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Elizabeth A. Brown
Clerk of Supreme Court

7 *Attorneys for Respondents*

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

11 DESERT VALLEY CONTRACTING, INC. a
Nevada corporation,

12 Appellant,

13 v.

14 IN-LO PROPERTIES, a Nevada limited
15 liability company; EUGENE INOSE, an
individual; JEFFREY LOUIE, an individual,

16 Respondents.
17

SUPREME COURT NO. 79751

**RESPONDENT'S MOTION TO
DISMISS APPEAL PURSUANT TO
NRAP 31(d)(1)**

18
19 Respondents IN-LO PROPERTIES ("IN-LO"), EUGENE INOSE ("Inose"), and
20 JEFFREY LOUIE ("Louie") (collectively "Respondents"), by and through their attorneys of
21 record, the law firm of Holley Driggs, hereby file their Motion to Dismiss Appeal Pursuant to
22 NRAP 31(d)(1) (the "Motion").

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1 The Motion is made and based upon the papers and pleadings on file herein, the
2 following Memorandum of Points and Authorities, and any argument at hearing on this matter.

3 Dated this 16th day of June 2020.

4 **HOLLEY DRIGGS**

5 /s/Brian W. Boschee

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3 Appellant Desert Valley Contracting, Inc. ("Appellant") filed its Notice of Appeal in
4 this Court on October 4, 2019. *See* Docket, Notice of Appeal. On March 24, 2020, the parties
5 filed their first Stipulation to Extend Briefing Schedule ("First Stipulation") to extend
6 Appellant's opening brief due date an additional thirty (30) days—to April 24, 2020—due to
7 the COVID-19 outbreak. *See* First Stipulation, on file herein.

8 Thereafter, Respondents agreed to Appellant's request for a Second Stipulation to
9 Extend Briefing Schedule ("Second Stipulation") another fourteen (14) days, which the parties
10 filed on April 23, 2020. *See* Second Stipulation, on file herein. As with the First Stipulation,
11 Respondents recognized that the COVID-19 outbreak posed certain difficulties for Appellant's
12 counsel and agreed to the Second Stipulation on that basis without hesitation. *Id.*

13 On May 7, 2020—one day prior to the *twice-extended* deadline for Appellant to file its
14 opening brief—the parties filed their Third Stipulation to Extend Briefing Schedule ("Third
15 Stipulation"), agreeing to extend the opening brief due date yet another fourteen (14) days. *See*
16 Third Stipulation, on file herein. Appellant requested this extension on the grounds that
17 counsel for Appellant had recently been hospitalized for kidney stones and needed additional
18 time to complete the opening brief. *Id.*

19 On May 22, 2020—the same day Appellant's opening brief was due under the Third
20 Stipulation—the parties filed their Fourth Stipulation to Extend Briefing Schedule ("Fourth
21 Stipulation"). *See* Fourth Stipulation. Appellant again claimed that its counsel was dealing with
22 the effects of his kidney stones. *See id.* Despite Respondents' reluctance to agree to another
23 extension, Respondents again considered the extenuating circumstances surrounding the
24 COVID-19 crisis and Appellant's counsel's health issues, and agreed to give Appellant as
25 much time as Appellant claimed was needed to complete the opening brief. The Fourth
26 Stipulation provided that Appellant's opening brief would be due on May 29, 2020. *Id.*

27 Despite Respondents' agreeing to give Appellant *four extensions* to file its opening brief
28

1 in this appeal, Appellant filed its Motion to Extend Briefing Schedule on May 29, 2020¹,
2 requesting another fourteen (14) days to submit its opening brief and appendix. *See* Docket,
3 Motion to Extend Briefing Schedule. Respondents filed a Response in Limited Opposition to
4 Appellant’s Motion to Extend Briefing Schedule (the “Limited Opposition”), noting that it
5 could not voluntarily accede to yet another of Appellant’s requests for an extension of time to
6 file its opening brief and therefore leaving the decision to the sound discretion of the Court.
7 *See* Limited Opposition at 3, on file herein.

8 On June 4, 2020, the Court granted Appellant’s Motion to Extend Briefing Schedule,
9 giving Appellant until June 12, 2020 to file and serve the opening brief and appendix. *See*
10 Order Granting Motions, on file herein. The Court’s order warned Appellant that

11 ***[n]o further extensions*** shall be permitted ***absent extraordinary and compelling***
12 ***circumstances***. . . Counsel’s caseload normally will not be deemed such a
13 circumstance. . . ***Failure to timely file the opening brief and appendix may***
result in the imposition of sanctions, including the dismissal of this appeal.
14 NRAP 31(d).

15 *Id.* (emphasis added).

16 Despite the Court’s warning, Appellant failed to file its opening brief on or before June
17 12, 2020. *See* Docket. Moreover, as of the date of this Motion, Appellant has failed to
18 communicate its need for additional time to submit its opening brief to Respondents and has
19 similarly failed to timely move for another extension of time from this Court. *Id.*

20 **II. LEGAL ARGUMENT**

21 “A motion for extension of time for filing a brief may be made no later than the due date
22 for the brief and must comply with the provisions of this Rule and Rule 27.” NRAP 31(b)(3).

23 ***Applications for extension of time beyond that to which the parties are***
permitted to stipulate under Rule 31(b)(2)² are not favored. The court will grant

24 ¹ Appellant’s latest request came three (3) days after Governor Sisolak allowed the State to
25 move into Phase 2 of reopening following the COVID-19 lockdown. Therefore, Respondents
26 dispute that COVID-19 has continued to inhibit Appellant’s ability to complete the opening
27 brief. *See* Governor Sisolak Releases Prepared Remarks, Guidance for Phase 2 Reopening,
Plans Press Call (May 26, 2020),
[http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Releases_Prepared_Remarks_Guidanc](http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Releases_Prepared_Remarks_Guidance_for_Phase_2_Reopening_Plans_Press_Call/)
[e_for_Phase_2_Reopening_Plans_Press_Call/](http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Releases_Prepared_Remarks_Guidance_for_Phase_2_Reopening_Plans_Press_Call/).

28 ² NRAP 31(b)(2) provides, in pertinent part, that “the parties may extend the time for filing any

1 an initial motion for extension of time for filing a brief only upon a clear
2 showing of good cause. The court shall not grant additional extensions of time
except upon a showing of *extraordinary circumstances or extreme need*.

3 NRAP 31(b)(3)(B) (emphasis added).

4 NRAP 31(d)(1) provides the consequences for Appellant's failure to timely file its
5 opening brief and appendix:

6 If an appellant fails to file an opening brief or appendix within the time provided
7 by this Rules, or within the time extended, a respondent may move for dismissal
of the appeal or the court may dismiss the appeal on its own motion. . .

8 NRAP 31(d)(1).

9 Here, the parties have stipulated to extend time for Appellant to file its opening brief and
10 appendix well beyond the thirty (30) days permitted under NRAP 31(b)(2). Therefore, even if
11 Appellant had filed another motion to extend briefing schedule prior to the June 12, 2020
12 deadline, such a motion would be disfavored. However, Appellant filed neither its opening
13 brief and appendix nor a subsequent motion to extend briefing schedule by June 12, 2020. *See*
14 Docket. Under NRAP 31(b)(3), the time for Appellant to file either of the foregoing has
15 passed. Moreover, such failure is in clear violation of the Court's Order Granting Motions. *See*
16 Order Granting Motions.

17 Even if Appellant were to file a belated motion to extend briefing schedule, Appellant
18 cannot show "extraordinary circumstances or extreme need" for yet another extension. *See*
19 NRAP 31(b)(3)(B). Indeed, Respondents have already accommodated Appellant's
20 "extraordinary circumstances" (*i.e.*, its counsel's health issues) by stipulating to the previous
21 extensions. *See* NRAP 31(b)(3)(B). Nevertheless, despite Respondents' willingness to stipulate
22 to multiple extensions, and despite Appellant's representation to the Court that it could
23 complete its opening brief by June 12, 2020, Appellant missed its latest deadline without any
24 communication to the Court or Respondents regarding the same. *See* Motion to Extend
25 Briefing Schedule, on file herein.

26 _____ (continued)

27 brief for a ***total of 30 days beyond the due dates set forth in Rule 31(a)(1)*** by filing a written
28 stipulation with the clerk of the Supreme Court on or before the brief's due date. . ." NRAP
31(b)(2) (emphasis added).

1 Therefore, absent some other “extraordinary circumstance”—the existence of which
2 Appellant has failed to timely bring to the Court’s attention—Respondents respectfully submit
3 that this Court must dismiss the instant appeal for Appellant’s failure to follow the NRAP and
4 the orders of this Court. *See Huckabay Props. v. NC Auto Parts*, 130 Nev. 196, 206, 322 P.3d
5 429, 436 (2014) (upholding dismissal of an appeal for appellant’s failure to adhere to the court
6 order setting briefing deadlines despite the Court’s warning that failure to do so may result in
7 dismissal, and recognizing that appeals “may be appropriately dismissed for such violations.”)
8 (citing *Weddell v. Stewart*, 127 Nev. 645, 261 P.3d 1080 (2011); *City of Las Vegas v. Int’l*
9 *Ass’n of Firefighters, Local No. 1285*, 110 Nev. 449, 453–54, 874 P.2d 735, 738 (1994);
10 *Varnum v. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974)).

11 Because Appellant has failed to file its opening brief and appendix prior to the
12 expiration of its *fifth* extension of time to do so, and because it failed to timely move for
13 another extension (much less demonstrate the “extraordinary circumstances or extreme need”
14 that is required when requesting successive extensions), Respondents respectfully request that
15 this Court dismiss the instant appeal.

16 CONCLUSION

17 In light of the foregoing, Respondents respectfully request that the Court dismiss the
18 instant appeal pursuant to NRAP 31(d)(1).

19 Dated this 16th day of June 2020.

20 **HOLLEY DRIGGS**

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