IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS A. HUERTA, AN INDIVIDUAL; AND GO GLOBAL, INC., A NEVADA CORPORATION, Appellants, vs. SIG ROGICH, A/K/A SIGMUND ROGICH, AS TRUSTEE OF THE ROGICH FAMILY IRREVOCABLE TRUST; ELDORADO HILLS, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondents.	Case No.: 70492 Appeal from the Eighth Judicial District Court, The Honorable Nancy Alff Presiding.

APPELLANTS' OMNIBUS REPLY BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Appellant Carlos Huerta is an individual, residing in the State of Nevada. Go Global, Inc. is an Idaho Corporation that is not publicly traded and has no parent corporation that owns 10% or more of the corporation's stock. The president and direct owner of Go Global is Carlos Huerta.

2. Samuel A. Schwartz, Esq., of Schwartz Flansburg PLLC is the attorney who appeared in bankruptcy court, district court and in this Court for Appellants. Brandon McDonald, Esq., also previously appeared in the district court for Appellants.

Dated this 7th day of April, 2017.

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A. SUMMARY OF ARGUMENT.

Although filed approximately two weeks apart, the answering briefs of Respondents Sig Rogich, a/k/a Sigmund Rogich, as Trustee of the Rogich Family Irrevocable Trust ("**Rogich**") and Eldorado Hills, LLC ("**Eldorado**" and collectively with Rogich, the "**Respondents**") to Appellants' opening brief[1] appear to be identical. Accordingly, Go Global and Huerta file this omnibus reply brief to reply to the answering briefs of Rogich and Eldorado.

The District Court's denial of the Request for Relief should be overturned because: (i) this Court determined it has jurisdiction over this appeal in two separate orders; (ii) federal and state law prohibit district courts from interfering with bankruptcy core proceedings; (iii) the obligation of full faith and credit requires the District Court to give determinations from bankruptcy courts res judicata effect; (iv) failure to give full faith and credit amounts to an impermissible collateral attack that undermines the unified Bankruptcy Code; and (v) none of Appellants' arguments are waived because the District Court considered everything contained in the briefs and raised at oral argument in its order.

[1] Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in Appellants' Opening Brief.

B. THIS COURT DETERMINED IT HAS JURISDICTION OVER THIS APPEAL AND RULED TWICE ON THE ISSUE.

1. It is Well Established That Orders Denying Relief Under NRCP 60(b) are Appealable.

Much of Respondents' answering briefs deal with procedural issues regarding this Court's jurisdiction of the instant appeal. Importantly, however, this Court already stated here that an order denying a motion for relief pursuant to NRCP 60(b) is independently appealable. See Order Denying Motion and Reinstating Briefing dated October 6, 2016 (the "**October 2016 Order**"), citing Holiday Inn v. Barnett,103 Nev. 60, 63, 732 P.2d 1376, 1378-79 (1987). After Respondents filed a motion for reconsideration of that order, on January 25, 2017, this Court entered an order denying Respondents' motion for reconsideration. See Order Denying Motion dated January 25, 2017 (the "**January 2017 Order**").

Despite the aforementioned rulings of this Court in the instant appeal, Respondents continue to argue that "nothing in NRCP 3A(b) [sic] provides that Holiday Inn Downtown v. Barnett or Smilanich v. Bonanza Airlines, Inc. has any relationship to appeal." See Respondent's Answering Brief, at 5:11-14. Respondents, however, misapply the rules of statutory interpretation. Statutory rules do not receive authority from court rulings, but the court interprets the rules and determines the manner in which they are applied. In re CityCenter Constr. & Lien Master Litig., 129 Nev. Adv. Op. 70, 310 P.3d 574, 580 (2013).

Furthermore, it is well established that federal courts interpreting the Federal Rules of Civil Procedure are "strong persuasive authority" for the

Nevada Supreme Court because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." Executive Mgmt., Ltd. v. Ticor Title Ins., 118 Nev. 46, 54, 38 P.3d 872 (2002). Accordingly, over 60 years ago, the Nevada Supreme Court, while interpreting Nevada's appellate procedure and determining the manner in which it should be applied, explicitly adopted the holding of the federal court in Greenspahn v. Joseph E. Seagram & Sons, which states that an order denying a Rule 60(b) motion "is a final order and therefore appealable." Smilanich v. Bonanza Air Lines, 72 Nev. 10, 11, 291 P.2d 1053, 1054 (1956), citing Greenspahn v. Seagram, 186 F.2d 616, 619 (2nd Cir. 1951). Moreover, the Nevada Supreme Court confirmed its position approximately 30 years later in Holiday Inn, when it held "our review of this appeal shall therefore be limited to the propriety of the order of June 13, 1985, denying appellant's motion to vacate the order of April 3, 1985, pursuant to NRCP 60(b)(3)." Holiday Inn, 103 Nev. at 64, 732 P.2d at 1379.

Applying the law above, this Court has jurisdiction. Long ago this Court determined that district court orders denying relief based on Rule 60(b) are final orders and therefore appealable. This Court confirmed this interpretation of the Nevada Rules of Appellate Procedure in the past and the application holds true today. Despite Respondents' attempt to distance the application of NRAP 3A(b) from Greenspahn, Smilanich, and Holiday Inn, the rule and the cases are intertwined by express adoption by the Nevada Supreme Court.

2. The Law of the Case Closes Jurisdictional Issues to Respondents.

When a court decides a principle or rule of law in a case, that decision governs the same issue or issues in subsequent proceedings in that case. Dictor v. Creative Management Services, LLC, 126 Nev. 41, 44-45, 223 P.3d 332, 334 (2010), citing Hsu v. County of Clark, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007); Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003). A court should not re-open questions decided by that court or a higher one in earlier phases. Estate of Adams By and Through Adams v. Fallini, 132 Nev. Adv. Op. 81, 386 P.3d 621, 624 (2016). This principle is known as the "law of the case" doctrine. Dictor, 126 Nev. at 44-45, 223 P.3d at 334. In order for the doctrine to apply, the court need only "actually address and decide the issue explicitly or by necessary implication." Dictor, 126 Nev. at 44-45, 223 P.3d at 334, citing Snow-Erlin v. U.S., 470 F.3d 804, 807 (9th Cir. 2006).

In this case, as this Court is aware, it initially issued an Order to Show Cause that it had proper jurisdiction over the instant appeal. See Order to Show Cause, at 1, Jul. 06, 2016. Shortly thereafter, Respondents filed a motion to dismiss the appeal on the grounds that the order is not appealable as a special order after final judgment.

After the parties briefed the issue, this Court entered the October 2016 Order, denying Respondents motion to dismiss. Specifically, the Court stated the "appeal may proceed without prejudice to our right to revisit the question of jurisdiction as briefing continues." Id. at 2. With this order, the Court closed

the issue to the parties, but reserved its own right to revisit the issue sua sponte. The Court did so because of Appellants' assertion that their motion for reconsideration was based in part on NRCP 60(b), which is independently appealable. Id. at 1.

Notwithstanding this Court's determination that it has jurisdiction, Respondents filed a motion for reconsideration of the October 2016 Order, and subsequently entered its January 2017 Order, and stated it "…considered the scope of NRCP 60(b) in resolving the original motion to dismiss… and Respondents do not demonstrate that reconsideration is warranted," as they fail to demonstrate "…that this court overlooked or misapprehended any material points of law or fact." Id. at 1-2.

Despite the Court twice determining that it has jurisdiction over this appeal, Respondents challenge the Court's decision with virtually the same assertion as before. Nevertheless, the Court actually addressed and decided the issue twice, and those decisions govern the same issue now as the law of the case.

3. Appellants Properly Raised NRCP 60(b) Relief.

Finally, Respondents argue that Appellants' NRCP 60(b) arguments were waived in its reply to Respondents' opposition to the motion for reconsideration and request for relief in the District Court, and were not in the original motion itself. Accordingly, such NRCP 60(b) arguments are waived, and this Court does not have jurisdiction over the instant appeal. Respondents arguments are incorrect for multiple reasons.

First, a request for NRCP 60(b) relief was raised in the original motion. The Appellants also argued that NRCP 60(b) was a basis for the District Court to grant relief from the prior partial summary judgment order, as all creditors had been paid in the Appellants' bankruptcy case. See App. at 2059-2116.

Second, Respondents' assertion that arguments raised for the first time in reply are waived lacks proper analysis and context. See Respondent's Answering Brief, at 2:25-3:4. Indeed, to support this assertion, Respondents rely only on a hollow reference to Striegel v. American Family Ins. Co., 2014 Wl 6473597 (D. Nev. 2014). Further analysis, however, demonstrates the correct rule is when an argument is raised for the first time in a reply brief in a lower court, the lower court is not obligated to consider it when ruling on the motion and may deem it waived. Striegel v. American Family Mut. Ins. Co., No. 2:13-cv-1338-GMN-VCF, 2014 WL 6473597, at *4 (D. Nev. Nov. 18, 2014) (emphasis added); Zamini v. Carnes, 491 F.3d 990, 997 (9th Cir. 2007), citing Koerner v. Grigas, 328 F.3d 1039, 1048 (9th Cir. 2003); Arnold v. Kip, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007). Indeed, the lower court may refuse to address the argument. Id.

Conversely, issues not raised at all in the lower court cannot be raised for the first time on appeal. Jackson v. Groenendyke, 132 Nev. Adv. Op. 25, 369 P.3d 362, 367 n.1 (2016), citing Francis v. Wynn Las Vegas, LLC, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011); Carrigan v. Comm'n on Ethics, 129 Nev. Adv. Op. 95 n.6, 313 P.3d 880, 890 n.6 (2013); Sophanthavong v. Palmateer, 378 F.3d 859, 872 (9th Cir. 2004), citing Smith v. Marsh, 194 F.3d

1045, 1052 (9th Cir. 1999); U.S. v. Gianelli, 543 F.3d 1178, 1184 (9th Cir. 2008), citing U.S. v. James, 109 F.3d 597, 599 (9th Cir. 1997), and U.S. v. Schlesinger, 49 F.3d 483, 485 (9th Cir. 1994). Similarly, issues raised for the first time in an appellate reply brief are waived. Tovar v. U.S. Postal Service, 3 F.3d 1271, 1289 n.3 (9th Cir. 1993); Bazuaye v. I.N.S., 79 F.3d 118, 120 (9th Cir. 1996); Sophanthavong v. Palmateer, 378 F.3d 859, 872 (9th Cir. 2004), citing Smith v. Marsh, 194 F.3d 1045, 1052 (9th Cir. 1999).

Here, the arguments regarding full faith and credit and summary judgment functioning as an injunction were raised in the reply brief, but the District Court properly considered those arguments. See App. Vol. II, at 571-72; App. Vol. II, at 1836-37. Accordingly, they were neither waived nor disregarded by the District Court.

Specifically, during the hearing and in its order, the District Court never refused to address the Appellants' NRCP 60(b) arguments, and never stated that its decision excluded those issues. Id. Instead, the District Court considered all arguments raised in the briefing (including the motion and reply) and at the hearing. Simply put, the NRCP 60(b) arguments were raised before the District Court. See App. Vol. II, at 556; App. Vol. II, at 1854, 1859.

Consideration and inclusion of all arguments in the District Court's decision is inherent in its oral ruling at the hearing, where it stated:

> [N]othing that's been presented to me changes the way the law should be applied in this case. So for those reasons the motion will be denied.

App. Vol. II, at 571-72.

Moreover, even the written order denying Appellants' motion states:

> …having considered the briefs duly filed herein and oral argument, and good cause appearing… the Plaintiffs' Motion for Reconsideration or Relief from Order Granting Motion for Partial Summary Judgment is denied.

See App. Vol. II, at 571-72; App. Vol. II, at 1836-37.

Accordingly, the District Court considered all briefs and arguments presented before it at the hearing. Consequently, all of the issues were properly before the District Court at the time of its decision and they are properly before this Court on appeal. Simply put, this Court has jurisdiction.

C. FEDERAL AND STATE LAW PROHIBIT DISTRICT COURTS FROM INTERFERING WITH BANKRUPTCY CORE PROCEEDINGS.

Apart from the jurisdiction issue here, the Respondents do not appear to address Appellants' arguments that the District Court did not have jurisdiction to determine whether the Appellants' Chapter 11 disclosure statement lacked adequate information. Rather, Respondents argue they are not aware of any statute requiring a state court to give full faith and credit to a bankruptcy court order. See Answering Brief, p. 15.

Importantly, however, proceedings in bankruptcy that invoke "a substantive right provided by Title 11 or … a proceeding that, by its nature, could arise only in the context of a bankruptcy case, [are] core proceedings." In re Gruntz, 202 F.3d 1074, 1081, 1082 (9th Cir. 2000). Accordingly, the bankruptcy court has "plenary power" and retains exclusive jurisdiction over core proceeding matters and issues, as granted by Congress. Id.; In re McGhan,

288 F.3d 1172, 1179-80, (9th Cir. 2002) (emphasis added). Necessarily, because no law or statute "vests the states with any jurisdiction over a core bankruptcy proceeding," final decisions concerning core proceedings "must rest with the federal courts." In re Gruntz, 202 F.3d at 1083-84. Importantly, the determination of the adequacy of a disclosure statement in bankruptcy proceedings is a core proceeding arising under 11 U.S.C. § 1125, and 28 U.S.C. §§ 157, 1409.

Hence, federal law "bars state court intrusions on all bankruptcy court orders (or core bankruptcy proceedings), not just the automatic stay." In re McGhan, 288 F.3d at 1179, citing In re Gruntz, 202 F.3d at 1082). If a state court infringes upon the bankruptcy court's exclusive jurisdiction, its action is void from the outset and the bankruptcy court should reopen the proceedings to protect its exclusive jurisdiction over the enforcement of its own orders. In re McGhan, 288 F.3d at 1182, citing Gonzales v. Parks, 830 F.2d 1033, 1036 (9th Cir. 1987).

Correspondingly, Nevada law also holds that federal courts have exclusive jurisdiction to administer a bankruptcy case. Bader Enterprises, Inc. v. Becker, 95 Nev. 807, 810 603 P.2d 268, 269 (1979). State courts "have no power to interfere with federal court decisions arising out of federal question jurisdiction, such as bankruptcy court decisions, even when state-law issues are resolved in the context of those decisions…" Stoll v. Gottlieb, 305 U.S. 165, 170-171 (1938); Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1055, 194

P.3d 709, 713 (2008); Clark v. Columbian/HCA Info. Servs., Inc., 117 Nev. 468, 481, 25 P.3d 215, 224 (2001).

In this case, on April 8, 2013, the Bankruptcy Court administering the Appellants' Chapter 11 bankruptcy case expressly determined the disclosure statement contained adequate information. See App. Vol. I, at 187. Specifically, the court stated "it is hereby ordered that the [sic] Pursuant to section 1125 of the Bankruptcy Cod and Rule 3017(b) of the Federal Rules of Bankruptcy Procedure, the Disclosure Statement, as amended is hereby approved…." Id. The Bankruptcy Court's determination arose under Chapter 11 of the bankruptcy code, making it a bankruptcy core proceeding. Id.

Nevertheless, the District Court subsequently determined that the disclosure statement did not contain adequate information. See App. Vol. II, at 569; App. Vol. II, at 1836-37. This determination infringed upon the Bankruptcy Court's plenary power and exclusive jurisdiction and directly contradicted the Bankruptcy Court's order. The District Court went even further and determined that the creditors in the bankruptcy matter may have been prejudiced by the alleged inadequacy. See App. Vol. II, at 569. The court stated "because those creditors might have been entitled to interest or there's some creditors who may have relied on what the assets were with what to be paid. And see, that's the thing that troubles me and that's – you know, the Hamilton case is directly on point here." Id.

Because the District Court made a determination regarding a bankruptcy matter involving bankruptcy core proceedings, it interfered with a federal court

decision arising out of federal question jurisdiction. By doing so, the District Court infringed upon the exclusive jurisdiction of the Bankruptcy Court. Because the District Court had no jurisdiction to issue the order, it is void. Moreover, the Bankruptcy Court also retains jurisdiction over the matter.

Indeed, even the Respondents reply brief supports Appellants contention that a judgment is void if the court that rendered it lacked jurisdiction over the subject matter:

> A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.

See Reply Brief, p. 16, citing Wright & Miller Federal Practice and Procedure Civil 3d, § 2862 at 434.

Here, the Bankruptcy Court previously ruled the Appelllants' Chapter 11 disclosure statement contained "adequate information" in accordance with 11 U.S.C. § 1125. The District Court's ruling that the Disclosure Statement failed to contain adequate information is void, as the District Court did not have jurisdiction to make that determination.

D. FULL FAITH AND CREDIT IS REQUIRED.

The full faith and credit doctrine requires the recognition, acceptance, and enforcement of the laws, orders, and judgments of another jurisdiction that are previously entered. Black's Law Dictionary 742 (9th ed. 2009); Colby v. Colby, 78 Nev. 150, 157-58, 369 P.2d 1019, 1023 (1962). "[A] federal court judgment is entitled to the same effects as the judgment of a state court sitting

in the same state." 18B Fed. Prac. & Proc. Juris., Wright & Miller, § 4468 (2d ed.); Bigelow v. Old Dominion Copper Mining & Smelting Co., 225 U.S. 111, 129-30 (1912) (finding that the judgment of the federal court in New York is "entitled in the courts of another State to the same faith and credit which would attach to a judgment of a court of the State of New York"); Embry v. Palmer, 107 U.S. 3, 10 (1882) ("[T]he judgments of the courts of the United States have invariably been recognized as upon the same footing, so far as concerns the obligations created by them, with domestic judgments of the States, wherever rendered and wherever sought to be enforced."); American Fabrics, Inc. v. L & L Textiles, 754 F.2d 1524, 1529 (9th Cir. 1985) ("Finally, a combination of constitutional and statutory considerations requires state courts to give res judicata effect to the judgments of federal courts.").

Here, the Bankruptcy Court, a court of federal jurisdiction, entered its order that the disclosure statement contained adequate information for the bankruptcy proceeding. Subsequently, the District Court, a court of another jurisdiction, disregarded the Bankruptcy Court's order and determined that the same disclosure statement did not contain adequate information for the bankruptcy proceeding. By doing so, the District Court failed to give the order of the Bankruptcy Court the same effect and recognize it as upon the same footing as is required. In short, the District Court failed to give the Bankruptcy Court's order full faith and credit. Because the District Court failed to give full faith and credit to a previously entered order, its determination should be void and its effects should be reversed.

E. DISREGARDING FULL FAITH AND CREDIT AMOUNTS TO A COLLATERAL ATTACK.

Nevada law prohibits collateral attacks on court decisions from another jurisdiction. State v. Sustacha, 108 Nev. 223, 225-26, 826 P.2d 959, 960-61 (1992). Indeed, a district court has no jurisdiction to vacate another district court's valid judgment. Id. The district courts in the State of Nevada "lack jurisdiction to review the acts of other district courts. Nev. Const. art. 6, § 6; Rohlfing v. Second Judicial Dist. Court In and For County of Washoe, 106 Nev. 902, 906, 803, P.2d 659, 662 (1990). A court action that will effectively circumvent a prior judgment of another court and relitigate issues already decided, constitutes a collateral attack on the prior judgment. Markoff v. New York Life Ins. Co., 92 Nev. 268, 271, 549 P.2d 330, (1976). If a collateral attack occurs, the proper course is to issue a writ of prohibition enjoining enforcement of the collateral order. Rohlfing, 106 Nev. at 907, 803 P.2d at 663.

Furthermore, "just as federal district courts are not part of the state appellate system, neither are state courts granted supervisory or appellate jurisdiction over federal courts." In re Gruntz, at 1084. Therefore, "bankruptcy court orders are not subject to collateral attack in other courts," including state court. In re McGhan, at 1179. Such state court orders "undermine the principle of a unified federal bankruptcy system, as declared in the Constitution and realized through the Bankruptcy Code." Id. at 1180.

In this case, the District Court vacated another court's valid judgment when it determined the disclosure statement did not contain adequate information for the bankruptcy proceeding after the Bankruptcy Court

determined it did. By vacating the Bankruptcy Court's order, the District Court circumvented the Bankruptcy Court's prior judgment and relitigated issues already decided. In sum, the District Court's action constitutes a collateral attack. As a collateral attack, the proper course is to issue a writ of prohibition enjoining enforcement of the collateral order.

II. CONCLUSION

For the foregoing reasons, the Appellants respectfully request that this Court reverse the District Court's denial of the Request for Relief.

Dated this 7th day of April, 2017.

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CERTIFICATE OF COMPLIANCE

1. 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 2007 in 14-point Times New Roman font.

2. 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)(C), it is either:

☐ proportionally spaced, has a typeface of 14 points or more and contains _____ words; or

☒ does not exceed 15 pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular 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 sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

/ / /

Dated this 7th day of April, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANTS' REPLY BRIEF** was filed electronically with the Nevada Supreme Court on the 7th day of April, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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