IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONETTE PATUSH,

Appellant,

v.

LAS VEGAS BISTRO, LLC,

Respondent.

Supreme Court No. 76062

Appeal from the Eighth Judicial District Court
Department 10, Clark County, Nevada
The Honorable Tierra Jones, District Court Judge

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

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

The undersigned, represents Respondent, Las Vegas Bistro, LLC. No other attorneys are expected to appear on Appellant's behalf. There is no corporation as addressed and/or defined within NRAP 26.1(a) which is a Respondent in this case.

Respectfully submitted this 27th day of September, 2018.

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I.

STATEMENT OF THE ISSUES

Whether the district court rightly dismissed Appellant's civil action pursuant to NRCP 12(b)(5) wherein Appellant asserted a single claim for wrongful retaliatory discharge in violation of public policy for filing a worker's compensation claim, finding that Appellant's tort claim against Respondent was barred by the two year statute of limitations set forth in NRS 11.190(4)(e) for injuries caused by the wrongful or negligent acts of others, and rejecting Appellant's argument that the four year "catch-all" statute of limitations is applicable to what she has deemed a "hybrid" tort-contract claim.

II.

FACTS RELEVANT TO THE ISSUES

Respondent terminated Appellant's employment on or about July 3 or 4, 2014. Appellant's Appendix, p. 2. Appellant was advised that she was terminated for failing to show up to work and for stealing other employees' personal property. *Id.* at 4. Prior to her termination on or about May 8, 2014, Appellant filed a worker's compensation claim that was honored by her employer. *Id.* at 3.

On March 21, 2018 Appellant filed her complaint against Respondent alleging that she was terminated in retaliation for filing her worker's compensation

claim in violation of public policy. *Id.* at 4. In response, Respondent filed a motion to dismiss pursuant to NRCP 12(b)(5) arguing that Appellant's claim, if any, had expired in 2016. The District Court heard argument on May 15, 2018 and correctly found that Appellant's claim sounded in tort and the operative statute of limitations governing her tort claim was two-years and is set forth in NRS 11.190(4)(e). *Id.* at 7-8. Accordingly, the District Court granted Respondent's motion. *Id.*

III.

SUMMARY OF THE ARGUMENT

This Court in *Hansen v. Harrah's* adopted a public policy exception to Nevada's "at-will" employment rule recognizing the retaliatory discharge for filing a workmen's compensation claim. In doing so, this Court specifically held:

> We elect to support the established public policy of this state concerning injured workmen and adopt the narrow exception to the at-will employment rule recognizing that retaliatory discharge by an employer stemming from the filing of a workmen's compensation claim by an injured employee ***is actionable in tort. Since both the cause of action and the remedy are governed by the law of torts.***

Hansen v. Harrah's, 100 Nev. 60, 64, 675 P.2d 394, 396 (1984). *Id.* at 64, 675 P.2d at 397 (emphasis added). A "two-year statute of limitations govern[s] tort actions brought in Nevada." *State Farm Mut. Auto. Ins. Co. v. Fitts*, 120 Nev. 707, 709, 99 P.3d 1160, 1161 (2004) (citing NRS 11.190(4)).

It is established law that Appellant's claim, as well as the remedy, for retaliatory discharge for filing a worker's compensation claim in violation of public policy sounds in tort. It is also established law that the two-year statute of limitation set forth in NRS 11.190(4)(e) governs injuries to the person caused by wrongful (tortious) or neglectful acts of another. The statute and the relevant case law from this Court, *Hansen* and its progeny, are clear on these issues.

Appellant disregards the law and instead asserts that her claim is a formerly unheard of "hybrid" of contract and tort and she argues that NRS 11.190(4)(e) is inapplicable. In furtherance of that specious argument, Appellant contends that the language in NRS 11.190(4)(e) – "an action to recover to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another" – means it applies only to "personal physical injury" and wrongful death claims. There is plainly no language in NRS 11.190(4)(e) restricting its application to only cases involving "physical injuries" as Appellant suggests and, Appellant's interpretation is belied by this Court's precedence.

The District Court followed this Court's guidance and correctly dismissed Appellant's complaint in the underlying action. Respondent asks the Court to affirm the District Court's decision by finding that Appellant's tort claim for retaliatory discharge in violation of public policy is governed by a two-year statute of limitations.

IV.

ARGUMENT

1. NEVADA RECOGNIZES A CLAIM FOR WRONGFUL DISCHARGE FOR FILING A WORKER'S COMPENSATION CLAIM.

Employees in Nevada are presumed to be employed "at-will" unless the employee can prove facts legally sufficient to show a contrary agreement was in effect. *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 375, 989 P.2d 882, 884 (1999). The at-will rule gives the employer the right to discharge an employee for any reason, so long as the reason does not violate public policy or the law. *Id.* at 376; 989 P.2d at 885 (citing *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 369 (1989); *K Mart Corp. v. Ponsock*, 103 Nev. 39, 47, 732 P.2d 1364, 1369 (1987)). "The at-will employment is subject to limited exceptions founded upon strong public policy..." *Hansen v. Harrah's*, 100 Nev. 60, 63, 675 P.2d 394, 396 (1984).

An employer commits a tortious discharge by terminating an employee for reasons that violate public policy. *Allum v. Valley Bank*, 114 Nev. 1313, 1319-20 (1998). Nevada recognizes the cause of action of retaliatory discharge for filing a workers' compensation claim. *Hansen*, *supra,* 100 Nev. at 63-65, 675 P.2d at 396-397; *State Indus. Ins. System v. Campbell*, 109 Nev. 997, 1001, 862 P.2d 1184, 1186 (1993) (noting *Hansen* adopted a remedy for an employee discharged in retaliation for filing workers' compensation claims); *Finn v. City of Boulder City*,

2:14-cv-01835-JAD-GWF, 2018 WL 473001, at *8 (D. Nev. Jan. 17, 2018) (noting that *Harrah's* adopted the narrow exception to the at-will employment rule and recognized that "retaliatory discharge by an employer stemming from the filing of a workmen's compensation claim by an injured employee is actionable in tort").

Nevada also recognizes a claim for constructive discharge for filing a workers' compensation claim. *Dillard, supra*, 115 Nev. at 377, 989 P.2d at 885.

> [A] tortious constructive discharge is shown to exist upon proof that: (1) the employee's resignation was induced by action and conditions that are violative of public policy; (2) a reasonable person in the employee's position at the time of resignation would have also resigned because of the aggravated and intolerable employment actions and conditions; (3) the employer had actual or constructive knowledge of the intolerable actions and conditions and their impact on the employee; and (4) the situation could have been remedied.

Id. (citing *Martin v. Sears, Roebuck and Co.*, 111 Nev. 923, 926, 899 P.2d 551, 553 (1995).

2. A CLAIM FOR WRONGFUL DISCHARGE IS FOUNDED IN TORT LAW.

The Nevada Supreme Court has recognized that "retaliatory discharge by an employer stemming from the filing of a workers' compensation claim by an injured employee is actionable in tort" as "***both the cause of action and the remedy are governed by the law of torts***." (Emphasis added). *Hansen, supra,* 100 Nev. at 64-65, 675 P.2d at 397; *Ponsock, supra,* 103 Nev. at 46, 732 P.2d at 1369

(referring to the application of general tort law to employee discharge cases and citing *Hansen* as the prototypical tortious discharge or public policy tort); *D'Angelo v. Gardner*, 107 Nev. 704, 718, 819 P.2d 206, 212 (1991) (the tort of wrongful discharge is not dependent upon or related to an employment contract); *Dillard, supra*, 115 Nev. at 376-77, 989 P.2d at 885 ("retaliatory discharge for filing workmen's compensation claims [is] tortious behavior").

In *D'Angelo v. Gardner*, the Nevada Supreme Court stated that "[t]he essence of a tortious discharge is the wrongful, usually retaliatory, interruption of employment by means of which are deemed contrary to the public policy of this state." *D'Angelo v. Gardner*, 107 Nev. 704, 718, 819 P.2d 206, 212 (1991). The Court further noted that "although a public policy tort cannot ordinarily be committed absent the employer-employee relationship, the tort, the wrong itself, is not dependent upon or directly related to a contract of continued employment..." *Id.* (quoting *Ponsock, supra,* 103 Nev. at 46, 732 P.2d at 1369)); *see Shoen v. Amerco, Inc.*, 111 Nev. 735, 744, 896 P.2d 469, 475 (1995) (quoting *D'Angelo*).

Therefore, "the type of employment – either at-will or by contract – is immaterial to a tortious discharge action." *Allum, supra,* 114 Nev. at 1317, 970 P.2d at 1064. Even if Appellant's assertion that her claim is a (never before recognized) "hybrid" of contract and tort is true, which it is not, the assertion is immaterial to her claim. In any event, there is no case law wherein this Court

found that a claim for tortious discharge in violation of public policy is a "hybrid" of tort and contract law.

3. PLAINTIFF'S WRONGFUL DISCHARGE CLAIM IS GOVERNED BY THE TWO-YEAR STATUTE OF LIMITATIONS FOR PERSONAL INJURIES DUE TO A WRONGFUL ACT.

NRS 11.190(4)(e) provides that the two-year statute of limitations applies to an action to recover damages to a person caused by the wrongful act (*i.e.*, intentional tort) or neglect (*i.e*, negligence) of another. NRS 11.190(4)(e). A "two-year statute of limitations govern[s] tort actions brought in Nevada." *State Farm Mut. Auto Ins. Co. v. Fitts*, 120 Nev. 707, 99 P.3d 1160, 1161 (2004); *Meadows v. Sheldon Pollack Corp.*, 92 Nev. 636, 556 P.2d 546 (1976) (the gravamen of the cause of action was in tort; thus, the two year limitation of NRS 11.190(4)(e) is applicable). The two-year statute of limitations applies to an action for wrongful discharge in Nevada. *See, e.g., Salopek v. Nevada*, No. 00-15004, 2001 WL 832724, * (9th Cir. July 24, 2001) (applying the two-year statute of limitations set forth in NRS 11.190(4)(e) to a claim for constructive discharge); *Taylor v. Becker*, Case No.: 2:13-cv-002199-APG-VCF, 2017 WL 44943, *4 (D. Nev. Jan. 3, 2017) (applying the two-year statute of limitations to plaintiff's wrongful termination, intentional infliction of emotional distress, negligent hiring, retention, and supervision, and defamation claims).

There are simply no wrongful discharge cases of an "at-will" employee in Nevada where anything other than the limitations period found at NRS 11.190(4)(e) has been applied.

In *Perez v. Seevers,* the Ninth Circuit cogently discussed the applicability of NRS 11.190(4)(e):

> The language of section 11.190(4)(e) 'wrongful act or neglect of another' encompasses all personal injuries whether intentional or negligent and, in effect, is the residual statute of limitations for personal injury actions. Section 11.190(4)(c)[1] is more specific in identifying certain intentional torts, but this does not abridge the general all-encompassing language of section 11.190(4)(e). That section, being the residual statute of limitations for personal injury actions is the statute of limitations applicable to [plaintiff's personal injury claim].

Perez v. Seevers, 869 F.2d 425, 426 (9th Cir. 1989). Significantly, the *Seevers* case involved a 42 U.S.C. § 1983 action against a Nevada Highway Patrol officer, it was not an action to seek redress for a "personal physical injury."

Appellant alleged that she was wrongfully terminated on or about July 3 or 4, 2014. Because Appellant asserted that she was wrongfully discharged her claim, if any, was to be filed on or before July 3 or 4, 2016. However, Appellant waited until March 21, 2018 to levy her claim of tortious discharge against Respondent. As the statute of limitations on Plaintiff's claim had long expired, there was

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[1] Two years for libel, slander, assault, battery, false imprisonment, and seduction. NRS 11.190(4)(c).

absolutely no legal basis for the lawsuit. The district court appropriately dismissed the complaint under Rule 12(b)(5).

Appellant claims that the statute of limitations governing her tortious discharge claim is not set forth in NRS 11.190(4)(e), but instead is set forth in NRS 11.220, which is Nevada's catch-all limitations provision: "An action for relief, not hereinbefore provided for, must be commenced within 4 years after the cause of action shall have accrued." NRS 11.220. The only case supporting that claim cited by Appellant is *Perry v. Herbst, Inc.*, 383 P.3d 257 (Nev. 2016). Though, if any way relevant whatsoever, *Perry* supports Defendant's position. Appellant also wrongly dismisses persuasive findings from the Nevada District Court (and Ninth Circuit), which commonly handle employment related claims due to the implication of Title VII. Nevada District Court judges have concluded that the two-year statute of limitations set forth in 11.190(4)(e) applies to tortious discharge in violation of public policy claims. Additionally, Plaintiff opines that the limitations period set forth in NRS 11.190(4)(e) only pertain to personal physical injury and wrongful death claims, but, again, provides no legal authority supporting that opinion.

i. *Perry* Supports Respondent's Position.

Perry involved a claim brought under the Minimum Wage Amendment ("MWA"), which was added to the Nevada Constitution in 2006. *Perry, supra,*

383 P.3d at 268. Because the MWA does not specify a statute of limitations for the right of action it establishes, this Court was asked to determine whether the two-year statute of limitations in NRS 608.260 or the catchall four-year statute of limitations set forth in NRS 11.220 applied to claims asserted under the MWA. The district court held that MWA claims are closely analogous to those provided for in NRS Chapter 608 and, thus, the two-year statute of limitations in NRS 608.260 controlled.

This Court affirmed. In doing so, the Court explained that Perry sought damages from Terrible Herbst based on her allegations that it failed to pay her the MWA-required minimum wage. *Id.* at 260. The Court found that though Perry's claim was asserted directly under MWA, her claim closely resembled an action for back pay under NRS 608.260. When a right of action does not have an express limitations period, the most closely analogous limitations period is to be applied. *Id.* at 262. The MWA does not expressly indicate which limitations period applies and the most closely analogous statute to the MWA was/is NRS 608.260, as both permit an employee to sue his employer for failure to pay the minimum wage. Nowhere in the *Perry* decision does this Court

Though Respondent thinks it is unnecessary as NRS 11.190(4)(e) is clear, if the Court was to analogize Appellant's tortious discharge claim with the most analogous limitations period it would apply the two-year limitations period set

forth in NRS 11.190(4). In the underlying case, Appellant sought damages for monetary injuries to her purportedly caused by the Respondent's tortious conduct, which is an action covered by NRS 11.190(4)(e). *Perry* said to look to the most analogous statute and the *Perry* court did not just fall back on the catch-all limitations period where the MWA was silent on the operative limitations period. The most analogous statute in this case is the generic tort statute (NRS 11.190(4)) because a tortious discharge claim can only be brought in the absence of contract (through the at will exception). Moreover, a two-year statute of limitations for a tortious discharge claim would be consistent with the Nevada legislature's codification of the two-year wage record keeping requirement in NRS 608.115 and the two-year statute of limitations for minimum wage violations.

ii. NRS 11.190(4)(e) Does Not Apply Only To Physical Personal Injury Cases.

Appellant asserts that the two-year limitations period specified in NRS 11.190(4)(e) only applies to physical personal injury and/or wrongful death cases. Plaintiff is wrong. The Nevada Supreme Court held in *Fitts* that the two-year statute of limitations period set forth in NRS 11.190(4) applies to torts. *Fitts, supra,* 120 Nev. at 709, 99 P.3d at 1161; *see also Palmer v. State*, 106 Nev. 151, 153, 787 P.2d 803, 804 (1990) (noting that the employer would have a defense to the employee's claim for discriminatory discharge based upon the expiration of the two-year statute of limitations set forth in NRS 11.190(4)(e)). There is also no

language in NRS 11.190(4)(e) restricting its application to only cases involving physical injuries.

In *Palmer*, Palmer filed a complaint with the Nevada Equal Rights Commission against her employer alleging that he had been wrongfully discharged. *Palmer, supra*, 106 Nev. at 152, 787 P.2d at 804. Twenty-one months later she filed a complaint in District Court without any action having been taken by NERC. Palmer's employer thereafter successfully moved to dismiss the complaint because she had failed to exhaust her administrative remedies. *Id.* Palmer appealed.

This Court stated:

> Despite the rule that exhaustion of remedies is required by NRS 613.420 prior to filing an employment discrimination action in court, we are constrained to excuse the exhaustion requirement in the instant case. Because of the NERC's twenty-one month delay in addressing her claim, Palmer felt compelled to file her action in court to preserve her tort claim against a potential defense based upon the expiration of the two-year statute of limitations. Palmer had attempted to fully comply with the exhaustion requirements. She had filed her claim with the NERC and was patiently awaiting a resolution of her case from that agency before proceeding to court. ***When faced with the possibility of losing her tort claim because of the statute of limitations, Palmer acted reasonably in filing her claim in court.***

Id. at 153, 787 P.2d at 804-805 (Emphasis added). Thus, this Court explicitly recognized in *Palmer* that it was reasonable for the employee to file her civil

complaint before the expiration of the applicable two-years statute of limitations period set forth in NRS 11.190(4)(e).

iii. District Court Decisions Regarding The Applicable Statute Of Limitations Are Persuasive.

Appellant takes issue with the fact that the District Court of Nevada has issued decisions finding that the applicable statute of limitations for tortious discharge cases is two-years. However, Appellant does not explain why the decisions are wrong or how the District Court should have ruled. In any event, it is improbable that numerous U.S. District Court judges all came to the wrong conclusion and that all the decisions went unchallenged.

In *Torre v. J.C. Penney Co., Inc.*, 916 F.Supp 1029, 1030-31 (D. Nev. 1996), the plaintiff's complaint contained three claims all of which the district court judge concluded sounded in tort. One claim was for tortious discharge in violation of public policy (filing a worker's compensation claim). The court noted, citing *Palmer, supra,* that under Nevada law there is a two-year statute of limitation period on a claim for tortious discharge in violation of public policy. Because the plaintiff had filed her claim one year after the expiration of the two-year period, that tort claim was subject to dismissal. In *Fox v. Sysco Corp.*, Case No. 2:11-cv-00424-RLH-PAL, 2011 WL 5838179, *4 (D. Nev. Nov. 21, 2011) (unreported), the district court dismissed the plaintiff's claim for tortious discharge because the plaintiff had filed the claim after the applicable two-year statute of

limitations period. The district court judge cited NRS 11.190(4)(e) and *Fitts* in its analysis. The same result occurred in *Scott v. Corizon Health, Inc.*, Case No. 3:14-cv-00004-LRH-VPC, 2014 WL 1877434, * (D. Nev. May 9, 2014) (unreported). The district court judge found that the plaintiff's claim for tortious discharge was time barred because she failed to bring the claim within the applicable two-year limitations period. In his analysis, the district court judge cited *Palmer*, *Fitts*, NRS 11.190(4)(e), and prior district court cases. *See Smallwood v. Titanium Metals Corp.*, 115 Fed.Appx. 416 (9th Cir. 2004) (citing *Palmer* and *Torre* and noting that ([i]n Nevada a claim for wrongful discharge is subject to a two-year statute of limitations").

Because employments cases typically involve Title VII claims, they are often filed in or removed to U.S. District Court. U.S. District Court judges are very proficient in handling employment cases, which include cases involving allegations of tortious discharge. There is no reason to summarily dismiss the District Court's line of persuasive cases.

iv. NRS 11.490(4)(e) Is Not Unconstitutionally Vague Nor Would Application Of The Two Year Statute Of Limitations Result In The Unconstitutional Denial Of Due Process.

In a last ditch effort, Appellant contends that NRS 11.490(4)(e) is unconstitutionally vague. Specifically, Appellant claims:

> No person of ordinary intelligence would have adequate notice from reading NRS 11.190(4)(e) that a retaliatory

> discharge in violation of public policy claim would be subject to a two year statute of limitations under that statute. Thus to apply that statute of limitations to the claim in this case would be an unconstitutional denial of and violation of due process.
>
> On the other hand, if a person of ordinary intelligence read the entirety of the limitations period statutes in NRS Chapter 11, he or she would conclude that there was no specific limitation period provided for the retaliatory discharge claim and would determine that the four year "catch-all" provision in NRS 11.220 applies to this claim.

Appellant's Opening Brief, p. 18. Plaintiff's argument is specious and belied by the numerous court decisions cited above. There is not one case in existence that holds that a four-year statute of limitations applies to retaliatory discharge claims. Moreover, the cases Plaintiff cites in support of this last argument pertain to placing a person on notice of prohibited conduct. *Id. at* 17. The cases do not pertain to the interpretation of a statute of limitations provision.

1. Appellant has not met her burden to invalidate NRS 11.190(4)(e).

The determination of whether a statute is constitutional is a question of law, which this Court reviews de novo. *Sheriff v. Burdg*, 118 Nev. 853, 857, 59 P.3d 484, 486 (2002). Statutes are presumed to be valid and the challenger to the statute bears the burden of demonstrating that the statute is unconstitutional. *Id.* There must be a "clear showing" of invalidity. *Id.*

The void-for vagueness doctrine is predicated upon a statute's repugnancy to the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Silvar v. Eighth Judicial Dist. Court ex rel. County of Clark*, 122 Nev. 289, 293, 129 P.3d 682, 685 (2006). "A statute is unconstitutionally vague and subject to facial attack if it (1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." *Id.* The first prong is concerned with guiding those who may be subject to potentially vague statutes, while the second – "and more important" – prong is concerned with guiding the enforcers of the statutes. *Id.* In cases involving a civil statute, the challenger must show that the statute is impermissibly vague in all of its applications. *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 512, 217 P.3d 546, 553 (2009).

Therefore, here, whether NRS 11.190(4)(e) is vague in all its applications, the statute is sufficiently clear if, in any application, it does not "(1) fail[ ] to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited" and does not "lack [ ] specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement. *Id.* at 518-19, 217 P.3d at 557. NRS 11.190(4)(e) is not vague in all of its applications and therefore is not constitutionally vague.

NRS 11.190(4)(e) is clear that it applies to actions to recover damages for injuries to a person caused by the wrongful act of another. A tortious discharge is certainly an injury to a person allegedly caused by the wrongful act of another. It cannot reasonably be disputed that this limitations period clearly applies to Appellant's claim against Respondent. Moreover, applying the two-year limitations period is not arbitrary and discriminatory because no court has ever applied the set four-year limitations period set forth in NRS 11.220 in the context of a tortious discharge claim. NRS 11.190(4)(e) is sufficiently clear to provide notice that a two-year limitations period applies to a tortious discharge claim and adequate guidance to avoid arbitrary or discriminatory enforcement and application.

Therefore, under a facial challenge the statute is not unconstitutionally vague for civil enforcement because the general restrictions under the statute have clear, constitutional applications. Accordingly, this Court should affirm the district court's ruling.

V.

CONCLUSION

In accordance with the above, the district court's decision should be affirmed in all respects.

Respectfully submitted this 27th day of September, 2018.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify I have read this brief, that it 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, pursuant to NRAP 32(a)(5)(A), has been prepared in a proportionally spaced typeface using Word in Times New Roman style at a font size of 14.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), this brief contains 5,133 words.

3. I further certify to the best of my knowledge, information, and belief, this brief is not frivolous or interposed for any improper purpose. I further certify 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 transcript or appendix where the matter relied upon may be found.

I understand I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted this 27th day of September, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Clark Hill, PLLC, and on this 27th day of September, 2018, I served a true and correct copy of the foregoing **RESPONDENT'S ANSWERING BRIEF** as follows:

☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

☐ via facsimile to the following counsel of record:

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