IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,

Appellant.

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

Supreme Court No. 73525

District Court No. A750151
District Court Dept. No. XVI

APPELLANT'S REPLY BRIEF

Appeal from Eighth Judicial District Court, Clark County, Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions

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REPLY POINTS AND AUTHORITIES

An appellant's reply brief is properly limited to addressing new matters set forth in the respondent's brief. NRAP 28(c).

1. Federal case law has extended employee protections from supervisors to non-employees.

In response to CCSD's opening brief, LVRJ concedes, ". . .CCSD is responsible for preventing harassment of employees by supervisors, Kevin Child is not an employee and does not supervise employees." Ans. Brief at 19. LVRJ fails to acknowledge the protections employees are provided under Title VII from discriminatory conduct of supervisors has been extended to the discriminatory conduct of non-employees. See *Folkerson v. Circus Circus Enterprises, Inc.*, 107 F.3d 754, 756 (9th Cir. 1997); *Trent v. Valley Electric Ass'n, Inc.*, 41 F.3d 524, 526 (9th Cir. 1994) (when outside trainer harasses employees, company may be liable under Title VII); *Powell v. Las Vegas Hilton Corp.*, 841 F. Supp. 1024, 1028 (D. Nev. 1992) (where employer mishandled employees' repeated complaints about harassment from casino customers, employer either ratified or was complicitous in harassment); 29 C.F.R. § 1604.11(e) (employers may be liable for sexual harassment by nonemployees "in the workplace, where the employer . . . knows or should have known of the conduct, and fails to take immediate and

appropriate corrective action."). As such, the two (2) cases cited by LVRJ are irrelevant because those cases involved harassment by co-workers as where the present case involves a non-employee. See Ans. Brief at 33. Given the case law extending vicarious liability of employers to include the actions of non-employees, the guidelines from EEOC 915.002 equally apply to an employer's vicarious liability for the actions of a non-employee such as Kevin Child. The preceding is additionally significant because LVRJ also concedes that EEOC Notice 915.002 does state, "information about the allegation of harassment should be shared only with those who need to know about it" and "[r]ecords relating to harassment complaints should be confidential on the same basis." Ans. Brief at 32 citing EEOC 915.002. As such, it would be a miscarriage of justice to protect CCSD employees from allegedly discriminatory conduct of a supervisor but then ignore those same protections when the discrimination is being wrought by a non-employee.[1]

2. There is no evidence to support LVRJ's claim that the investigation is closed; to the contrary, LVRJ's own reporting demonstrates the investigation continues.

[1] LVRJ's quote at the top of its answering brief at p. 34 and citation to Appellant's Appendix II 240 regarding fact Trustee Child cannot order human resources to fire a specific individual omits the leading and following language of CCSD counsel's response. It would be disingenuous and conveniently naïve to believe a school board member may not assert authority that would affect employees even if they cannot hire and fire employees directly.

LVRJ also concedes, "Thus, while it is true that during investigations information is not to be disseminated, here the investigation is complete." Ans. Brief at 34. CCSD agrees that at the minimum information should not be disseminated while an investigation is ongoing; CCSD vehemently disagrees that the investigation is complete. LVRJ does not cite to the record to support its assertion that CCSD's investigation is closed. CCSD's duty to protect employees from the alleged discrimination by Trustee Child will not end until either each of the employees has left CCSD's employ or Child is no longer a trustee. As evidence of the ongoing nature of CCSD's efforts to protect its employees and curtail the allegedly discriminatory actions of Trustee Child, it is clear CCSD has taken additional actions against Trustee Child in order to protect CCSD staff and students when it trespassed Child on October 24, 2017 as reported by LVRJ. Appellant's App. II 372-382. Additionally, and most troubling, despite LVRJ's contention that there is no ongoing investigation, LVRJ reported that there was an investigation on November 2, 2017, when it quoted the Superintendent. Appellant's App. II 380-381. It is beyond refute that the investigation of Trustee Child is ongoing.

3. LVRJ concedes the limited redactions ordered by the district court were insufficient.

If this Court were to determine any of the withheld documents are not confidential, LVRJ has conceded that the redactions ordered by the district court are overbroad and redactions of the names and identifying information is appropriate in this case. The Order appealed allows for limited redacting to include the names direct victims of sexual harassment or alleged sexual harassment, students and support staff, only. Appellant's App. II 308 at ¶88 & Appellant's App. I 7-8 at ¶¶34-35. Victims and witnesses of all other forms of discrimination are not provided any protections whatsoever if they serve as a school dean, principal, assistant principal, program coordinator or teacher. *Id*. No other identifying information other than names is allowed to be redacted. *Id.*

LVRJ in its answering brief has conceded that far more redacting is appropriate in order to protect employees:

> In the instant case, redaction of information that might identify those who have cognizable privacy interests is an option for CCSD. Mere redaction of that identifying information, rather than complete non-production of documents would be sufficient to eliminate the risk of harassment, retaliation, stigma or embarrassment caused by the revelation of such information.

And

> In the instant case, CCSD can properly comply with the spirit of *Cameranesi* by simply redacting the names and identifying information contained within the responsive documents instead of refusing to produce those responsive documents.[2]
> Ans. Brief at 35.

Based on LVRJ's clear concession, at the minimum this Court should reverse the lower court and order redactions to include all names and identifying information regardless of the person's job title so as to enforce the employees' privacy interests and eliminate risks of harassment, retaliation, stigma and embarrassment.

4. Whether CCSD regulations trump the NPRA is irrelevant because NRS 239.010(1) specifically allows confidentiality pursuant to its "and unless otherwise declared by law to be confidential" language .

CCSD does not contend its regulations trump the NPRA but rather they are consistent with the clear and unambiguous language under NRS

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[2] CCSD argued for non-disclosure under *Cameranesi* at the district court in its answering brief. Appellant's App. I 91. In the lower court, LVRJ opposed any application of *Cameranesi* as its position was in concert with the district court's positon that only direct victims of sexual harassment or alleged sexual harassment, students and support staff, may have their names redacted. RA I 61at lines 16-23 & RA I 65 at lines 6-10 & Appellant's App. at II 220 lines 5-10 and 245 at lines 8-15. A position LVRJ has now abandoned.

239.010(1) that states public records are confidential when so declared by law. As such, LVRJ's preemption arguments fail because LVRJ's assertion that CCSD has created regulations to skirt or circumvent the NPRA ignores the fact the NPRA specifically allows for confidentiality when "otherwise declared by law." It is not a matter of preemption but rather a matter of enforcing each part of the NPRA rather than wielding the "must be construed liberally" language from NRS 239.001(2) as a hammer to declare every document in CCSD's possession must be produced under these circumstances regardless of the regulations in place and without consideration of the entirety of Chapter 239 of the NRS. If the preceding was the legislature's intention, the legislature would have stated as such in the NPRA and not included the "unless otherwise declared by law to be confidential" language. The district court's and LVRJ's over reliance on "liberally construed" attempts to eliminate the "unless otherwise declared by law to be confidential" language from the NPRA.

Additionally, LVRJ attempts to confuse policies with regulations. CCSD has both policies and regulations. CCSD has not asserted that any "policy" is a law. CCSD has put forth that its duly and formally enacted regulations have legal effect as allowed for by NRS 239.010(1). Op. Br. at 21-24. LVRJ's citation to *Reno Newspaper, Inc. v. Gibbons*, 127 Nev. 873,

875 (2011) citing *State v. City of Clearwater*, 863 So.2d 149, 154 (Fla. 2006) is of no avail to this point. Those cases involved emails only and attempts to base non-disclosure on informal email policies. *Gibbons* at 876, FN 1; *City of Clearwater* at 154.

In the instant case, no emails are at issue and more importantly neither is any informal policy. LVRJ's attempt to re-categorize CCSD regulations as informal policies is disingenuous and patently untrue. Ans. Brief at 39. Instead CCSD's formally enacted regulations[3] created pursuant to the granting of authority of the State Legislature to the seven (7) publically elected members of the Clark County School Board are before this Court. NRS 386.350.

Finally, this Court's case law has previously established that in Nevada regulations authorized by the State Legislature have the "effect of law" in Nevada. *Snow v. Nevada Dep't of Prisons*, 543 F. Supp. 752, 756 (1982) citing *Turk v. Nevada State Prison*, 94 Nev. 101, 575 P.2d 599, 601 (1978); NRS 284.155(1); see also *Munoz v. State Dept. of Highways*, 92 Nev. 441, 552 P.2d 42, 43 (1976); *Edwards v. State Dept. of Human Resources*, 96 Nev. 689, 615 P.2d 951, 953-4 (1980). Furthermore, if CCSD regulations had no lawful effect, this Court would not have ruled on CCSD

[3] Interestingly, LVRJ does not question the legal effect of administrative code (regulations) created by non-elected bodies. See Ans. Brief at 42-43.

regulations in cases such as *CCSD et al v. Beebe*, 91 Nev. 165, 533 P.2d 161 (1975) and *Bartlett et al. v. Board of Trustees of the White Pine County School District*, 92 Nev. 347, 349, 550 P.2d 416 (1976).

It is clear regulations created under the authority of the Nevada Legislature have the legal effect of law. It is equally clear that by its language itself, NRS 239.010(1) requires that when a public record is "otherwise declared by law to be confidential" that record is confidential. Finally, it is also clear CCSD's regulations fall within the preceding statutory framework. As such, CCSD's regulations are not inconsistent with the NPRA.

5. The "significant other needs" and "comply with law" exceptions to CCSD Regulation 4110(X) should not be interpreted in a way to render the regulation without effect .

The LVRJ's and district court's interpretation of "significant other needs" and "comply with law" creates an untenable situation where employees would be discouraged from reporting discrimination while exposing the same employees to the stigma, embarrassment and retaliation recognized by the EEOC and the federal courts. *See* U.S., Equal Employment Opportunity Commission, EEOC Notice No. 915.002, *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors*, at § V(D)(1) re Failure to Complain (dated

6/18/99, in effect until rescinded or superseded) (The EEOC has stated employees who are subjected to harassment frequently do not complain to management due to fear of retaliation); *Cameranesi v. United States Dep't of Defense*, 839 F.3d 751 (9th Cir. 2016) (disclosure could cause harassment, stigma, or violence which is exactly the type of risk that courts have recognized as nontrivial**);** *Prudential Locations LLC v. United States Dep't of Housing and Urban De*v., 739 F.3d 424, 429-34 (9th Cir. 2013) (The court found the authors faced a significant risk of harassment, retaliation, stigma, or embarrassment if their identities were revealed).

Regulation 4110(X) states:

> All information gathered by the District in the course of its investigation of an alleged unlawful discriminatory practice will remain confidential except to the extent necessary to **conduct an investigation, resolve the complaint, serve other significant needs, or comply with law**.

CCSD Reg. 4110 (emphasis added).

LVRJ argues the district court's ruling that disclosure of the withheld documents, serves the "significant need of providing the public information about the alleged misconduct of an elected official and CCSD's handling of the related investigation" thereby warranting disclosure. Ans. Brief at 39 citing to Appellant's App. II 304 ¶73. To rule the "serve other significant needs" exception to non-disclosure under Regulation 4110(X) requires

production to a NPRA request ignores the "unless otherwise declared by law to be confidential" portion of NRS 239.010(1) and renders the entire regulation ineffectual. Additionally, it strips the legislature of its power to authorize the enactment of lawfully recognized regulations to the school board.

Beyond the "significant other needs" exception to confidentiality, the other three (3) exceptions are clear as the exceptions allow for dissemination of otherwise confidential information in only limited circumstances. These circumstances include allowing an investigation to be conducted, resolve a complaint and when disclosure is necessary to "comply with law" or in other words be consistent or adhere to State and federal law. There is no inconsistency with the NPRA because the NPRA clearly states that public records are confidential when declared as such by law. NRS 239.010(1). It would be an unreasonable interpretation of "significant other needs" or "comply with law" to require production of information gathered during the course of an investigation of alleged unlawful discriminatory practice pursuant to a public records request as doing so would eviscerate the lawful regulation in its entirety.

6. CCSD employees' reports of alleged discriminatory conduct is a personnel matter properly kept confidential under CCSD Regulations 1212 and 4311.

CCSD regulations 1212 and 4311 are laws with legal effect for the same reasons previously expressed in regard to the enforceability of CCSD regulation 4110(X). Obviously, being discriminated or witnessing discrimination is not part of one's job duties at CCSD. As such, any issue regarding discrimination is by nature a personnel matter. CCSD regulations 1212 and 4311 provide confidentiality to personnel information. RA IV 651, 658. CCSD has referenced NAC 284.718(5) as illustrative purposes of the protections afforded to State employees. Nonetheless, LVRJ misconstrues NAC 284.718(5) when they argue the code is only applicable to keep records confidential if the records, "are provided to an appointing authority." Ans. Brief at 43. The preceding is a misinterpretation of the code. NAC 284.718 states in pertinent part:

> 1. The following types of information, which are maintained by the Division of Human Resource Management or the personnel office of an agency, are confidential:
> . . .
> 5. Any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to sexual harassment or discrimination, or both, **and** any findings of such an investigation that are provided to an appointing authority are confidential. (emphasis added).

LVRJ ignores or misses the word "and" in its interpretation. It is not that the records related to the investigation are confidential only if they are provided to an appointing authority but rather that the investigation documents and any findings of such an investigation that are provided to an appointing authority are both confidential. NAC 284.718(5).

CCSD has never argued the NAC is applicable on its face to this case, but sound public policy would be supported by providing CCSD's approximately 40,000 employees the same confidentiality as afforded State employees and the same is achieved by giving CCSD regulations 1212 and 4311 the legal effect they are entitled to. See *Snow at* 756 (1982) citing *Turk at*, 601 (1978); see also *Munoz at* 43 (1976); see also *Edwards at* 953-4. It would be incongruent public policy to deny CCSD employees' confidentiality under this case's set of facts when State employees confidentiality would be protected.

7. The withheld documents are subject to the deliberative process privilege as CCSD has cited evidence that demonstrates the withheld documents were predecisional and deliberatively created for the sole purpose of determining a course of action to deal with the trustee's alleged misconduct.

LVRJ argues CCSD has failed to demonstrate by a particularized showing that the withheld documents were used to help determine the

actions to be taken in regard to the allegations against Trustee Child. Ans. Brief at 45. The preceding is untrue.

The affidavit of Cedric Cole, Director of Office of Diversity and Affirmative Action dated April 12, 2017, the memorandum by Cedric Cole dated October 19, 2016 and published by LVRJ on or about December 23, 2016, and the withheld documents clearly evidences at least three points that support the withheld documents fall under the deliberative process privilege: 1) Mr. Cole's investigation was done at the bequest of the Superintendent for the purpose of providing opinions and recommendations in order to develop a course of action in regard to allegations of discriminatory conduct by Trustee Child; 2) The information gathered during Mr. Cole's investigation formed the basis of his recommendations to the Superintendent; and 3) Mr. Cole's recommendations were heavily relied upon in preparation and distribution of guidelines directed to Trustee Child to curb his alleged misconduct. Appellant's App. I 61-64, 114-115, Appellant's App. II 330-335, 372-376 & 380-382; see also withheld documents upon request. Contrary to LVRJ's assertion, the evidence cited directly above, which was also cited in CCSD's opening brief, is a particularized showing. No part of the investigation or its resulting memorandums and recommendations were done for any other reason but to aid the Superintendent in determining a

course of action to deal with the trustee and to protect CCSD employees and students.

8. The balancing test is only necessary if no statute or law declares the withheld documents are confidential.

LVRJ's citation to the holding in *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (Nev. 2011) (emphasis added), is incomplete in regards to the balancing test when it states that the governmental entity must: 1) "establish by a preponderance of the evidence the records are confidential; and 2) prove that its interest in [non]disclosure clearly outweighs the public's interest in access." Ans. Brief at 50 citing *Gibbons* at 628 (citation omitted)[4]. The preceding implies that a public record declared confidential by statute or "unless otherwise declared by law to be confidential" under NRS 239.010(1), the balancing test would also need be applied. LVRJ's implication is false.

Gibbons also holds, "[U]nder the NPRA, 'all public records generated by government entities are public information and are subject to public inspection **unless otherwise declared to be confidential'**". *Gibbons* at 627 citing *Reno Newspapers, Inc. v. Haley*, 234 P.3d 922, 924, 2010 Nev. LEXIS 25, 126 Nev. Adv. Rep. 23 (emphasis added).

[4] LVRJ incorrectly quotes *Gibbons* at 628 where LVRJ states "disclosure" rather than "non-disclosure."

Neither NRS Chapter 239 nor *Gibbons* require that when a statute or law renders a public record confidential that a balancing test then also needs to be applied. Rather a balancing test need **only apply** when there is **no** statute or law that provides a given public record is confidential.

> "[I]n the **absence** of a statutory provision that explicitly declares a record to be confidential, any limitations on disclosure must be based upon a broad balancing of the interests involved, [citations omitted] and the state entity bears the burden to prove that its interest in nondisclosure clearly outweighs the public's interest in access."

Gibbons at 628 (emphasis added) (citing *DR Partners v. Board of County Comm'rs*, 116 Nev. 616, 622 (2000); *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635 (1990); and *Reno Newspapers v. Haley*, 234 P.3d 922, 927 (2010)).

Therefore, a balancing test would only be necessary in this case if the statutory provision under NRS 239.010(1) stating records are confidential when they are "otherwise declared by law to be confidential" were determined inapplicable.[5]

Donrey, DR Partners, Haley, and *Gibbons* did not involve an ordinance, code, or regulation such as the case at bar. *Donrey*, decided in 1990, was decided pursuant to the 1965 version of NRS 239.010(1). In that

[5] The balancing test may also be applicable under the deliberative process privilege.

case, the government entity attempted to assert that an investigative report was confidential pursuant to NRS Chapter 179A. *Donrey*, 105 Nev. at 632-634. Only after the *Donrey* Court had found NRS Chapter 179A did not render the investigative criminal report confidential did it apply common-law principles calling for a balancing test. *Id*. at 635, 635 n.2.

In the case at bar, CCSD's lawfully enacted regulations clearly make the investigative report and any documents associated with it confidential. If the Court finds otherwise, it should then (and only then) look to a balancing test.

9. The foreign jurisdiction cases cited by LVRJ are distinguishable from the case at bar and neither warrant disclosure of the withheld documents.

The cases out of California and Utah are distinguishable from the facts at bar and render these foreign cases unpersuasive. *Marken v. Santa Monica-Malibu Unified School District*, 202 Cal. App. 4th 1250, 1261-1262 (2012); *Deseret News Publ. Co. v. Salt Lake County*, 182 P.3d 372 (Utah 2008).

In *Marken*, teacher Ari Marken was investigated by the school district for allegedly sexually harassing a student and received a reprimand. *Marken* at 1254. After his reprimand, Mr. Marken returned to teaching. *Id*. Two (2) years later, when no active investigation was ongoing, a parent sought the

records via a public records request. *Id. at* 1255. Mr. Marken upon being advised by the school district that it intended to release the investigative report[6] and letter of reprimand, only, filed a verified complaint to block dissemination. *Id*. at 1255.

Petitioner's reliance on *Marken* is misplaced. *Marken* is distinguishable for several reasons. Foremost, *Marken* involved the alleged harassment by a school employee against a student. As such, unlike CCSD who cannot discipline Trustee Child as an employee, the school district in *Marken* was able to suspend Mr. Marken and discipline him. The school district could move him to another school away from the alleged victim or even place him in a job that did not work directly with kids. CCSD has limited means by which to protect its employees from a non-employee such as Trustee Child. Additionally, the investigation was not ongoing in *Marken* as where in the present case the investigation will remain open and CCSD's duties to continue to protect its employees and students remain. Appellant's App. II 372-382. Furthermore, in *Marken* the only records ordered released was an investigation report that contained a summary of the evidence gathered as where in the instant case the district court has ordered everything

[6] The investigative report contained a summary of the evidence gathered but because the parents of the alleged victim declined to have their daughter interview the investigation was not considered completed.

be disclosed including notes, rough drafts, employee names and limited redactions. Additionally, *Marken* was unique because it was Mr. Marken himself who attempted to block disclosure as the school district was willing to provide the report and letter of reprimand. *Id*. at 1255. In *Marken* the school district could choose to disclose the records because California's public records law is different from Nevada's in that California law provides the government the right to disclose documents that would otherwise fall under an exemption from disclosure. California Government Code § 6254 provides twenty-nine (29) categories of exemptions from disclosure, the exemptions are **permissive, not mandatory**. *Id.* at 1262 (emphasis added) (citations omitted). Indeed, the penultimate sentence of section 6254 provides, "Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law." *Id*. at 1262. NRS Chapter 239 does not provide for permissive disclosure of confidential information. If a record is confidential under the provisions of NRS Chapter 239, it remains confidential.

Petitioner has also cited *Deseret News Publ. Co. v. Salt Lake County*, 182 P.3d 372 (Utah 2008) to argue that a "sexual harassment investigation report should be produced because the report 'provides a window . . . into

the conduct of public officials'". Ans. Brief at 25. This case is also distinguishable from the case at bar. In *Deseret News* the alleged discriminator retired before the investigative report was completed or requested under a public records statute. *Deseret News* at 375. Thus, unlike CCSD who has an ongoing duty to protect its employees from the trustee who remains in office, the county's duty in *Deseret News* had ceased. Additionally, in *Deseret News* a summary of its investigation was publically available as required by law once the investigation was complete, and the summary was provided to the accuser and widely reported on by the media. *Id*. at 375. It was not until after the summary was released that the public records request was issued. *Id*. at 375. As such the investigation was not ongoing at the time of the request or during litigation; unlike the present matter. Additionally, the alleged victim publically disclosed her identity in promoting the alleged misbehavior of her supervisor thereby waiving any privacy interest. *Id*. at 381. In this case no alleged victims or witnesses have waived any privacy interests or otherwise disclosed their identities. Also in *Deseret News*, thirteen (13) of the sixteen (16) names in the report are identified using aliases as where in the present case the district court has gone so far as to order release of the "key" to the aliases used in Mr. Cole's investigatory notes. *Id*. at 381; Appellant's App. II 184 & Withheld

Documents at 178 available for in camera review upon request. Finally, *Deseret News* also states that under some circumstances, most investigative reports concerning allegations of sexual harassment could qualify for nonpublic status including by example a report of an ongoing investigation could reasonably be expected to interfere with investigations. *Deseret News* at 377-378 (citations omitted). "More plausible still is the possibility that a sexual harassment investigative report contains information that 'constitute[s] clearly warranted invasion of personal privacy, or [allow] disclosure [that] is not in the public interest.'" *Id*. at 378 (citations omitted).

Aside from being non-binding decisions from outside jurisdictions, the cases cited by LVRJ are clearly distinguishable from the facts of the present matter. Neither *Marken* nor *Deseret News* support disclosure under the current facts in Nevada.

II.

CONCLUSION

CCSD respectfully, asks this Court to reverse the District Court Order and remand the matter for further proceedings directing the district court to issue an order denying LVRJ's Amended Writ of Mandate as to the

Withheld Records amid a determination the withheld documents are confidential.

Respectfully submitted, this 23rd day of February, 2018.

/s/Adam Honey

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COMBINED NRAP 28.2 AND NRAP 32 CERTIFICATE OF ATTORNEY AND 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:

    [X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 pt. font; or

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 briefs exempted by NRAP 32(a)(7)(c), it is either:

    [X] Proportionately spaced, has a typeface of 14 points or more, and contains 4,825 words; or

    [ ] Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text, or

    [ ] The text of this brief does not exceed fifteen (15) pages.

3. Finally, I hereby certify that I have read this Appellant's Reply 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. 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.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

Respectfully submitted, this 23rd day of February, 2018.

/s/Adam Honey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **APPELLANT'S REPLY BRIEF** was filed electronically with the Nevada Supreme Court on the 23rd day of February, 2018. I further certify that on the same date, I served a copy of this document upon Respondent's counsel by depositing a true and correct copy hereof in the United States mail at Las Vegas, Nevada, postage fully prepaid, addressed as follows:

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