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Elizabeth A. Brown
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IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN FERGASON,

Appellant,

vs.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Respondent.

Case No.: 72640

Appeal from the Eighth Judicial District
Court, the Honorable Douglas E. Smith
Presiding

REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL

I. INTRODUCTION

Respondent, Las Vegas Metropolitan Police Department ("LVMPD"), by and through its attorneys of record, Marquis Aurbach Coffing, hereby submits this Reply in Support of Motion to Dismiss Appeal.

On April 17, 2017, Fergason submitted his Opposition to LVMPD's Motion to Dismiss and Other Relief ("Opposition"). In his Opposition, Fergason argues as a result of a copy and staple error, his unsigned, undated notice of appeal, which he intended to file later, was filed as his actual Notice of Appeal. Opposition at 2–3. He explains that his appeal should not be dismissed but stayed pending the resolution of the motion for reconsideration. Opposition at 3–4. LVMPD maintains this appeal is premature and should be dismissed according to NRAP 4(a)(6).

II. LEGAL ARGUMENT

NRAP 4(a)(6) provides:

(6) Premature Notice of Appeal. A premature notice of appeal does not divest the district court of jurisdiction. *The court may dismiss as premature a notice of appeal filed* after the oral pronouncement of a decision or order but before entry of the written judgment or order, or *before entry of the written disposition of the last-remaining timely motion listed in Rule 4(a)(4)....*

(emphases added). Fergason's motion for reconsideration, filed in the District Court, is a tolling motion. See Motion to Dismiss Appeal at 5–6 (citing *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010); 11 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure*, § 2810.1, 121 *2d ed. 1995). So long as this Court treats Fergason's motion for reconsideration

as tolling, this appeal is premature under NRAP 4(a)(6) and should be dismissed. This is unaffected by the issues related to the unsigned, undated Notice of Appeal being separately filed. Any Notice of Appeal is premature at this time as jurisdiction remains in the District Court. LVMPD respectfully requests dismissal of this appeal due to the pending issues in the District Court and the plain language of NRAP 4(a)(6).

Dated this 21st day of April, 2017.

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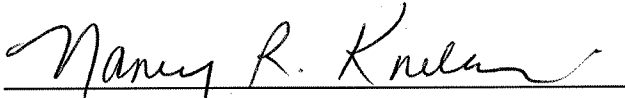
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL** was filed electronically with the Nevada Supreme Court on the 21 day of April, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, via certified mail/return receipt requested, addressed to:

Bryan Fergason #96803
High Desert State Prison
P.O. Box 650
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Nancy Knilans, an employee of
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