IN THE SUPREME COURT OF THE STATE OF NEVADA

APCO CONSTRUCTION, INC., a Nevada Corporation; and SAFECO INSURANCE COMPANY OF AMERICA, Appellants, vs. HELIX ELECTRIC OF NEVADA, LLC, a Nevada limited liability company, Respondent.	Case No. 80177 District Court Case No. A571228

APPELLANTS' PETITION FOR REHEARING

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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 in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. APCO Construction, Inc. (APCO), is not owned by a parent corporation and no publicly traded company owns more than 10% of APCO's stock.

2. John Randall Jefferies, Esq., of Fennemore Craig; and Christopher H. Byrd, Esq. of Fennemore Craig represent APCO in this Court.

Dated this 23rd day of May, 2022.

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INTRODUCTION

Pursuant to NRAP 40, Appellants APCO Construction, Inc. and Safeco Insurance Company of America (collectively, "APCO") hereby petition this Court for a rehearing of its opinion entered on May 5, 2022. APCO seeks rehearing on the basis that this Court may have, respectfully, "overlooked or misapprehended" certain facts in the record and principles of law pertaining to the application of the implied covenant of good and fair dealing.

Rehearing is required because this Court expanded the use of the covenant to rewrite the parties contract, beginning with the refusal to limit Helix Electric of Nevada's ("Helix's") recovery for delay to a time extension as required by Section 6.5 of the subcontract. This Court overlooks that the parties stipulated that APCO's conduct did not extend the completion date for the project. Contrary to the Opinion, Section 6.3 of the subcontract could not override or modify the no damage for delay provision in Section 6.5, unless APCO caused the delay, which did not occur. Thus, Section 6.5 must be enforced as written. All courts which have addressed this issue, hold that the implied covenant may not be used to add to or vary from the terms of the parties' agreement.

Besides being entitled only to an extension of time for any delay caused by CNLV, this Court overlooks that Helix failed to prove that delay increased its costs

or that its claim did not include costs for which CNLV was already paying. This Court also overlooks that by not appealing CNLV's denial of the claim, there is no evidence that CNLV would have accepted and paid Helix's claim even if jointly presented. These issues are material because without such proof Helix cannot prove that APCO's handling of the claim caused Helix's damages.

This Court's opinion also does not address the standard set forth for a finding of "bad faith" conduct sufficient to sustain a breach of the implied covenant in the *Restatement (Second) of Contracts* and this Court's prior order *Renown Health v. Holland & Hart, LLP*, No. 72039, 2019 WL 1530161 (Apr. 5, 2019). If this Court applies the standard it previously adopted, then APCO cannot be held liable for breaching the implied covenant because APCO did not act with a dishonest purpose or an interested or corrupt motive. In reaching its holding, this Court overlooked material facts which prove APCO's handling of Helix's demand for delay damages, if improper at all, was nothing more than an honest mistake. In particular, this Court overlooks: that APCO did advise Helix that one of CNLV's stated reasons for not approving Helix change order request ("COR") was that CNLV did not have a contract with Helix and that CNLV had never previously rejected a COR for that reason; that CNLV never rejected any COR, including those from Helix based upon the settlement with APCO; and APCO's rights under the prime contract to submit a

claim without including Helix, particularly when Helix refused to comply with its obligations under the subcontract to document a claim.

For these reasons, APCO respectfully seeks rehearing of this Court's opinion.

PETITION FOR REHEARING STANDARDS

Rehearing is warranted "[w]hen it appears that this [C]ourt has overlooked or misapprehended a material matter in the record or a material question of law in the case[.]" NRAP 40(c)(2)(A).

ARGUMENT

I. THIS COURT'S OPINION IMPROPERLY EXPANDS THE SCOPE OF THE IMPLIED COVENANT AND REWRITES THE SUBCONTRACT.

This Court acknowledges that it cannot rewrite the parties' subcontract and the implied covenant cannot increase the legal obligations of the parties. Opinion pp. 7-8. This Court also acknowledges that Helix's remedy for most delays was an extension of time because of the no damage for delay provision in section 6.5 of the subcontract. *Id*. When the parties "have agreed to terms that address the circumstance that gave rise to their dispute," a "court has no business injecting its own sense of what amounts to 'fair dealing.'" *Vander Veur v. Groove Ent. Techs.*, 452 P.3d 1173, 1178 (Utah 2019) (internal quotations omitted).

Neither Helix nor the District Court addressed whether Section 6.3 of the subcontract modified the no damage for delay provision in Section 6.5. *See*, 13 JA

2605-06. Nor did Helix claim damages under Section 6.3. Nevertheless, this Court expanded Helix's remedy for delay by misapplying Section 6.3 of the subcontract.[1] By its plain language, Section 6.3 only provides additional compensation to Helix for APCO's instructions to "suspend, delay or accelerate" provided APCO and CNLV also agree "in writing" to the extra compensation. *Id.* Here, the parties stipulated that APCO's conduct did not extend the completion date for the project to trigger Section 6.3. 17 JA 3487 at fn. 1. APCO could not be liable for the delay. In addition, there was no agreement in writing between APCO and CNLV to pay Helix additional delay compensation. This Court's finding that Section 6.3 provides an exception to the no damage for delay provision in 6.5 and that APCO's failure to submit a joint claim with Helix precluded Helix from recovery under Section 6.3, is contrary to the parties' stipulation and the plain language of Section 6.3. *See* 13 JA 2601; 17 JA 3487, 3491, 3499. As a result, this Court's Opinion effectively rewrites the subcontract to require APCO to pay Helix, even if APCO and Helix agreed APCO was not responsible for the delay and neither APCO nor CNLV agreed that Helix was entitled to extra compensation. 13 JA 2602. Thus, a rehearing is required because the Opinion affirms a claim that was not compensable under the terms of the parties subcontract, which is prohibited by this Court's holding in *Senteney v.*

[1] *See* Opening Brief, pp. 33-37.

Fire Ins. Exchange, 101 Nev. 654, 656-657, 707 P.2d 1149, 1150-51 (1985), cited in the Opinion.[2] *See*, Opinion p. 8.

II. THIS COURT'S OPINION OVERLOOKS HELIX'S FAILURE TO PROVE DELAY DAMAGES AND CAUSATION[3]

This Court's opinion overlooks that Helix did not present any evidence that its costs were increased by delay or that APCO's alleged mishandling of the claim caused Helix's damages. The covenant cannot relieve Helix from proving its damages because of some perceived unfairness in the claim process.

A. Proof of Delay Damages Requires More Than Evidence of Costs During a Delay Period.

This Court overlooks that evidence of costs during a delay period is not sufficient to recover on a delay claim. Delay damages require proof that the subcontractor's "costs were **increased**" by the delay. *Thalle Constr. Co. v. The Whiting-Turner Contr. Co.*, 39 F.3d 412, 417 (2d. Cir. 1994)(Emphasis added.). In addition, Helix must "connect the alleged losses to the particular incident of the delay." *A.G. Cullen Constr., Inc. v. State Sys. of Higher Educ.*, 898 A.2d 1145, 1160-61 (Pa. Commw. Ct. 2006); The fact that costs are incurred after the scheduled completion date is not evidence of delay damages. *Manshul Constr. Corp., v,. Dormitory Auth. of N.Y.*, 436 N.Y.S.2d 724, 729 (N.Y. Sup. Ct. App. Div. 1981).

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[2] Opening Brief p. 33.

[3] *See,* Opening Brief, pp. 26-32; Reply brief pp.5-8.

This Court also overlooks that Helix did not prove its claimed costs were increased by the delay. *See, e.g. George Solitt Constr. Co. v. U.S.,* 64 Fed. Cl. 229, 238 (Ct. Cl. 2005) (holding that in addition to having "the burden of proving the extent of the delay," a subcontractor must also prove "that the delay harmed the [sub]contractor" by increasing its costs). The District Court specifically found that during the claimed delay period Helix had only one person on the job who was working on completing subcontract work and change order work for which Helix was being paid by CNLV. 17 JA 3521, FOF 52. Helix was still billing for its general conditions through October of 2014. 7 JA 1146. As a result, there was no way to determine whether Helix's delay costs were duplicative. Furthermore, Helix admitted that it never performed any analysis that its claimed costs increased because the project was not completed on time. 7 JA 1146; 8 JA 1392-93.

Finally, this Court also overlooks that expert testimony is required to establish that specific delays caused increased costs. *TechDyn Sys. Corp. v. Whittaker Corp.*, 427 S.E. 2d 334 (Va. 1993).[4] A time impact analysis ("TIA") is necessary to show when, where and why a contractor's scope of work was delayed. 8 JA 1441. Furthermore, the level of mitigation and the opportunities for mitigation are different for general contractors and subcontractors. 7 JA 1134. This means this Court could

[4] Opening Brief p. 9; Reply Brief pp. 5-6.

not compute Helix's delay costs using the same delay period CNLV used to compensate APCO.

APCO respectfully requests that rehearing is warranted on this issue because, without proof of delays and their effect on costs, Helix's claim was invalid, regardless of why CNLV rejected it. NRAP 40(c). The covenant cannot be used to correct a party's failure to prove its damages as required by the contract or under applicable case law.

B. Helix Had to Appeal CNLV's Denial of the Claim to Establish Causation and Hold APCO Liable.[5]

Finally, this Court's opinion overlooks the fact that Helix made a deliberate choice not to appeal CNLV's rejection of its claim under Paragraph 6.3.2.A of the Prime Contract[6]. 11 JA 1898 at Sec. 6.2.3(a); Vol. XIII JA 2601-2602 at Sec 1.1, 1.3. The appeal process applies specifically "decisions based on Contract interpretation." *Id.* The record is clear that Helix knew about its right to appeal, and that Helix ***intentionally*** chose not to pursue an appeal directly ***or*** to direct APCO to pursue such an appeal. 7 JA 1126, 1227-28; 17 JA 3487, 3499.

As APCO pointed out, by failing to address the issue, Helix conceded that without an appeal there was no evidence that CNLV would have approved Helix's

[5] *See* Opening Brief, pp. 25-27.
[6] Opening Brief 7-8.

claim, as it existed, even if jointly presented.[7] Thus, without proof of a claim acceptable to CNLV, there was no proof that APCO's conduct and not Helix's inability to prove a viable claim caused Helix's damages[8]. *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 796–97, 858 P.2d 380, 384 (1993)

Furthermore, by ignoring Helix's failure to appeal, this Court held APCO liable for an untested claim. In doing so, this Court again uses the covenant to rewrite the parties' contract. The subcontract provided a mechanism for Helix to contest any unfairness in the claim process, which remedy Helix declined to exercise.[9] By using the covenant as a substitute for an appeal by Helix, this Court provides a Helix a remedy for which the parties did not bargain. Such use of the covenant creates the potential for widespread misuse of the covenant as a means for courts to substitute their own notions of fairness for the terms the parties negotiated, which is improper.[10] See, *Allen v. El Paso Pipeline Co., LLC*, 113 A.3d 167, 183 (Del. Ch. 2014).

III. THIS COURT'S OPINION OVERLOOKS ITS PRIOR AUTHORITY REQUIRING PROOF OF BAD FAITH TO FIND A BREACH OF THE IMPLIED COVENANT.

[7] Reply Brief pp. 4-5.
[8] Opening Brief p. 24.
[9] The District Court agreed that an appeal could have resolved the differences of opinion about the scope of the settlement. 7 JA 3495-96.
[10] Opening Brief pp. 33-34.

A. This Court Overlooks Its Earlier Decision in *Renown Health*.

This Court's opinion overlooks its earlier decision in which it found that a breach of the implied covenant requires evidence of actual bad faith. Although not binding authority, in *Renown Health v. Holland & Hart, LLP*, No. 72039, 2019 WL 1530161 (Apr. 5, 2019),[11] this Court explained that "the central question in determining whether the [implied] covenant was breached is whether the party acted in bad faith." *Id.* at * 2 (citing to *Geysen v. Securitas Sec. Servs. USA, Inc.*, 142 A.3d 227 (Conn. 2016)). This Court further explained:

> "[b]ad faith generally implies . . . actual or constructive fraud, or a design to mislead or deceive another, *or a neglect or refusal to fulfill some duty or some contractual obligation,* ***not prompted by an honest mistake as to one's rights or duties,*** *but by some interested or sinister motive . . . Bad faith means more than mere negligence; it involves a dishonest purpose.*"

Id. (quoting *Geysen*, 142 A.3d at 238 (italics and alterations in original, bold emphasis added)). Notably, this Court affirmed the lower court's directed verdict on the appellant's claim for breach of the implied covenant because there was no evidence that the respondent "acted with an interested or corrupt motive, or with anything other than an honest mistake, bad judgment or negligence." *Id.* (Internal quotations omitted).[12]

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[11] *See* Opening Brief p. 55 and Reply Brief, p. 21.

[12] This identical line of authority has also been relied upon by the Court of Appeals. *See Minturn Tr. v. Morawska*, No. 73804-COA, 2019 WL 2714827 (Nev. App. Ct. June 20, 2019).

This Court's holding in *Renown* is the standard established by Section 205 of the *Restatement (Second) of Contracts*, as well by the majority of jurisdictions to address this issue. *See Restatement (Second) of Contracts,* § 205 (1981); *see also Himmelstein v. Comcast of the Dist., LLC,* 908 F. Supp. 2d 49, 53-54 (D.D.C. 2012); *Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 272 Cal. Rptr. 399-400 (Ct. App. 1990); *Geysen*, 142 A.3d at 238; *Targus Int'l, Inc. v. Sherman*, 922 N.E.2d 841, 853 (Mass. App. Ct. 2010) (holding that "a breach of the implied covenant involves 'bad faith' conduct implicating a dishonest purpose, consciousness of wrong, or ill will in the nature of fraud").[13] Moreover, this Court's holding in *Renown* is consistent with earlier Nevada law, which generally adopted Section 205 of the Second Restatement in the context of a public works contract. *See A.C. Shaw Constr., Inc. v. Washoe Cnty.*, 105 Nev. 913, 914, 784 P.2d 9, 9 (1989). If this Court applies the Restatement standard adopted by this Court in *Renown,* there is no evidence in the record to support a finding that APCO acted in bad faith.

[13] Additional cases are *Jordet v. Just Energy Solutions, Inc.,* 2020 WL 7167514 (W.D.N.Y. 2020); *Courtean v. Tchrs. Ins. Co.*, 338 F. Supp. 3d 88, 101-102 (D. Conn. 2018); *Andrichyn v. TD Bank, N.A.,* 93 F. Supp. 3d 375, 387 (E.D. Pa. 2015); *Third Fed. S. & L. Ass'n of Cleveland v. Formanik,* 64 N.E.3d 1034, 1048-49 (Ohio 2016); *Khalid v. Citrix Sys., Inc.,* 489 P.3d 252 (Wash. Ct. App. 2020).

B. This Court Overlooks Material Facts That Prove APCO Did Not Act in Bad Faith and That Helix Failed to Comply with the Terms of the Agreement.

APCO's conduct does not fall within the type of conduct both this Court and the Restatement have held constitutes a breach of the implied covenant, which is:

> [E]vasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of power to specify terms, and interference with or failure to cooperate in the other party's performance.

Restatement (Second) of Contracts, § 205 at cmt. d.

As will be shown below, APCO did not evade the spirit of its bargain with Helix. To the contrary: (1) APCO informed Helix that CNLV claimed to reject Helix's claim because there was no contract; (2) APCO diligently pursued Helix's claim, but Helix failed to provide the information it was contractually required to provide to APCO in order for APCO to successfully seek delay damages; and (3) Helix, ***not APCO***, made the choice not to challenge CNLV's denial of Helix's claim, thus preventing APCO or the City from correcting any mistake in the handling of Helix's claim.

1. APCO Expressly Informed Helix that CNLV Rejected Helix's Request Because There was No Contract Between Helix and CNLV.[14]

This Court found that APCO misled Helix about the reasons for CNLV's rejection, but overlooked a significant fact. APCO did inform Helix about CNLV's

[14] *See* Opening Brief, pp. 14-16.

stated reason for the rejection when it sent Helix CNLV's rejection form in October 2013 that stated, "This COr (sic) is rejected. The City of North Las Vegas does not have a contract with Helix Electric." *See* 14 JA 2691-2692.

This Court's opinion also overlooks the unrefuted evidence of the course of dealing between APCO and CNLV. "Purpose, intentions and expectations of the parties should be determined by considering the contract language and the course of dealings and conduct of the parties." *Scherer Const., LLC v. Hedquist Constr. Inc.*, 18 P3d 645,652-653 (Wyo. 2001)[15]. APCO routinely submitted separate claims on behalf of its subcontractors, including Helix, before and after the rejection of Helix's claim that CNLV routinely approved. 7 JA 1198-1200; 8 JA 1430-31; 16 JA 3251-3364. Mr. Llamado admitted that APCO used the correct form for Helix's COR. 7 JA 1200. No other change order on the project was rejected because the subcontractor did not have a contract with CNLV. 8 JA 1434. Furthermore, there was no contractual requirement for a joint claim submission and the parties' course of dealing did not include joint submissions. Besides, Helix never objected to the manner in which APCO processed the claim, knowing full well that APCO was processing its claim separately in the various COR's submitted to CNLV. Thus, this Court's application of the covenant, rather than protecting the reasonable

[15] Opening Brief p. 53

expectation of the parties, created a new set of obligations for which the parties never bargained.

This Court also overlooked material facts when it concluded that APCO performed the contract unfaithful to its purpose when it told Helix CNLV's denial was based upon lack of back up. Mr. Pelan was told by Mr. Llamado that Helix's change order was BS and that he would not review a one line change order with no backup, so Pelan requested additional backup from Helix. 8 JA 1434-35. In addition, Mr. Pelan testified that in February of 2014, CNLV's Mr. Duval again reviewed and rejected Helix's delay costs. 8 JA 1444. The District Court found Mr. Pelan's testimony on this issue to be credible. 17 JA 3499. This evidence, which this Court overlooks, resulted in APCO's good faith subjective belief that Helix needed to provide additional back up, which Helix refused to do in violation of the subcontract and applicable law.

This Court's conclusion that APCO breached the covenant by settling with the City in October of 2013 and waiving Helix's claim also overlooks that the CNLV never rejected any change order after the settlement, including those for Helix's delay costs, based upon the settlement. 8 JA1439. Mr. Llamado testified that he rejected Helix's COR's for delay after the settlement because CNLV did not have a contract with Helix—not because of the settlement. 7 JA 1193. This evidence is consistent with Mr. Pelan's testimony that the settlement could not affect the claims

of other subcontractors because work was ongoing and was limited to APCO's claims. 9 JA 1544.

This Court also overlooks CNLV's conduct after the settlement. CNLV continued to approve change orders until March 17, 2014—more than five months after the settlement. 14 JA 2744-45. The City wrote on the last COR : **"With the acceptance of this CCA, APCO agrees that no further COR's will be submitted, thus concluding the project in its entirety."** *Id*. (Emphasis added.) Moreover, CNLV continued to meet and discuss Helix's delay COR's until February of 2014 when Mr. Pelan met with the Deputy Director of facilities, Randy DuVal. 8 JA 1444. This evidence is further indication of APCO's good faith belief that it was properly processing Helix's claim.

2. Helix was Contractually Obligated to Provide Timely, Detailed Backup Information of its Delay Damages, But Repeatedly Failed to Do So.[16]

APCO's belief that Helix was required to submit detailed documentation to the City in support of its claim was based upon the plain language of the parties' agreements and applicable case law. The notice and record keeping requirements of the Subcontract are material terms that Helix was required to follow. *See Eagles Nest Ltd. Partnership v. Brunzell*, 99 Nev. 710, 713, 669 P. 2d 714, 715 (1983)[17].

[16] *See* Appellants' Opening Brief, pp 40-42.
[17] Opening Brief p.38.

This Court overlooks Helix's obligations for documenting additional costs under the ***Prime Contract***. But, paragraph 1.1 of the subcontract between Helix and APCO expressly incorporated all of the terms of the Prime Contract between APCO and CNLV. 13 JA 2601 ("The Contract Documents for this Subcontract Agreement shall include . . . . the Primary Contract between Owner and Contractor"). In Paragraph 1.2 of the subcontract, Helix expressly acknowledged that it had reviewed and understood the terms of the Prime Contract. *Id.* at 2602. And, in paragraph 1.3 of the subcontract, Helix agreed to comply with "all obligations, liabilities and responsibilities that [APCO], by the Contract Documents has assumed towards . . . [CNLV] in the Prime Contract." *Id.*

Paragraph 6.3 of the Prime Contract governed claims for payment. *Id.* at 1898. Under Paragraph 6.3.2.B, Helix was also required to submit ***detailed contemporaneous documentation*** of the costs that were in dispute. *Id.* at 1899. This required Helix to provide "a daily summary of the hours and classifications of equipment and labor utilized on the disputed work, as well as a summary of any materials or any specialized services which are used . . ." *Id.* Furthermore, if the costs claimed continued for more than 30 days, Helix was required to continue to submit *all* of its claimed costs, with backup, to CNLV as reasonably practicable in fifteen-day increments. *See id.* Helix went months without even advising APCO about the amount of its claim, much less detailed back up.

This Court's opinion does not address Helix's obligation to provide this information or that the covenant cannot relieve Helix from specific obligations of its subcontract. Nor does it address that Helix consistently failed to provide information despite APCO's repeated requests, when finding that APCO should have submitted Helix's claim together with APCO's claim. Specifically, APCO submitted its own independent delay claim on January 9, 2013 before Helix gave any notice of a potential claim. 8 JA 1425-26; 17 JA 3491. Twenty days later, Helix notified APCO of its intent to seek delay damages, but did not provide APCO with any of the detailed documentation required by Paragraph 6.3.2.B of the Prime Contract. 13 JA 2641; 17 JA 3491. The next day, APCO requested the documentation required by Paragraph 6.3 of the Prime Contract, but Helix ***did not provide this information.*** 14 JA 2645. In May 2013, APCO submitted its final claim for delay costs. *Id.* If APCO had submitted Helix's claim with its own on May 9, 2013, as this Court concludes good faith required, Helix's claim would have been as follows: "Helix reserves all rights to any and all additional cost incurred due to schedule delays for this project." 13 JA 2641-42 . That is all Helix provided for a claim. The implied covenant cannot be applied to require APCO to force Helix to make a claim, nor does it require APCO to wait to process its claims on the off chance Helix might be able to prove the delay increased costs on the project. Helix did not provide APCO with any backup for a claim until October 31, 2013, ***after***

APCO had already settled APCO's claim with the City. 14 JA 2729. Thus, besides overlooking material facts and relieving Helix from its contractual obligations to document its claim, this Court applied the covenant in a manner that prohibited APCO from timely protecting its own financial interests to recover for its claim under the Prime Contract. There is "no reported case in which a court has held the covenant of good faith may be read to prohibit a party from doing that which is expressly permitted by an agreement." *Carma Developers (Cal.), Inc. v. Marathon Dev. California, Inc.*, 826 P. 2d 710, 728 (Cal. 1992).[18]

Accordingly, the evidence in the record overwhelmingly indicates that APCO made, at worst, an honest mistake in judgment as to how to proceed with Helix's claim and the effect of the settlement. This is not a sufficient basis to find a breach of the implied covenant. *See Renown*, 2019 WL 1530161 at *2; *see also Restatement (Second) of Torts*, § 205 at cmt. d. APCO respectfully submits that rehearing is warranted on this basis. NRCP 40(c).

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[18] Opening Brief p. 54.

CONCLUSION

For the foregoing reasons, APCO respectfully requests that this Court grant its petition for rehearing.

Dated this 23rd day of May, 2022.

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/s/Christopher H. Byrd, Esq.

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CERTIFICATE OF COMPLIANCE

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 size 14 font in Times New Roman. I further certify that this petition complies with the type-volume limitation of NRAP 32(a)(7) as **it contains 4,128 words.**

Finally, I hereby certify that 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 that every assertion in this brief regarding matters in the record be supported by appropriate references to the record on appeal.

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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 23rd day of May, 2022.

FENNEMORE CRAIG, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 23rd day of May, 2022 and was served on the following by the Supreme Court Electronic Filing System (eFlex):

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