IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTOINE SALLOUM,

Appellant,

vs.

BOYD GAMING CORPORATION, D/B/A MAIN STREET STATION, A DELAWARE CORPORATION,

Respondent.

Case No. 80769

District Court Case No. A-19-804678-C

APPEAL
From the Eighth Judicial District Court
The Honorable Kathleen E. Delaney

ANSWERING BRIEF

Paul Swenson Prior
Nevada Bar No. 9324
Kelly H. Dove
Nevada Bar No. 10569
Hayley J. Cummings
Nevada Bar No. 14858
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
sprior@swlaw.com
kdove@swlaw.com
hcummings@swlaw.com

Attorneys for Respondent Boyd Gaming Corporation

NRAP 26.1 DISCLOSURE STATEMENT

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 Justices of this Court may evaluate possible disqualification or recusal.

Boyd Gaming Corporation states that the proper party to this action is M.S.W., Inc. d/b/a Main Street Station Hotel, Casino and Brewery. M.S.W., Inc., a Nevada corporation, is a wholly owned subsidiary of Boyd Gaming Corporation. Boyd Gaming Corporation, a Nevada corporation, does not have a parent corporation, and no publicly held corporation owns more than 10 percent of its stock.

There are no other known interested parties.

Snell & Wilmer L.L.P. has represented Boyd Gaming Corporation in this matter.

ROUTING STATEMENT

Respondent agrees that the Nevada Supreme Court should retain this appeal. This appeal does not fall within any of the categories presumptively assigned to the Court of Appeals. While Respondent does not believe Appellant's position has merit, the issue, at least in part, is one of first impression and is appropriately decided by the Nevada Supreme Court. *See* NRAP 17(a)(11).

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

Federal Cases

TABLE OF AUTHORITIES
(continued)

Page

State Cases

TABLE OF AUTHORITIES
(continued)

Page

Federal Statutes

TABLE OF AUTHORITIES
(continued)

Page

State Statutes

Other Authorities

INTRODUCTION

The district court correctly dismissed Plaintiff-Appellant Antoine Salloum's ("Mr. Salloum") action against Boyd Gaming Corporation (the "Company") because it was time-barred by any measure.

First, discrimination claims "authorized by Chapter 613 of the Nevada Revised Statutes may not be 'brought more than 180 days after the date of the act complained of.'" *Richardson v. HRHH Gaming Senior Mezz, LLC*, 99 F. Supp. 3d 1267, 1271 (D. Nev. 2015) (quoting NRS 613.430). While Mr. Salloum repeatedly asserts that he submitted a claim on the 180th day, in fact, he did not, and the district court correctly determined that his unsigned, un-stamped submission to the Equal Employment Opportunity Commission ("EEOC") did not qualify as such or toll the applicable 180-day period.

Second, Mr. Salloum's claim that NRS 613.430 extended the deadline to 90 days after a right-to-sue notice is fatally flawed and contrary to the canons of statutory construction applied by Nevada courts. Senate Bill (S.B.) 177's 90-day provision ***only*** applies when a claimant receives his right-to-sue notice pursuant to Section 2 of Chapter 613. And, a person receives a right-to-sue notice from the Nevada Equal

Rights Commission ("NERC") "pursuant to Section 2" if the person requests the notice, NERC issues the notice, and at least 180 days have passed since the person filed his employment discrimination charge. In contrast, here, Mr. Salloum did not request the right to sue letter after the required 180 days. Instead, on August 12, 2019, 63 days after Mr. Salloum filed his Charge with the EEOC, his counsel wrote to the EEOC and requested Mr. Salloum's right-to-sue notice. S.B. 177's 90-day provision does not apply because Mr. Salloum, under counsel's direction, did not receive his right-to-sue letter pursuant to Section 2 of Chapter 613. As Section 2 is unambiguous, Mr. Salloum's misguided interpretation of NRS 613.430's language does not apply.

Finally, Mr. Salloum's claim of equitable tolling, which he raised for the first time at the continued hearing on the Company's motion to dismiss does not apply to this case or these facts. In the context of employment discrimination claims, equitable tolling only applies in extreme circumstances. *Scholar v. Pac. Bell*, 963 F.2d 264, 267–68 (9th Cir. 1992). Courts generally do not apply equitable tolling "when a late filing is due to [a] claimant's failure to exercise due diligence in preserving his legal rights." *Id.* at 268.

Notably here, Mr. Salloum's claims under NRS 613.330 expired 180 days after the last date of the act complained of, but he still could have timely filed claims under Title VII of the Civil Rights Act, 42 U.S.C. § 2000d *et seq.*, or the Age Discrimination and Employment Act (ADEA), 29 U.S.C. §§ 621–34 within 90 days of receiving the EEOC's right-to-sue notice. Yet, despite referencing Title VII and the ADEA in his Charge, under the representation of counsel, Mr. Salloum made the strategic decision to omit all federal claims from his Complaint.

Indeed, Mr. Salloum's Complaint does not mention federal law and specifically alleges his gender discrimination claim, age discrimination claim, and hostile work environment claim as alleged state law violations under NRS 613.330 *et seq.* In other words, it is apparent that, represented by counsel, Mr. Salloum made the strategic and calculated decision to file his action in state court and insulate it from removal by choosing not to assert any federal claims. That this calculated decision was based on a misinterpretation of NRS 613.430's amended language, resulting in dismissal does not support any equitable tolling. Now, like his claims under NRS 613.330, Mr. Salloum's claims under Title VII and the ADEA are also time-barred.

This Court should affirm the district court's granting of the Company's motion to dismiss.

STATEMENT OF THE CASE

I. Factual and Procedural Background

A. Mr. Salloum's Employment with the Company and His Termination.

Mr. Salloum's tenure with the Company began around April 2003 as a food and beverage employee at the Main Street Station Hotel, Casino, and Brewery ("Main Street Station"), which the Company owns and operates. JA003 ¶¶ 11, 13; *see also* JA014 at 2:13-17. The complaint contains a laundry list of inane grievances—none of which amount to employment discrimination under NRS 613.330, and which primarily target Terri Mercer ("Ms. Mercer"), a woman appointed as Main Street Station's general director and manager in 2017. JA003 ¶ 14; *see also* JA122–25 (order granting the Company's motion to dismiss).

Mr. Salloum, who served as a food and beverage manager at the time of Ms. Mercer's appointment, accuses Ms. Mercer of "engag[ing] in

misandrist[1] behavior." JA003 ¶ 15. And, in Mr. Salloum's opinion, Ms. Mercer's alleged contempt for men ultimately led to his suspension around August 9, 2018 and his termination on August 15, 2018. *See* JA003–5 ¶¶ 16–33. Contrary to Mr. Salloum's allegations, the Company in fact terminated Mr. Salloum's employment after investigating numerous claims of financial coercion and solicitation of his subordinates. JA005–6 ¶¶ 24–33; Op. Br. at 2. Regardless, the cause of Mr. Salloum's termination is not at issue here, as the action was dismissed only because it was time-barred.

As the district court resolved this action through the Company's motion to dismiss, there are few facts of record that directly pertain to Mr. Salloum's employment history and, by extension, the events underlying the Company's decision to terminate his employment. *See* JA122–25. However, when opposing the Company's motion to dismiss, Mr. Salloum introduced a purported correspondence to the EEOC that

---

1 Misandrist is defined as "a person that hates men." *Misandrist*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/misandrist (last visited Nov. 21, 2019).

sheds light on the Company's rationale.[2] *See* JA025 at 3:6-7; JA029–35. In this correspondence, Main Street Station management communicated a concrete reason for ending Mr. Salloum's employment: "willful misconduct." JA030. Management informed Mr. Salloum that his "willful misconduct" was based on his "violation of [two] general rules": (1) "Rule #42 [-] Any violation of [the] established [C]ompany solicitation and distribution policy"; and (2) "Rule #43 [-] Lending [or] barrowing [sic] money from customers or other team members at any time or pressuring or coercing a team member or customer in an attempt to borrow money." JA030–34.

As detailed in his own correspondence, Ms. Mercer did not decide to terminate the Company's relationship with Mr. Salloum in a vacuum.

---

[2] As explained in Mr. Salloum's opposition to the Company's motion to dismiss, "[a] court "may also consider unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document." JA024 at 3:10-14 (quoting *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015)). Moreover, the Court may consider Mr. Salloum's correspondence: "[o]n appeal, a court can only consider those matters that are contained in the record made by the court below and the necessary inferences that can be drawn therefrom." *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (citing *Toigo v. Toigo*, 109 Nev. 350, 350, 849 P.2d 259, 259 (1993)).

See JA030–34. Rather, before his termination, Main Street Station management investigated complaints concerning Mr. Salloum for a considerable amount of time. *See* JA031. The investigation resulted in four employees submitting written statements outlining Mr. Salloum's pattern of financial solicitation, which included, but was not limited to: (1) borrowing at least $1,000.00 from a subordinate and failing to repay the funds; (2) requesting that a subordinate solicit money from fellow employees for a supposed birthday cake fund despite the request not only violating the Company's policies, but also placing the employee in an uncomfortable position; and (3) collecting money from cocktail servers—again, Mr. Salloum's subordinates—for a charity purportedly related to his church. *See* JA032–34.

On the one hand, Mr. Salloum (unsurprisingly) disputes the foregoing allegations. Yet, on the other hand, he attempts to justify his conduct by comparing his actions to Main Street Station's annual United

Way[3] Campaign, arguing: "management at Main Street Station do a United Way Campaign every year. . . . What is the difference between the [C]ompany's action or my actions. . . ?" JA032. At the investigation's conclusion, with four written statements on file, numerous violation examples, and Mr. Salloum's apparent inability to accept responsibility for his actions, Ms. Mercer suspended Mr. Salloum on August 9, 2018. *See* JA031–34. Following Mr. Salloum's suspension, and based on his repeated policy violations, Ms. Mercer, with the Company's support, officially discharged Mr. Salloum on August 15, 2018. *See* JA003 ¶ 13; JA031–34.

B. Mr. Salloum's Initial EEOC Inquiry, His June 10, 2019 Charge of Discrimination, His August 12, 2019 Right-to-Sue Request, and the EEOC's August 13, 2019 Right-to-Sue Letter.

After suspending Mr. Salloum "for borrowing money from employees and/or soliciting employees to donate to charitable causes," the Company ended Mr. Salloum's employment on August 15, 2018. JA005

[3] In comparison to Mr. Salloum's birthday cake fund, the United Way is a global, vetted non-profit organization, founded over a century ago, "focused on focused on creating community-based and community-led solutions that strengthen the cornerstones for a good quality of life: education, financial stability and health." *About Us*, UNITED WAY, https://www.unitedway.org/about (last visited Feb 10, 2021).

¶ 2. On February 14, 2019—***183 days after his termination***—Mr. Salloum submitted an online inquiry information form through the EEOC's public portal (the "Initial Inquiry"). JA060 (stating "Submission (Initial Inquiry) Date: 02/14/2019"). With respect to online inquiry forms, the EEOC's "FAQ" section displayed on the public portal login page is clear:

> If I submit an online inquiry, does that mean I filed a charge of discrimination?
> . . .
> ***No***. An inquiry is typically your first contact with the EEOC regarding your concerns about potential employment discrimination, which is followed by an interview with EEOC staff. Submitting an inquiry is the first step to determine whether you want to proceed with filing a formal charge of discrimination. ***A charge of discrimination is a signed statement asserting that an organization engaged in employment discrimination***. It requests EEOC to take remedial action. The laws enforced by EEOC, except for the Equal Pay Act, require you to file a charge before you can file a lawsuit for unlawful discrimination. There are strict time limits for filing a charge.[4]

Mr. Salloum filed an official charge of discrimination (the "Charge") with the EEOC on June 10, 2019—***299 days after his termination***. *See* JA064.

[4] *Public Portal FAQ*, U.S. Equal Emp. Opportunity Comm'n (June 28, 2017) https://publicportal.eeoc.gov/Portal/Login.aspx (emphasis added).

Contrary to the timeline presented above, which the EEOC's official records confirm, Mr. Salloum asserts that "he has consistently maintained that he submitted his complaint with the EEOC on February 11, 2019, the 180th day to do so. . . . [His] Charge of Discrimination was therefore timely submitted." Op. Br. at 4. But the "complaint" Mr. Salloum references throughout his Opening Brief is an unsigned, unsworn, unverified typewritten letter—with no official timestamp. *See* JA030–35. As previously noted, and in direct contrast to Mr. Salloum's unsigned, unsworn, unverified typewritten letter, the Initial Inquiry is dated February 14, 2019—183 days after his termination. *Compare* JA030–35 *with* JA060–62. Aside from Mr. Salloum's repeated, unsupported insistence that he timely submitted a complaint to the EEOC simply because his typewritten letter is conveniently dated February 11, 2019, Mr. Salloum has failed to provide any additional support for this conclusory assertion. *See generally* Op. Br.; JA022–46; JA069–99. And while Mr. Salloum may have uploaded the letter in question to the EEOC's public portal at some point in time, EEOC

guidance materials provide that a claimant is only able to upload supporting documentation ***after*** submitting an online inquiry.[5]

Turning back to Mr. Salloum's official Charge, on August 12, 2019—***only 63 days after submitting the Charge***—Mr. Salloum's attorney,[6] wrote to the EEOC and requested Mr. Salloum's right-to-sue notice:

> To Whom it May Concern:
>
> Please be advised that while we understand the intake process, Mr. Salloum wishes to pursue his claims in federal district court as soon as possible. Accordingly, please issue him [sic] right-to-sue letter immediately.
>
> Thank you for your time and attention to this matter. If you have any questions, or need additional information, please feel free to call the office
>
> Respectfully,
> */s/ Theresa M. Santos*

---

[5] Equal Emp. Opportunity Comm'n, *EEOC Public Portal User's Guide: Vol 8 - Manage Charge Information* 9 (Jan. 28, 2021), https://publicportal.eeoc.gov/Portal/content/UserGuides/V8-Manage_Charge_Information.pdf ("In the My Documents section of the My Charge page, you may upload documents supporting your charge, to send them to the EEOC. When you upload documents in the Portal, they will be available for you and the EEOC to read.").

[6] Ms. Santos represented Mr. Salloum before the district court and has continued to represent Mr. Salloum through this appeal.

JA066.; *see also* JA049 at 3:7-11. On August 13, 2019, per counsel's explicit request, the EEOC (not NERC) issued Mr. Salloum a right-to-sue letter for his alleged claims under Title VII and the ADEA. The right-to-sue letter plainly stated that "less than 180 days [had] passed since the filing of [Mr. Salloum's] charge":

☐	More than 180 days have passed since the filing of this charge.
☒	Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
☒	The EEOC is terminating its processing of this charge.
☐	The EEOC will continue to process this charge.

JA011.

In addition to the August 13, 2019 right-to-sue letter, the "Recommendation for Dismissal/Closure" form issued by the EEOC further clarifies the timeline related to Mr. Salloum's claims:

> Charging Party or his/her attorney has requested an immediate RTS from the EEOC. ***It has been less than 180 days since the filing of Charging Party's charge with the District Office***. Charging Party has been advised that the District Director can deny requests for a RTS which is submitted less than 180 days from the date their charge was filed with the EEOC; ***Charging Party has been counseled regarding the termination of their investigation; their private suit rights under the applicable EEOC statute; and the requirement of filing a claim in federal court within 90 days***.

JA068 (emphasis added). Mr. Salloum's right-to-sue letter and the EEOC's form for "Recommendation for Dismissal/Closure" underscore

two critical points: (1) Mr. Salloum filed his Charge on June 10, 2019—not February 11, 2019, a date that preceded the right-to-letter by more than six months; and (2) far fewer than 180 days passed between Mr. Salloum filing his Charge and Ms. Santos requesting a right-to-sue letter from the EEOC.

Eighty-one days after the EEOC issued the right-to-sue letter, on November 1, 2019, Mr. Salloum, still represented by counsel, filed the complaint underlying this appeal. *See* JA001–9. The complaint set forth three causes of action (*i.e.*, sex (gender) discrimination, age discrimination, and hostile work environment) exclusively under "NV Rev. Stat. §613.330 *et seq.*" Unlike his Charge, Mr. Salloum's complaint is silent on Title VII and the Age Discrimination in Employment Act, and it includes not one citation to relevant federal law, such as 42 U.S.C. § 2000(e), 29 U.S.C. § 621 et seq., and 28 U.S.C. § 331.

II. Legislative Background

As the Opening Brief notes, S.B. 177, which passed in 2019 during the Nevada Legislature's 80th Session, is the foundation for Mr. Salloum's appeal. Though Mr. Salloum fails to explain how a non-retroactive piece of legislation introduced on February 18, 2019 and effective as of October

1, 2019[7]—***after*** his claims under NRS 613.330 expired—can possibly revive his time-barred claims, the Company provides an overview here to clarify the legislation and show its inapplicability to Mr. Salloum's case. During its 80th Legislative Session, the Nevada legislature amended several portions of Chapter 613 of the Nevada Revised Statutes with S.B.177. Relevant here, S.B. 177 amended NRS 613.430 as follows:

> **Sec. 8.** NRS 613.430 is hereby amended to read as follows:
> 613.430 No action authorized by NRS 613.420 may be brought more than 180 days after the date of the act complained of ~~[.]~~ ***or more than 90 days after the date of the receipt of the right-to-sue notice pursuant to section 2 of this act, whichever is later.*** When a complaint is filed with the Nevada Equal Rights Commission , the limitation provided by this section is tolled as to any action authorized by NRS 613.420 during the pendency of the complaint before the Commission.

The statutory amendment's plain language clarifies that the added 90-day language exclusively applies to right-to-sue notices received "pursuant to section 2 of this act." Section 2 of S.B. 177 states:

> **Sec. 2.** ***If a person files a complaint pursuant to paragraph (b) of subsection 1 of NRS 233.160 which alleges an unlawful discriminatory practice in employment, the Commission shall issue, upon request from the person, a right-to-sue notice if at least 180 days have passed after the complaint was filed pursuant to NRS 233.160. The right-to-sue notice must indicate that the person may, not later than 90 days after the date of receipt of the right-to-sue notice, bring a civil action in district court against the person named in the complaint.***

[7] *See S. Journal*, 2019 Leg., 80th Sess. 8 (Nev. Feb 18, 2019) (introduction, first reading and reference of S.B. 177).

Based on the foregoing language, under NRS 613.430 a person receives a right-to-sue notice from the Commission "pursuant to section 2" if the person requests the notice, the Commission issues the notice, and at least 180 days have passed since the person filed his employment discrimination charge.

During an April 1, 2019 hearing on S.B. 177, the bill's sponsor, Senator Yvanna Cancela, provided insight into the amendment to NRS 613.430:

> Section 8 discusses timelines for actions. ***After 180 days of an open investigation, the employee may request a right-to-sue letter***. Once the letter has been requested, an employee has 90 days to bring the lawsuit forward.

Hearing on S.B. 177 Before the S. Comm. on Commerce and Labor, 2019 Leg., 80th Sess. 10 (Nev. April 1, 2019) (statement of Sen. Yvanna D. Cancela, S. Dist. 10) (emphasis added). Senator Cancela further clarified the relationship between Section 2 and Section 8 set forth in S.B. 177 during a May 4, 2019 hearing:

> Section 2 requires that, ***once 180 days have passed from the time a Nevada Equal Rights Commission investigation has been started, an individual may then request a right-to-sue notice***. Once they have requested a right-to-sue notice, an individual has 90 days to file suit against the employer.
> …

> That language is meant to allow an individual to request a right-to-sue notice even if the investigation has not been completed. Investigations can take longer than 180 days, so if the investigation is ongoing, the individual is now permitted to request the right-to-sue notice. It makes the timeline for that explicit.

Hearing on S.B. 177 Before the Assemb. Comm. on Judiciary, 2019 Leg., 80th Sess. 10–11 (Nev. May 7, 2019) (Statement of Sen. Yvanna D. Cancela, S. Dist. 10). With no language regarding retroactive application, S.B. 177 went into effect on October 1, 2019. [Final Vol.] *Senate History*, 2019 Leg., 80th Sess. 81–82 (2019).

ARGUMENT

I. Mr. Salloum Failed to File a Charge of Discrimination with the EEOC within 180 days of the Discriminatory Act.

Mr. Salloum argues that he "has consistently maintained that he submitted his complaint with the EEOC on February 11, 2019, the 180th day" following his August 15, 2018 termination. Op. Br. 4. Yet, the "complaint" Mr. Salloum references is an unsigned, unsworn, unverified, typewritten letter addressed to the EEOC and dated February 11, 2019. JA030–34. As such, it does not constitute a "complaint" within the meaning of the statute as a matter of law. Moreover, the date on Mr. Salloum's unsigned, unsworn, unverified letter directedly contradicts the EEOC's official records, which identify Mr. Salloum's

"initial inquiry" date as February 14, 2019—***183 days after the Company terminated Mr. Salloum's employment***. JA060. Mr. Salloum wholly fails to explain or provide legal authority to demonstrate how the letter, which conflicts with the EEOC's official records, constitutes a charge of discrimination.

Of course, "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court." *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); *see also Matter of Fund for Encouragement of Self Reliance*, 135 Nev. 84, 86 n.3, 440 P.3d 30, 32 n.3 (2019) (quoting *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006)) ("It is the parties' 'responsibility to cogently argue, and present relevant authority, in support of' their arguments."); *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (stating that this Court "need not consider… claims" when a party "neglect[s] his responsibility to cogently argue, and present relevant authority, in support of his" claims).

Along with disregarding his burden to present legal and factual support for his position, Mr. Salloum also disregards the statutory and regulatory language relevant to charges filed with the EEOC and NERC.

That is, both the EEOC and NERC unambiguously require complaints or charges of discrimination to be signed under oath or verified. Under NRS 233.160(2), "[t]he complainant shall specify in the complaint the alleged unlawful practice and sign it under oath." Similarly, per 29 C.F.R. § 1601.9, "[a] charge shall be in writing and signed and shall be verified." These are definite requirements that are not open to interpretation. Indeed, the law on this issue is straightforward: "'[w]hen a statute is clear and unambiguous, this court will give effect to the plain and ordinary meaning of the words.'" *Associated Risk Mgmt., Inc. v. Ibanez*, 136 Nev. Adv. Op. 91, 478 P.3d 372, 374 (2020) (internal quotation marks omitted) (quoting *Reif ex rel. Reif v. Aries Consultants, Inc.*, 135 Nev. 389, 391, 449 P.3d 1253, 1255 (2019)).

Further, noted above, to the extent Mr. Salloum relies on his Initial Inquiry, which does not fall within the 180-day time period, as a charge of discrimination, the EEOC's public portal clarifies that an online inquiry is ***not*** comparable to a charge of discrimination. To illustrate, "[s]ubmitting an inquiry is the first step to determine whether you want to proceed with filing a formal charge of discrimination[, whereas] a charge of discrimination is a ***signed statement*** asserting that an

organization engaged in employment discrimination." [8] Though the Company recognizes that "EEOC Guidelines are not administrative regulations promulgated pursuant to formal procedures established by . . . Congress[,] . . . [the U.S. Supreme Court] has . . . noted, [that] they do constitute '(t)he administrative interpretation of the Act by the enforcing agency,' and consequently they are 'entitled to great deference.'" *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 431 (1975) (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 433–34 (1971)).

II. Mr. Salloum's Claims under NRS 613.330 *et seq.* Are Time-Barred.

A. NRS 613.430 Prohibited Claimants from Filing State Law Discrimination Claims with the District Court More than 180 Days from the Last Act Complained of at the Time Mr. Salloum's State Law Claims Expired.

On February 11, 2018—the date Mr. Salloum's alleged discrimination claims under state law expired—NRS 613.430 explicitly "***prohibited*** the bringing of such actions after 180 days from the date of the act complained of." *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 825, 673 P.2d 490 (1983) (emphasis added); *see also Kame v. Employment Sec.*

[8] *Public Portal FAQ*, U.S. Equal Emp. Opportunity Comm'n (June 28, 2017) https://publicportal.eeoc.gov/Portal/Login.aspx (emphasis added).

Dep't, 105 Nev. 22, 24, 769 P.2d 66, 67 (1989) ("*Copeland* involved an interpretation of NRS 613.430, which prohibits the bringing of causes of action based on discriminatory employment practices after 180 days from the date of the act complained of. . . .").

Though this Court has not had the occasion to assess analogous circumstances at length, well-established authority from the United States District Court for the District of Nevada is instructive.[9] Courts in the District of Nevada have repeatedly held that discrimination claims "authorized by Chapter 613 of the Nevada Revised Statutes may not be 'brought more than 180 days after the date of the act complained of.'" *Richardson*, 99 F. Supp. 3d at 1271 (quoting NRS 613.430); *see also, e.g.*, *Szyszka v. Cove Elec. of Nev., Inc.*, No. 2:14-cv-00580-JCM-NJK, 2014 U.S. 2014 WL 3748208, at *4 (D. Nev. July 30, 2014) (internal citation omitted) (The "[p]laintiff's claim was filed with the EEOC on June 3, 2013, while the last alleged discriminatory conduct—the constructive

[9] The Court may consider federal case law interpreting NRS 613.430 as persuasive authority. *See, e.g.*, *Terry v. Sapphire Gentlemen's Club*, 130 Nev. 879, 886, 336 P.3d 951, 957 (2014) ("having no substantive reason to break with the federal courts on this issue, judicial efficiency implores us to use the same test as the federal courts. . . .") (internal quotations omitted).

termination—occurred around November 21, 2012. The court finds that the plaintiff's discrimination claim under NRS 613.330 is untimely, because 194 days passed between the last date of the alleged conduct and the date plaintiff's claim was filed with the EEOC. Therefore, defendant's motion to dismiss will be granted as to plaintiff's claim of discrimination . . . in violation of NRS 613.330."). The Ninth Circuit has also followed NRS 613.430's 180-day limitation period when assessing employment discrimination claims brought under Nevada state law. That is, the Ninth Circuit held that "[t]he district court properly concluded that [the plaintiff's] state-law discrimination claims were time-barred. Under Nevada law, '[n]o action ... may be brought more than 180 days after the date of the act complained of.'" *Swan v. Bank of Am.*, 360 F. App'x 903, 906 (9th Cir. 2009) (quoting NRS 613.430).

Further, in *Young v. Boggs*, No. 2:10-cv-01846-KJD, 2011 WL 2690125 (D. Nev. July 11, 2011), the plaintiff asserted race and age discrimination violations under NRS 613.330. While the plaintiff filed a charge with the EEOC 240 days after the alleged discriminatory act, the court dismissed plaintiff's NRS 613.330 claims, with prejudice, because

the plaintiff failed to file her charge within Nevada's 180-day deadline. *Young*, 2011 WL 2690125, at *2. The court explicitly stated,

> NRS 613.430 requires plaintiffs who wish to bring lawsuits under Nevada's unfair employment practice laws to file charges with NERC within 180 days after the alleged discriminatory or retaliatory act. ***This 180-day deadline is not expanded even though Nevada has a work sharing agreement with the EEOC that lengthens the deadline to file with the EEOC to 300 days***.

Id. (emphasis added). Here, like the plaintiff in *Young*, Mr. Salloum filed his Charge of discrimination within 300 days of the alleged discriminatory act but failed to meet NRS 613.430's 180-day deadline. As a result, the district court correctly dismissed Mr. Salloum's NRS 613.330 *et seq.* claims with prejudice.

The reasoning in *Russo v. Clearwire US, LLC*, No. 2:12-cv-01831-PMP, 2013 WL 1855753 (D. Nev. Apr. 30, 2013) is also instructive. The court rejected the plaintiff's argument that his claim was timely because it was filed within 300 days of his constructive discharge, holding that "***§ 233.160(1)(b) does not apply to claims in which a plaintiff seeks to file a district court action. Instead, § 233.160(1)(b) provides that a plaintiff has 300 days from the date of a discriminatory employment practice to file a complaint with NERC***." *Id.* (emphasis

added). Though "[a] plaintiff might timely file a complaint with NERC within the 300–day deadline," he would "be unable to file a district court action once that complaint has been disposed of by NERC if 180 days had elapsed before the NERC complaint was filed." *Id.* To be clear, while "a plaintiff has 300 days to file a complaint with NERC and only 180 days to bring suit in district court," nothing prevents a plaintiff from filing his "complaint with NERC before § 613.430's 180–day deadline, which would have tolled the limitations period for his district court action." *Id.* There, as here, the court dismissed with prejudice the plaintiff's claim for violation of NRS 613.330. *Id.* at *4; *see also Lo v. Verizon Wireless LLC*, No. 2:13-cv-2329-JCM-NJK, 2014 WL 2197636, at *2 (D. Nev. May 27, 2014) ("Plaintiff did not file his complaint [within] the 180–day limitations period. Therefore, the plaintiff is time barred from raising . . . causes of action [under NRS § 613.330].").

Here, Mr. Salloum filed is Charge on June 10, 2019—***119 days late*** and ***299 days after*** the Company terminated his employment. Accordingly, the district court correctly recognized that Mr. Salloum's failure to file his NRS 613.330 claims within its 180-day deadline was a fatal defect, and, for this reason, the Court should affirm.

B. Mr. Salloum Misunderstands the Work-Sharing Agreement Between NERC and the EEOC.

The Company does not dispute the fact that Nevada and the EEOC have a work-sharing agreement—the law on this agreement is extensive and coherent. Yet, Mr. Salloum's understanding of the work-sharing agreement is incorrect. The court in *Young* provides a thorough explanation on Nevada's work-sharing agreement with the EEOC in the context of NRS 613.430's 180-day deadline. Specifically, a "charge filed with the EEOC is 'constructively filed' with the state agency either on the same day that the charge was filed with the EEOC or on the day the EEOC refers the complaint to the state agency." *Young*, 2011 WL 2690125, at *2 (citing *Peterson v. State of California*, 319 Fed. Appx. 679 (9th Cir. 2009); *EEOC v. Commercial Office Products Co.*, 486 U.S. 107, 112–113 (1988)). NRS 613.430 "requires plaintiffs who wish to bring lawsuits under Nevada's unfair employment practice laws to file charges with NERC within 180 days after the alleged discriminatory or retaliatory act." *Id.* "***This 180-day deadline is not expanded even though Nevada has a work sharing agreement with the EEOC that lengthens the deadline to file with the EEOC to 300 days***." *Id.* (emphasis added) (citing *Kora v. Renown Health*, 2010 WL 2609049, *3

(D. Nev. 2010)). The court in *Young* was clear: "***Federal EEOC deadlines do not affect state law deadlines***." *Id.*, at *2 emphasis added). In other words, "[c]harging parties have the benefit of the 300-day time ***limit for filing their federal claims*** even when they have missed the state's filing deadline for submitting those claims to the state deferral agency." *Anisko v. Eldorado Dev. Corp.*, No. 2:16-cv-02020-JAD-GWF, 2018 WL 4409354, at *3 (D. Nev. Sept. 17, 2018).

III. Even if NRS 613.430's Amended Language Applied to Mr. Salloum's Claims—Which It Does Not—Mr. Salloum's Claims Are Still Time-Barred.

A. While S.B. 177 Added a 90-Day Provision to NRS 613.430, the Statute's Plain Language Clarifies that the Added 90-Day Language Does Not Apply to Mr. Salloum's Claims.

Despite S.B. 177's amended language, Mr. Salloum's claims under NRS 613.330 remain absolutely time-barred. His filings make clear that Mr. Salloum based his decision to abandon his federal causes of action and exclusively pursue state-based claims on a mistaken understanding of S.B. 177. In fact, Mr. Salloum affirmatively decided to abandon his federal claims and pursue his time-barred state law claims:

> Plaintiff was on a train to federal court. He filed timely under the EEOC. He filed his right to sue correctly.

> He was preparing to file his complaint in federal court, and he looks out the window, low and behold, the law in Nevada changed a month earlier. Now, the same remedies available in federal court are now available in state court. Well, let's file in state court, and that's exactly what he did.

JA073–74. Yet, when deciding to deboard the "train to Federal Court" and rely on a fragment of newly enacted legislation, Mr. Salloum apparently neglected the most basic principle of statutory construction—a statute must be construed as a whole. *See, e.g.*, *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1890 (2019) (affirming that the cardinal principle of interpretation is that courts must give effect, if possible, to every clause and word of a statute); *C. Nicholas Pereos, Ltd. v. Bank of Am.*, 131 Nev. 436, 441, 352 P.3d 1133, 1136 (2015) (holding that when interpreting a statute, the Supreme Court considers the statute's multiple legislative provisions as a whole).

Even if NRS 613.430's recently amended language applied, the language does not transform his untimely allegations into timely allegations. As explained above, during its 80th Legislative Session, the Nevada Legislature amended several portions of Chapter 613 of the Nevada Revised Statutes with S.B. 177. S.B. 177 specifically amended NRS 613.430 as follows:

> **Sec. 8.** NRS 613.430 is hereby amended to read as follows:
> 613.430 No action authorized by NRS 613.420 may be brought more than 180 days after the date of the act complained of ~~[.]~~ ***or more than 90 days after the date of the receipt of the right-to-sue notice pursuant to section 2 of this act, whichever is later.*** When a complaint is filed with the Nevada Equal Rights Commission , the limitation provided by this section is tolled as to any action authorized by NRS 613.420 during the pendency of the complaint before the Commission.

The statute's plain language clarifies that the added 90-day language exclusively applies to right-to-sue notices received "pursuant to section 2 of this act." Notably, just as with his briefing and oral argument presented to the district court, Mr. Salloum ignores "section 2" in his opening brief and provides no explanation as to why he escapes this statutory provision.

Section 2 of Chapter 613 states:

> **Sec. 2.** *If a person files a complaint pursuant to paragraph (b) of subsection 1 of NRS 233.160 which alleges an unlawful discriminatory practice in employment, the Commission shall issue, upon request from the person, a right-to-sue notice if at least 180 days have passed after the complaint was filed pursuant to NRS 233.160. The right-to-sue notice must indicate that the person may, not later than 90 days after the date of receipt of the right-to-sue notice, bring a civil action in district court against the person named in the complaint.*

Based on the foregoing language, a person receives a right-to-sue notice from the Commission "pursuant to section 2" if the person requests the notice, the Commission issues the notice, and ***at least 180 days have passed since the person filed his employment discrimination charge***.

Here, Mr. Salloum did ***not*** receive his right-to-sue notice pursuant to section 2 of Chapter 613. First, under Nevada law, the "Commission" that "shall issue" the right to sue letter is NERC—not the EEOC. The Nevada statutes plainly define "Commission," clarifying that it "means the Nevada Equal Rights Commission [NERC] within the Department of Employment, Training and Rehabilitation." NRS 233.020(2). Of note, whenever NRS Chapters 233 and 613 (or SB 177, for that matter) reference the term "Commission," that reference is to the NERC, not the EEOC. At no time, did the NERC (*i.e.*, the "Commission") issue Mr. Salloum a right-to-sue letter. Rather, the EEOC, not the Commission/NERC, issued the right-to-sue letter attached to Mr. Salloum's Complaint.

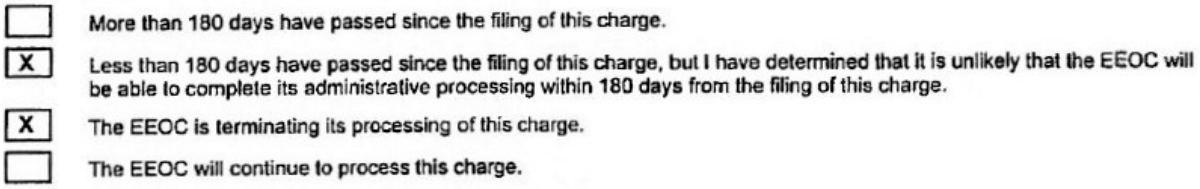
Second, though discussed in more detail below, S.B. 177 was not effective until "October 1, 2019"; therefore, NERC could not—and did not—issue any new right-to-sue letters pursuant to section 2 until then. Rather, on August 13, 2019, the EEOC (not NERC) issued Mr. Salloum the purported right-to-sue letter for his alleged claims under Title VII and the ADEA. Obviously, the EEOC issued the letter long before S.B. 177 was even effective.

Third, Mr. Salloum did not request the right to sue letter after the required 180 days. Instead, on August 12, 2019, sixty-three days after Mr. Salloum filed the Charge with the EEOC, Mr. Salloum's counsel wrote to the EEOC and requested Mr. Salloum's right-to-sue notice:

> To Whom it May Concern:
>
> Please be advised that while we understand the intake process, Mr. Salloum wishes to pursue his claims in federal district court as soon as possible. Accordingly, please issue him [sic] right-to-sue letter immediately.
>
> Thank you for your time and attention to this matter. If you have any questions, or need additional information, please feel free to call the office
>
> Respectfully,
> */s/ Theresa M. Santos*

JA066; *see also* JA049 at 3:7-11. From this letter, Mr. Salloum's counsel ostensibly recognized the age of the Charge.

On August 13, 2019, per counsel's explicit request, the EEOC (not NERC) issued Mr. Salloum a right-to-sue letter for his alleged claims under Title VII and the ADEA. The right-to-sue letter plainly stated that "less than 180 days [had] passed since the filing of [Mr. Salloum's] charge":



JA011.

In addition to the August 13, 2019 right-to-sue letter, the "Recommendation for Dismissal/Closure" form issued by the EEOC further clarifies the timeline related to Mr. Salloum's claims:

> Charging Party or his/her attorney has requested an immediate RTS from the EEOC. ***It has been less than 180 days since the filing of Charging Party's charge with the District Office***. Charging Party has been advised that the District Director can deny requests for a RTS which is submitted less than 180 days from the date their charge was filed with the EEOC; ***Charging Party has been counseled regarding the termination of their investigation; their private suit rights under the applicable EEOC statute; and the requirement of filing a claim in federal court within 90 days***.

JA068 (emphasis added). Mr. Salloum's right-to-sue letter and the EEOC's form for "Recommendation for Dismissal/Closure" underscore two critical points: (1) Mr. Salloum filed his Charge on June 10, 2019—not February 11, 2019, a date that preceded the right-to-sue letter by more than six months; (2) far less than 180 days passed between Mr. Salloum filing his Charge and Ms. Santos requesting a right-to-sue letter from the EEOC.

Undoubtedly, though Mr. Salloum received a right-to-sue notice, he did not receive his notice "pursuant to section 2" of Chapter 613. Even if

the Court ignores the fact that the EEOC, rather than the "Commission," issued Mr. Salloum's right-to-sue notice, it is still apparent that Mr. Salloum did not receive his right-to-sue notice "pursuant to section 2" because ***less than 180 days*** passed between the filing of Mr. Salloum's Charge and receipt of the notice. Indeed, through counsel, Mr. Salloum requested his right-to-sue notice only sixty-three days after Mr. Salloum filed his Charge. Accordingly, the primary argument that Mr. Salloum relies on to show that he "timely filed" his Complaint is entirely unpersuasive. In effect, Mr. Salloum's Complaint is time-barred and the Court should affirm.

B. NRS 613.430's Amended Language Does Not Revive Mr. Salloum's Expired Claims.

As shown above, even if NRS 613.430's amended language applied to the instant case, the language would not revive Mr. Salloum's claims against the Company. However, in an abundance of caution, the Company addresses Mr. Salloum's argument on legislation affecting remedies and procedures and retroactive application.

"It is a principle of the English common law, as ancient as the law itself, that a statute, even of its omnipotent parliament, is not to have a retrospective effect." *Dash v. Van Kleeck*, 1811 WL 1243, at *15 (N.Y.

Sup. Ct. 1811). This Court has expressly analyzed when legislation should be applied retroactively. *See Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev. 813, 313 P.3d 849 (2012). Under *Sandpointe*, courts must determine whether enacted legislation would have a retroactive effect. If a court finds there is no retroactive effect, the statute at issue would apply. *See id.*, 129 Nev. at 823, 313 P.3d at 856. On the other hand, if there is a retroactive effect, the court must determine whether the statute was meant to be applied retroactively. *See id.* Here, applying S.B. 177 would have a retroactive effect, as it would impair vested rights acquired under existing laws, as well as create new obligations and impose new duties. Retroactive application of S.B. 177, however, is not supported by the legislature.

Substantive statutes, like the one at issue here, are presumed to only operate prospectively unless it is clear that the drafters intended the statute to apply retroactively. *Id.*, 129 Nev. at 820, 313 P.3d at 853 (*citing Landgraf v. USI Film Prods.*, 511 U.S. 244, 273 (1994); *Pub. Employees' Benefits Program v. Las Vegas Metro. Police Dept.*, 124 Nev. 138, 154, 179 P.3d 542, 553 (2008); *Cnty. of Clark v. Roosevelt Title Ins.* Co., 80 Nev. 530, 535, 396 P.2d 844, 846 (1964)). Deciding when a statute operates

retroactively is not always a simple or mechanical task. *Id.*, 129 Nev. at 820, 313 P.3d at 854 (quoting *Landgraf*, at 268). "Broadly speaking, courts take a commonsense, functional approach in analyzing whether applying a new statute would constitute retroactive application." *Id.* (internal quotations and citations omitted).

Indeed, from its inception, this Court, has viewed retroactive statutes with disdain, noting that such laws are "odious and tyrannical" and "have been almost uniformly discountenanced by the courts of Great Britain and the United States." *Id.*, 129 Nev. at 826, 313 P.3d at 858 (citing *Milliken v. Sloat*, 1 Nev. 573, 577 (1865)). Thus, as the Nevada Supreme Court has already established, a statute will not be applied retroactively unless: "(1) the Legislature clearly manifests an intent to apply the statute retroactively, or (2) it clearly, strongly, and imperatively appears from the act itself that the Legislature's intent cannot be implemented in any other fashion." *Id.* (internal quotations and citations omitted).

Here, the Legislature provided that the Statute became effective on October 1, 2019. The Legislature did not manifest an intent to resurrect dead claims or to apply the statute retroactively. Tellingly, the Nevada

Legislature has expressly demonstrated its intent to have legislation apply retroactively with respect to other laws, suggesting it could have done the same here if that was indeed the intent. *See, e.g.*, NRS 278.4787(7) ("The provisions of this section apply retroactively…"); NRS 176.025 (Laws 2005, c. 33, § 2, providing "this act becomes effective upon passage and approval and applies retroactively"); NRS 287.023 (Laws 2007, c. 496, § 16, as amended by Laws 2009, c. 369, § 15, eff. May 29, 2009, providing in part that "Section 2 of this bill becomes effective on July 1, 2007, and applies retroactively to October 1, 2003."). Yet, no retroactive language exists here. And the absence of any such language indicates the Legislature did not intend to apply S.B. 177 retroactively under the *Sandpointe* analysis.

Finally, in arguing that S.B. 177's 90-day language is procedural, Mr. Salloum misses a critical distinction, which underscores the statue's "retroactive effect." That is, "[w]hen claims are already time-barred at the time the limitations period is enlarged, a clear statement of [the legislature] is required before a court will apply an amendment retroactively to revive a claim." *United States v. Lewis*, 2013 WL 6407885, at *10 (N.D. Tex. 2013). Indeed, one of the cases on

which Mr. Salloum relies makes this distinction clear. *See Friel v. Cessna Aircraft Co.*, 751 F.2d 1037 (9th Cir. 1985). In *Friel*, the Ninth Circuit only applied an amended statute of limitations retroactively because the prior "two-year time bar was not yet complete and the action was viable when the limitation period was lengthened to three years." *Id.* at 1040. In this case, depending on the Charge date the Court accepts, Mr. Salloum's NRS 613.430 claims either expired on February 11, 2019 or August 14, 2019—the day after Mr. Salloum received his right-to-sue notice. Either way, Mr. Salloum's claims expired before S.B. 177 went into effect on October 1, 2019. By extension, even if applicable, S.B. 177 could not revive Mr. Salloum time-barred claims.

IV. The District Court Correctly Declined to Apply Equitable Tolling.

At the continued hearing on the Company's motion to dismiss, Mr. Salloum argued for the very first time and without any prior briefing that equitable tolling should apply. As such, it should be considered waived, but it in any event fails on the merits. The entire argument on equitable tolling—both factual and legal—was as follows:

> I will add though that, if Your Honor is inclined to grant [the Company's] motion, ask that you deny it under the basis of equitable tolling. Any delay by [Mr. Salloum] was excusable

> delay. He was under [the] good faith belief that he was doing everything timely. There is no prejudice to the [Company].
>
> And, in fact, our Supreme Court has said in the past, and I quote: "Procedural technicalities that would bar claims of discrimination will be looked upon with disfavor," and that's the case of "*Copeland vs. Desert Inn Hotel*."

JA103. Generally, "[a] party may not raise 'new issues, factual and legal, that were not presented to the district court ... that neither [the opposing party] nor the district court had the opportunity to address.'" *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 693 n.3, 290 P.3d 249, 252 n. 3 (2012) (quoting *Schuck v. Signature Flight Support*, 126 Nev. 434, 437–38, 245 P.3d 542, 545 (2010)). Moreover, "[a] point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal." *Archon Corp. v. Eighth Judicial Dist. Ct.*, 133 Nev. 816, 822, 407 P.3d 702, 708 (2017) (quoting *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981)). As such, this argument was waived and should not be considered on its merits on appeal.

However, even if it was properly raised before the district court, the argument fails. In short, filing a defective pleading based on a legal error – an incorrect understanding of new legislation — and while under the representation of counsel does not warrant equitable tolling. Rather,

equitable tolling "'focuses on 'whether there was excusable delay by the plaintiff." *City of N. Las Vegas v. State Local Gov't Employee-Mgmt. Relations Bd.*, 127 Nev. 631, 640, 261 P.3d 1071, 1077 (2011). "If a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather what information he needs.'" *Id.* (quoting *Lukovsky v. City and County of San Francisco*, 535 F.3d 1044, 1051 (9th Cir. 2008)).

As noted in Mr. Salloum's opening brief, this Court first adopted equitable tolling in the context of an anti-discrimination statute. *See Copeland v. Desert Inn Hotel*, 99 Nev. 823, 673 P.2d 490, 492 (1983). In *Copeland*, the plaintiff filed a complaint against her employer after the employer terminated her employment due to a physical disability. 99 Nev. at 824, 673 P.2d at 491. Officials from NERC then misled the plaintiff regarding her rights under Nevada's anti-discrimination statutes, resulting in a complaint that fell outside the 180-day limitations period set by NRS 613.430. *Id.* Because the only bar to the plaintiff's otherwise timely claim was a procedural technicality caused by the misleading information provided by NERC, this Court applied equitable

tolling. *Id.* ("We therefore adopt the doctrine of equitable tolling ...; procedural technicalities that would bar claims ... will be looked upon with disfavor.").

In contrast to the plaintiff in *Copeland*, Mr. Salloum's time-barred complaint is not the result of misleading information or a procedural technicality. In fact, the record shows that an attorney represented Mr. Salloum through nearly every step of this action. That is, counsel requested Mr. Salloum's right-to-sue letter (fully cognizant that the Charge had not been pending for 180 days); counsel received Mr. Salloum's right-to-sue letter from the EEOC; and counsel represented Mr. Salloum when he filed his complaint. Even more so, counsel represented Mr. Salloum when he decided to abandon his federal claims. As the Ninth Circuit held, ["e]quitable tolling is typically denied in cases where a litigant's own mistake clearly contributed to his predicament." *Harris v. Carter*, 515 F.3d 1051, 1055 (9th Cir. 2008); *see also Arrieta v. Battaglia*, 461 F.3d 861, 867 (7th Cir. 2006) ("[P]ermitting equitable tolling of a statute of limitation for every procedural or strategic mistake by a litigant (or his attorney) would render such statutes of no value at all to persons or institutions sued by people who don't have good, or

perhaps any, lawyers."); *South v. Saab Cars USA, Inc.*, 28 F.3d 9, 12 (2d Cir. 1994) (holding that the lawyer's strategic choice did not justify equitable tolling).

Mr. Salloum cannot employ equitable tolling to revive his time-barred claims. Under counsel's guidance, he made a strategic decision to pursue his claims in state court, rather than federal court, before fully comprehending the amendment on which he relied. Any argument to the contrary is disingenuous. Consequently, this Court should affirm the district court's decision to grant the Company's motion to dismiss.

Conclusion

Primarily because Mr. Salloum's claims are time-barred, but also for the other foregoing reasons, this Court should affirm.

DATED: February 18, 2021

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove
Paul Swenson Prior (NV Bar No. 9324)
Kelly H. Dove (NV Bar No. 10569)
Hayley J. Cummings (NV Bar No. 14858)
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169

Attorneys for Respondent Boyd Gaming Corporation

CERTIFICATE OF COMPLIANCE

I hereby certify that the **ANSWERING BRIEF** complies with the typeface and type style requirements of NRAP 32(a)(4)-(6), because this brief has been prepared in a proportionally spaced typeface using a Microsoft Word 2010 processing program in 14-point Century Schoolbook type style. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because it contains approximately 7,701 words.

Finally, I hereby certify that I have read the **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)(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: February 18, 2021

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove
PAUL SWENSON PRIOR
Nevada Bar No. 9324
KELLY H. DOVE
Nevada Bar No. 10569
HAYLEY J. CUMMINGS
Nevada Bar No. 14858
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Attorneys for Respondent Boyd Gaming Corporation

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On February 18, 2021, I caused to be served a true and correct copy of the foregoing **ANSWERING BRIEF** upon the following by the method indicated:

☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ Maricris Williams
An Employee of SNELL & WILMER L.L.P.

4850-1366-3197