IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF MESQUITE,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE GLORIA STURMAN, DISTRICT JUDGE,

Respondents,

and

DOUGLAS SMAELLIE,

Real Party in Interest.
_____/

Docket No. 75743
District Ct. Case No. A-17-759770-C

ANSWER TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITIION

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DISCLOSURE STATEMENT PURSUANT TO NRAP 26.1

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made an order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Daniel Marks, Esq. and Adam Levine, Esq. of the Law Office of Daniel Marks. There are no parent corporations.

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I. PROCEDURAL HISTORY

This case arose following the Order Affirming in Part and Vacating in Part issued by this Court in *Smaellie v. City of Mesquite*, Dock No. 69714.

Smaellie's Complaint alleges that he was employed as a police officer with the City of Mesquite and in 2013 was terminated without just cause in violation of the collective bargaining agreement as a result of an off-duty arrest unrelated to his job and for which he was never convicted.

Smaellie's Complaint alleges that his position was covered by the collective bargaining agreement ("CBA") entered into by the Mesquite Police Officers Association (hereafter "MPOA") and the City of Mesquite. Like most CBAs, it contained a grievance and arbitration procedure for resolving disputes. However, under the language of the CBA only the union could invoke arbitration.

The Complaint alleges Smaellie requested the MPOA grieve his termination and advanced the matter to arbitration. Smaellie asserts that the grievance was meritorious due to the fact that the conduct occurred off duty, and the charges were dismissed. However, the MPOA refused to advance a grievance arbitration. Smaellie then retained his own counsel who requested the City arbitrate the dismissal and that the City refused to do so. (APP Vol. I at 001-004).

On February 14, 2014 Smaellie filed suit in the Eighth Judicial District Court in Case No. A-14-696355 under what is commonly referred to under federal

law as the "*Vaca* exception" to the requirement that a party exhaust his contractual remedies through arbitration prior to resorting to judicial enforcement. See *Vaca v. Sipes*, 386 U.S. 171, 87 S. Ct. 903 (1967). The *Vaca* exception applies where (1) a union breaches its duty of fair representation by failing to advance a meritorious grievance to arbitration and/or the employer repudiates the arbitration remedy within the CBA. 386 U.S. at 185-186, 87 S.Ct. at 914.

On April 16, 2014 the City filed a Motion to Dismiss alleging that a breach of contract action cannot survive without an accompanying claim regarding the union's breach of its duty of fair representation. This motion further argued that the statute of limitations on any such breach-of-contract claim was only six (6) months. (APP Vol. I at 51-59). Smaellie's Opposition filed May 7, 2014 pointed out that the six (6) month statute of limitations for the EMRB is inapplicable and that the statute of limitations for an action on a written contract is six (6) years under NRS 11.190(1)(b). (APP Vol. I at 61-68). The district court denied the Motion to Dismiss stating that pending further direction from this Court it will exercise jurisdiction over breach of contract claims as a court of general jurisdiction. (APP Vol. at 070-071).[1]

[1] As addressed below, it is been well-settled law for half a century that employees do have such standing to enforce collective bargaining agreements under state law.

The parties completed discovery. Thereafter, the City filed a Motion for Summary Judgment and included within it, a renewed Motion to Dismiss. However, the renewed Motion to Dismiss did not reassert the statute of limitations argument previously rejected; it was based solely upon an unpublished disposition in the case of *Dixson et al. v. City of North Las Vegas* Dock No. 64016 which affirmed a dismissal of an attempt to judicially enforce a collective bargaining agreement on the grounds of standing because the complaint in that case did not assert that the plaintiffs were intended third-party beneficiaries of the collective bargaining agreement. (APP Vol. I at 73-10).

On January 7, 2016 the district court granted the renewed Motion to Dismiss on the grounds of standing. (APP Vol. I at 106-107). Smaellie filed a timely appeal to this Court.

Already pending before this Court was the case of *Clark County v. Mark Tansey* Dock No. 68951. In that case Senior Judge Bonaventure had concluded that employees do have standing to judicially enforce collective bargaining agreements under the exception set forth in *Vaca v. Sipes*, 386 U.S. 171173 (1967) and *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151165 (1983) ("*DelCostello*") and had entered judgment in favor of Code Enforcement Officer Tansey. (APP Vol. II at 110-120).

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In connection with its defense of Smaellie's appeal, the City abandoned its argument regarding statute of limitations by failing to raise or argue the issue. (See City's Answering Brief in Docket No. 69741, APP Vol. II at 122-160). On March 1, 2017 this Court in an unpublished disposition recognized the applicability of the *Vaca v. Sipes* exception in the *Clark County v. Mark Tansey* case. (APP Vol. II at 162-166). On March 13, 2017 Smaellie filed the Tansey decision with the Supreme Court as a supplemental authority in Docket No. 69741 pursuant to NRAP 31(e).

On April 17, 2017 this Court issued its Order Affirming in Part and Vacating in Part in Docket No. 69741. The Court again recognized that employees may judicially enforce collective bargaining agreements through the courts under *Vaca* and *DelCostello* where the union breached its duty of fair representation. The Court affirmed the dismissal of Smaellie's prior action because his complaint filed on February 9, 2014 did not explicitly allege that the MPOA breached its duty of fair representation. However, the Court reversed that portion of the district court's order dismissing Smaellie's case with prejudice holding that the dismissal should have been without prejudice. (APP Vol. II at 168-175).

Because the dismissal was without prejudice, and because the six (6) year statute of limitations under NRS 11.190(1)(b) for enforcing contracts "founded upon an instrument in writing" had not expired, Smaellie re-filed his Complaint

expressly alleging that the MPOA had breached its duty of fair representation in refusing to advance his grievance after City had terminated him without just cause. (APP Vol. I at 001-004).

The City filed another Motion to Dismiss asserting the same argument(s) previously rejected by the district court in Case No. 8-14-696355. This included the argument that any breach of contract action brought by Smaellie had to be brought within six (6) months analogizing to *Vaca* cases brought pursuant to under the §301 of the Labor Management Relations Act. (APP Vol. I at 005-033). The district court again denied the motion finding that the six (6) year statute of limitations under NRS 11.190(1)(b) applies. (APP Vol. III at 286-287).

II. WRIT RELIEF SHOULD BE DENIED BECAUSE THE CITY'S ARGUMENTS REGARDING A STATUTE OF LIMITATIONS ARE PRECLUDED UNDER THE LAW OF THE CASE DOCTRINE.

The Law of the Case Doctrine "provides that the law or ruling of a first appeal must be followed in all subsequent proceedings, both in the lower court and on any later appeal." *Hsu v. County of Clark*, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007).

As set forth above the City makes the same arguments regarding a six (6) month statute limitations that it previously made in connection with its April 2014 Motion to Dismiss. As set forth above that motion was denied.

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After the district court later granted the City's renewed Motion to Dismiss on standing grounds, Smaellie appealed. The City did not file a cross-appeal regarding the denial of the Motion to Dismiss on a statute of limitations grounds. Likewise, in defending the appeal in Docket No. 69741 the City did not pursue its statute limitations arguments. It certainly could have done so as the Supreme Court may "affirm the district court if it reaches the right result, even when it does so for the wrong reason." *LVCVA v. Secretary of State*, 124 Nev. 669, 689 n. 58, 191 P.3d 1138, 1151 n. 58 (2008).

This Court determined that Smaellie's Complaint should be dismissed *without prejudice*. A dismissal on statute of limitations grounds is a dismissal *with prejudice*. See *Executive Management, LTD v. Ticor Title Insurance Co.*, 118 Nev. 46, 49, 38 P.3d 872, 874 (2002). Granting a motion to dismiss on the grounds of statute limitations would be contrary to this Court's determination that the matter should have been dismissed without prejudice. The law of the case doctrine may prohibit the reassertion of a statute of limitations defense. *Lee v. Chun Ka Luk*, 1 A.D. 3rd 612, 8 N.Y.S. 3rd 288 (2015).

III. THE APPLICABLE STATUTE LIMITATIONS IS SIX (6) YEARS UNDER NRS 11.190(1)(b).

NRS 11.190(1)(b) provides that the statute limitations is six (6) years for "An action upon a contract, obligation or liability founded upon an instrument in

writing, except those mentioned in the preceding sections of this chapter." An action to judicially enforce a collective bargaining agreement is an action founded upon "an instrument in writing".[2]

Collective bargaining agreements have long been recognized as third party beneficiary contracts with the employee as the beneficiary. 4A *Corbin on Contracts* §781 at 72, §782 at 83-84 (1962); see also Clyde W. Summers, *Collective Agreements and the Law of Contracts*, Yale Law School Faculty Scholarship Series Paper 3914 (1969). State courts of general jurisdiction have always had jurisdiction over contract actions. See e.g. Article 6 §6 of the Nevada Constitution (establishing original jurisdiction of the district courts in all cases excluded by law from the original jurisdiction of justices' courts.) Intended third-party beneficiaries have always had standing to enforce contracts under the common-law. See e.g. *Morelli v. Morelli*, 102 Nev. 326, 720 P.2d 704 (1986).

The City's Writ Petition argues that hybrid actions brought under the *Vaca v. Sipes* exception under federal law have a six (6) month statute of limitations pursuant to *DelCostello v. International Brother Teamsters*, 462 U.S. 151,_103 S.Ct. 2281 (1983). However, such federal actions are governed by §301 of the

[2] While in theory it may be possible to have an oral collective bargaining agreement, there has been no suggestion by the City of Mesquite that the collective bargaining agreement it had with the MPOA was exclusively oral in nature.

Labor Management Relations Act. Section 301 did not create a new cause of action permitting an employee to judicially enforce a collective bargaining agreement; it simply conferred original jurisdiction to hear such actions in the United States District Courts. Such statutory authorization was necessary because the United States district courts are courts of limited jurisdiction and "possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 1675 (1994).

However, when Congress passed §301 in 1947, it did not provide for any statute of limitations. Accordingly, the United States Supreme Court in *DelCostello*, supra was forced to judicially create one borrowing from the six (6) month statute limitations in §10(b) of the National Labor Relations Act which the LMRA amended.

However, Smaellie is not governed by either the NLRA or the LMRA. Employees of the states and their political subdivisions are not covered by the NLRA or §301 of the Labor Management Relations Act. See 29 U.S.C. §152(2) (excluding from the definition of "Employer" the states and their political subdivisions); *Truckee Meadows Fire Protection District v. International Association of Fire Fighters, Local 2487*, 109 Nev. 367, 374, 849 P.2d 343, 348 (1993) citing *NAACP, Det. Branch v. Detroit Police Officers Association*, 821 F.2d 328, 331-32 (6th Cir. 1987).

In the absence of any application of §301, the judicial enforcement of the collective bargaining agreement by members of the public sector is governed *solely and exclusively* by Nevada's state law of contracts. The fact that §301 was not the source of the right to judicially enforce collective bargaining agreements was conclusively determined by *Charles Dowd Box Co., Inc. v. Courtney*, 368 U.S. 502, 82 S.Ct. 519 (1962) which arose from an action in equity brought by employees in the Massachusetts state courts to enforce the terms of their collective bargaining agreement. The Supreme Judicial Court of Massachusetts affirmed a judgment in favor of the plaintiffs holding that §301 did not impair the already existing jurisdiction of state courts to hear cases for violations of collective bargaining agreements under state law. See *Courtney v. Charles Dowd Box Co.*, 341 Mass. 337, 169 N.E.2d 885 (1960). The employer filed a petition for writ of certiorari.

As noted by Justice Potter Stewart writing for a unanimous Supreme Court:

> The sole question presented by this case is whether [§301(a)] operates to divest a state court of jurisdiction over a suit for a violation of the contract between an employer and a labor organization.

368 U.S. at 503, 82 S. Ct. at 520.

In affirming the decision of the Supreme Judicial Court of Massachusetts the United States Supreme Court expressly recognized the long-standing

jurisdiction of the state courts over breach of contract actions arising out of collective bargaining agreements:

> To hold that §301(a) operates to deprive the state courts of a substantial segment of their established jurisdiction over contract actions would thus be to disregard this consistent history of hospitable acceptance of concurrent jurisdiction.
>
> Such a construction of §301(a) would also disregard the particularized history behind the enactment of that provision of the federal labor law. The legislative history makes clear that the basic purpose of §301(a) was not to limit, but to expand, the availability of forums for the enforcement of contracts made by labor organizations. Moreover, there is explicit evidence that Congress expressly intended not to encroach upon the existing jurisdiction of the state courts.

368 U.S. at 508-509, 82 S.Ct. at 523. See also *Smith v. Evening News*, 371 U.S. 195, 83 S.Ct. 267 (1962) (holding that state courts had jurisdiction over actions filed by an employee against his employer for damages resulting from a violation of a collective bargaining agreement even if the alleged conduct of the employer was also an unfair labor practice within the jurisdiction of the NLRB).

In *Griffin v. United Transportation Union*, 190 Cal. App. 3d 1359, 236 Cal. Rptr. 6 (Cal. App. 1987) the California Court Appeals rejected the application of the six (6) month statute of limitations from *DelCostello* because public employees are not covered by §301. The California Court held:

> Although acknowledging the federally exempt nature of the employment in this case, respondent nevertheless urges that we adopt the *DelCostello* rule as good policy and to secure uniformity of treatment of public and private employees. This we cannot do.

> Having determined that federal labor law is inapplicable, and that appellant's cause of action arises under state law, we have no discretion to adopt the federal statute of limitations. We have no choice but to determine the applicable state statute of limitations. Although we have discretion to consider federal law as persuasive authority in interpreting state substantive labor law (see *Holayter v. Smith* (1972) 29 Cal.App.3d 326, 335, 104 Cal.Rptr. 745), we do not have authority to create a statute of limitation. Enactment of statutes of limitations is a legislative function. We are limited to determining the existing state statute of limitations applicable to this cause of action.

190 Cal. App. 3d at 1364, 236 Cal. Rptr. at 9.

Likewise, this court should decline the invitation of the City and the Amici Curiae to supplant the Legislature and create a new statute of limitations because §301 does not apply, and the Nevada Legislature has already determined that the appropriate limitations period for a contract action based upon a written instrument is six (6) years.

IV. WRIT RELIEF WOULD LIKEWISE BE INAPPROPRIATE UNDER THE FOUR (4) YEAR STATUTE LIMITATIONS SET FORTH IN NRS 11.220 OR THE THREE (3) YEAR STATUTE UNDER NRS 11. 190(3)(a).

The City's Writ Petition argues in the alternative that the three (3) year statute of limitations from NRS 11.190(3)(a) for "An action upon a liability created by statute, other than a penalty or forfeiture" should be utilized as the California Court of Appeals utilized California's version of such a statute in *Griffin v. United Transportation Union*, supra.

However, *Griffin* is distinguishable insofar as the action was brought against *the union* for breach of the duty of fair representation, not the employer *for breach of a written instrument.* The California Court recognized that a union's duty of fair representation is a statutory obligation. While the plaintiff in *Griffin* pled the matter against the union as a breach of contract, the California Court recognized "despite appellant's label of breach of contract, the pertinent question is the statute of limitations applicable to an action against a union for breach of its duty of fair representation." 190 Cal. App. 3d at 1362, 236 Cal. Rptr. at 8.

Smaellie agrees that the obligations imposed on a union through its duty of fair representation are statutory in nature as they arise out of the provisions of Chapter 288 recognizing the union as the exclusive bargaining representative. However, unlike *Griffin,* the claim brought by Smaellie is against his employer the City only, and not against the MPOA. The only claim brought by Smaellie against the City is that the City breached the collective-bargaining agreement by discharging him without just cause. Because this is not a claim based upon a statute, but rather a breach of an instrument in writing, it is the six (6) year statute of limitations under NRS 11.190(1)(b) which applies.[3]

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[3] It should be noted that seven (7) years after *Griffin* was decided, it was rendered moot by *Anderson v. California Faculty Association,* 25 Cal.App.4th 207, 31 Cal.Rptr.2d 406 (1994) which held that breach of duty of fair representation claims against unions must be brought exclusively before the Public Employee

However, should the court conclude that NRS 11.190(1)(b) does not apply, it would not be the three (3) year statute of limitations from 11.190(3)(a) which applies. Rather, the governing statute would be NRS 11.220 which states "An action for relief, not hereinbefore provided for, must be commenced within four (4) years after the cause of action shall have accrued." Nevada subscribes to the Maxim of "*Expressio Unius Est Exclusio Alterius*, the expression of one thing is the exclusion of another". *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967). If an action under the *Vaca* exception is not an action on an instrument in writing, it is an action for relief "not hereinbefore provided for".

Finally, even if the three (3) year statute of limitations from NRS 11.190(3)(a) were applied, it does not necessarily mean the case should be dismissed for two (2) reasons. First, the cause of action only accrues when the plaintiff has clear and unequivocal notice that the union will not advance the grievance to arbitration. *Zuniga v. United Can Co.*, 812 F.2d 443, 448–49 (9th Cir.1987). Both federal law and this state have adopted the "clear and unequivocal notice" standard. See *City of North Las Vegas v. State Local Government Employee-Management Relations Board*, 127 Nev. 631, 261 P.3d 1071 (2011)

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Relations Board. However *Anderson* held that the breach of contract claims could be brought against the employer in the superior courts.

(citing multiple federal circuit court cases adopting the clear and unequivocal notice standard).

Because this matter was brought before the District Court on a Rule 12(b) Motion, the record is not sufficiently developed as to when Smaellie received the clear and unequivocal notice that the union was finally abandoning his grievance. This Court has repeatedly held that it "is not a fact-finding tribunal". See *Zugel v. Miller*, 99 Nev. 100, 659 P.2d 296 (1983).

Second, in computing the expiration of any limitations period, the statute of limitations will be equitably tolled. The doctrine of equitable tolling applies "where circumstances beyond a plaintiff's control prevented the plaintiff from filing in a timely manner." *Slusser v. Vantage Builders, Inc.*, 306 P.3d 524, 528 (N.M. App. 2013). This Court has recognized that the doctrine of equitable tolling applies in Nevada. See *City of North Las Vegas v. State Local Government Employee-Management Relations Board*, supra; See also *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 673 P.2d 490 (1983) (identifying a *nonexclusive* list of examples of when the doctrine applies).

A statute of limitations is ordinarily tolled for 120 days by the filing of an action in the trial court. See *Lutz v. A.L. Garber Company, Inc.*, 340 A.2d 186, Del. Ch., (1974); *Watters v. Stripling*, 675 So.2d 1242 (Miss. 1996); *Frasca v.*

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United States, 921 F.2d 450 (2nd Cir.1994). Accordingly, such tolling must be factored into whether any new complaint was timely.

More significantly, once the district court dismissed Smaellie's Complaint in Case No. A-14-696355 *with prejudice* he could not refile it within any limitations period. Likewise, once that dismissal with prejudice was appealed to this Court, the district court would have been deprived of any jurisdiction. It is well-established law that a statute of limitations is tolled during the pendency of an appeal. See *Paniagua v. Orange County Fire Authority*, 149 Cal.App.4th 83, 56 Cal.Rptr.3d 746 (2007) citing *Hoover v. Galbraith*, 7 Cal. Rptr. 3rd 519, 498 P.2d 981 (1972) and 3 Witkin, Cal. Procedure (4th Ed. 1996) Actions, §658, p. 841; *Bracken v. Yates Petroleum Corp.*, 107 N.M. 463, 760 P.2d 155 (1988); *White v. Michigan Consol. Gas Co.*, 352 Mich. 201, 89 N.W.2d 439 (1958) citing 54 C.J.S. Limitations of Actions §248 and 34 Am.Jur., Limitation of Actions, §237.

Accordingly, if the court finds that this matter is governed by any limitations period other than NRS 11.190(1)(b), in calculating the limitations period the district court must consider the 120 days tolling after the filing of the Complaint in Case No. A-14-696355, and must further include tolling for the time between the dismissal with prejudice in Case No. A-14-696355 and the issuance of remittitur in Docket No. 69714. Smaellie's rights should not be prejudiced

because the district court erroneously dismissed his case with prejudice, instead of without prejudice.

V. SMAILLIE IS NOT OBLIGATED TO PURSUE AN ACTION AGAINST HIS UNION FOR BREACH OF THE DUTY OF FAIR REPRESENTATION.

In support of its argument that the statute of limitations should be six (6) months, and not six (6) years, the City borrows from the language of *DelCostello* that the union's breach of its duty of fair representation is "inextricably interdependent" with the action against the employer to judicially enforce a bargaining agreement. The City argues that because Smaellie could not file an action against the MPOA before the State of Nevada Local Government Employee Management Relations Board because of the six (6) month statute of limitations under NRS 288.110(4) he likewise cannot not pursue an action against his employer – the City of Mesquite.

The City cites no authority for this argument and the argument is without merit. As recognized by this Court in *Clark County v. Tansey* citing directly from *DelCostello*:

> As a result, the employee "must not only show that [his] discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union" *Id.* at 165 (internal quotation omitted). "The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both." *Id.* Thus, the [*DelCostello*] Court determined that it is unreasonable to only allow an employee to bring a breach of duty of fair representation claim against a union

> when the union's breach is related to an employer's breach of the collective bargaining agreement. *Id.*

(APP Vol. 1 at 032). See also *Vaca v. Sipes*, 386 U.S. at 186, 87 S. Ct. at 914 ("We cannot believe that Congress, in conferring upon employers and unions the power to establish exclusive grievance procedures, intended to confer upon unions such unlimited discretion to deprive injured employees of all remedies for breach of contract. Nor do we think that Congress intended to shield employers from the natural consequences of their breaches of bargaining agreements by wrongful union conduct in the enforcement of such agreements.")

If Douglas Smaellie seeks to judicially enforce the collective bargaining agreement against his employer, as part of his case he must prove that the MPOA breached its duty to advance his meritorious grievance. However, he is not obligated to pursue such a claim against his union before the EMRB. This is exactly the holding reached by the State of California when examining the issue of hybrid actions for its bargaining eligible public-sector employees. See *Anderson v. California Faculty Association,* 25 Cal.App.4th 207, 31 Cal.Rptr.2d 406 (1994) (holding that California's PERB had exclusive jurisdiction over claims against the union for breach of the duty of fair representation but that judicial enforcement of the bargaining agreement may be pursued against the employer in the California Superior Courts.)

V. CONCLUSION

For all the reasons set forth above the Writ Petition of the City of Mesquite should be denied. If the Court chooses to deny the Writ Petition through a published decision, it should utilize that decision to affirm what has previously recognized in unpublished dispositions: that the *Vaca v. Sipes* exception applies to the public employees of the State of Nevada for to deny such an exception works what this Court and the United States Supreme Court have referred to as an "unacceptable injustice".

DATED this 5th day of July, 2018.

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CERTIFICATE OF COMPLIANCE WITH NRAP 28(e) AND NRAP 32(a)(8)

I hereby certify that I have read this Answer to Petition for Writ of Mandamus or Prohibition 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 Answer to Petition for Writ of Mandamus or Prohibition complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e), which requires every assertion in the Answer to Petition for Writ of Mandamus or Prohibition regarding any material issue which may have been overlooked to be supported by a reference to the page of the transcript or appendix where the matter overlooked is to be found.

I further certify that this Answer to Petition for Writ of Mandamus or Prohibition is formatted in compliance with *NRAP* 32(a)(4-6) as it has one (1) inch margins and uses New Times Roman - font size 14 has 18 pages, double

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spaced, and contains 4,150 words. I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 5th day of July, 2018.

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CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 5th day of July, 2018, I did serve the above and forgoing ANSWER TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION, by way of Notice of Electronic Filing provided by the court mandated E-Flex filing service, to the following email addresses on file for:

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