Case No. 70823

**IN THE SUPREME COURT OF THE STATE OF NEVADA**



PETER and CHRISTIAN GARDNER, on behalf of minor child, LUCIAN GARDNER,
Plaintiffs-Petitioners,

v.

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

and

HENDERSON WATER PARK, LLC DBA COWABUNGA BAY WATER PARK, WEST COAST WATER PARKS, LLC, AND DOUBLE OTT WATER HOLDINGS, LLC
Defendants-Real Parties in Interest,

Extraordinary Writ from the Eighth Judicial District Court of the State of Nevada, in and for County of Clark

# REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

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## POINTS AND AUTHORITIES

## I. INTRODUCTION

In their Answer to the Gardners' Petition for Writ of Mandamus (the "Petition"), the Cowabunga Bay entities essentially ask this Court to transform LLCs from a *limited*-liability business entity into an absolute, impenetrable shield from any liability for LLC members and managers.[1] Indeed, under the Cowabunga Bay entities' warped interpretation of Nevada's statutory scheme for LLCs, members and managers of a LLC would be wholly immune from any personal liability for negligent, fraudulent or even criminal acts taken on behalf of the company. Put another way, the Cowabunga Bay entities urge this Court to depart from well-settled legal precedent governing LLCs in states around the country in order to make Nevada a safe haven for LLC members and managers seeking to avoid the consequences of their wrongful conduct. The Court should reject the Cowabunga Bay entities' invitation to adopt such a dangerous precedent as it would inevitably lead to grossly unjust results in this case and many others in the future.

With the exception of the Nevada statutes and the Nevada Lawyer article relied on by the district court, the Cowabunga Bay entities do not cite any applicable legal authority to support their strained interpretation of the law governing LLCs in Nevada. Instead, they argue the Court should flatly ignore the abundant federal and

[1] For ease of reference, the Gardners will use the same terminology from their Petition in the instant Reply.

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state case law supporting the Gardners' position that 1) members and managers of LLCs can be held personally liable for their own tortious conduct, and 2) the alter ego doctrine applies to LLCs. The Cowabunga Bay entities are forced to rely on these meager authorities because no court in the nation has been willing to hold that the formation of a LLC absolutely shields its members and managers from liability under any circumstances.

Before disposing of the Cowabunga Bay entities' substantive arguments, the Gardners will first update the Court on relevant events that have occurred in the district court since the filing of their Petition.

## II. UPDATED STATEMENT OF FACTS

1. On August 12, 2016—less than one (1) month after the Gardners initiated this writ proceeding—the Cowabunga Bay entities filed their Motion for Summary Judgment as to Claims Against Defendants West Coast and Double Ott. GARD172. Therein, the Cowabunga Bay entities argued that HWP's member-LLCs were immune from liability for the same reasons as the seven (7) Individual Defendants who were the subject of the Gardners' Motion for Leave to File Amended Complaint. *Id.* Relying on the district court's Order Denying Plaintiffs' Motion for Leave to Amend Complaint, the Cowabunga Bay entities asserted that West Coast Water Parks, LLC ("West Coast") and Double Ott Water Holdings, LLC ("Double Ott") should be dismissed from the underlying action pursuant to NRS 86.371 and NRS 86.381. *Id.*

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2. The Gardners filed their Opposition on August 29, 2016, and the Cowabunga Bay entities submitted their Reply on September 8, 2016. GARD182, GARD244.

3. The district court conducted a hearing on the Cowabunga Bay entities' Motion for Summary Judgment on September 13, 2016, and granted the same in its entirety based on the same reasoning supporting its prior denial of leave to amend. GARD285.

4. On October 10, 2016, the district court entered the Order Granting Motion for Summary Judgment as to Defendants West Coast and Double Ott Only, and dismissed HWP's member-LLCs from the case. GARD302. The Cowabunga Bay entities then filed the Notice of Entry of Order Granting Motion for Summary Judgment as to Defendants West Coast and Double Ott Only on October 13, 2016. GARD306.

5. Thereafter, the district court entered its Order Granting Plaintiffs' Motion for NRCP 54(b) Certification of Order Granting Motion for Summary Judgment as to Defendants West Coast and Double Ott. GARD314.

6. On November 2, 2016, the Gardners filed their Notice of Appeal to the Nevada Supreme Court of the Order Granting Motion for Summary Judgment as to Defendants West Coast and Double Ott Only. GARD319. Because this writ proceeding and the appeal concern the identical legal issue, the Gardners intend to seek consolidation of the two matters and ask that the Court's ruling in the writ

proceeding govern the disposition of their appeal without the necessity of requiring the parties to submit (and the Court to review) additional, repetitive briefing.

## III. ARGUMENT

### A. The Cowabunga Bay Entities' Conclusory Argument That The Gardners May Appeal The District Court's Order At A Later Date Does Not Preclude Writ Relief.

Relying on general case law pertaining to writ proceedings, the Cowabunga Bay entities cursorily claim that the Gardners have an adequate remedy at law in the form of an appeal at the end of the case. *See* Ans. at 4-5. They fail, however, to address the Gardners' arguments that an appeal is not an adequate and speedy legal remedy under the test set forth in *Halcrow, Inc. v. Eighth Judicial Dist. Court*. 129 Nev.Adv.Op. 42, 302 P.3d 1148, 1151 (2013). *See* Pet. at 10-13.

The Cowabunga Bay entities, moreover, never addressed the Gardners' legal authority standing for the principle that "mandamus will lie when it appears the trial court has deprived a party of an opportunity to plead his cause of action or defense, and when extraordinary relief may prevent a needless and expensive trial and reversal." *Taylor v. Superior Court of Los Angeles Cnty.*, 598 P.2d 854, 855 (Cal. 1979) (cited in Pet. at 11).[2] Nor did they cite a single case endorsing their apparent position that the Gardners should first proceed to trial against the Cowabunga Bay

[2] *See also Holtz v. Superior Court of the City and Cnty. of San Francisco*, 475 P.2d 441, 443 n. 4 (Cal. 1970); *In re City of Dallas*, 445 S.W.3d 456, 462-63 (Tex.Ct.App. 2014).



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entities, thereafter appeal the District Court's denial of leave to amend, and then—if successful—restart the litigation against the Individual Defendants on the very same issues that were already tried once. Respectfully, such a proposal completely undermines the policies of speed, efficiency and inexpensiveness expressed in the applicable court rules. *See* NRAP 1(c); NRCP 1.

The Gardners have demonstrated that they do not have an adequate remedy at law to address the district court's denial of their motion for leave to amend. Other courts have entertained writ relief in similar circumstances. None of the arguments in the Answer overcome the propriety of writ relief here.[3]

### B. The Plain Language Of NRS 86.371 And NRS 86.381 Does Not Establish Absolute Immunity For Members And Managers Of A Limited Liability Company.

In response to the Gardners' arguments concerning their ability to pursue direct claims for negligence against the Individual Defendants, the Cowabunga Bay entities

[3] The Cowabunga Bay entities also assert that the Court should not rule on the Gardners' Petition because it previously declined to decide whether the alter ego doctrine applies to LLCs in *Webb v. Shull*, 128 Nev.Adv.Op. 8, 270 P.3d 1266, 1272 n. 3 (2012). *See* Ans. at 5. In that case, however, "[t]he parties assume[d] that NRS 78.747, which is part of the statutory chapter governing corporations, applie[d] to the alter ego assertion against Shull and Celebrate, an LLC." *Id.* As a result, this Court "likewise assume[d], without deciding, that the statute applies and analyze[d] their alter ego arguments under that standard." *Id.* That the Court previously declined to decide an issue on appeal that was not contested by the parties in the lower court does not mean it should reject the Gardners' Petition where, as here, the issue of the alter ego doctrine's application to LLCs is very much in dispute. *See Coast to Coast Demolition and Crushing, Inc. v. Real Equity Pursuit, LLC*, 126 Nev. 97, 100, 226 P.2d 605, 607 (2010) ("[T]his court normally will not decide an issue not litigated in the trial court.").



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ask this Court to ignore the abundant legal authorities cited in the Gardners' Petition and instead adopt their own unsupported interpretation of NRS 86.371 and NRS 86.381. The Cowabunga Bay entities, though, offer nothing more than generic statements of law regarding LLCs and mere parroting of the two Nevada statutes that formed the basis of the district court's Order. *See* Ans. at 10-14. We address both faulty arguments in turn.[4]

**1. The generalized statements cited by the Cowabunga Bay entities are consistent with the Gardners' case law and the principle that LLC members and managers may be sued individually in certain circumstances.**

The Cowabunga Bay entities acknowledge that "limited liability companies (LLCs) are business entities created to provide a corporate styled liability shield with pass-through tax benefits of a partnership." *See* Ans. at 11 (citing *Weddell v. H2O, Inc.*, 128 Nev. Adv. Op. 9, 271 P.3d 743, 748 (2012)). The Gardners agree with this statement. That is exactly why they cited this Court's decision in *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 901 P.2d 684 (1995). *See* Pet. at 14-15. In

[4] As they did below, the Cowabunga Bay entities repeatedly conflate the liability theory premised on a member's/manager's personal participation in a tort with the alter ego theory of liability that allows a party to pierce the corporate veil in certain circumstances. *See, e.g.*, Ans. at 3 (arguing that NRS 86.381 contains no exceptions allowing one to "pierce a limited liability company."). Again, as the Gardners have previously argued, and as the case law makes clear, these are distinct legal theories. *See* Pet. at 19 n. 6; *see also D'Elia v. Rice Dev., Inc.,*147 P.3d 515, 524 (Utah Ct. App. 2006) ("Several courts and commentators make it clear that holding an officer or director personally liable for corporate torts in which they participate is distinct from the piercing the veil doctrine.") (listing cases and authorities).



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*Semenza*, the Court held that that "[a]n officer of a corporation may be individually liable for any tort which he commits . . . ." even though NRS 78.747, like NRS 86.371, states that "no stockholder, director or officer of a corporation is individually liable for a debt or liability of the corporation[.]" *Id.* at 1098, 901 P.2d at 689.

In other words, "the corporate styled liability shield" is not absolute despite the existence of a statute that immunizes corporate officers from individual liability for an entity's debts or liabilities. Where a corporate officer personally participates in a tort, or directs or ratifies the same, he or she may be held personally liable. Because that same "corporate styled liability shield" applies to LLCs, logic dictates that members and mangers of such an entity may likewise be sued when they personally commit a tort despite the existence of an analogous statute precluding individual liability for LLC debts or liabilities. Tellingly, the Cowabunga Bay entities never addressed the *Semenza* opinon in their Answer.

The Cowabunga Bay entities next attempt to grapple with the Gardners' other authorities through the pithy assertion that "federal and extra-jurisdictional case law carry no weight with regard to interpreting the distinct language of the Nevada LLC statutes." *See* Ans. at 13. Such an over-simplified approach fails to acknowledge that state courts considering the personal liability of LLC members routinely do so in the context of statutes akin to NRS 86.371 and NRS 86.381.

The Utah Court of Appeals, for instance, considered the effect of Utah Code Ann. § 48-2c-601 (2002), which, like NRS 86.371, provides "no organizer, member,

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manager, or employee of a company is personally liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the company." *D'Elia,*147 P.3d at 524-25. Despite this statutory language, which is arguably broader than Nevada's statute, the *D'Elia* court noted "other states have determined that even absent an express statutory exception, a member or manager of a limited liability company can be held liable for tortious acts" in which they personally participate, direct or otherwise ratify. *Id.*at 525 (citing *Rothstein v. Equity Ventures, LLC*, 299 A.2d 472, 474 (N.Y. App. Div. 2002) and *Salzano v. Goulet*, 2005 WL 1154225, *6 (Conn. Super. Ct. April 18, 2005)).

Many of the out-of-state cases cited by the Gardners involve the interpretation of statutes that, like Nevada's, provide a member or manager is not personally liable for the debts and obligations of the company. *See Weber v. United States Sterling Sec., Inc.*, 924 A.2d 816, 823-24 (Conn. 2007) (addressing Del. Code. Ann. tit. 6, § 18-303(a) (2005)); *Equipoise PM LLC v. Int'l Truck and Engine Corp.*, 2007 WL 2228621, *10 (N.D.Ill. July 31, 2007) (same); *Mbahaba v. Morgan*, 44 A.3d 472, 476 (N.H. 2012) (addressing RSA 304-C:25 (2005)); *Allen v. Dackman*, 991 A.2d 1216, 1228 (Md.Ct.App. 2010) (addressing Md. Code (1975, 2007 Repl.Wol.), § 4A-301 of the Corporations and Associations Article); *Morris v. Cee Dee, LLC*, 877 A.2d 899, 908 (Conn. Ct. App. 2005) (addressing the Connecticut Limited Liability Company Act, General Statutes § 34-100 et seq.) (cited in Pet. at 16-17 and n. 5).

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This Court often turns to opinions from other state courts that interpret statutes or legal principles analogous to those present in Nevada. *See, e.g., In re Amerco Derivative Litig.*, 127 Nev. 196, 218–19, 252 P.3d 681, 697–98 (2011) ("[t]o determine whether demand upon the board is excused, we apply standards articulated by the Delaware Supreme Court[.]"); *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 756, 219 P.3d 1276, 1283 (2009) ("When determining whether Nevada's anti-SLAPP statute falls within this category, we consider California caselaw because California's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute."); *Pope v. Motel 6*, 121 Nev. 307, 315–17, 114 P.3d 277, 282–84 (2005) (surveying jurisdictions addressing whether statements made to law enforcement enjoy absolute or qualified privilege and concluding "we agree with those courts that have adopted a qualified privilege."). Accordingly, the Cowabunga Bay entities' cannot seriously claim that the case law cited by the Gardners is "all distinguishable" simply because it is found outside Nevada. *See* Ans. at 13. While many of those authorities are admittedly "federal and extrajurisdictional," these attributes do not detract from their persuasiveness—particularly when the statute being examined track Nevada's statutory scheme and "there is no Nevada jurisprudence on point." *See* Ans. at 12.[5]

[5] Ironically, the Cowabunga Bay entities cited *White v. Longley*, 244 P.3d 753 (Mt. 2010) for a general statement of law concerning the "corporate-styled liability shield" of LLCs. *See* Ans. at 11. In so doing, they failed to appreciate that the Montana Supreme Court in *White* addressed the same issue presented here in the context of that state's version of NRS 86.371 and found "[w]hile individual liability limitation is an aspect of the LLC form of business organization, there is wide-spread

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**2. Adding the members and managers of HWP as individual defendants does not run afoul of either NRS 86.371 or NRS 86.381.**

Setting aside the overwhelming amount of case law supporting the Gardners' position, the Cowabunga Bay entities' interpretation of the plain language of NRS 86.371 and NRS. 86.381 is simply wrong. The Gardners acknowledge that the Individual Defendants are not personally liable "for the debts and liabilities of the company" just because they hold the position of manager. *See* NRS 86.371. Similarly, the Gardners recognize that the Individual Defendants would not be proper parties to this litigation under NRS 86.381 if the Gardners were merely asserting claims "against the company," say, for instance, in a breach of contract action.

Here, however, the Gardners are not seeking to hold the Individual Defendants liable "for the debts and liabilities of the company," *see* NRS 86.371; nor is this action simply "against the company." *See* NRS 86.381. To the contrary, the Gardners are seeking to assert independent claims and impose direct liability against the Individual Defendants based on their own tortious conduct that resulted in the severe non-fatal drowning of Leland in the wave pool at Cowabunga Bay. This is clearly permissible

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acknowledgement that individual members of an LLC may be subjected to personal liability" for tortious conduct. *Id.* at 760. And while this Court has yet to address the issue, a federal district court in Nevada has found the managing members of a Nevada LLC personally liable for the tort of conversion. *See In re Commercial Mortg. Co.*, 802 F.Supp.2d 1147, 1165 (D.Nev. 2011) ("As managing members of Compass, Piskin and Blatt are personally liable for engaging in the conversion that plaintiffs proved was committed by Compass.")

under the legal authorities set forth above. *See supra* at 7-9; *see also* Limited Liability Companies: A State-by-State Guide to Law and Practice § 14:38 (2016) ("[t]here are several important exceptions to the rule that members are not liable for the LLC's debts and obligations. First, members are liable for their own tortious conduct, even when they act on the LLC's behalf.") (interpreting NRS 86.371 and NRS 86.381).[6]

### C. The Negative Inference Theory Advanced By The Nevada Lawyer Magazine Article And Relied On By The Cowabunga Bay Entities Is Factually And Legally Baseless.

The Cowabunga Bay entities' first line of defense against the Gardners' wholly independent theory that the alter ego doctrine applies to LLCs is to claim that the Court cannot consider legislative history or persuasive case law because the statutes at issue here are unambiguous. *See* Ans. at 8.[7] This is a misstatement of law as courts

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[6] The Cowabunga Bay entities' argument that the Gardners are seeking to "assert a claim for the allegedly negligent mismanagement of the LLC by the Management Committee" is nonsensical. *See* Ans. at 13. The Gardners are claiming that the Individual Defendants, as the managers of Cowabunga Bay, owed a duty directly to Leland, which they breached by authorizing, directing, ratifying and participating in the illegal conduct that forms the basis of the Amended Complaint. The Court should disregard the fallacious assertion that the Gardners somehow lack standing to sue the Individual Defendants for their negligent conduct.

[7] The Cowabunga Bay entities understandably wish to disregard the two judicial decisions that have considered whether the alter ego doctrine applies to Nevada LLCs as both courts answered that question in the affirmative. *See In re Giampetro*, 317 B.R. 841, 846 (Bankr.D.Nev. 2004) (concluding it was "highly likely that Nevada courts would recognize the extension of the alter ego doctrine to members of limited liability companies."); *Montgomery v. eTreppid Tech., LLC*, 548 F.Supp.2d 1175, 1180 (D.Nev. 2008) (listing a number of cases standing for the principle that federal and state courts have consistently applied corporate law to LLCs for the purpose of piercing the veil under the alter ego doctrine).



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may "look beyond the plain language [of a statute] if it is ambiguous ***or silent*** on the issue in question." *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) (emphasis added). Here, Nevada's statutory scheme governing LLCs is silent as to the application of the alter ego doctrine, which means "the legislature's intent is the controlling factor in statutory construction." *Potter v. Potter*, 121 Nev. 613, 616, 119 P.3d 1246, 1248 (2005). As a result, the Court properly "look[s] to legislative history for guidance." *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1302, 148 P.3d 790, 793 (2006).

Because the legislative history is clearly relevant to the Court's analysis, the Cowabunga Bay entities now invoke the "negative inference" theory contained in the Nevada Lawyer magazine article adopted *sua sponte* by the district court in its Order. *See* Ans. at 9-10. In short, the Cowabunga Bay entities ask this Court to discount completely the legislative history from NRS Chapter 86 because the Legislature subsequently codified the alter ego doctrine for corporations in NRS Chapter 78, thereby creating a negative inference that the Legislature intended to exclude LLCs from the alter ego doctrine. This theory is designed to circumvent the reality that the legislative history underlying NRS Chapter 86 unequivocally demonstrates that the Legislature believed the alter ego doctrine would apply to LLCs. *See* Pet. at 24-26 (citing GARD140-42).

Notwithstanding the clear legislative history of Nevada's LLC statutes, the negative inference theory promulgated by the author of the Nevada Lawyer magazine

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article is contradicted by the legislative history underlying the codification of NRS 78.747 in 2001. As detailed in the Petition, Judge Markell stated that "the court discounts heavily any argument that Nevada's codification of the principles of alter ego liability for corporations in 2001 created a negative inference that the Nevada legislature intended to abrogate alter ego liability for limited liability companies." *In re Giampetro*, 317 B.R. at 846-47. Indeed, Judge Markell found that "[n]owhere in the legislative minutes or other scraps of legislative history [ ] is there any indication of an intent to tighten or clarify alter ego liability for corporations while eliminating it for limited liability companies or any other limited liability entity[.]" *Id.* at 847. Rather, the "legislative history of the 2001 Nevada legislation indicates that legislators were interested in increasing corporate franchise fees, and were prepared to codify corporate alter ego liability as a price for that increase." *Id.*[8]

The negative inference theory relied on by the Cowabunga Bay entities fails for the additional reason that it misapplies the principle of statutory interpretation

[8] A review of the legislative history from the 2001 session confirms that the Legislature did not intend to exempt LLCs from the alter ego doctrine. GARD337. Indeed, the application of the alter ego doctrine to LLCs was never discussed by the Legislature when it enacted the current version of NRS 78.747. *Id.* In fact, the term "limited liability company" only appears twice in the legislative materials; once in reference to the fact that the Legislature recently created new business entities including LLCs without increasing filing fees for corporations, and again in reference to the Business Law Section of the State Bar of Nevada's annual efforts to improve Nevada's corporate and limited liability statutes beginning in 1993. *Id.* Suffice it to say, the legislative history underlying NRS 78.747 is devoid of any evidentiary support for the alleged presumption relied on by the Cowabunga Bay entities.



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espoused in *Dep't of Taxation v. DaimlerChrysler*, 121 Nev. 541, 119 P.3d 135 (2005). While "omissions of subject matter from statutory provisions are presumed to be intentional," that maxim only applies when the Court is considering different sections within the same act. *See, e.g.*, *id.* (comparing statutory provisions within the Sales and Use Tax codified in NRS Chapter 372); *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op. 35, 373 P.3d 66, 71 (2016) (comparing statutory provisions in the Uniform Common Interest Ownership Act of 1982 codified in NRS Chapter 116).

The United States Supreme Court has articulated the same principle of statutory interpretation as follows: "[w]here Congress includes particular language in one section of a statute but omits it in another section ***of the same Act***, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23, 104 S.Ct. 296, 300 (1983) (emphasis added); *see also Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 439-40, 122 S.Ct. 941, 944 (2002) (same).

The laws governing corporations in Nevada are set forth in NRS Chapter 78 whereas the laws governing LLCs are set forth in NRS Chapter 86. Because they are part of separate acts, no negative inference can flow from the omission of statutory language in the chapter governing LLCs simply because it was included in the different chapter governing corporations. Were it otherwise, any time the Legislature includes or excludes language in one NRS Chapter, it would be "presumed" to have

effectuated a change to other NRS Chapters containing arguably similar subject matter. No principle of statutory construction supports such a sweeping result.

In sum, the legislative history underlying Nevada's statutory scheme for LLCs clearly demonstrates that the Legislature intended the alter ego doctrine to apply to LLCs. The Legislature likewise did not intend to eliminate alter ego liability for LLCs simply because it later codified the doctrine for corporations in 2001. The Gardners, therefore, should be permitted to amend their complaint to plead allegations related to the alter ego doctrine against the HWP's member-LLCs and the Individual Defendants.

## IV. CONCLUSION

For the reasons set forth above, this Court should grant the Petition for Writ of Mandamus in its entirety.

DATED this 7th day of November, 2016

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## VERIFICATION

I, Donald J. Campbell, declare as follows:

1. I am one of the attorneys for Peter and Christian Gardner, on behalf of minor child, Leland Gardner.

2. I verify that I have read and compared the foregoing REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS and that the same is true to my own knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

3. I, as legal counsel, am verifying the Reply because the questions presented are legal issues, which are matters for legal counsel.

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

DATED this 7th day of November, 2016

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## CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Reply, 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), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page 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 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 fifteen (15) pages.

Finally, I certify that the Appendix accompanying this brief complies with NRAP 21(4) and NRAP 30 in that the Appendix includes a copy of the District Court's order that is challenged, the pertinent parts of the record before the respondent judge, and the other original documents,

which are essential to understand the matter set forth in this Petition.

DATED this 7th day of November, 2016

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## CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that, in accordance therewith and on this 7th day of November, 2016, I caused true and correct copies of the foregoing Reply in Support of Petition for Writ of Mandamus to be delivered to the following counsel and parties:

VIA HAND DELIVERY:

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