

IN THE SUPREME COURT OF THE STATE OF NEVADA
CASE NO. 70504

JAMES NALDER, GUARDIAN AD LITEM ON BEHALF OF ONE YANNE
NALDER; AND GARY LEWIS, INDIVIDUALLY,
Appellants,

v.

UNITED AUTOMOBILE INSURANCE COMPANY,
Respondent.

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**APPELLANTS' OPENING BRIEF REGARDING SECOND CERTIFIED
QUESTION OF LAW**

Ninth Circuit Case No. 13-17441
U.S.D.C. No. 2:09-cv-01348-RCJ-GWF

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I. ROUTING STATEMENT

This matter involves a question of law certified by the Ninth Circuit Court of Appeals and is, therefore, presumptively retained by the Supreme Court of Nevada pursuant to NRAP 17(a)(7).

II. JURISDICTIONAL STANDARD FOR CERTIFICATION

On December 27, 2017, the Ninth Circuit Court of Appeals asked this Court to answer a second certified question:

Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

Nalder v. United Auto. Ins. Co., 878 F.3d 754 (9th Cir. 2017).

Pursuant to the second certification order, no other issues are before this Court. On February 23, 2018, this Court issued its Order Accepting Second Certified Question, but rephrased the question as permitted by the Ninth Circuit:

In an action against an insurer for breach of the duty to defend its insured, can the plaintiff continue to seek consequential damages in the amount of a default judgment obtained against the insured when the judgment against the insured was not renewed and the time for doing so expired while the action against the insurer was pending?

The Supreme Court of Nevada may answer questions of law certified to it by a United States Court of Appeals when requested by the certifying court. Nev. R. App. P. 5(a). "The certifying order must include a statement of facts relevant to the

question certified in its order certifying questions to this court.” *In re Fountainbleau Las Vegas Holdings, LLC*, 127 Nev. 941, 955, 267 P.3d 786, 794 (2011) (citing Nev. R. App. 5(c)(2)). The Supreme Court of Nevada is “bound by the facts as stated in the certification order” and cannot make findings of fact in response to a certified question. *Id.* at 956, 795. Although a party to the certification case may provide an appendix to provide this Court with a better understanding of the underlying action, “this Court may not use information in the appendix to contradict the certification order.” *Id.*

In its second certification order, the Ninth Circuit provides this Court with a substantially similar factual background as in the first certification order. *Nalder*, 878 F.3d at 756-57; *see also, In re Nalder*, 824 F.3d 854, 855 (9th Cir. 2016). The Ninth Circuit also provides additional facts presumptively relevant to the narrow issue of law addressed in the second certified question. *Nalder*, 878 F.3d at 757. This Court must accept the facts as stated in the second certification order and answer the question of law so that the certifying court can then apply the law to those facts. *In re Fountainbleau*, 127 Nev. at 955-56, 267 P.3d at 794. “This approach prevents the answering court from intruding into the certifying court’s sphere by making factual findings or resolving factual disputes.” *Id.* (citing *Alexander v. Certified Master Builders*, 268 Kan. 812, 1 P.3d 899, 908 (Kan. 2000); *Puckett v. Rufenacht, Bromagen & Hertz*, 587 So. 2d 273, 277 (Miss. 1991) (“This Court is not

called upon to decide the case. Nor should we go behind the facts presented by the certifying court.”)).

Based on the foregoing, Appellants provide the following factual background relevant to this narrow question of law that this Court agrees to answer.

III. FACTUAL BACKGROUND

This matter arises from a July 8, 2007 incident in which Gary Lewis ran over Cheyanne Nalder, born April 4, 1998, who was a nine-year-old girl at the time. *Nalder*, 878 F.3d at 756. Lewis maintained an auto insurance policy with Appellee United Auto Insurance Company (“UAIC”), which was renewable on a monthly basis. *Id.* Before the subject incident, Lewis received a statement from UAIC instructing him that his renewal payment was due by June 30, 2007. *Id.* The renewal statement also instructed Lewis that he remit payment prior to the expiration of his policy “[t]o avoid lapse in coverage.” *Id.* The statement provided June 30, 2007 as the effective date of the policy. *Nalder*, 878 F.3d at 756. The statement also provided July 31, 2007 as the expiration date of the policy. *Id.* On July 10, 2007, Lewis paid UAIC to renew his auto policy. *Id.* Lewis’s policy limit at this time was \$15,000.00. *Id.*

Following the incident, Cheyanne’s father, James Nalder, extended an offer to UAIC to settle Cheyanne’s injury claim for Lewis’s policy limit of \$15,000.00. *Id.* UAIC rejected Nalder’s offer. *Id.* UAIC rejected the offer because it believed

that Lewis was not covered under his insurance policy given that he did not renew his policy by June 30, 2007. *Id.* UAIC never informed Lewis that Nalder offered to settle Cheyanne's claim. *Id.*

After UAIC rejected Nalder's offer, Nalder, on behalf of Cheyanne, filed a lawsuit against Lewis in Nevada state court on May 22, 2009. *Id.*; *see also*, 1.A.App. 0001 – 0010. Lewis failed to appear and answer the complaint. *Id.* As a result, Nalder obtained a default judgment against Lewis for \$3,500,000.00. *Id.* On May 22, 2009, Nalder and Lewis filed suit against UAIC alleging breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and violation of NRS 686A.310. *Id.* Nalder filed suit after Lewis assigned to Nalder his right to "all funds necessary to satisfy the Judgment" 1 A.App. 0011.

Once UAIC removed the underlying case to federal district court, UAIC filed a motion for summary judgment as to all of Lewis and Nalder's claims alleging Lewis did not have insurance coverage on the date of the subject collision. *Nalder*, 878 F.3d at 756. The federal district court granted UAIC's summary judgment motion because it determined the insurance contract was not ambiguous as to when Lewis had to make payment to avoid a coverage lapse. *Id.* Nalder and Lewis appealed to the Ninth Circuit. *Id.* The Ninth Circuit reversed and remanded the matter because Lewis and Nalder had facts to show the renewal statement was

ambiguous regarding the date when payment was required to avoid a coverage lapse.

Id. The Ninth Circuit affirmed the district court's order as to all other claims. *Id.*

On remand, the district court concluded the renewal statement was ambiguous and therefore, Lewis was covered on the date of the incident because the court construed this ambiguity against UAIC. *Id.* The district court also determined UAIC breached its duty to defend Lewis, but did not award damages because Lewis did not incur any fees or costs in defense of the Nevada state court action. *Id.* Based on these conclusions, the district court ordered UAIC to pay the policy limit of \$15,000.00. *Id.* Both Nalder and Lewis appealed to the Ninth Circuit, which ultimately led to certification of the first question to this Court, namely whether an insurer that breaches its duty to defend is liable for all foreseeable consequential damages to the breach. *Nalder* 878 at 757.

While the first certified question was fully briefed and pending before this Court, UAIC filed a motion to dismiss Appellants' appeal with the Ninth Circuit for lack of standing. *Id.* UAIC argued Nalder's underlying \$3,500,000.00 default judgment against Lewis is not enforceable because the six-year statute of limitation to institute an action upon the judgment or to renew the judgment pursuant to NRS 11.190(1)(a) expired. *Id.* As a result, UAIC contends Nalder can no longer recover damages above the \$15,000.00 policy limit for breach of the contractual duty to defend because the judgment lapsed. *Id.*

The Ninth Circuit concluded the parties failed to identify Nevada law that conclusively answers whether a plaintiff can recover consequential damages based on a default judgment that is over six years old and presumably expired. *Id.* at 758. The Ninth Circuit was also unable to determine whether expiration of the default judgment reduces the consequential damages to zero or if the damages should be calculated from the date when the suit against UAIC was initiated, which was within the six-year window. *Id.*

Notably, UAIC made three payments to Appellants on June 23, 2014; June 25, 2014; and February 5, 2015 in satisfaction of the underlying default judgment. 1 A.App. 0012 – 0015.¹ Lewis also currently resides in California. 1. A.App. 0016 – 0019.

IV. SUMMARY OF THE ARGUMENT

Appellants timely instituted an action on the judgment against UAIC within the six-year statute of limitations to enforce the judgment. Appellants' breach of contract and bad faith complaint against UAIC is an enforcement action to collect on the underlying default judgment because the judgment directly results from UAIC's breach of the contractual duty to defend and breach of the implied covenant of good faith and fair dealing. The underlying default judgment is binding on UAIC

¹ The July 1, 2014 Satisfaction of the June 3, 2014 Judgment memorializes the June 23, 2014 and June 25, 2014 payments.

because of its wrongful conduct. As a result, Appellants were not required to renew the underlying default judgment because the relevant statutes do not require a party to file an action on the judgment and renew it to secure the continued validity and enforceability of the judgment.

Alternatively, the six-year statute of limitations to pursue an action on the judgment was extended because UAIC made three separate payments on the judgment. Further, the six-year statute of limitations was tolled during the period of time that Cheyanne Nalder was a minor. Thus, the statute of limitations does not run until, at the earliest, April 4, 2022. Lewis's California residency also continues to toll the six-year statute of limitations because Appellants cannot strictly comply with the renewal statute in accordance with Nevada law.

V. ARGUMENT

UAIC requested dismissal of Appellants' appeal before the Ninth Circuit solely because Appellants allegedly failed to renew the underlying default judgment pursuant to NRS 17.214. UAIC overlooks that Nevada's statutory scheme requires a party to either file a renewal of judgment *or* file an action to enforce the judgment pursuant to NRS 11.190(1)(a). Appellants' bad faith and breach of contract complaint against UAIC constitutes an action upon the default judgment because Appellants filed suit to obtain satisfaction of the default judgment from UAIC. UAIC's breach of the contractual duty to defend is precisely the grounds upon which

Appellants seek to collect upon the default judgment against UAIC. As a result, the underlying default judgment did not expire, which means the amount of recoverable consequential damages should not be reduced.

A. Appellants' Bad Faith and Breach of Contact Claim Against UAIC is an Action on the Judgment

NRS 11.190(1)(a) states that within six years, “an action upon a judgment or decree of any Court of the United States, or of any territory within the United States, *or* the renewal thereof” must be commenced. An action filed upon a judgment is broadly defined:

An action on a judgment is an action independent of the original action in which the judgment was obtained, the main purpose of which is to obtain a new judgment which will facilitate the ultimate goal of securing satisfaction of the original cause of action.

Salinas v. Ramsey, 234 So. 3d 569, 571 (Fla. 2018); *see also*, *Fid. Nat'l Fin. Inc. v. Friedman*, 225 Ariz. 307, 310, 238 P.3d 118, 121 (Ariz. 2010).

An action on a judgment provides the judgment creditor with the opportunity, “when the limitations period has almost run on the judgment, to obtain a new judgment that will start the limitations period anew.” *Salinas*, 234 So. 2d at 571. “[A] cause of action on a judgment is different from that upon which the judgment was entered.” *Guinness PLC v. Ward*, 955 F.2d 875, 894-95 (4th Cir. 1992) (*citing Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 275, 56 S. Ct. 229, 233 (1935)).

An injury victim can institute an action on a judgment against the tortfeasor’s insurer even though the insurer was not formally a party to the proceedings that lead

to the judgment. Nevada is not a direct action state. *Hall v. Enter. Leasing Company-West*, 122 Nev. 685, 693, 137 P.3d 1104, 1109 (2006). However, Nevada “allows **actions** by third-party tort claimants against third-party liability coverage providers **only after a judgment against the tortfeasor has been obtained.**” *Id.* (emphasis added); *see also, Ohio Cas. Ins. Co. v. Time Warner Entm’t Co., L.P.*, 244 S.W. 3d 885, 888 (Tex. Ct. App. 2008) (“Generally, an injured person cannot sue the tortfeasor’s liability insurer directly until the tortfeasor’s liability has been determined by agreement or judgment.”). Generally, an injured party must first obtain a judgment against the insured before he can actually pursue any remedy against the insurer. *Western Casualty & Sur. Co. v. Evans*, 130 Ariz. 333, 336, 636 P.2d 111, 114 (Ariz. Ct. App. 1981).

A judgment, default or otherwise, is also binding against an insurer that breaches the contractual duty to defend its insured in the underlying personal injury action, irrespective of whether the insurer is a party to that action.

It is the general rule that a liability insurer who has had an opportunity to defend the underlying action brought against its insured is bound by the judgment against its insured as to all issues which were litigated in the action.

Pruyn v. Agricultural Ins. Co., 36 Cal. App. 4th 500, 515, 42 Cal. Rptr. 2d 295, 303 (Cal. Ct. App. 1995).

An insured who is abandoned by his liability insurer is free to secure the best settlement possible with the third-party injury plaintiff, including even a stipulated

judgment with a covenant not to execute. *Pruyn*, 36 Cal. App. 4th at 515, 42 Cal. Rptr. 2d at 303 (citing *Samson v. TransAmerica, Ins. Co.*, 30 Cal. 3d 220, 240, 636 P.2d 32, 45 (Cal. 1981)). This stipulated judgment, however, must be free of fraud or collusion between the third-party injury victim and the insured. *Id.*

An insurer that wrongfully refuses to defend its insured is liable on the judgment against the insured. *Gray v. Zurich Ins. Co.*, 65 Cal. 2d 263, 279, 419 P.2d 168, 179 (Cal. 1966). Here, the federal district court ruled that UAIC breached its contractual duty to defend as a matter of law. *Nalder*, 878 F.3d at 756. As a direct result of that breach of the duty to defend, Nalder secured a default judgment against Lewis. *Id.* Nalder was required under Nevada law to secure a judgment against Lewis before he could even pursue a claim against UAIC. *Hall*, 122 Nev. at 693, 137 P.3d at 1109. After fulfilling that legal prerequisite and securing an assignment, Appellants sued UAIC for breach of contract, breach of the implied covenant of good faith and fair dealing (bad faith), fraud, and breach of the Nevada Unfair Claims Practices Act. on May 22, 2009. *Nalder*, 878 F.3d at 756. Specifically, Appellants seek “payment for the excess verdict rendered against Lewis which remains unpaid in an amount in excess of \$3,500,000.00” in their Complaint. 1 A.App. 0009. The underlying default judgment was entered against Lewis because UAIC abandoned him when it failed to defend against Nalder’s third-party injury claim. UAIC’s contractual breach of the duty to defend renders the default judgment binding against

it. *Gray*, 65 Cal. 2d at 279, 419 P.2d at 179. Therefore, it is appropriate for this Court to conclude that Appellants' Complaint against UAIC is an action upon the underlying default judgment pursuant to NRS 11.190(1)(a) that was timely filed. The alleged expiration of the judgment is rendered meaningless because Nevada's statutory scheme allows a party to either file an action on the judgment or renew a judgment.

B. The Underlying Default Judgment Did Not Expire Because Appellants Were Not Required to Both Institute an Action on the Default Judgment and Renew the Default Judgment

An action on a judgment is distinguishable from the treatment of an application to renew the judgment. *Pratali v. Gates*, 4 Cal. App. 4th 632, 637, 5 Cal. Rptr. 2d 733, 736 (Cal. Ct. App. 1992). This distinction is inherently recognized in the Nevada Revised Statutes' treatment of both courses of acts. "A judgment creditor may enforce his judgment by the process of the court in which he obtained it, *or he may elect to use the judgment as an original cause of action and bring suit thereon and prosecute such suit to final judgment.*" *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (1897) (emphasis added). NRS 11.190(a)(1) expressly provides the option to either commence an action upon the judgement *or* a renewal of the judgment within six years of entry of the judgment. Statutes of limitations are intended to ensure pursuit of the action with reasonable diligence, to preserve

evidence and avoid surprise, and to avoid the injustice of long-dormant claims. *Petersen v. Bruen*, 106 Nev. 271, 273-74, 792 P.2d 18, 19-20 (1990).

NRS 17.214 provides the procedural steps necessary to renew a judgment before the expiration of the statute of limitations set forth in NRS 11.190(1)(a). Specifically, NRS 17.214 provides that a judgment creditor may renew a judgment that has not been paid by filing an affidavit with the clerk of the court where the judgment is entered, "...within 90 days before the date the judgment expires by limitation." NRS 11.190(a)(1) must be read together with NRS 17.214 because they relate to the same subject matter and are not in conflict with one another. *Piroozi v. Eighth Judicial Dist. Court*, 131 Nev. ___, 363 P.3d 1168, 1172 (2015). When NRS 11.190(1)(a) and NRS 17.214 are read together, they establish that a party must either file an action to enforce the judgment or renew the judgment before the 6-year statute of limitations runs. This Court expressly adopts that result in *Levin v. Frey*, 123 Nev. 399, 403, 168 P.2d. 712, 715 (2007): "An action on a judgment *or* its renewal must be commenced within six years under NRS 11.190(1)(a); thus a judgment expires by limitation in six years."

This Court also recognizes the well-established rule that it will not look beyond the plain language of the statute when the words "have a definite and ordinary meaning." *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003). "Normal principles of statutory construction also preclude

interpreting a statute to render part of it meaningless.” *United States v. Bert*, 292 F.3d 649, 652 n.11 (9th Cir. 2002). UAIC’s apparent position is that even though Appellants filed an action upon the default judgment, they were also required to file a renewal of the default judgment. This interpretation ignores the clarity of the disjunctive “or.” UAIC’s proposed interpretation of the statute effectively renders the “or” in NRS 11.190(1)(a) meaningless. If the Nevada Legislature intended to require a judgment creditor to file an action on the judgment and renew the judgment, then the Nevada Legislature would have used the word “and.” However, the Nevada Legislature uniquely understood that a party was only required to proceed with one course of action to ensure the validity of a judgment. This understanding is reflected in the permissive language of NRS 17.214(1), which states that a judgment creditor “*may* renew a judgment which has not been paid”

Based on the unambiguous language of both NRS 11.190(1)(a) and NRS 17.214, the underlying default judgment did not expire in this matter. Appellants timely commenced their breach of contract and bad faith action upon the default judgment against UAIC, upon which the judgment is binding, before the six-year statute of limitations expired. As a result, the value of the consequential damages that stem from UAIC’s breach of its contractual duty to defend remains at \$3,500,000.00 plus any post-judgment interest that has accrued.

. . .

C. The Six-Year Statute of Limitations to Pursue an Action Upon the Default Judgment or a Renewal of that Judgment was Extended and Tolled

The underlying judgment remains collectible even in the absence of a valid action upon the default judgment or renewal of the judgment. UAIC made three undisputed payments toward the judgment to Appellants on June 23, 2014; June 25, 2014; and February 5, 2015. 1 A.App. 0012 – 0015. Pursuant to NRS 11.200, the statute of limitations “dates from the last transaction or the last item charged or the last credit given.” Further, when any payment is made, “the limitation shall commence from the time the last payment was made. *See Nev. Rev. Stat. 11.200.* Therefore, UAIC’s last payment on the judgment extended the expiration of the six-year statute of limitations to February 5, 2021.

Additionally, NRS 11.250 outlines various circumstances that prevent the running of the statute of limitations and states, in relevant part:

If a person entitled to bring an action other than for the recovery of real property be, at the time cause of action accrued, either:

1. Within the age of 18 years;

...

the time of such disability ***shall not*** be a part of the time limited for the commencement of the action (emphasis added).

Cheyenne Nalder was born on April 4, 1998 and was a minor when the subject incident occurred. She turned 18 years old on April 4, 2016. Therefore, the earliest date that the six-year statute of limitations runs is April 4, 2022.

Lewis's residency in California also tolls the six-year statute of limitations governing the judgment. 1 A.App. 0016 – 0019. Pursuant to NRS 11.300, the absence of Lewis from the State of Nevada tolls the statute of limitations to enforce a judgment and it remains tolled because of his absence. *See Bank of Nevada v. Friedman*, 82 Nev. 417, 421, 420 P.2d 1, 3 (1966). These tolling statutes present a Catch-22 for NRS 17.214 and the “strict compliance” interpretation from this Court. Specifically, NRS 17.214 requires a renewal to be brought within 90 days of the expiration of the statute of limitations. If that 90-day period is strictly construed, any renewal attempt by Nalder pursuant to the statute would be premature and therefore ineffective because Lewis resides outside the State of Nevada.

D. The Statute of Limitations in California on a Judgment of a Sister State is Ten Years

Lewis now resides in California. 1 A.App. 0016 – 0019. In California, an action upon a judgment must be commenced within 10 years of entry of the judgment. *See* Cal. Code Civ. P. § 337.5. Alternatively, a judgment must be renewed within 10 years of entry of the judgment. *Kertesz v. Ostrovsky*, 115 Cal. App. 4th 369, 372, 8 Cal. Rptr. 3d 907, 911 (Cal. Ct. App. 2004); *see also*, Cal. Code Civ. P. §§ 683.020, 683.120, 683.130. Out of an abundance of caution, Appellants have incurred the expense to renew the judgment in both Nevada and California. In spite of this action, Appellants contend that they timely instituted an action on the

default judgment or, alternatively, that the six-year limitations period has not expired.

E. Lewis Suffered Damages When He Assigned His Rights Against UAIC to Nalder and Collection of the Judgment Allows Nalder to Collect from UAIC, Regardless of the Continuing Validity of the Underlying Judgment

Nalder's ability to collect against UAIC for the full amount of damages he incurred is not controlled by his right to collect against Lewis, the original judgment debtor. *Pinto v. Allstate Ins. Co.*, 221 F.3d 394, 403-04 (2d Cir. 2000) (“[E]xchange of a general release for an assignment of a bad faith claim operates to preserve the bad faith claim”); *see also*, *Consolidated American Ins. Co. v. Mike Soper Marine Services*, 951 F.2d 186, 190-91 (9th Cir. 1991). It is not uncommon for judgment debtors to give up valuable rights and consideration to avoid execution of an adverse judgment. When a judgment debtor, like Lewis, assigns his bad faith rights in exchange for satisfaction of a judgment or stay of execution, such assignment does not relieve UAIC of its liability for the damages it caused to Lewis.

On February 28, 2010, Lewis took steps to protect himself from execution on the judgment because he gave up right to sue UAIC for bad faith to Nalder. 1 A.App. 0011. The value of this right is at least \$3,500,000.00 and likely now more because of interest. The terms of the assignment specifically state that Lewis assigns to Nalder the rights to “all funds necessary to satisfy the Judgment.” 1 A.App. 0011.

Pursuant to these terms, any and all damages recovered in the underlying action only go towards paying off the \$3,500,000.00 default judgment.

F. UAIC Admitted the Judgment was Valid Both Times the Federal District Court Disregarded the Judgment as an Item of Damage in its Rulings

If the judgment's ongoing validity is evaluated independent of the assignment or action on the judgment, then its validity should have been tested when the federal district court issued its rulings regarding Appellants' damages. The appropriate time to examine the validity of the judgment was when the federal district court disregarded the judgment when computing Appellants' damages. At that time UAIC admitted the judgment was valid. Thus, such damages include the \$3,500,000.00 underlying default judgment, irrespective of whether that judgment has since expired under the statute of limitations.

VI. CONCLUSION

For the reasons set forth above, Appellants respectfully request that this Court conclude that a plaintiff can still seek the recovery of consequential damages stemming from a breach of the duty to defend even if the underlying judgment expires within the six-year limitations period.

DATED this 1st day of August, 2018.

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are the persons and entities as described in NRAP 26.1(a)(1), and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal:

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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). This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011, Version 14.4.1, in 14 point, double-spaced Times New Roman font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and 4,227 contains words.

3. Finally, I hereby certify that I have read this appellate 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 Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of August, 2018, I served the foregoing **APPELLANTS' OPENING BRIEF REGARDING SECOND CERTIFIED QUESTION OF LAW** by electronically filing and serving the document(s) listed above with the Nevada Supreme Court.

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