#### IN THE SUPREME COURT OF THE STATE OF NEVADA

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No. 79751

Electronically Filed Jun 16 2020 01:44 p.m. Elizabeth A. Brown

APPELLANT'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS APPEAL PURSUANT TO NRAP 31(d)(1)

COMES NOW, Appellant DESERT VALLEY CONTRACTING, INC. (hereinafter "APPELLANT"), by and through their attorneys of record, CARRIE E. HURTIK, ESQ., and JONATHON R. PATTERSON, ESQ., of the law firm of HURTIK LAW & ASSOCIATES, and

submit the following Opposition to Motion to Dismiss.

DESERT VALLEY CONTRACTING, INC. a

Appellant,

IN-LO PROPERTIES, a Nevada limited liability

through 10; and ROE ENTITIES 1 through 10,

Respondents,

company; EUGENE INOSE, an individual; JEFFREY LOUIE, an individual; DOES 1

Nevada corporation,

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

DATED this /6 day of June, 2020.

#### **HURTIK LAW & ASSOCIATES**

/S/ JONATHON R. PATTERSON

CARRIE E. HURTIK, ESQ.

Nevada Bar No. 7028

JONATHON R. PATTERSON, ESQ.

Nevada Bar No. 9644

**HURTIK LAW & ASSOCIATES** 

6767 West Tropicana Ave. #200 Las Vegas, NV 89103 (702) 966-5200 Telephone

(702) 966-5206 Facsimile

DESERT VALLEY CONTRACTING, INC.

Opposition - 1

### DECLARATION OF JONATHON R. PATTERSON, ESQ.

Jonathon R. Patterson, Esq., under penalty of perjury, deposes and states as follows:

- 1. I have personal knowledge of all matters stated herein and would competently be able to testify thereto if called to do so.
- 2. I am an Associate Attorney at Hurtik Law & Associates, LTD and counsel for Appellants.
- 3. I spoke with several Supreme Court Clerks on Friday June 12, 2020 regarding the procedures for mailing in the Appendix and the Appellate Brief (See Exhibit 1).
- 4. Thereafter on June 12, 2020, I mailed the Appendix and Appellate Brief to opposing counsel and the Supreme Court Clerk

Executed on June 16 2020.

By: <u>/s/ Jonathon R. Patterson</u> Jonathon R. Patterson

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

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#### FACTUAL BACKGROUND

The Respondent's Factual Background provides and accurate account of events until they reference Appellant's failure to file on June 12, 2020. On June 12, 2020 the Appellant, after speaking to the Supreme Clerk Court, Counsel for the Appellant placed the Appendix and Opening Brief in the mail. These actions constitute timely filing pursuant to the rules discussed below. Counsel for the Appellant did not "miss the deadline without any communication to the Court or Respondents". Appellant met the deadline pursuant to the rules and Respondents have jumped the gun in filing their Motion to Dismiss.

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#### LEGAL ARGUMENT

The allegations levied by opposing counsel are unfounded and premature. Counsel for Appellant has timely filed the Appendix and Opening Brief pursuant to Nevada Rules of Appellate Procedure. Electronic Filing of the Motions is *not* the only method to achieve timely filing. Pursuant to NRAP 25(2)(B)(ii) a filing (including and Opening Brief) is timely if it is mailed to the Clerk of the Supreme Court by first class mail on or before the last day for filing. Counsel for Appellant mailed the Opening Brief and Appendix to both the Supreme Court and opposing counsel on June 12, 2020. Therefore, filing has been accomplished pursuant to the rules.

NRAP 25 (2)(A)-B(ii)

- (2) Filing: Method and Timeliness.
- (A) Filing may be accomplished by mail addressed to the clerk at the Supreme Court of Nevada, 201 South Carson Street, Suite 201, Carson City, Nevada 89701-4702.

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- (B) Unless the court by order in a particular case directs otherwise, a document is timely filed if, on or before the last day for filing, it is:
- (i) delivered to the clerk in person in Carson City;
- (ii) mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid;

Counsel for the Appellant is grateful the extension provided by the Supreme Court to June 12, 2020 and Counsel timely filed the Opening Brief and Appendix by placing it in the mail on June 12, 2020, the deadline prescribed by NRAP25(B)(ii). Counsel for the Appellant did not file a Request for Extension because Counsel does not need additional time or an extension. The Appellant has mailed the Appendix and Appellate Brief first class mail to Opposing Counsel and the Clerk of the Court. In compliance with NRAP 25(2)(B)(ii). Therefore, the Motion filed by the Respondent, is moot and should be denied.

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#### **CONCLUSION**

Counsel for the Appellant did not "fail to file their Opening Brief" as alleged by Respondent's Counsel. The Opening Brief and Appendix were filed in accordance with Supreme Court Rules. Appellant also did not "fail" to request another extension because they do not need an extension. Electronic Filing is not the only avenue for *timely* filing with the Supreme Court. This issue and Motion could have been avoided with a phone call or email. The Respondents

Motion to Dismiss Appeal Pursuant to NRAP 31(d)(1) should be denied because the Appellants have timely filed their Opening Brief and Appendix.

DATED this 16 day of June, 2020.

#### **HURTIK LAW & ASSOCIATES**

/S/ JONATHON R. PATTERSON

CARRIE E. HURTIK, ESQ.
Nevada Bar No. 7028
JONATHON R. PATTERSON, ESQ.
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6767 West Tropicana Ave. #200
Las Vegas, NV 89103
(702) 966-5200 Telephone
(702) 966-5206 Facsimile
DESERT VALLEY CONTRACTING, INC.

#### **CERTIFICATE OF SERVICE**

STATE OF NEVADA	)
	) ss
COUNTY OF CLARK	)

I, JONATHON R. PATTERSON, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6767 West Tropicana Ave., Suite #200, Las Vegas, Nevada, 89103

Pursuant to N.R.C.P 5(b) and EDCR 7.26, I hereby certify that on <u>//</u> day of June 2020, I served a true and correct copy of the foregoing document described as <u>APPELLANT'S</u>

<u>OPPOSITION TO RESPONDENTS' MOTION TO DISMISS APPEAL PURSUANT TO</u>

NRAP 31(d)(1) on the party listed below:

BRIAN W. BOSCHEE, ESQ. HOLLEY, DRIGGS, WALCH FINE, WRAY, PUZEY & THOMPSON 400 South Fourth Street, Third Floor Las Vegas, Nevada 89101 Attorneys for Respondents

VIA ELECTRONIC SERVICE: by transmitting via electronic service maintained by court's electronic filing system, on whom it is served at the electronic service address as last given by that person on any e-document which he/she has filed in the action and served on the party making the service. The copy of the document served by electronic service bears a notation of the date and time of transmission and the electronic mail address to which transmitted. A confirmation of the electronic service containing the electronic mail addresses to which the e-document(s) was/were transmitted will be maintained with the e-document(s) served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Las Vegas, Nevada on June 16, 2020.

THON R. PATTERSON an employee of HURTIK LAW & ASSOCIATES

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# EXHIBIT 1



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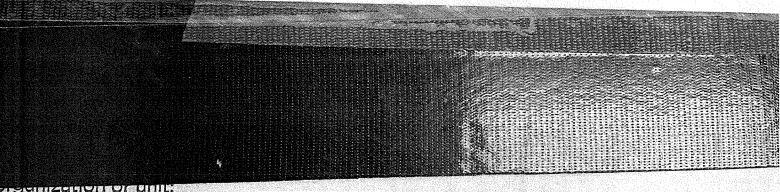
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BRIAN W. BOSCHEE, ESQ. HOLLEY, DRIGGS, WALCH, FINE, WRAY, **PUZEY & THOMPSON** 400 South Fourth Street, Third Floor Las Vegas, Nevada 89101



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