IN THE SUPREME COURT OF THE STATE OF NEVADA

Global Experience Specialists, Inc., Respondent/Plaintiff, vs. Landon Shores, Appellant/Defendant.	Case No.72716

APPENDIX OF EXHIBITS TO APPELLANT LANDON SHORES' MOTION TO STAY PRELIMINARY INJUNCTION PENDING APPEAL

Appellant Landon Shores, by and through his attorneys, Mark M. Jones and Madison Zornes-Vela of Kemp, Jones & Coulthard, LLP, and pursuant to Nevada Rules of Appellate Procedure ("NRAP") 8 and 27, hereby files this Appendix of Exhibits to his Motion to Stay Preliminary Injunction Pending Appeal, filed concurrently herewith:

Exhibit No.	Description
1	Map Figure Illustrating Limited Scope of GES's National Presence
2	Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Plaintiff's Motion for Preliminary Injunction
3	Notice of Entry of Order Granting Defendants' Motion to Stay Enforcement of Preliminary Injunction Pending Appeal on Order Shortening Time
4	Defendant's Motion to Stay Enforcement of Preliminary Injunction Pending Appeal on Order Shortening Time
5	Plaintiff's Motion for Preliminary Injunction
6	Complaint
7	March 6, 2017 Hearing Transcript on Plaintiff's Motion for Preliminary Injunction

8	Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction
9	Reply in Support of Plaintiff's Motion for Preliminary Injunction
10	Notice of Appeal
11	Plaintiff's Opposition to Defendant's Motion to Stay Enforcement of Preliminary Injunction Pending Appeal on Order Shortening Time
12	March 30, 2017 Hearing Transcript on Defendant's Motion to Stay Enforcement of Preliminary Injunction Pending Appeal on Order Shortening Time

Dated this 7th day of April, 2017.

/s/Mark M. Jones

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ATTORNEYS FOR APPELLANT

Appellant Landon Shores ("Shores"), by and through his attorneys, Mark M. Jones and Madison Zornes-Vela of Kemp, Jones & Coulthard, LLP, and pursuant to Nevada Rules of Appellate Procedure ("NRAP") 8 and 27, hereby moves this Court for a stay of the district court's Preliminary Injunction order pending the outcome of Shores' appeal. This Motion is supported by the memorandum of points and authorities set forth below, the exhibits attached to the Appendix filed concurrently herewith, and the records of the district court.

INTRODUCTION

This case arises out of Respondent Global Experience Specialists, Inc.'s ("GES") attempt to enforce a nationwide noncompete clause (the "Noncompete

Clause") within a noncompete agreement against Shores, a prior employee. Shores is appealing the district court's grant of a preliminary injunction against Shores pursuant to the Noncompete Clause because, under black-letter Nevada law, the Noncompete Clause is unreasonable and, therefore, unenforceable. Given this unenforceability and pursuant to the four factors present within NRAP 8(c), Shores submits that he is entitled to a stay of the Preliminary Injunction pending his appeal.

Under the first NRAP 8(c) factor, Shores is likely to prevail in his appeal because the Noncompete Clause is unenforceable under Nevada law. Specifically, the geographic scope of the Noncompete Clause is unreasonable as it spans the entire United States. It is well settled that a noncompete clause cannot restrict an employee from working in a territory in which the employer does not have established customers and goodwill, and noncompete agreements that are overbroad in geographic scope are unenforceable as a matter of law. *See Camco, Inc. v. Baker*, 113 Nev. 512, 520 (1997). GES's evidence demonstrates that it has not contracted for any convention or trade show events in 17 of 50 states since December of 2015.[1] GES's evidence further shows that it has a minimal presence in an additional 16 states, which is insufficient to establish the requisite customers and goodwill to support a ***statewide*** noncompete exclusion against Shores under *Camco*.[2] Thus, there are a total of 33 states (**66% of states in the United States**) in which GES cannot show the requisite established customers and goodwill. *See* Appendix of Exhibits, filed concurrently herewith ("App."), Ex. 1(Map Figure illustrating the limited scope of GES's national presence). Quite simply, GES does not have the established customers and goodwill required to render a blanket nationwide noncompete clause reasonable

[1] The 17 states are Alaska, Arkansas, Connecticut, Delaware, Idaho, Kansas, Maine, Mississippi, Montana, New Hampshire, New Mexico, North Dakota, South Dakota, South Carolina, Vermont, West Virginia, and Wyoming.
[2] The 16 states are Alabama, Hawaii, Indiana, Iowa, Kentucky, Michigan, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Virginia, and Wisconsin.

as a matter of law. As argued more specifically below, the remaining NRAP 8(c) stay factors also weigh in favor of granting a stay.

A.
RELIEF SOUGHT

Appellant Shores seeks a stay of the Preliminary Injunction pending resolution of his appeal. *See* App., Ex. 2 (Order Granting Motion for Preliminary Injunction (the "Preliminary Injunction")). Shores first requested a stay of the Preliminary Injunction before the district court, but the district court failed to afford the relief requested, issuing only a fifteen-day temporary stay of the Preliminary Injunction to permit Shores to seek the requested stay relief before this Court. *See* App., Ex. 3 (Order granting in part Defendant's Motion to Stay Enforcement of Preliminary Injunction Pending Appeal on Order Shortening Time). Shores now moves this Court for an order staying the Preliminary Injunction pending the outcome of Shores' appeal. *See* NRAP 8(a)(2)(A)(ii).

B.
STATEMENT OF FACTS

Shores began working for GES in 2013. App., Ex. 4 at Ex. A at ¶ 2. (Declaration of Landon Shores). Shores' duties were to solicit show organizers to sign a contract with GES, a general services contractor that builds show floors for trade shows, conventions, and corporate events. *Id.* Shores signed the subject Confidentiality and Non-Competition Agreement ("Noncompete Agreement") in or around September of 2016. App., Ex. 5 at Ex. 1-B. (Noncompete Agreement). The Noncompete Agreement purports to prevent Shores from indirectly or directly competing with GES for a period of 12 months after leaving GES, and states that "a geographical restriction on competitive employment **in the United States** . . . is reasonable and necessary to protect the company's legitimate business interests." *Id.* at § 1.6A (emphasis added).

Shores accepted a sales position with Freeman Expositions, Inc. ("Freeman") in Anaheim, California on or around December 20, 2016. App., Ex. 4 at Ex. A at ¶ 6. Shores' position with Freeman in a new geographical market is not competitive with his prior position at GES in Las Vegas, Nevada. *See id.* at ¶¶ 12, 14-22. Shores has not solicited GES customers since he left GES and has not used proprietary, confidential, or other trade secret information of GES to leverage a competitive advantage against GES in favor of Freeman *Id.* at ¶¶ 14-22.

GES filed its Complaint and Motion for Preliminary Injunction on January 31, 2017, and a hearing was held on March 6, 2017. App., Exs. 5-7. Shores filed his opposition to GES's preliminary injunction motion on February 23, 2017. App., Ex. 8. In its Reply, GES finally provided its alleged supporting "evidence" by attaching a schedule of all events for which it had contracted from December of 2015 through the end of 2017. *See* App., Ex. 9 at Ex. 1-A. As discussed herein, it is this information, ***GES's own information***, that underscores the unenforceability of the Noncompete Clause and forms the factual basis for this Motion.

This Court entered the Preliminary Injunction on March 23, 2017. App., Ex. 2. Shores filed a Notice of Appeal in the district court on March 24, 2017 and in this Court on April 3, 2017. App., Ex. 10. On March 27, 2017, Shores filed a Motion to Stay Enforcement of the Preliminary Injunction on Order Shortening Time. App., Ex. 4. GES filed its Opposition on March 28, 2017, and the hearing on the Motion was held March 30, 2017. App., Exs. 11-12. On April 6, 2017, the district court entered an order granting in part Shores' Motion to Stay Enforcement of Preliminary Injunction, issuing only a temporary fifteen-day stay. App., Ex. 3.

C.
LEGAL ARGUMENT

A. The NRAP 8(c) Factors Weigh in Favor of a Stay

This Court has the power to stay enforcement of the Preliminary Injunction while Shores' appeal is pending. *See* NRAP 8. Under NRAP 8(c), this Court generally considers four factors in determining whether to issue a stay: whether: (1) the appellant is likely to prevail on the merits; (2) the appellant will suffer irreparable or serious injury if the stay is denied; (3) the appellee will suffer irreparable or serious injury if the stay is granted; and (4) the object of the appeal will be defeated if the stay is denied. *See Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657 (2000). Any one factor is not more important than the others; however, where "one or two factors are especially strong, they may counterbalance other weak factors." *See Mikohn Gaming Corp. v. McCrea*, 89 P.3d 36, 38 (Nev. 2004).

As demonstrated below, the foregoing NRAP 8(c) factors demonstrate that this Court must stay enforcement of the Preliminary Injunction pending a decision on Shores' appeal. Further and in the event this Court determines that a stay bond is required pursuant to NRAP 8(a)(2)(E), Shores would submit that a release of GES's bond would be appropriate security, or Shores would ask that this Court impose only a minimal bond in an amount of $5,000, which is sufficient given that GES will be able to release its posted $100,000 bond when the preliminary injunction is stayed.

1. Shores is likely to prevail on appeal because the Noncompete Clause is unreasonable and overbroad.

A district court's decision to grant or deny a preliminary injunction is reviewed for an abuse of discretion. *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 407 (2001). A district court's determination of the facts will be set aside if clearly erroneous, but questions of law are reviewed de novo. *Id.* Here, because Shores' appeal is based on

the unreasonableness of the Noncompete Clause as a matter of law, the Preliminary Injunction will be reviewed under the de novo standard. *See id.*

Shores will likely prevail on appeal because the nationwide geographic scope of the Noncompete Clause is not reasonable and because GES does not have a protectable interest in a vast market Shores never developed on GES's behalf. *See Camco,* 113 Nev. at 518. "[B]ecause the loss of a person's livelihood is a very serious matter," noncompete agreements are subject to careful scrutiny and must not impose a greater burden than is required to protect an employer's interest. *See id.* at 520.

The Noncompete Clause must be enforced as written and an unreasonable provision renders the entire Noncompete Agreement unenforceable. *See Golden Rd. Motor Inn, Inc. v. Islam*, 376 P.3d 151, 156 (Nev. 2016). The Noncompete Clause imposes a burden "greater than is required for the protection of the person for whose benefit the restraint is imposed" in at least two separate ways.[3] *See Camco*, 113 Nev. at 518. First, GES failed to present evidence that it had established customers and goodwill throughout the United States to justify a nationwide prohibition on Shores' future competitive employment. Second, even assuming GES could establish that it had established customers and goodwill in every state (which it has not done), GES failed to establish that it had a legitimate business interest in preventing Shores from working for a competitor in a market in which Shores had no previous contacts and developed no customers on behalf of GES.

First, Shores is likely to prevail on his appeal because GES has not established that it has customers and goodwill throughout the ***entire*** United States to justify a ***nationwide*** prohibition on Shores' future competitive employment. *See Camco*, 113 Nev. at 520. In *Camco*, this Court determined that the subject noncompete provision

[3] Shores also contends that the Noncompete Clause is unenforceable because it places a burden on him that is significantly greater than necessary to protect GES's alleged interests. *See* Hansen, 83 Nev. at 191-92. However, in the interest of brevity, Shores reserves argument on this issue for his appellant's brief.

was unreasonably broad in geographical scope because it was not limited to the territory in which the former employer has established customer contacts and goodwill. *Id.* at 519-20. In other words, where a noncompete term covers territory in which the employer does not have a protectable interest in the form of established customers and goodwill, it is unreasonable and cannot be enforced. *See id.*

GES did not establish in obtaining the Preliminary Injunction that it has a full 50 state territorial presence that it needs to protect against Shores' future competitive employment. *See* App., Ex. 1. In fact, GES's own evidence shows that GES has precisely zero customers and goodwill in **17 entire states** because GES has not signed a contract for a convention, trade show or event in these states since at least December 2015. These facts alone show the Noncompete Clause is grossly overbroad in its territorial scope and unenforceable as a matter of law. In addition, GES's evidence proves that it had a *de minimus* presence (contracting for 10 or fewer events) in an additional 16 states within the same time frame. GES's limited presence in only certain cities in these 16 states does not justify a noncompete restriction covering ***that entire state***. *See Hansen*, 83 Nev. at 193.

GES's non-presence, or minimal presence in at least 33 states means that GES does not have a legally protectable interest in **66%** of the United States. GES's Noncompete Clause is not just overbroad by a radius of 50 or 100 miles, but is unquestionably overbroad by at least 17 states, and arguably 33 states, consisting of thousands of square miles of territory across the entire United States. According to GES's own evidence the Noncompete Clause is unreasonable and cannot be enforced in Nevada as a matter of law.

Second, GES does not have a legitimate interest in prohibiting Shores from working for a competitor in any market that Shores did not develop or work in for GES. *See Martin v. Hawley*, 50 S.W.2d 1105, 1109 (Tex. Civ. App.- Dallas 1932)(forming a substantial basis for the Texas *Weatherford Oil* ruling this Court cited

favorably in *Camco,* 113 Nev. at 520, and holding that a noncompete covenant prohibiting the employee from working for a "competitive business," without specifying a geographic scope was unreasonable because it was not limited to *territory where the employee had developed for the former employer*. *See* 50 S.W.2d at 1109.[4]).

As in *Martin*, the Noncompete Clause here is unreasonable because it prevents Shores from working in markets which he did not develop for GES. Specifically, GES does not have an interest in preventing Shores from freely working for Freeman in Los Angeles/Anaheim because Shores' work in Los Angeles/Anaheim is not competitive with his prior work for GES in the Las Vegas event market. GES does not contend that Shores is soliciting his former customers or stealing confidential information or trade secrets. Thus, there is no need for GES to protect its Las Vegas client relationships any more than if Shores had stopped working in the industry altogether. Given these undisputed facts, GES cannot identify an **actual substantive** customer or business interest it has in preventing Shores: a) from working nationwide for a competitor; or b) more specifically, for Freeman in Los Angeles/Anaheim.

Shores is likely to prevail on the merits of the appeal because the Noncompete Clause within the Noncompete Agreement is unenforceable as a matter of law. Shores submits that this factor weighs heavily in favor of a stay of the Preliminary Injunction pending resolution of Shores' appeal.

2. Refusal to stay the Preliminary Injunction would irreparably harm Shores.

"Irreparable harm is an injury for which compensatory damage is an inadequate remedy." *Gilmore*, 351 P.3d at 723 (internal quotes omitted). Here, the irreparable

[4] The court's actual holding was, "We are of the opinion that the restrictive covenant in the contract forbids appellee from entering the same character of business either as employee, owner, or lessee in a territory in which the Electrified Water Company has elected or may elect to sell its product, regardless of whether the **activities of appellee had developed such territory for such company** during his connection therewith, and that such restrictive covenant is void on its face." *See id.* (emphasis added).

harm to Shores is inflicted if he is forced to comply with an unenforceable noncompete restriction for its entire 12-month duration. Even if Shores prevails on appeal, the victory will be illusory because, absent a stay and with this Court's busy schedule and decision timetable, GES can likely force Shores to comply with the (unenforceable) Preliminary Injunction for its full duration.

Additionally, the Preliminary Injunction is an improper ***restraint of his chosen trade***, which prohibits Shores from practicing his particular set of work skills in the convention event sales industry, which is Shores' professional specialization and livelihood. The deprivation of Shores' right to perform his specialized job duties pursuant to an unenforceable Noncompete Clause is, in and of itself, irreparable injury to Shores.

3. GES will not suffer irreparable injury if the stay is granted and it has failed to prove any irreparable harm.

Conversely, GES failed to present evidence that it has or will suffer any irreparable harm if the national territorial scope of the Noncompete Clause is not enforced. GES simply has no nationwide territory or presence to protect. This failure causes the first stay factor—likelihood of prevailing on appeal—to greatly favor Shores because irreparable harm is a substantive element of the merits of GES's Preliminary Injunction motion.

Instead, GES relied entirely on the crutch of presumed harm and has presented no evidence of actual irreparable harm caused by Shores leaving GES to work for a competitor. In addition, Shores has demonstrated within his new employment that he was not soliciting or interacting with existing GES customers in the Los Angeles/Anaheim convention market and that was not using GES's confidential or proprietary information to gain a competitive advantage. ***GES did not refute these contentions***. As GES failed to prove or show any tangible irreparable injury or harm it suffered because Shores left GES in the Las Vegas convention market to work for

Freeman in the Los Angeles/Anaheim convention market, it cannot show it would suffer irreparable injury in the event that this matter is stayed.

4. The object of Shores' appeal will be defeated without a stay.

Shores' appeal challenges the Preliminary Injunction, enforcing the nationwide Noncompete Clause, which bars Shores from working for any competitor in the same capacity he worked for GES for a 12-month period following his GES employment. The object of the appeal, to stop enforcement of the Preliminary Injunction, will be defeated if a stay is not ordered, because this Court's historically busy schedule suggests that Shores' appeal will likely not be resolved before the end of the 12-month noncompete obligation, thus rendering the appeal moot. Accordingly, it is highly probable that the object of Shores' appeal will be defeated absent a stay. This factor weighs heavily in Shores' favor.

D.
CONCLUSION

Shores respectfully requests that this Court issue an order staying enforcement of the Preliminary Injunction pending a decision on his appeal. In the event this Court determines that a bond is required pursuant to NRAP 8(a)(2)(E), Shores would respectfully request a release of GES's bond as appropriate security, or impose only a minimal bond in an amount of $5,000, which is sufficient given that GES will be able to release its $100,000 bond when the preliminary injunction is stayed.

Dated this 7th day of April, 2017.

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Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2017, the foregoing **APPELLANT LANDON SHORES' MOTION TO STAY PRELIMINARY INJUNCTION PENDING APPEAL** was filed electronically with the Nevada Supreme Court and served on all parties through the electronic service system

AND Via U.S. Mail to the following:

Thomas J. Tanksley
10161 Park Run Drive #150
Las Vegas, Nevada 89145

The Honorable Mark Denton
Department 13
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Angela Embrey
An employee of Kemp, Jones & Coulthard, LLP

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Dated this ____ day of April, 2017.

_____
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ERRATA TO APPELLANT LANDON SHORES' MOTION TO STAY PRELIMINARY INJUNCTION PENDING APPEAL

Appellant Landon Shores, by and through his attorneys, Mark M. Jones and Madison Zornes-Vela of Kemp, Jones & Coulthard, LLP, and pursuant to Nevada Rules of Appellate Procedure ("NRAP") 8 and 27, hereby files this Errata to Appellant Landon Shores' Motion to Stay Preliminary Injunction Pending Appeal, which was filed on April 10, 2017. *See* Motion to Stay, attached hereto as **Exhibit 1** (excluding exhibits). The Motion mistakenly included the incorrect version of the Appendix of Exhibits. A correct copy of the Appendix of Exhibits to the Motion to Stay Preliminary Injunction Pending Appeal is attached hereto as **Exhibit 2**.

Dated this 12th day of April, 2017.

/s/Mark M. Jones

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2017, the foregoing **ERRATA TO APPELLANT LANDON SHORES' MOTION TO STAY PRELIMINARY INJUNCTION PENDING APPEAL** was filed electronically with the Nevada Supreme Court and served on all parties through the electronic service system

AND Via U.S. Mail to the following:

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/s/ Angela Embrey
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