IN THE SUPREME COURT OF NEVADA

YACOV JACK HEFETZ, Appellant, vs. CHRISTOPHER BEAVOR, Respondent.	Supreme Court No. 70327 District Court Case No. A-11-645353-C

RESPONDENT CHRISTOPHER BEAVOR'S

ANSWERING BRIEF ON APPEAL

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NRAP 26.1 DISCLOSURE STATEMENT

Pursuant to NRAP 26.1(a), the undersigned counsel of record for Respondent Christopher Beavor ("Beavor") states the following:

1. Parent corporation or publicly held company owning 10% or more of stock:

Not applicable, as Beavor is an individual.

2. Names of all the law firms whose attorneys have appeared for Beavor, including proceedings in the district court:

Dickinson Wright PLLC
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3. Names of all the law firms whose attorneys are expected to appear in this Court for Beavor:

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DATED this 2nd day of September 2016

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I. STATEMENT OF THE CASE

The instant appeal arises from the district court's dismissal of Appellant Yacov Hefetz's ("Hefetz") breach of guaranty lawsuit against respondent Beavor for violation of Nevada Revised Statute 40.030 (the "One Action Rule"), and a subsequent award of attorneys' fees and costs to Beavor as the prevailing party pursuant to a valid offer of judgment.

In an effort to reverse the district court's legally-sound orders, Hefetz asks this Court: (1) to entirely ignore substantial portions of the factual background and procedural history of this case and (2) to announce new law regarding waiver of, and exceptions to, the One Action Rule which would contradict express statutory provisions and the underlying intent of the Nevada Legislature.

As detailed further herein:

- In 2007, Toluca Lake Vintage, LLC ("Toluca Vintage" or "Borrower") obtained a senior loan from Chinatrust Bank and a junior loan from the Herb Frey Revocable Trust dated November 22, 1982 ("Lender") in conjunction with a real estate acquisition and development loan;
- Beavor guaranteed the Toluca Vintage junior loan and allowed his primary residence to serve as security;
- Hefetz, a long-time business partner of Herb Frey (the Trustor and Trustee of Lender) was an undisclosed participant in the Toluca Vintage junior loan;
- As a result of actions by Herb Frey, Toluca Vintage defaulted on the Chinatrust Bank senior loan;

- Lender and Hefetz then duped Beavor into letting them take control of Toluca Vintage and eliminated Herb Frey's exposure to Chinatrust Bank as a guarantor of the senior loan, but left Beavor on the hook for his guaranty to Lender on the junior loan despite assurances that Beavor's guaranty would be eliminated if he relinquished control of Toluca Vintage;

- Beavor and Herb Frey thereafter reached a settlement agreement which Beavor tried to effectuate, but Hefetz interfered with the settlement and prevented Beavor's performance;

- Hefetz then paid Lender $10.00 to acquire whatever interest remained in Beavor's guaranty and commenced the instant action;

- Hefetz's breach of guaranty claim against Beavor was tried before a jury in 2013, with the jury returning a verdict in Beavor's favor;

- Hefetz moved for a new trial and was granted a new trial solely as a result of Beavor's then-counsel's failure to file a substantive opposition. Indeed, the district court has expressly stated that but for the failure of Beavor's then-counsel to file a substantive opposition, Hefetz's new trial motion would have been denied;

- Beavor's then-counsel attempted to remedy his error by filing a writ petition with this Court. This tactic merely compounded his errors and the writ was denied as procedurally improper since the granting of Hefetz's new trial motion was an appealable order;

- Upon the denial of Beavor's writ petition, the case resumed before the district court and Beavor retained the undersigned as new counsel;

- Beavor's new counsel filed, *inter alia*, a motion to dismiss based upon Hefetz's unequivocal violation of the One Action Rule and the motion was granted by the district court; and

- Beavor, through his new counsel, also served Hefetz with an offer of judgment for $10,000.00. After Hefetz's sole claim for breach of guaranty was dismissed, Beavor applied for an award of attorneys' fees and costs as the prevailing party, and his request was granted, in part, by the district court.

II. STATEMENT OF FACTS

The "Statement of Facts" section in Hefetz's Opening Brief omits a substantial portion of the pertinent factual background, glosses over other key facts, and, in several instances, entirely misstates the facts and procedural history. Beavor therefore provides a Statement of Facts to ensure a complete and accurate account of the facts and procedural history. This section should assist the Court in understanding the extent to which Hefetz is overreaching in his request for a reversal of the district court's orders.

A. FACTUAL BACKGROUND

On March 29, 2007, Toluca Vintage and Lender entered into a loan agreement. APP007. The proceeds of the loan, $4,408,510 were used to purchase real property in Los Angeles County, California, as well as to fund engineering, marketing, and architects for a planned development of the property (the "Project"). APP007-APP0010; SUPP00056.

At the time of the Toluca Vintage loan, Toluca Vintage was managed by C&S Holdings, which in turn was owned by Beavor and his former wife Samantha. SUPP00015. Beavor personally guaranteed the Toluca Vintage loan. APP0024. As security for his guarantee, Beavor provided Lender a deed of trust encumbering Beavor's personal residence (the "Beavor Property"). APP00842; SUPP00031.

The Beavor Property is one residential structure in which only the Beavor family has resided since approximately 2005. APP00842.

Unbeknownst to Beavor, $2,214,875.00 of the loan proceeds was provided to Lender pursuant to an undisclosed participation agreement in 2008 between Lender and Hefetz and his sister Alis Cohen. APP003; APP00893; SUPP00055.

The Toluca Vintage loan from Lender was a junior loan and only part of the necessary funding for development of the Project, with a significantly larger senior loan coming from Chinatrust Bank. SUPP00017. Chinatrust Bank's loan was secured by the Project. *Id.* After eighteen (18) months of construction on the Project, Herb Frey refused to execute an option necessary for further funding on the Chinatrust Bank senior loan. APP00871. Chinatrust Bank therefore ceased funding and construction of the Project halted. *Id.* Chinatrust Bank then commenced a legal action against Toluca Vintage and in April 2009 filed an *ex parte* motion for a receivership to take control of the Project. APP00110.

At that point, Beavor was contacted by Lender and Hefetz with a strategy that would supposedly eliminate the liability of all borrowers and guarantors. SUPP00025. In furtherance of this plan: (1) Beavor was asked to relinquish management of Toluca Village to a new manager of Lender's choosing; (2) Toluca Vintage, through new management, would retain counsel to represent the collective and purportedly-common interests of Herb Frey, Lender, Toluca

Vintage, and Beavor; (3) Toluca Vintage, through the counsel chosen by new management, would file bankruptcy; and (4) Toluca Vintage would negotiate a settlement whereby all affected parties would be released from their obligations, including Beavor, who would be released from his guaranty obligation to Lender and have the deed of trust encumbering the Beavor Property released. SUPP00024- SUPP00028. Thinking this would relieve him of personal liability, Beavor agreed to, and complied with, the proposal. *Id.*

On May 13, 2009, Lender appointed Star Management, LLC ("Star"), of which Hefetz was manager and co-owner, as manager of Toluca Vintage after Beavor relinquished management pursuant to Lender's and Hefetz's representations. SUPP00040- SUPP00043. The following day, Star caused Toluca Vintage to file bankruptcy, which in turn was a default under Toluca Vintage's junior loan with Lender, rendering it immediately due and payable to Lender. APP003; APP0015. However, as set forth above, Beavor understood this was part of the plan in dealing with the liability to Chinatrust Bank on Toluca Vintage's senior loan. SUPP00025.

Unfortunately, despite relying upon Hefetz's and Herb Frey's representations and following their plan, Beavor's guaranty to Lender was not among the liabilities addressed by a purported global settlement reached in the Toluca Vintage bankruptcy. SUPP00030- SUPP00031. In fact, the terms of a

settlement excluding Beavor's guaranty were not disclosed to Beavor at all, and Toluca Vintage instead made false representations to the bankruptcy court that Beavor was advised of and approved the terms of settlement. SUPP00048.

What was included in the ultimate Confirmed Plan of the Toluca Vintage bankruptcy, however, was Lender's claims. APP00928. Lender consented to the Settlement Agreement and his claims—the same claims purportedly assigned to Hefetz—were satisfied accordingly in the bankruptcy. *Id.*

In December 2010, Beavor was contacted by Star and advised that settlement and release documents had been drafted to release all claims between Beavor and Lender pertaining to Beavor's guaranty. SUPP00061. Beavor reviewed and signed the settlement agreement and release documents, pursuant to which he was relieved of all obligations and personal guarantees in exchange for paying twenty four thousand dollars ($23,500.00) for associated legal fees. SUPP00063- SUPP00069. In January 2011, Beavor personally delivered all executed settlement and release documents and tendered payment of the $23,500.00 settlement amount to Lender. *Id.* Hefetz was in Lender's office at the time of Beavor's arrival, and physically grabbed the settlement agreement from Beavor and stated that he would not allow Lender to sign the settlement documents. SUPP00069. On or about July 6, 2011, Lender assigned his interest in the Beavor personal guaranty to Hefetz for $10.00. APP00938.

B. PROCEDURAL HISTORY

In July 2011, Hefetz brought an action against Beavor for breach of his guaranty obligations. APP001. Hefetz's claims were tried before a jury from February 25, 2013 through March 1, 2013. APP00431. On March 1, 2013, the jury returned a verdict in favor of Beavor. APP00434.

On May 21, 2013, a Notice of Entry of Judgment was entered. APP00457. Hefetz replaced his counsel and on June 10, 2013, Hefetz's new counsel filed a Motion for New Trial or in the Alternative, Motion for Judgment Notwithstanding Verdict (the "New Trial Motion"). APP00463. Beavor's then-counsel failed to file a substantive opposition to the New Trial Motion, and instead filed an opposition erroneously arguing that the New Trial Motion was untimely filed, and therefore jurisdictionally barred. APP00789. On August 7, 2013, the district court reviewed the New Trial Motion in chambers and granted the New Trial Motion solely as a result of Beavor having failed to file an opposition on the merits. APP00807; *see also* APP001158 (noting the motion for new trial "would not have been granted except for the lack of a timely and written opposition").[1]

[1] The district court also noted that Appellant's motion for new trial was substantively flawed because it was based on statements that were not objected to at the time of trial and were therefore waived. APP001158. As such, it is clear that Appellant's misrepresentations regarding the reason a new trial was ordered are clearly erroneous.

Beavor's then-counsel thereafter moved for reconsideration of the district court's ruling, for the first time asserting substantive grounds upon which the New Trial Motion should have been denied. SUPP00096. The district court, however, denied the motion for reconsideration in an order entered November 14, 2013. SUPP00131.

Beavor's then-counsel then compounded his prior error by filing a writ petition instead of properly challenging the Order through a direct appeal. SUPP00133. By the time his writ petition was rejected, the time for properly appealing the order granting the New Trial Motion had expired. SUPP00148.

On December 30, 2014, the district court entered an Order Re-Setting Civil Jury Trial, setting the new trial for the jury stack commencing February 9, 2015. APP00822. Beavor retained new counsel (his present counsel), who attended the January 20, 2015 pre-trial conference, at which time it was decided the trial should be continued to accommodate a settlement conference between the parties. SUPP00150. On January 27, 2015, the district court entered an Order Re-setting Civil Jury Trial, setting trial for the five week stack commencing April 20, 2015. APP00825.

On April 3, 2015, Beavor served Hefetz with an offer of judgment. SUPP00151. By way of the offer of judgment, Beavor offered to allow judgment to be taken against him in the amount of $10,000.00, including costs and attorneys'

fees. *See id.* On April 7, 2015, while the offer of judgment remained open, the parties attended a hearing during which the district court ruled on pending motions in limine. SUPP00154. At the same hearing, Beavor's counsel announced that he had submitted an order shortening time (the "OST") with a motion to dismiss based on the One Action Rule. *Id.* The Court acknowledged receipt of the OST, but ordered the parties to attend a settlement conference and continued the trial. *Id.* Accordingly, Beavor's counsel stated in open court that he would withdraw the OST application and file the motion to dismiss in the ordinary course because Hefetz was acting in clear violation of the One Action Rule. *Id.*

Despite learning of Beavor's motion to dismiss based on Hefetz's indisputable violation of the One Action Rule, Hefetz did not accept the offer of judgment within ten days of service and, therefore, the offer of judgment was rejected. NRCP 68(e). On May 7, 2015, Beavor filed a motion to dismiss based on the One Action Rule. APP00833. On May 8, 2015, Beaver filed a Motion to Reopen Dispositive Motion Deadline. APP00858. On June 17, 2015, the Court granted Beavor's motion to dismiss, denied the motion to reopen deadlines as moot, and entered its Order dismissing Hefetz's sole claim for relief. APP001035.

On June 19, 2015, Hefetz filed a motion for reconsideration, requesting reconsideration of the dismissal of his complaint for violation of the One Action Rule. APP001040. In its Order denying Hefetz's request for reconsideration, the

Court specifically found that Hefetz brought this action in bad faith and that he never would have received a new trial had Beavor's prior counsel properly opposed the motion for new trial. APP001158-APP00159. The Court further found that it did not abuse its discretion in selecting dismissal rather continuing the matter and observed that "[Hefetz] confirms that there is no legal standard to specifically guide district courts when determining whether to dismiss pursuant to NRS 40.435(2)(a) or continue pursuant to NRS 40.435(2)(b)." APP001158.

On June 25, 2015, Beavor filed a Memorandum of Costs, setting forth $338.48 in taxable costs incurred following service of his Offer of Judgment. APP001049. On July 8, 2015, Beavor filed a motion for attorneys' fees seeking $21,285.00 in attorneys' fees incurred following service of the Offer of Judgment. APP001070. On August 19, 2015, after careful consideration of the *Brunzell* factors, the district court entered an order awarding Beavor $15,000.00 in attorneys' fees and $338.48 in costs. APP001188.

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III. SUMMARY OF ARGUMENT

Hefetz's appeal is a compilation of unfounded and untenable arguments centered on the proposition that the district court somehow abused its discretion in dismissing Hefetz's breach of guaranty claim when Hefetz's claim was a violation of the One Action Rule and dismissal was the only realistically-available statutory remedy.

Hefetz also erroneously argues: (1) contrary to the express language of Nev. Rev. Stat. 40.435(3), Beavor could and did waive his One Action Rule defense before entry of a final judgment; (2) the Court should judicially legislate an exception to the statutory provisions regarding the One Action Rule, even though the exception advocated by Hefetz would not apply to the facts of this case; and (3) the district court erred in awarding Beavor prevailing party attorneys' fees and costs when Beavor unequivocally obtained a more favorable result than the good faith, timely offer of judgment served on Hefetz.

For the reasons detailed further below, the arguments advanced in Hefetz's opening brief fail. The district court correctly applied the law to the facts of the case and dismissed Hefetz's improper breach of guaranty claim, and thereafter awarded Beavor a portion of his attorneys' fees and costs as the prevailing party. Moreover, there is no basis in law or fact to rewrite Nevada's existing statutory provisions or to contravene the Legislature's intent. As such, Beavor respectfully

requests that the Court affirm the district court's dismissal and award of fees and costs.

IV. ARGUMENT

A. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING HEFETZ'S BREACH OF GUARANTY CLAIM PURSUANT TO NRS 40.435(2)(a).

Hefetz devotes a substantial portion of his Opening Brief attempting to re-write statutory provisions before arriving at the central argument of his appeal: that the district court abused its discretion in dismissing Hefetz's breach of guaranty claim. For the reasons detailed in subsequent sections of this brief, Hefetz's foray into statutory reconstruction is a fruitless endeavor. Furthermore, Hefetz's contention that the district court abused its discretion in dismissing his breach of guaranty claim against Beavor necessarily fails because the district court could not abuse its discretion in selecting a statutorily-proscribed remedy when by his own actions, Hefetz left the district court no choice but to dismiss his claim.

1. Dismissal Was the Appropriate Remedy.

NRS 40.435(2) states:

> If the provisions of NRS 40.430 are timely interposed as an affirmative defense in such a judicial proceeding, upon the motion of any party to the proceeding the court shall:
>
> (a) Dismiss the proceeding without prejudice; ***or***

> (b) Grant a continuance and order the amendment of the pleadings to convert the proceeding into an action which does not violate NRS 40.430. (Emphasis added).

Nev. Rev. Stat. § 40.435(2) (emphasis added). Thus, based upon the language of NRS 40.435(2), it was within the district court's discretion to determine whether it was more appropriate to dismiss the action or grant a continuance to allow Hefetz to amend his pleading.

In evaluating the viability of granting Hefetz a continuance to amend his claim against Beavor, the district court took several factors into consideration, including whether it was even possible to convert the proceeding into an action that did not violate the One Action Rule. As set forth in Beavor's district court filings, there are two ways in which an action against a guarantor of a debt secured by the guarantor's personal residence theoretically can be converted into an action not violating the One Action Rule: (1) foreclosing on the security and proceeding with a post-foreclosure deficiency claim to the extent a deficiency remains after foreclosure; or (2) releasing the security and resuming prosecution of the breach of guaranty claim. APP001007. However, on the facts of this case, foreclosure was not a valid legal option[2] because in addition to his One Action Rule defense,

[2] Accepting as true Hefetz's contention that the third priority deed of trust securing Beavor's guaranty was "valueless," foreclosure was of not practical value to Hefetz. At the same time, if the security interest was indeed valueless, there was no practical reason for Hefetz not to release it either.

Beavor had additional legal defenses that would have rendered any foreclosure a wrongful foreclosure as a matter of law. *Id.*

Therefore, the only viable option for Hefetz to convert the action into one not violating the One Action Rule was to release his security interest in the Beavor Property. Given that Hefetz believed the security interest was valueless, there was no reason for him to resist a release, but that is precisely what he did.[3] The district court determined that it had no choice but to order a dismissal without prejudice of Hefetz's claim because Hefetz was unwilling to release his security interest. *See* APP001033; *see also* APP001038. As such, there is no valid basis for Hefetz's contention that the district court abused its discretion in dismissing Hefetz's complaint without prejudice when it was his refusal to release his security interest that forced the district court to order a dismissal.

2. The District Court's Orders Sufficiently Detail the Basis for Dismissal.

In addition to arguing that the district court abused its discretion in ordering a dismissal without prejudice, Hefetz contends, "the [district court] gave absolutely no consideration to the less drastic alternative of continuing the case." Opening

[3] Beavor's motion to dismiss was filed May 7, 2015, and the hearing on the motion was June 9, 2015. *See* APP00833, APP001029. Despite being afforded over one month to weigh his options and come to the realization that a release or reconveyance was the only option that would avoid dismissal, Hefetz was unwilling to offer a release or reconveyance. *See* APP001031.

Brief at 22:14-15. Not only does this argument ignore the language of two orders from the district court, it also misstates the remedy for a violation of the One Action Rule set forth in NRS 40.435(2)(b).

NRS 40.435(2)(b) does not provide for a continuance of an action to allow a claimant, currently in violation of the One Action Rule, time to ponder whether he would like to cure the violation (to the extent curable). Instead, NRS 40.435(2)(b) allows a district court, under appropriate circumstances, to order a continuance and an amendment of the pleadings to convert the proceeding into an action which does not violate the One Action Rule. Here, the only way Hefetz could have cured his violation of the One Action Rule was to release his security interest in the Beavor Property, which he clearly was not willing to do. The district court therefore did not abuse its discretion in denying Hefetz's request for a general continuance when he expressed no interest in complying with the requirement of NRS 40.435(2)(b) to convert the action into one not violating the One Action Rule.

Moreover, not only did the district court express the rationale behind its decision to grant dismissal without prejudice at the hearing on Beavor's motion to dismiss and in its order granting the motion (*see* APP001033, APP001038), but the district court also provided a lengthy analysis of its decision in its order denying Hefetz's motion for reconsideration (*see* APP001157).

In his motion for reconsideration, Hefetz proposed a standard he believed the district court should have used in deciding whether to dismiss his claim or order a continuance. The district court indulged Hefetz by addressing—and ruling in Beavor's favor—on each and every factor of Hefetz's hypothetical standard. *See* APP001045, APP001158-1159. Thus, Hefetz's contention that the district court gave no consideration to the remedy of a continuance and also failed to provide an adequate explanation of the basis for its decision is simply unfounded.

B. BEAVOR COULD NOT AND DID NOT WAIVE THE STATUTORY ONE ACTION RULE DEFENSE

Because Hefetz cannot prevail on his argument that the district court abused its discretion in dismissing his breach of guaranty claim by applying the law to the facts of this case, Hefetz focuses his efforts on trying to refashion the law to suit his needs.

First, Hefetz posits that there is an ambiguity in NRS 40.435(3), which expressly states that a One Action Rule defense may be interposed at any point "before the entry of a final judgment." Second, Hefetz argues that the Court should interpret the "before the entry of a final judgment" requirement of NRS 40.435(3) to actually require the interposition of the One Action Rule defense at a much earlier point in time; namely, on or before the deadline to amend the pleadings set forth in a scheduling order. Third, in addition to attempting to

accelerate the timeline for interposing the One Action Rule defense in contravention of the language and legislative intent of NRS 40.435(3), Hefetz argues that Beavor's One Action Rule defense had to be asserted in a pleading, irrespective of the fact that it was litigated before final judgment.

Hefetz is incorrect in each of these arguments and there is no basis for rewriting statutory provisions for the expediency of Hefetz's untenable claim against Beavor.[4]

1. The Plain Language of NRS 40.495(5)(d) Prohibits a Waiver of the One Action Rule.

The rules of statutory construction are straightforward. *Cty. of Clark v. Doumani*, 114 Nev. 46, 52, 952 P.2d 13, 16 (1998) (superseded by statute on other grounds as stated in *Kay v. Nunez,* 122 Nev. 1100 (2006)). When interpreting a statute, the Court looks first to its plain language. *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (2011) (citing *Salas v. Allstate Rent–A–Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511, 513 (2000)). This Court must give a

[4] Several times in his Opening Brief, Hefetz cites to the prejudice he has supposedly suffered due to the fact that Beavor was allowed to assert a One Action Rule defense. See, e.g., Opening Brief at p. 28. Hefetz completely ignores the fact that the errors of Beavor's former counsel not only prevented Beavor from asserting the defense at an earlier stage in the case, but also allowed Hefetz an opportunity for a second trial when there was no valid ground for a second trial. APP001157. Indeed, Hefetz is perfectly happy with his second bite at the apple, but would deny Beavor the opportunity to assert applicable legal defenses such as the One Action Rule.

statute's terms their plain meaning, considering the statute's provisions as a whole so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory. *Southern Nev. Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005). Where the language of a statute is plain and unambiguous, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself. *Doumani*, 114 Nev. at 52 (citing *Charlie Brown Constr. Co. v. Boulder City*, 106 Nev. 497, 503, 797 P.2d 946, 949 (1990)).

Here, there is no ambiguity within NRS 40.495. By its plain language, it provides that a guarantor cannot waive the One Action Rule where the debt is secured by the guarantor's principal residence. *See* Nev. Rev. Stat. §§ 40.495(2), (5)(d). Additionally, there is no legitimate dispute that at all relevant times the Beavor Property has been: (1) Beavor's principal residence; (2) there is not more than one residential structure on the Beavor Property; and (3) not more than four families reside at the Beavor Property. *See* Nev. Rev. Stat. § 40.495(d); *see also* APP00842, APP00951. It is also undisputed that the Beavor Property secured an indebtedness guaranteed by Beavor.[5] *See* Nev. Rev. Stat. §§ 40.495(2), (5)(d); *see also* APP00842, APP00951. As such, pursuant to the express language of NRS 40.495(2) and (5)(d), Beavor could not waive his One Action Rule defense. *See id.*

2. Beavor Timely Asserted the One Action Rule Defense.

While there is no ambiguity within NRS 40.495 itself, there is an apparent contradiction between NRS 40.495—providing the One Action Rule cannot be waived by a guarantor when the indebtedness being guaranteed is secured by the guarantor's personal residence—and NRS 40.435(3)—providing that if a One Action Rule defense is not interposed before entry of a final judgment, the defense is waived. This contradiction arguably creates an ambiguity between the statutory provisions. *See Law Offices of Barry Levinson v. Milko,* 124 Nev. 355, 367, 184 P.3d 378, 387 (2008) (internal conflict can render a statute ambiguous). However, when the basic rules of statutory construction are followed, the apparent conflict between the two provisions is easily reconciled and does not lead to the absurd conclusion propounded by Hefetz that the defense is waived if not interposed before a deadline not set forth in any statutory provision.

a. Any Ambiguity Can Easily Be Harmonized by Basic Statutory Construction

The Court has a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized. *Orion Portfolio Servs. 2 LLC v. Cty. of Clark ex rel. Univ. Med. Ctr. of S. Nevada*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010) (citations omitted). In addition, the

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[5] Setting aside Hefetz's proposed alternate definition of the term "secured," discussed further in Section III(C), *infra*.

Court will not render any part of the statute meaningless, and will not read the statute's language so as to produce absurd or unreasonable results. *Id.* (citing *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712,716 (2007)).

When interpreting a statute, legislative intent "is the controlling factor." *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) (quoting *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983)). Statutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained. *Colello v. Adm'r of Real Estate Div. of State of Nev.*, 100 Nev. 344, 347, 683 P.2d 15, 17 (1984) (citations omitted).

Following these rules of interpretation, NRS 40.495 and NRS 40.435(3) are easily harmonized: a guarantor of debt secured by the guarantor's principal residence can raise the One Action Rule defense at any point in a legal proceeding before entry of a final judgment. This construction prevents the "before the entry of a final judgment" clause of NRS 40.435(3) from being rendered superfluous or nugatory and is consistent with the second sentence of NRS 40.435(3) which provides:

> Such a failure [to interpose the One Action Rule as an affirmative defense] does not affect the validity of the final judgment, but entry of the final judgment releases and discharges the mortgage or other lien.

Nev. Rev. Stat. § 40.435(3) . In other words, even when a guarantor fails to assert a One Action Rule defense before entry of a final judgment, there still is not a

complete waiver of the guarantor's protections; a judgment creditor is precluded from obtaining double recovery against the guarantor through both a residual security interest and a monetary judgment.[6] *See Nevada Wholesale Lumber co. v. Myers Realty, Inc.*, 92 Nev. 24, 30, 544 P.2d 1204, 1208 (1976) ("Failure to assert NRS 40.430 as an affirmative defense ***does not result in a waiver of all protection under that statute*** and leaves the debtor or his successor in interest free to invoke the sanction aspect of the 'one-action' rule") (emphasis added).

Construing NRS 40.495 and 40.435(3) to provide that a guarantor of debt secured by his personal residence can assert the One Action Rule defense at any point up to entry of a final judgment harmonizes the two statutory sections and gives meaning to all provisions thereof.

b. The legislative intent also dispels Hefetz's interpretation

Such a construction is also entirely consistent with the legislative intent behind NRS 40.495 and 40.435(3). In 1987, NRS 40.453 was amended to provide protection for anyone who pledged a personal residence as loan collateral by making the One-Action Rule non-waivable in those situations. *See* S.B. 359 (1987). This was based on the public policy of preserving the sanctity of the single family home. *See* Hearing on S.B. 359 Before the Senate Judiciary Committee (April 16, 1987). Two years later, in 1989, the protection of single family

[6] In essence, a claimant is forced to elect a remedy to preclude double recovery.

residences was relocated to its current position in NRS 40.495. *See* A.B. 557 (1989).

That same year, the Nevada legislature also enacted S.B. 479, which is now NRS 40.435. In remarks before the Senate Judiciary Committee, attorney Michael Buckley,[7] on behalf of the State Bar of Nevada Business Law Committee—the drafters of S.B. 479—, said with regard to NRS 40.435(3):

> The second new provision, Section 3, is probably the heart of our proposal. . . ***Litigation decisions made in error should be rectifiable so long as no final judgment is entered.*** The Committee believes this is consistent with California case law and modern civil procedure.

Hearing on S.B. 479 before the Senate Judiciary Committee (May 30, 1989) (emphasis added).[8]

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[7] This Court previously has relied on remarks submitted during legislative meetings when interpreting NRS Chapter 40. *See Lowe Enterprises Residential Partners v. District Court*, 118 Nev. 92, 103, 40 P.3d 405, 412 (2002).

[8] If any case exemplifies "litigation decisions made in error," it is the instant action, and it was the intention of the Nevada legislature that litigants such as Beavor would be afforded the opportunity to rectify prior errors (by counsel) before entry of final judgment. As much as Hefetz would like to impugn Beavor, characterizing his delay in the assertion of the One Action Rule defense as "indolent" and a "cavalier disregard of the Court's scheduling order," the simple fact is that Beavor is not an attorney nor was he familiar with Nevada's One Action Rule. Instead, Beavor reasonably relied upon his former counsel, who clearly erred in not raising a host of legal defenses, including the One Action Rule. Hefetz can hardly cry foul when the defense: (1) was timely asserted per the express language of NRS 40.435(3); and (2) when, but for the errors of Beavor's counsel, his claim against Beavor would never have made it to a first trial, let alone survived a jury verdict in Beavor's favor.

When the Court considers this evolution of the One Action Rule, in particular NRS 40.495(5) and NRS 40.435(3)and the underlying intent of the Nevada Legislature to protect single family residences in all circumstances, the only plausible reading of NRS 40.495 and 40.435. is found within the plain language of NRS 40.435(3): that the One Action Rule defense can be interposed at any point prior to entry of a final judgment.

3. The Statutory Construction Proposed by Hefetz Renders Language Superfluous and Nugatory, Contravenes the Legislative Intent, and Leads to an Absurd Result.

In his opening Brief, Hefetz argues, "nothing in NRS 40.435(3) addresses the absolute deadline for asserting the One Action Rule Defense. . . . NRS 40.453(3) says nothing about whether the One Action Rule may be untimely and waived prior to final judgment." *Id.* at 16:11-17. Hefetz's position, therefore, is that the statutory phrase "before entry of final judgment" does not set the deadline for asserting a One Action Rule defense; rather, there is an implicit deadline to raise the defense prior to the deadline to amend the pleadings set forth in a trial court's scheduling order. However, this construction of NRS 40.453(3) not only reads "before entry of a final judgment" out of NRS 40.435(3), thus rendering it superfluous and nugatory, but also contravenes the legislative intent discussed above.

Moreover, whereas the reasonable statutory construction advanced by Beavor sets a discernable deadline, the construction advocated by Hefetz has no such effect because the deadlines in a scheduling order, including the deadline to amend pleadings, are never static and can be modified even after they have passed when there is good cause. *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 357 P.3d 966 (Ct. App. 2015). Thus, reading the "before entry of final judgment" language of NRS 40.435(3)to implicitly allow the Court to set an arbitrary deadline, as opposed to the deadline actually being the entry of final judgment as stated in NRS 40.453(3), leads to an absurd result.

4. There Is No Conflict between NRS 40.435(3) and the Nevada Rules of Civil Procedure.

Recognizing the flaws in his arguments regarding the construction of NRS 40.453(3), Hefetz next argues that the "before entry of final judgment" clause of NRS 40.453(3) has "no effect" because it conflicts with the Nevada Rules of Civil Procedure. *See* Opening Brief at 17:6-7. Even if there were some conflict, which Beavor disputes, the Court must remember that NRCP 15(b) allows amendments of the pleadings "at any time, even after judgment." *Id.* Additionally, as discussed above, deadlines set forth in a scheduling order are subject to extension and re-opening. Thus, there is no conflict between NRS 40.453(3) and any Nevada Rule of Civil Procedure.

5. The One Action Rule Defense Is a Substantive Right That Cannot Be Abridged or Modified by a Procedural Rule.

While the judiciary has the power to promulgate procedural rules for the purpose of simplifying civil practice and promoting the determination of litigation on its merits, such rules cannot abridge or modify any substantive right.[9] *See* Nev. Rev. Stat. § 2.120(2). There can be no doubt that the One Action Rule defense is a substantive right of borrowers and guarantors under Nevada law. The inability to waive the One Action Rule defense, as set forth in NRS 40.495 and NRS 40.435(3), is part-and-parcel of the substantive rights of a guarantor of debt secured by his/her personal residence pursuant to the One Action Rule. A procedural rule effectuating a waiver of the One Action Rule Defense before entry of final judgment would abridge or modify the substantive rights of a guarantor. Therefore, to the extent there is a procedural rule in conflict with NRS 40.495 and 40.435(3), such procedural rule is invalid and unenforceable assuming the rule and statutory provisions cannot be harmonized. *See Watson Rounds v. Eighth Jud. Dist. Ct.*, 358 P.3d 228, 232 (Nev. 2015) (stating apparent conflicts between a court rule and a statutory provision should be harmonized and both should be given effect if possible).

[9] The construction of NRS 40.435(3) advocated by Hefetz neither simplifies nor promotes determination of civil proceedings on their merits.

6. Beavor's Assertion of the One Action Rule by Motion was Procedurally Proper.

Given that a One Action Rule defense can be interposed at any point before entry of a final judgment,[10] Hefetz's argument can only be that it was procedurally improper for Beavor to raise the One Action Rule defense in a motion without first seeking leave to amend his prior answer. This untenable argument places form over substance and also ignores: (1) the "upon the motion of any party" language of NRS 40.435(2), suggesting that a motion is an appropriate means to raise the One Action Rule defense[11]; and (2) precedent from this Court allowing affirmative defenses to be interposed by motion and "otherwise litigated" before final judgment. *See, e.g., Second Baptist Church of Reno v. First Nat. Bank of Nevada*, 89 Nev. 217, 220, 510 P.2d 630, 632 (1973); *City of Boulder City v. Boulder Excavating, Inc.*, 124 Nev. 749, 754-55, 191 P.3d 1175, 1178 (2008).

The critical issue at play is due process; whether Hefetz was given reasonable notice and the opportunity to respond. *See Whealon v. Sterling*, 121 Nev. 662, 666, 119 P.3d 1241, 1244 (2005). Hefetz was unquestionably given notice of Beavor's One Action Rule defense. Hefetz was first notified on April 7, 2015, when Beavor's counsel informed Hefetz's counsel in open court of an

[10] It is undisputed that a final judgment was not entered in this case because Hefetz was granted a new trial,

[11] *See* Nev. Rev. Stat. § 40.435(2).

application to have a motion to dismiss based on the One Action Rule be heard by the district court on shortened time. Hefetz was again notified on May 7, 2015, when Beavor filed his motion to dismiss in the ordinary course. Hefetz was afforded a full opportunity to respond Beavor's motion, he availed himself of the opportunity to file a written opposition to Beavor's motion, and argued the merits of his opposition at the hearing on Beavor's motion.

Hefetz therefore was given notice of, and the opportunity to respond to, Beavor's One Action Rule defense, and the defense was fully litigated before entry of a final judgment. Thus, there was no need for the defense to be set forth in an amended pleading before it was "interposed" through Beavor's motion to dismiss and the district court appropriately granted the motion to dismiss.

C. BEAVOR'S ALLEGED DEBT IS SECURED BY A DEED OF TRUST ENCUMBERING HIS RESIDENCE.

In furtherance of his push for a novel construction of NRS 40.495, Hefetz argues that the lien he was assigned for $10.00 is not "secured by real property" because the third deed of trust is "valueless." Opening Brief at pp. 18-21. This position is actually comprised of two separate arguments: (1) the One Action Rule does not apply in this case; and (2) NRS 40.495(5)(d)'s exception to the waiver of the One Action Rule does not apply in this case. Hefetz is incorrect on both accounts.

1. The Security Has Not Been Rendered Valueless.

Hefetz first argues that the One Action Rule should not have been applied because the "third deed of trust was valueless, due to the priority of the other liens on the property, thus making it futile to proceed against the alleged security." Opening Brief at p. 21. Thus, Hefetz is asking the Court to adopt a "lost or rendered valueless" exception to Nevada's One Action Rule.

In support of his argument, Hefetz cites to non-authoritative case law from other jurisdictions holding that where the security is exhausted or rendered valueless, the One Action Rule does not apply. For example, in an unpublished decision in *United States v. Curty*, 156 F.3d 1240, 12401998 WL 391426, at *2 (9th Cir. 1998), the Ninth Circuit analyzed California's one action rule and held that "when a security becomes valueless through no fault of the creditor, the creditor is allowed to bring action on the debt." However, the security at issue in *Curty* was valueless "because it was destroyed by fire and subsequently sold by the county for delinquent taxes." *Id.* Here, the security has neither been destroyed nor sold.

Likewise, Hefetz cites to *F.D.I.C. v. Shoop*, 2 F.3d 948, 951 (9th Cir. 1993), which analyzes Montana's version of the one action rule. Although Hefetz claims that the Montana rule is "almost identical" to Nevada's rule, Montana has an express statutory exception to the rule "for recovery of a debt or for enforcement of a right secured by a mortgage when the mortgage security in this state has become

valueless through no fault of the mortgagee." *See* MT ST 71-1-222(4)(s). Nevada has no such statutory exception. As such, the Ninth Circuit's analysis in *Shoop* is entirely inapplicable.

Moreover, in *Shoop*, the Ninth Circuit held that there was a question of material fact regarding whether the security of a second lien was valueless where the holder of the first lien had filed suit to foreclose, but had not yet obtained a final judgment **and** where the holder of the second lien contractually reconveyed its interest in the security to the holder of the first. *Shoop*, 2 F.3d at 951. The Ninth Circuit reasoned that prior to final conclusion of the foreclosure suit anything could happen with respect to the first lien. *Id.* (*citing White v. Jewitt*, 106 Mont. 416, 78 P.2d 85, 88 (1938); *Glacier Campground v. Wild Rivers, Inc.*, 182 Mont. 389, 497 P.2d 689 (1978)) ("Where the vendor on a land sale contract has not yet pursued one of her remedies 'to a conclusion,' she is not yet precluded from electing an alternative remedy.") As such, *Shoop* made clear that until the security is actually foreclosed upon by a senior lienholder, it is not rendered valueless. That has not occurred in this case.

Ultimately, each and every case cited by Hefetz holds that security is not exhausted or rendered valueless unless the collateral has either been destroyed or sold-out by a senior lienholder. *See City Consumer Services, Inc. v. Peters*, 815 P.2d 234, 236 (Utah 1991) (holding that a junior creditor is not barred by the one-

action rule if the junior creditor becomes unsecured as a result of foreclosure by senior creditor and that "once the senior had exhausted the security the junior was free to proceed on the note"); *Brown v. Jensen*, 41 Cal.2d 193, 196 (1953) (holding that the exception to the one action rule "has been applied in favor of a second mortgagee, the security being considered lost or valueless as to him, where a first mortgagee forecloses his mortgage and the property is sold for no more than the senior debt and a deed has been given.").

2. Beavor Cannot Satisfy the Requirements of the Exemption He Wants This Court to Judicially Interpose into the Statute.

Moreover, assuming *arguendo* the Court is inclined to read the "lost or rendered valueless" exception to the One Action rule into Nevada's statutes, for the exception to apply, "it is not enough to speculate that the security is valueless, or might become valueless if foreclosed by a senior lienholder and the security must, as a fact, be exhausted and a deficiency established to a certainty and the plaintiffs mortgagee must show that the security has been foreclosed and sold or otherwise lost by no fault of the plaintiff prior to commencement of an action on a secured note." 55 Am. Jur. 2d Mortgages § 459 (*citing Lockhart Co. v. Equitable Realty, Inc.,* 657 P.2d 1333 (Utah 1983)).

Here, Hefetz only speculates that the security is valueless or might become valueless if foreclosed by a senior lienholder. In fact, the only "evidence" that

Hefetz presented to the district court regarding the alleged value of the security was inadmissible online property valuations. In his Opening Brief, Hefetz states:

> Plaintiff has determined that the fair market value of the real property allegedly securing the debt is between "$384,794.00 to $512,446.00," that real property is secured by first deed of trust with an outstanding amount owed of "$518,000.00," a second deed of trust with an outstanding amount owed of "$1,350,000," and therefore the third deed of trust, which is held by Hefetz, is valueless because the real [property] "is underwater by an amount in excess of eight hundred thousand dollars even without considering the Loan and third deed of trust held by Hefetz.

Opening Brief at p. 21. However, this conclusion is not supported by any admissible evidence, nor was it supported in the lower court. Additionally, it is not enough for Hefetz to state that it may become valueless in the future if the senior lienholders were to foreclose. Hefetz must show that the senior lienholders have actually foreclosed for this exception to apply, which he cannot do.

3. Nevada Already Has A Statutory "Sold-Out" Exception.

In considering whether to read a "lost or rendered valueless" exception to the One Action Rule into Nevada's statute—even though such an exception would not be applicable in this case—it is important for the Court to keep in mind the already-existing statutory sold-out status exception to the One Action Rule. *See* NRS 40.430(j). ("[A]n 'action" does not include any act or proceeding. . . [t]o collect any debt, or enforce any right, secured by a mortgage or other lien on real

property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.").

The "valueless" standard adopted in other jurisdictions as an exception to the One Action Rule is, in effect, nothing more than a common law version of Nevada's sold-out status exception. However, as set forth above, neither the sold-out status exception already existing in Nevada statute nor the common law "valueless" exception adopted in other jurisdictions apply to the facts of this case. Hefetz is hoping to overcome these factual and legal infirmities by advocating the adoption of a broader exception that would preclude the application of the One Action Rule in Nevada when a creditor simply speculates that he is, or at some point could be, undersecured.

4. Hefetz Improperly Asks the Court to Judicially Legislate an Exception to NRS 40.495(5)(d).

Although it is only mentioned in passing, and subsumed within Hefetz's primary argument that a "valueless" exception should be read into the One Action Rule to render it inapplicable in this case, Hefetz further argues that the express language of NRS 40.495(5)(d) precluding waiver of the One Action Rule by a guarantor whose personal residence serves as security for the underlying debt also implicitly contains a "valueless" exception. Opening Brief at 19:3-7.

This secondary argument is entirely unsupported. Quite simply, all of the cases cited by Hefetz pertain to the issues of whether, under the law of other jurisdictions, there was an exception to the One Action Rule where the security had been lost or rendered valueless, or whether the exception applied on the facts of the particular case. Nowhere do the cases even mention an exception to waiver similar to that expressly set forth in NRS 40.495(5)(d). Hefetz is therefore asking the court to ignore the plain language of the statute to unnecessarily and improperly add an exception to NRS 40.495(5)(d).[12]

D. THE DISTRICT COURT PROPERLY AWARDED BEAVOR ATTORNEYS' FEES AND COSTS.

The final argument of Hefetz's appeal is that the district court abused its discretion in awarding Beavor attorneys' fees and costs pursuant to NRS 17.115 and NRCP 68 after Beavor obtained a more favorable judgment than his $10,000.00 offer of judgment to Hefetz. Specifically, Hefetz contends the district court committed two separate errors: (1) in awarding fees and costs pursuant the offer of judgment statute and rules when there was no final judgment entered; and (2) in failing to "carefully evaluate" the *Beattie*[13] factors. *See* Opening Brief at 24-26. Hefetz is mistaken on both accounts.

[12] NRS 40.495(5)(d) is itself an express exception to NRS 40.495(2). *See id.* Thus, Hefetz is asking the Court to create an exception within an exception.

[13] *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983).

First, the Court need look no further than the first sentence of the Opening Brief, wherein Hefetz states, "[t]his Court has jurisdiction pursuant to Nev. R. App. P. 3A(b)," to confirm that the dismissal order being appealed is a final judgment. *Id.* at vii:2. The only provision of NRAP 3A applicable to Hefetz's appeal is subsection (b)(1), which provides that an appeal may be taken from a final judgment. *See id.* If it is Hefetz's contention that the order dismissing his sole claim for relief against Beavor was not a final judgment, then he must concede that the Court has no jurisdiction over his appeal. Conversely, if Hefetz maintains that the Court does have jurisdiction over a final judgment, then his argument that the Court erred by awarding attorneys' fees and costs pursuant to NRS 17.115 and NRCP 68 necessarily fails.

Hefetz's second contention—that the district court failed to consider the *Beattie* factors—is equally groundless. In its order denying Hefetz's motion for reconsideration, the district court stated quite clearly, "It is this Court's opinion this case was brought in bad faith," thus addressing the first *Beattie* factor before even ruling on Beavor's motion for attorneys' fees. APP001158. Then, it its order granting Beavor's motion for attorneys' fees and costs, the district court expressly stated that Beavor's offer of judgment "was both timely and reasonable in amount especially given the circumstances under which the Plaintiff had been advised prior to the filing of the motion to dismiss that the One Action Rule would resolve the

situation," thus addressing the second Beattie factor. APP001190-91. Next the district court determined that while Beavor satisfied the *Brunzell*[14] factors, his counsel spent an excessive amount of time following the offer of judgment, thus addressing the fourth *Beattie* factor.[15] APP001191. Lastly, while the district court did not expressly address the third *Beattie* factor (whether it was grossly unreasonable for Hefetz to have rejected Beavor's offer of judgment), the determination that the rejection was grossly unreasonable was inherent in the Court's statement that "Plaintiff had been advised prior to the filing of the motion to dismiss that the One-Action Rule would resolve the situation." APP001191. In addition, even had the district court determined that it was not grossly unreasonable for Hefetz to have rejected the offer of judgment, the determination on that factor alone would not have changed the district court's conclusion. *See Yamaha Motor Co. v. Arnault*, 114 Nev. 233, 251 n.16, 955 P.2d 661, 672 n.16 (1998) (no single *Beattie* factor is determinative).

As much as Hefetz may disagree with the determinations of the district court, he is not remotely close to establishing that the district court's evaluation of the Beattie factors was arbitrary or capricious. *See Schouweiler v. Yancey Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790 (1985) (noting the Court can only overturn an

[14] *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

[15] The district court also reduced the award of attorneys' fees from $21,831.00 (the amount requested by Beavor) to $15,000.00. *See* APP001070, APP001191.

order of attorneys' fees if the district court's exercise of discretion in evaluating the *Beattie* factors was arbitrary or capricious). Thus, provided the Court affirms the district court's dismissal of Hefetz's breach of guaranty claim for the multitude of reasons set forth above, there is no basis for reversing the district court's award of attorneys' fees and costs.

V. CONCLUSION

Hefetz has not advanced a single tenable argument warranting a reversal of the district court's orders. The district court properly exercised its discretion in deciding to dismiss Hefetz's breach of guaranty claim for violating the One Action Rule, and Hefetz can hardly complain that the district court did not chose the alternate statutory remedy which he made unavailable through his refusal to cure his violation of the One Action Rule. Moreover, unless this Court is willing to read language out of NRS 40.435 and add language into NRS 40.495, contravening the intent of the Nevada Legislature in the process, then Hefetz's contentions that Beavor waived and/or untimely asserted his One Action Rule Defense and that NRS 40.495 does not apply to the facts of this case are entirely baseless. Lastly, the district court properly awarded Beavor attorneys' fees and costs pursuant to an offer of judgment. As such, the district court's orders should be affirmed.

VI. CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(A), it is proportionately spaced, has a typeface of 14 points and contains 8,730 words.

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

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sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 2nd day of September 2016

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of September 2016, a copy of the foregoing RESPONDENT CHRISTOPHER BEAVOR'S ANSWERING BRIEF was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex):

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