**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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| SHARATH CHANDRA, ADMINISTRATOR, NEVADA REAL ESTATE DIVISION,<br><br>Appellant,<br><br>vs.<br><br>MELANI SCHULTE; AND WILLIAM SCHULTE,<br><br>Respondents. | Case No. 75477<br><br>District Court No. D-12-458809-D |

# APPELLANT'S REPLY BRIEF

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Appellant Sharath Chandra, Administrator, Nevada Real Estate Division (the "Division"), by and through its counsel, Aaron D. Ford, Attorney General, David J. Pope, Chief Deputy Attorney General, and Donald J. Bordelove, Deputy Attorney General, hereby submits its Reply Brief.

## ARGUMENT

### I. The Amended Decree of Divorce is Void as a Matter of Law, and the Court Should Address this Important Jurisdictional Issue

Ms. Schulte[1] argues that Appellant has no standing to attack the Decree of Divorce based on this Court's November 30, 2018 Order resulting from its Order to Show Cause. Answering Brief, at 16.

However, this Court specifically held, Appellant "lacks standing to **appeal from these orders** … and we dismiss this appeal from the May 18. 2017, order and the judgments against William Schulte." Order, at 2 (**emphasis** added). However, Appellant is neither appealing those

[1] As there are two Respondents in this case, and only Ms. Schulte has appeared in any of the proceedings, Appellant refers to Ms. Schulte specifically, as opposed to Respondent, for the sake of clarity.

judgments, nor is Appellant appealing the Amended Decree. Appellant is attacking the Amended Decree of Divorce, and the second final judgments related thereto, on jurisdictional grounds including challenging the Family Court's jurisdiction to enter said judgments in the first place – standing is irrelevant.

It is black letter law that jurisdictional challenges cannot be waived and can be raised at any time by any party. *Barber v. State*, 131 Nev. Adv. Op. 103, 363 P.3d 459, 462 (2015) ("[W]hether a court lacks subject matter jurisdiction 'can be raised by the parties at any time, or sua sponte by a court of review, and cannot be conferred by the parties."); *Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011), *citing Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990); *Mainor v. Nault*, 120 Nev. 750, 761 n.9, 101 P.3d 308, 315 n.9 (2004) ("Lack of subject matter jurisdiction can be raised at any time during the proceedings and is not waivable."); *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 275, 44 P.3d 506, 515 (2002) ("[p]arties may not confer jurisdiction upon the court by their consent when jurisdiction does not otherwise exist.").

It is also well established that a judgment is void if a court lacks jurisdiction to enter the judgment. *Landreth*, 127 Nev. at 179, 251 P.3d

at 166, *citing State Indus. Ins. System v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984); *Smith v. Emery*, 109 Nev. 737, 741, 856 P.2d 1386, 1389 (1993) (holding that "the district court's actions taken after that date [it lacked jurisdiction] are hereby reversed as void for lack of jurisdiction.").

*a. The Amended Decree of Divorce was an order modifying the original decree*

As indicated in the Opening Brief, the original Decree of Divorce was entered on July 8, 2013. JA, at 25. The Amended Decree of Divorce was entered on April 3, 2017 – **3 years, 8 months, and 26 days later**. *See* JA, at 43. As Appellant also noted, "The Nevada Supreme Court has long distinguished between an order modifying a judgment or decree and an order construing or clarifying a judgment or decree." *Mizrachi v. Mizrachi*, 132 Nev. Adv. Op. 66, 385 P.3d 982, 986 (Nev. App. 2016).

Ms. Schulte concludes (without support to the record) that the Amended Decree was a clarification, as opposed to an order modifying. *See* Answering Brief, at 18-19. However, as Appellant noted (Opening Brief, at 29-30, n. 5), it cannot be reasonably argued that the Amended Decree of Divorce was "an order construing or clarifying a judgment or

decree" as opposed to "an order modifying a judgment or decree". *Mizrachi*, 385 P.3d at 986. Ms. Schulte provides no support whatsoever for her assertion that the Amended Decree of Divorce qualified as a simple clarification.

Instead, the Court in *Mizrachi* cited to a 1947 Nevada Supreme Court decision explaining "that the district court's order defining the effect of a divorce decree but not changing that decree construed, rather than modified, the decree"; *citing Murphy v. Murphy*, 64 Nev. 440, 445, 183 P.2d 632, 634 (1947); *also citing Kishner v. Kishner*, 93 Nev. 220, 225–26, 562 P.2d 493, 496 (1977) (noting that "the district court only 'has inherent power to construe its judgments and decrees for the purpose of removing any ambiguity.'"). The Court went on to note that "a modification 'alters the parties' substantive rights, while a **clarification involves the district court defining the rights that have already been awarded to the parties' and leaves their substantive rights unchanged**." *Mizrachi*, 385 P.3d at 987 (**emphasis** added); *citing Vaile v. Porsboll*, 128 Nev. 27, 33, 268 P.3d 1272, 1276 (2012).

It is more than evident that the Family Court did not simply clarify the order but, instead, changed the decree and altered the parties'

substantive rights. *See, e.g.*, Amended Decree of Divorce, JA, at 30 (adding that "Defendant should be held solely and personally liable for any and all debts or liabilities if arising from his fraud, misrepresentation and deceit as a broker of Sabreco" and "[i]f Sabreco ... is found liable ... Melani will not be responsible for, or be held personally liable for those debts"); JA, at 34 (adding that "Melanie shall also be awarded any unclaimed funds from the Nevada State Treasury in the name of 'Melani and William R. Schulte,' 'Sabreco,' 'William R. Schulte,' 'Bill Schulte' and/or 'W R Schulte' for any and all of the Schulte properties and/or accounts including any unknown future claims...."; JA, at 44-81 (**awarding new individual judgments of specific amount allocations, on behalf of new parties, and attorney's fees**). *See also, e.g.*, *Vaile v. Porsboll*, 128 Nev. 27, 32, 268 P.3d 1272, 1275 (2012) (concluding a modification "[b]y setting Vaile's monthly support payment at a the fix amount … substantively altered the parties' rights, such that district court modified, rather than clarified …."), *citing Collins v. Billow*, 277 Ga. 604, 592 S.E.2d 843, 844-45 (2004) (establishing a sum payment constituted a modification); *but cf. Mizrachi v. Mizrachi*, 132 Nev. Adv. Op. 66, 385 P.3d 982, 987 (Nev. App. 2016) ("Here, the divorce decree

assigned Eli the substantive right to exercise parenting time on the Jewish holidays, and the district court did not purport to alter that right in any way. Instead, the court merely sought to define which days were included within the meaning of the provision. Thus, we conclude that the court was only clarifying the term, which it had authority to do, so long as the term was ambiguous.")

*b. The Motion to Amend was untimely*

Ms. Schulte also summarily concludes the motion to amend was timely. *See* Answering Brief, at 17-18 (stating: "To the extent Melani was unaware of the amounts of liability she and the LLC suffered due to the fraud of William, which were not discovered until after the 2013 Decree of Divorce, the court retained jurisdiction to adjudicate those assets and liability."). Yet, this is not the standard as even admitted on page 17 of her Answering Brief.

Assuming, *arguendo*, the Amended Decree is seen as a clarification (which it should not be), the motion to amend the decree was **still** untimely made. NRS 125.150(3) (**emphasis** added) (requiring that "[a] motion pursuant to this subsection must be filed **within 3 years** after

the discovery by the aggrieved party **of the facts constituting the fraud or mistake**.").

The Motion to Amend was made on February 13, 2017 (JA, at 277), 3 years 7 months and 9 days after the July 8, 2013 Decree of Divorce was entered (see JA, at 14). All of the facts *constituting the fraud or mistake* were well known at this point, it is irrelevant if Ms. Schulte was allegedly "unaware of the amounts of liability she and the LLC entities suffered due to the fraud of William,..." Answering Brief, at 17. *See, e.g.,* Decree of Divorce, at JA 15-16 ¶¶ 14-17 (specifically noting the facts constituting the fraud or mistake); Complaint of Nevada Real Estate Division, at JA 6-9 (listing facts, June 11, 2013); Findings of Fact, Conclusions of Law and Decree of Divorce, at JA 14-25 (July 8, 2013); Findings of Fact, Conclusions of Law, and Order of the Nevada Real Estate Commission, at JA 26-27 (October 11, 2013 – 3 years, 4 months, and 2 days before the Motion to Amend was made); Amended Decree of Divorce Nunc Pro Tunc, at JA 28 (noting that the trial was conducted on May 28, 2013).

Furthermore, the Motion to Amend itself also illustrates its untimely nature. JA, at 286 (citing NRCP 60 as the basis for the motion). NRCP 60 specifically provides that "[t]he motion shall be made within a

**reasonable time**, **and for reasons (1), (2) and (3) not more than 6 months after the proceeding was taken** ...." *Id* (**emphasis** added); *see also* NRCP 52(b) (motion to amend or additional findings must be made no later than 28 days after service of notice of entry of judgment).[2] As shown, the Motion to Amend the Decree of Divorce was made well outside the 6 month deadline.

*c. The Amended Decree and final judgments are void second final judgments*

Finally, the rules did not permit the Family Court to enter the Amended Decree or multiple second final judgments. As noted in the Motion to Amend, NRCP 60(b) provided: "On motion … the court **may**

[2] As noted in the Motion to Amend, subsections 1 through 3 are "for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have discovered in time to move for a new trial under Rule 59(b); [and] (3) fraud (whether heretofore denominate intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;…)." JA 268. **These are precisely the reasons argued as the basis for the Motion originally, and, as indicated above, exactly the reasons Ms. Schulte argues the Motion was necessary**. While *neither* the Motion to Amend (*nor* Ms. Schulte) argue that the Motion was made pursuant to subsections 4 or 5, the above quoted language requires those subsections be made *within a reasonable amount of time*, not almost 4 years later.

**relieve a party** or party's legal representative **from a final judgment** …." JA, at 286 (**emphasis added**). Preliminarily, while Ms. Schulte cites to NRS 125.150(3) as the alleged basis of the Motion to Amend (Answering Brief, at 17), the Motion itself is based off of NRS 125.040 and NRCP 60. JA, at 285-86.

Either way, the original judgment (*i.e.* Decree of Divorce) was final because it resolved all of the issues pending in that action. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) ("[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court…"). And "once a final judgment is entered, the district court lacks jurisdiction to reopen it, absent a proper and timely motion under the Nevada Rules of Civil Procedure." *SFPP, L.P. v. Second Judicial Dist. Court*, 123 Nev. 608, 612, 173 P.3d 715, 717 (2007); *see, e.g.*, *Greene v. Eighth Judicial Dist. Court*, 115 Nev. 391, 396, 990 P.2d 184, 187 (1999) (concluding that a court "lacks jurisdiction to allow amendment of a complaint, once final judgment is entered, unless that judgment is first set aside or vacated pursuant to the Nevada Rules of Civil Procedure"). As the motion was not timely and properly made, the Family Court lacked jurisdiction to

reopen the case. The amended judgment and related second final judgments entered are therefore void. *See also Sleeper*, 100 Nev. at 269, 679 P.2d at 1274 ("There can be no dispute that lack of subject matter jurisdiction renders a judgment void.").

It is well established that there can only be one final judgment in any action. *Alper v. Posin*, 77 Nev. 328, 331, 363 P.2d 502, 503 (1961), *overruled on other grounds in Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417) (there can only be one final judgment in a case); *see Greene v. Eighth Judicial Dist. Court*, 115 Nev. 391, 395, 990 P.2d 184, 186 (1999) (recognizing the import of the rule that an action may have only one final judgment and refusing to adopt an argument that would cause there to be multiple final judgments in one action).

Under these circumstances, the district court lacked jurisdiction to reopen the case, entertain the new relief sought by Ms. Schulte, and rendered impermissible second final judgments. *See also SFPP, L.P. v. Second Judicial Dist. Court*, 123 Nev. 608, 612, 173 P.3d 715, 717 (2007) (explaining that "once a final judgment is entered, the district court lacks jurisdiction to reopen it").

Going even further, as indicated above, **these new judgments added additional parties (*i.e.*, Respondents' LLCs)**. This was also improper. *Gladys Baker Olsen Family Tr., By & Through Olsen v. Olsen*, 109 Nev. 838, 841, 858 P.2d 385, 386 (1993) ("We further observed that NRCP 60 only allows 'a party' to seek relief from a judgment. Therefore, because post-judgment intervention was impermissible, we concluded that the non-party never properly became 'a party' to the action and could not properly seek relief from the judgment under NRCP 60(b)(1).").

In *Olsen*, this Court further noted: "Rules of procedure are a necessary part of an orderly system of justice. Their efficacy, however, depends upon the willingness of the courts to enforce them according to their terms."). *Id*; *see also, e.g.*, *Lopez v. Merit Ins. Co.*, 109 Nev. 553, 557, 853 P.2d 1266, 1269 (1993) ("NRCP 60 allows the district court to relieve 'a party' from a final judgment…. Since Merit was never properly a party, Merit could not move to set aside Eric and Erwin's judgments pursuant to NRCP 60).[3]

[3] In the same vein, the original Complaint was only brought on behalf of Ms. Schulte. JA, at 1-4 (Complaint for Divorce on behalf of Plaintiff Melani Schulte); *see also* JA, at 14 (Decree of Divorce, Plaintiff Melani Schulte); NRCP 54(a) (a judgment includes a decree from which an appeal lies); NRAP 3A(a) (only a party may appeal from a judgment);

## II. Respondents' Marriage at the Time of Mr. Schulte's Conduct Precludes Fund Relief – Statutory Spousal Exception

Ms. Schulte argues the statute's use of the present tense "is" and introductory phrase "[u]pon the hearing on the petition…" is the be all and end all of this case. Answering Brief, at 10. However, Ms. Schulte tellingly ignores Appellant's opening arguments that it is black letter law that "[n]o part of a statute should be rendered meaningless, and this court will not read statutory language in a manner that produces absurd or unreasonable results." *City of Reno v. Bldg. & Const. Trades Council*

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NRCP 54(c) ("final judgment should grant the relief to which each party is entitled"). Ms. Schulte attempted to circumvent the rules and did not file a new action. This is most likely because her counsel knew a new action would not have been permissible and additionally was time barred. In other words, the original complaint only had one cause of action, for divorce (which the LLCs could not have brought). Persons harmed by a realtors' misuse of their license **must bring causes of action for fraud for Fund relief**. *See* NRS 645.844 ("obtains a final judgment … against any licensee or licensees pursuant to this chapter, upon grounds of fraud, misrepresentation or deceit…"); NRS 11.190(3)(d) (statute of limitations for action for fraud or mistake must be brought within 3 years); NRS 42.001 ("'Fraud' means an intentional misrepresentation, deception…."). The required new action would also not have been in family court. *See Margold v. Eighth Judicial Dist. Court In & For Cty. of Clark*, 109 Nev. 804, 806–07, 858 P.2d 33, 35 (1993) (requiring random assignment in conformity with Eighth District Court Rule 1.60).

*of N. Nevada*, 127 Nev. 114, 121, 251 P.3d 718, 722 (2011); *Sheriff, Clark Cty. v. Burcham*, 124 Nev. 1247, 1253, 198 P.3d 326, 329 (2008) ("we only look beyond the plain language of the statute if … its plain meaning clearly was not intended. Therefore, where the legislative intent is clear, we must effectuate that intent. 'Additionally, statutory construction should always avoid an absurd result.'"); *In re Orpheus Tr.*, 124 Nev. 170, 175, 179 P.3d 562, 565 (2008) ("This court must also interpret the statute 'in light of the policy and spirit of the law, and the interpretation should avoid absurd results."); *State v. White*, 130 Nev. 533, 536, 330 P.3d 482, 484 (2014) ("Additionally, statutory construction should always avoid an absurd result."); *Szydel v. Markman*, 121 Nev. 453, 456–57, 117 P.3d 200, 202 (2005) ("Under the plain meaning rule, '[t]his court will not look beyond the plain language of the statute, unless it is clear that this meaning was not intended.'").

As this Court further holds: "However, ambiguity is not always a prerequisite to using extrinsic aids." *A.J. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 394 P.3d 1209, 1213 (Nev. 2017), *citing* 2A Norman J. Singer & Shambie Singer, Statutes and Statutory Construction § 48:1, at 554 (7th ed. 2014) (also noting that "'[t]he plain meaning rule … is not

to be used to thwart or distort the intent of [the Legislature] by excluding from consideration enlightening material from the legislative' history."); *see also Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. Adv. Op. 9, 412 P.3d 56, 60 (2018), *citing* 1A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes & Statutory Construction § 21.15 (7th ed. 2009) ("stating that grammar and punctuation use are statutory interpretation aids, but 'neither is controlling unless the result is in harmony with the clearly expressed intent of the Legislature,'"); *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 696, 290 P.3d 249, 254 (2012), *citing* 2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 46:2, at 162 (7th ed. 2007) ("Statutes should be read sensibly rather than literally and controlling legislative intent should be presumed to be consonant with reason and good discretion."); *In re Orpheus Tr.*, 124 Nev. 170, 174, 179 P.3d 562, 565 (2008) ("when 'the [L]egislature has failed to address a matter or ... addressed it with imperfect clarity, [it becomes the responsibility of this court] to discern the law.'").

Using Ms. Schulte's interpretation produces an unreasonable or absurd result and renders the exception completely meaningless – Ms.

Schulte and Mr. Schulte could simply divorce after the bad acts occurred, even just one day before the hearing on the petition, and all of sudden the exception would not apply. Ms. Schulte's interpretation completely obliterates the statutory exception and is not compatible with the purposes, policies, or spirit of the Fund. *See, e.g.*, *Coal. for Clean Air v. S. California Edison Co.*, 971 F.2d 219, 225 (9th Cir. 1992) ("The present tense is commonly used to refer to past, present, and future all at the same time. We believe that Congress used the present tense word "disapproves" because it did not wish to limit § 110(c)(1)(B)'s reach to either past or future disapprovals." and "As appellants point out, the Clean Air Act, as amended, uses the present tense frequently."); *United States v. Williams*, 659 F.3d 1223, 1226 (9th Cir. 2011) ("Thus, construing 'involves' as applying only to the present or future would diminish authority to enforce many of the chapter's statutes.); *Pub. Employees' Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 154, 179 P.3d 542, 553 (2008) ("Grammatically, however, the Legislature's use of the present tense is neutral and expresses no intent to prevent employees who retired before October 1, 2003, from receiving the subsidy after that date."); *State v. Quinn*, 117 Nev. 709, 715, 30 P.3d 1117, 1121 (2001)

("[A]n interpretation that would nullify the statute and theoretically allow for limitless prosecutions would be unreasonable and absurd.").

As pointed out in the Opening Brief (also ignored by Ms. Schulte), if we were to accept the arbitrary date of filing as the pivotal point (instead of the more logical time period of when the bad acts occurred), then relief could not be granted under the Fund. *See* NRS 645.844(1) (**emphasis** added) ("when any person obtains a final judgment in any court of competent jurisdiction **against any licensee** or licensees.") Since Mr. Schulte was no longer a licensee at the time of the judgments, Fund relief is precluded using Ms. Schulte's interpretation.[4]

Ms. Schulte argues (without any authority whatsoever) that "8 of the 9 judgments are not in favor of Melani but rather, the LLC which owned the property. These distinct entities are not the spouse of William and therefore should not be barred from recovery."). Answering Brief, at 11. This argument is self-defeating – the statute plainly provides: "when any **person** obtains a final judgment in any court of competent

[4] As such, if the Court is inclined to accept Ms. Schulte's reading, then the Court should apply said reading consistently across NRS Chapter 645 and deny Ms. Schulte any relief due to Mr. Schulte losing his license before Ms. Schulte obtained her second final judgments.

jurisdiction against any licensee … that **person** …" may petition for Fund relief. NRS 645.844(1). Ms. Schulte cannot have it both ways and claim the statute is plain in respect to the word "is" and not in other respects that do not benefit her.[5]

Ms. Schulte tries to distract this Court from the uncontested fact that the Schultes owned the LLCs, as husband and wife, and allowing recovery in this case essentially allows Mr. Schulte to recovery for his own bad acts. There is nothing in the legislative history supporting Ms. Schulte's interpretation. Our Legislature specifically stated that our

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[5] Of note, within that same provision, that statute goes on to state: "The liability of the Fund does not exceed $100,000 for **any person** licensed pursuant to this chapter, **whether the person is licensed as a limited-liability company, partnership, association or corporation or as a natural person, or both**." NRS 645.844(1) (**emphasis** added). *See Coast Hotels & Casinos, Inc. v. Nev. State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) ("Generally, when the [L]egislature has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded."); *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op. 35, 373 P.3d 66, 71 (2016), *citing* 2A Norman J. Singer & J.D. Shambie Singer, Statutes & Statutory Constr. § 47:23 (7th ed. 2014) ("The maxim expressio unius est exclusio alterius ... instructs that, where a statute designates a form of conduct, the manner of its performance and operation, and the persons and things to which it refers, courts should infer that all omissions were intentional exclusions."). *See also supra* note 4.

Fund statute was modeled after California's ERRF statute. Opening Brief, at 18. The presumption is that we apply the same construction as the parent state. *Id.*, at 19. Not only is our Fund statute exactly the same as California's (including the words on which Ms. Schulte relies), we even amended our statute in the same manner as California, following their lead. Opening Brief, at 21.

Our statute is patterned after California's, that is all the legislative history provides in regards to the spousal exception (*i.e.*, we took California's statute and used it). The California Court of Appeals analyzed their legislative history and found "that, insofar as liability of the fund is based on frauds committed" by the licensee "between the date of his marriage to [the petitioner] and the decree of nullity, … **recovery is barred** by [§10472(a)]." *Powers v. Fox*, 96 Cal. App. 3d 440, 446, 158 Cal. Rptr. 92, 94 (**emphasis** added) (Cal. Ct. App. 1979). The court indicated that "[t]he **obvious** reason for the exception … is that, where the victim and the fraudulent actor are married, the reliance is more likely based on the marital relationship with the trust therein involved than on the license." *Id.* (**emphasis** added); *see also Great Basin Water Network v. Taylor*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010) ("[T]his

court determines the Legislature's intent by evaluating the legislative history and construing the statute in a manner that conforms to reason and public policy."); *In re CityCenter Constr. & Lien Master Litig.*, 129 Nev. 669, 673, 310 P.3d 574, 578 (2013) ("The ultimate goal of interpreting statutes is to effectuate the Legislature's intent."); *In re Orpheus Tr.*, 124 Nev. 170, 175, 179 P.3d 562, 565 (2008) ("this court will resolve any doubt as to the Legislature's intent in favor of what is reasonable"); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575, 102 S. Ct. 3245, 3252, 73 L. Ed. 2d 973 (1982) ("interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.").

The Schultes were married at the time that Mr. Schulte's complained-about fraud, misrepresentation or deceit took place. Their relationship was one of husband and wife, not that of a real estate licensee and client. Their post-misconduct divorce does not change that fact, nor did the divorce transform Ms. Schulte's situation into one that the Fund is meant to remedy. A party should not simply be allowed to divorce after the misconduct occurs and then obtain relief from the Fund in an apparent attempt to create a loophole.

Ms. Schulte argues: "To do otherwise would make it impossible for a former spouse to ever recover from their ex for real estate fraud which is not the intent of the statute." Answering Brief, at 11-12. Of note, Ms. Schulte does not point to anything in support of this assertion. Regardless, this statement is clearly incorrect and incomplete. If Mr. Schulte continued managing the marital property after they divorced, she could still recover for his fraud committed thereafter. If Mr. Schulte committed the bad acts after they divorced, she could still recover. If Ms. Schulte hired Mr. Schulte after they divorced, she could recover.

Ms. Schulte claims the purpose of the Fund is meant to remedy her situation by generally quoting the following language – "The primary purpose of the Fund is to aid victims of real estate fraud whose judgments against real estate licensees have proven to be uncollectable." *Colello*, 100 Nev. at 347. Ms. Schulte's judgments (in actuality, a divorce award) are not *against* a real estate licensee, in that capacity (of note, as further detailed below, she did not hire him). It was against her husband for their divorce! Her divorce decree was just that – a decree of divorce allocating community property (this is in stark contrast to the numerous fraud and related claims, brought on behalf of other individuals, against

Mr. Schulte after actually hiring him – claims which could now be precluded, also as further explained below).

While Ms. Schulte again points to the Family Court's conclusion that the statutory exception is meant to protect people from being defrauded by married couples working in concert to defraud, there is no basis in the statute, legislative history, the court's order, or anything whatsoever for this limited conclusion. In theory, that could have been one of the unstated reasons for the exception, but it's not the only reason. The California Court of Appeals specifically analyzed the legislative history of their statute (which our statute was a copy and paste of) and held that "[t]he **obvious** reason for the exception … is that, where the victim and the fraudulent actor are married, the reliance is more likely based on the marital relationship with the trust therein involved than on the license." *Id.* (**emphasis** added). *Powers*, 96 Cal. App. 3d at 446, 158 Cal. Rptr. at 94. Of note, this connects with the next section on the fact that Mr. Schulte did not need a license to manage the couples' community property.[6]

[6] Oddly, Ms. Schulte argues *Powers* is distinguishable from the current case because "[i]n the instant case, Melani did not agree to act in concert with William and was not involved in the acts which led to the fraud."

Finally, Ms. Schulte insultingly insinuates that the spousal exception was codified with discriminatory intent without giving any support whatsoever for this shocking assertion. Answering Brief, at 15; *Rhyne v. State*, 118 Nev. 1, 12, 38 P.3d 163, 170 (2002) ("Contentions unsupported by specific argument or authority should be summarily rejected on appeal.") As indicated, our Legislature did not say why they added the spousal provision, simply that we are patterned off California's. The California Court of Appeals analyzed the history, intent, and policy underlying the exception explaining that the trust is not from the license, but from the marriage (*i.e.* not what the Fund was supposed to remedy). Claims for public monies out of the Fund are not meant to enhance Ms. Schulte's divorce allocations. Ms. Schulte's tactics

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Answering Brief, at 12. The fraudulent conduct in *Powers* was committed by the husband only (Powers), not the wife (Hill), indeed she was the individual defrauded! *E.g. Powers*, 96 Cal. App. 3d at 444 ("Powers forged the indorsement of the payees of the $17,500 check and used the funds for his own purposes"); *id*. ("Although Powers had told Hill that title to the condominium would be taken in their joint names, he caused title to be in his name only"); *id*. ("Powers had defrauded Hill of the $55,000"); *id*. at 445 ("Powers had been convicted of forgery and grand theft, based on the transactions above set forth."); *id*. at 446 ("The Tahoe embezzlement was no more than a second step in that same scheme, designed to keep Hill from discovering that the restaurant had never been purchased as Powers had represented.").

here are what this exception is aimed to prevent. The Fund is not meant to fund community property.

### III. The Recovery was Not with Reference to any Transaction for Which a License is Required Pursuant to Chapter 645

As noted in the Opening Brief, NRS 645.844(1) requires the final judgment to be "with reference to any transaction for which a license is required pursuant to this chapter...."

Ms. Schulte has not disputed the uncontested fact that Mr. and Ms. Schulte owned the LLCs (and the properties associated with them) when Mr. Schulte's fraudulent acts occurred – they were marital and community property. JA, at 15-17 (Decree of Divorce, Division of Community Property); JA, at 16, ¶ 19 ("parties owned 32 rental properties … The Court finds Schulte Properties is a community property asset."), at ¶ 27 ("Schulte Properties provides a source of income for Melani at the rate of $3,800.00 per month per her Financial Disclosure Form.", at ¶ 28 ("Melani shall be awarded Schulte Properties as her sole and separate property…."), at ¶ 29 ("William shall sign all Quitclaim Deeds on the 32 real properties."), at 31 ("Melani shall be awarded the

four checks … because Schulte Properties is awarded to her solely.").[7]

Instead, Ms. Schulte ironically makes the argument on behalf of all those others harmed by Mr. Schulte's conduct when using his real estate license – the ones who actually hired him and relied on his licensure. *See*

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[7] *Compare, e.g.*, Order Directing Payment to 1701 Empire Mine, LLC, JA, at 183-85 *with* Amended Decree, JA, at 32 (listing said property awarded to Ms. Schulte as her separate property ("SP")) *and* Exhibit "3" to Motion to Amend, JA, at 304 (listing the same), 282:10-11 (Ms. Schulte conceding the same); Order Directing Payment to 2861 Marathon, LLC, JA, at 215-17 *with* Amended Decree, JA, at 32 (listing said property awarded to Ms. Schulte as her SP) *and* Exhibit "3" to Motion to Amend, JA, at 304 (listing the same), 282:10-11 (Ms. Schulte conceding the same); Order Directing Payment to 8216 Peaceful Canyon, LLC, JA, at 211-13 *with* Amended Decree, JA, at 33 (listing said property awarded to Ms. Schulte as her SP) *and* Exhibit "3" to Motion to Amend, JA, at 304 (listing the same), 282:10-11 (Ms. Schulte conceding the same); Order Directing Payment to 5524 Rock Creek, LLC, JA, at 195-97 *with* Amended Decree, JA, at 33 (listing said property awarded to Ms. Schulte as her SP) *and* Exhibit "3" to Motion to Amend, JA, at 304 (listing the same), 282:10-11 (Ms. Schulte conceding the same); Order Directing Payment to 5609 San Ardo, LLC, JA, at 199-201 *with* Amended Decree, JA, at 33 (listing said property awarded to Ms. Schulte as her SP) *and* Exhibit "3" to Motion to Amend, JA, at 304 (listing the same), 282:10-11 (Ms. Schulte conceding the same); Order Directing Payment to 9521 Sierra Summit, LLC, JA, at 203-05 *with* Amended Decree, JA, at 33 (listing said property awarded to Ms. Schulte as her SP) *and* Exhibit "3" to Motion to Amend, JA, at 304 (listing the same), 282:10-11 (Ms. Schulte conceding the same). *Cf.* Nevada Real Estate Complaint, JA, at 7-9 (listing the specific properties defrauded, ***none*** of which are the properties Ms. Schulte seeks Fund relief for); Findings of Fact, Conclusions of Law, and Order of Nevada Real Estate Commission, JA, at 26 (finding the same for only those properties – ***none*** of those of which Ms. Schulte's claims Fund relief for).

Answering Brief, at 14-15. Ms. Schulte baldly asserts that Mr. Schulte "was not a direct owner of the properties, rather he was a broker for Sabreco who contracted with LLC entities and property owners to manage their properties, rents and deposits." Answering Brief, at 14. NRAP 28(e) ("every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number").[8] As the above confirms, this is incorrect, Mr. Schulte managed the marital properties for the benefit of the community (the 32 properties were

[8] Of note, Ms. Schulte's Statement of Facts fails to comply in this respect with numerous of its unsupported assertions (in addition to the Answering Brief's additional failures as specifically reference herein). *See also* NRAP 28(a)(8) (requiring the statement of facts to have references to the record); NRAP 28(b) (answering brief must conform to requirements of Rule 28(a)(8)). It is also worth noting that Ms. Schulte's Statement of Facts is further incorrect, stating "In Fact, the Division, in their Complaint against William, included each property relevant hereto and listed above, attached as Exhibit 3 to the Complaint." Answering Brief, at 4, *citing* JA, at 303-04. JA, at 277, 303 (Exhibit "3" is Exhibit "3" **to Ms. Schulte's Motion to Amend Decree of Divorce** (with footer entitled "Verified Petition – ERRF – MS")), not to the Division's Complaint. Exhibit "2" to Ms. Schulte's Motion is the Division's Complaint and Commission's Order related thereto. JA, at 292-302. The Division Complaint did not include attachments. *See* JA, at 6-13; *see also* NAC 645.810(2) ("The Division may not submit any evidence to the Commission before the hearing except for the complaint and answer."); *supra* note 7 (citing to the record on appeal to note that none of the properties for which Ms. Schulte seeks Fund compensation were part of the Division's case against Mr. Schulte).

community property before awarded to Ms. Schulte via the Decree of Divorce). *See also* Opening Brief, at 26-27 (citations to the record); JA, at 6-13 (Nevada Real Estate Complaint alleging Mr. Schulte committed violations of NRS Chapter 645 by failing to remit money to many individuals (*none* of whom were Ms. Schulte or the couples' LLCs)); JA, at 26 (Order of Nevada Real Estate Commission finding Mr. Schulte "admitted to allegations 1-23 in the Complaint" – those factual allegations that his conduct harmed numerous individuals, *none* of which were Ms. Schulte or the couples' LLCs (specifically allegations 8 through 16 of the Complaint, JA, at 7-9)).

Ms. Schulte then alleges: "Once licensed, William had the same responsibility to the LLC properties as he did to any client of Sabreco." Ms. Schulte yet again ignores the contentions and authorities cited by Appellant in the Opening Brief, at 25-27 (*i.e.*, NRS 645.0445 specifically states that one does not need a license to manage their own property (including investment property)).[9] This is well established. *See also* NRS

[9] "A respondent who fails to include and properly argue a contention in the respondent's brief takes the risk that the court will view the contention as forfeited." *Polk v. State*, 126 Nev. 180, 183, n. 2, 233 P.3d 357, 359 (2010); *U.S. Home Corp. v. Lanier*, 431 P.3d 38, n. 3, unpublished disposition, Docket No. 68692, filed November 28, 2018

645 645.030(1) (defining real estate broker and requiring that one must act "for another and for compensation or with the intention or expectation of receiving compensation"); NRS 645.035 (defining real estate broker-salesperson); NRS 645.040 (defining real estate salesperson); NRS 644.019 (property management requires a fee pursuant to a property management agreement); NRS 645.5056(2) (strict requirements of a property management agreement); NRS 645.252 (duties of licensee acting as agent in real estate transaction); *but see contra Gaessler v. Sheriff, Carson City*, 95 Nev. 267, 270, 592 P.2d 955, 957 (1979) (noting that the "solicitation and receipt of an 'advertising fee' for listing Wilcox's business for sale is the type of conduct which our real estate licensing statutes were designed to regulate and, therefore, Gaessler was required to have a real estate license.").

As co-owner of those companies, Mr. Schulte was authorized to act

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(Nev. 2018) (Respondent "concede[d] this issue [raised by Appellant] by failing to address it in their answering brief."); NRAP 28(a)(10) (requiring the argument to contain citations to the authorities and parts of the record on which respondent relies); *Rhyne v. State*, 118 Nev. 1, 12, 38 P.3d 163, 170 (2002) ("Contentions unsupported by specific argument or authority should be summarily rejected on appeal."); NRAP 28(b)(requiring respondent's brief to conform to the requirements of NRAP 28(a)(10)); NRAP 28(e).

to their benefit (or detriment) due to his ownership role – regardless of his real estate licenses (in other words, Mr. Schulte just happened to hold a broker's license which does not transform the couples' divorce into a situation the Fund was designed to remedy).

Ms. Schulte completely ignores the rational in *Powers* from Appellant's Opening Brief (other than to say it's just a rehashing of an argument, Answering Brief, at 14-15). California's statute (which we patterned) also "provides for recovery only for a 'transaction' for which a license is required." *Powers*, 96 Cal. App. 3d at 446; NRS 645.844(1). The California Court of Appeals astutely analyzed – "a transaction is not one 'for which a license is required' as section 10471 requires, even though one of the coadventurers happens to hold a broker's license." *Powers*, 96 Cal. App. 3d at 446. "[T]he theory of the statute… is that a citizen has relied… on the implied representation, inherent in the fact of licensure, that the licensee is honest and dependable" and not "based on the marital relationship with the trust therein involved than on the license." *Powers*, 96 Cal. App. 3d at 445, 158.[10]

[10] Of note, while Ms. Schulte argues, in conclusory fashion, that her judgment complied with NRS 645.844 (Answering Brief, at 13), Appellant explained in the Opening Brief that NRS 645.844(4)(g) requires that

## IV. In the Alternative, Ms. Schulte's Entitlement, if any, is Limited to $25,000

### a. *Ms. Schulte's procedural ploys are no bar to this Court applying the $25,000 cap (if she is entitled to any relief)*

In the same vein as the spousal exception above, Ms. Schulte latches on to the single phrase in NRS 645.844(1) – "but not more than $25,000 per judgment." Again, Ms. Schulte argues that this concludes the matter and completely ignores Appellant's argument from the Opening Brief (without counter). *See supra* note 6.

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"[t]he petition has been filed no more than 1 year after the termination of all proceedings, including reviews and appeals, in connection with the judgment." Ms. Schulte tellingly failed to respond to this contention. As Section I, *supra*, confirms, the proceedings terminated once the original Decree of Divorce was entered in 2013. Opening Brief, at 32. The statute and rules do not permit Ms. Schulte to come back almost 4 years later to "fix" the decree – getting new final "judgments", despite there already being one (as analyzed above). This was a facade for the purpose of making a claim to public funds without filing a new case. Ms. Schulte initiated a carefully crafted design so her petition would look viable on the surface (including the charade of multiple judgments to evade the statutory cap, as detailed above and below). We must observe more than just the tip of the iceberg to understand what's really going on underneath. And just like an iceberg, there's much more than the superficial surface here.

As indicated above, roughly four years after the issuance of the final original Decree of Divorce, Ms. Schulte convinced the Family Court to issued 21 new individual final judgments to new parties along with the Amended Decree. JA, at 28-81.

The Nevada Supreme Court case of *Adm'r of Real Estate Educ., Research & Recovery Fund v. Buhecker*, 113 Nev. 1147, 1150 945 P.2d 954 (1997) is directly on point here.

This Court held: "Consistent with *Colello* is the principle of law that 'a judgment in favor of joint plaintiffs should be joint if their cause of action is joint'" and "[u]nder the Buheckers' analysis, **judgment is each plaintiff's separate right to recover, which is precisely the interpretation S.B. 268 rejected**. Therefore, we conclude that the Buheckers could not have *four* judgments against only *two* real estate agents." *Adm'r of Real Estate Educ., Research & Recovery Fund v. Buhecker*, 113 Nev. 1147, 1140, 1150 945 P.2d 954, 954 (1997) (**emphasis** added, *emphasis* in original). Of note, it is undisputed there is only one real estate agent here (*i.e.*, Mr. Schulte).

This Court went on: "However, the issue considered in *Colello* is distinguishable from the current appeal, and the underlying facts of

*Colello* support the interpretation that joint owners of property receive one judgment." *Buhecker*, 113 Nev. at 1149; *see also Colello v. Adm'r of Real Estate Div. of State of Nev.*, 100 Nev. 344, 346, 683 P.2d 15, 16 (1984) (stating that "appellants were granted a judgment totaling $46,394.95 against a real estate licensee on the basis of fraud, misrepresentation and embezzlement. Appellants could not recover the full amount of the judgment, so they claimed $10,000 ...."). It is undisputed that the Schultes were the joint owners of the properties until said properties were declared as Ms. Schulte's separate property via the Divorce Decree.

More importantly, "[c]onsistent with *Colello* is the principle of law that '**a judgment in favor of joint plaintiffs should be joint if their cause of action is joint**.'" *Id.* at 1150 (**emphasis** added). As indicated above, *supra* Section I, it was not proper to award multiple new final judgments and add new parties. The LLCs were either not parties to the divorce (and thus unable to obtain judgments) or they are properly considered joint plaintiffs with Ms. Schulte entitled to one judgment for purposes of Fund relief. This is clear from the Complaint for Divorce itself. *See* JA, at 1-4 (Ms. Schulte is the only plaintiff and there are no separate or distinct causes of action); *see also* Decree of Divorce 14-25;

*Buhecker*, 113 Nev. at 1149 (**emphasis** added) ("There is no indication that Mr. Buhecker's causes of action are somehow different and separate from Mrs. Buhecker's. This is supportive of a finding that the Buheckers' judgment is not separable between them, but is joint in nature, therefore affording them two awards of $10,000.00 from the ERRF, **one for each original defendant**."). Again, there is only one defendant and realtor in this case.

This Court specifically analyzed the Legislative history in regards to the change from claimant to judgment in 1985 via SB 268. [11] This Court held that "Appellant argues the legislative history of NRS 645.844(1) illustrates that the Nevada Legislature intended recovery to be limited to $10,000.00 per final judgment in cases of multiple plaintiffs", "We find that legislative history of the statute is persuasive of appellant's interpretation ...." *Buhecker*, 113 Nev. at 1149.

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[11] Of note, Ms. Schulte argues that the Legislative change in this regard (from claimant to judgment) "is evidence that the legislature intended to limit joint claimants' recovery to $10,000 per judgment they received, and not to each claimant." Answering Brief, at 20. Noticeably absent is any authority (yet again) to support this bald assertion. Also telling is Ms. Schulte's general cite to *Buhecker* without a pin cite. *See id*. As detailed herein, there is much more to this assertion, and this Court's precedent and the statute's legislative history is instructive.

This Court noted that in 1985 when NRS 645.844(1) was amended via SB 268, the amount recoverable was changed to $10,000 per judgment, rather than per claimant. *Id.* at 1150. This Court explained "the amendment to NRS 645.844(1) was a 'clarification of the liability limit' of the ERRF. Thus, the amendment **was not a change in the legislature's intent, but a clarification of the statute's liability limitations**." *Id* (**emphasis** added); Minutes of the Senate Committee on Commerce and Labor, 63rd Session, March 27, 1985, Exhibit G (stating that Section 38 "[p]rovides for clarification of the liability limit of the recovery funds...."); Minutes of the Assembly Commerce Committee, May 22, 1985, Exhibit C (stating the same).

The Court reasoned that "this is evidence that the legislature intended to **limit** joint claimants' recovery to $10,000.00 per judgment **they received**, and not to each claimant. Thus, the number of claimants in a joint action is irrelevant; only the number of judgments **they received together** is determinative of their recovery under the ERRF." *Id* (**emphasis** added).

The underlying case is a divorce action. Despite the surplus of judgments, *none* of the Schulte Properties LLCs were parties to that

divorce action. Rather, the Schulte Properties LLCs were part of the Schultes' community property – assets awarded to Ms. Schulte via the Decree of Divorce. Ms. Schulte's tactic of splintering *her* judgment against Mr. Schulte into 21 separate judgments should not enable her to obliterate the statutory limit set forth in NRS 645.844(1). In other words, a full reading of this Court's analysis in *Buhecker* demonstrates that the number of judgments Ms. Schulte and her LLCs received together is one for purposes of Fund relief. Ms. Schulte may have convinced the Family Court to make the single plural (*i.e.*, "judgments"), but as the old proverb goes: if it looks like a duck, if it quakes like a duck, if it swims like a duck, then it is a duck! Ms. Schulte can call them multiple judgments, but this Court's precedent, including its analysis of the legislative change, and the history of this case shed light on the reality of the situation – their judgment is joint in nature, therefore affording them one award.

b. *Ms. Schulte's interpretation renders the $25,000 cap meaningless and produces an unreasonable result*

As with many of Appellant's arguments, Ms. Schulte did not address Appellant's argument regarding the interplay of the statutory caps. *See supra* note 6. In addition to the $25,000 cap, "[t]he liability of

the Fund does not exceed $100,000 for any person licensed pursuant to this chapter, whether the person is licensed as a limited-liability company, partnership, association or corporation or as a natural person, or both." NRS 645.844(1).

As indicated above, it is black letter statutory construction that "[n]o part of a statute should be rendered meaningless, and this court will not read statutory language in a manner that produces absurd or unreasonable results." *Bldg. & Const. Trades Council of N. Nevada*, 127 Nev. at 121, 251 P.3d at 722; *Burcham*, 124 Nev. at 1253, 198 P.3d at 329; *In re Orpheus Tr.*, 124 Nev. at 175, 179 P.3d at 565; *Sebelius*, 569 U.S. at 381, 133 S. Ct. at 1896; *White*, 130 Nev. at 536, 330 P.3d at 484.

The Fund was formed to help all those harmed by Mr. Schulte's bad acts based on the trust inherit in licensure – Ms. Schulte's actions, as detailed, produce the absurd or unreasonable result of destroying the $25,000 cap and depriving all others who have or will have rightful claims (in other words, the $25,000 cap will no longer have continuing application and effectively be repealed).[12]

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[12] *See, e.g.*, *Dagger Properties, LLC v. Sabreco, Inc.*, Case No. A-14-694093-C (EJDC, petition filed on September 27, 2018). In this case, Dagger Properties and *7 other related LLCs* filed for Fund relief based on

Based on the above, the Court should not interpret NRS 645.844(1) in a manner that produces an absurd or unreasonable result. This Court's precedent, analysis, and rational in *Buhecker* are on point as well as the legislative intent and public policy. Applying the $25,000 statutory cap in this case results in a harmonious and compatible reading of NRS 645.844(1) within the statutory scheme, meaningful within the context of the purpose of the legislation.

"Where alternative interpretations of a statute are possible, the one producing a reasonable result should be favored." *Colello*, 100 Nev. at 347; *see also Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) ("We read statutes within a statutory scheme harmoniously with one another to avoid an unreasonable or absurd result."). *Williams*

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the same bad acts of Mr. Schulte in the current matter (Mr. Schulte signed a stipulated judgment). On October 29, 2018, on the hearing of the Petition, the District Court found that the $25,000 cap applies, and the plaintiffs were only entitled to $25,000. The Court also stayed the matter pending the results in the instant appeal as this Court's decision will have an impact on what, if any, is paid from the Fund. *See also* JA, at 7-13 (Complaint of Nevada Real Estate Division specifically noting numerous individuals defrauded by Mr. Schulte's conduct, *none* of whom were Ms. Schulte or the couples' LLCs); JA, at 26 (Order of Nevada Real Estate Commission finding Mr. Schulte "admitted to allegations 1-23 in the Complaint" – specifying the individuals harmed by his real estate conduct (specifically allegations 8-16 of the Complaint, JA, at 7-9)).

*v. Clark Cty. Dist. Attorney*, 118 Nev. 473, 484-85, 50 P.3d 536, 543 (2002) ("In determining the legislature's intent, we should consider what reason and public policy indicate was intended, and we should avoid reaching absurd results. We are obliged to construe statutory provisions so that they are compatible, provided that in doing so, we do not violate the legislature's intent."); *Berkson v. LePome*, 126 Nev. 492, 497, 245 P.3d 560, 563–64 (2010) ("a statute will be construed in order to give meaning to its entirety, and this court 'will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.'"); *Zahavi v. State*, 131 Nev. Adv. Op. 7, 343 P.3d 595, 600 (2015) ("When construing various statutory provisions, which are part of a 'scheme,' this court must interpret them 'harmoniously' and 'in accordance with [their] general purpose.'"); *Webb v. Shull*, 128 Nev. 85, 89–90, 270 P.3d 1266, 1269 (2012) (prohibiting interpreting a statute in a manner that would negate another provision); *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129 Nev. 492, 508, 306 P.3d 369, 380–81 (2013) (noting that "[w]hen two statutory provisions conflict, this court employs the rules of statutory construction, and attempts to harmonize conflicting provisions so that the act as a whole is given effect" and "[s]tatutes are

interpreted so that each part has meaning."); *Szydel*, 121 Nev. at 457, 117 P.3d at 202-03 (2005) ("When two statutes are clear and unambiguous but conflict with each other when applied to a specific factual situation, an ambiguity is created and we will attempt to reconcile the statutes. In doing so, we will attempt to read the statutory provisions in harmony, provided that this interpretation does not violate legislative intent.").

## CONCLUSION

For the foregoing reasons, the Division respectfully requests that the District Court's Fund Orders be vacated and reversed, and that Ms. Schulte not be awarded any Fund relief.

In the alternative, Ms. Schulte's Fund relief should be limited to $25,000.

Dated: May 10, 2019.

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## CERTIFICATE OF COMPLIANCE

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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 14 pt. Century Schoolbook type style.

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 is proportionately spaced, has a typeface of 14 points or more and contains 8,674 words.

Finally, 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.

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: May 10, 2019.

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Respondent's Answering Brief in accordance with this Court's electronic filing system and consistent with NEFCR 9 on May 10, 2019.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

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The following participants in this case are not registered electronic filing systems users and will be served via United States mail, first class, postage prepaid:

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