd day of June, 2015.


NEIL A. ROMBARDO, ESQ.
Attorney for Respondent DETR/ESD

**POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW**

This action was commenced by Petitioner with the filing a Petition for Judicial Review on April 13, 2015. As of the date of the preparation of this instant Motion To Dismiss, Petitioner has failed to properly serve the Petition for Judicial Review pursuant to the requirements of NRS 612.530(2).

During the course of the administrative hearings at the agency level, the claimant and former employee, Jessica Gerry, was a party. In the Petition for Judicial Review filed on April 13, 2015, the last day that a Petition could be filed under Nevada law, the Petitioner failed to name their former employee, Jessica Gerry, as a party.

NRS 612.530 is entitled "Judicial review of decision of Board of Review; Commencement of action in district court; parties; service of petition; summary hearings; appeals to Supreme Court," and states, in pertinent part:

1. Within 11 days after the decision of the Board of Review has become final, any party aggrieved thereby or the Administrator may secure judicial review thereof by commencing an action in the district court of the county where the employment which is the basis of the claim was performed for the review of the decision, ***in which action any other party to the proceedings before the Board of Review must be made a defendant.*** (Emphasis added.)

The Nevada Supreme Court, in the case of *Washoe County v. Otto*, 128 Nev. ___, 282 P.3d 719 (2012), held that the failure to name a party required by the applicable review procedures divests the District Court of subject matter jurisdiction. The Nevada Supreme Court pointed out that the District Courts have no inherent appellate jurisdiction over official acts of administrative agencies except where the legislature has made some statutory provision for judicial review. The Court went on to hold that when the legislature creates a specific procedure for review, such procedure is controlling. In *Otto, supra*, the Petitioner, Washoe County, failed

1 to name all of the parties to the administrative proceedings below as defendant parties in the
2 petition. The Supreme Court held that the failure to name all of the parties was a fatal defect and
3 that the District Court had no subject matter jurisdiction.

4 In support of its decision, the Supreme Court cited to the case of *Kame v.*
5 *Employment Security Department*, 105 Nev. 22, 769 P.2d 66 (1989) as authority. The *Kame* case
6 involved judicial review of a denial of unemployment insurance benefits under NRS Chapter
7 612.

8 The Supreme Court stated in *Otto, supra*, that "... the petitioner must strictly
9 comply with the ... procedural requirements." The procedural requirement in *Otto, supra*, as well
10 as in the instant case, included that the Petitioner must name all parties to the administrative
11 proceedings as parties to the Petition for Judicial Review.

12 The Supreme Court held that the naming of all parties was "mandatory and
13 jurisdictional." In the instant case, the Petitioner did not name the claimant, former employee
14 Jessica Gerry, as a party. Thus, the Petition for Judicial Review is fatally defective.

15 NRS 233B.039(3)(a) provides that the special provisions of NRS Chapter 612
16 regarding judicial review apply to the judicial review of a case concerning unemployment
17 insurance benefits. As stated above, NRS 612.530(1) requires that any party to the proceedings
18 before the Board of Review must be made a party to any action for judicial review brought
19 before a district court.

20 Finally, under NRS 612.525(1), any Petition for Judicial Review arising under
21 NRS Chapter 612 must be filed within eleven (11) days after the decision of the Board of
22 Review becomes final. The last day to file a Petition for Judicial Review in this case was April
23 13, 2015. (*Please see* the Decision of the Board of Review, attached hereto as Exhibit 1 and
24 made a part hereof by this reference.) The Nevada Supreme Court in *Otto, supra*, held that the

1 defect of failure to name a required party cannot be cured by the filing of an Amended Petition
2 after the final date for appeal.

3 In *Otto, supra*, the Supreme Court stated:

4 As noted above, the time period for filing a petition for judicial
5 review is mandatory and jurisdictional. *Kame v. Employment*
6 *Security Dep't*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989). Because
7 Washoe County's original petition failed to invoke the district
8 court's jurisdiction, it could not properly be amended outside of
9 the filing deadline. *Id.* at 15.

10 This Court lacks subject matter jurisdiction of this case. The Court has no
11 authority to allow the Petitioner to file an Amended Petition to attempt to cure the jurisdictional
12 defect. (*Otto* at 16)

13 Finally, the Nevada Supreme Court held in the case of *Scott v. Nevada*
14 *Employment Security Department*, 70 Nev. 555, 559, 278 P.2d 602 (1954), that if the court did
15 not have jurisdiction it could not have made an effective order of any kind except the order of
16 dismissal.

17 **WHEREFORE**, the Administrator of the Employment Security Division (ESD)
18 respectfully requests the Court dismiss the instant Petition for Judicial Review based upon the
19 fact this Court lacks subject matter jurisdiction.

20 AFFIRMATION Pursuant to NRS 239B.030:

21 The undersigned does hereby affirm that the preceding document does not contain
22 confidential information; including, but not limited to: the Social Security number or employer
23 identification number of any person or party.

24 **RESPECTFULLY SUBMITTED** this 2nd day of June, 2015.


NEIL A. ROMBARDO, ESQ.

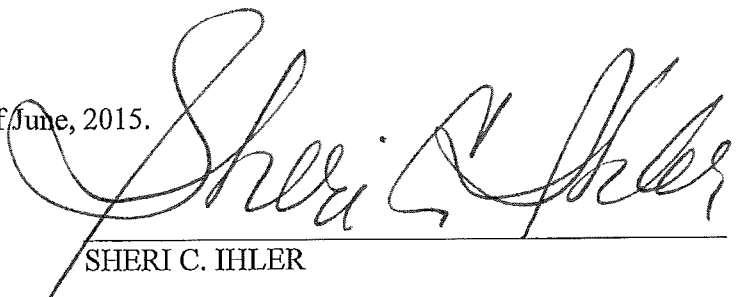
Attorney for Nevada ESD Respondents

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of
3 Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and
4 correct copy of the foregoing MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW,
5 by placing the same within an envelope upon which first class postage was fully prepaid and
6 affixed, which was thereafter sealed and deposited for mailing with the United States Postal
7 Service at Carson City, Nevada, addressed for delivery as follows:

8 Charles Zeh, Esq.
9 575 Forest St., Suite 200
10 Reno, NV 89509

11 **DATED** this 2nd day of June, 2015.

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13 SHERI C. IHLER
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INDEX OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>LENGTH</u>
1	Decision of the Board of Review	1

INDEX OF EXHIBITS

FILED
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NEIL A. ROMBARDO, ESQ.
Senior Legal Counsel
STATE OF NEVADA DEPT. OF
1340 So. Curry Street
Carson City, NV 89703
(775) 684-6317
(775) 684-6344 (Fax)

EXHIBIT 1

Employment Security Division
Board of Review
1325 Corporate Blvd. Suite B
Reno, NV 89502
Tel (775) 823-6676
Fax (775) 688-1151



DETR
Nevada Department of Employment,
Training and Rehabilitation

ONE NEVADA - Growing A Skilled, Diverse Workforce



2154573
<https://www.nvdetr.org>

BOARD OF REVIEW

In the Matter of:

MC DONALDS OF KEYSTONE
1547 S VIRGINIA #1
RENO, NV 89502

JESSICA GERRY
4055 GARDELLA AVE APT 1526
RENO, NV 89506

Date Decision is Mailed: 03/20/2015

Date Board's Decision is Final: 03/31/2015

Final Date for Appeal to Court: 04/13/2015

SSN:

Docket Number: V-14-B-05213

Having reviewed the complete record and having considered the arguments presented by the parties:

I. The Board of Review adopts the FINDINGS OF FACT of the Appeals Referee as its FINDINGS OF FACT.

II. The Board of Review adopts the REASONS of the Appeals Referee as its REASONS.

DECISION:

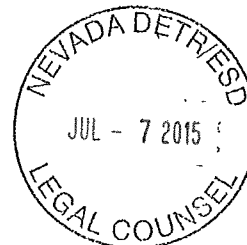
The decision of the Appeals Referee is affirmed in all respects; the claimant is not disqualified under the provisions of Section 612.380 of the Nevada Revised Statutes (Voluntary Quit), and is entitled to benefits effective October 13, 2013 onward, if otherwise eligible and qualified.

This decision is unanimous.

BOARD OF REVIEW

/s/ KATIE JOHNSON, CHAIRPERSON

EXHIBIT 3



1 Code: 2645
2 Charles R. Zeh, Esq.
3 State Bar No. 001739
4 The Law Offices of Charles R. Zeh, Esq.
5 575 Forest Street, Suite 200
6 Reno, NV 89509
7 Phone: (775) 323-5700
8 Fax: (775) 786-8183
9 e-mail: crzeh@aol.com

10 *Attorneys for Petitioner*

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

McDonald's of Keystone,
Petitioner,

v.

The Board of Review for the Nevada
Department of Employment, Training and
Rehabilitation, Employment Security
Division; and, The Administrator of the
Nevada Department of Employment,
Training and Rehabilitation, Employment
Security Division,

Respondents.

Case No. CV15-00671

Department No. 9

McDONALD'S OPPOSITION TO THE ADMINISTRATOR'S MOTION TO DISMISS¹

I. STATEMENT OF FACTS AND INTRODUCTION

Jessica Gerry (Gerry) was an employee of McDonald's of Keystone (McDonald's or petitioner) until about October 12, 2013. After termination, Gerry applied for unemployment

¹The motion to dismiss to which this pleading responds was filed on behalf of the Administrator, only. See, Administrator's motion, p. 1;20. No motion to dismiss or any other pleading has been filed on behalf of the Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division. The Board of Review, therefore, has no objection if the Court reviewed its decision. See, e.g., *Tait v. Asset Acceptance, LLC*, No. 12-9532, 2013 WL 3811767 *3, (C.D.Cal., 7/22/2013).

1 benefits. An administrative hearing was conducted before an Appeals Referee (AR) as
2 McDonald's challenged the award of benefits to the ex-employee. Although Gerry did not bother
3 to appear for the hearing on her benefits, the AR proceeded anyway to hear the matter and after
4 the hearing, the AR inexplicably awarded Gerry unemployment benefits. The Board of Review
5 tersely adopted the AR's unsustainable findings without further hearing. The decision was made
6 final on March 31, 2015.

7 McDonalds filed the instant Petition for Judicial Review (PJR) on April 13, 2015,
8 pursuant to NRS 612.530. It is beyond dispute, this PJR was filed within the eleven day period
9 for commencing such review. *See*, NRS 612.530(1) quoted in the margin.² *See also*, Exhibit 1,
10 attached hereto. The PJR named the Administrator of the Department of Employment, Training
11 and Rehabilitation, Employment Security Division (DETR or Administrator) as the respondent.
12 Attached as an exhibit to the PJR was the Board of Review's decision which clearly set forth
13 Gerry's full name and address. *See*, Exhibit 1. Further, as required by NRS 612.530(2) four
14 copies of the PJR were served on Joyce Golden, the administrative assistant for the
15 Administrator. *See*, Exhibit 1. As can be seen, Gerry's name did not appear in the caption to the
16 PJR.

17 On June 2, 2015, the Administrator moved to dismiss this petition on jurisdictional
18 grounds. The sole basis for the motion to dismiss was the absence of Gerry's name in the caption
19 of the PJR. The Administrator claims that because the ex-employee's name did not appear in the
20 caption before the expiration of the eleven day period for filing a petition for judicial review, the
21 Court is ousted of jurisdiction to hear this matter. Couched alternatively, the placement of
22 Gerry's name in the caption is, in and of itself, jurisdictional under NRS 612.530(1). Therefore,
23 since Gerry's name was not set forth in the caption of the PJR before the expiration of the
24 aforementioned eleven day period, McDonald's is foreclosed from having its day in court to
25

26 ²1. Within 11 days after the decision of the Board of Review has become final, any party
27 aggrieved thereby or the Administrator may secure judicial review thereof by commencing an action in
28 the district court of the county where the employment which is the basis of the claim was performed for
the review of the decision, in which action any other party to the proceedings before the Board of Review
must be made a defendant. NRS 612.530(1).

1 challenge what it believes was a clearly erroneous decision issued by the AR and affirmed
2 without meaningful comment by the Board of Review.

3 The Administrator relies exclusively upon *Washoe County v. Otto*, 128 Nev.Adv.Rep. 40,
4 282 P.3d 719 (2012), for this tortured reading of NRS 612.530(1). Although *Otto* interprets a
5 statute strikingly different from NRS 612.530(1), *see*, NRS 233B.130, addressed below, the
6 Administrator nevertheless claims that *Otto* also stands for the proposition that a failure to
7 include the ex-employee's name in the caption, in and of itself, is sufficient to oust the Court of
8 jurisdiction under NRS 612.530(1).

9 The Administrator is mistaken about both *Otto* and NRS 612.530. The statute does not
10 require the strained reading that the Administrator would assign to NRS 612.530. Also, the
11 difference between the statute *Otto* interprets and the statute in this case, NRS 612.530(1), is so
12 disparate, *Otto* is inapposite to this matter. It should not be relied upon to produce the untenable
13 result the Administrator seeks.

14 In this case, the ex-employee was, in fact, identified in the PJR at the time it was filed and
15 the filing occurred before the expiration of the eleven day period of NRS 612.530(1). NRS
16 612.530(1) requires no more of petitioners who are seeking relief thereunder. McDonald's has,
17 therefore, satisfied the jurisdictional requirement of NRS 612.530. This Court may proceed to
18 hear McDonald's appeal on the merits and give McDonald's its day in court as elucidated further,
19 below.

20 **II. ARGUMENT**

21 **A. Standard of Review**

22 McDonald's accepts that it has the burden of proof to show subject matter jurisdiction
23 exists as the party asserting that the Court has the authority to hear this dispute. *See*, Wright and
24 Miller: Federal Practice and Procedure: Civil 3d § 1350. If the jurisdictional allegations of the
25 pleading are complete and sufficient, a court must deny a Rule 12(b)(1), NRCP motion. *Id.*
26 Where the jurisdictional allegations are less than sufficient, the court has at least two options. It
27 may provide leave for the plaintiff to amend the complaint or it may dismiss with leave to
28 amend. *Id.* A court should dismiss an action for want of subject matter jurisdiction "only if the

1 material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a
2 matter of law." *See, Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999).

3 A Rule 12(b)(1), NRCP jurisdictional attack may be "facial" or "factual." *Cf., Safe Air*
4 *for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir., 2004). *Girola v. Rocessille*, 81 Nev. 661,
5 408 P.2d 918 (1965). *Rosofeust v. Firefighters Local 1908*, 118 Nev. 44, 49 P.3d 651 (2002). In
6 a "facial attack," the claim that jurisdiction is lacking is based upon the face of the pleadings. *Id.*
7 In a factual attack, the party challenging jurisdiction disputes the allegations set out in the
8 complaint. *Id.*

9 In this case, it is evident, the Administrator is attempting to mount a "facial attack" upon
10 the pleadings. There could be no other basis for the attack inasmuch as there is no dispute that,
11 (a) the PJR was timely filed, and (b) the PJR did not contain the ex-employee's name in the
12 caption of the PJR when the eleven day period of NRS 612.530(1) expired. There is also no
13 dispute, however, that, (a) the ex-employee's name was identified by the PJR, and (b) the
14 petitioner, McDonald's, served four copies of the PJR on the Administrator.

15 The Administrator's jurisdictional attack, therefore, assumes the facts on the face of the
16 pleadings. Instead, the Administrator's jurisdictional assault is predicated upon the
17 Administrator's interpretation of NRS 612.530(1). This dispute distills, consequently, to a matter
18 of statutory interpretation as the facts surrounding the filing of the PJR are not in dispute. The
19 Administrator, here, has simply misunderstood NRS 612.530(1) and misread and misapplied the
20 *Otto* case. Neither, as indicated, prevents McDonald's from proceeding with this appeal, given
21 the undisputed facts of this case.

22 **B. The Filing Of the PJR Within the Eleven Day Filing Period Completely**
23 **Satisfies The Jurisdiction Requirement Contained In NRS 616B.530(1)**

24 The operative statute in this matter is not NRS 233B.130, which was the basis for *Otto*. It
25 is, instead, NRS 612.530. Since there is no dispute over the facts surrounding the filing of the
26 PJR, we are left with a dispute over the meaning of NRS 612.530(1), which the Administrator
27 seeks to interpret through the eyes of the *Otto* case. As this is a dispute, therefore, over the
28 meaning of NRS 612.530(1), the rules of statutory interpretation apply. From their application to

1 NRS 612.530(1), it readily becomes apparent that the failure to name the ex-employee in the
2 caption of the complaint is neither jurisdictional nor grounds, alone, to oust the Court of
3 jurisdiction to hear this appeal.

4 Statutory construction begins with the plain meaning rule. Nevada Courts express this
5 rule as follows: "When the language of a statute is plain and unambiguous, a court should give
6 that language its ordinary meaning and not go beyond it." *See, Hotel Employees v. State, Gaming*
7 *Control Bd.*, 103 Nev. 588, 591, 747 P.2d 878, 880 (1987). On the other hand, a statute is
8 ambiguous, when it "is capable of being understood in two or more senses by reasonably
9 informed persons' or one that otherwise does not speak to the issue before the court." *Nelson v.*
10 *Heer*, 123 Nev. 217, 224, 163 P.3d 420 (2007).

11 Thus, analysis begins with the language contained in NRS 612.530(1). From any fair
12 reading of the statute, it is revealed that NRS 612.530(1) is not susceptible to more than one
13 reasonably conceived interpretation because the interpretation offered by the Administrator flies
14 in the teeth of the plain meaning of the words the legislature employed to create the jurisdiction
15 requirement for filing an appeal by a PJR. The statute is quoted in the margin, footnote one, page
16 2, above. There, it can be seen that the jurisdictional requirement starts out with the phrase,
17 "Within 11 days after the decision of the Board..." and the jurisdictional requirement ends with
18 "...for the review of the decision...." NRS 612.530(1). In between, the only two requirements are
19 that the PJR be filed in the county where the employment upon which the decision was based
20 was performed and that this filing is to occur within eleven days of decision from which the
21 appeal is being taken. *Id.* More particularly, the statute states: "Within eleven days after the
22 decision of the Board of Review has become final, any aggrieved party ... MAY secure judicial
23 review thereof by commencing an action in the district court...." This language sets out the
24 requirement. It is plain on its face. McDonald's met the requirement as it commenced an action
25 when it filed the petition for judicial review within eleven days.

26 The Administrator, however wants to tack on as a requirement, the naming of the ex-
27 employee to the jurisdictional portion of NRS 612.530. The problem, however, for the
28 Administrator's attempted reading is that it disregards the fact that grammatically, the naming

1 requirement is set forth in its own clause, in the statute and it follows the jurisdictional language
2 which is walled off by a comma from the portion where the naming requirement is found. The
3 portion of the statute where the naming language appears is an appendage, at best, to the rest of
4 the statute, because of the comma. It is an independent clause, that does not control the portion
5 of the statute where the jurisdictional language is found.

6 There is no time limit in the naming clause, for when the ex-employee must be named in
7 the petition. This is an important point, because if the Legislature had wanted to elevate the
8 naming requirement to become a part of the jurisdictional language, it could have readily done so
9 by eliminating the comma that precedes the naming language and inserting the expression "by
10 naming as a defendant any other party to the proceedings before the Board of Review." Had the
11 Legislature coupled the naming requirement to the commencement of the action within the
12 eleven day time period, with the insertion of the clause set out above in lieu of the comma, it
13 would have been undeniable that the eleven day time frame would have been joined to and
14 applied to the naming language.

15 The Legislature did not write such a statute. If that is what they had intended, however, it
16 is also patent that they could have written a statute in that manner to make clear, the eleven day
17 requirement included the naming language. The fact that the Legislature did not take this simple
18 step and employed a comma, instead, which separates the jurisdictional language from the
19 naming language, the Legislature must be understood to mean what it said and that is, that the
20 jurisdictional requirement was satisfied when the action, itself, was commenced by McDonald's.
21 See, Norman J. Singer & Shamblie Singer: Statutes and Statutory Construction 7th Ed. § 47.15
22 citing *Iverson v. Muroc Unified School Dist.*, 32 Cal. App. 4th 218, 225, 38 Cal. Rptr.2d 35, 39,
23 (Cal. App. 5th Dist. 1995) ("When the punctuation discloses a proper legislative intent or conveys
24 a clear meaning courts should give weight to it as evidence.").

25 That the Legislature could have written a statute that would make it crystal clear that the
26 naming requirement was a part of the jurisdictional requirement, the Administrator need only
27 have looked no further than the language of the statute found in *Otto*, the case upon which the
28 Administrator bases the motion. In *Otto*, the statute at issue, stated:

1 Petitions for judicial review **must**:

2 (a) **Name as respondents the agency and all parties of record** to
3 the administrative proceeding;

4 (b) Be instituted by filing a petition in the district court in and for
5 Carson City, in and for the county in which the aggrieved party
6 resides or in and for the county where the agency proceeding
7 occurred; and

8 (c) **Be filed within 30 days after service** of the final decision of
9 the agency. NRS 233B.130(2) (Emphasis added).

10 In subsection (2), the word "must" imposes the jurisdictional predicate on all three of the
11 conditions listed below the term. This is clear because the command explicitly applies directly to
12 each of the three sub-clauses of the statute. There is a straight line running from both the filing
13 requirement of NRS 233B.130(2)(c) and the naming requirement of NRS 233B.130(2)(a). For
14 this reason, the court in *Otto* found that the inclusion of the names of the additional respondents
15 somewhere in the body of the PJR was jurisdictional. *Id.* at 725.

16 By contrast, NRS 612.530(1) does not link the filing requirement to the naming
17 requirement. As stated, the operative language of the first clause, "any party... may secure
18 judicial review thereof by commencing an action in the district court," is a self-contained
19 jurisdictional predicate. It exists and can be completely satisfied as written, independent of any
20 other clause in the statute. If the balance of the statute were lopped off, the jurisdictional
21 requirement could still be satisfied without resort to any other language or clause of the statute.
22 By contrast, the over-arching command of "must" set out in NRS 233B.130(2) attaches to each
23 subsection or clause and is not satisfied unless each element of the statute is satisfied. The
24 contrast reveals the anomaly of applying *Otto* to control the interpretation, here, of NRS
25 612.530(1).

26 The naming requirement is then an appurtenance to the PJR. It is not, however,
27 jurisdictional. This becomes even more clear when the title to the statute is taken into
28 consideration. It, too, makes clear the separation between "the naming" of the parties and the
29 "commencement" of the appeal. The "commencement of the action in district court" is separated
30 by a semi-colon from the naming of the "parties," in the title to the statute, thereby, further
31 reinforcing that the naming of the parties is a separate act from the jurisdictional commencement
32 of the action.

1 Furthermore, *Otto* was a case whose outcome clearly rose and fell upon the language
2 extant in NRS 233B.130(2)(a), the statute that was before the court to interpret and apply in *Otto*.
3 Therefore, it is also evident in the case of a different statute, employing words other than as
4 found in *Otto* or arranged in a statute different than the arrangement employed by the statute
5 before the court in *Otto*, *Otto* would require a different outcome than in *Otto* when the words are
6 different or employed differently. *Otto*, therefore, actually counsels that there be a different
7 outcome in this case because the language employed in *Otto* departs so significantly from the
8 statute before the Court, here.

9 Concededly, on the other hand, *Otto* requires strict adherence to the jurisdictional
10 requirements in a statute based upon a literal reading of the jurisdictional language of the statute.
11 Applying this underlying principle that must be gleaned from *Otto*, McDonald's PJR met the
12 jurisdictional test of NRS 612.530(1) because a literal and strict reading of the statute leads to the
13 conclusion that the jurisdictional requirement is satisfied by the filing itself of the PJR within the
14 eleven day period. Thus, under the plain meaning of NRS 612.530, which *Otto* requires the
15 Court to apply, the Court has subject matter jurisdiction over this appeal. The jurisdictional
16 requirement of NRS 612.530(1) was satisfied by the timely filing of the PJR. As the Court
17 retains jurisdiction, it can allow leave to amend so that Gerry's name could be added to the
18 caption. Dismissal of the case, however, with prejudice would be clearly inappropriate at this
19 stage of the proceedings as would any other action which would foreclose an appeal by
20 McDonald's.

21 **C. The Cure For A Technical Dereliction Is Not Dismissal But An Amended**
22 **Pleading**

23 The cure to a technical dereliction is not dismissal but an amended pleading. *See, Bing*
24 *Construction Co. v. NV Dept. of Taxation*, 107 Nev 630 (1991). *Otto* left this principle intact, for
25 non-jurisdictional transgressions. *Otto*, supra at 725, fn. 9. An amended pleading adding the
26 name of the ex-employee would provide the cure without doing violence, therefore, to *Otto's*
27 concerns. Furthermore, an amended pleading would harm no one, while avoiding what the
28 courts abhor, a forfeiture if a dismissal is granted without a hearing on the merits. *See*,

1 *Humphrey v. Sagouspe*, 50 Nev 157, 254 P. 1074 (1927).

2 No party would be hurt by such an amendment as no "responsive pleading" has been
3 filed, given that a motion to dismiss is not deemed a responsive pleading. *See*, Rule 7(a), NRCP.
4 Where no responsive pleading has been filed, a party may amend a pleading "once as a matter of
5 course." Rule 15(a), NRCP. In this case, however, no responsive pleading need be filed by the
6 Administrator. Thus, upon leave of court, an amended pleading should freely be granted when
7 justice so requires it. Rule 15(a), NRCP.

8 Here, justice requires that the pleading be freely amended, given that the appeal would be
9 dismissed, leaving McDonald's without a hearing to overturn a tersely worded, summary
10 disposition by the Board of Review. Furthermore, allowing the pleading to be amended to add
11 the name of the ex-employee to the caption would do no violence to the rest of the somewhat
12 convoluted process by which appeals are taken of Board of Review decisions. Under the
13 statutory scheme for these kinds of appeals, while the petitioner is obliged at some point to name
14 in the caption the other parties to the appeal, the petitioner is not charged with serving the other
15 parties with a copy of the PJR. That responsibility falls to the Administrator. NRS 612.530(2).
16 Moreover, aside from requiring the Administrator to proceed with dispatch to serve the ex-
17 employee, with a copy of the PJR, there is actually no time limit imposed upon the
18 Administrator, to serve the ex-employee with a copy of the PJR. *Id.*

19 There is no indication in the record that Administrator has served the ex-employee with
20 the PJR. Nonetheless, the petitioner has, as indicated, served four copies of the PJR on the
21 Administrator, leaving the Administrator with a copy of the PJR to use when carrying out its duty
22 to serve the ex-employee. Furthermore, it seems highly anomalous at best, for the Administrator,
23 on the one hand, to hold the petitioner to a highly stringent time limit for naming under NRS
24 612.530(1), the ex-employee in the caption of the PJR, when, on the other, the Administrator has
25 no time constraint where a clock actually starts ticking on the time within which the
26 Administrator is to serve the ex-employee with a copy of the PJR. *See*, NRS 612.530(2). This
27 is all the more reason, therefore, to consider the actual placement of the ex-employee's name in
28 the caption of the pleading, a technical dereliction to be cured with an amended pleading, when

1 there is also no specific time frame for placing the ex-employee's name in the caption in the first
2 place.

3 Thus, shortly following the filing of this pleading, the petitioner is filing a motion to
4 amend the caption in the PJR to include the ex-employee.

5 **CONCLUSION**


6 For the foregoing reasoning, the motion to dismiss for the want of jurisdiction should be
7 denied. Granting the motion would work a forfeiture on McDonald's, given the terse and
8 summary disposition of its appeal by the Board of Review. Timely filing, moreover, is the
9 jurisdictional predicate under NRS 612.530(1), according to the plain wording of the statute and
10 by comparison to the statute examined in *Otto*, where the contrast with NRS 233B.130(2)(a), is
11 striking and telling.

12 The Administrator's Rule 12(b)(1), NRCP motion to dismiss should be denied. The
13 appeal should be permitted to proceed. McDonald's seeks all other relief deemed appropriate in
14 the premises.

15 The undersigned does hereby affirm that the preceding document does not contain the
16 social security number of any person.

17 Dated this 6th day of July, 2015.

The Law Offices of Charles R. Zeh, Esq.

18
19 By: 
20 Charles R. Zeh, Esq.
21 The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

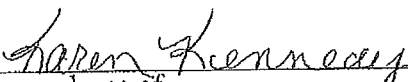
22 *Attorneys for petitioner McDonald's of Keystone*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *McDonald's Opposition to the Administrator's Motion to Dismiss* on those parties identified below by:

√	<p>Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada:</p> <p>The Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502</p> <p>Neil A. Rombardo, Esq. State of Nevada, Department of Employment, Training & Rehabilitation (DETR) Employment Security Division (ESD) 1340 South Curry Street Carson City, NV 89703</p>
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 6th day of July, 2015.


An employee of
The Law Offices of Charles R. Zeh, Esq.

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EXHIBIT LIST

Exhibit No.	Document	Page(s)
1	Petition for Judicial Review and Notice of Service	12

S:\Clients\McDonalds\Gerry Jessica\Opposition to Motion to Dismiss R15.wpd

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Jacqueline Bryant
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Exhibit 1

Exhibit 1

1 Code: 3550
2 Charles R. Zeh, Esq.
3 State Bar No. 001739
4 The Law Offices of Charles R. Zeh, Esq.
5 575 Forest Street, Suite 200
6 Reno, NV 89509
7 Phone: (775) 323-5700
8 Fax: (775) 786-8183
9 e-mail: crzeh@aol.com

10 *Attorneys for Petitioner*

11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12
13 IN AND FOR THE COUNTY OF WASHOE

14 ***

15 McDonalds of Keystone,

Case No. _____

16 Petitioner,

Department No. _____

17 v.

18 The Board of Review for the Nevada
19 Department of Employment, Training and
20 Rehabilitation, Employment Security
21 Division; and, The Administrator of the
22 Nevada Department of Employment,
23 Training and Rehabilitation, Employment
24 Security Division,

25 Respondents.

26 PETITION FOR JUDICIAL REVIEW

27 The petitioner, McDonalds of Keystone, by and through its attorney, Charles R. Zeh,
28 Esq., The Law Offices of Charles R. Zeh, Esq., hereby petitions this Court for judicial review of
the Decision rendered and issued by The Board of Review for the Nevada Department of
Employment, Training and Rehabilitation, Employment Security Division (Board) on March 20,
2015, regarding Docket Number: V-14-B-05213. A copy of Board's decision is attached hereto
as Exhibit 1.

///

1 The grounds upon which this review is sought are:

2 The Decision rendered by Board of Review prejudices substantial rights of the petitioner
3 because it is:

- 4 a. affected by error of law;
5 b. clearly erroneous in view of the reliable, probative and substantial evidence on the
6 whole record; and
7 c. arbitrary and capricious and based upon an abuse of discretion by the Board of
8 Review.

9 WHEREFORE, petitioner prays as follows:

- 10 1. The Court grants judicial review of the Board's Decision of March 20, 2015;
11 2. The Court vacate and set aside the decision issued by the Board of Review; and
12 3. For such other and further relief as the Court deems just and proper.

13 Dated this 13th day of April, 2015.

The Law Offices of Charles R. Zeh, Esq.

14
15 By: 

Charles R. Zeh, Esq.
The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

16
17
18
19 AFFIRMATION
20 Pursuant to NRS 239B.030

21 The undersigned does hereby affirm that the preceding document does not contain the
22 social security number of any person.

23 DATED this 13th day of April, 2015. .

The Law Offices of Charles R. Zeh, Esq.

24
25 By: 

Charles R. Zeh, Esq.
The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

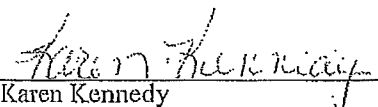
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *Petition for Judicial Review* on those parties identified below by:

✓	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada: The Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502 The Administrator of the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 13th day of April, 2015.

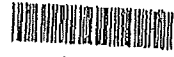

Karen Kennedy

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Jacqueline Bryant
Clerk of the Court
Transaction # 4904776 : melwood

Exhibit 1

Exhibit 1

Employment Security Division
Board of Review
1325 Corporate Blvd, Suite B
Reno, NV 89502
Tel (775) 823-6070
Fax (775) 688-1151



2154795
<https://www.nvdetr.org>

BOARD OF REVIEW

In the Matter of:

MC DONALDS OF KEYSTONE
1547 S VIRGINIA #1
RENO, NV 89502

JESSICA GERRY
4055 GARDELLA AVE APT 1526
RENO, NV 89506

Docket Number: V-14-B-05213

Date Decision is Mailed: 03/20/2015
Date Board's Decision is Final: 03/31/2015
Final Date for Appeal to Court: 04/13/2015

Appeal Rights: An appeal to the state district court of the county in which the work was performed must be filed on or before the "Final Date for Appeal to Court," as set forth Above (NRS 612.525 and 612.530).

SSN: [REDACTED]

Having reviewed the complete record and having considered the arguments presented by the parties:

I. The Board of Review adopts the FINDINGS OF FACT of the Appeals Referee as its FINDINGS OF FACT.

II. The Board of Review adopts the REASONS of the Appeals Referee as its REASONS.

DECISION:

The decision of the Appeals Referee is affirmed in all respects; the claimant is not disqualified under the provisions of Section 612.380 of the Nevada Revised Statutes (Voluntary Quit), and is entitled to benefits effective October 13, 2013 onward, if otherwise eligible and qualified.

This decision is unanimous.

BOARD OF REVIEW

/s/ KATIE JOHNSON, CHAIRPERSON

Docket #V-14-B-05213

LET7721_64.0.0

1 Code: 2610
2 Charles R. Zeh, Esq.
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10 *Attorneys for Petitioner*

11
12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13
14 IN AND FOR THE COUNTY OF WASHOE

15 ***

16 McDonalds of Keystone,

Case No. CV15-00671

17 Petitioner,

Department No. 9

18 v.

19 The Board of Review for the Nevada
20 Department of Employment, Training and
21 Rehabilitation, Employment Security
22 Division; and, The Administrator of the
23 Nevada Department of Employment,
24 Training and Rehabilitation, Employment
25 Security Division,

26 Respondents.

27 NOTICE OF SERVICE

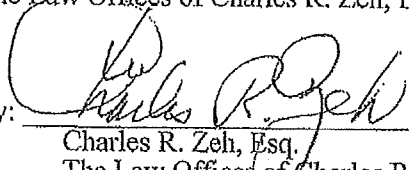
28 PLEASE TAKE NOTICE that on the 24th day of April, 2015, Renee Olson, the
Administrator of the Nevada Department of Employment, Training and Rehabilitation,
Employments Security Division, was served four copies of the Petition for Judicial Review, in
the above-captioned matter by virtue of service upon Joyce Golden, Administration Assistant to
Renee Olson. Ms. Golden represented that she was authorized to accept service on behalf of Ms.
Olson. A true and correct copy of the Declaration of Service is attached hereto as Exhibit 1.

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The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 28th day of April, 2015.

The Law Offices of Charles R. Zeh, Esq.

By: 
Charles R. Zeh, Esq.
The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

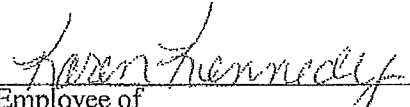
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *Notice of Service* on those parties identified below by:

√	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada: The Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502 The Administrator of the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502 Renee Olson, The Administrator of the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 500 East Third Street Carson City, NV 89713
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 20th day of April, 2015.


Employee of
The Law Offices of Charles R. Zeh, Esq.

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Exhibit List

1. Declaration of Service

1 page

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Jacqueline Bryant
Clerk of the Court
Transaction # 4930726 : mcholino

Exhibit 1

Exhibit 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND
FOR THE COUNTY OF WASHOE

MCDONALDS OF KEYSTONE

Plaintiff,

vs.

Case No: CV15-00671

THE BOARD OF REVIEW FOR THE
NEVADA DEPARTMENT OF
EMPLOYMENT, TRAINING AND
REHABILITATION, EMPLOYMENT
SECURITY DIVISION, ET AL

Defendant

DECLARATION OF SERVICE

STATE OF NEVADA
COUNTY OF CARSON CITY ss.:



LISA MORLAN, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the 4 COPIES OF THE PETITION FOR JUDICIAL REVIEW, on 04/23/2015 and served the same on 04/24/2015 at 10:48 AM by delivering and leaving a copy with:

JOYCE GOLDEN, ADMINISTRATIVE ASSISTANT who stated he/she is authorized to accept service on behalf of RENEE OLSON, THE ADMINISTRATOR OF THE NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION, EMPLOYMENT SECURITY DIVISION.

Service address: 500 E. THIRD ST. Carson City, NV 89713

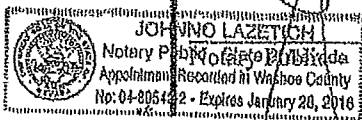
A description of JOYCE GOLDEN is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Red	60'S	Under 5ft	100-130lbs
Other Features:					

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

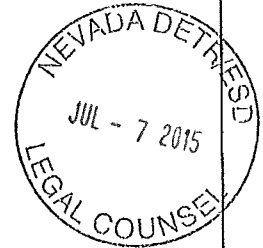
Sworn to and subscribed before me on
04/27/2015
by LISA MORLAN

X *Lisa Morlan*
LISA MORLAN
Registration#: R-062428
Reno/Carson Messenger Service, Inc. (Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: MCDONALDS



62688

EXHIBIT 4



1 Code: 2490
Charles R. Zeh, Esq.
2 State Bar No. 001739
The Law Offices of Charles R. Zeh, Esq.
3 575 Forest Street, Suite 200
Reno, NV 89509
4 Phone: (775) 323-5700
Fax: (775) 786-8183
5 e-mail: crzeh@aol.com

6 *Attorneys for Petitioner*

7
8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 ***

11 McDonald's of Keystone,

Case No. CV15-00671

12 Petitioner,

Department No. 9

13 v.

14
15 The Board of Review for the Nevada
16 Department of Employment, Training and
17 Rehabilitation, Employment Security
18 Division; and, The Administrator of the
Nevada Department of Employment,
Training and Rehabilitation, Employment
Security Division,

19 Respondents.

20
21 **PETITIONER'S MOTION TO AMEND PETITION FOR JUDICIAL REVIEW**

22 COMES NOW, the petitioner, McDonald's, by and through legal counsel, Charles R. Zeh,
23 Esq., the The Law Offices of Charles R. Zeh, Esq., and pursuant to Rule 15(a), NRCP, moves
24 this Court for an Order allowing the petitioner to amend the Petition for Judicial Review to add
25 the name of the ex-employee to the caption of the Petition for Judicial Review. A copy of the
26 proposed amended pleading is attached hereto as Exhibit 1. This motion is predicated upon the
27 accompanying points and authorities, the petitioner's opposition to the administrator's motion to
28 dismiss, and upon all other documents and records on file herein.

1 Wherefore, petitioner prays for the amendment of the Petition for Judicial Review, as
2 stated, and for all other relief deemed appropriate in the premises.

3 The undersigned does hereby affirm that the preceding document does not contain the
4 social security number of any person.

5 Dated this 6th day of July, 2015.

The Law Offices of Charles R. Zeh, Esq.

6
7 By: 

Charles R. Zeh, Esq.
The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

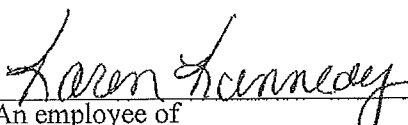
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10 *Attorneys for petitioner McDonald's of Keystone*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *Petitioner's Motion to Amend Petition for Judicial Review*, on those parties identified below by:

<p>√</p>	<p>Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada:</p> <p>The Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502</p> <p>Neil A. Rombardo, Esq. State of Nevada, Department of Employment, Training & Rehabilitation (DETR) Employment Security Division (ESD) 1340 South Curry Street Carson City, NV 89703</p>
	<p>Personal delivery</p>
	<p>Telephonic Facsimile at the following numbers:</p>
	<p>Federal Express or other overnight delivery</p>
	<p>Reno-Carson Messenger Service</p>
	<p>Certified Mail/Return Receipt Requested</p>

Dated this 6th day of July, 2015.


An employee of
The Law Offices of Charles R. Zeh, Esq.

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EXHIBIT LIST

Exhibit No.	Document	Page(s)
1	Amended Petition for Judicial Review	6

S:\Clients\MeDonalds\Gerry Jessica\Motion to Amend R2.wpd

FILED
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2015-07-07 10:48:13 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5032949 : csulezic

Exhibit 1

Exhibit 1

1 Code: 1110
2 Charles R. Zeh, Esq.
3 State Bar No. 001739
4 The Law Offices of Charles R. Zeh, Esq.
5 575 Forest Street, Suite 200
6 Reno, NV 89509
7 Phone: (775) 323-5700
8 Fax: (775) 786-8183
9 e-mail: crzeh@aol.com

10 *Attorneys for Petitioner*

11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12
13 IN AND FOR THE COUNTY OF WASHOE

14 ***

15 McDonalds of Keystone,

Case No. CV15-00671

16 Petitioner,

Department No. 9

17 v.

18 The Board of Review for the Nevada
19 Department of Employment, Training and
20 Rehabilitation, Employment Security
21 Division; The Administrator of the Nevada
22 Department of Employment, Training and
23 Rehabilitation, Employment Security
24 Division; and, Jessica Gerry,

25 Respondents.

26 AMENDED PETITION FOR JUDICIAL REVIEW

27 The petitioner, McDonalds of Keystone, by and through its attorney, Charles R. Zeh,
28 Esq., The Law Offices of Charles R. Zeh, Esq., hereby petitions this Court for judicial review of
the Decision rendered and issued by The Board of Review for the Nevada Department of
Employment, Training and Rehabilitation, Employment Security Division (Board) on March 20,
2015, regarding Docket Number: V-14-B-05213. A copy of the Board's decision is attached
hereto as Exhibit 1.

///

1 The grounds upon which this review is sought are:
2 P The Decision rendered by Board of Review prejudices substantial rights of the petitioner
3 because it is:

- 4 a. affected by error of law;
5 b R clearly erroneous in view of the reliable, probative and substantial evidence on the
6 whole record; and
7 c. arbitrary and capricious and based upon an abuse of discretion by the Board of
8 Review.

9 WHEREFORE, petitioner prays as follows:

- 10 1. The Court grants judicial review of the Board's Decision of March 20, 2015;
11 2. The Court vacate and set aside the decision issued by the Board of Review; and
12 3. For such other and further relief as the Court deems just and proper.

13 Dated this ____ day of P ____, 2015. The Law Offices of Charles R. Zeh, Esq.
14

15 By: _____
16 Charles R. Zeh, Esq.
17 The Law Offices of Charles R. Zeh, Esq.
18 575 Forest Street, Suite 200
19 Reno, NV 89509

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

22 The undersigned does hereby affirm that the preceding document does not contain the
23 social security number of any person.

24 DATED this ____ day of ____, 2015. The Law Offices of Charles R. Zeh, Esq.
25

26 By: _____
27 Charles R. Zeh, Esq.
28 The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *Amended Petition for Judicial Review* on those parties identified below by:

✓ R	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada: The Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502 Neil A. Rombardo, Esq. State of Nevada, Department of Employment, Training & Rehabilitation (DETR) Employment Security Division (ESD) 1340 South Curry Street Carson City, NV 89703
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 13th day of April, 2015.

Karen Kennedy

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Exhibit List

1. Board of Review Decision

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Exhibit 1

Exhibit 1

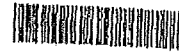
Employment Security Division
Board of Review
1325 Corporate Blvd, Suite B
Reno, NV 89502
Tel (775) 823-8870
Fax (775) 888-1151



DETR

Nevada Department of Employment,
Training and Rehabilitation

ONE NEVADA - Growing A Skilled, Diverse Workforce



2154795

<https://www.nvdestr.org>

BOARD OF REVIEW

In the Matter of:

MC DONALDS OF KEYSTONE
1547 S VIRGINIA #1
RENO, NV 89502

JESSICA GERRY
4055 GARDELLA AVE APT 1526
RENO, NV 89506

Docket Number: V-14-B-05213

Having reviewed the complete record and having considered the arguments presented by the parties:

I. The Board of Review adopts the FINDINGS OF FACT of the Appeals Referee as its FINDINGS OF FACT.

II. The Board of Review adopts the REASONS of the Appeals Referee as its REASONS.

DECISION:

The decision of the Appeals Referee is affirmed in all respects; the claimant is not disqualified under the provisions of Section 612.380 of the Nevada Revised Statutes (Voluntary Quit), and is entitled to benefits effective October 13, 2013 onward, if otherwise eligible and qualified. This decision is unanimous.

BOARD OF REVIEW

/s/ KATIE JOHNSON, CHAIRPERSON

Docket #V-14-B-05213

LET7721_04.0.0

1 Code: 2490
Charles R. Zeh, Esq.
2 State Bar No. 001739
The Law Offices of Charles R. Zeh, Esq.
3 575 Forest Street, Suite 200
Reno, NV 89509
4 Phone: (775) 323-5700
Fax: (775) 786-8183
5 e-mail: crzeh@aol.com

6 *Attorneys for Petitioner*

7
8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR THE COUNTY OF WASHOE**

10 ***

11 **McDonald's of Keystone,**

Case No. CV15-00671

12 **Petitioner,**

Department No. 9

13 **v.**

14
15 **The Board of Review for the Nevada**
16 **Department of Employment, Training and**
17 **Rehabilitation, Employment Security**
18 **Division; and, The Administrator of the**
19 **Nevada Department of Employment,**
20 **Training and Rehabilitation, Employment**
21 **Security Division,**

22 **Respondents.**

23 **PETITIONER'S POINTS AND AUTHORITIES**
24 **IN SUPPORT OF MOTION TO AMEND PETITION FOR JUDICIAL REVIEW**

25 Where, as here, there has been no filing of a responsive pleading and the parties are at the
26 earliest possible stage in the proceedings, a motion to amend should be freely granted. *See*, Rule
27 15(a), NRCP. The proposed Amended Petition for Judicial Review is attached hereto. *See*,
28 Exhibit 1, attached to Petitioner's Motion to Amend Petition for Judicial Review. In this case,
the Administrator has filed a motion to dismiss. No responsive pleading, however, to the
Petition for Judicial Review has been filed as a motion to dismiss is not a pleading. *See*, Rule

1 7(a), NRCP. And, the Board of Review has filed no pleading, whatsoever, in that counsel for the
2 Administrator indicated in his motion to dismiss, it was filed only on behalf of the Administrator.
3 The Board of Review has filed no pleading or motion, yet in this case.

4 McDonald's, the petitioner, has also filed an opposition to the Administrator's motion to
5 dismiss wherein, the Administrator claims that the Petition for Judicial Review should be
6 dismissed for the want of jurisdiction for failing to name in the caption to the Petition for Judicial
7 Review the McDonald's ex-employee, whose unemployment benefits were being challenged.
8 The Petition for Judicial Review, concededly, did not include the ex-employee's name in the
9 caption. The Petition for Judicial Review, however, was timely filed. Further, the ex-employee's
10 name appears in the initial pleading inasmuch as McDonald's attached to the Petition for Judicial
11 Review, a copy of the decision of the Board of Review, from which the appeal was taken.

12 McDonald's opposition to the motion to dismiss also discusses the reasons why the
13 instant motion to amend to include in the caption the name of the ex-employee should be
14 granted. McDonald's opposition therefore, is incorporated herein by reference as further grounds
15 for granting the motion to amend the Petition for Judicial Review by adding the name of the ex-
16 employee to the caption.

17 No pleading has been filed, it is further noted, objecting to jurisdiction on behalf of the
18 Board of Review. Presumably, then, the Board of Review has no objection to having its decision
19 reviewed by this Court, with or without the name of the ex-employee appearing in the caption of
20 the petition for judicial review. *Cf., Tait v. Asset Acceptance, LLC*, No. 12-9532, 2013 WL
21 3811767, at *3 (C.D. Cal., 7/22/13).

22 Wherefore, petitioner prays for the amendment of the Petition for Judicial Review, as
23 stated, and for all other relief deemed appropriate in the premises.

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The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 6th day of July, 2015.

The Law Offices of Charles R. Zeh, Esq.

By: 
Charles R. Zeh, Esq.
The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

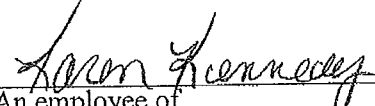
Attorneys for petitioner McDonald's of Keystone

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the Attached *Petitioner's Points and Authorities in Support of Motion to Amend Petition for Judicial Review*, on those parties identified below by:

√	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada: The Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502 Neil A. Rombardo, Esq. State of Nevada, Department of Employment, Training & Rehabilitation (DETR) Employment Security Division (ESD) 1340 South Curry Street Carson City, NV 89703
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 6th day of July, 2015.


An employee of
The Law Offices of Charles R. Zeh, Esq.

S:\Clients\McDonalds\Gerry Jessica\PA Motion to Amend R4.wpd

Employment Security Division
Board of Review
1325 Corporate Blvd, Suite B
Reno, NV 89502
Tel (775) 823-8878
Fax (775) 888-1151



DETR
Nevada Department of Employment,
Training and Rehabilitation

ONE NEVADA - Growing A Skilled, Diverse Workforce



2154795
<https://www.nvdeltr.org>

BOARD OF REVIEW

In the Matter of:

MC DONALDS OF KEYSTONE
1547 S VIRGINIA #1
RENO, NV 89502

JESSICA GERRY
4055 GARDELLA AVE APT 1526
RENO, NV 89506

Docket Number: V-14-B-05213

Having reviewed the complete record and having considered the arguments presented by the parties:

I. The Board of Review adopts the FINDINGS OF FACT of the Appeals Referee as its FINDINGS OF FACT.

II. The Board of Review adopts the REASONS of the Appeals Referee as its REASONS.

DECISION:

The decision of the Appeals Referee is affirmed in all respects; the claimant is not disqualified under the provisions of Section 612.380 of the Nevada Revised Statutes (Voluntary Quit), and is entitled to benefits effective October 13, 2013 onward, if otherwise eligible and qualified.
This decision is unanimous.

Date Decision is Mailed: 03/20/2015

Date Board's Decision is Final: 03/31/2015

Final Date for Appeal to Court: 04/13/2015

Appeal Rights: An appeal to the state district court of the county in which the work was performed must be filed on or before the "Final Date for Appeal to Court," as set forth Above (NRS 612.525 and 612.530).

SSN: [REDACTED] *pal*

BOARD OF REVIEW

/s/ KATIE JOHNSON, CHAIRPERSON

Docket #V-14-B-05213

LET7721_04.0.0

EXHIBIT 5

1 Code: 1650
2 Charles R. Zeh, Esq.
3 State Bar No. 001739
4 The Law Offices of Charles R. Zeh, Esq.
5 575 Forest Street, Suite 200
6 Reno, NV 89509
7 Phone: (775) 323-5700
8 Fax: (775) 786-8183
9 e-mail: crzeh@aol.com

6 Attorneys for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE

10 ***

11 McDonald's of Keystone,
12 Petitioner,

Case No. CV15-00671

Department No. 9

13 v.

14
15 The Board of Review for the Nevada
16 Department of Employment, Training and
17 Rehabilitation, Employment Security
18 Division; and, The Administrator of the
19 Nevada Department of Employment,
20 Training and Rehabilitation, Employment
21 Security Division,

19 Respondents.

21 ERRATA TO PETITIONER'S MOTION TO AMEND
22 PETITION FOR JUDICIAL REVIEW

23 At page six, line 19, following the word "said" and before the word "and," "*see, Barnhart*
24 *v. Sigmon Coal Co.*, 534 U.S. 438, 461-62, 122 S. Ct. 941 (2002) should have been inserted.

25 Please make the appropriate inclusion, there.

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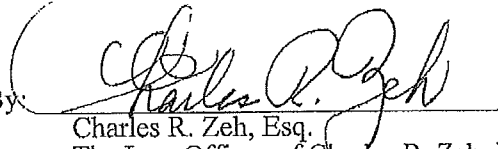
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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 8th day of July, 2015.

The Law Offices of Charles R. Zeh, Esq.

By: 
Charles R. Zeh, Esq.
The Law Offices of Charles R. Zeh, Esq.
575 Forest Street, Suite 200
Reno, NV 89509

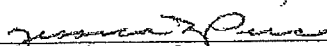
Attorneys for petitioner McDonald's of Keystone

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached *Errata to Petitioner's Motion to Amend Petition for Judicial Review*, on those parties identified below by:

√	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada: The Board of Review for the Nevada Department of Employment, Training and Rehabilitation, Employment Security Division 1325 Corporate Blvd., Suite B Reno, NV 89502 Neil A. Rombardo, Esq. State of Nevada, Department of Employment, Training & Rehabilitation (DETR) Employment Security Division (ESD) 1340 South Curry Street Carson City, NV 89703
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Dated this 8th day of July, 2015.


An employee of
The Law Offices of Charles R. Zeh, Esq.

S:\Clients\McDonalds\Gerry Jessica\Errata to Mtn to Amend.wpd

1 NO.

2 IN THE SUPREME COURT OF THE STATE OF NEVADA

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Dec 31 2015 03:20 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

THE BOARD OF REVIEW FOR THE NEVADA DEPARTMENT
OF EMPLOYMENT, TRAINING AND REHABILITATION, EMPLOYMENT
SECURITY DIVISION; AND THE ADMINISTRATOR OF THE NEVADA
DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION,
EMPLOYMENT SECURITY DIVISION,

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE,
and the HONORABLE SCOTT FREEMAN, DISTRICT JUDGE,

Respondents.

and,

McDONALD'S OF KEYSTONE,

Real Party in Interest.

PETITIONERS' APPENDIX TO
PETITION FOR WRIT OF MANDAMUS OR PROHIBITION
AND REQUEST FOR A STAY

JOSEPH L. WARD, JR., ESQ.

Nevada State Bar No. 1032

State of Nevada, Department of Employment,

Training & Rehabilitation (DETR),

Employment Security Division (ESD)

1340 South Curry Street

Carson City, NV 89703

(775) 684-6317

(775) 684-6344 Fax

Attorney for Nevada ESD Petitioners

PETITIONERS' APPENDIX

TABLE OF CONTENTS

No.	DESCRIPTION	DATE/FILED	PAGES
1.	McDonald's Petition for Judicial Review	04/13/2015	001-006
2.	ESD's Motion to Dismiss Petition for Judicial Review	06/02/2015	007-016
3.	McDonald's Opposition to the Administrator's Motion to Dismiss	07/06/2015	017-041
4.	[McDonald's] Motion to Amend Petition For Judicial Review	07/07/2015	042-058
5.	[McDonald's] Errata to Petitioner's Motion to Amend Petition for Judicial Review	07/08/2015	059-062
6.	[ESD's] Reply to Opposition to Motion to Dismiss Petition For Judicial Review	07/08/2015	063-072
7.	[ESD's] Request for Submission	07/08/2015	073-076
8.	[ESD's] Opposition to Petitioner's Motion to Amend Petition for Judicial Review	07/08/2015	077-081
9.	McDonald's Reply to Administrator's Opposition to McDonald's Motion to Amend Petition for Judicial Review	07/09/2015	082-086
10.	[McDonald's] Request for Submission of Motion	07/09/2015	087-090

1	11.	Order to Set Hearing	08/21/2015	091-094
2	12.	Transcript of Proceedings		
3		Oral Arguments		
4		December 15, 2015		095-107
5	13.	[McDonald's] Notice of Entry		
6		Of Order	12/17/2015	108-119
7	14.	[McDonald's] Amended		
8		Petition for Judicial		
9		Review (Rec'd by ESD 12/21/15)		120-126

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(d)(1)(B), I hereby certify that I am an employee
3 of the State of Nevada, over the age of 18 years; and that on the date hereinbelow
4 set forth, I served a true and correct copy of the attached PETITIONERS'
5 APPENDIX, by placing the same within an envelope which was thereafter sealed
6 and deposited for mailing through the State of Nevada mail at Carson City,
7 Nevada, addressed for delivery as follows:

8 HON. SCOTT FREEMAN
9 Department 9
10 Second Judicial District Court
75 Court Street
Reno, NV 89501

11 CHARLES ZEH, ESQ.
12 575 Forest Street, Suite 200
Reno, NV 89509

13
14 **DATED** this 31st day of December, 2015.

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16 _____
17 SHERI C. IHLER
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