

IN THE SUPREME COURT OF THE STATE OF NEVADA

IRWIN GONOR, DECEASED; THE
ESTATE OF IRWIN GONOR; AND
ROBERT WOMBLE, SPECIAL
ADMINISTRATOR,

Appellants,

vs.

RICHARD J. DALE; KELLY
MAYER; RICK'S RESTORATIONS,
INC.; KIKI T'S LLC; MAKING
HISTORY LLC; AND BOOKIN' IT
LLC,

Respondents.

SUPREME COURT NO. 72949

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APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable William Kephart, District Judge
District Court Case No. A-11-653755-C

APPELLANT'S OPENING BRIEF

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*Irwin Gonor, deceased; The Estate of Irwin Gonor; and Robert Womble, Special
Administrator*

1
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4 ESTATE OF IRWIN GONOR; AND
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7 RICHARD J. DALE; KELLY
8 MAYER; RICK'S RESTORATIONS,
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HISTORY LLC; AND BOOKIN' IT
LLC,

10 Respondents.
11

SUPREME COURT NO. 72949

RULE 26.1 DISCLOSURE

12 The undersigned counsel of record certifies that the following includes all
13 necessary disclosures as required by NRAP 26.1(a):

- 14 1. Appellant IRWIN GONOR, DECEASED, an individual, is a proper
15 person.
16 2. Appellant THE ESTATE OF IRWIN GONOR, an estate, is a proper
17 person.
18 3. Appellant ROBERT WOMBLE, SPECIAL ADMINISTRATOR, an
19 individual, is a proper person.
20

1 2. Appellants IRWIN GONOR, DECEASED, THE ESTATE OF IRWIN
2 GONOR, and ROBERT WOMBLE, SPECIAL ADMINISTRATOR were
3 represented by Ryan Alexander of RYAN ALEXANDER, CHTD., at the trial court
4 level and are represented by the same counsel in this Appeal.

5
6 Dated January 17, 2018.

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1 **I. JURISDICTIONAL STATEMENT**

2 (A) Jurisdictional Statement: NRAP 3A(b)(1) - this appeal is in regards to an order
3 dismissing Plaintiff's case on a countermotion to Plaintiff's motion to substitute party
4 after the death of the Plaintiff. Also, NRAP 3A(b)(8) - after entry of the order
5 dismissing the case, an order was pending denying Plaintiff's estate's timely motion to
6 be substituted as plaintiff.

7 (B) Order entered on March 18, 2017 with Notice of Entry of Order served on
8 March 29, 2017; Notice of Appeal filed April 26, 2017.

9 (C) NRAP 3A(b)(8) - Order after final judgment after grant of “Summary
10 Judgment.”

11 **II. ROUTING STATEMENT**

12 Appellant believes that this matter should be routed to the Nevada Supreme
13 Court as a principal issue of first impression under Nevada common law under NRAP
14 17(a)(13), or as a principal issue of a question of statewide importance under NRAP
15 17(a)(14).

16 **III. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

17 1. Did the District Court Err by Granting the Motion to Dismiss and in Denying the
18 Motion to Amend the Complaint for Substitution, Under the Theory That the 90-Day
19 Period Prescribed by NRCP 25 Had Passed?

1 2. Did the District Court Incorrectly Impose an Affirmative Duty for
2 Plaintiffs/Appellants to File a Suggestion of Death After the Death of a Plaintiff, Under
3 the Theory That No Legal Precedent Has Provided an Affirmative Duty for Any Party
4 to File a Suggestion of Death?

5 3. Would Interpreting NRCP 25 as Implying a Time Period Required to File a
6 Suggestion of Death Prejudice Plaintiffs/Appellants, Under the Theory That There Is
7 No Legal Precedent Requiring Any Party to File a Suggestion of Death Immediately
8 Following a Party's Death?

9 **IV. STATEMENT OF THE CASE**

10 After five years of bitter, combative litigation for breach of contract and fraud
11 for unpaid commissions, the District Court ruled on January 10, 2017 that
12 Plaintiffs/Appellants failed to file a timely motion to substitute party under the
13 Nevada Rules of Civil Procedure ("NRCP") 25, after Plaintiff Irwin Gonor passed
14 away. This hearing was only 76 days after the filing of the suggestion of death. The
15 District Court judge ruled that Plaintiffs/Appellants waited too long after Plaintiff
16 Gonor's death to file the suggestion of death notice. The District Court judge further
17 stated that, because Plaintiffs/Appellants waited too long to notify the Defendants of
18 Plaintiff's death and to file the suggestion of death notice themselves,
19 Plaintiffs/Appellants missed the 90-day deadline outline by NRCP 25.

1 Plaintiffs filed a second timely motion on January 24, 2017, moving to
2 substitute Gonor's estate's special administrator for the deceased Plaintiff. At a
3 hearing on March 28, 2017, the District Court judge stated that he had already ruled
4 on the motion to substitute, that he considered the motion as a reconsideration, and
5 he concluded that Plaintiffs had failed to meet the requirements of NRCP 25 by
6 waiting from June 2016 to October 2016 to notify Defendants of Plaintiff's death.

7 This appeal is brought by Plaintiffs/Appellants, because the District Court
8 erred in ruling that Plaintiffs failed to file a motion to substitute within 90 days of
9 the suggestion of death notice being served. The District Court incorrectly
10 interpreted NRCP 25 by imputing a duty on Plaintiffs to notify Defendants of
11 Gonor's death at an earlier date. Nothing in NRCP 25 suggests that there is a period
12 of time within which Plaintiffs must notify Defendants of Plaintiff's death.

13 **V. STATEMENT OF THE FACTS**

14 On June 2, 2016, Irwin Gonor ("Gonor"), the plaintiff in the District Court
15 case, passed away. At that time, the Third Amended Complaint was the operative
16 complaint on file, it had not been answered by Defendants as an order was pending
17 allowing a Fourth Amended Complaint to be filed. JA01-014. On October 26, 2016,
18 the Defendants filed a suggestion of death notice and served it on Plaintiffs. JA015.
19 On November 19, 2016, Plaintiffs filed a motion to substitute Gonor's mother in his
20 place as his sole intestate heir. JA017-024. At a hearing on January 10, 2017, the

1 District Court judge found that Plaintiffs waited too long to notify Defendants that
2 Gonor had died, had not filed the motion to substitute within 90 days of Gonor's
3 death. JA049-059; JA083-086. At the hearing, Defendants argued that Plaintiffs did
4 not move to substitute a proper party, because NRS 41.100 requires an executor or
5 administrator to substitute the place of a deceased party. *Id.* The District Court
6 granted a countermotion to dismiss the case with prejudice. *Id.*

7 On January 24, 2017, Plaintiffs filed a second timely motion to substitute
8 Robert Womble, special administrator of Gonor's estate, in the place of Gonor.
9 JA062-067. On February 27, 2017, the probate court finalized Robert Womble as
10 the special administrator of Gonor's estate. JA077. The first order dismissing the
11 case was not docketed until March 18, 2017. JA083. At the second motion hearing
12 on March 28, 2017, the District Court judge stated that he had already ruled on the
13 matter and he affirmed his ruling that Plaintiffs had failed to meet the requirements
14 of NRCp 25 by waiting too long to notify Defendants that Gonor had died. JA03-
15 086. Thereafter, the notice of entry of order was served, and this appeal followed.
16 JA087; JA094.

17 **VI. SUMMARY OF THE ARGUMENT**

18 First, the District Court erred in ruling that Plaintiffs had missed the 90-day
19 deadline to file a motion for substitution after Gonor's death, because Plaintiffs filed
20 a motion for substitution on January 24, 2017, less than 90 days after the suggestion

1 of death had been filed. Under NRCP 25, a party has 90 days from the suggestion
2 of death to file a motion for substitution. The District Court erred in ruling that
3 Plaintiffs missed the 90-day deadline under a theory that Plaintiffs waited too long
4 after Gonor's death to file the suggestion of death. Neither NRCP 25 nor any of the
5 case law interpreting NRCP 25 hold that a party must file a suggestion of death
6 within a certain period of time.

7 Second, the District Court also erred when it imputed an affirmative duty for
8 Plaintiffs to file a suggestion of death within a certain period of time after Gonor's
9 death. The District Court ruled that Plaintiffs waited too long to file the suggestion
10 of death; however, there is no rule explicitly or implicitly imposing a duty upon a
11 party's successor/representative to file a suggestion of death within an arbitrary
12 amount of time after said party's death.

13 Third, interpreting NRCP 25 to include a timeline under which a party must
14 file a suggestion of death would prejudice Plaintiffs in this case. Courts must view
15 a statute narrowly when interpreting an ambiguous meaning. There is no ambiguity
16 in NRCP 25: it clearly states that a party has 90 days from the suggestion of death
17 being served to file a motion for substitution of a deceased party. There is no
18 mention of when a suggestion of death must be filed, and no case law has implied a
19 deadline under which a party must file a suggestion of death. Affirming the District
20 Court's decision would retroactively hold Plaintiffs to abide by a rule that was not

1 in existence at the time that they filed the motion for substitution, which would result
2 in unfair prejudice to Plaintiffs.

3 Therefore, because the District Court incorrectly interpreted NRCP 25 to
4 impute a deadline for when a party must file a suggestion of death, because the
5 District Court incorrectly imputed an affirmative duty to file a suggestion of death
6 within an arbitrary period of time, and because affirming the District Court's ruling
7 would unfairly prejudice Plaintiffs, this Court should reverse the ruling made by the
8 District Court when it granted Defendants' motion to dismiss and denied Plaintiffs'
9 motion for substitution.

10 11 **VII. ARGUMENT**

12 **A. Standard of Review on Appeal**

13 This Court has applied an abuse of discretion standard of review when
14 reviewing appeals concerning motions to dismiss and motions to amend a Complaint
15 under NRCP 25. *See Barto v. Weishaar*, 101 Nev. 27, 28-29, 692 P.2d 498, 498-91
16 (1985) (holding that the district court incorrectly granted respondent's motion to
17 dismiss under NRCP 25, because the suggestion of death was "neither filed by nor
18 identified a successor or representative of the deceased"). *See also Bennett v.*
19 *Topping*, 102 Nev. 151, 152 (1986) (reviewing whether the district court judge acted
20

1 properly under NRCP 25 and holding that the district court judge properly dismissed
2 appellant's claim under NRCP 25).

3 **B. The District Court Judge Erred in Granting the Motion to Dismiss and**
4 **in Denying the Motion to Amend, Because the 90-Day Period Under**
5 **NRCP 25 Had Not Passed.**

6 The Nevada Rules of Civil Procedure ("NRCP") allow a successor or
7 representative to be substituted in for a deceased litigant in order to ensure that the
8 causes of action survive an individual's death. *Lummis v. Eighth Judicial Dist. Court*
9 *ex rel. County of Clark*, 94 Nev. 114, 576 P.2d 272 (1978). This is codified in NRCP
10 25(a)(1):

11 "If a party dies and the claim is not thereby extinguished, the court may
12 order substitution of the proper parties. The motion for substitution
13 may be made by any party or by the successors or representatives of the
14 deceased party and, together with the notice of hearing, shall be served
15 on the parties as provided in Rule 5 and upon persons not parties in the
16 manner provided in Rule 4 for the service of a summons. Unless the
17 motion for substitution is made **not later than 90 days after the death**
18 **is suggested upon the record by service of statement of the fact of**
19 **the death** as provided herein for the service of the motion, the action
20 shall be dismissed as to the deceased party."

16 N.R.C.P. 25 (emphasis added). The 90-day period is not triggered until the
17 suggestion of death is filed. *Barto*, 101 Nev. 27 at 29.

18 The relation back effect of NRCP 15(c) applies to the addition or substitution
19 of parties pursuant to NRCP 25. *Costello v. Casler*, 127 Nev. 436, 254 P.3d 631,
20 127 Nev. Adv. Rev. 36 (2011). Moreover, "except as otherwise provided in this

1 section, no cause of action is lost by reason of the death of any person, but may be
2 maintained by or against the person's executor or administrator." Nev. Rev. Stat.
3 Ann. § 41.100(1).

4 After Gonor died intestate, never married and without children, his mother
5 and sole heir agreed to be substituted for him in the pending litigation. Defendants
6 filed a suggestion of death on October 26, 2016, and Plaintiffs filed a motion for
7 substitution on November 19, 2016. This motion was filed only three weeks after
8 the suggestion of death had been filed. The statute clearly states that the substitution
9 be made "not later than 90 days after the death is suggested upon the record." No
10 party has contested the legitimacy of the suggestion of death, and no party has
11 contested that Plaintiffs filed multiple motions to substitute a successor
12 representative for Gonor within 90 days of the suggestion of death being filed.

13 The defendants contested Gonor's mother as being a legitimate executor or
14 administrator under NRS 41.100(1). After the hearing on January 10, 2017,
15 Plaintiffs filed a subsequent motion on January 24, 2017, naming Robert Womble
16 as the special administrator of Gonor's estate. JA062. The 90-day deadline to file a
17 motion under NRCP 25 ended on January 27, 2017. Under NRCP 25, Plaintiffs met
18 the 90-day deadline requirement by filing not one, but two motions for substitution
19 after the suggestion of death had been filed. The second motion clearly met both the
20

1 requirements of NRCP 25 and NRS 41.100 by being timely and by naming a proper
2 administrator of Gonor's estate respectively.

3 Although the probate proceedings took until February 27, 2017 to establish
4 Robert Womble as the special administrator of Gonor's estate, the January 24, 2017
5 motion clearly named and identified Mr. Womble as the administrator being
6 substituted in Gonor's place. The rule does not indicate that the estate needs to be
7 complete, only that the motion need be filed – indeed, in cases of multiple heirs or
8 claimants the establishment of an estate in probate court could take far longer than
9 90 days. Notwithstanding Plaintiffs meeting the 90-day deadline, the District Court
10 judge granted Defendants' motion to dismiss on January 10, 2017, ruling that
11 Plaintiffs had not properly followed NRCP 25, even though the 90-day deadline had
12 not yet passed at that point.

13 Procedurally, Plaintiffs followed the necessary steps to meet the requirements
14 set forth by NRCP 25. Plaintiffs expediently filed their first motion for substitution
15 only three weeks after the suggestion of death had been filed, leaving enough time
16 for Plaintiffs to file a second motion naming a proper administrator under NRS
17 41.100. Because Plaintiffs promptly and timely filed the necessary motion for
18 substitution within 90 days of the suggestion of death being filed by Defendants,
19 Plaintiffs' motion was proper and should have been granted. Therefore, because
20 Plaintiffs' motion was proper and should have been granted, the District Court judge

1 erred in denying the motion and in prematurely granting Defendants’ motion to
2 dismiss the case.

3 **C. There is No Affirmative Duty to File a Suggestion of Death After the**
4 **Death of a Plaintiff.**

5 No case citing NRCP 25 creates an affirmative duty for any party to litigation
6 to file the suggestion of death described in NRCP 25(a)(1). *See, e.g., Brass v. State*,
7 306 P.3d 393, 129 Nev. Adv. Rep. 53 (2013); *Costello*, 127 Nev. 436; *Barto*, 101
8 Nev. 27; *Moseley v. Eighth Judicial Dist. Court of Nev.*, 124 Nev. 654, 188 P.3d
9 1136, 124 Nev. Adv. Rep. 61 (2008). All of the cases citing and annotating NRCP
10 25 interpret solely what happens after a suggestion of death is filed. *Id.* As
11 previously mentioned, the 90-day period is not triggered until a proper suggestion is
12 filed. *Barto*, 101 Nev. at 29.

13 This Court has held that, “[u]pon the death of a party . . . the [action] cannot
14 proceed until someone is substituted for the decedent.” *Brass*, 306 P.3d at 394
15 (2013) (citing *Walker v. Burkham*, 68 Nev. 250, 253-54, 229 P.2d 158, 160 (1951)).
16 However, this Court concluded in *Brass v. State* that “a motion . . . must be filed
17 within a reasonable time **after the decedent’s death has been suggested on the**
18 **record**. *Id.* (comparing NRCP 25 to NRAP 43 while concluding that the motion
19 must be filed after the suggestion of death, not the actual date of death of a party to
20 a lawsuit or a criminal action) (emphasis added).

1 At the District Court hearings, the defense attempted to create an affirmative
2 duty to file a suggestion of death within a certain period of time out of the plain-
3 wording of NRCP 25. However, this Court has clearly held that the motion for
4 substitution must be filed within 90 days after the suggestion of death. In *Brass*, this
5 court addressed the issue of whether a case can continue once a party to the litigation
6 has passed away. Furthermore, this Court held that a case cannot continue until a
7 proper party is substituted, mentioning only the suggestion of death, not the actual
8 date of death. Just as in *Brass*, where the case could not continue without a proper
9 substitution, this case could not continue without Gonor's successor representative
10 being substituted. Also as in *Brass*, where this Court held that the motion needed to
11 be filed within 90 days of the suggestion of death being filed, this Court should hold
12 that Plaintiffs had 90 days from the date of Gonor's suggestion of death being filed
13 to file the motion.

14 The case law on NRCP 25 clearly uses the suggestion of death as the basis for
15 the 90-day deadline. This Court has had the opportunity to interpret NRCP 25 to
16 include the actual date of death in the timeline; however, the legislature and this
17 Court intentionally omit the actual date of death from the 90-day period. By creating
18 an affirmative duty to file a suggestion of death, the defense went beyond the
19 requirements of NRCP 25 and grasped at straws in an attempt to get the case
20

1 dismissed. Just because the defense states there is a duty to file a suggestion of death
2 does not mean that there is an actual duty.

3 Because Nevada courts have clearly used the suggestion of death as the
4 triggering point for the 90-day period to file a motion for substitution under NRCP
5 25, and because Nevada courts have intentionally omitted the actual date of death in
6 interpreting the 90-day period, there is no affirmative duty to file a suggestion of
7 death within a certain period of time. Therefore, when Plaintiffs filed the motion for
8 substitution on January 24, 2017, naming Robert Womble as the special
9 administrator for Gonor's estate, Plaintiffs properly followed the requirements of
10 NRCP 25 within the requisite period of time.

11 **D. Interpreting NRCP 25 as Implying a Time Period Required to File a**
12 **Suggestion of Death Would Prejudice Plaintiffs.**

13 As previously stated, all of the cases citing and annotating NRCP 25 interpret
14 solely what happens after a suggestion of death is filed. *See, e.g., Brass*, 306 P.3d
15 393; *Costello*, 127 Nev. 436; *Barto*, 101 Nev. 27; *Moseley*, 124 Nev. 654.

16 This Court has recognized that “[a] fundamental rule of statutory
17 interpretation is that the unreasonableness of the result produced by one among
18 alternative possible interpretations of a statute is reason for rejecting that
19 interpretation in favor of another that would produce a reasonable result.” *Int’l*
20 *Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 202, 179 P.3d 556,

1 562 (2008) (citing *Sheriff v. Smith*, 91 Nev. 729, 733, 542 P.2d 440, 443 (1975)). “It
2 is well established that when ‘the language of a statute is plain and unambiguous,
3 and its meaning clear and unmistakable, there is no room for construction, and the
4 courts are not permitted to search for its meaning beyond the statute itself.’ *Nelson*
5 *v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007) (citing *State, Div. of Insurance*
6 *v. State Farm*, 116 Nev. 290, 293, 995 P.2d 482, 484 (2000)) (quoting *State v.*
7 *Jepsen*, 46 Nev. 193, 196, 209 P. 501, 502 (1922)). An ambiguous statute, however,
8 which ‘is capable of being understood in two or more senses by reasonably informed
9 persons,’ or one that otherwise does not speak to the issue before the court, may be
10 examined through legislative histories, reason, and consideration of public policy to
11 determine the Legislature’s intent.” *Id.* (citing *McKay v. Bd. of Supervisors*, 102
12 Nev. 644, 649, 730 P.2d 438, 442 (1986)).

13 Even if this Court finds that the issue of how long a plaintiff has to file a
14 suggestion of death falls under the statutory interpretation of NCRP 25, this Court
15 should still hold that NRCF 25 has clearly stated that a plaintiff has 90 days from the
16 date the suggestion of death was filed to file a motion for substitution. Moreover,
17 this Court should find that, in order to avoid unfairly prejudicing the plaintiffs,
18 NRCF 25 does *not* impose a deadline to file a suggestion of death. As previously
19 stated, if there is an unreasonable result in the interpretation of a statute, then that
20 interpretation must not be adopted by this Court. Retroactively requiring Plaintiffs

1 to file the suggestion of death within a certain period of time would unfairly
2 prejudice Plaintiffs, because they abided by NRCP 25 in promptly filing two motions
3 to substitute a representative for Gonor after his suggestion of death had been filed.
4 Moreover, retroactively requiring Plaintiffs to have filed the suggestion of death
5 within a certain period of time would burden Plaintiffs with a rule that they were not
6 aware of when the case was heard in District Court.

7 Even if this Court finds that NRCP 25's language is ambiguous as to the issue
8 of filing a suggestion of death after a plaintiff's death, this Court would follow
9 legislative history to determine whether an interpretation is proper. This Court has
10 had multiple opportunities to impose a requirement that either party file a suggestion
11 of death notice within a reasonable period of time after a party's death; however, this
12 Court has clearly established that the 90-day period applies *only* to the date the
13 suggestion of death has been filed. Nothing in the legislative history has interpreted
14 NRCP 25 to impose a time limit for a party in litigation to file a suggestion of death.

15 In *Barto*, this Court interpreted NRCP 25 to require a defendant to properly
16 identify a successor representative in a suggestion of death in order to trigger the 90-
17 day deadline for plaintiff to file a motion for substitution. 101 Nev. 27. This Court
18 held that a plaintiff would be unfairly burdened if he or she were allowed only 90
19 days to ascertain the location and identity of the deceased defendant's successor
20 representative. *Id.* This Court also "concluded that no injustice would befall a

1 defendant as a result of this [new] requirement” that the suggestion of death identify
2 a successor representative in order to trigger the 90-day period. *Id.* at 29.

3 Unlike in *Barto*, where the plaintiff would have been at an unfair disadvantage
4 in having to search for and find the proper representative of defendant’s estate, the
5 defendants in this case have been put at no disadvantage in waiting from June 2,
6 2016 until October 26, 2016 to file a suggestion of death. Litigation did not
7 commence again until the December 6, 2016 hearing. Defendants provided no
8 claims or evidence that they were put at a disadvantage of any sort by filing the
9 suggestion of death in October 2016, rather than June 2016. To the contrary, this
10 attempt at imposing an affirmative duty on Plaintiffs to file a suggestion of death has
11 put Plaintiffs at a disadvantage. After following the procedure required by NRC
12 25, Plaintiffs’ case was dismissed, even prior to the 90-day deadline closing.

13 Unlike in *Barto*, where this Court held that “no injustice would befall a
14 defendant as a result of this [new] requirement,” severe injustice would befall
15 Plaintiffs if this Court affirms the District Court ruling. Imposing a requirement that
16 Plaintiffs should have filed a suggestion of death earlier would create an arbitrary
17 rule that is based on no legal precedent. Moreover, this requirement would impose
18 a requirement on Plaintiffs for which they would have had no foresight to expect
19 after Gonor’s death.

1 Therefore, considering that this Court must take a very narrow approach when
2 interpreting any statute, considering that NRCP has consistently been interpreted to
3 impute a 90-day requirement only after the suggestion of death has been filed, and
4 considering that interpreting NRCP 25 to include a requirement that Plaintiffs should
5 have filed a suggestion of death sometime after June 2, 2016, but before October 26,
6 2016, would create an unfair prejudice against Plaintiffs, this Court should follow
7 legal precedent and conclude that NRCP 25 leaves no room to include an affirmative
8 duty to file a suggestion of death within a certain period of time following a party's
9 actual death.

10 **VIII. CONCLUSION**

11 The Order Denying Motion to Amend Complaint to Substitute Shirley Ann
12 Hoffner as Plaintiff or in the Alternative to Extend time to Substitute the Estate of
13 Irwin Gonor as Plaintiff and Order Granting Defendant's Countermotion to
14 Dismiss Case with Prejudice must be reversed and this matter remanded to the
15 District Court for further proceedings.

16 Dated January 17, 2018.

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1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting requirements
3 of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because:

5 [X] This brief has been prepared in a proportionally spaced typeface using
6 Microsoft Word in 14 point Times New Roman;

7 2. I further certify that this brief complies with the page- or type-volume
8 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted
9 by NRAP 32(a)(7)(C), it is either:

10 [X] Proportionately spaced, has a typeface of 14 points or more, and contains
11 **3,865** words;

12 [] Does not exceed _____ pages.

13 3. Finally, I hereby certify that I have read this appellate brief, and to the
14 best of my knowledge, information, and belief, it is not frivolous or interposed for
15 any improper purpose. I further certify that this brief complies with all applicable
16 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which
17 requires every assertion in the brief regarding matters in the record to be
18 supported by a reference to the page and volume number, if any, of the transcript
19 or appendix where the matter relied on is to be found. I understand that I may be
20 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 January 17, 2018.

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