No. 73039

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, TRUSTEES OF THE LYTLE TRUST,
Appellants,

vs.

MARJORIE B. BOULDEN, TRUSTEES OF THE MARJORIE B. BOULDEN TRUST; LINDA LAMOTHE AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST,
Respondents.

On Appeal from an Order of the Eighth Judicial District Court, Clark County, Nevada; The Honorable Timothy C. Williams, District Court Judge; District Court Case No. A-16-747800-C

AMICUS BRIEF SUPPORTING RESPONDENTS AND AFFIRMANCE of Amici Curiae September Trust, dated March 23, 1972; Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust; Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992; and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants

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NRAP 26.1 DISCLOSURE

In accordance with NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as 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 disqualifications or recusal.

Amicus Curiae September Trust dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants, are individuals and trusts that are not affiliated with any corporation.

The only law firm that has appeared or is expected to appear for Amici Curiae in this case is Christensen James & Martin, 7440 W. Sahara Ave., Las Vegas, Nevada 89117.

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I. STATEMENT OF INTEREST

This Amicus Brief ("Brief") is filed with the written consent of all parties pursuant to NRAP 29(a). *See* emails granting consent from Richard Haskins, Esq., Daniel T. Foley, Esq. and Christina H. Wang, Esq., Amicus Curiae Index ("ACI") ACI 1 – ACI 4.

Amici Curiae are the September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife as Joint Tenants (hereafter "Gegen") (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be collectively referred to as "Amici Curiae"). Amici Curiae each own a lot located in the Rosemere Estates subdivision ("Subdivision"), title to which has been clouded by Appellants when they recorded abstracts of judgments ("Recorded Liens") obtained against Rosemere Estates Property Owners' Association (the "Association") against the Amici Curiae's property.

Amici Curiae filed suit against the Appellants in the Eighth Judicial District Court, Clark County, Nevada Case No. A-17-765372-C, Dept. No. XXVIII ("Amici Curiae District Court Case"), in order to have the wrongfully Recorded

Liens removed. The Amici Curiae District Court Case was consolidated on February 21, 2018 with the pending case filed by the Respondents from which this Appeal has been brought because the two cases present similar issues of law and fact. The facts and circumstances regarding Respondents' case and Amici Curiae case are exactly the same and the Appellants are the same. The only difference is that the Amici Curiae are four (4) different homeowners asserting the exact same request for relief that the Respondents were granted, and which is the subject of this Appeal. Therefore, Amici Curiae are in a substantially similar position as Respondents and will most likely be directly affected by the outcome of this Appeal.

The Amici Curiae have filed a Motion for Summary Judgment requesting the same relief as the Respondents and Appellants have filed a Countermotion for Summary Judgment. Both the Motion for Summary Judgment and the Countermotion are scheduled to be heard by the District Court on March 21, 2018. To the extent that the Amici Curiae are granted the same relief as the Respondents, the Amici Curiae join and adopt Respondents' Answering Briefs as their own.

II. SUMMARY OF ARGUMENT

The District Court's granting of a permanent injunction to Respondents should be upheld, because, as the District Court correctly decided, NRS 116.3117 does not apply to limited purpose associations as this Association has been

declared to be, that any debts of the Association are not an obligation or debt of the Rosemere property owners and that the Abstracts of Judgment were improperly recorded against such properties. The Attorney's Fees Judgment upon which the Appellants rely should be carefully scrutinized by this Court because it was written by the Appellants, unopposed by the Association and the language of such has been mischaracterized by the Appellants. The Original CC&Rs do not contain any language that allows liens against the Association to be recorded against the Subdivision property owners nor do the provisions of Chapter 116 that apply to limited purpose associations include NRS 116.3117. The Appellants should be judicially stopped from bringing this appeal as they took the opposite position in the Underlying Litigation when they had the Association declared a limited purpose association and the Amended CC&Rs declared *void ab initio*.

III. ARGUMENT

A. The Appellants' Attorney's Fees Judgment Against the Association is Akin to a Default Judgment and Should be Weighted Lightly in Any Deliberations by This Court.

Appellants rely heavily on the language in the Order Granting Attorneys' Fees ("Underlying Judgment") entered in the Underlying Litigation, arguing that this Court should consider the case *Mackintosh v. California Fed. Sav. & Loan Ass'n*, 113 Nev. 393, 405–06, 935 P.2d 1154, 1162 (1997) and the Amended CC&Rs, even though the district court had declared such *void ab initio*, in

considering whether NRS 116.3117 can be used by Appellants to attach the Underlying Judgment to the properties in the Subdivision. *See* Appellant's Opening Brief ("App. Br.") at 9-10, 18-19. However, what the Appellants conveniently leave out is that the Underlying Judgment was prepared and filed by the Appellants' attorneys and was granted after the Association's counsel withdrew and so was uncontested. *See* AA, Vol. 2, Part I, at 000186 par. 1. Further, the hearing held to obtain the Underlying Judgment was not contested or attended by any representative of the Association. *Id*. Thus, the Underlying Judgment can only be considered a "default judgment" against the Association, which the Appellants are now trying to enforce against parties not named in the lawsuit.

The Nevada Courts have been clear that justice is best served when cases are decided upon their merits and not through default judgments. *Hotel Last Frontier Corp. v. Frontier Props., Inc*., 79 Nev. 150, 155, 380 P.2d 293 (1963). A strong policy exists in favor of resolution of disputes on their merits. *Yochum v. Davis*, 98 Nev. 484, 487, 653 P.2d 1215 (1982). "Default judgments are only available as a matter of public policy when an essentially unresponsive party halts the adversarial process." *Lindblom v. Prime Hospitality Corp*., 120 Nev. 372, 376, 90 P.3d 1283 (2004). Default judgments are usually set aside "because the court favors resolving disputes on their merits." *Jiminez v. State, Dept of Prisons*, 98 Nev. 204, 644 P.2d 1023 (1982). "The district court has wide discretion in

determining whether to set aside a default judgment." *Reynolds v. Spinelli*, 281 P.3d 1213, 2009 WL 3189344 * 1 (2009). Further, the defaulting actions of one defendant cannot be imputed to another who behaves properly. *Gearhart v. Pierce Enters., Inc*., 105 Nev. 517, 520, 779 P.2d 93, 95 (1989) (*citing Doyle v. Jorgensen*, 82 Nev. 196, 203 n. 11, 414 P.2d 707, 711 n. 11 (1966)).

The Amici Curiae are not the Association and so cannot request that the monetary Judgments obtained by the Appellants against the Association be set aside. However, what the Amici Curiae are asking this Court to do is to look at the nature of the Underlying Judgment that the Appellants are trying to now impose against the individual homeowners. As the Appellants have heavily relied on the language in the Underlying Judgment they obtained against the Association, it would be appropriate for this Court to consider that such language was written by the Appellants, was unopposed by the Association, has not been tried on its merits and has been recorded against parties not part of such litigation. Thus, it would be appropriate for this Court to use its wide discretion in determining what kind of weight it should use in considering the language of the Underlying Judgment.

In any event, the defaulting actions of the Association cannot be imputed to the property owners. *Gearhart v. Pierce Enters., Inc*., 105 Nev. 517, 520, 779 P.2d 93, 95 (1989) (refusing to impose liability for one defendant's default against

another party). It would be improper to hold anything in the Underlying Judgment against the property owners.

B. The Actual Language of the Underlying Judgment Has Been Mischaracterized by Appellants.

Appellants mischaracterize the actual language of the Underlying Judgment claiming that it states that Appellants could recover attorneys fees under the Amended CC&R's "because that document, while declared *void ab initio* by the district court, was in effect and enforced by the Association against the Appellants at all times during the underlying litigation." *See* App. Br. at 19. There is no such language in the Underlying Judgment nor is such language implied. *See* AA, Vol. 2, Part 1, at 000186-000189. The Underlying Judgment cites to specific provisions of the CC&R's, Amended CC&R's and quotes *Mackintosh*, but never comes to the conclusion that attorneys fees were granted to Appellants because the Amended CC&R's "were in effect and enforced by the Association during the Underlying Litigation."

It is important to note that since Appellants wrote the Underlying Judgment and there was no opposition by the Association (*see* discussion *infra* Part III.A.), Appellants could have put such language in the Underlying Judgment but did not do so. Therefore, coming after the fact and declaring that the Underlying

Judgment says something different than it actually says is self serving and inconsistent with the actual findings of the Court.

C. The Original CC&R's Do Not Allow the Rosemere Properties to be Subject to Liens Against the Association.

The first paragraph of the Original CC&Rs states in pertinent part that "it is the desire and intention of Subdivider to sell . . . land . . . and to impose on it mutual, beneficial covenants, conditions and restrictions . . . for the benefit of all the land . . . and the future owners of the lots . . ." *See* AA, Vol. 2, Part 1, at 000159. Appellants state as a fact that the Association includes every lot in the subdivision based on this language. *See* App. Br. at 3. It appears that Appellants include this conclusion in their Statement of Facts to argue later that somehow the Association actually has ownership of the Subdivision properties. *See* App. Br. at 27-29. However, the CC&Rs are restrictions that attach to the land and do not grant ownership to the Developer or to the Association. The CC&Rs are limited to minimal specific responsibilities. *See generally* AA, Vol. 2, Part 1, at 000159-000162. To conclude from this language in the introductory paragraph that the Association has an actual ownership interest in the Subdivision properties is a factual and legal impossibility. Such language only shows that the CC&Rs are for the benefit of the Subdivision properties. The simplicity and purpose of the

language is obvious. The Association does not hold title to the properties in the Subdivision.

For instance, in *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 125 Nev. 449, 451, 215 P.3d 697, 699 (2009), the Court determined that a homeowner's association had standing to assert a representational construction defect claim for individual unit members because the common interest community included the individual units. However, the Court did not say that these individual units were the property of the association – only that the association had standing to sue on the unit owners' behalf for a claim that was common to all units. These are two very different concepts. Further, in *High Noon at Arlington Ranch Homeowners Association v. Eighth Judicial District Court in and for County of Clark*, 402 P.3d 639 (2017), the Court concluded that "homeowners' associations do have representational standing to represent unit owners who purchase their units after the litigation commences . . . [but] does not have standing . . . to bring, or continue to pursue, claims for unit owners who sell their units after the litigation commences." Thus, the association only has standing based on who owns the units-the association has no ownership interest in any of the units and any standing privileges end when those units are sold. Amici Curiae have been unable to find any cases where the Court determined that CC&Rs granted any ownership interest in individual units to the association and Appellants have not cited to any.

The pertinent part of paragraph 4 of the Original CC&Rs states, "A breach or violation of these CC&R's . . .or any liens established hereunder shall not defeat or render invalid or modify in any the lien of any mortgage or deed of trust . . .as to said lots or Property or any part thereof . . ." *See* AA, Vol. 2, Part 1, at 000159. Appellants argue that based on the language in the first paragraph of the CC&Rs and this paragraph 4 that somehow judgment against the Association is enforceable against all property owners. *See* App. Br. at 27-29. However, this language is simply and only to allow buyers of property to obtain loans to finance the purchases of their homes. In other words, the words "or any liens established hereunder" is only referring to liens authorized by the unit owner and does not give the Appellants the right to attach their Judgments to any of the Subdivision properties. Even if this far-fetched argument were true, it is defeated by the specific words of Paragraph 24 that provides the only remedy allowed by the CC&Rs:

> Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any such lot owner or owners against any other owner or owners.

See AA, Vol. 2, Part 1, at 000162. This provision provides the mechanism by which a lawsuit may be brought with regard to the Original CC&Rs. The

Subdivision property owners were never named parties to any litigation between the Association and the Appellants. Therefore, the Appellants deliberately chose to not bring such a lawsuit, despite the clear availability of such a claim under NRS 116.4117. If the Court does interpret the CC&Rs as a contract, the words that the Appellants have chosen to take out of context to imply a lien right against the individual homeowners simply cannot possibly create such rights.

D. The Provisions of Chapter 116 That Apply to Limited Purpose Associations are Expressly Limited to Only Those Enumerated in NRS 116.1201. These Limited Provisions Do Not Include NRS 116.3117 or NRS 116.3115.

The Appellants argue that NRS 116.3117 applies to limited purpose associations. They do not cite to any authority to support this reading of the statute, and the Amici Curiae have been unable to locate any cases that have interpreted the statutes this way. This reading is also not supported by the plain meaning of the statutes.

Statutory language must be given its plain meaning if it is clear and unambiguous. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007). The provisions of NRS 116 that apply to a limited purpose association are limited to those that are expressly enumerated in NRS 116.1201. On its face, NRS 116.3117 is not included, which should be enough to end the discussion.

However, it seems the Appellants understand that dilemma so instead they rely on a string of statutory references to come to the conclusion that NRS 116.3117 applies to limited purpose associations. However, this string is illogical, not supported by case law, and the statutes in the chain are aimed at specific tort and contract liabilities with regard to condominium type units, not the kind of claim at issue here.

The statutory string the Appellants follow in order to reach NRS 116.3117 is 116.1201 → 116.4117 → 116.3111 → 116.3117. NRS 116.1201 was amended in 2005 (Senate Bill 325) to add that a limited purpose association is subject to 116.4101 to 116.412 (including 116.4117). NRS 116.4117 was added to Chapter 116 in 1997 by Senate Bill 314. It contained a reference to NRS 116.3111 at the time of the 2005 amendment to NRS 116.1201. However, NRS 116.3111 did not contain a reference to NRS 116.3117 at the time of the 2005 amendment. In fact, the last sentence buried at the end of NRS 116.3111, which completes the string and is essential to the Appellants argument (stating that "liens resulting from judgments against the association are governed by NRS 116.3117"), was not added until 2011 (Senate Bill 204). This suggests that the Legislature did not intend to create the string or make the connection that the Appellants are now suggesting can be used to record an association judgment against an individual unit owner.

This is further emphasized when the substance of the statutes in the string is analyzed. NRS. 116.4117 states that claims for failure to comply with NRS 116 or governing documents can be brought against the association (NRS 116.4117(2)(b)(1)) or another unit's owner (NRS 116.4117 (2)(b)(3)). But, NRS 116.3111 states that an action alleging a wrong done by the association may be maintained only against the association and not against any unit's owner. These two (2) statutes are directly contradictory, which suggests that they must apply to different situations, and that they cannot be used together to create the Appellants' statutory daisy chain or a right to record the Appellants' judgment against the unit owners.

Further, NRS 116.3111 is titled "tort and contract liability", which must be different than liability under NRS 116.4117, because NRS 116.4117 addresses failure to follow 116 or the governing documents. NRS 116.3111 is the statute that states that judgments are governed by NRS 116.3117. So, it appears that NRS 116.3117 only applies for the specific kind of association liability addressed in NRS 116.3111, and not the liability addressed in NRS 116.4117. To reiterate, NRS 116.4117 allows for claims against unit owners, while NRS 116.3111 does not. It makes sense then that NRS 116.3111 would provide a mechanism for recording an association liability judgment against the unit owner, because the creditor had no other remedy against the unit owner. On the other hand, NRS

116.4117 provides a remedy and therefore does not need a mechanism for unit assessment - the creditor can proceed directly against the unit owner and record if a judgment is obtained. For whatever reason, the Appellants chose not pursue this remedy, even though it was readily available to them.

While there are no cases under these sections of NRS, in states that have similar statutes with regard to "tort and contract liability," the types of cases that have been brought pursuant to such similar statutes have to do with traditional tort or contract liability of an association, and not failure to follow the common-interest community act. For instance, Hawaii has a similar statute, HRS § 514B-141, with regard to "tort and contract liability." A case brought under this statute was filed against an association for the drowning of a child in a swimming pool at the condominium. *Estate of Rogers v. AOAO Maluna Kai Estates*, 2008 WL 11344919 (D. Hawaii 2008). Similarly, under a Washington's similar RCW 64.34.344, the association sued the developer for failure to repair the common elements. *Water's Edge Homeowners Ass'n v. Water's Edge Assocs.*, 152 Wash.App. 572, 216 P.3d 1110 (Wash Ct. App. 2009). These are the kinds of cases contemplated by this type of statute. Thus, the plain language of the statute did not and does not contemplate the filing of liens obtained by individuals against the Association for declaratory judgments regarding the CC&Rs. The Court should reject the Appellants' strained and remote reading of NRS 116.

In *James F. O'Toole Co., Inc. v. L.A. Kingsbury Court Owners' Ass'n*, 126 Cal.App.4th 459 (2005), the California Appeals Court allowed a special assessment to be imposed on unit owners to pay a judgment against the association. Such a right is also contained in NRS 116.3115. However, that is not the process that happened here. The Appellants have attempted to shortcut and directly lien the properties - which skips the step of the association's board imposing a special assessment on the unit owners pursuant to the association's governing documents. Further, NRS 116.3115 is not available to the Appellants as a remedy because the Association is only a limited purpose association and NRS 116.3115 is not one of the expressly enumerated exceptions under NRS 116.1201. Therefore, any attempts by Appellants to argue that the Association has the power to make special assessments should be disregarded by this Court.

E. Judicial Estoppel Bars the Appellants' Arguments Regarding the Amended CC&Rs and Limited Purpose Associations.

Judicial estoppel bars Appellants' argument that it was proper to record the Abstracts of Judgment against the properties in the Subdivision under the Amended CC&Rs and that all of NRS 116 should be applicable. Under the doctrine of judicial estoppel, "[i]f a party has taken a position before a court of law, whether in a pleading, in a deposition, or in testimony, judicial estoppel may be invoked to bar that party, in a later proceeding, from contradicting his earlier

position." Rand G. Boyers, *Comment, Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel*, 80 NW. U.L.Rev. 1244, 1244–45 (1986). "The independent doctrine of judicial estoppel precludes a litigant from playing fast and loose with a court of justice by changing his position according to the vicissitudes of self-interest…." *Porter Novelli, Inc. v. Bender*, 817 A.2d 185, 188 (D.C. 2003).

In Nevada, judicial estoppel applies when "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." *Marcuse v. Del Webb Communities, Inc*., 123 Nev. 278, 288, 163 P.3d 462 (2007). The Appellants attempt to use the Amended CC&Rs against the Respondents in this case is subject to the doctrine of judicial estoppel because this position is inconsistent with the position the Appellants took in the Underlying Litigation and such position is not the result of fraud, ignorance or mistake.

F. The Appellants Had the CC&Rs Declared *Void Ab Initio* in the Underlying Litigation so Most Remedies are Unavailable to Them.

"Because a rescinded contract is *void ab initio*, following a lawful rescission the 'injured' party is precluded from recovering damages for breach just as though the contract had never been entered into by the parties." *Bergstrom v. Estate of*

DeVoe, 109 Nev. 575, 578, 854 P.2d 860, 862 (1993) (quotations omitted). Here, the Appellants are trying to enforce the Amended CC&Rs against the individual homeowners even though they were declared *void ab initio*. Such a remedy is simply not available to them and they are precluded from doing so.

Appellants rely upon *Mackintosh* for the proposition that the Amended CC&Rs should be considered by this Court in making its decision regarding the applicability of NRS 116 to the Association. *See* App. Br. at 19-22. However, in *Katz v. Ban Der Noord*, 546 So.2d 1047 (Fla. 1989), upon which *Mackintosh* relies and which Appellants quote, the Court makes clear that the holding is about a contract that is rescinded, not a contract that is *void ab initio*, as follows:

> The legal fictions which accompany a judgment of rescission do not change the fact that a contract did exist. It would be unjust to preclude the prevailing party to the dispute over the contract which led to its rescission from recovering the very attorney's fees which were contemplated by that contract. **This analysis does no violence to our recent opinion in *Gibson v. Courtois* in which we held that the prevailing party is not entitled to collect attorney's fees under a provision in the document which would have formed the contract where the court finds that the contract never existed.**

Id. at 1049 (emphasis added). By leaving the last sentence of this quote out of their Brief, the Appellants use the holding to bolster their argument that the Amended CC&Rs should now be enforced against the Subdivision homeowners. However, this last sentence of the quote makes clear that *Mackintosh* does not apply since the Appellants had the Amended CC&R's declared *void ab initio*, and

not just rescinded, in the Underlying Litigation. Although some courts seem to declare that rescission and *void ab initio* are the same concept, in *Katz* the Court implies that these doctrines are different. Further, the Appellants prepared the Underlying Judgment upon which they are relying and the Association had withdrawn representation at that point. Therefore, any language in the Underlying Judgment should be construed narrowly and suspiciously as explained in Section III.B., *supra*.

IV. CONCLUSION

Based upon the foregoing, the Amici Curiae respectfully request that this Court affirm the decision of the district court in its entirety.

DATED this 16th day of March, 2018.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Amicus 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:

   ☒ The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010, Times New Romans, size 14-point font; or

   ☐ The brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

2. I further certify that this Amicus 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 either:

   ☐ Does not exceed 15 pages; or

   ☒ Proportionately spaced, has a typeface of 14 points or more and contains 4,026 words; or

   ☐ Monospaced, has 10.5 or fewer characters per inch, and contains ___ words or ___ lines of text.

3. I hereby certify that I have read this Amicus 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 of 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 requirements of the Nevada Rules of Appellate Procedure.

DATED this 16th day of March, 2018.

By: */s/ Wesley J. Smith*
Wesley J. Smith, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this date, the 16th day of March 2018, I submitted the foregoing **AMICUS BRIEF (Docket 73039)** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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