IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER GARDNER and CHRISTIAN GARDNER, on behalf of minor child, LELAND GARDNER,
Petitioners,
vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, II, DISTRICT JUDGE,
Respondents,
and

HENDERSON WATER PARK, LLC dba COWABUNGA BAY WATER PARK; WEST COAST WATER PARKS, LLC; DOUBLE OTT WATER HOLDINGS, LLC,
Real Parties in Interest.

CASE NO: 70823

Electronically Filed
Nov 01 2016 10:48 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

ANSWER TO PETITION FOR WRIT OF MANDAMUS

THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER
Paul F. Eisinger, Esq.
Nevada Bar No. 1617
Alexandra B. McLeod, Esq.
Nevada Bar No. 8185
1100 East Bridger Avenue, P.O. Box 2070
Las Vegas, NV 89125
Attorneys for Real Parties in Interest,
HENDERSON WATER PARK, LLC
dba COWABUNGA BAY WATER PARK,
WEST COAST WATER PARKS, LLC, and
DOUBLE OTT WATER HOLDINGS, LLC

THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER

Docket 70823 Document 2016-33985

NRAP 26.1 DISCLOSURE STATEMENT

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

HENDERSON WATER PARK, LLC dba COWABUNGA BAY WATER PARK is a privately held limited-liability company, organized under the laws of Nevada. It is 39.5% owned by WEST COAST WATER PARKS, LLC, 51.5% owned by DOUBLE OTT WATER HOLDINGS, LLC, and the remaining 9% owned by individual member-investors.

WEST COAST WATER PARKS, LLC is a privately held limited-liability company, organized under the laws of Nevada. It has no parent corporation and there is no publically held corporation that owns 10% or more of its stock.

DOUBLE OTT WATER HOLDINGS, LLC is a privately held limited-liability company, organized under the laws of Utah. It is 100% owned by O & O INVESTMENT HOLDING, LP.

Real Parties in Interest have not been represented by any other attorneys in addition to **THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER**.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

POINTS & AUTHORITIES

I. INTRODUCTION AND RELIEF SOUGHT

Exercising its sound discretion, the trial court denied Plaintiffs' Motion for Leave to Amend which sought to add seven (7) individuals as Defendants who were/are members of a Management Committee for Defendant, Henderson Water Park, LLC. Here, the remedy of mandamus does not lie to compel the trial court to permit the addition of these individuals as Defendants in light of: (1) the fact that an appeal is an adequate legal remedy precluding writ relief; (2) long-standing precedent that discretionary acts of the trial court will not be reviewed by a writ of mandamus; and, (3) the applicable protections of NRS 86.371 and 86.381 for members and managers of Nevada limited-liability companies.

II. ISSUES PRESENTED

1. Whether Petitioners have carried their NRAP 21(a) burden and demonstrated that extraordinary relief is warranted in the case at bar;

2. Whether the district court manifestly abused its discretion in prohibiting Petitioners from amending their complaint to add seven individuals as new Defendants:

   a. Whether the district court was within its discretion to find that NRS 86.371 and 86.381 are clear and unambiguous and therefore any proposed changes or amendments to said statutes, including but not limited

to the adding of an alter ego provision, is for the legislature and not the courts;

b. Whether the trial court was manifestly reasonable in finding NRS 86.371 and 86.381 prohibit the claims Petitioners propose against the seven individuals by the statutes' unambiguous language that a member of a limited-liability company is not a proper party to proceedings against the company and is not individually liable for the debts or liabilities of the company; and,

c. Whether the district court was within its discretion to find that the alter ego statute for corporations does not apply to limited-liability companies.

III. FACTS NECESSARY TO UNDERSTAND ISSUES PRESENTED BY THE PETITION

The underlying lawsuit was brought by Peter and Christian Gardner on behalf of their son, Leland Gardner. Leland was a six-year-old kindergarten student who was not wearing a life vest at the time he was rescued from the deep end of the wave pool at the Cowabunga Bay Water Park on May 27, 2015. Petitioners' July 28, 2015 Complaint named Henderson Water Park, LLC which does business as Cowabunga Bay, and oversees the park's operations. Petitioners also named two other limited liability companies that are each members of

Henderson Water Park, LLC: West Coast Water Parks, LLC and Double OTT Water Holdings, LLC.[1] Then, Petitioners' May 5, 2016 Motion for Leave to Amend sought to add seven (7) individuals as Defendants who were/are members of the Management Committee for Henderson Water Park, LLC. Defendants opposed the Motion for Leave to Amend as it flies in the face of longstanding Nevada law and statutory protections for managers and members of limited-liability companies found at NRS 86.371 and 86.381.

Petitioners argue that their claims against these seven (7) individuals (proposed new Defendants) have merit and that their Motion for Leave to Amend should have been granted. However, Petitioners overlook an essential flaw in their argument for amendment: In order for any of Petitioners claims to be viable against the proposed seven (7) Individual Defendants, Petitioners MUST overcome the definite protections of NRS Chapter 86, which they cannot do. Unlike corporations, which may be pierced under very limited circumstances, there are no exceptions which allow one to "pierce" a limited-liability company. NRS 86.381 ***unambiguously*** sets forth that, "A member of a limited-liability company is not a proper party to proceedings… against the company."

If leave to amend had been granted, the claims Petitioners sought to assert against the seven (7) individuals would have immediately been subject to

[1] These two entities were subsequently dismissed pursuant to summary judgment granted in their favor on September 13, 2016 and entered on October 10, 2016.

dismissal, making the Motion for Leave to Amend futile. In that regard the trial court's decision was not only correct, but well within its discretion. The availability of an appeal (although not immediate) further precludes writ relief.

IV. REASONS WHY WRIT SHOULD NOT ISSUE

A. AN ADEQUATE REMEDY EXISTS IN THE FORM OF AN APPEAL FROM THE DISTRICT COURT'S ORDER, AND PETITIONERS HAVE FAILED TO MEET THEIR BURDEN OF DEMONSTRATING THAT EXTRAORDINARY RELIEF IS WARRANTED HERE

Mandamus is an **extraordinary remedy**, and the decision to entertain such a petition is addressed solely to the Supreme Court's discretion. *State ex rel. Masto v. Second Judicial Dist. Court of State*, 125 Nev. 37, 43-44, 199 P.3d 828, 832 (2009) (emphasis added) (citing *Poulos v. District Court*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 [1982]). In general, a writ may issue only when petitioner has no plain, adequate, and speedy legal remedy, such as an appeal. *Id.* (citing NRS 34.170, and *Pan v. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841 [2004] [noting that an appeal is generally an adequate legal remedy precluding writ relief]).

In fact, this writ petition could be denied solely on procedural grounds if the Court determines that Petitioners have an adequate remedy in the form of an appeal from the district court's order or that Petitioners have failed to meet their burden of demonstrating that extraordinary relief is warranted. *See Pan*, 120 Nev.

at 224. This is true even if an appeal is not immediately available because the challenged Order is interlocutory in nature; the fact that an order may ultimately be challenged on appeal from the final judgment generally precludes writ relief. *Id*. at 225 (*citing Co. of Washoe v. City of Reno*, 77 Nev. 152, 360 P.2d 602 [1961]).

Importantly, it is Petitioners who carry the burden of demonstrating that extraordinary relief is warranted. *Id* at 228; *see also Mineral County v. State, Dep't of Conserv.*, 117 Nev. 235, 117 Nev. 235, 20 P.3d 800 (2001). Here, Petitioners implore this High Court to accept the Petition and promulgate new case law on the personal liability for members and managers of Nevada LLC's. Yet, the Court has **already** declined to decide this issue at least once before. *See, e.g., Webb v. Shull*, 270 P.3d 1266, 1271 n.3 (Nev. 2012); *see also* footnote 2, hereinbelow. For all of these reasons, Petitioners cannot meet their burden under NRAP 21 to show that the exceptional remedy of a writ of mandamus is warranted here.

B. THE DISTRICT COURT'S DENIAL OF LEAVE TO AMEND WAS THE RESULT OF DUE CONSIDERATION, WAS MANIFESTLY REASONABLE, AND DOES NOT AMOUNT TO AN ABUSE OF DISCRETION

"A motion for leave to amend is addressed to the **sound discretion of the trial court** and its action in denying the motion should not be held to be error

unless that discretion has been abused." *Stephens v. S. Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973) (emphasis added). Errors committed in the exercise of judicial discretion will **not** be made the subject of review or be corrected by a writ of mandamus. *Wilmurth v. District Court*, 80 Nev. 337, 340, 393 P.2d 302 (1964). In fact, it has been the law in this state for 150 years that "mandamus will not lie to review discretionary acts of the trial court." *Id*., citing *Pinana v. District Court*, 75 Nev. 74, 334 P.2d 843 (1959); *State v. McFadden*, 46 Nev. 1, 205 P. 594 (1922); *State v. District Court*, 40 Nev. 163, 161 P. 510 (1916); *State v. Curler*, 26 Nev. 347, 67 P. 1075 (1902); *Hoole v. Kinkead*, 16 Nev. 217 (1881); *State ex rel. Hetzel v. Board of Commissioners of Eureka County*, 8 Nev. 309 (1873); *State v. Curler*, 4 Nev. 445 (1869).

When the Nevada Supreme Court does elect to consider a writ of mandamus, it generally applies a **manifest abuse of discretion** standard. *See Hidalgo v. Eighth Judicial Dist. Court*, 124 Nev. 330, 334, 184 P.3d 369, 372 (2008). In *State v. Eighth Judicial Dist. Court of Nev*., 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) this Court further defined that standard:

> In the context of mandamus, this court considers whether the district court's… ruling was a manifest abuse or arbitrary or capricious exercise of its discretion. *See* NRS 34.160; *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). An arbitrary or capricious exercise of discretion is one "founded on prejudice or preference rather than on reason," BLACK'S DICTIONARY 119 (9th ed. 2009) (defining "arbitrary"), or "contrary to the evidence or established rules of law," *id*. at 239 (defining

> "capricious"). *See generally City Council v. Irvine*, 102 Nev. 277, 279, 721 P.2d 371, 372 (1986) (concluding that "[a] city board acts arbitrarily and capriciously when it denies a license without any reason for doing so"). A manifest abuse of discretion is "[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." *Steward v. McDonald*, 330 Ark. 837, 958 S.W.2d 297, 300 (Ark. 1997); *see Jones Rigging and Heavy Hauling v. Parker*, 347 Ark. 628, 66 S.W.3d 599, 602 (Ark. 2002) (stating that a manifest abuse of discretion "is one exercised improvidently or thoughtlessly and without due consideration"); *Blair v. Zoning Hearing Hd. of Tp. of Pike*, 676 A.2d 760, 761 (Pa. Commw. Ct. 1996) ("[M]anifest abuse of discretion does not result from a mere error in judgment, but occurs when the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.").

Therefore, unless the district court's denial of leave to amend was clearly "manifest abuse" or an "arbitrary or capricious exercise of discretion," it should not be disturbed and certainly not in the extraordinary context of a writ. Here, the trial court properly supported its determination with Findings of Fact and Conclusions of Law, as demonstrated by the written Order Denying Plaintiffs' Motion for Leave to Amend Complaint entered June 30, 2016 and filed July 5, 2016. (GARD144-147)

C. THE CLEAR AND UNAMBIGUOUS STATUTES IN QUESTION HERE SUPPORT THE DENIAL OF PETITIONERS' MOTION TO AMEND AND ANY CHANGE IS THE PREROGATIVE OF THE LEGISLATURE, NOT THE COURTS

Significantly, there is no basis to pierce the veil of a Nevada limited-liability company in order to reach the individual members of the LLC's

Management Committee. By contrast, the analysis under Nevada law for piercing a corporate veil is statutory under NRS 78.747[2] and the standard for doing so extremely stringent. However, ***even greater protections are extended under NRS Chapter 86 to limited-liability companies*** such as Henderson Water Park, LLC. As the questions presented in the Writ Petition concern the limitations on liability for Nevada business entities under the Nevada statutes (specifically NRS 86.371 and 86.381), "[i]t is the prerogative of the Legislature, not this court, to change or rewrite a statute." *Holiday Ret. Corp. v. State DIR*, 128 Nev. Adv. Op. 13, 274 P.3d 759, 761 (2012) (*citing Breen v. Caesars Palace*, 102 Nev. 79, 86-87, 715 P.2d 1070, 1075 [1986]). The rules of statutory construction mandate if the statute text is clear and unambiguous on its face corollary evidence of the meaning of the statutes from other sources, such as legislative history or case law from other jurisdictions, shall not be considered.

[2] NRS 78.747 provides that "no stockholder, director or officer of a *corporation* is individually liable for a debt or liability of the corporation, unless the stockholder, director or officer acts as the alter ego of the corporation." (emphasis added). This provision does **not** refer to LLCs, their members or managers — and, by its terms, governs only *corporate* shareholders and officers. There has been no decision by this High Court that the alter ego doctrine applies with equal force to LLC members or managers. *See, e.g., Webb v. Shull*, 270 P.3d 1266, 1271 n.3 (Nev. 2012) ("The parties assume that NRS 78.747, which is part of the statutory chapter governing corporations, applies to the alter ego assertion against Shull and Celebrate, an LLC. Accordingly, for purposes of this appeal, we likewise ***assume, without deciding***, that the statute applies and analyze their alter ego arguments under that standard.") (emphasis added).

Moreover, the statutes have no stated exceptions to these limitations on liability and no mention of any ability to "pierce" the LLC. Although the Nevada corporation statutes include an alter ego exception to the corporate protections, the LLC statutes do **not** contain a similar exception, creating a negative inference that the Nevada legislature did not intend for it to apply to LLCs. (*Suing the Man Behind the Curtain: Can Nevada LLC Members be Liable Under the Alter Ego Doctrine?* by Ryan Lower, Esq., Nevada Lawyer, November, 2014, pg. 16, citing to *Dep't. of Taxation v. DaimlerChrysler*, 121 Nev. 541, 548, 119 P.3d 135, 139 [2005] ["omissions of subject matters from statutory provisions are presumed to have been intentional"]). In that regard, Petitioners' reliance on the 1991 drafters notes (GARD134-143) is misplaced. Although the alter ego doctrine in Nevada was originally based in common law, it was codified by our Nevada Legislature **only** as to Chapter 78 corporations in 2001, ten years *after* the legislative history on which Petitioners rely so heavily. *Compare* GARD 134-143 *and* NRS 86.371 added by 1991 Nev. Ch. 442, §310, p.1300 (1991 Nev. AB 655) *with* NRS 78.747(1), added by 2001 Nev. Stat. 601, §1, p. 3170 (2001 Nev. SB 577). Unlike Nevada's corporation statute (NRS Chapter 78), however, the alter ego doctrine was **not** included in Nevada's LLC statute (NRS Chapter 86). The 2001 Legislature's omission of a similar alter ego exception to the LLC protections must be presumed to have been intentional. **Therefore, under Nevada's**

statutory scheme, the limitations on liability for members and managers of LLCs are explicit and indisputable.

If the district court was within its sound discretion to find: (1) that NRS 86.371 and 86.381 are clear and unambiguous in their limits on LLC manager liability and capacity to be sued; and, (2) that it is the role of the Legislature, not the courts, to modify those statutes; then this Honorable Court need go no further. The lower court's decision was well within its purview and the Supreme Court need not address the remaining arguments under mandamus review.

D. MERELY HOLDING A POSITION AS AN LLC MEMBER OR MANAGER CANNOT SUBJECT AN INDIVIDUAL TO DIRECT LIABILITY BECAUSE ACTIONS UNDERTAKEN BY AN LLC ARE DONE THROUGH A SEPARATE LEGAL ENTITY

Longstanding Nevada business law insulates individual LLC managers from direct liability. **"The concept of limited liability through corporate organization and investment has been legally recognized in Nevada since before the granting of its statehood**." *In re Twin Lakes Village, Inc.*, 2 B.R. 532, 545 (D. Nev. 1980). The capacity of an individual, including one acting in a representative capacity, to sue or be sued shall be determined by the law of this State. NRCP 17(b). Importantly, a "limited-liability company is an entity distinct from its managers and members," and the actions undertaken by an LLC are done through the separate legal entity. NRS 86.201(3); *Cf. Canarelli v. Eighth Judicial*

Dist. Court of Nev., 127 Nev. Adv. Rep. 72, 265 P.3d 673, 677, (2011) (explaining that under the common law, a corporation is a legal entity that exists separate and distinct from its shareholders, officers, and directors), citing BLACK'S LAW DICTIONARY 340 (6th ed. 1990) ("The corporation is distinct from the individuals who comprise it."). Of course, an LLC, like any organizational entity, must act through individuals or other entities with the authority to act on behalf of the LLC.

This Court instructed in *Weddell v. H20, Inc.*, 271 P.3d 743, 748 (Nev. 2012) that "[l]imited-liability companies (LLCs) are business entities created 'to provide a corporate-styled liability shield with pass-through tax benefits of a partnership.'" (citing *White v. Longley*, 2010 MT 254, 358 Mont. 268, 244 P.3d 753, 760 (Mont. 2010); *Gottsacker v. Monnier*, 2005 WI 69, 281 Wis. 2d 361, 697 N.W.2d 436, 440 (Wis. 2005) (stating that "[f]rom the partnership form, the LLC borrows characteristics of informality of organization and operation, internal governance by contract, direct participation by members in the company, and no taxation at the entity level. From the corporate form, the LLC borrows the characteristic of protection of members from investor-level liability." [internal citation omitted]). The protection of LLC members from investor-level liability was codified at NRS 86.381: "A member of a limited-liability company is **not a proper party** to proceedings by or against the company, except where the object

is to enforce the member's right against or liability to the company." (emphasis added) Petitioners' personal injury action does not fall into that specific and narrow exception.

Petitioners' argument that they are entitled to bring claims for negligence directly against the individual members of the LLC's Management Committee is misguided when viewed in light of NRS 86.381 (discussed above) as well as NRS 86.371. This unambiguous statute (NRS 86.371) makes it clear that, "[N]o member or manager of any LLC formed under the law of this State is ***individually liable*** for the debts or liabilities of the company." Substituting the names of the parties in interest into this statute is instructive: "No member or manager of Henderson Water Park, LLC (any LLC formed under the law of this State) is individually liable for the debts or liabilities of Henderson Water Park, LLC (the company)." Under the unequivocal protections of NRS Chapter 86, there is simply no basis to break through the protections of Henderson Water Park, LLC to maintain a direct action against the seven (7) individual members of the Management Committee.

Even Petitioners concede that there is no Nevada jurisprudence on point. (Petition at 13:4-9; 20:6-7). At the same time, the creation of business entities is strictly a state function, and the nuances and differences from state to state are meaningful and significant. States make intentional decisions in their statutory

constructions to lure businesses to their state, and Nevada and Delaware are both very popular states for business formation due largely to those protections. Petitioners would undermine those protections in order to allow them to maintain their suit against the managers of a Nevada LLC. To that end, the case law cited by Petitioners is all distinguishable as it relates to other jurisdictions and interprets dissimilar statutes. As such, federal and extra-jurisdictional case law carry no weight with regard to interpreting the distinct language of the Nevada LLC statutes.

Petitioners repeat that they seek to bring "direct claims" against the individual members of the Management Committee but they cannot overcome the presumption that actions undertaken by the limited-liability company are done through the separate, independent legal entity and are not acts of individual, private citizens. Petitioners attempt to circumvent the district court's Order which precludes individual liability of or alter ego claims against the seven (7) managers of this Nevada LLC by arguing a "direct liability" theory or cause of action. This is nothing more than a thinly-veiled disguise to assert a claim for the allegedly negligent management of the LLC by its Management Committee. However, a third party has no standing to sue for duties owed by an LLC's managers to the company. Even, *arguendo*, if the Court were to accept Petitioners' faulty premise, it still falls short of permitting a direct cause of action

because it is only the LLC or its members who can sue for alleged mismanagement. Merely holding a position as a manager or member of and LLC cannot subject an individual to liability to a third party. *See,* Rest. 3d of Agency §7.02 ("An agent is subject to tort liability to a third party harmed by the agent's conduct only when the agent's conduct breaches a duty that the agent owes to the third party.") If accepted, Petitioners' interpretation of the Nevada statutes would do away with the statutory protections in Chapter 86 that were specifically intended by the Legislature to protect the LLCs, and their members and managers.

E. BECAUSE LLCS EXPRESSLY PROTECT MANAGERS FROM LIABILITY, AND NO ALTER EGO EXCEPTION WAS MADE TO NEVADA'S LLC STATUTE BY THE LEGISLATURE, PETITIONERS CANNOT PIERCE THE LLC VEIL

NRS 86.381's unequivocal protection of members of an LLC is unmistakable: "**A member of a limited-liability company is not a proper party to proceedings by or against the company**, except where the object is to enforce the member's right against or liability to the company." (emphasis added) Moreover, NRS 86.371 further specifies that, "…no member or manager of any LLC formed under the law of this State is individually liable for the debts or liabilities of the company."

Nevada is known for its strictness in sticking to the law when it comes to enforcing limitations on liability provided by business entities formed under any of the provisions of NRS Title 7. "**The corporate cloak is not lightly thrown aside**." *Nevada Tax Comm'n v. Hicks*, 73 Nev. 115, 310 P.2d 852 (1957). In fact, in the past twenty years, the Nevada courts have only pierced the corporate veil one time, and undersigned counsel could not find even one example where a Nevada state court pierced the protections of an LLC. *See Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598 747 P.2d 884 (1987) ; *Cf. Webb v. Shull, supra*. Under the explicit protections of NRS Chapter 86, there is simply no basis to break through the protections of the limited-liability companies named as Defendants and the district court made a reasonable determination within its discretion that Petitioners' proposed amendment to add seven (7) individuals as Defendants would have been futile.

V. CONCLUSION

WHEREFORE, the district court did not abuse its discretion in its Order denying Petitioners' Motion for Leave to Amend because the pertinent protections of NRS 86.371 and 86.381 for members and managers of Nevada limited-liability companies apply in this case. Any modifications or exceptions to those clear and unambiguous statutes are solely the purview of the Legislature. Additionally, there is an adequate legal remedy precluding writ relief in this

matter and long-standing precedent holding that discretionary acts of the trial court will not be reviewed by a writ of mandamus. As such, the Petition should be denied, the Order of the district court upheld, and the addition of claims against the seven (7) individual LLC managers prohibited as futile.

Dated this 31st day of October, 2016.

THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER

/s/ Paul F. Eisinger, Esq.

PAUL F. EISINGER, ESQ.
Nevada Bar No. 1617
ALEXANDRA B. MCLEOD, ESQ.
Nevada Bar No. 8185
1100 East Bridger Avenue, P.O. Box 2070
Las Vegas, NV 89125
Attorneys for Real Parties in Interest,
HENDERSON WATER PARK, LLC dba
COWABUNGA BAY WATER PARK,
WEST COAST WATER PARKS, LLC, and
DOUBLE OTT WATER HOLDINGS, LLC

CERTIFICATE OF COMPLIANCE

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 N.R.A.P. 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.

I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) as this brief was prepared in a proportionally spaced typeface using Times New Roman 14 pt. font. I also certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) as it does not exceed thirty (30) pages.

Dated this 31st day of October, 2016.

THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER

/s/ Paul F. Eisinger, Esq.

PAUL F. EISINGER, ESQ. | NV Bar #1617
1100 East Bridger Avenue, P.O. Box 2070
Las Vegas, NV 89125
Attorneys for Real Parties in Interest

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2016, service of the foregoing **ANSWER TO PETITION FOR WRIT OF MANDAMUS** was made upon the following parties via the Nevada Supreme Court electronic notification system, pursuant to NEFCR 9, and hand delivered to the Honorable Judge Wiese, II:

Donald J. Campbell, Esq.
Samuel R. Mirkovich, Esq.
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, NV 89101
Attorneys for Plaintiffs,
PETER and CHRISTIAN GARDNER
on behalf of minor child, LELAND
GARDNER

Hon. Jerry A. Wiese II
Eighth Judicial District Court Judge,
Department 30
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

/s/ Adam K. Crawford
An Employee of THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER