Case No. 77617

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE DEPARTMENT,

Appellant,

v.

THE CENTER FOR INVESTIGATIVE REPORTING, INC., A CALIFORNIA NONPROFIT ORGANIZATION.

Respondent.

Appeal from the Eighth Judicial District Court of the State of Nevada, in and for County of Clark

RESPONDENT'S ANSWERING BRIEF

Philip R. Erwin, Esq. (#11563)
Samuel R. Mirkovich, Esq. (#11662)
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222

Counsel for Respondent

RULE 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities 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 CENTER FOR INVESTIGATIVE REPORTING, INC. ("CIR") is a California nonprofit organization and has no corporate affiliation.

CIR has not been represented by any other attorneys besides CAMPBELL & WILLIAMS.

ROUTING STATEMENT

The Nevada Supreme Court should retain this writ proceeding because it is a matter raising as a principal issue questions of statewide importance. NRAP 17(a)(12).

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RESPONDENT'S OPENING BRIEF

Respondent The Center For Investigative Reporting, Inc. hereby submits its Answering Brief. For ease of reference, Appellant Las Vegas Metropolitan Police Department will be referred to as "LVMPD," and Respondent The Center For Investigative Reporting, Inc. will be referred to as "CIR."

I. JURISDICTION

CIR does not dispute LVMPD's jurisdictional statement.

II. COUNTERSTATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the district court correctly determined that CIR prevailed under NRS 239.011(2) where the filing of CIR's Petition for Writ of Mandamus ("Petition") caused LVMPD to voluntarily produce the requested public records before the district court entered an order on the merits?

2. Whether the district court properly awarded CIR attorney's fees and costs based on its determinations that the fee provision in NRS 239.011(2) is not subject to the immunity provision in NRS 239.012 and, regardless, LVMPD did not act in good faith when it refused to comply with CIR's public records request?

III. COUNTERSTATEMENT OF THE CASE

This case presents an issue of first impression as this Court must decide whether Nevada recognizes the "catalyst theory" for the purpose of determining whether a requester prevailed pursuant to NRS 239.011(2). Here, CIR submitted a valid written request to LVMPD pursuant to the Nevada Public Records Act

("NPRA") seeking any public records related to the murder of Tupac Shakur in Las Vegas, Nevada in September 1996. In response, LVMPD committed serial violations of the NPRA by (i) refusing to respond to CIR's public records request for months until CIR retained litigation counsel, (ii) maintaining an improper blanket objection to confidentiality based on the manufactured claim that its 22-year-old murder investigation was open and active, and (iii) failing to provide a *Vaughn* index identifying responsive records that were withheld.

As a result of LVMPD's brazen refusal to comply with its obligations under the NPRA, CIR was forced to file suit in the Eighth Judicial District Court to compel LVMPD's production of the responsive public records. LVMPD first opposed CIR's Petition in its entirety but subsequently changed its position and belatedly complied with the NPRA after the district court indicated LVMPD had failed to meet its burden of proving confidentiality. LVMPD, in turn, voluntarily produced thousands of pages of records and other types of media related to the murder of Tupac Shakur along with the required *Vaughn* index, thereby mooting the substantive aspects of CIR's Petition.

The parties subsequently submitted supplemental briefing on the issue of whether CIR "prevailed" under NRS 239.011(2). CIR contended that the district court should apply the catalyst theory and find that CIR prevailed because the filing of the Petition caused LVMPD to voluntarily comply with the NPRA. In that regard, CIR submitted abundant legal authority from other jurisdictions applying the catalyst theory

in the context of state public records acts containing similar fee provisions to the NPRA. For its part, LVMPD argued that CIR did not prevail because the district court never entered a substantive ruling on the merits of the Petition. The district court adopted the catalyst theory and correctly found that CIR prevailed under NRS 239.011(2).

Based on that finding, CIR moved for its attorney's fees and costs incurred in the litigation. LVMPD claimed that the district court must interpret the fee provision in NRS 239.011(2) in conjunction with the good faith immunity provision in NRS 239.012. Ignoring its repeated and willful violations of the NPRA, LVMPD contended that it acted in good faith in response to CIR's public records requests and was, therefore, not subject to an award of attorney's fees and costs. In addition, LVMPD disputed CIR's entitlement to pre-litigation fees and costs.

The district court rejected LVMPD's reliance on the good faith immunity provision in NRS 239.012 and, moreover, found that LVMPD did not act in good faith in response to CIR's public records requests. The district court likewise found that CIR's attorney's fees and costs were reasonable under *Brunzell* and entered a fee award in the amount of $50,402.89. Notably, the fee award did not include pre-litigation fees as CIR voluntarily withdrew its request for such fees prior to the entry of the district court's order. This appeal followed.

IV. COUNTERSTATEMENT OF FACTS

1. CIR owns and operates *Reveal*, a website, public radio program, and podcast. JA 2. CIR was founded in 1977 as the nation's first nonprofit investigative journalism organization and its work has been recognized for its excellence with recent awards including two national News & Documentary Emmys, a George Foster Peabody Award, a Webby award, a Military Reporters and Editors Award, a Bartlett & Steele Gold Award for investigative business journalism, Alfred I. DuPont-Columbia University Awards, a George Polk Award, IRE Awards for multiplatform journalism and an Edward R. Murrow Award for investigative reporting. *Id*. CIR was also named as a finalist for the Pulitzer Prize in 2012, 2013, and 2018. *Id*.

2. Respondent Las Vegas Metropolitan Police Department ("LVMPD") is a state agency and the joint city-county police force for the City of Las Vegas and Clark County, Nevada. *Id.*

3. On or about December 11, 2017, Andy Donohue, the Managing Editor of CIR, contacted LVMPD's Office of Public Information to request information under the NPRA concerning the murder of Tupac Shakur in Las Vegas, Nevada in September 1996. JA 19-23. Specifically, Mr. Donohue formally requested the opportunity to inspect or obtain copies of "[a]ny and all records related to the American rapper Tupac Amaru Shakur, aka 2Pac, aka Makaveli, including but not limited to law enforcement files involving his murder." *Id.*

4. The purpose of Mr. Donohue's request was to gather information for a piece of investigative journalism about the decades-old unsolved murders of Tupac Shakur and Christopher Wallace aka Notorious B.I.G. that would be broadcast to a national audience on one of CIR's platforms. JA 2-3.

5. If LVMPD refused to comply with CIR's public records request, Mr. Donohue asked LVMPD to cite each specific exemption justifying such refusal under Nevada law. JA 19-23. To the extent LVMPD determined that some, but not all, of the information in the subject records was exempt from disclosure, Mr. Donohue requested that LVMPD redact that information and produce the segregable portions of the records. *Id*.

6. Although Nevada law requires that a government entity respond to a request for public records under the NPRA with five (5) business days, LVMPD did not respond to Mr. Donohue's December 11, 2017 e-mail. *Id*.

7. On January 10, 2018, Mr. Donohue followed up on CIR's public records request and noted that LVMPD had failed to comply with its statutory obligations under the NPRA. *Id*. That same day, LVMPD's Office of Public Information responded to Mr. Donohue by stating that his e-mail had been forwarded to PIO Officer Lawrence Hadfield for "follow-up." *Id*. Nevertheless, neither Officer Hadfield nor any other individual from LVMPD provided a determination to CIR regarding its public records request. *Id*.

8. On January 22, 2018, Mr. Donohue followed up on CIR's public records request for a second time and noted that LVMPD's determination was more than one month overdue. *Id*. Again, LVMPD did not respond to Mr. Donohue's e-mail. *Id*.

9. On March 15, 2018, Mr. Donohue followed up on CIR's public records request for a third time and pointed out that LVMPD's determination was now more than three months overdue. *Id*. Consistent with its prior failures to comply with the requirements of the NPRA, LVMPD did not respond to Mr. Donohue's e-mail. *Id*.

10. On March 28, 2018, CIR's counsel sent a letter to LVMPD Director of Public Information, Carla Alston, setting forth LVMPD's failure to comply with its statutory obligations under the NPRA and demanding a complete response to CIR's public records request on or before April 4, 2018. JA 25-31.

11. On April 5, 2018, LVMPD produced a two-page police report concerning the murder of Tupac Shakur. JA 33-34. In direct contravention of its obligations under NRS 239.0107(d), LVMPD did not indicate whether additional records existed or were withheld based on alleged confidentiality grounds. JA 36-37.

12. On April 11, 2018, CIR's counsel e-mailed Officer Hadfield and asked for confirmation that the two-page police report was the only document in LVMPD's possession responsive to CIR's public records request. *Id*. CIR's counsel likewise requested that LVMPD confirm that it did not withhold any responsive records—

e.g. investigative files, correspondence, memoranda, et cetera—based on confidentiality grounds. *Id*. If LVMPD did withhold responsive records on confidentiality grounds, CIR's counsel demanded that LVMPD provide notice of that fact along with a citation to the supporting statute(s) or other legal authorities as required by NRS 239.0107(d). *Id*.

13. On April 12, 2018, Charlotte M. Bible, Assistant General Counsel for LVMPD, sent a letter in response to CIR's counsel's April 11, 2018 e-mail. JA 39-40. Ms. Bible first confirmed that LVMPD failed to advise CIR that it would research its public records request and respond within 30 days as required by NRS 239.0107(1)(c). *Id*. Ms. Bible then claimed that the criminal investigation of Tupac Shakur's murder was an "open active investigation" and, as such, the requested records were (i) not public records under NRS 239.010(1), (ii) declared by law to be confidential, (iii) subject to the "law enforcement privilege," and (iv) protected from disclosure because law enforcement policy justifications for nondisclosure outweigh the public's interest in access to the records. *Id*. Notwithstanding LVMPD's continued refusal to comply with CIR's public records request, Ms. Bible conceded that LVMPD had failed to notify CIR that responsive documents were withheld and did not provide supporting legal authorities as required by the NPRA. *Id*. In sum, Ms. Bible declared that "disclosure of the investigative file would jeopardize apprehending a murder suspect" although she did not provide any information or

evidence to suggest that LVMPD's purported investigation into Tupac Shakur's murder was, in fact, "open" and "active." *Id*.

14. On April 23, 2018, CIR's counsel responded to Ms. Bible's letter and disputed LVMPD's legally unsupported position that any and all records related to Tupac Shakur's 22-year-old murder were confidential as a matter of law because LVMPD had labeled its investigation as "open" and "active." JA 42-44. In short, CIR's counsel submitted that the production of records related to the murder of Tupac Shakur was required under Nevada law and requested that LVMPD confirm its intention to comply with its statutory obligations by April 27, 2018. *Id*.

15. On April 27, 2018, Ms. Bible responded and maintained LVMPD's position that the requested records were confidential and, therefore, not subject to disclosure under the NPRA. JA 46. Although Ms. Bible attempted to expand on LVMPD's policy justifications for nondisclosure, she did not provide any additional information or evidence to suggest that the LVMPD's alleged investigation into the decades-old murder of Tupac Shakur was "open" and "active." *Id*. Ms. Bible also did not indicate whether LVMPD had actually reviewed the requested records to determine whether each and every document is confidential. *Id*. Instead, LVMPD maintained its blanket objection to CIR's request on confidentiality grounds and refused to produce any documents other than the two-page police report. *Id*.

16. On May 2, 2018, CIR filed its Petition and argued that records related to Tupac Shakur's murder were subject to disclosure under the balancing test

established by this Court in *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990). JA 1-55.

17. On May 10, 2018, LVMPD filed its Response to the Petition. JA 68-183. Therein, LVMPD maintained its blanket objection to the production of records related to the murder of Tupac Shakur on grounds that the NPRA did not require the disclosure of records concerning open criminal investigations. *Id*.

18. On May 14, 2018, CIR filed its Reply in Support of Verified Petition for Writ of Mandamus and Incorporated Application for Order and Expedited Hearing Pursuant to NRS 239.011. JA 184-208.

19. On May 15, 2018, the Court conducted a hearing on CIR's Petition. JA 217-50. The Court plainly stated that LVMPD had failed to meet its burden of demonstrating confidentiality as required by Nevada law. JA 243-245. In light of the expedited briefing schedule, however, the Court provided LVMPD with two options: 1) produce the requested records with redactions or 2) conduct an *in-camera* evidentiary hearing regarding confidentiality. *Id*. In response, LVMPD indicated that it would maintain its blanket confidentiality objection and proceed with the *in-camera* evidentiary hearing. *Id*.

20. Following the hearing, LVMPD agreed to produce records concerning the murder of Tupac Shakur within thirty (30) days subject to LVMPD's right to redact and/or withhold records based on confidentiality under the NPRA. JA 335. LVMPD likewise agreed to produce a *Vaughn* index identifying any records that

were redacted and/or withheld along with the supporting legal justification(s) therefore. *Id.* CIR reserved the right to challenge LVMPD's redactions and/or withholdings of records that were the subject of the Petition. *Id.* CIR further reserved the right to seek its attorney's fees and costs at the conclusion of this proceeding pursuant to NRS 239.011(2). *Id.*

21. On July 9, 2018, LVMPD produced more than 2200 pages of records concerning Tupac Shakur's murder. JA 337-338. LVMPD also produced a *Vaughn* index identifying records that were redacted or withheld along with the supporting legal bases for non-disclosure under the NRPA. *Id.*

22. On August 2, 2018, LVMPD produced audio recordings of 911 calls. *Id.*

23. On August 16, 2018, CIR requested additional information and/or the production of certain records identified on LVMPD's *Vaughn* index. *Id.* CIR further requested that LVMPD produce any audio recordings of witness interviews conducted during its investigation of Tupac Shakur's murder. *Id.*

24. On August 27, 2018, LVMPD produced additional documents that were previously identified on its *Vaughn* index. *Id.*

25. On August 31, 2018, LVMPD agreed to produce audio recordings of witness interviews and subsequently produced six such recordings. *Id.*

26. On October 12, 2018, the parties submitted supplemental briefs on whether CIR "prevailed" under NRS 239.011(2) such that CIR would be entitled to

its attorney's fees and costs incurred in the litigation. JA 254-346. Contrary to LVMPD's representation to this Court, *see* OB at 13, CIR did not "urge" the district court to apply the catalyst theory that is codified in the federal Freedom of Information Act ("FOIA"). JA 254-338. In reality, while CIR discussed the history of the catalyst theory under FOIA, CIR asserted that the district court should follow the analyses of numerous state courts that have adopted the catalyst theory when interpreting fee provisions in state public records acts that are substantially similar to the NPRA. JA 261-269.

27. The district court conducted a hearing on the application of NRS 239.011(2) on October 30, 2018 and ruled that CIR prevailed because the filing of its Petition caused LVMPD to produce the requested records.[1] JA 349-357. In so finding, the district court specifically noted that NRS 239.011(2) employs the general term "prevails" rather than the legal term of art "prevailing party." JA 351-352.

28. The district court then entered its Order Regarding The Center For Investigative Reporting, Inc.'s Petition for Writ of Mandamus on November 5, 2018. JA 358-363. Specifically, the district court found that "prior to the filing of this lawsuit, LVMPD did not comply with the [NPRA] in response to CIR's requests for public records related to the murder of Tupac Shakur in September 1996." *Id.* The

[1] This matter was randomly reassigned from the Honorable Joanna Kishner to the Honorable Elizabeth Gonzalez on October 15, 2018. JA 347.

district court further found that "as a result of the filing of this lawsuit, LVMPD complied with the [NPRA] and made a satisfactory production of the public records sought by CIR's Petition." *Id.* Finally, the district court found that "because the filing of this lawsuit caused LVMPD to comply with the [NPRA], CIR prevailed pursuant to NRS 239.011(2)" and, thus, was entitled to move for attorney's fees and costs. *Id.*

29. Again, contrary to LVMPD's representations to this Court, *see* OB at 14 and 16, the district court did ***not*** apply the codified FOIA standard or otherwise rely on federal law. *Id.* In fact, the two federal cases cited by LVMPD in support of this representation were not cited by CIR or the district court in the underlying proceedings. *See* OB at 16 (citing *Elec. Privacy Info. Ctr. v. United States Dep't of Homeland Sec.*, 218 F.Supp.3d 27, 41-42 (D. D.C. 2016) and *Judicial Watch, Inc. v. United States Dep't of Justice*, 878 F.Supp.2d 225, 231-233 (D. D.C. 2012)).

30. On November 14, 2018, CIR submitted its Motion for Attorney's Fees and Costs, analyzed the applicable *Brunzell* factors, and requested a fee award in the amount of $56,133.54. JA 364-380. In response, LVMPD argued that the fee provision in NRS 239.011(2) must be read in conjunction with the immunity provision in NRS 239.012 such that LVMPD would only be subject to an award of attorney's fees and costs if it did not act in good faith. JA 381-755. LVMPD, in turn, asserted that it acted in good faith when it ignored CIR's repeated requests for public records and maintained an improper blanket claim of confidentiality. *Id.*

Additionally, LVMPD claimed that CIR's attorney's fees and costs were unreasonable under *Brunzell*. *Id.* Finally, LVMPD contended that CIR sought pre-litigation fees and costs to which it was not entitled under NRS 239.011(2). *Id.* CIR filed its Reply in Support of Motion for Attorney's Fees and Costs on December 12, 2018, refuted LVMPD's statutory arguments concerning NRS 239.011(2) and NRS 239.012, and voluntarily reduced its fee request to exclude pre-litigation fees and certain costs. JA 790-831.

31. The district court entered its Order Granting The Center For Investigative Reporting, Inc.'s Motion for Attorney's Fees and Costs on January 7, 2019 and awarded $50,402.89 to CIR. JA 881-889. The fee award did not pre-litigation fees incurred by CIR. *Id.*

32. LVMPD filed its Notice of Appeal of the Order Regarding The Center For Investigative Reporting, Inc.'s Petition for Writ of Mandamus on December 4, 2018, and its Notice of Appeal of the Order Granting The Center For Investigative Reporting, Inc.'s Motion for Attorney's Fees and Costs on January 16, 2019. JA 773-775, 890-899.

V. SUMMARY OF THE ARGUMENT

The Court should affirm the district court's application of the catalyst theory and resulting determination that CIR prevailed under NRS 239.011(2). There can be no dispute that the filing of CIR's Petition caused LVMPD to voluntarily produce the requested public records after LVMPD had intentionally refused to comply with

its legal obligations under the NPRA for months. Numerous jurisdictions with substantially similar fee provisions to NRS 239.011(2) have addressed this exact situation and held that the requester prevails in public records litigation when the filing of a lawsuit caused the offending government entity to comply with the law. To hold otherwise would only incentivize government entities like LVMPD to resist valid public records requests and force litigation before voluntarily producing the records in the face of an adverse ruling.

Nor did the district court err by awarding CIR the full amount of its requested attorney's fees and costs incurred in prosecuting the Petition. Indeed, LVMPD's attempt to interpolate a good faith immunity provision in NRS 239.011(2) contradicts basic rules of statutory interpretation, Nevada precedent governing attorney fee awards, and the underlying public policy of the NPRA. Even if NRS 239.011(2) was subject to a good faith requirement—and it is not—the district court correctly determined that LVMPD failed to act in good faith as evidenced by its repeated violations of the NPRA. Finally, CIR's attorney's fees and costs were reasonable and excluded the pre-litigation fees to which LVMPD objected in the court below.

VI. ARGUMENT

A. Standard Of Review.

The Court reviews a district court's grant or denial of a writ petition under the NPRA for an abuse of discretion. *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op.

10, 343 P.3d 608, 612 (2015). The Court, however, applies the de novo standard of review to the district court's interpretation of case law and statutory language. *Id.* Additionally, "when a party's eligibility for a fee award is a matter of statutory interpretation, as is the case here, a question of law is presented, which [the Court] review[s] de novo." *In re Estate and Living Trust of Miller*, 125 Nev. 550, 553, 216 P.3d 239, 241 (2009). An award of attorney's fees itself is reviewed for an abuse of discretion and will be affirmed if supported by substantial evidence. *Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d 1139, 1143 (2015).

Here, CIR submits that the Court should apply the de novo standard of review to the district court's adoption of the catalyst theory under NRS 239.011(2). The Court should then review the district court's finding that CIR's Petition caused LVMPD to voluntarily comply with the NPRA for an abuse of discretion. The Court should apply the same framework to the district court's fee order by first assessing the district court's interpretation of NRS 239.011(2) and NRS 239.012 under the de novo standard of review before reviewing the fee award for an abuse of discretion.

B. The District Court Did Not Err By Adopting The Catalyst Theory And Finding That CIR Prevailed Under NRS 239.011(2).

NRS 239.011(2) provides that "[i]f the requester ***prevails***, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record." *Id.* (emphasis added). The Nevada Supreme Court has never considered whether a requester "prevails" under NRS 239.011(2) where it causes a government entity to

voluntarily disclose public records during litigation prior to the entry of a court order on the merits.[2] As it did in the court below, CIR will begin its analysis by detailing the manner in which other federal and state courts have applied the catalyst theory in public records litigation before turning to the plain language of NRS 239.011(2).

1. The Genesis of the Catalyst Theory under FOIA.

In 1974, Congress amended FOIA to include a provision awarding attorney's fees and costs to a plaintiff who "substantially prevailed" in litigation against a government entity. *First Amendment Coal. v. United States Dep't of Justice*, 878 F.3d 1119, 1126 (9th Cir. 2017). "The fees provision [in FOIA] has as its fundamental purpose the facilitation of citizen access to the courts to vindicate the public's statutory rights, and a grudging application of the attorney fees provision would clearly be contrary to congressional intent." *Id.* (internal citations omitted). FOIA did not define the term "substantially prevailed" and, as a result, the United States Circuit Courts developed a body of decisional law interpreting that legal standard. *Id.*

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[2] The Nevada Supreme Court has only interpreted NRS 239.011(2) on one occasion in *Blackjack Bonding*. There, the Nevada Supreme Court confirmed that "by its plain meaning, [NRS 239.011] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs[.]" 343 P.3d at 615. The Nevada Supreme Court further stated that "[a] party prevails if it succeeds on *any significant issue* in litigation which achieves some of the benefit it sought in bringing suit." *Id.* (emphasis in original). The Nevada Supreme Court then explained that "[t]o be a prevailing party, a party need not succeed on every issue." *Id.* Ultimately, the Nevada Supreme Court determined that the petitioner in *Blackjack Bonding* "prevailed" for the purposes of NRS 239.011 because it obtained a writ compelling the production of records that were wrongfully withheld by LVMPD. *Id.* As will be addressed in greater detail below, *Blackjack Bonding* does not resolve the questions presented by this appeal.

One crucial aspect of this decisional law was the widespread adoption of the catalyst theory, *i.e.*, an "alternate theory for determining the prevailing party [in public records litigation] if no relief on the merits is obtained." *Kilgour v. City of Pasadena*, 53 F.3d 1007, 1010, *as modified on denial of reh'g* (9th Cir. 1995). Indeed, the Ninth Circuit Court of Appeals and numerous other Circuit Courts adopted the catalyst theory in FOIA litigation. *See, e.g.*, *Long v. I.R.S.*, 932 F.2d 1309 (9th Cir. 1991); *Nationwide Bldg. Maint. Inc. v. Sampson*, 559 F.2d 704 (D.C. Cir. 1977); *Maynard v. C.I.A.*, 986 F.2d 547 (1st Cir. 1993); *Vermont Low Income Advocacy Council v. Usery*, 546 F.2d 509 (2d Cir. 1976); *Cazalas v. United States Dep't of Justice*, 660 F.2d 612 (5th Cir. 1981); *Clarkson v. I.R.S.*, 678 F.2d 1368 (11th Cir. 1982).

In 2001, the United States Supreme Court held that the catalyst theory was not a permissible basis to award attorney's fees and costs under the "prevailing party" attorney's fee provisions in the Fair Housing Amendments Act ("FHAA") and the Americans with Disabilities Act ("ADA"). *See Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep't of Health and Human Resources*, 532 U.S. 598 (2001). Specifically, the United States Supreme Court focused on Congress's use of the legal term of art "prevailing party" in the FHAA and ADA, and ruled that "[a] defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial *imprimatur* on the change." *Id.* at 603-605. The United States Supreme Court further held that a plaintiff must obtain an enforceable judgment on the merits or a court-ordered consent decree to be

considered a "prevailing party" entitled to an award of attorney's fees under the FHAA and ADA. *Id.* at 604.

In response to the *Buckhannon* decision, Congress amended the FOIA attorney's fees statute "to clarify [ ] that *Buckhannon* does not apply to FOIA cases, since under that provision, a FOIA requester can obtain attorney's fees when he or she filed a lawsuit to obtain records from the Government and the Government releases those records before the court orders them to do so." *First Amendment Coal.*, 878 F.3d at 1128. Congress enacted this amendment to address the concern that "[f]ederal agencies had an incentive to delay compliance with FOIA requests until just before a court decision was made that was favorable to a FOIA requester." *Id.* (internal citations omitted). The Ninth Circuit Court of Appeals and six other Circuit Courts have since concluded that the catalyst theory continues to apply to FOIA litigation if there is a "causal nexus between the litigation and the voluntary disclosure or change in position by the Government." *Id.* (listing cases).

2. Application of the Catalyst Theory in State Public Records Litigation after *Buckhannon*.

Relying on the erroneous straw man that the district court applied FOIA to find that CIR prevailed in the underlying litigation, LVMPD predictably argues that federal law is distinguishable because Congress codified the catalyst theory in the FOIA attorney's fees provision whereas Nevada has no such statutory provision. While

federal case law addressing FOIA is certainly persuasive in this area,[3] CIR submits that the manner in which other states have applied the catalyst theory in connection with attorney fee provisions that mirror the language of NRS 239.011(2) is highly instructive here.

In *Mason v. City of Hoboken*, the New Jersey Supreme Court considered the application of the catalyst theory to the attorney fee provision in that state's public records act, which contained broad language providing that "a requester who ***prevails*** in any proceeding shall be entitled to a reasonable attorney's fee." 951 A.2d 1017, 1031 (N.J. 2008) (emphasis added). The New Jersey Supreme Court rejected *Buckhannon* and applied the catalyst theory on grounds that "[o]ur case law and the language and purpose of the OPRA justify this departure from the reasoning of federal cases that interpret similar federal laws." *Id.* at 1032. In addition to the statute's broad use of the term "prevails"—as opposed to the legal term of art "prevailing party"—the New Jersey Supreme Court found that "Plaintiff and amici rightly advance another reason why the catalyst theory should apply to OPRA: the potential for abuse should an agency deny access, vigorously defend against a lawsuit, and then unilaterally disclose the documents sought at the eleventh hour to avoid the entry of a court order and the resulting award of attorney's fees." *Id.* at 1031. Accordingly, the New Jersey Supreme

[3] The United States Supreme Court did not consider FOIA in *Buckhannon* and, moreover, Congress only amended the FOIA to "clarify" that *Buckhannon* had no application in the public records domain. *First Amendment Coal.*, 878 F.3d at 1128.

Court determined that the *Buckhannon* decision did not preclude the application of the catalyst theory in litigation under New Jersey's public records act.

The Illinois Court of Appeals reached the same conclusion when assessing that state's attorney's fees provision, which contained similarly broad language: "[i]f a person seeking the right to inspect or receive a copy of public record ***prevails*** in a proceeding under this Section, the court shall award such person reasonable attorney's fees and costs." *Uptown People's Law Ctr. v. Dep't of Corr.*, 7 N.E.3d 102, 104 (Ill. Ct. App. 2014) (emphasis added). As in *Mason*, the court acknowledged the state legislature's use of the broad term "prevails" and declined to follow the reasoning espoused by the United States Supreme Court in *Buckhannon*. *Id.* at 108-09. Accordingly, the Illinois Court of Appeals confirmed that a judgment on the merits is not a prerequisite to an award of attorney's fees in public records litigation. *Id.*

The District of Columbia Court of Appeals followed suit. In *Frankel v. Dist. of Columbia Office for Planning and Econ. Dev.*, 110 A.3d 553, 557 (D.C. Ct. App. 2015), the court found that the D.C. Council's use of the phrase "***prevails*** in whole or in part"—as opposed to "prevailing party"—"suggests that the D.C. Council intended to authorize attorney's fees in [D.C.] FOIA cases more often than in other types of cases." *Id.* (emphasis added). The court also declined to infer that the catalyst theory did not apply to D.C. FOIA because, unlike Congress, the D.C. Council did not amend its attorney's fees provision following *Buckhannon*. *Id.* Finally, the court held that the catalyst theory "advances [the] goals [of D.C. FOIA] by allowing more litigants to recover attorney's

fees and creating an incentive for the D.C. government to disclose more documents in the first place." *Id.* In sum, the court ruled that "the catalyst theory continues to operate in D.C. FOIA cases, and a party 'prevails in whole or in part' [ ] when he demonstrates a causal nexus between the action brought in court and the agency's surrender of the information." *Id.*; *see also Fraternal Order of Police, Metro. Labor Comm. v. Dist. of Columbia*, 113 A.3d 195 (2015) (reaffirming application of catalyst theory in D.C. FOIA cases and rejecting *Buckhannon*).

For its part, California has long recognized that the catalyst theory applies to its public records act, which provides that a "court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff ***prevail*** in litigation filed pursuant to this section." *See Belth v. Garamendi*, 232 Cal.App.3d 896, 902 (Cal. Ct. App. 1991) ("A plaintiff is considered the prevailing party if his lawsuit motivated defendants to provide the primary relief sought or activated them to modify their behavior, or if the litigation substantially contributed to or was demonstrably influential in setting in motion the process which eventually achieved the desired result.") (internal citations omitted) (emphasis added). In *Graham v. DaimlerChrysler Corp.*, 101 P.3d 140, 152 (Cal. 2004), the California Supreme Court refused to follow *Buckhannon* and instead cited the *Belth* court's application of the catalyst theory with approval. Indeed, the California Supreme Court stated that it would be "perverse" to award attorney's fees to a plaintiff who obtains a final judgment, "but not a plaintiff whose litigation position is

so strong that it achieves the same result by compelling the defendant to change its conduct rather than face a probable judgment against it." *Id.*[4]

Based on the foregoing, numerous states considering this issue have declined to follow *Buckhannon* and instead applied the catalyst theory in public records litigation by awarding attorney's fees to a requester who files a lawsuit and, in turn, causes a government entity to produce the requested records. Many state courts applying the catalyst theory under these circumstances have relied on the statutes' use of the general term "prevail" rather than the legal term of art "prevailing party," which was at issue in *Buckhannon*. These courts have likewise determined that refusing to adopt the catalyst theory would incentivize government entities to withhold public records and only turn them over in the face of an impending court order.[5]

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[4] Ohio has also continued to employ the catalyst theory in public records litigation despite the United States Supreme Court's decision in *Buckhannon*. *See, e.g.*, *State ex rel. Cincinnati Enquirer v. Ronan*, 918 N.E.2d 515 (Ohio 2009) (finding claim for attorney's fees in public records action was not mooted by government's production of records during litigation); *State ex rel. Cincinnati Enquirer v. Heath*, 902 N.E.2d 976 (Ohio 2009) (same); *cf. State ex rel. Pennington v. Gundler*, 661 N.E.2d 1049 (Ohio 1996) (holding that a court may award attorney's fees where the government produces records only after the mandamus action is filed, thereby rendering the claim moot).

[5] In *Buckhannon*, the United States Supreme Court dismissed this consideration by pointing out that "petitioners' fear of mischievous defendants only materializes in claims for equitable relief, for so long as the plaintiff has a cause of action for damages, a defendant's change in conduct will not moot the case." 532 U.S. at 608-09. The New Jersey Supreme Court correctly noted that the *Buckhannon* court's analysis is distinguishable in the context of public records litigation because "unlike other fee-shifting statutes, the OPRA does not provide for damages. Under OPRA, a

3. CIR Prevailed in this Litigation Because the Catalyst Theory is a Viable Right of Recovery under NRS 239.011(2).

The Nevada Public Records Act provides that "all public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person." NRS 239.010. "The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law." NRS 239.011(1); *see also DR Partners v. Bd. of Cnty. Comm'rs of Clark Cnty.*, 116 Nev. 616, 622, 6 P.3d 465, 468 (2000) ("The purpose of the [Nevada Public Records Act] is to ensure the accountability of the government to the public by facilitating public access to vital information about governmental activities."). "The provisions of [NRS Chapter 239] must be construed liberally to carry out this important purpose." NRS 239.011(2). In furtherance of this underlying policy, NRS 239.011(2) provides that "[i]f the requester prevails, the requester is entitled to recover his or her costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record."

The NPRA does not define "prevails" and, as such, the Court must interpret the plain language of the statute. *See, e.g.*, *Savage v. Pierson*, 123 Nev. 86, 89, 157

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victorious party gains access to public records and possibly an award of attorney's fees, but not civil damages." *Mason*, 951 A.2d at 1032.

P.3d 697, 699 (2007) ("When examining a statute, a purely legal inquiry, this court should ascribe to its words their plain meaning, unless this meaning was clearly not intended."); *see also S. Nevada Homebuilders Ass'n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) ("When interpreting a statute, this court must give its terms their plain meaning, considering its provisions as a whole so as to read them in a way that would not render the words or phrases superfluous or a make a provision nugatory.").

Here, it is important to note that the Legislature intentionally used the term "prevails" in NRS 239.011(2) rather than the legal term of art "prevailing party," which has a well-defined meaning in Nevada. *C.f.*, *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 284, 890 P.2d 769, 773-74 (1995) ("Where the legislature uses words which have received judicial interpretation, they are presumed to be used in that sense unless the contrary intent can be gathered from the statute. The legislature's employment of the same measuring language suggests that the legislature did not intend to eliminate the requirement of a money judgment."); *Savage*, 123 Nev. at 94, 157 P.3d at 703 ("When the same word is used in different statutes that are similar with respect to purpose and content, the word will be used in the same sense unless the statutes' context indicates otherwise."). Indeed, the legal term of art "prevailing party" has "consistently been interpreted as requiring a money judgment [*i.e.* an order on the merits] prior to an award of attorney fees." *Smith*, 111 Nev. at 284, 890 P.2d at 773-74 (interpreting the use of "prevailing party" in NRS 18.010).

The fact that the Legislature chose not to use the legal term of art "prevailing party" in NRS 239.011(2) is significant as it demonstrates that the Legislature intended the attorney fee provision in the NPRA to be broader in scope and not tied to judicial relief on the merits. *Compare Frankel*, 110 A.3d at 557 (finding that the D.C. Council's use of the term "'prevails' [ ] suggests that the D.C. Council intended to authorize attorney's fees in [D.C.] FOIA cases more often than in other types of cases.") *with Buckhannon*, 532 U.S. at 604 (placing importance on the fact that "Congress employed the term 'prevailing party' [in the FHAA and ADA], a legal term of art.").

Tellingly, LVMPD exclusively relies on Nevada jurisprudence addressing statutory fee provisions such as NRS 18.010 that use the legal term of art "prevailing party" rather than the general term "prevails," which is utilized in NRS 239.011(2) *See* OB at 15-22. While CIR recognizes that the Court referenced the "prevailing party" standard in *Blackjack Bonding*, the issue raised by this appeal—*i.e.* whether a requester prevails under NRS 239.011(2) by causing a government entity to voluntarily produce records before an order on the merits is entered—was neither presented nor squarely addressed by the Court.

As a result, *stare decisis* does not apply and *Blackjack Bonding* is not controlling here. *See First Fin. Bank v. Lane*, 130 Nev. 972, 977, 339 P.3d 1289, 1292-93 (2014) ("Respondents seize on language in *Sandpointe* favoring an interpretation contrary to that above[,] [b]ut the proper interpretation of NRS 40.451

was not squarely presented in *Sandpointe*, and therefore principles of *stare decisis* do not apply with the same force that they might otherwise."); *Sherman v. S. Pac. Co.*, 31 Nev. 285, 102 P. 257, 259 (1909) ("An examination of the authorities in this court discloses that this is the first time this court has ever been called upon specifically to pass upon a question identical to the one presented. Some of the former decisions of this court contain language which would seem to be adverse to the ruling herein made; but, as the question was not squarely presented in those cases, such language may be regarded as dicta."); *Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993) (*stare decisis* did not apply and the Supreme Court was "free to address the issue on the merits" because its prior case law never squarely addressed the issue, and at most assumed the applicability of the standard in question).

As demonstrated above, numerous other states (like Nevada) employ the term "prevails"—rather than "prevailing party"—in attorney's fees provisions in public records acts. Courts interpreting that language have uniformly determined that it encompasses a scenario where, as here, the government entity changes position and voluntarily discloses the requested records only after the requester was forced to file a lawsuit. *See supra* at 18-22. The underlying purpose of the NPRA also supports this interpretation of NRS 239.011 as any ruling to the contrary would incentivize government entities like LVMPD to "deny access, vigorously defend against a lawsuit, and then unilaterally disclose the documents sought at the eleventh hour to avoid the

entry of a court order and the resulting award of attorney's fees." *Mason*, 951 A.2d at 1031. That cannot be the law.

Here, LVMPD committed multiple violations of the NPRA in response to CIR's public records request by (i) refusing to respond for months, (ii) maintaining an improper blanket objection to confidentiality, and (iii) failing to confirm that responsive records were withheld or produce a *Vaughn* index identifying the same. LVMPD then vigorously opposed CIR's Petition right up until the district court made it clear that LVMPD would be required to comply with the law. Thereafter, LVMPD made a satisfactory production of public records in response to CIR's request that resolved the Petition before the district court entered its ruling on the merits. This is exact type of behavior by a government entity in public records litigation that the catalyst theory is meant to prevent and, thus, the Court should affirm the district court's finding that CIR prevailed under NRS 239.011(2).

C. The Court Should Summarily Reject LVMPD's Specious Claim That NRS 239.011(2) Incorporates The Good Faith Immunity Provision In NRS 239.012.

Over the course of the past year, local government agencies in Clark County have advanced the theory that the fee provision in NRS 239.011(2) should be read together with the immunity provision in NRS 239.012 such that a non-prevailing government entity is only subject to an award of fees and costs if it acted in bad faith. This argument has been soundly rejected by courts in the Eighth Judicial District resulting in multiple appeals that are currently pending before this Court. JA 863-

879; *see Clark Cty. Office of the Coroner/Med. Exam'r v. Las Vegas Review Journal*, Case No. 76436; *Clark Cty. School Dist. v. Las Vegas Review-Journal*, Case No. 75534. Although the Court will likely resolve this question before it reaches the instant appeal, CIR will address the many flaws in LVMPD's statutory interpretation along with the preposterous notion that LVMPD acted in good faith with respect to CIR's public records request.

1. CIR is Entitled to Seek Attorney's Fees and Costs Pursuant to the Plain Language of NRS 239.011(2).

There is no language in NRS 239.011(2) that provides a requesting party is only entitled to attorney's fees and costs if the governmental entity acted in bad faith. *See Savage*, 123 Nev. at 89, 157 P.3d at 699 ("When examining a statute, a purely legal inquiry, this court should ascribe to its words their plain meaning, unless this meaning was clearly not intended."). Rather, the requesting party must only "prevail" in order to seek attorney's fees and costs as CIR did here. *See Blackjack*, 343 P.3d at 615 ("[B]y its plain meaning, [NRS 239.011] grants a requester who prevails in NPRA litigation the right to recover attorney fees and costs[.]")

Nevertheless, LVMPD contends that NRS 239.011(2) must be read in conjunction with NRS 239.012, which provides that "[a] public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer or employee are immune from liability for damages, either to the requester or to the person to whom the information concerns." Put another way, LVMPD argues that an award of attorney's fees and costs is subsumed

within the "damages" contemplated by the good faith immunity statute of NRS 239.012. *See* OB at 26-28. This is wrong.

To begin, Nevada law is clear that a statutory award of attorney's fees and costs differs from special damages in the form of attorney's fees incurred as a result of tortious conduct or a breach of contract. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 955-57, 956 P.3d 964, 968-69 (2001) (clarifying Nevada jurisprudence "regarding the difference between attorney fees as a cost of litigation and attorney fees as an element of damage[,]" and listing cases where fees were awarded as a cost of litigation or as an element of special damages).[6] Here, CIR is plainly seeking its attorney's fees as a cost of litigation pursuant to a statute and not as special damages subject to the pleading requirements of NRCP 9(g). Accordingly, LVMPD's assertion that an award of attorney's fees and costs under NRS 239.011(2) is synonymous with the damages addressed by NRS 239.012 is decidedly misplaced.

The plain language of NRS 239.011(2) and NRS 239.012 also illustrates the differences between the two statutes. For example, NRS 239.011(2) provides that a

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[6] While the Court receded from certain aspects of *Sandy Valley* in *Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007), the Court's clarification of the difference between attorney fee awards as a cost of litigation and attorney fee awards as special damages remains good law. *See, e.g.*, *Simmons v. Briones*, 133 Nev. 9, 390 P.3d 641, 645 (2017) (citing with approval the explanation of "the difference between attorney fees as a cost of litigation and attorney fees as an element of damage" in *Sandy Valley*); *Cheyenne Valley Inv'rs, LLC v. MB REO-NV Land, LLC*, 2016 WL 6651501, at *1 (Nev. Ct. App. Oct. 26, 2016) (same).

"governmental entity"—a defined term in NRS 239.005(5)—will be subject to an award of attorney's fees and costs for failure to disclose public records. NRS 239.012, however, does not reference the defined term "governmental entity" and instead immunizes a "public officer or employee" and his or her employer from liability for damages. The Court must presume that this "variation in language indicates a variation in meaning"—*i.e.* that NRS 239.011(2) is intended to subject a government body to an award of attorney's fees and costs while NRS 239.012 is designed to immunize an individual employee or his or her employer who acts in good faith from liability for damages. *Williams v. State Dep't of Corr.*, 402 P. 3d 1260, 1264 (Nev. 2017).[7]

[7] LVMPD cites to a number of out-of-state cases where courts have applied a good faith exemption to liability for attorney's fees and costs in public records litigation. *See* OB at 28-29 (citing cases from Florida, Kentucky, Arizona and Tennessee). These cases are inapposite as a finding of bad faith or willful/unlawful conduct is a prerequisite to an award of attorney's fees under the plain language of those state public records acts. *See, e.g.*, Fla. Stat. § 119.12 (requiring a finding of unlawful refusal to disclose a public record); Ky. Rev. Stat. Ann. § 61.882 (requiring a finding that public records were willfully withheld); Ariz. Rev. Stat. Ann. § 39-121.02(B) (requiring a finding of bad faith); Tenn. Code. Ann. § 10-7-505(g) (requiring a finding of knowing and willful refusal to disclose a public record). In fact, LVMPD cited *Althouse v. Palm Beach Cty. Sheriff's Office*, 92 So.3d 899, 901 (Fla. Ct. App. 2012) for the proposition that fee provision in Florida's public records act contains a "good faith exception" despite the fact that the Florida Supreme Court subsequently overruled *Althouse* and other similar cases to the extent they "require a showing that the public agency acted unreasonably or in bad faith before allowing recover of attorney's fees under the Public Records Act." *Bd. of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So.3d 120, 122 (Fla. 2016). LVMPD's reliance on bad or otherwise inapplicable law speaks volumes.

NRS 239.012 also applies to a broader set of circumstances than the narrow fee provision in NRS 239.011(2). NRS 239.012 immunizes an individual employee from damages for any good faith response to a public records request whereas NRS 239.011(2) only applies when a requester prevails in a judicial action to obtain records that were wrongfully withheld by a governmental entity. Similarly, NRS 239.012 immunizes an individual employee for the disclosure *or* refusal to disclose public records, but NRS 239.011(2) is only invoked based on a governmental entity's refusal to disclose public records. These distinctions also weigh against a finding that NRS 239.011(2) incorporates the good faith immunity provision contained in NRS 239.012.

Lastly, LVMPD's position conflicts with the underlying policy of the NPRA, which is "to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law." NRS 239.001(1). In that regard, "the provisions of the [NPRA] must be construed liberally to carry out this important purpose[,]" and "[a]ny exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly." NRS 239.001(2) and (3). The Court should refuse to interpolate a good faith requirement in NRS 239.011(2) because an expansive application of the NPRA's fee provision encourages governmental entities such as LVMPD to comply with the law. *See, e.g.*, *Frankel*, 110 A.3d at 557 (adopting broad interpretation of fee provision as it "advances [the]

goals [of D.C. FOIA] by allowing more litigants to recover attorney's fees and creating an incentive for the D.C. government to disclose more documents in the first place.").[8]

2. LVMPD's Reliance on Legislative History is Improper.

It is well-settled that the Court may not consider legislative history where, as here, the plain language of NRS 239.011(2) is facially clear. *See, e.g.*, *Great Basin Water Network v. State Eng'r*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010) ("To determine legislative intent, this court will not go beyond a statute's plain language if the statute is facially clear."); *Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 840, 34 P.3d 546, 550 (2001) ("When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it."). NRS 239.011(2) is absolutely clear that CIR is entitled to seek attorney's fees and costs because it prevailed against LVMPD and, as demonstrated above, the good faith immunity provision in NRS 239.012 does not create ambiguity because the two statutes serve completely different purposes.

[8] Refusing to manufacture a good faith requirement in NRS 239.011(2) would not render NRS 239.012 meaningless as argued by LVMPD because an individual employee could conceivably become liable for damages in a number of scenarios. A party could conceivably sue a public employee for defamation or a privacy tort if the employee disclosed public records that were alleged to contain false or private information. In a different real-life example, the Hawaii Supreme Court held that a government employee was immune from damages for the plaintiff's loss in property value based on the allegedly negligent retention and production of public records. *See Molfino v. Yuen*, 399 P.3d 679 (Haw. 2014). Accordingly, the mere fact that NRS 239.012 has no application in this case does not render the immunity statute a nullity across the board.

Regardless, the mere fact that the Legislature enacted the fee provision and good faith immunity provision in the same bill is indicative of nothing especially when numerous other aspects of the NPRA were amended during the same legislative session. JA 689-755.

3. Even if the Court Adopts LVMPD's Tortured Statutory Construction—and it Should not—LVMPD did not Act in Good Faith in Response to CIR's Public Records Requests.

LVMPD claims that it acted in good faith because CIR's public records request concerned an allegedly "open and active" criminal investigation of the 22-year-old unsolved murder of Tupac Shakur. This is nonsense. First, it is undisputed that LVMPD's pre-Petition conduct was marked by serial violations of the NPRA based on an improper blanket claim of confidentiality that LVMPD ultimately withdrew in the face of an adverse ruling. *See supra* at 4-8. Second, CIR overwhelmingly refuted LVMPD's contention that the investigation of Tupac Shakur's murder was protected under the NPRA as evidenced by the district court's observation that LVMPD failed to meet its burden of proving confidentiality. JA 1-13, 184-208. Third, LVMPD's claim that the investigation was "open and active" was dubious at best as the witness interview it cited was obviously scheduled after CIR served its public records request and LVMPD provided no other evidence to support its position. JA 56-183, 231-232. In reality, LVMPD's belated production of the requested records simply confirms

that the records never should have been withheld in the first place.[9] The Court should affirm the district court's finding that LVMPD did not act in good faith when it stonewalled CIR's public records request.

D. The District Court Did Not Award Pre-Litigation Fees Or Costs.

The record is crystal clear that CIR withdrew its request for pre-litigation fees and costs prior to the district court's entry of the fee award. JA 797. Similarly, the district court's fee award does not contain the $5,310 in fees and costs for which LVMPD claims error. JA 881-889. The Court should disregard LVMPD's confused argument on this point.

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[9] Suffice it to say, CIR disputes LVMPD's rose-colored depiction of its production in this case. *See* OB at 34-35. LVMPD's itemization contained errors—*e.g.* that certain transcripts were withheld—and the use of the term "significantly redacted" in reference to LVMPD's 2200-page production is, frankly, absurd. Regardless, LVMPD's revisionist history is irrelevant to the Court's inquiry so CIR will not belabor the point. *See Blackjack Bonding*, 343 P.3d at 615 ("To be a prevailing party, a party need not succeed on every issue.").

VII. CONCLUSION

Based on the foregoing, CIR respectfully requests that the Court deny LVMPD's appeal in its entirety and affirm the district court's Order Regarding The Center For Investigative Reporting, Inc.'s Petition for Writ of Mandamus as well as the Order Granting The Center For Investigative Reporting, Inc.'s Motion for Attorney's Fees and Costs.

DATED this 28th day of May, 2019

CAMPBELL & WILLIAMS

By: /s/ ***Philip R. Erwin***
PHILIP R. ERWIN, ESQ., (#11563)
SAMUEL R. MIRKOVICH, ESQ. (#11662)
700 South Seventh Street
Las Vegas, Nevada 89101

Counsel for Respondent
The Center For Investigative Reporting, Inc.

VERIFICATION

I, Philip R. Erwin, declare as follows:

1. I am one of the attorneys for The Center For Investigative Report, Inc.

2. I verify that I have read and compared the foregoing RESPONDENT'S ANSWERING BRIEF and that the same is true to my own knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

3. I, as legal counsel, am verifying the Answering Brief because the questions presented are legal issues, which are matters for legal counsel.

4. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 28th day of May, 2019

/s/ ***Philip R. Erwin***
Philip R. Erwin, Esq. (#11563)

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Answering 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), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page 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 Nevada Rules of Appellate Procedure.

I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) as this brief was prepared in a proportionally spaced typeface using Times New Roman 14 pt font. I also certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) as it contains 8,962 words.

DATED this 28th day of May, 2019

CAMPBELL & WILLIAMS

By: /s/ ***Philip R. Erwin***
PHILIP R. ERWIN, ESQ., (#11563)

Counsel for Respondent
The Center For Investigative Reporting, Inc.

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that, in accordance therewith and on this 28th day of May 2019, I caused true and correct copies of the foregoing Appellants' Opening Brief to be delivered to the following counsel and parties:

VIA ELECTRONIC SERVICE:

Nick D. Crosby, Esq.
Jackie V. Nichols, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145

Attorneys for Appellant
Las Vegas Metropolitan Police Department

/s/ ***John Y. Chong***
An employee of Campbell & Williams