IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN MARCUS, AN INDIVIDUAL, Appellant, vs. FULL COLOR GAMES, INC., A NEVADA CORPORATION, Respondent.	**SUPREME COURT CASE NO. 79512**

On Appeal from a decision in favor of Respondent
entered by the Eighth Judicial District Court, Clark County, Nevada
The Honorable Mark R. Denton, District Court Judge
District Court Case No. A-17-759862-B

RESPONDENT'S ANSWER TO PETITION FOR REHEARING

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I.

NRAP 26.1 DISCLOSURE

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 so the judges of this court may evaluate possible disqualification or recusal. FCGI Full Color Games, Inc. is a Nevada corporation ("FCGI" or "Respondent"). Intellectual Properties Holding, LLC was the sole stock holder holding 100% percent of its common stock and 100% of all voting rights. Intellectual Properties Holding, LLC is wholly owned by David Mahon. FCGI was previously represented by the law firm of Hutchison & Steffen, PLLC. FCGI is now represented by the law firm of Hogan Hulet PLLC. No other law firms are expected to appear on FCGI's behalf in this appeal.

II.

INTRODUCTION

The Petition for Rehearing (the "Petition") filed by Brian Marcus ("Marcus") seeks to challenge the Court's Order of Affirmance (the "Order") in which the Court affirmed the district court's denial of Marcus' anti-SLAPP motion to dismiss. To prevail, Marcus must establish that the Court "overlooked or misapprehended" a material fact or a material question of law or "overlooked, misapplied or failed to consider controlling authority." NRAP 40(a)(2).

Marcus fails to meet his burden. Marcus incorrectly argues that the Order "will have a chilling effect on people speaking freely in future litigation and other judicial proceedings," because Marcus was "sued for nothing more than good-faith participation" in the case below. See Petition at 1. In reality, the Order properly and accurately ruled that FCGI's wide-ranging claims against Marcus are based on actions other that Marcus submitting a declaration in the case below, including a claim that Marcus participated in a racketeering enterprise and a claim for declaratory

relief seeking to divest Marcus of his shares in FCGI. See Order, on file herein.

FGCI's claims are not retaliation for Marcus' submission of a declaration in the case below. FCGI's claims are the result of Marcus' wrongful conduct that began well before Marcus submitted his declaration. Much of the argument in Marcus' Petition reads like a motion to dismiss under NRCP 12(b)(5) or motion for summary judgment, where Marcus attempts to test the sufficiency of the pleadings or argue the evidence. Those arguments should be made before the district court under the proper standards – not under the anti-SLAPP statute.

All told, the essence of Marcus' argument is that a party can commit all sorts of wrongdoing but cannot be liable for those wrongdoings – or even have to face discovery into those alleged wrongdoings – so long as the party makes a sworn statement in the subject case. That is not the purpose of Nevada's anti-SLAPP statute. The district court and this Court have properly rejected Marcus' misplaced attempt to utilize the anti-SLAPP statute as a global shield from any allegations of wrongdoing.

III.

ARGUMENT

A. LEGAL STANDARD FOR ANTI-SLAPP MOTION TO DISMISS.

To prevail on a special anti-SLAPP motion to dismiss, the moving defendant must satisfy two statutory prongs. Under prong one, the claims must arise under a protected communication, and the court must "[d]etermine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a); NRS 41.650.

. . .

Prong one of this analysis contains two sub-components. To start, the purported protected communication must fall into one of four categories. NRS 41.637; NRS 41.650. Marcus here contends that his sworn statement in the case below falls under NRS 41.637(3), as "a communication . . . made in direct connection with an issue under consideration by a . . . judicial body." Then, as the second sub-part to prong one, the defendant must establish the communication was "truthful or is made without knowledge of its falsehood." NRS 41.637(4); see also Shapiro v. Welt, 133 Nev. 35, 40, 389 P.3d 262, 268 (2017) ("[N]o communication falls within the purview of NRS 41.660 unless it is truthful or made without knowledge of its falsehood" (internal quotation marks omitted)). If the moving party fails to meet his burden under the first prong, "the inquiry ends . . . the case advances." Coker v. Sassone, 135 Nev. 8, 12, 432 P.3d 746, 749 (2019).

Under the second prong, if the district court determines that the moving defendant has met the burden under prong one, the burden shifts to "determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim." NRS 41.660(3)(b).

B. THE COURT CORRECLTY RULED THAT FCGI'S CAUSES OF ACTION ARE NOT BASED ON ANY COMMUNICATIONS THAT MAY BE PROTECTED UNDER THE ANTI-SLAPP STATUTE.

Marcus was named as a third-party defendant by FCGI in the case below after submitting a declaration in support of the derivative plaintiffs' opposition to a summary judgment in the same case. See Order, on file herein. Marcus filed a special motion to dismiss arguing that FCGI's claims were retaliation for Marcus' submission of his declaration. See id. The district court denied the anti-SLAPP motion without reaching the second prong of the anti-SLAPP analysis because Marcus failed to demonstrate that FCGI's claims were based upon protected good faith communications. See id.

On October 20, 2020, the Court entered its Order in affirming the district court's ruling. See id. The Court ruled that Marcus did not meet his burden under prong one of the anti-SLAPP analysis because FCGI's claims against Marcus are based on actions other than Marcus submitting his declaration.[1] See id. The Court also correctly declined to consider Marcus's argument that the district court was required to look at the "gravamen" of FCGI's claims because he raised this argument for the first time in his appellate reply brief. See id.

C. THE COURT CORRECLTY RULED THAT FCGI'S CAUSES OF ACTION FOR ABUSE OF PROCESS, INDUCING A LAWSUIT, AND PEREJURY ARE NOT BASED ON PROTECTED COMMUNICATIONS.

Marcus's first argument in Section 2.0 of the Petition is a conclusory one, in which Marcus asserts that FCGI's claims for abuse of process, inducing a lawsuit, and perjury "by their definition, satisfy the first prong of the SLAPP analysis." See Petition at 1-2. This argument is made without citation to the record or analysis of these claims.

Even a cursory review of these claims refutes Marcus' argument. Marcus characterizes FCGI's perjury claim as being a simple perjury claim arising under Marcus' declaration. In actuality, the claim Marcus references is a claim for "Securities Fraud & Perjury – Violation of Nevada Racketeering Statute (N.R.S. § 90.570)," which names twelve total individuals including Marcus. Vol. V: AA0756-

[1] It is clear from the Court's Order that the Court did not, as claimed by Marcus' Petition at 4, n. 1, require that "all" claims be based on protected communications to qualify for protection under the anti-SLAPP statute. The Order specifically states: "Although Marcus' declaration could qualify as a good faith communication protected by the anti-SLAPP statutes . . . FCGI's third-party complaint also alleged claims based on actions other than Marcus submitting his signed declaration." Order at 2.

759.[2] FCGI alleges that due to these twelve defendants' racketeering, FCGI has suffered "loss of commercial revenue, loss of a casino gaming license application, injury to their reputation, name, brand, likeness, career, millions of dollars in shareholder investments and years of development work in the loss of relationships, market timing, position and business opportunities." Vol. V: AA0758. Furthermore, the only specific reference to perjury under that claim is as to another defendant (Linham) – not Marcus. Id. This claim does not reference Marcus' declaration.

Marcus also characterizes FCGI's inducing a lawsuit claim as arising under Marcus' declaration. In reality, FCGI's full claim is: "Inducing lawsuit pursuant to N.R.S. § 199.320," which arises under Nevada's RICO statute and names twelve total defendants including Marcus. Vol. V: AA0760. NRS 199.320 makes it illegal to "instigate, incite or encourage another to bring, any false suit . . . with intent to distress or harass a defendant." FCGI alleges that these twelve defendants together "instigated, incited and encouraged each other to bring a false lawsuit . . . to carry out their extortion" of FCGI and its principal, David Mahon, and that these twelve defendants have succeeded in preventing FCGI from reaching revenue. VOL V: AA0759-0760. This claim does not mention Marcus' declaration.

Marcus also characterizes FCGI's claim for abuse of process as arising under Marcus's declaration. In fact, FCGI's "Abuse of Process" claim is against twelve total defendants including Marcus. Vol. V: AA0760. FCGI alleges: "The defendants

[2] FCGI specifically alleges: "Starting in October 2015 and continuing through to this date in time, with specificity and explicit particularity herein, the Counter-Defendants and Third-Party Defendants through their actions knowingly, willingly and fraudulently engaged in billing fraud, wire fraud for the purposes of tax evasion in order to conceal the purchase of FCGI securities in four different acts of money laundering, then destroyed the evidence of it and engaged in making false statements made in sworn declarations under the penalty of perjury and in their conduct engaged in violation of N.R.S. §207.400(1)(b)." Vol. V: AA0757.

named in that claim have made it unequivocally clear that their purpose was to extort MAHON and the Counter-claimants out of their property rights in forcing him to step down as the CEO and sole Director of FCGI, give 100% of his stock to the Counter-Defendants, turn over all of his trade secrets and be forced into indentured servitude or face a tortuous litigation if Mahon did not comply." Vol. V: AA00761. There is no mention of Marcus' declaration.

This review of FCGI's claims refutes Marcus' assertion that "it is undeniable that each of these causes of action are directly and by definition based on [Marcus'] petition the court in the underlying shareholder lawsuit," and that the "Opinion of the Court did not address these causes of action." Petition at 2, 4. That is not accurate. In its Order, the Court correctly recognized that these claims do not arise under Marcus' declaration because "FCGI's third-party complaint also alleges claims based on actions other than Marcus submitting his signed declaration." Order at 2. "For example, the third-party complaint also alleges that Marcus participated in a racketeering enterprise with other shareholders." Order at 2-3. Hence, the Court's Order does not "overlook or misapprehend" a material fact or question of law or "fail to consider controlling authority." NRAP 40(a)(2).

D. THE COURT'S RULING IS CONSISTENT WITH PRECEDENT.

Marcus takes a similar tact in Section 3.0 of his Petition where he argues that the Court's Order fails to "follow longstanding and well-established precedent that is directly controlling" as to FCGI's racketeering claim. Petition at 5. Marcus mischaracterizes the "apparent conclusion" of the Order as ruling "that the mere inclusion of a cause of action in racketeering is enough to defeat an Anti-SLAPP motion." Petition at 5.

That is not what the Order ruled. The Order consistently ruled that the moving party must establish his alleged conduct arises under the first prong of the anti-SLAPP analysis. See Order at 2 (citing Delucchi v. Songer, 133 Nev. 290, 299, 396

P.3d 826, 833 (2017) (quoting NRS 41.637)). In other words, a party whose conduct may in part be protected by the anti-SLAPP statute is not shielded from other wrongdoings.

Marcus then attempts to draw away from the plain reality – as recognized in the Court's Order – that there are racketeering allegations against Marcus and his cohorts apart from simply submitting a declaration. Marcus argues that a "claim for racketeering is only as good as its underlying factual allegations," but then incorrectly claims that the "factual allegations here against Marcus consist of nothing more than Marcus's participation in litigation." Petition at 6.

This is the third time Marcus has raised this same inadequate argument. As ruled by the district court and this Court in the Order, there are multiple claims and multiple factual allegations against Marcus that do not arise under Marcus' declaration. The district court declared: "The declaration is alleged to have – to exist, but I don't read the pleading as being necessarily based entirely upon his declaration," (Vol. VI: AA1073), and there are "allegations against him collectively with the other third-party defendants" (Vol. VI: AA1073). And this Court has ruled: "FCGI's third-party complaint also alleges claims based on actions other than Marcus submitting his signed declaration." Order at 2. "For example, the third-party complaint also alleges that Marcus participated in a racketeering enterprise with other shareholders." Order at 2-3. Marcus has not identified any way in which the Court "overlooked, misapplied or failed to consider controlling authority." NRAP 40(a)(2). The Court correctly determined that Marcus' alleged racketeering conduct – along with multiple other co-defendants – does not arise under prong one of the anti-SLAPP statute.

Marcus also challenges the Order's ruling that the Court would not consider Marcus' argument that the district court was required to look at the "principal thrust or gravamen" of FGCI's claims to determine if they fall under the anti-SLAPP statute because Marcus raised those issues for the first time in his reply brief. See Order at 2

(citing Bongiovi v. Sullivan, 122 Nev. 556, 570 n.5, 138 P.3d 433, 444 n.5 (2006)). Marcus' claim that he raised this argument in earlier filings is not correct. Marcus' Opening Brief at p. 21 is merely a restatement of the requirements of NRS 41.637. The jurisprudence addressing the "gravamen or thrust" is a discussion of an approach courts take to apply NRS 41.637, which is an additional argument that should have been raised in the Opening Brief but was not. Thus, the Court was correct to not consider the argument. Nonetheless, even if the Court were to consider the "gravamen" of FCGI's claims, those claims do not arise under Marcus' submission of his declaration – they instead arise under Marcus' wrongdoing that started years before Marcus submitted his declaration.

Marcus contends that Navellier v. Sletten, 29 Cal.4th 82 (Cal. 2002) is "directly on point". But Navellier is far from "on point" here, and the few similarities actually boost FCGI's argument. Factually, there is nothing shared between this case and Navellier. Here, FCGI asserts claims against Marcus for racketeering, securities fraud and perjury, inducing a lawsuit, abuse of process, and declaratory relief. Answering Brief at 5-6. In contrast, Navellier involved the defendant being named in a suit under causes of action for breach of contract and fraud because the defendant previously brought counterclaims in a different suit between the same parties even though there was an existing release between those parties. 29 Cal.4th at 86-88. The dissimilarities are clear.

Legally, there is also little shared between the two cases other than they involve anti-SLAPP issues. In Navellier, the court found that the claims against the defendant were improper under the California anti-SLAPP statute because those claims would not exist but-for the defendant's counterclaims in the earlier suit. Id. at 90. Conversely, FCGI's myriad claims here against Marcus do not rely on Marcus' earlier participation in this case by providing his declaration. Instead, Marcus' declaration's existence is mentioned and is evidence in the case below, but the claims

do not rely on its existence to survive.

Indeed, the only value from examining Navellier that it solidifies FCGI's argument in this regard. There, the court declared that "the mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute." Navellier, 29 Cal.4th at 89. Moreover, "that a cause of action arguably may have been 'triggered' by protected activity does not entail it is one arising from such." Id. These pronouncements are directly applicable here where Marcus incorrectly argues that his mere submission of a declaration prior to being named in the action should shield him. The fact that he submitted a declaration before he was named in the action – or even if his declaration may have "triggered" some action by FCGI – does not mean the underlying claims are "arising from such". See id. The bottom line is that FCGI's claims against Marcus arise under his unlawful conduct, not as a retaliation for submitting his declaration in the case below.

Marcus' next step in his Petition is to argue the facts. See Petition at 9. Marcus claims that FCGI's allegations are not specific enough as to Marcus. See id. But where FCGI provides specifics, including a specific reference to a report referenced in the Third-Party Complaint that details all of the non-compliance issues caused by Marcuss' conduct, Marcus argues those specifics are not sufficient. Id. Marcus wants it both ways.

Certainly, a prong one analysis under the anti-SLAPP statute is not the place to engage in this type of argument. These arguments should be made at the trial court level on a motion to dismiss or motion for summary judgment. And Marcus cannot identify how the Court erred in reviewing the substantial allegations against Marcus and his cohorts and determining that the claims do not arise under Marcus declaration. Thus, this argument falls short.

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Marcus continues down this erroneous path by maintaining that FCGI admitted at the hearing in the case below that it had no evidence of any wrongdoing by Marcus. See Petition at 10-11. In reality, FCGI's counsel told the district court that there was some evidence of Marcus' wrongdoing sufficient to make claims against Marcus along with his cohorts and conduct discovery on those claims. Here is what counsel stated at the hearing:

> "We have made it clear that we're not seeking liability against Marcus for a specific submission of a declaration to this Court. That's not what we're seeking liability for in this case. We did allege it, as background to that. But the things that we believe have been good-faith alleged against Marcus is that he was in support of all the actions that Munger has been alleged to have completed before he even submitted that declaration." Vol. VI: AA1070.

> "[O]ur allegations are based on things that we believe he did before he even submitted this declaration," and "he is supporting all of the racketeering allegations we made against [Marcus's cohorts]". Vol. VI: AA1072.

Marcus then invents a standard that does not exist. He argues that FCGI was required to plead all of Marcus' conduct with specificity to avoid losing on the prong one anti-SLAPP analysis. See Petition at 11. That is not the standard under NRCP 8, and Marcus cites no authority for this suggestion. Under Marcus' invented standard, even the mere mention of a communication that has even the slimmest possibility of being protected under the anti-SLAPP statute would defeat any claims against a defendant unless the defendant's other conduct was pled with specificity.[3]

[3] Marcus characterizes an email referring to the declaration as evidence that FCGI's claims are retaliation for submitting the declaration. See Petition at 11, n. 2. This again evidences Marcus' misplaced belief that he cannot be held accountable for the wrongdoing he committed simply because some of that wrongdoing was the subject of averments in his declaration and because the false statements in his declaration are evidence of his wrongdoing. That is not the standard or the purpose of the anti-SLAPP statute; it is not intended to be a global shield from any wrongdoing. Marcus

If an anti-SLAPP motion can be granted simply by a complaint's mention of a potentially protectable communication even though there are other allegations of other wrongdoing by the defendant, the anti-SLAPP statute would become exactly what it was created to prevent: a tool to chill public participation and prevent the adjudication of legitimate claims.

As his final inadequate argument, Marcus then contends that FCGI should be stuck with the face of its Third-Party Complaint without the benefit of discovery if a prong two analysis became necessary. If prong two were implicated, which it is not here, FCGI would have the burden to show with prima facie evidence a probability of prevailing on its claims. See NRS 41.660(3)(b). Even in that scenario, however, FCGI would be entitled to discovery on those issues pursuant to NRS 41.660(4). As explained in the Answering Brief, no such discovery has occurred; in fact, there has been very little discovery in the case below on any issue while motion practice ensues in order to simplify matters. FCGI requested discovery under NRS 41.660(4) if prong two analysis is deemed necessary, and, in that instance, the Court should remand the matter to district court with instructions to address prong two just as it did recently in Stark v. Lackey, 136 Nev.Adv.Op. 4, 458 P.3d 342, 345 (2020). Marcus declares that "the entire purpose of the Anti-SLAPP statute is to resolve meritless cases without imposing the burden of discovery." Petition at 13, n. 4. This position is directly refuted by NRS 41.660(4) and the Court's recent ruling in Stark, both of which permit limited discovery as part of a prong two analysis.

In sum, Marcus' bending of the nature of FCGI's claims to try to narrow them and make them look like retaliation when they are not all while ignoring some standards and creating others does not meet his burden under the anti-SLAPP statue

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provides no authority for this position and his position is certainly not supported by the anti-SLAPP statute.

or NRAP 40. The Court's Order does not "overlook or misapprehend" facts or law or fail to consider controlling authority under NRAP 40(a)(2).

E. MARCUS FAILED TO SATISFY THE FIRST SUB-PART OF PRONG ONE SO THE COURT DID NOT RULE ON WHETHER MARCUS' PURPORTED PROTECTED COMMUNICATION WAS IN "GOOD FAITH"; NONETHELESS, MARCUS' STATEMENT WAS NOT IN "GOOD FAITH".

The Court's Order was not based on a finding that Marcus' declaration was not in "good faith". As set forth above, there are two sub-parts to prong one of the anti-SLAPP analysis. The first sub-part requires the claims against the moving party be based on protected communications, and that the purported protected communication fall into one of four protected categories. See NRS 41.637; NRS 41.650. Marcus here contends that his declaration in the case below falls under NRS 41.637(3). Then, as the second sub-part to prong one, the moving party must establish the communication was in good faith; in other words, the communication was "truthful or is made without knowledge of its falsehood." NRS 41.637(4).

Section 4.0 of the Petition argues that to the extent the Order was premised on a finding that Marcus did not establish that his declaration was in "good faith" – i.e., was "truthful or is made without knowledge of its falsehood" – this finding was erroneous. See Petition at 13-16. But the Court's ruling was based on its correct finding that FCGI's claims are not based on Marcus's declaration and the analysis stopped there. See Order at 1 ("FCGI's third-party complaint also alleged claims based on actions other than Marcus submitting his signed declaration"). Thus, the Court's analysis stopped at the first sub-part of prong one because Marcus could not establish that FCGI's claims are based on his declaration. Given Marcus's inability to establish that FCGI's claims are based on his declaration, there was no reason for the Court do delve into the truthfulness or falsity of the averments in Marcus' declaration.

But if the Court were to have considered the second sub-part of prong one, Marcus' declaration would have to be "truthful or made without knowledge of its falsehood" to meet Marcus' burden. NRS 41.637(4). Anti-SLAPP statutes do not protect communications that would otherwise be illegal, such as extortion, fraud, or perjury. See, e.g., Flatley v. Mauro, 46 Cal. Rptr. 3d 606, 139 P.3d 2, 15 (Cal. 2006). Marcus claims that FCGI did not challenge Marcus' assertion that his declaration was truthful. Petition at 14. In reality, FCGI did challenge Marcus' assertion and requested that if the Court were to consider the issue of whether Marcus's declaration was actually truthful, that issue should be remanded to the district court for discovery on that issue. Answering Brief at 11.

Marcus argues that "good faith" is "meant to be easy to establish" simply by the moving party making a declaration that the purportedly protected communication was truthful. Petition at 15. But Marcus ignores that a party is entitled to limited discovery on issues germane to the anti-SLAPP analysis. See NRS 41.660(4). This is sensible from a policy perspective because it allows an early determination of the anti-SLAPP issues based on limited discovery without over-burdening the party claiming protections of the anti-SLAPP statute.[4]

[4] Marcus's reliance on Taylor v. Colon, 136 Nev. Adv. Op. 50, 468 P.3d 820 (2020) is misplaced. First, Marcus had the opportunity to raise this issue in his reply brief since Taylor was decided before his reply brief was filed, but he did not mention it. Second, in Taylor there does not appear to have been a request for limited discovery on the "truthfulness" issue as has been raised here. Third, the "truthfulness" issue in Taylor involved a dispute over whether what was said in a single presentation was true. See Taylor, 136 Nev. Adv. Op. 50, 468 P.3d at 826. Here, the disputed issue is more convoluted because Marcus' declaration contains multiple averments involving multiple time periods and actions. Marcus does not get the benefit of accepting each of those averments as true when disputed by FCGI without limited discovery on those issues, because to hold as much would be to make it nearly insurmountable for the opposing party to ever defeat the moving party on the second sub-part of prong one.

IV.

CONCLUSION

Marcus' Petition repeats the same inadequate argument he made before the district court and this Court. This argument boils down to Marcus' incorrect position that the anti-SLAPP statute bars a party from making claims of wrongdoing against a party who submitted a declaration in a case before being named as a party. But that is not the result intended by the anti-SLAPP statute. The anti-SLAPP statute was intended to protect against retaliation for participation in public matters. Prior public participation is not a shield against allegations of other wrongful acts.

Marcus attempts to narrow FCGI's claims against Marcus as only arising under the submission of his declaration. He must take this approach because he knows it is the only way to fit his argument under the anti-SLAPP statute. The district court and this Court correctly rejected that approach because the face of FCGI's pleadings is clear that the claims against Marcus are not retaliatory for the declaration – they are actually based on Marcus' wrongful acts that he committed with others ultimately harming FCGI and its principal, David Mahon, most of which was well before Marcus submitted his declaration.

All told, Marcus did not meet his burden under the anti-SLAPP statute or under NRAP 40. Marcus raised no plausible argument in his Petition that established the Court has "overlooked or misapprehended" a material fact or a material question of law or "overlooked, misapplied or failed to consider controlling authority." NRAP 40(a)(2). The Court's Order correctly ruled that Marcus did not satisfy prong one of the anti-SLAPP statute because FCGI asserts multiple claims against Marcus that are not retaliatory for Marcus's providing a declaration in the case below. Therefore, the

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Court should deny the Petition and affirm its Order and the order of the district court.

Dated this 21st day of December 2020.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(4)-(6) and (NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4,559 words as counted by Microsoft Word.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 21st day of December 2020.

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CERTIFICATE OF SERVICE

The undersigned, Jeffrey Hulet, Esq., hereby certifies that on the 21st day of December 2020, a true and correct copy of the foregoing was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list upon all counsel of record using the Nevada Supreme Court's electronic filing system.

JEFFREY HULET, ESQ.