

Case No. 71652

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

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Elizabeth A. Brown  
Clerk of Supreme Court

PETER and CHRISTIAN GARDNER, on behalf of mother and son,  
GARDNER,

Appellants,

v.

HENDERSON WATER PARK, LLC dba COWABUNGA BAY WATER PARK,  
WEST COAST WATER PARKS, LLC, AND DOUBLE OTT WATER  
HOLDINGS, LLC,

Respondents.

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

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**APPELLANTS' OPENING BRIEF**

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**RULE 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 judges of this Court may evaluate possible disqualification or recusal.

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

Appellants have not been represented by any other attorneys besides CAMPBELL & WILLIAMS.

## ROUTING STATEMENT

The Nevada Supreme Court should retain this writ proceeding because it is a matter raising as a principal issue questions of first impression involving common law as well as questions of statewide importance. NRAP 17(a)(13)-(14). In addition, the Nevada Supreme Court directed that this appeal would be clustered with Appellants' pending original writ proceeding (Supreme Court Case No. 70823) pursuant to IOP 2(c)(2).

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## **APPELLANTS' OPENING BRIEF**

Peter and Christian Gardner, on behalf of minor child, Leland Gardner, hereby submit their Opening Brief. For ease of reference, Appellants will be collectively referred to as the "Gardners," and Respondents will be collectively referred to as the "Cowabunga Bay entities."

### **I. JURISDICTION**

This is an appeal from an order granting summary judgment pursuant to NRCP 56. On October 31, 2016, after notice and a hearing, the district court granted the Gardners' Motion for NRCP 54(b) Certification of Order Granting Motion for Summary Judgment as to Claims against Defendants West Coast and Double Ott. JA 165. In that order, the district court determined, directed and certified that, there being no just reason for delay, final judgment should be entered in favor of Defendants West Coast Water Parks, LLC and Double Ott Water Holdings, LLC. *Id.* As such, the Court has appellate jurisdiction pursuant to Nev. Const., Art. 6, § 4 and NRS 2.090.

### **II. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

Whether the district court erred by granting the Cowabunga Bay entities' Motion for Summary Judgment on grounds that NRS Chapter 86 constituted a complete bar to liability against the Member-LLCs where the Gardners alleged that the Member-LLCs committed the tort of negligence by participating in the illegal conduct that forms the basis of the Complaint.

### III. STATEMENT OF THE CASE

This case arises from the severe non-fatal drowning of six-year old Leland Gardner (“Leland”) on May 27, 2015 in the wave pool at the Cowabunga Bay water park in Henderson, Nevada. Cowabunga Bay is owned and operated by Defendant Henderson Water Park, LLC (“HWP”). HWP’s membership is comprised of two limited liability companies (“LLCs”), West Coast Water Parks, LLC and Double Ott Water Holdings, LLC (the “Member-LLCs”). The Member-LLCs are owned and operated by the seven (7) individuals who personally serve on HWP’s Management Committee and exercise complete control over every aspect of Cowabunga Bay’s operations, including the illegal conduct that resulted in Leland’s devastating injuries.<sup>1</sup>

On July 28, 2015, the Gardners filed the Complaint in the underlying action and brought claims for negligence against HWP and the Member-LLCs. JA 1-9. On August 12, 2016—shortly after the district court denied the Gardners’ request for leave to amend to bring claims for negligence against the individual members of HWP’s management committee—the Cowabunga Bay entities filed their Motion for Summary Judgment as to Claims against Defendants West Coast and Double

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<sup>1</sup> On May 5, 2016, the Gardners filed their Motion for Leave to File Amended Complaint in which they sought to assert direct claims for negligence against the seven (7) individual managers. The district court denied the Gardners’ request for leave to amend for the same reasons it granted the Cowabunga Bay entities’ Motion for Summary Judgment as to the Member-LLCs, *i.e.*, that LLC members and managers are immune from liability under NRS Chapter 86. As a result, the Gardners filed their Petition for Writ of Mandamus, which is fully briefed and clustered with the instant appeal pursuant to IOP 2(c)(2). *See Gardner v. District Court*, Supreme Court Case No. 70823.



1 Ott (the “Motion”). JA 16-25. Therein, the Cowabunga Bay entities argued that the  
2 Member-LLCs are wholly immune from liability under NRS Chapter 86. *Id.*

3 On October 10, 2016, the Honorable Jerry A. Wiese II granted the  
4 Cowabunga Bay entities’ Motion in its entirety. JA 153-56. The district court ruled  
5 that the Member-LLCs were protected from liability because NRS 86.371 provides  
6 “no member or manager of any limited-liability company formed under the laws of  
7 this State is individually liable for the debts and liabilities of the company.” *Id.*  
8 The district court likewise held that the Member-LLCs are shielded from suit  
9 because NRS 86.381 provides “[a] member of a limited-liability company is not a  
10 proper party to proceedings [ ] against the company[.]” *Id.* In dismissing the  
11 Gardners’ claims against the Member-LLCs, the District Court ignored abundant  
12 case law and other persuasive legal authority holding that a member or manager of  
13 a LLC can be held personally liable for his, her or its own tortious conduct that was  
14 committed on behalf of a LLC. After the district court granted NRCP 54(b)  
15 certification of its order, the Gardners filed the instant appeal.  
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#### 21 IV. STATEMENT OF FACTS

22 1. The Gardners filed their Complaint on July 28, 2015. JA 1-9. Therein,  
23 the Gardners brought direct claims for negligence against HWP as well as the  
24 Member-LLCs. *Id.* The Gardners did **not** seek to impose liability against the  
25 Member-LLCs simply by virtue of the fact that they were members of HWP. *Id.*  
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1 Rather, the Gardners specifically accused the Member-LLCs of violating numerous  
2 duties to Leland through their grossly negligent and patently illegal conduct. *Id.*

3 2. The Cowabunga Bay entities filed their Motion on August 12, 2016,  
4 which was primarily based on the district court's prior order denying the Gardners  
5 leave to amend to assert direct claims for negligence against the individual  
6 members of the management committee. JA 16-25. In fact, the Cowabunga Bay  
7 entities (incorrectly) claimed that the district court's earlier order "upholding the  
8 protections to members of LLCs [was] the law of the case." JA 19. Notably, the  
9 Cowabunga Bay entities asserted that "[t]he question [of] whether West Coast and  
10 Double Ott are proper defendants in light of the protections of NRS Chapter 86 is  
11 purely a legal issue." JA 19-20.<sup>2</sup>

12 3. The Gardners filed their Opposition on August 29, 2016, and the  
13 Cowabunga Bay entities submitted their Reply on September 8, 2016. JA 26-128.

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19 <sup>2</sup> The Cowabunga Bay entities did not contend in their Motion that the factual  
20 allegations or evidence underlying the Gardners' claims for negligence against the  
21 Member-LLCs were somehow insufficient. JA 16-25. In their Reply, however, the  
22 Cowabunga Bay entities improperly argued for the first time that the Gardners'  
23 claims against the Member-LLCs were unsupported by the evidence. JA 88-128.  
24 Because this argument was raised for the first time in reply, the district court did not  
25 consider the Cowabunga Bay entities' substantive arguments. JA 129-156; *see also*  
26 *Khoury v. Seastrand*, 132 Nev.Adv.Op. 52, 377 P.3d 81, 88 n. 2 (2016) ("Because  
27 Khoury raises this issue for the first time in his reply brief, it is deemed waived and  
28 we do not consider it here."); *Weaver v. State, Dep't of Motor Vehicles*, 121 Nev.  
494, 502, 117 P.3d 193, 198-99 (2005) (holding arguments raised for the first time  
in reply brief need not be considered). While the district court did not consider or  
rely on the Cowabunga Bay entities' substantive arguments in granting summary  
judgment, the Gardners object in advance to any improper attempt to raise them on  
appeal.

1           4.       The district court conducted a hearing on the Cowabunga Bay entities’  
2 Motion on September 13, 2016 and granted the same in its entirety. JA 129-152.

3           5.       On October 10, 2016, the district court entered the Order Granting  
4 Motion for Summary Judgment as to Defendants West Coast and Double Ott Only.  
5 JA 153-56. The district court quoted the provisions of NRS 86.371 and NRS  
6 86.381 before finding that “Defendants, West Coast and Double Ott, as members of  
7 a limited-liability company, specifically Henderson Water Park, LLC, fall within  
8 the scope of NRS Chapter 86 and the absolute statutory protection of NRS 86.381,  
9 and are not proper parties to proceedings against Henderson Water Park, LLC dba  
10 Cowabunga Bay Water Park.” *Id.* The district court also cited its previous ruling  
11 denying the Gardners’ Motion for Leave to Amend, which is the subject of the  
12 clustered extraordinary writ proceeding that is pending before the Court. *Id.*  
13 Finally, the district court opined that “[i]t is for the Nevada Legislature, if it so  
14 chooses, not the courts, to rewrite a clear and unambiguous statute dealing with  
15 limited-liability companies.” *Id.*

16           6.       The Cowabunga Bay entities filed the Notice of Entry of Order  
17 Granting Motion for Summary Judgment as to Defendants West Coast and Double  
18 Ott Only on October 13, 2016. JA 157-64.

19           7.       On October 31, 2016, after notice and a hearing, the district court  
20 granted the Gardners’ Motion for NRCP 54(b) Certification of Order Granting  
21 Motion for Summary Judgment as to Claims against Defendants West Coast and  
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1 Double Ott. JA 165-66. In that order, the district court determined, directed and  
2 certified that, there being no just reason for delay, final judgment should be entered  
3 in favor of Defendants West Coast Water Parks, LLC and Double Ott Water  
4 Holdings, LLC. *Id.*

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6 8. On November 2, 2016, the Gardners filed their Notice of Appeal in the  
7 district court, and subsequently filed the same in this Court on November 7, 2016.  
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9 *See* Notice of Appeal (on file).

10 **V. SUMMARY OF THE ARGUMENT**

11 The district court committed clear error when it granted the Cowabunga Bay  
12 entities' Motion on grounds that NRS Chapter 86 shields LLC members and  
13 managers from liability or suit arising out of their own tortious conduct. Although  
14 this Court has never addressed the issue presented by this appeal, federal and state  
15 courts from other jurisdictions have repeatedly held that LLC members and  
16 managers can be held liable for their own tortious conduct committed on behalf of a  
17 LLC. Moreover, the district court's ruling sets dangerous precedent in the State of  
18 Nevada as it would give LLC members and managers a license to engage in  
19 tortious, fraudulent or even criminal acts on behalf of a LLC without facing any  
20 legal consequences in the civil justice system. The Court should, therefore, reverse  
21 the district court's order granting summary judgment as to the Member-LLCs.  
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## VI. ARGUMENT

### A. Standard Of Review.

Pursuant to NRCP 56, “[s]ummary judgment is appropriate and ‘shall be rendered forthwith’ when the pleadings and other evidence on file demonstrate that no ‘genuine issue of material fact remains and that the moving party is entitled to a judgment as a matter of law.’” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (citing *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997)). “This court has noted that when reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party.” *Id.* (citing *Lipps v. S. Nevada Paving*, 116 Nev. 497, 498, 998 P.2d 1183, 1184 (2000)). “This court reviews a district court’s grant of summary judgment *de novo*, without deference to the findings of the lower court.” *Id.* (citing *GES, Inc. v. Corbitt*, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001)).

### B. The Gardners Are Entitled To Pursue Direct Claims Against The Member-LLCs Arising Out Of Their Participation In The Negligent Management And Operation Of Cowabunga Bay That Caused Leland’s Injuries.

In the lower court, the Cowabunga Bay entities relied exclusively on two Nevada statutes to support their argument that the Member-LLCs are immune from liability for their own tortious conduct. JA 16-25. NRS 86.371 provides that “[u]nless otherwise provided in the articles of organization or an agreement signed by the member or manager to be charged, no member or manager of any limited-liability

1 company formed under the laws of this State is individually liable for the debts and  
2 liabilities of the company.” NRS 86.381 further provides that “[a] member of a  
3 limited-liability company is not a proper party to proceedings by or against the  
4 company, except where the object is to enforce the member’s right against or liability  
5 to the company.”

7 What the Cowabunga Bay entities failed to recognize, however, is that the  
8 Gardners are not seeking to hold the Member-LLCs liable “for the debts and liabilities  
9 of the company,” *see* NRS 86.371; nor is this action simply “against the company.”  
10 *See* NRS 86.381. To the contrary, the Gardners brought claims for negligence against  
11 the Member-LLCs to hold the entities liable for their own tortious conduct. In other  
12 words, the Gardners would be entitled to bring these claims for negligence against the  
13 Member-LLCs even if HWP was not a named defendant in the underlying action.  
14 The district court similarly failed to apprehend this distinction when it ruled that the  
15 Gardners’ claims against the Member-LLCs were barred as a matter of law under  
16 NRS Chapter 86.

21 It is ironic that the Cowabunga Bay entities premised their legal analysis of this  
22 issue on a comparison to the law governing corporations in Nevada, *i.e.*, that “limited-  
23 liability companies (LLCs) are business entities created to provide a corporate-styled  
24 liability shield[.]” JA 91 (citing *Weddell v. H20, Inc.*, 126 Nev.Adv.Op. 9, 271 P.3d  
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743, 748 (2012)).<sup>3</sup> Indeed, despite the fact that 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....[,]” this Court has expressly held that “[a]n officer of a corporation may be individually liable for any tort which he commits[.]” *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1098, 901 P.2d 684, 689 (1995); *see also Rosenthal v. Poster*, 2008 WL 4527859, \*3 (D.Nev. Sept. 30, 2008) (“Generally, a tortious act committed by a corporate officer, regardless of the fact he was acting on behalf of the corporation, is considered a personal wrongdoing, holding the officer himself personally liable.”). Accordingly, and contrary to the Cowabunga Bay entities’ misplaced reliance on the law governing corporations, this Court’s binding precedent clearly establishes that officers are individually liable for their own tortious acts committed on behalf of the corporation. The same principle should apply to LLCs.<sup>4</sup>

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<sup>3</sup> The Cowabunga Bay entities, perhaps unwittingly, also cited *White v. Longley*, 244 P.3d 753 (Mt. 2010) for a general statement of law concerning the “corporate-styled liability shield” of LLCs. JA 91. 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 acknowledgement that individual members of an LLC may be subjected to personal liability” for tortious conduct. *Id.* at 760.

<sup>4</sup> Although statutory interpretation is not necessary to resolve this issue, the Gardners must point out that the Legislature drew a direct comparison between the language of NRS 78.747 and the section of the LLC bill that would eventually become NRS 86.371. JA 85 (“Mr. Fowler pointed out that [ ] section [310 of the limited liability company bill] stated ‘they were not liable under a judgment, decree,

This Court has not addressed direct liability relating to tortious conduct committed by members or managers on behalf of a LLC in any published opinion. The overwhelming majority of federal and state courts that have considered the issue hold that, like corporate officers and directors, LLC members and managers may be held individually liable for torts committed on behalf of the LLC.

For example, the United States District Court for the District of Nevada, when sitting in diversity and applying Nevada law, refuted the argument advanced by the Cowabunga Bay entities in *In re Commercial Mortg. Co.*, 802 F.Supp.2d 1147, 1164-65 (D.Nev. 2011). There, the plaintiff brought a tort claim for conversion against the defendant LLC and two individual defendants that served as the LLC's managing members. *Id.* The United States District Court cited the analogous corporate principles referenced above and held that the managing members were personally liable for the tortious conduct of the LLC as follows:

***As managing members of Compass, Piskin and Blatt are personally liable for engaging in the conversion that plaintiffs proved was committed by Compass. See Pocahontas First Corp. v. Venture Planning Group, Inc.***, 572 F.Supp. 503, 508 (D.Nev. 1983) ("There is no doubt that an individual who commits a tort while acting in the capacity of a corporate officer may be held personally liable."); *Marino v. Cross Country Bank*, No. C.A.02-65-GMS, 2003 WL 503257, at \*7 (D.Del. Feb. 14, 2003) ("Corporate officers are liable for tortious conduct even if they were acting officially for the corporation in committing the tort. A corporate officer can be held personally liable for the torts he commits and cannot shield himself behind the corporation when he is a participant.").

or order of the court, for any debts, obligations or liabilities of the company,’ which was exactly present corporate law.”) (emphasis in original).



1 *Id.* at 1165 (emphasis added).

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3 Numerous other courts have reached the same conclusion that members and  
4 managers are personally liable for their own tortious conduct committed on behalf of  
5 an LLC. *See, e.g., D’Elia v. Rice Dev., Inc.*, 147 P.3d 515, 524-25 (Utah Ct. App.  
6 2006) (“We are persuaded by those authorities that hold that both limited liability  
7 members and corporate officers should be treated in a similar manner when they  
8 engage in tortious conduct. We therefore conclude that *Harrison’s* imposition of  
9 personal liability on corporate officers who participate in a corporation’s tortious acts  
10 [ ] also applies to limited liability members or managers.”); *Rothstein v. Equity*  
11 *Ventures, LLC*, 299 A.2d 472, 474 (N.Y.App.Div. 2002) (“We agree that members of  
12 limited liability companies, such as corporate officers, may be held personally liable if  
13 they participate in the commission of a tort in furtherance of company business.”);  
14 *Weber v. United States Sterling Sec., Inc.*, 924 A.2d 816, 825 (Conn. 2007)  
15 (“Accordingly, we conclude that although § 18-303(a) of the Delaware Code  
16 Annotated shields the defendants from personal liability based solely on their  
17 affiliation with Retail Relief, it does not shield them from personal liability for their  
18 own tortious conduct.”) (interpreting Delaware law); *Dzurilla v. All American Homes,*  
19 *LLC*, 2010 WL 559923, \*3 (E.D.Ky. Jan. 4, 2010) (“[A] shareholder of a corporation  
20 or a member of an LLC can be held liable for its individual conduct, without regard to  
21 the limited liability status of the corporation or company. While mere status as a  
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manager of an LLC will not subject a person to liability, the statute does not preclude liability for the manager's own tortious conduct.”).<sup>5</sup>

Legal commentators and treatises addressing this issue likewise confirm that a member or manager of a Nevada LLC can be held personally liable for its own tortious conduct. *See, e.g.,* Limited Liability Companies: A State-by-State Guide to Law and Practice § 14:38 (2015) (citing NRS 86.371 and NRS 86.381 and stating “[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.”) (emphasis added); 3A Fletcher

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<sup>5</sup> *See also* *Hoang v. Arbess*, 80 P.3d 863, 867 (Colo.Ct.App. 2003) (“While an officer of a corporation cannot be held personally liable for a corporation’s tort solely by reason of his or her official capacity, an officer may be held liable for his or her individual acts of negligence even though committed on behalf of the corporation, which is also held liable. The parties do not dispute that this principle applies equally to a manager of a limited liability company.”); *Equipoise PM LLC v. Int’l Truck and Engine Corp.*, 2007 WL 2228621, \*10 (N.D.Ill. July 31, 2007) (“As its plain language suggests, this provision will shield Price and Morton from liability if the only basis defendants have for the claims against them is their membership in Equipoise. If, however, defendants prove that Price or Morton assumed liability, or committed, authorized or ratified tortious acts while acting for Equipoise, then this provision provides them no protection.”); *Mbahaba v. Morgan*, 44 A.3d 472, 476 (N.H. 2012) (“When [ ] a member or manager commits or participates in the commission of a tort, whether or not he acts on behalf of his LLC, he is liable to third persons injured thereby.”); *Allen v. Dackman*, 991 A.2d 1216, 1228-29 (Md.Ct.App. 2010) (“These cases discuss tort liability for corporate officers and agents who personally committed, inspired, or participated in torts in the name of the corporation. We have not previously determined whether these same principles apply to members of LLCs. We agree, however, with other jurisdictions that have come to that conclusion.”); *Morris v. Cee Dee, LLC*, 877 A.2d 899, 908-09 (Conn.Ct.App. 2005) (“Furthermore, the law of this state permits the court to attach individual assets if a member of a limited liability company personally commits a tort.”).

1 Cyc. Corp. § 1135 (“It is the general rule that an individual is personally liable for all  
2 torts the individual committed [ ]. This rule applies equally to torts committed by  
3 those acting in their official capacities as officers or agents of a corporation. It is  
4 immaterial that the corporation may also be liable. [ ]. *These rules have been*  
5 *applied to principals of a limited liability company.*”) (emphasis added).  
6

7 In addition to the analogous Nevada law on tort liability for corporate officers  
8 and the overwhelming weight of highly persuasive legal authority on this issue, the  
9 Gardners ask this Court to consider the practical effects of the district court’s ruling  
10 that members and managers of a LLC are completely immune from liability for their  
11 own tortious conduct. A member of a LLC could, for example, make fraudulent  
12 misrepresentations in order to contract with another business, yet that same member  
13 would be wholly immune from liability for his intentional misconduct. Similarly, a  
14 member of a LLC could operate a company vehicle while under the influence of  
15 alcohol to perform business on behalf of the LLC and severely injure an innocent third  
16 party, but that member would not face any personal liability for his wrongful conduct.  
17 Simply put, this Court cannot condone the district court’s ruling as it would permit  
18 members and managers of Nevada LLCs to engage in intentional misconduct with  
19 impunity and hide behind the shield of the LLC form, which, as is the case here, may  
20 be severely underinsured and undercapitalized. That cannot be the law.  
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**VII. CONCLUSION**

Based on the foregoing, the Gardners respectfully request that the Court reverse the district court's erroneous grant of summary judgment in favor of the Member-LLCs and remand this matter for further proceedings on the Gardners' causes of action against the Member-LLCs.

DATED this 22nd day of December, 2016

CAMPBELL & WILLIAMS

By: /s/ Donald J. Campbell

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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 APPELLANTS' OPENING BRIEF 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 Opening Brief 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 22nd day of December, 2016

/s/ Donald J. Campbell  
Donald J. Campbell, Esq. (#1216)

## CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Opening 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), 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 thirty (30) pages.

Finally, I certify that the Appendix accompanying this brief complies with 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 22nd day of December, 2016

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## CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that, in accordance therewith and on this 22nd day of December 2016, I caused true and correct copies of the foregoing Appellants' Opening Brief to be delivered to the following counsel and parties:

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