IN THE SUPREME COURT OF THE STATE OF NEVADA

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AARON ROMANO, Appellant, vs. TRACY ROMANO, Respondent.	)	Docket No: 81259

AARON ROMANO, Appellant, vs. TRACY ROMANO, Respondent.	)	Docket No: 81439

APPELLANT'S SUPPLEMENTAL OPENING BRIEF

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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 in order that the judges of this court may evaluate possible disqualification or recusal.

Statement identifying all parent corporations and any publicly-held company that owns 10% or more of the party's stock.

None.

The names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or an administrative agency) or are expected to appear in this court:

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ROUTING STATEMENT

This matter has already been retained by the Supreme Court pursuant to NRAP 17(a)(11-12) because it raises as a principle issue a question of first impression and of statewide public importance. Appellant does not contest the decision for the Supreme Court to retain this matter.

SUPPLEMENTAL QUESTIONS PRESENTED

1. Whether the test to modify joint physical custody should require a party to show that a change in circumstances occurred since the entry of the previous custody order as well as that modification is in the best interest of the child, consistent with the test to modify primary physical custody announced in *Ellis v. Carucci,* 123 Nev. 145, 150, 161 P.3d 239, 242 (2007); and, if so,
2. Whether this court should revisit its holding in *Rivero v. Rivero,* 125 Nev. 410, 429, 216 P.3d 213, 226 (2009), requiring a court to determine the actual custody status of the children under Nevada law on the filing of a motion to modify custody and instead direct courts to do so as part of the best interest analysis only after finding a change in circumstances.

ANSWERS

1. Yes.
2. Yes, in part. The district court should first make a finding of a change in circumstances if the parents have been exercising a custodial arrangement that

differs from the last custodial order. A *de facto* change in the custodial arrangement is a change in circumstances. If the parents have modified their custodial arrangement **upon mutual agreement**, the district court should affirm the agreed modified arrangement and apply Nevada law to correctly identify the custodial label. If the modified custodial arrangement was **not upon mutual agreement**, the district court should apply the best interest factors to determine whether a change in the custodial label is warranted.

STATEMENT OF THE CASE

This is an appeal by AARON ROMANO from the *Order from Hearing on April 21, 2020*, entered May 17, 2020, and *Order Awarding Attorney's Fees and Costs*, entered on June 19, 2020, Hon. Rebecca Burton, Eighth Judicial District Court Judge, Department C, presiding.

Relevant to this appeal, the district court denied Aaron's motion for a determination that the parties had split *de facto* primary physical custody of their seven minor children. Without holding an evidentiary hearing, the district court found that there had been no change in circumstances from the last court order warranting a modification in custody—even though the parties had followed an entirely different parenting time schedule over the year prior to Aaron filing his motion. Following the denial of Aaron's motion, the district court also awarded Tracy her attorney's fees and costs.

SUPPLEMENTAL STATEMENT OF FACTS[1]

On March 8, 2019, the district court entered the parties' *Stipulated Order Resolving Parent/Child Issues*. JA 16-42. This stipulated order resolved all issues relating to the custody, control, and care of the parties' seven minor children,[2] and provided for the following joint physical custody timeshare to be accomplished in phases:

- **Julian, then age 17**, was permitted teenage discretion allowing him to spend the majority of his time with Aaron, and only five hours each day on Tuesdays and Thursdays with Tracy.
- **Mirabella, then age 13**, was also permitted limited teenage discretion (though specifically "not to the same level as Julian") with her spending the majority of her time with Aaron. She was to also spend every Monday through Thursday after school with Tracy until 4:30 p.m. Aaron was also responsible for picking Mirabella up from Tracy's house and taking her to school each morning. Tracy was responsible for picking up Mirabella from school. Mirabella would automatically receive full teenage discretion upon reaching age 15.

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[1] Aaron has already provided this Court with a statement of facts relevant to this appeal in his fast-track statement. The supplemental statement of facts herein is intended provide a clarified statement limited to the issues presented by this Court.

[2] The parties also had three adult children not subject to the proceedings below.

- Regarding the two eldest children, Tracy was supposed to make efforts to improve her relationship with them so she would be in position to share more parenting time, but the children always had teenage discretion and it was never agreed they would spend overnights with Tracy.
- **Etienne, then age 9**, shared Mirabella's schedule (except he had no teenage discretion) spending the majority of his time with Aaron. He was to also spend every Monday through Thursday after school with Tracy until 4:30 p.m. Aaron was similarly responsible for picking Etienne up from Tracy's house and taking him to school each morning. Tracy was responsible for picking Etienne up from school. Etienne would automatically receive full teenage discretion upon reaching age 15.
- **Celeste, then age 7**, had the most complex schedule. During the school week, she was to spend every day after school with Tracy until 4:30 p.m., then she would spend time with Aaron until 8:00 p.m., when she would be returned to Tracy for overnight parenting time. On weekends Aaron would have Celeste from Friday after school until Sunday evening. Aaron was similarly responsible for picking Celeste up from Tracy's house and taking her to school each morning. Tracy was

responsible for picking Celeste up from school. Celeste would automatically receive full teenage discretion upon reaching age 15.

- **Twins Estelle and Lisette, then age 4, and baby Emmeline, then age 19 months**, were to spend all overnights with Tracy and up to five hours each day with Aaron until they turned the age 5. After their 5th birthday, they would follow the same schedule as Celeste, spending all weekends with Aaron and split time back-and-forth between each parent's house each day during the school week. Each of these children would automatically receive full teenage discretion upon reaching age 15, respectively.

JA 22-27.

The parties adopted this complex schedule based on the uniqueness of their family, the extensive range of ages of their children and their varying needs. Aaron actually had primary physical of three children; the parties had joint physical custody of one child; and Tracy initially had primary physical custody of three children, to be phased into a joint physical custody timeshare. JA 22-23. This stipulated arrangement was called joint physical custody on paper, despite neither parent having at least 40% parenting time with all seven children at that time.

Though the intent of this stipulated order was to work towards a true joint physical custody arrangement of the four youngest children at least, this never occurred.

Following the entry of the stipulated order (March 2019) to the time Aaron filed his motion (February 2020), the parties followed a parenting time arrangement which differed from the ordered schedule. JA 145. Aaron still had primary physical custody of three eldest children (Julian, now age 19[3]; Mirabella, now age 16; and Etienne, now age 12) but Tracy did not exercise any of her timeshare with these children. Tracy had primary physical custody timeshare of the four youngest minor children (Celeste, now age 9; twins Estelle and Lisette, now age 6; and Emmeline, now age 3).

- **Julian and Mirabella** spent no time in Tracy's care. Tracy made zero efforts to contact Mirabella, and while Tracy had limited contact with Julian, he never spent any time "in her care."
- **Etienne** spent a couple hours at Tracy's home on Mondays through Thursdays each week during the school year, but never an overnight. Tracy eventually did not exercise *any* parenting time with Etienne beginning the Summer of 2019.
- Tracy also never exercised any of her holiday time with Julian, Mirabella, or Etienne, ever—including Christmas, Thanksgiving, their birthdays, or even Mother's Day.

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[3] Julian was a minor at the time this private arrangement was reached.

- Regarding **Celeste, Estelle, Lisette, and Emmeline**, Aaron had parenting time with them for a couple hours one to two days each week and an occasional overnight (except for Emmeline), certainly not every weekend, as stated in the stipulated order).

JA 146-148.

On February 28, 2020, Aaron filed a *Motion to Confirm De Facto Physical Custody Arrangement of Children*. JA 142-156. Specifically, Aaron asked the district court to recognize the agreed upon change in the parties' parenting time schedule from the March 2019 stipulated parenting schedule and affirm the custodial arrangement the parties had been practicing for the last year as an order of the court. JA 153. Tracy opposed Aaron's motion and filed a countermotion for financial relief unrelated to the custody issue. JA 187-211. It is notable that Tracy did not dispute that the parties modified the timeshare upon mutual agreement and confirmed that the parties' *actual* parenting time arrangement was working for the children. Tracy nonetheless opposed the court changing the custodial designations as to the older children. JA 191-197.

At the hearing on Aaron's motion, the district court allowed the parties approximately fifteen minutes of oral argument, and without taking any evidence, summarily denied Aaron's motion. JA 323-327. The district court determined that, based on the "pretty extensive parenting agreement" and "extremely unusual case," the parties had agreed that their "unique arrangement was in the best interests of the

children." JA 284. Yet, the parenting agreement to which the district court was referring was the parties' stipulated order—which they never followed and subsequently abandoned in favor of the actual time share they had followed for now over a year. Despite neither party contesting the fact that they had been exercising a modified schedule, the district court specifically found that there was no change in circumstances from the March 2019 stipulated order. JA 326.

This appeal followed. JA 328-329.

STANDARD OF REVIEW

The proper standard of review child custody determinations, including decisions as to parenting time, is "abuse of discretion." Most decisions of family law issues are reviewed for an abuse of discretion.[4] Generally, a court abuses its discretion when it makes a factual finding which is not supported by substantial evidence and is "clearly erroneous."[5] Abuse of discretion also occurs when the decision is "arbitrary or capricious or if it exceeds the bounds of law or reason."[6] An open and obvious error of law can also be an abuse of discretion,[7] as can a court's

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[4] *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009); *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996)

[5] *Real Estate Division v. Jones*, 98 Nev. 260, 645 P.2d 1371 (1982)

[6] *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001)

[7] *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 598 P.2d 1147 (1979)

failure to exercise discretion when required to do so.[8] Finally, a court can err in the exercise of personal judgment and does so to a level meriting appellate intervention when no reasonable judge could reach the conclusion reached under the particular circumstances.[9] A court does not abuse its discretion, however, when it reaches a result which could be found by a reasonable judge.[10]

The district court's conclusions of law are reviewed de novo.[11]

SUMMARY OF THE ARGUMENT

As this Court already noted, there are inconsistencies with this Court's prior holdings as to how the district court should conduct its analysis under primary and joint physical custody modification requests. This Court should adopt a uniform test for modifications of child custody, regardless of existing physical custody designation. Consistent with this Court's holding in *Ellis v. Carucci*,[12] modification of any physical custody arrangement should only be appropriate when (1) there is a substantial change in circumstances affecting the child following the last custody order; and (2) the modification serves the child's best interests. Further, consistent

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[8] *Massey v. Sunrise Hospital*, 102 Nev. 367, 724 P.2d 208 (1986)

[9] Franklin v. Bartsas Realty, Inc., supra; *Delno v. Market Street Railway*, 124 F.2d 965, 967 (9th Cir. 1942)

[10] *Goodman v. Goodman*, 68 Nev. 484, 236 P.2d 305 (1951)

[11] *Kilgore v. Kilgore*, 135 Nev. 357, 359-60, 449 P.3d 843, 846 (2019)

[12] 123 Nev. 145, 150, 161 P.3d 239, 242 (2007)

with the holding in *Rivero*, a *de facto* deviation from the last custody order is a sufficient showing of changed circumstances to move to the best interest analysis and the district court in this matter should have found that a change of circumstance occurred based on the parties' private agreement following the stipulated order.

Once the district court found that there was a change in circumstances, the district court should have considered the actual parenting time arrangement between the parties to be in the best interest of the children, giving deference to the parents' stipulation that the new schedule was in the children's best interest, there being no dispute between the parties as to the underlying changed parenting time arrangement. The district court should have granted Aaron's motion and held that he had primary physical custody of the three oldest minor children and that Tracy had primary physical custody of the four youngest minor children.

ARGUMENT

I. The test for modifying custody should remain consistent regardless of the parenting time arrangement. Aaron demonstrated that there was a change in circumstances from the last custody order—a *de facto* change of physical custody from the last custody order is a change of circumstances.

Currently under the controlling authorities of this Court, when considering whether to modify a timeshare arrangement, the district court employs a two-step process. Under *Rivero*, once a motion to modify is brought, the district court must first determine the type of physical custody arrangement the parties exercise in

practice.[13] The district court must evaluate the actual timeshare the parties exercise, not the timeshare set forth in the underlying order.[14] To determine whether the parties' timeshare constitutes joint or primary physical custody, the district court must calculate the time that each party has physical custody of the children over one calendar year.[15] In doing so, the district court should count the number of days each party has custody of the child.

Second, the district court must apply the applicable test to determine whether modification is appropriate. Through the evolution of case law, Nevada has developed one standard by which a district court evaluates a modification of joint physical custody and one standard by which a district court determines modification of primary physical custody. Under current case precedent, modification of a primary physical custody arrangement is appropriate when there is a substantial change in circumstances affecting the child and the modification serves the child's best interest.[16] The modification of a joint custody arrangement requires an analysis of the best interest of the child only.

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[13] *Rivero*, 125 Nev. at 430, 216 P.3d at 227

[14] *Id*.; *see also Bluestein v. Bluestein*, 131 Nev. 106, 109-10, 345 P.3d 1044, 1047 (2015)

[15] *Rivero*, 125 Nev. at 427, 216 P.3d at 225

[16] *Ellis v. Carucci,* 123 Nev. 145, 150, 161 P.3d 239, 242 (2007)

As noted in this Court's *Order Directing Full Briefing and Inviting Amicus Curiae Participation*, entered on May 10, 2021, there are inconsistencies with this Court's prior holdings as to how the district court should conduct its analysis under primary and joint physical custody modification requests. Over twenty years ago, the Court held in *Mosley v. Figliuzzi* , a party seeking to modify a joint physical custody order must show a change in circumstances:[17]

> We said in *Truax v. Truax*, 110 Nev. 437, 438, 874 P.2d 10, 11 (1994), that "*if it is shown that the best interest of the child requires the modification or termination*" of a joint custody, "any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion." This did not mean that we abandoned the doctrine of *res adjudicata* in child custody matters and that persons dissatisfied with custody decrees can file immediate, repetitive, serial motions until the right circumstances or the right judge allows them to achieve a different result, based on essentially the same facts. "'The moving party in a custody proceeding must show that circumstances . . . have substantially changed *since* the most recent custodial order. . . . Events that took place before the proceeding [are] inadmissible to establish a change of circumstances.'" *McMonigle v. McMonigle*, 110 Nev. 1407, 1408, 887 P.2d 742, 743 (1994) (quoting *Stevens v. Stevens*, 107 Ore. App. 137, 810 P.2d 1334, 1336 (Or. Ct. App. 1991)). It is rather obvious that when a judge makes a decision on child custody, such a decision should not be subject to modification if substantially the same set of circumstances that were present at the time the decision was made remains in effect. What we said in Truax was that the best interest of the child was paramount and that we would not allow reliance on a technical failure to allege a change of circumstances to interfere with this paramount consideration. We certainly did not say or intimate that litigants were to try the same issues over and over again, before different judges, based on the same predicate facts.

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[17] *Mosley v. Figliuzzi*, 113 Nev. 51, 58-59, 930 P.2d 1110, 1114-1115 (1997)

In 2009 through the *Rivero* decision, the Court held modification of joint physical custody is appropriate if the change is in the child's best interest.[18]

> When considering whether to modify a physical custody agreement, the district court must first determine what type of physical custody arrangement exists because different tests apply depending on the district court's determination. A modification to a joint physical custody arrangement is appropriate if it is in the child's best interest. NRS 125.510(2). In contrast, a modification to a primary physical custody arrangement is appropriate when there is a substantial change in the circumstances affecting the child and the modification serves the child's best interest. *Ellis*, 123 Nev. at 150, 161 P.3d at 242.
>
> Under the definition of joint physical custody discussed above, each parent must have physical custody of the child at least 40 percent of the time. This would be approximately three days each week. Therefore, the district court properly found that the 5/2 timeshare included in the parties' divorce decree does not constitute joint physical custody. The district court must then look at the actual physical custody timeshare that the parties were exercising to determine what custody arrangement is in effect.

A. Consistency is needed in custody modification determinations.

Under the existing precedent of this Court, parents who seek to gain primary physical custody of a child from joint physical custody are not held to the same standard as those moving to modify an existing primary physical custody arrangement.

From a public policy standpoint, inconsistency in the application of custody modification tests often results in overlitigation and confusion over which standards

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[18] *Rivero*, 125 Nev. at 430, 216 P.3d at 227; *see also* NRS 125C.0045(2)

apply. Since the holding in *Bluestein*, this Court has even relaxed the strict application of the 40% rule when determining what custody arrangements can be considered joint physical custody.[19] Unique custody arrangements—such as the arrangement in this matter—make the application of separate standards difficult to uniformly enforce in practice and create the strong possibility of error in application.

This Court should adopt a uniform test for modifications of child custody, regardless of the existing physical custody designation. Consistent with this Court's holding in *Ellis* (which would essentially be a merging of the requirements in *Mosely* and *Rivero* leading to the instant issue), modification of any physical custody arrangement should only be appropriate when (1) there is a substantial change in circumstances affecting the child following the last custody order; and (2) the modification serves the child's best interests. Consistent with the holding in *Rivero*, a *de facto* deviation from the last custody order is a sufficient showing of changed circumstances to move to the best interest analysis.

B. This Court should adopt a uniform test for modification of custody and find that Aaron met his burden of establishing a change in circumstances.

Here, Aaron moved the district court for an order establishing *de facto* primary physical custody which modified the parties' joint physical custody designation.

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[19] *Bluestein*, 131 Nev. At 113, 345 P.3d at 1049

Even though the district court was not required under *Rivero* alone to perform a "change in circumstances" test to Aaron's motion under this Court's existing authority, the error in this matter did not come from the consideration of this factor, but rather the district court's finding below that a change of circumstances did not occur.

When Aaron and Tracy signed their stipulated custody order and when the district court entered said order in March 2019, the parties' intent was to continue building their respective relationships with the children and work towards a true joint physical custody schedule of at least the four youngest children. Tracy was to engage in counseling with the oldest children and eventually take on a larger role in their lives, while they exercised their teenage discretion. Aaron would eventually receive at least 40% of the time with the younger children by way of phased-in weekend overnights and additional parenting time during the school week. Though the stipulated order clearly did not provide the parties with true joint physical custody of all the children from the onset, the ordered plan and intent of the parties was to eventually achieve an arrangement close to the joint physical custody designation.

What followed was a complete overhaul of the parenting time schedule in favor of an arrangement that both parents agreed worked better for the children. Tracy never worked toward having Julian, Mirabella, and Etienne spend more time with her (in fact, following the stipulated order, they spent *less* time with Tracy than previously agreed), and Tracy abandoned her plans to build a better relationship with

the older children. Aaron never received his two overnights per week with the younger children. Neither parent disputed these facts regarding the custodial schedule for the minor children for the year prior to Aaron filing his motion.

In other words, there was a change in these parties' circumstances that affected the children—leading to the substantially changed parenting time schedule and abandonment of plans to work towards a true joint physical custody schedule—from when the parents left the district court with a stipulated custody order in March 2019 to when the district court heard Aaron's motion for *de facto* primary physical custody in April 2020. The district court's finding that no change in circumstances had occurred ignores the parties' private agreement following the stipulated order, the changed intent of the parties, and the actual conduct of the parties. With no dispute as to the underlying changed parenting time arrangement, the district court should have granted Aaron's motion and held that he had primary physical custody of the three oldest minor children and Tracy had primary physical custody of the four youngest minor children. Accordingly, the resulting order for Aaron to pay Tracy's attorneys' fees should not have been entered.

II. This Court's holding in *Rivero* should not be revised, but rather expanded to include the determination of the actual custody status of the children as both an initial consideration and as part of the best interest analysis.

In deciding whether modification from joint physical custody is appropriate, the *Rivero* Court only required the district court to determine if the change is in the

child's best interest.[20] This Court now asks, if that test should be expanded to include a change in circumstances determination, and whether the holding in *Rivero* should be revisited to shift the consideration from the onset of the request to the best interest analysis *after* the district court determines that there has been a change in circumstances from the last order.

The actual custody arrangement between the parties is relevant both as to whether it constitutes a change in circumstances from the last custodial order and whether that custody arrangement is in the best interest of the child. These considerations are not mutually exclusive.

A change in circumstances should be the first prong of the analysis in considering modification of any custodial designation—joint or primary. If the expectations, intent, or the actual parenting timeshare of the parties changed significantly from the last custodial order—as it did in this matter with the parties substantially altering their parenting time schedule and abandoning their plans to work toward a timeshare that would give them at least 40% time with each child—that would be a change in circumstances and it would then be the onus of the district court to determine whether that change was mutual or unilaterally imposed on the other parent, and thus, in the best interest of the child.[21]

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[20] *Rivero*, 125 Nev. at 430, 216 P.3d at 227

[21] *Ellis*, 123 Nev. at 151, 161 P.3d at 243

Once the district court moves to the second prong of the analysis, the effect, if any, of how the change in parenting timeshare impacts the child is wholly relevant to the best interest determination of the district court. Custody labels mean one thing on paper and to the courts, but the day-to-day care of the child should always be at the forefront of the analysis—which parent makes the meals, drives to/from school, helps with homework, etc.

The actual timeshare that the parents practice provides the district court with the necessary information to consider whether the schedule works for the child. As parents, with the best interest of their child directing their decision-making, their choices should control, so long as they are in agreement. When the parents are not in agreement that the *de facto* custody arrangement is in the best interest of their child, the district court must then resolve the dispute and apply its analysis.

This approach differs somewhat with the Court's holding in *Bluestein* that when parties dispute the label of their custody agreement the district court must conduct a best interest analysis. Respectfully, if there is no dispute between the parents as to the custodial arrangement the district court should only correctly apply the label as determined under Nevada law, not entirely revisit the best interest analysis, so long as the parents agree to that schedule. While parents are free to come to an agreement regarding the care, custody, and control of their children, in application the label they give to that agreement effects determination of child support. Parents cannot be expected to have extensive legal knowledge of the effect

of such labels and should be free to contract as to a timeshare that works best for their child.

In this matter, once Aaron filed his motion for *de facto* primary physical custody, the district court should have first looked to the parties' actual custody arrangement to determine whether a change in circumstances had occurred since the March 2019 stipulated order. Once the district court inevitably found that the parties' expectations, intent, and actual parenting timeshare changed from the last point the issue of custody was before the court, the district court should have inquired whether the parties were in dispute as to the new timeshare. If so, the district could then move to the second prong and make a determination that the new custody arrangement was in the best interests of the children based upon the parties' agreement. This standard is both consistent with the requirement in *Rivero* for the district court to calculate the parties' actual parenting time from the onset, as well as ensures that the underlying agreement meets the best interest requirements. If there is no dispute as to the new timeshare then the Court should have applied Nevada law to the custodial arrangement and affirmed what they parents were doing. After all, the parents are the ultimate determiners of what is in their children's best interest.

CONCLUSION

Aaron and Tracy never had joint physical custody of their seven minor children according to Nevada law. Their actual arrangement was not even close to a parenting time schedule that could be considered joint physical custody of all seven children.

Despite the label and their best intentions regarding increasing their custodial time with their children, the district court should have found that that there was a change in circumstances from the March 2019 stipulated order, and should have confirmed that Aaron had primary physical custody of the three oldest minor children, while Tracy had primary physical custody of the four youngest minor children.

DATED Wednesday, June 23, 2021.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[x] It has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in font-size 14 of Times New Roman; or

[ ] It has been prepared in a monospaced typeface using Microsoft Word 2010 with 10 ½ characters per inch of Courier New.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains 14,000; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains 14,000 words or 1,300 lines of text; or

[x] Does not exceed 30 pages.

3. Further, I hereby certify that I have read this appellate brief, and to the best of my knowledge, 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 Wednesday, June 23, 2021.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Appellant's Supplemental Opening Brief* was filed electronically with the Nevada Supreme Court in the above-entitled matter on Wednesday, June 23, 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List, pursuant to NEFCR 9, as follows:

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