IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT'S REPLY BRIEF

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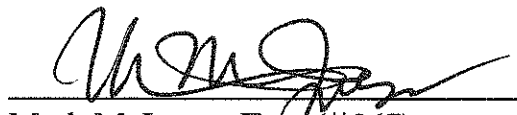
NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a).

No such corporations or entities exist.

Since the inception of this case, KEMP, JONES & COULTHARD, LLP has been counsel of record for Appellant Landon Shores. Mark Jones (Nev. Bar No. 267), Madison Zornes-Vela (Nev. Bar No. 13626), Matthew Carter (Nev. Bar No. 9524), and David Blake (Nev. Bar No. 11059) have appeared for Landon Shores and no other attorneys are expected to appear in this court in this case.



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INTRODUCTION

Respondent Global Experience Specialists, Inc. ("GES") fails to set forth any basis on which this Court should affirm the district court's Order granting the Preliminary Injunction at issue in this appeal.

GES makes several unsupported assertions that Appellant Landon Shores ("Shores") is improperly seeking a final determination on the merits by challenging the district court's Order. NRAP 3A(b)(3) clearly permits an appeal from an order granting a preliminary injunction. On an appeal from an order granting or denying a preliminary injunction, one of the key issues is whether the moving party enjoys a likelihood of success on the merits. To enjoy a likelihood of success on the merits, an employer must show that its noncompete agreement is reasonable because unreasonable agreements are unenforceable under Nevada law. Shores' arguments regarding the unenforceability of the Noncompete Agreement are properly before this Court at this stage in the proceedings.

GES failed to show that the district court applied the correct legal standard for its determination that the nationwide restriction in GES's non-compete clause was reasonable. GES does not dispute that the district court failed to apply or even cite to this Court's clearly applicable holding in *Camco v. Baker*, 936 P.2d 829, 833-34 (Nev. 1997) on the issue of whether GES can show that the nationwide territorial restriction is reasonable. Instead, just as the district court did, GES relied solely on non-binding,

non-Nevada cases. These cases are inapplicable to whether GES's territorial restriction is reasonable because they were decided upon inapplicable law or reasoning that contradicts *Camco*. If the district court had applied the correct legal standard set forth in *Camco*, then it would have determined GES did not enjoy a likelihood of success on the merits because the evidence GES provide showed that its territorial restriction was not properly limited to the areas in which GES had established customer contacts and good will.

The district court also abused its discretion in determining that GES met its burden to show that the nationwide territorial restriction in its Noncompete was reasonable. The district court's decision is clearly erroneous because GES provided only facially deficient evidence demonstrating it did not establish customer contacts and good will throughout the United States to justify its nationwide restriction. Rather than contend that the evidence it chose to provide to the district court (for the first time in its Reply in support of its Motion for Preliminary Injunction) demonstrates that its Noncompete Clause is reasonable, GES contends that it was permitted to rely on facially deficient evidence due to the preliminary nature of the proceedings. This position is not supported by Nevada law or public policy, which disfavors covenants not to compete and strictly construes them against employers who overreach. Because this Court has never upheld a territorial restriction even remotely as expansive as the nationwide territorial restriction GES seeks to enforce, GES had a substantial burden to show that the nationwide restriction in its Noncompete Clause was reasonable.

Even assuming GES was held to some lower evidentiary threshold at this stage in the proceedings, there is no question that GES failed to meet its burden. The only evidence GES presented unequivocally shows that GES does not have established customer contacts and good will throughout the United States to justify its nationwide restriction as required under this Court's holding in *Camco*. Therefore, the district court abused its discretion in determining that GES enjoyed a likelihood of success on the merits.

GES' Answering Brief also failed to show that the district court did not error by determining GES enjoyed a likelihood of success on the merits given that the Noncompete Agreement is broader than necessary to protect GES's legitimate business interests and places undue burden on Shores. GES's arguments on both of these issues miss the mark. GES did not and cannot show that it has a legally protectable interest in precluding Shores from providing similar services to companies under circumstances where such employment would pose no risk to GES's legitimate and protectable interests. GES similarly failed to provide support for its position that a nationwide restriction does not place an undue burden on Shores simply because it contains a time limit.

GES further failed to show that the district court's determination that GES would suffer irreparable harm in the absence of the Preliminary Injunction was properly supported. As in the lower court proceedings, GES's arguments regarding irreparable harm are based on hypotheticals and conclusory statements rather than

actual evidence. This is insufficient to justify the Preliminary Injunction against Shores in GES's favor.

In Respondent's Answering Brief, GES erroneously attempts to place significance on several facts that have no bearing on the issues on appeal. Shores' signature on the Noncompete Agreement and the fact that he performed limited work for GES in five cities outside of Las Vegas have no bearing on whether the scope of the Noncompete Clause is reasonable under Nevada law. Similarly, although GES seeks to portray Shores in a negative light for his decision to leave GES and work for Expositions, Inc. ("Freeman") in California, this is irrelevant to whether the scope of the Noncompete Clause is reasonable under Nevada law. *See Golden Road Motor Inn, Inc. v. Islam*, 376 P.3d 151, 153, 159-160 (Nev. 2016).The Court must ignore these arguments.

ARGUMENT

A. Shores properly seeks relief from this Court pursuant to NRAP 3A(b)(3).

GES contends throughout its Answering Brief that Shores is improperly seeking a final ruling on the merits or dismissal of the case because Shores challenges the enforceability of the Noncompete Agreement at a "preliminary" stage of the litigation. These arguments have no merit.

Shores appealed the district court's order granting a preliminary injunction pursuant to NRAP 3A(b)(3) (designating an order granting or denying a preliminary

injunction as an appealable determination). NRAP 3A(b)(3) and Nevada law make it clear that Shores was not required to wait for a final ruling on the merits to challenge the enforceability Noncompete Agreement on Appeal.

On appeal, the fundamental issue is whether the district court erred in ordering the Preliminary Injunction. One of the key factors this Court considers to determine if injunctive relief was properly granted is whether the party moving for the preliminary injunction has shown a likelihood of success on the merits. *S.O.C., Inc. v. Mirage Casino-Hotel*, 23 P.3d 243, 246 (Nev. 2001). To determine whether a former employer enjoys a reasonable likelihood of success on the merits in an action to enforce a noncompete covenant, the court must consider whether the provisions of the noncompete covenant will likely be found reasonable at trial. *Camco*, 936 P.2d at 832 (citing *Hansen v. Edwards*, 426 P.2d 792, 793 (Nev. 1967)). Under Nevada law, if a clause within a noncompete agreement is determined to be unreasonable, then the entire noncompete agreement is unenforceable as a matter of law and as against Nevada public policy. *See Golden Road*, 376 P.3d at 156, 159 (citing *Jones v. Deeter*, 913 P.2d 1272, 1275 (Nev. 1996)); *see also Camco*, 936 P.2d at 834. Therefore, the enforceability of the Noncompete Agreement is properly before this Court. Accordingly, Shores provided authority and citations to the record demonstrating that GES did not enjoy a likelihood of success on the merits because the Noncompete Clause is unreasonable and thus unenforceable based on the applicable law and evidence.

Additionally, whether GES can provide any additional evidence of the scope of its business operations throughout the United States is irrelevant to whether the district court erred by ordering the Preliminary Injunction because this Court's review of Shores' appeal is limited to the record below. *Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov't*, 100 P.3d 179, 187 (Nev. 2004). GES had the burden to establish that it was entitled to a preliminary injunction. *S.O.C., Inc.*, 23 P.3d at 246. GES cannot bring a motion for a preliminary injunction, fail to meet its burden, and then claim that it is nonetheless entitled to an injunction because it may potentially have other evidence.

For these reasons, the issue of the ultimate enforceability of the Noncompete Clause is properly before this Court, and this Court must disregard GES's arguments that Shores is somehow committing a procedural error by raising arguments regarding the enforceability of the Noncompete Clause on this appeal or that Shores is not entitled to relief because of the preliminary nature of the proceedings.

B. Regardless of the standard of review, this Court must vacate the Preliminary Injunction.

1. The district court applied the incorrect legal standard.

The district court relied on the incorrect legal standard and, therefore, a de novo standard of review applies. *See Nevadans for Sound Gov't*, 100 P.3d at 187. Specifically, the district court relied on the incorrect legal standard by determining, based solely on non-binding, non-Nevada cases that the "nature" of an employer's business rather

than its legally protectable business interests in the form of established customer contacts and good will determines whether the territorial scope of a noncompete clause is reasonable. *See* App., Vol. II, at APP000194-95.

In support of Shores' contention that the district court misapplied the law, Shores cites to this Court's holding in *Camco* that to be reasonable, a territorial restriction must be limited to the territory in which the employer has established customer contacts and good will. 936 P.3d at 834.[1] GES argues that *Camco* is not applicable because Shores does not contend that the Noncompete Clause is unreasonable on its face. This argument is unpersuasive because this Court did not limit its holding to facial challenges. *Id.* Because the reasonableness of GES's nationwide restriction is directly at issue, there is no question that *Camco* is applicable and that the district court should have applied the legal standard set forth therein.

GES does not dispute that the district court failed to even cite to *Camco* and instead relied solely on non-binding, non-Nevada cases. Instead, GES erroneously contends that the cases cited by GES and the district court enforcing nationwide geographic restriction in noncompete agreements are consistent with this Court's

[1] GES incorrectly contends that Shores also relies directly on *Hansen*, *Jones*, and *Golden Road* for the proposition that the district court misapplied the law. Moreover, GES's attempt to distinguish *Hansen*, *Jones*, and *Golden Road* on the basis that those cases were farther along in the litigation process is unavailing. The alleged procedural differences between those cases and the facts here do not change the applicable holdings in those cases, and their applicability to Shores' other arguments in this case.

holding in *Camco*. This argument fails because these cases were decided under inapplicable state law that contradicts this Court's holding and reasoning in *Camco* or are based on wholly unrelated facts. Specifically, these cases found reasonableness under non-Nevada law, based on factors other than a determination that the employer had established customer contacts and good will throughout the territory covered by the restrictive covenant. *See* App., Vol. II at App000194-95. For example, GES and the district court rely on *Marshall v. Gore*, 506 So. 2d 91 (Fla. Dist. Ct. App. 1987) for the proposition that "a nationwide restriction is reasonable if it is justified by the nationwide nature of the employer's business." App., Vol. II, at APP000194. In that case, the court determined that, under Florida law, a nationwide noncompete restriction was reasonable where the employer sold only forty-two software programs to dairies in only seven states and advertised in a national dairy publication. 506 So. 2d at 91. In *Camco*, this Court determined that an employer who did business in Las Vegas could not enforce a noncompete covenant in a city only approximately 100 miles away from Las Vegas because they employer did not have established customer contacts and good will there. 936 P.2d at 834. Under this Court's reasoning in *Camco*, it is inconceivable that this Court would determine that a territorial restriction covering the entire United States was reasonable because the employer sold less than fifty of its products in only seven states and advertised in a specialty publication. The same reasoning applies to the remaining cases cited by GES and relied on by the

district court, which were decided pursuant to non-applicable law that contradicts this Court's holding in *Camco* and/or involved inapplicable factual scenarios.

Here, because the district court failed to apply this Court's clear legal standard set forth in *Camco*, and instead relied on its unsupported determination that the alleged "nationwide nature" of GES's business rather than the scope of GES's established customer contacts and good will was the legal standard by which to determine whether GES's nationwide territorial restriction was reasonable, the district court erred as a matter of law, and this Court must review this district court's determination de novo.

2. The district court abused its discretion by granting the Preliminary Injunction without substantial evidence that the nationwide territorial restriction in GES's Noncompete Clause was reasonable.

Even if this Court reviews the Preliminary Injunction order for an abuse of discretion, the Preliminary Injunction must be vacated. GES failed to set forth substantial evidence to establish that the nationwide territorial restriction its Noncompete Agreement was reasonable under Nevada law. *Nevadans for Sound Gov't*, 100 P.3d at 187.

GES does not dispute that the evidence it presented to the district court and that the district court relied on to find that the nationwide restriction in GES's Noncompete Clause was reasonable fails to show that GES has established customer contacts and good will throughout the United States. Instead, GES attempts to shift the focus away from its failure to provide sufficient evidence demonstrating the

reasonableness of its nationwide restriction with hyperbole and by claiming that it could meet its burden by providing facially deficient evidence due to the preliminary nature of the proceedings. GES thus contends that it should be able to enforce its nationwide restriction against Shores based solely on evidence that is facially deficient to demonstrate that its nationwide restriction is reasonable. GES's position is directly contradicted by Nevada law and public policy, which disfavor a strictly construe post-employment covenants not-to-compete.

Even if GES were subject to some lower evidentiary threshold, the only evidence GES provided unequivocally shows that GES's Noncompete Clause ***is not limited*** to territory in which it has established customer contacts and good will as required by Nevada law. *Camco*, 113 Nev. at 520. Therefore, the district court's determination that GES enjoyed a likelihood of success of the merits to enforce it Noncompete Agreement was clearly erroneous.

a. Nevada law requires GES to provide more than facially deficient evidence that its Noncompete Clause is reasonable to enforce the same.

There is no dispute that GES had the burden to establish that it was entitled to a preliminary injunction to enforce its Noncompete Agreement against Shores. This Court has never upheld a territorial restriction even remotely as expansive as the nationwide restriction in GES's Noncompete Clause. Therefore, GES faced a substantial burden to show that its nationwide restriction was reasonable. GES's

position that Nevada law would permit GES to enforce this restriction based solely on evidence that is facially deficient fails.

In spite of this, GES erroneously contends that it could meet its burden by relying on "incomplete" to demonstrate that the territory covered by it Noncompete Clause was limited to territory in which it had established customer contacts and good will. In other words, GES contends it permitted to rely solely on facially deficient evidence that its Noncompete Agreement is reasonable to obtain a preliminary injunction to limit Shores' ability to work in his chosen profession throughout the entire United States. GES's position is not only wrong and inequitable, but also contrary to Nevada law and public policy.

This Court has expressly recognized that a district court's factual findings supporting the grant or denial of a preliminary injunction will be set aside if they are not supported by "substantial evidence." *Nevadans for Sound Gov't*, 100 P.3d at 187. Thus, regardless of how GES wishes to characterize its burden, there can be no dispute that GES was required to provide, and the district court was required to rely on substantial evidence to show that the Noncompete Clause was reasonable such that GES enjoyed a likelihood of success on the merits.

GES's proposed minimal burden is also inconsistent with Nevada public policy, which disfavors noncompete agreements and subjects them to greater scrutiny prior to permitting their enforcement against former employees. This Court has recognized on multiple occasions that noncompete agreements in the employment

context are restraints of trade and subject to strict scrutiny, and that "because the loss of a person's livelihood is a very serious matter, post employment anti-competitive covenants are scrutinized with greater care than are similar covenants incident to the sale of a business." *See Camco*, 936 P.2d at 834 (citing *Ellis v. McDaniel*, 596 P.2d 222, 224-25); *see also Golden Road*, 376 P.3d at 155-58 (citing *Jones*, 913 P.2d at 1275). These policy considerations make it clear that to obtain a preliminary injunction to enforce a noncompete covenant, employers must set forth more than unsupported assertions and facially deficient evidence especially where, as here, GES seeks to enforce a nationwide territorial restriction that is exponentially in excess of any geographic restriction this Court has found reasonable.

GES's reliance on *Nevada Escrow Service, Inc. v. Crockett* for its position that it could provide only facially deficient to properly obtain a preliminary injunction under the Noncompete Agreement is misplaced and illustrates the flaws in GES's position at outlined above. 533 P.3d 471 (Nev. 1975). In *Crockett*, this Court reversed the district court's ruling permitting a foreclosure to go forward, and determined that "[f]or the purpose of a preliminary injunction **to halt a threatened foreclosure on the property**...a prima facie showing of possible agency of Acro to the Crocketts need only be shown." (emphasis added). This determination is inapplicable here because GES seeks to enforce a noncompete covenant, not to halt a foreclosure. Nevada law and policy considerations for halting a threatened foreclosure pursuant to real property right are inapplicable to those for the enforcement of employment

noncompete agreements. *Compare Dixon v. Thatcher*, 742 P.2d 1029, 1030 (Nev. 1987) (determining that because "real property and its attributes are considered unique and loss of real property rights generally result in irreparable harm.") *with Ellis*, 95 Nev. at 459 ("[B]ecause the loss of a person's livelihood is a very serious matter, post employment anti-competitive covenants are scrutinized with greater care"). Thus, while this Court determined that a prima facie showing was sufficient to halt a foreclosure under the circumstances set forth in *Crockett*, it does not follow that GES is entitled to make only a prima facie showing that its nationwide restriction was reasonable to enforce its Noncompete Agreement against Shores.

Moreover, in *Crockett*, this Court still relied on substantial evidence establishing the fact at issue, including the undisputed evidence that the defendants executed a document appointing the third-party as their collection representatives and the recorded deed of trust designated return to defendants "c/o" the third-party. 533 P.2d at 472. Conversely, here, the district court relied only on facially deficient evidence that actually demonstrates that GES's nationwide restriction is not limited to the territory in which GES has established customer contacts and good will. As such, this case does not support GES's position.

Finally, even assuming GES could make only a prima facie showing, GES failed to even meet this low burden. GES's facially deficient evidence demonstrates that GES's nationwide restriction is nowhere close to limited to areas in which GES

provides its convention services and thus has established customer contacts and good will. App. Vol. II, at APP000082-161.

Accordingly, GES's contention that it should be permitted to provide only minimal evidence to establish that the expansive nationwide restriction in its Noncompete Agreement is reasonable is not supported by Nevada law or public policy and must be rejected by this Court.

b. GES failed to provide any evidence, let alone substantial evidence showing that the nationwide territorial restriction in GES's Noncompete Clause was reasonable under Nevada law.

The only evidence GES provided and that the district court relied on establishes that GES has no business or contacts in seventeen (17) states and substantially limited business and contacts in an additional sixteen (16) states. App., Vol. II at APP000082-161. Under *Camco*, GES thus unequivocally failed to demonstrate that the nationwide restriction in the Noncompete Clause was limited to areas in which GES has established customer contacts and good will. 936 P.2d at 834. Because the evidence presented by GES clearly did not establish that nationwide restriction is reasonable, the district court abused its discretion in finding that GES enjoyed a likelihood of success on the merits.

GES contends that *Camco* is inapplicable because in that case this Court determined that the subject noncompete clause was unreasonable on its face, and no facial challenge was raised on appeal here. GES ignores the fact that any procedural differences do not change this Court's express holding in *Camco* that to be reasonable,

a territorial restriction must be limited to the territory in which the employer has established customer contacts and good will. 936 P.2d at 834. Here, GES failed to provide any evidence, let alone substantial evidence demonstrating that its nationwide territorial restriction was reasonable under *Camco*. The only evidence GES provided shows that it does not have established customer contacts and good will throughout the United States to justify such an expansive restriction. App., Vol. II at APP000082-161; Vol. III at APP000218. Thus, GES failed to establish that it enjoyed a likelihood of success on the merits, and the district court erred in finding the same.

GES's reliance on Shores' signature on the Noncompete Agreement and his work for GES in five cities outside of Las Vegas have no bearing on whether GES's Noncompete Clause is reasonable. Shores' "acknowledgement" in the Noncompete Agreement that GES has "a national and international presence" is irrelevant to whether the geographic scope of GES's Noncompete Clause is reasonable under Nevada law. An employee's signature on an agreement containing an ***unenforceable*** restrictive covenant does not render it enforceable. If this were the case every noncompete agreement signed by an employee would be enforceable regardless of the unreasonableness its scope. Similarly, the fact that Shores performed work for GES in five cities outside of Las Vegas does not amount to an admission that he performed work for GES "throughout the country," and even if it did, it is also irrelevant to whether GES has established customer contacts and good will throughout the United States. App., Vol. II at APP000192, 195.

3. The district court further erred by granting the Preliminary Injunction because GES's Noncompete Agreement is broader than necessary to protect GES's legitimate business interests and places undue burden on Shores.

a. The Noncompete Agreement is broader than necessary to protect GES's legally protectable interests.

GES misconstrues Shores' position that the Noncompete Clause is unreasonable because, in addition to its unreasonable territorial scope, it is broader than necessary to protect GES's legitimate business interests. *See Golden Road*, 379 P.3d at 155. GES erroneously contends that this point relates only to the geographic scope. However, Shores has shown that Noncompete Clause is overbroad because GES cannot have an ***actual substantive*** business interest in preventing Shores from providing similar services for a company that does not provide conventions services in the same areas as GES, which relates to more than geographic scope. *See id.*

GES erroneously argues that if Shores is performing services for a company similar to the services he provided for GES, then that employer "competes" with GES and GES has a legally protectable interest in precluding Shores from providing services for that company. GES's position here grossly overstates the scope of its legally protectable interests. *See Weber v. Tillman*, 913 P.2d 84, 89 (Kan. 1997) ("[I]t is well settled that only a legitimate business interest may be protected by a noncompetition covenant. If the sole purpose is to avoid ordinary competition, it is unreasonable and unenforceable.").

The crutch of GES's position regarding its alleged harm is based on its alleged interests in maintaining its relationships with its customers. App., Vol. II at APP000197. GES cannot show that it has a legitimate business interest to protect by precluding Shores from providing similar services to companies that operate in markets and even entire states in which GES does not provide its convention services for customers. Therefore, its Noncompete Clause is overbroad because it precludes Shores from employment GES has no legitimate interest to protect under the law.

GES argues that the Noncompete Clause is narrowly tailored to protect GES's legitimate business interests because Shores could theoretically work for a competitor of GES in a position dissimilar to his position at GES. Even assuming this is true, which is doubtful under the broad language of GES's Noncompete Clause, this argument does nothing to change the fact that the scope of the Noncompete Clause is broader than necessary to protect GES's legitimate, i.e., legally protectable, business interests.

b. The Noncompete Agreement places undue burden on Shores.

GES contends that Shores cannot suffer undue burden because the Noncompete Clause contains a twelve-month time restriction. GES again misses the point. The **nationwide restriction** of the Noncompete Clause is what makes it unduly burdensome on Shores, not merely the fact that the Noncompete Clause contains restrictions. In derogation of Nevada Law, the nationwide scope of the

Noncompete Agreement seeks to preclude Shores from working in his profession anywhere in the United States throughout the duration of the Noncompete Agreement. App., Vol. I, at APP000037-38. GES's attempt to refute this undue burden by relying again on non-Nevada case law is unavailing. For example, GES relies on *Nationwide Mut. Ins. Co. v. Cornutt*, 907 F.2d 1085, 1090 (11th Cir. 1990), for the proposition that other courts routinely enforce non-compete provisions that prevent a former employer from taking the same position with a new employer. However, under Alabama law applicable to that case, an employer can only prevent a former employee from working in a similar position for another employer in the specified county, city, or part thereof where the employer was also carrying on a similar business. *Id.* at 1087. In *Retina Services, Ltd. v. Garoon*, 538 N.E.2d 651 (Ill. 1989), another case GES relies on, the former employer sought only to restrict the former employee from providing services at five specific hospitals, not throughout the United States. Conversely, here, GES seeks to preclude Shores from providing similar services to any employer throughout the entire United States, even if GES has does not provide its conventions services in that state. Thus, unlike these cases, the undue burden alleged here comes not from the fact that GES seeks to restrict Shores' ability to work in his chosen profession, but that GES seeks to do so ***throughout the entire United States***.

4. The district court erred in ordering the Preliminary Injunction because GES failed to provide evidence of irreparable harm.

To the extent this Court considers the issue of irreparable harm, GES failed to provide substantial evidence that it would suffer any irreparable harm for which compensatory damages would be inadequate. App. Vol. I, at APP000007-44; Vol. II at APP000071-161. Even now, GES relies entirely on conclusory statements and the crutch of presumed harm simply by virtue of the fact that Shores went to work in a similar position for Freeman. GES presented insubstantial evidence of actual irreparable harm caused by Shores leaving GES to work for a competitor in a different market. *See Excellence Cmty. Mgmt. v. Gilmore*, 951 P.3d 720, 723 (Nev. 2015).

The district court assumed that GES would suffer irreparable harm by Shores going to work for Freeman in a similar position, rather than requiring GES to meet its burden to show that it would suffer actual, tangible harm for which monetary damages would be insufficient. App., Vol. II, APP000196-97.

GES asserts in its Answering Brief that it will suffer harm if Shores is permitted to work in a similar position for Freeman in a different market. However, GES fails to cite to any evidence in the record to supports the majority of its propositions. GES contends that its interests are harmed because Shores is generating leads and sales in the same manner he did at GES, but has failed to explain how using the same general methods based on publicly available information harms GES's protectable interests. App., Vol. I, at APP000068. The district court concluded that GES suffers an unfair

disadvantage when Shores takes advantage of customer relationships developed during his employment with GES on behalf of Freeman," but GES provided no evidence that Shores could take advantage of Las Vegas customer relationships by working for Freemen in a different market. App., Vol. II, at APP000196. Therefore, GES failed to present substantial evidence that it would be irreparably harmed if GES could not enforce its Noncompete Agreement and the district court erred in so finding.

5. This Court must disregard GES's reliance on facts that have no bearing on the issues on appeal.

Throughout its Answering Brief, GES relies heavily on several facts that have no bearing on the issues on appeal. As set forth above, the fact that Shores signed the Noncompete Clause and performed limited work for GES in a handful of cities is not relevant to whether the Noncompete Clause is reasonable. Similarly, the scope of the Preliminary Injunction has no bearing on whether the district court erred in entering the Preliminary Injunction. Finally, while GES seeks to paint Shores in a negative light for leaving GES to work for Freeman, whether GES believes Shores' action were inappropriate has no bearing on whether GES's Noncompete Agreement is enforceable in the first place. *See Golden Road*, 376 P.3d at 153, 159-60 (former employee's act of stealing customer information for use at new job was irrelevant because the noncompete agreement was unenforceable). The Court must ignore GES's attempts to conflate the issues with these arguments.

CONCLUSION

For the foregoing reasons and for the reasons set forth in Appellant's Opening Brief, Appellant Shores respectfully requests that this Court reverse the district court's decision and order the district court to vacate the Preliminary Injunction.

DATED: August 3, 2017.

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NRAP 28.2 CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface in 14-point Garamond font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed the applicable word count. The actual word count in this brief is 5,060 words.

3. 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 NRAP 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.

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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.

DATED: August 3, 2017.

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CERTIFICATE OF SERVICE

Under NRAP 25(c)(1)(A), I certify that I am an employee of Kemp, Jones & Coulthard, LLP and that on this date I caused to be served, via U.S. Mail, a true copy of the Appellant's Reply Brief to a clerk or responsible person at the offices of the following people:

Honorable Mark R. Denton
Department 13
Courtroom 3D
Eighth Judicial District Court
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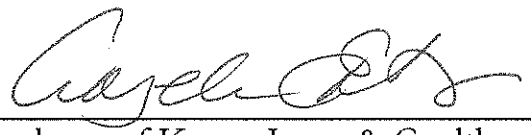

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