

Case No. \_\_\_\_\_

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*In the*  
**Supreme Court**  
*of the*  
**State of Nevada**

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Electronically Filed  
Jul 15 2020 10:58 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DEKKER/PERICH/SABATINI LTD.,  
NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN,  
MELROY ENGINEERING, INC. d/b/a MSA ENGINEERING CONSULTANTS,  
JW ZUNINO & ASSOCIATES, LLC, and  
NINYO & MOORE, GEOTECHNICAL CONSULTANTS,

*Petitioners,*

vs.

THE EIGHTH JUDICIAL DISTRICT COURT,  
STATE OF NEVADA,  
CLARK COUNTY, and  
THE HONORABLE TREVOR ATKIN,

*Respondents,*

CITY OF NORTH LAS VEGAS,

*Real Party in Interest.*

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FROM DECISIONS OF THE EIGHTH JUDICIAL DISTRICT COURT,  
CLARK COUNTY, NEVADA  
CASE NO. A-19-798346-C  
HONORABLE TREVOR ATKIN · DEPARTMENT 8 · PHONE: (702) 671-4338

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**PETITIONERS' APPENDIX TO**  
**PETITION FOR WRIT OF MANDAMUS OR,**  
**ALTERNATIVELY, PROHIBITION**

**VOLUME 15**

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## CHRONOLOGICAL INDEX - APPENDIX OF EXHIBITS

<b>Exhibit:</b>	<b>Volume:</b>	<b>Bates: PET.APP.</b>	<b>Date:</b>	<b>Description:</b>
<b>15</b>	<b>15</b>	<b>002272 – 002274</b>	<b>09/06/2019 12:14 PM</b>	<b>Ninyo &amp; Moore, Geotechnical Consultants’ Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, In the Alternative, Motion for Summary Judgment</b>
<b>16</b>	<b>15</b>	<b>002275 – 002281</b>	<b>09/13/2019 4:22 PM</b>	<b>Paffenbarger &amp; Walden, LLC and P &amp; W Bonds, LLC’s Limited Joinder in Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment</b>
<b>17</b>	<b>15</b>	<b>002282 – 002292</b>	<b>09/18/2019 3:07 PM</b>	<b>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time</b>
	15	002293 – 002294	08/06/2019	<u>Exhibit A</u> – Clerk of the Court’s Notice of Hearing
	15	002295 – 002296	09/06/2019	<u>Exhibit B</u> – Court’s Notice of Rescheduling Motions to Dismiss and Joinders
	15	002297 – 002202	09/09/2019	<u>Exhibit C</u> – Emails re Rescheduling of Hearing
	15	002203 – 002304	09/10/2019	<u>Exhibit D</u> – Emails re Rescheduling of Hearing
	15	002305 – 002306	N/A	<u>Exhibit E</u> – Las Vegas Law Offices of Snell & Wilmer
<b>18</b>	<b>15</b>	<b>002307 – 002312</b>	<b>09/26/2019</b>	<b>City of North Las Vegas’ Limited Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time</b>
	15	002313 – 002318	09/26/2019	<u>Exhibit 1</u> – Register of Actions Case A-19-798346-C

	15	002319 – 002320	09/20/2019	<u>Exhibit 2</u> – Weil & Drage, APC’s Letter to All Counsel re Hearing of Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on September 27, 2019
19	15	002321 – 002325	09/26/2019 5:16 PM	<b>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Reply to City of North Las Vegas’ Limited Opposition to Motion to Change Date of Hearing</b>
20	15	002326 – 002330	09/27/2019 4:18 PM	<b>City of North Las Vegas’ Surreply to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time</b>
21	15	002331 – 002335	09/30/2019 11:29 AM	<b>Richardson Construction, Inc. and The Guarantee Company of North America USA’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment</b>
22	15	002336 – 002338	09/30/2019 4:35 PM	<b>JW Zunino &amp; Associates LLC’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment</b>
23	15	002339 – 002398	10/10/2019 1:20 PM	<b>Recorder’s Transcript of Hearing Re: All Pending Motions, September 30, 2019</b>
24	15	002399 – 002406	10/17/2019 10:08 AM	<b>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Notice of Entry of Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and All Joinders to Same</b>



25	15	002407 – 002421	11/13/2019 11:58 AM	City of North Las Vegas’ Motion to Alter Judgment
	15	002422 – 002430	10/17/2019	<u>Exhibit 1</u> - Notice of Entry of Order Granting Nevada by Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment and All Joinders to the Same
	15	002431 – 002448	07/11/2019	<u>Exhibit 2</u> – City of North Las Vegas’ Complaint
	15	002449 – 002455	09/30/2019	<u>Exhibit 3</u> - Order Granting Nevada by Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Change Date
	15	002456 – 002471	2019	<u>Exhibit 4</u> - Assembly Bill 421 – 80 <sup>th</sup> Session 2019

## ALPHABETICAL INDEX - APPENDIX OF EXHIBITS

<b>Exhibit:</b>	<b>Vol.:</b>	<b>Bates: PET.APP.</b>	<b>Date:</b>	<b>Description:</b>
<b>10</b>	<b>11</b>	<b>001560 – 001562</b>	<b>08/20/2019 1:34 PM</b>	<b>City of North Las Vegas’ Appendix of Exhibits to Opposition to Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss</b>
	11	001563 – 001580	07/11/2019	<u>Exhibit 1</u> – City of North Las Vegas’ Complaint
	11	001581 – 001614	02/07/2007	<u>Exhibit 1</u> – Professional Architectural Services Agreement
	11	001615 – 001680	08/29/2007	<u>Exhibit 2</u> – Ninyo & Moore’s Geotechnical Evaluation
	11	001681 – 001694	01/30/2008	<u>Exhibit 3</u> – City of North Las Vegas’ Letter to Richardson Construction Inc re Construction Contract
	11	001695 – 001696	07/13/2009	<u>Exhibit 4</u> – Notice of Completion
	12	001697 – 001832	12/11/2017	<u>Exhibit 5</u> – American Geotechnical Inc’s Geotechnical Investigation
	12	001833 – 001836	1988 - Present	<u>Exhibit 6</u> – American Geotechnical Inc. Resume of Edred T. Marsh, Principal Geotechnical Engineer
	12	001837 – 001838	07/03/2019	<u>Exhibit 7</u> – Declaration of Edred T. Marsh, P.E.
	12	001839 – 001840	10/17/2007	<u>Exhibit 8</u> – Ninyo & Moore Letter to Dekker/Perich/Sabatini re Review of 95 Percent Bid Set Construction Documents
	13	001841 – 002053	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	14	002054 – 002131	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	14	002132 – 002210	11/10/2007	<u>Exhibit 10</u> - Plans / Record Drawings
<b>8</b>	<b>7</b>	<b>000847 – 000849</b>	<b>08/20/2019 1:24 PM</b>	<b>City of North Las Vegas’ Appendix of Exhibits to Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultant's Motion to Dismiss or in the Alternative, Motion for Summary Judgment</b>
	7	000850 – 000867	07/11/2019	<u>Exhibit 1</u> – City of North Las Vegas’ Complaint

	7	000868 – 000901	02/07/2007	<u>Exhibit 1</u> – Professional Architectural Services Agreement
	7	000902 – 000967	08/29/2007	<u>Exhibit 2</u> – Ninyo & Moore’s Geotechnical Evaluation
	7	000968 – 000981	01/30/2008	<u>Exhibit 3</u> – City of North Las Vegas’ Letter to Richardson Construction Inc re Construction Contract
	7	000982 – 000983	07/13/2009	<u>Exhibit 4</u> – Notice of Completion
	8	000984 – 001119	12/11/2017	<u>Exhibit 5</u> – American Geotechnical Inc’s Geotechnical Investigation
	8	001120 – 001123	1988 - Present	<u>Exhibit 6</u> – American Geotechnical Inc’s Resume of Edred T. Marsh, Principal Geotechnical Engineer
	8	001124 – 001125	07/03/2019	<u>Exhibit 7</u> – Declaration of Edred T. Marsh, P.E.
	8	001126 – 001127	10/17/2007	<u>Exhibit 8</u> – Ninyo & Moore Letter to Dekker/Perich/Sabatini re Review of 95 Percent Bid Set Construction Documents
	9	001128 – 001340	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	10	001341 – 001418	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	10	001419 – 001497	11/10/2007	<u>Exhibit 10</u> - Plans / Record Drawings
	10	001498 – 001513	2019	<u>Exhibit 2</u> – Assembly Bill 421 – 80 <sup>th</sup> Session 2019
	10	001514 – 001546	05/15/2019	<u>Exhibit 3</u> - Minutes of the Senate Committee on Judiciary, 80th Legislature
<b>1</b>	<b>1</b>	<b>000001 – 000017</b>	<b>07/11/2019 4:35 PM</b>	<b>City of North Las Vegas’ Complaint Against Defendants – Exempt from Arbitration Under N.A.R. 3(A): Seeks Damages in Excess of \$50,000</b>
	1	000018 – 000051	02/07/2007	<u>Exhibit 1</u> – Professional Architectural Services Agreement
	1	000052 – 000117	08/29/2007	<u>Exhibit 2</u> – Ninyo & Moore’s Geotechnical Evaluation
	1	000118 – 000131	01/30/2008	<u>Exhibit 3</u> – City of North Las Vegas’ Letter to Richardson Construction Inc re Construction Contract
	1	000132 – 000133	07/13/2009	<u>Exhibit 4</u> – Notice of Completion

	2	000134 – 000269	12/11/2017	<u>Exhibit 5</u> – American Geotechnical Inc’s Geotechnical Investigation
	2	000270 – 000273	1988 - Present	<u>Exhibit 6</u> – American Geotechnical Inc. Resume of Edred T. Marsh, Principal Geotechnical Engineer
	2	000274 – 000275	07/03/2019	<u>Exhibit 7</u> – Declaration of Edred T. Marsh, P.E.
	2	000276 – 000277	10/17/2007	<u>Exhibit 8</u> – Ninyo & Moore Letter to Dekker/Perich/Sabatini re Review of 95 Percent Bid Set Construction Documents
	3	000278 – 000491	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	4	000492 – 000568	11/02/2007	<u>Exhibit 9</u> - Dekker/Perich/Sabatini’s Structural Calculations
	4	000569 – 000647	11/10/2007	<u>Exhibit 10</u> - Plans / Record Drawings
<b>18</b>	<b>15</b>	<b>002307 – 002312</b>	<b>09/26/2019</b>	<b>City of North Las Vegas’ Limited Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time</b>
	15	002313 – 002318	09/26/2019	<u>Exhibit 1</u> – Register of Actions Case A-19-798346-C
	15	002319 – 002320	09/20/2019	<u>Exhibit 2</u> – Weil & Drage, APC’s Letter to All Counsel re Hearing of Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on September 27, 2019
<b>25</b>	<b>15</b>	<b>002407 – 002421</b>	<b>11/13/2019 11:58 AM</b>	<b>City of North Las Vegas’ Motion to Alter Judgment</b>
	15	002422 – 002430	10/17/2019	<u>Exhibit 1</u> - Notice of Entry of Order Granting Nevada by Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment and All Joinders to the Same
	15	002431 – 002448	07/11/2019	<u>Exhibit 2</u> – City of North Las Vegas’ Complaint

	15	002449 – 002455	09/30/2019	<u>Exhibit 3</u> - Order Granting Nevada by Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Change Date
	15	002456 – 002471	2019	<u>Exhibit 4</u> - Assembly Bill 421 – 80 <sup>th</sup> Session 2019
	16	002472 – 002504	05/15/2019	<u>Exhibit 5</u> - Minutes of the Senate Committee on Judiciary – Eightieth Session
	16	002505 – 002510	09/30/2019	<u>Exhibit 6</u> - Richardson Construction, Inc. and The Guarantee Company of North America USA's Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	16	002511 – 002514	09/30/2019	<u>Exhibit 7</u> - JW Zunino & Associates LLC's Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
<b>6</b>	<b>6</b>	<b>000821 – 000826</b>	<b>08/15/2019 5:02 PM</b>	<b>City of North Las Vegas' Motion to Strike and Opposition to Jackson Family Partnership LLC d/b/a Stargate Plumbing's Motion to Dismiss</b>
	6	000827 – 000828	08/06/2019	<u>Exhibit 1</u> – Affidavit/Declaration of Service to Jackson Family Partnership LLC d/b/a Stargate Plumbing
<b>62</b>	<b>20</b>	<b>003467 – 003470</b>	<b>04/02/2020 4:21 PM</b>	<b>City of North Las Vegas' Notice of Entry of Decision and Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss</b>
	20	003471 – 003480	04/02/2020	<u>Exhibit 1</u> - Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss
<b>66</b>	<b>21</b>	<b>003589 – 003592</b>	<b>05/05/2020 3:48 PM</b>	<b>City of North Las Vegas' Notice of Entry of Decision and Order Denying Richardson Construction, Inc. and The Guarantee Company of North America USA's Motion to Dismiss / Motion for Summary Judgment Based on Laches and All Joinders</b>
	21	003593 – 003597	05/05/2020	<u>Exhibit 1</u> – Court's Decision and Order Denying Richardson Construction, Inc. and The Guarantee Company of North America USA's Motion to Dismiss / Motion for Summary Judgment Based on Laches and All Joinders

46	18	003064 – 003067	01/24/2020 3:55 PM	City of North Las Vegas’ Notice of Entry of Decision and Order Granting Its Motion to Alter Judgment
	18	003068 – 003073	01/23/2020	<u>Exhibit 1</u> – Court’s Decision and Order
9	11	001547 – 001559	08/20/2019 1:34 PM	City of North Las Vegas’ Opposition to Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss
52	19	003255 – 003274	02/17/2020 4:39 PM	City of North Las Vegas’ Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ and Joinders Motion to Dismiss on Order Shortening Time
60	20	003409 – 003413	03/16/2020 4:57 PM	City of North Las Vegas’ Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion for Clarification Regarding Court’s Minute Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss Brought Pursuant to NRS 11.258, on Order Shortening Time
	20	003414 – 003415	03/13/2020	<u>Exhibit 1</u> – Email re Proposed Order Denying MSA’s Motion to Dismiss on NRS 11.258
	20	003416 – 003425	Undated	<u>Exhibit 2</u> – Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss
	20	003426 – 003428	03/16/2020	<u>Exhibit 3</u> – Email re Request to Withdraw Motion for Clarification on Order Shortening Time Without Prejudice
7	6	000829 – 000846	08/20/2019 1:24 PM	City of North Las Vegas’ Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultant’s Motion to Dismiss or, in the Alternative, Motion for Summary Judgement
45	18	003047 – 003063	12/19/2019 4:59 PM	City of North Las Vegas’ Reply in Support of Its Motion to Alter Judgment

<b>20</b>	<b>15</b>	<b>002326 – 002330</b>	<b>09/27/2019 4:18 PM</b>	<b>City of North Las Vegas’ Surreply to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time</b>
<b>61</b>	<b>20</b>	<b>003429 – 003466</b>	<b>03/30/2020 3:09 PM</b>	<b>Court Recorder’s Transcript of Hearing re All Pending Motions, March 10, 2020</b>
<b>63</b>	<b>20</b>	<b>003481 – 003491</b>	<b>04/10/2020 3:04 PM</b>	<b>Court Recorder’s Transcript of Hearing re All Pending Motions, March 17, 2020</b>
<b>23</b>	<b>15</b>	<b>002339 – 002398</b>	<b>10/10/2019 1:20 PM</b>	<b>Recorder’s Transcript of Hearing Re: All Pending Motions, September 30, 2019</b>
<b>65</b>	<b>21</b>	<b>003541 – 003588</b>	<b>04/21/2020 8:19 AM</b>	<b>Court Recorder’s Transcript of Proceedings re All Pending Motions, February 20, 2020</b>
<b>64</b>	<b>21</b>	<b>003492 – 003540</b>	<b>04/21/2020 8:19 AM</b>	<b>Court Recorder’s Transcript of Proceedings re City of North Las Vegas’ Motion to Alter Judgment, January 21, 2020</b>
<b>29</b>	<b>16</b>	<b>002678 – 002681</b>	<b>11/26/2019 12:35 PM</b>	<b>Dekker/Perich/Sabatini, Ltd.’s Joinder to JW Zunino &amp; Associates LLC’s Opposition to City of North Las Vegas’ Motion to Alter</b>
<b>49</b>	<b>19</b>	<b>003147 – 003154</b>	<b>02/04/2020 3:11 PM</b>	<b>Dekker/Perich/Sabatini, Ltd.’s Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss on Order Shortening Time</b>
<b>3</b>	<b>5</b>	<b>000718 – 000720</b>	<b>08/06/2019 2:44 PM</b>	<b>Dekker/Perich/Sabatini, Ltd.’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, In the Alternative, Motion for Summary Judgment</b>

28	16	002651 – 002660	11/26/2019 12:28 PM	<b>Dekker/Perich/Sabatini, Ltd.’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to Motion to Alter Judgment; Opposition by Incorporation and Request to Reset Prior Motion to Dismiss</b>
	16	002659 – 002664	10/15/2019	<u>Exhibit 1</u> – Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and all Joinders to Same
	16	002665 – 002677	08/06/2019	<u>Exhibit 2</u> – Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss
4	6	000721 – 000735	08/06/2019 2:44 PM	<b>Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss</b>
	6	000734 – 000751	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas’ Complaint
	6	000752 – 000786	02/07/2007	<u>Exhibit B</u> – City of North Las Vegas’ Complaint <u>Exhibit 1</u> – Professional Architectural Services Agreement
	6	000787 – 000789	07/11/2019	<u>Exhibit C</u> – Affidavit of Aleema A. Dhalla, Esq.
	6	000790 – 000793	1988 – Present	<u>Exhibit D</u> – American Geotechnical, Inc.’s Resume of Edred T. Marsh, Principal Geotechnical Engineer
	6	000794 – 000801	03/23/2007	<u>Exhibit E</u> - Excerpts from Legislative History of N.R.S. 11.258
	6	000802 – 000803	07/03/2019	<u>Exhibit F</u> – Declaration of Edred T. Marsh, P.E.
	6	000804 – 000817	12/11/2017	<u>Exhibit G</u> - American Geotechnical, Inc.’s Geotechnical Investigation
13	14	002219 – 002232	08/28/2019 8:48 AM	<b>Dekker/Perich/Sabatini, Ltd.’s Reply to City of North Las Vegas’ Opposition to Its Motion to Dismiss</b>
53	19	003275 – 003285	02/18/2020 3:00 PM	<b>Dekker/Perich/Sabatini, Ltd.’s Reply to City of North Las Vegas’ Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ and Joinders to Motion to Dismiss on Order Shortening Time</b>
	19	003286 – 003287	07/03/2019	<u>Exhibit A</u> – Declaration of Edred T. Marsh, P.E.



	19	003288 – 003294	07/11/2019	<u>Exhibit B</u> – City of North Las Vegas’ Complaint
12	14	002214 – 002218	08/26/2019 4:15 PM	<b>Jackson Family Partnership LLC d/b/a Stargate Plumbing’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, In the Alternative, Motion for Summary Judgment</b>
36	18	002894 – 002900	12/02/2019 2:22 PM	<b>Jackson Family Partnership LLC d/b/a Stargate Plumbing’s Joinder to JW Zunino &amp; Associates LLC’s Opposition to Motion to Alter Judgment with Supplemental Points and Authorities</b>
7	18	002901 – 002907	12/02/2019 2:22 PM	<b>Jackson Family Partnership LLC d/b/a Stargate Plumbing’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to City of North Las Vegas’ Motion to Alter Judgment with Supplemental Points and Authorities</b>
2	18	003037 – 003039	12/03/2019 10:01 AM	<b>JW Zunino &amp; Associates LLC’s Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Opposition to Motion to Alter Judgment</b>
50	19	003155 – 003166	02/07/2020 3:04 PM	<b>JW Zunino &amp; Associates LLC’s Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss on Order Shortening Time</b>
22	15	002336 – 002338	09/30/2019 4:35 PM	<b>JW Zunino &amp; Associates LLC’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment</b>
31	17	002686 – 002688	11/27/2019 10:43 AM	<b>JW Zunino &amp; Associates LLC’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to Motion to Alter Judgment</b>
38	18	002908 – 002910	12/02/2019 2:34 PM	<b>JW Zunino &amp; Associates LLC’s Joinder to Richardson Construction, Inc. and The Guarantee Company of North America USA’s Opposition to Motion to Alter Judgment</b>

26	16	002515 – 002527	11/25/2019 5:02 PM	<b>JW Zunino &amp; Associates LLC's Opposition to City of North Las Vegas' Motion to Alter Judgment</b>
	16	002528 – 002530	10/09/2019	<u>Exhibit A</u> – Affidavit of Rita Tuttle
57	20	003385 – 003391	02/19/2020 11:29 AM	<b>JW Zunino &amp; Associates LLC's Reply to City of North Las Vegas' Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Time</b>
5	6	000818 – 000820	08/08/2019 1:32 PM	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment</b>
40	18	003029 – 003032	12/02/2019 3:19 PM	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Joinder to JW Zunino &amp; Associates, LLC's Opposition to City of North Las Vegas' Motion to Alter Judgment</b>
41	18	003033 – 003036	12/02/2019 3:19 PM	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Opposition to City of North Las Vegas' Motion to Alter Judgment</b>
39	18	002911 – 002936	12/02/2019 3:19 PM	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Opposition to Motion to Alter Judgment</b>
	18	002937 – 002941	10/15/2019	<u>Exhibit 1</u> – Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and all Joinders to Same
	18	002942 – 002960	08/20/2019	<u>Exhibit 2</u> – City of North Las Vegas' Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	18	002961 – 003021	10/10/2019	<u>Exhibit 3</u> – Court Recorder's Transcript of Hearing: All Pending Motions

	18	003022 – 003024	10/15/2019	<u>Exhibit 4</u> – Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Change Date of Haring on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
	18	003025 – 003028	08/05/2019	<u>Exhibit 5</u> – Cover Sheet Filings of: Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment; Dekker/Perich/Sabatini, Ltd.'s Motion to Dismiss; and Melroy Engineering, Inc. d/b/a MSA Engineering Consultants Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
7	18	<b>003074 – 003090</b>	<b>02/04/2020 12:14 PM</b>	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants'</b> <b>Motion to Dismiss on Order Shortening Time</b>
	19	003091 – 003108	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas' Complaint
	19	003110 – 003111	07/11/019	<u>Exhibit B</u> – Affidavit of Aleema A. Dhalla, Esq.
	19	003112 – 003115	1988 - Present	<u>Exhibit C</u> – American Geotechnical Inc's Resume of Edred T. Marsh, Principal Geotechnical Engineer
	19	003116 – 003123	03/23/2007	<u>Exhibit D</u> – Legislative History of 11.258 Senate Bill 243
	19	003124 – 003137	12/11/2017	<u>Exhibit E</u> – American Geotechnical Inc's Geotechnical Investigation
	19	003138 – 003139	07/03/2019	<u>Exhibit F</u> – Declaration of Edred T. Marsh, P.E.
59	20	<b>003399 – 003408</b>	<b>03/16/2020 8:58 AM</b>	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants'</b> <b>Motion for Clarification Regarding Court's Minute Order Denying Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss Brought Pursuant to NRS 11.258, on Order Shortening Time</b>

55	20	003308 – 003318	02/18/2020 5:02 PM	<b>Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Reply to City of North Las Vegas’ Opposition to Its Motion to Dismiss</b>
	20	003319 – 003325	02/12/2020	<u>Exhibit 1</u> – Notice of Entry of Order Granting Kittrell Garlock and Associates, Architects, AIA, Ltd.’s Motion to Dismiss; Kittrell Garlock and Associates, Architects, AIA, Ltd.’s Motion to Dismiss City of North Las Vegas’ Complaint
	20	003326 – 003340	11/22/2019	Kittrell Garlock and Associates, Architects, AIA, Ltd.’s Motion to Dismiss City of Las Vegas’ Complaint
	20	003341 - 003347	11/06/2019	<u>Exhibit A</u> – City of North Las Vegas’ Complaint
	20	003348 – 003353	N/A	<u>Exhibit B</u> – Michael Panish Expert Witness & Consultants Construction Systems Curriculum Vitae
	20	003354 – 003361	03/23/2007	<u>Exhibit C</u> - Legislative History of 11.258 Senate Bill 243
	20	003362 – 003366	12/09/2019	A-19-804979-C Kelli Nash’ Opposition to Defendant’s Motion to Dismiss its Complaint
	20	003367 – 003373	12/26/2019	A-19-804979 Kittrell Garlock and Associates, Architects, AIA, Ltd.’s Reply to Kelly Nash’s Opposition to its Motion to Dismiss Kelly Nash’s Complaint
	20	003374 – 003378	10/15/2019	<u>Exhibit 1</u> – Stipulation and Order to Dismiss Kittrell Garlock and Associates, AIA, Ltd.
30	16	002682 – 002685	11/26/2019 12:43 PM	<b>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Joinder to JW Zunino &amp; Associates LLC’s Opposition to City of North Las Vegas’ Motion to Alter</b>
48	19	003140 – 003146	02/04/2020 3:09 PM	<b>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss on Order Shortening Time</b>

17	15	002282 – 002292	09/18/2019 3:07 PM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ <b>Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time</b>
	15	002293 – 002294	08/06/2019	<u>Exhibit A</u> – Clerk of the Court’s Notice of Hearing
	15	002295 – 002296	09/06/2019	<u>Exhibit B</u> – Court’s Notice of Rescheduling Motions to Dismiss and Joinders
	15	002297 – 002202	09/09/2019	<u>Exhibit C</u> – Emails re Rescheduling of Hearing
	15	002203 – 002304	09/10/2019	<u>Exhibit D</u> – Emails re Rescheduling of Hearing
	15	002305 – 002306	N/A	<u>Exhibit E</u> – Las Vegas Law Offices of Snell & Wilmer
2	5	000648 – 000663	08/05/2019 4:15 PM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ <b>Motion to Dismiss or, in the Alternative, Motion for Summary Judgment</b>
	5	000664 – 000681	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas’ Complaint
	5	000682 – 000684	07/13/2009	<u>Exhibit B</u> – City of North Las Vegas’ Complaint Exhibit 4 Notice of Completion
	5	000685 – 000690	03/25/2019	<u>Exhibit C</u> - Nevada Legislature Website (80 <sup>th</sup> Session) Concerning the “Effective Date” of the AB 421
	5	000691 – 000693	07/11/2019	<u>Exhibit D</u> – Aleem A. Dhalla, Esq.’s Affidavit of Merit Attached to City of North Las Vegas’ Complaint
	5	000694 – 000707	12/11/2017	<u>Exhibit E</u> - American Geotechnical, Inc’s Geotechnical Investigation
	5	000708 – 000709	07/03/2019	<u>Exhibit F</u> – Declaration of Edred T. Marsh, P.E.
	5	000710 – 000717	03/23/2007	<u>Exhibit G</u> – Excerpts from Legislative History of N.R.S. 11.258
24	15	002399 – 002406	10/17/2019 10:08 AM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ <b>Notice of Entry of Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and All Joinders to Same</b>

27	16	002531 – 002558	11/26/2019 11:17 PM	<b>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to Motion to Alter Judgment</b>
	16	002559 – 002563	10/15/2019	<u>Exhibit 1</u> – Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment and all Joinders to Same
	16	002564 – 002582	08/20/2019	<u>Exhibit 2</u> – City of North Las Vegas’ Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	16	002583 – 002643	10/10/2019	<u>Exhibit 3</u> – Court Recorder’s Transcript of Hearing: All Pending Motions
	16	002644 – 002646	10/15/2019	<u>Exhibit 4</u> – Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
	16	002647 – 002650	08/05/2019	<u>Exhibit 5</u> - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
19	15	002321 – 002325	08/06/2019	Dekker/Perich/Sabatini, Ltd.’s Motion to Dismiss
			08/08/2019	Melroy Engineering, Inc. d/b/a MSA Engineering Consultants Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
19	15	002321 – 002325	09/26/2019 5:16 PM	<b>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Reply to City of North Las Vegas’ Limited Opposition to Motion to Change Date of Hearing</b>
54	20	003295 – 003307	02/18/2020 3:57 PM	<b>Nevada by Design, LLC d/b/a Nevada By Design Engineering Consultants’ Reply to City of North Las Vegas’ Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ and Joinders to Motion to Dismiss on Order Shortening Time</b>

14	14	002233 – 002249	8/28/2019 9:02 AM	Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ <b>Rely to City of North Las Vegas’ Opposition to Motion to Dismiss or, in the Alternative, Motion for Summary Judgement</b>
	14	002250 – 002255	07/01/019	<u>Exhibit A</u> – Assembly Bill No. 221 – Committee on Judiciary 80 <sup>th</sup> Session (2019)
	14	002256 – 002257	2019	<u>Exhibit B</u> – 80 <sup>th</sup> Session (2019)
	15	002258 – 002271	12/11/2017	<u>Exhibit C</u> – American Geotechnical Inc’s Geotechnical Investigation
35	17	002891 – 002893	12/02/2019 1:54PM	Ninyo & Moore, Geotechnical Consultants’ <b>Joinder to JW Zunino &amp; Associates LLC’s Opposition to City of North Las Vegas’ Motion to Alter Judgment</b>
44	18	003044 – 003046	12/06/2019 10:08 AM	Ninyo & Moore, Geotechnical Consultants’ <b>Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Opposition to Motion to Alter Judgment With Respect to Statute of Repose Arguments</b>
51	19	003167 – 003174	02/07/2020 3:36 PM	Ninyo & Moore, Geotechnical Consultants’ <b>Joinder to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Motion to Dismiss on Order Shortening Time</b>
	19	003175 – 003240	08/29/2007	<u>Exhibit A</u> – Ninyo & Moore’s Geotechnical Evaluation
	19	003241 – 003254	12/11/2017	<u>Exhibit B</u> – American Geotechnical Inc’s Geotechnical Investigation
11	14	002211 – 002213	08/23/2019 10:02 AM	Ninyo & Moore, Geotechnical Consultants’ <b>Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, In the Alternative, Motion for Summary Judgment</b>
15	15	002272 – 002274	09/06/2019 12:14 PM	Ninyo & Moore, Geotechnical Consultants’ <b>Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, In the Alternative, Motion for Summary Judgment</b>

<b>34</b>	<b>17</b>	<b>002888 – 002890</b>	<b>12/02/2019 1:54 PM</b>	<b>Ninyo &amp; Moore, Geotechnical Consultants’ Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to City of North Las Vegas’ Motion to Alter Judgment</b>
<b>58</b>	<b>20</b>	<b>003392 – 003398</b>	<b>02/19/2020 2:56 PM</b>	<b>Ninyo &amp; Moore, Geotechnical Consultants’ Reply to City of North Las Vegas Opposition to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ and Joinders to Motion to Dismiss on Order Shortening Time</b>
<b>32</b>	<b>17</b>	<b>002689 – 002693</b>	<b>11/27/2019 1:15 PM</b>	<b>Paffenbarger &amp; Walden, LLC and P &amp; W Bonds, LLC’s Joinder in (1) Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Opposition to Motion to Alter Judgment; and (2) JW Zunino &amp; Associates LLC Opposition to Motion to Alter Judgment</b>
<b>43</b>	<b>18</b>	<b>003040 – 003043</b>	<b>12/04/2019 8:35 AM</b>	<b>Paffenbarger &amp; Walden, LLC and P &amp; W Bonds, LLC’s Joinder in (1) Richardson Construction, Inc. and The Guarantee Company of North America USA’s Opposition to Motion to Alter Judgment; and (2) Melroy Engineering, Inc. d/b/a MSA Engineering Consultants’ Opposition to Motion to Alter Judgment</b>
<b>16</b>	<b>15</b>	<b>002275 – 002281</b>	<b>09/13/2019 4:22 PM</b>	<b>Paffenbarger &amp; Walden, LLC and P &amp; W Bonds, LLC’s Limited Joinder in Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment</b>
<b>21</b>	<b>15</b>	<b>002331 – 002335</b>	<b>09/30/2019 11:29 AM</b>	<b>Richardson Construction, Inc. and The Guarantee Company of North America USA’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Dismiss or, in the Alternative, Motion for Summary Judgment</b>



56	20	003379 – 003384	02/18/2020 5:06 PM	<b>Richardson Construction, Inc. and The Guarantee Company of North America USA's Limited Response to Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Motion to Dismiss on Order Shortening Times and All Joinder Thereto</b>
33	17	002694 – 002887	11/27/2019 4:51 PM	<b>Richardson Construction, Inc. and The Guarantee Company of North America USA's Opposition to Motion to Alter Judgment and Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Opposition to Motion to Alter Judgment</b>
	17	002706 – 002723	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas' Complaint
	17	002724 – 002740	08/05/2019	<u>Exhibit B</u> - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	17	002741 – 002758	07/11/2019	<u>Exhibit A</u> – City of North Las Vegas' Complaint
	17	002759 – 002761	07/13/2009	<u>Exhibit B</u> – City of North Las Vegas' Complaint Exhibit 4 Notice of Completion
	17	002762 – 002767	03/25/2019	<u>Exhibit C</u> – AB421
	17	002768 – 002770	07/11/2019	<u>Exhibit D</u> – Affidavit of Aleema A. Dhalla, Esq.
	17	002771 – 002784	12/11/2017	<u>Exhibit E</u> – American Geotechnical Inc's Geotechnical Investigation
	17	002785 – 002786	07/03/2019	<u>Exhibit F</u> – Declaration of Edred T. Marsh, P.E.
	17	002787 – 002794	03/23/2007	<u>Exhibit G</u> – Senate Bill 243 - 11.258
	17	002795 – 002796	08/06/2019	<u>Exhibit C</u> – Clerk of the Court's Notice of Hearing
	17	002797 – 002815	08/20/2019	<u>Exhibit D</u> – City of North Las Vegas' Opposition to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
	17	002816 – 002822	09/04/2019	<u>Exhibit E</u> – Richardson Construction, Inc.'s and The Guarantee Company of North America USA's Motion to Dismiss

17	002823 – 002824	09/06/2019	<u>Exhibit F</u> – Clerk of the Court’s Notice of Hearing
17	002825 – 002831	11/27/2019	<u>Exhibit G</u> – Register of Actions
17	002832 – 002833	09/10/2019	<u>Exhibit H</u> – Emails re Rescheduling of Hearing
17	002834 – 002846	09/18/2019	<u>Exhibit I</u> - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants’ Motion to Change Date of Hearing of Motion to Dismiss or, in the Alternative, Motion for Summary Judgment
17	002847 – 002848	08/06/2019	<u>Exhibit A</u> – Clerk of the Court’s Notice of Hearing
17	002849 – 002850	09/06/2019	<u>Exhibit B</u> – Court’s Notice of Rescheduling Motions to Dismiss and Joinders
17	002851 – 002856	09/09/019	<u>Exhibit C</u> – Emails re Rescheduling of Hearing
17	002857 – 002858	09/10/2019	<u>Exhibit D</u> – Emails re Rescheduling of Hearing
17	002859 – 002860	N/A	<u>Exhibit E</u> – Las Vegas Law Offices of Snell & Wilmer
17	002861 – 002862	09/20/2019	<u>Exhibit J</u> – Weil & Drage, APC Letter to All Counsel re Hearing of Nevada By Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on September 27, 2019
17	002863 – 002868	09/26/2019	<u>Exhibit K</u> - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Reply to City of North Las Vegas’ Limited Opposition to Motion to Change Date of Hearing
17	002869 – 002871	11/27/2019	<u>Exhibit L</u> – Register of Actions A-19-798346-C
17	002872 – 002874	11/27/2019	<u>Exhibit M</u> – Register of Actions A-19-798346-C
17	002875 – 002880	09/30/3019	<u>Exhibit N</u> – Richardson Construction, Inc. and The Guarantee Company of North America USA’s Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

	17	002281 – 002887	10/17/2019	<u>Exhibit O</u> – Notice of Entry of Order Granting Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Change Date of Haring on Motion to Dismiss or, in the Alternative, Motion for Summary Judgment on Order Shortening Time
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# **Reply Exhibit C**

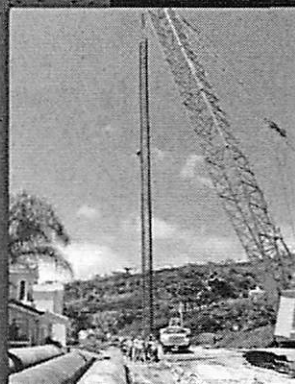
# **Reply Exhibit C**

# GEOTECHNICAL INVESTIGATION

## FIRE STATION 53

2804 W. Gowan Road  
North Las Vegas, Nevada

December 11, 2017  
FN 40779-01



Corporate Office:  
22725 Old Canal Rd.  
Yorba Linda, CA 92887

2640 Financial Court  
Suite A  
San Diego, CA 92117

3100 Fite Circle  
Suite 103  
Sacramento, CA 95827

5600 Spring Mtn. Rd.  
Suite 201  
Las Vegas, NV 89146



**American  
Geotechnical Inc.**  
GEOTECHNICAL ENGINEERING / MATERIALS TESTING & INSPECTION

[WWW.AMGT.COM](http://WWW.AMGT.COM)

PELAPP.002259

December 11, 2017

File No. 40779-01

Mr. Dale Daffern  
CITY OF NORTH LAS VEGAS  
50 E. Brooks Avenue  
North Las Vegas, Nevada 89030

Subject: **GEOTECHNICAL INVESTIGATION**  
FIRE STATION 53  
2804 W. Gowan Road  
North Las Vegas, Nevada

Dear Mr. Daffern:

In accordance with your authorization, American Geotechnical has performed a geotechnical investigation of the site. The purpose of this investigation was to evaluate the site geotechnical conditions and to determine the probable cause(s) of the existing distress to the building and surrounding appurtenances and to provide remedial recommendations for improvement of adverse site conditions. Our findings, conclusions, and recommendations for remedial repairs are presented below. We have included concept repair plans and the backup calculations that we believe are adequate to provide to specialty contractors for determining preliminary cost estimates for remedial work at the site. These concept repair plans can be revised after a discussion of the final intentions are determined for the project going forward. If final repair plans are desired, our office or an engineering firm of your choice can prepare final repair drawings for remediation. It is recommended that a meeting take place to discuss these findings and recommendations. These concept repair recommendations can be revised as needed based on the results of the outcome of a meeting with the concerned parties.

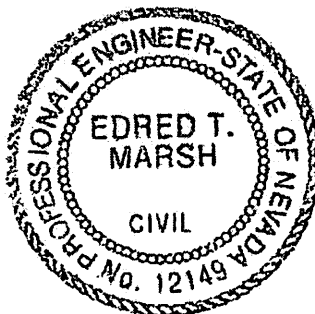
American Geotechnical and the undersigned appreciate the opportunity to work with you on this project. Should you have any questions regarding the information contained herein, please do not hesitate to contact us.

Respectfully submitted,

AMERICAN GEOTECHNICAL, INC.



Edred T. Marsh  
Principal Engineer  
P.E. 12149



AA/ETM: km

Distribution: Mr. Dale Daffern



Alva (Arumugam) Alvappillai  
Principal Engineer

*Via E-Mail Only*

22725 Old Canal Road, Yorba Linda, CA 92887 - (714) 685-3900 - FAX (714) 685-3909  
2640 Financial Court, Suite A, San Diego, CA 92117 - (858) 450-4040 - FAX (858) 457-0814  
3100 Fite Circle, Suite 103, Sacramento, CA 95827 - (916) 368-2088 - FAX (916) 368-2188  
5600 Spring Mountain Road, Suite 201, Las Vegas, NV 89146 - (702) 562-5046 - FAX (702) 562-2457

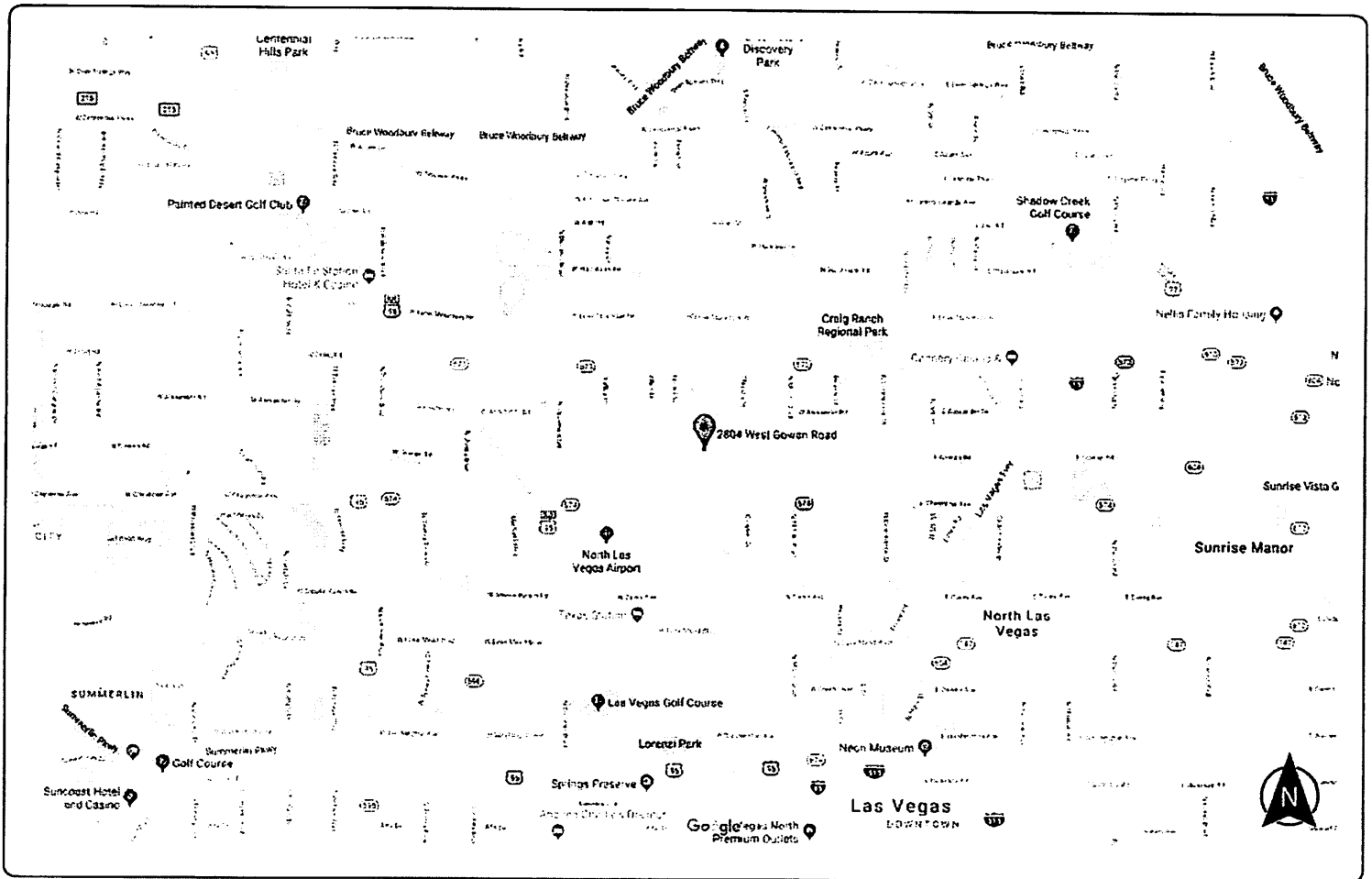
## 1.0 SCOPE OF WORK


The scope of work performed during this investigation included the following:

- Visual review and photo documentation of the site conditions;
- A manometer floor-level survey of the east portion of the building;
- Subsurface exploration consisting of the excavation of a test pit (AGTP-1) and drilling of three small-diameter borings (AGSB-1, AGBS-2 and AGBS-3);
- Collection of relatively undisturbed and bulk samples of representative materials encountered in the borings and test pit excavation;
- Laboratory testing of soil samples obtained during the subsurface effort;
- Engineering analyses of field and laboratory data; and,
- Preparation of this report summarizing our field investigation, findings, conclusions, and remedial recommendations.

## 2.0 SITE DESCRIPTION AND HISTORY

The site is located on the north side of W. Gowan Road and is presently occupied with a single-story fire station building and associated appurtenant improvements on a relatively level pad. The building has masonry as well as metal stud bearing walls and is supported on isolated shallow pad and continuous foundation footings. The interior of the building has a conventional slab-on-grade floor system. The front of the building faces south to W. Gowan Road and a 4 to 4 ½ foot high masonry retaining wall is located around the southeast corner of the building. Exterior improvements include a concrete driveway and parking areas as well as typical desert landscaping around the building. A site location map is shown on **Plate 1** and an aerial view of the site is presented on **Plate 2**.



 <b>AMERICAN GEOTECHNICAL, INC.</b> 22725 Old Canal Road, Yorba Linda, CA 92887 (714) 685-3900 (714) 685-3909 <a href="http://www.amgt.com">www.amgt.com</a>	<b>TITLE:</b> <b>SITE LOCATION MAP</b> 2804 West Gowan Rd., N. Las Vegas, AZ		<b>PLATE</b> <b>1</b> 138	
	<b>SCALE:</b> <b>N.T.S</b>	<b>DATE:</b> <b>DEC 2017</b>		<b>FILE NO.:</b> <b>40779-01</b>





#### LEGEND

- ⊕ AGSB-3 Approximate Location of Small Diameter Boring
- ⊗ AGTP-1 Approximate Location of Test Pit



#### AMERICAN GEOTECHNICAL, INC.

22725 Old Canal Road, Yorba Linda, CA 92887

(714) 685-3900 (714) 685-3909

www.amgt.com

#### TITLE:

#### Aerial View/Test Location Map

2804 West Gowan Rd., N. Las Vegas, AZ

#### SCALE:

N.T.S

#### DATE:

DEC 2017

#### FILE NO.:

40779-01

#### PLATE

2

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Based on our review of available documents, Ninyo & Moore performed the preliminary geotechnical investigation for the project and provided recommendations for the design and construction of the site improvements. According to the Ninyo & Moore report dated May 11, 2007, the site was underlain by about 1.5 feet of fill over native alluvial soil. They recommended that the fill as well as surficial loose native soils be removed and replaced with a structural fill for the building pad. The recommended thickness of the structural fill was 36 inches below building foundations or 48 inches below existing grades. As we understand, the grading for the project was performed in the latter part of 2007 or early 2008 followed by the construction of the building and other site improvements.

Distress to the building in the form of wall cracks and separations, and some interior slab cracking was observed and reported after the construction for the project. In addition, damage to exterior appurtenant structures was noted and brought to our attention. Most of the damage was concentrated along the eastern portion of the building as well as the front south east portion of the lot.

### **3.0 OBSERVED DAMAGE**

Our review indicated various cracks and separations mainly in the eastern portion of the building and surrounding exterior areas. Separations in the masonry walls were documented up to 1 to 1 ½ inches in width. Up to ½ inch wide cracks were also noted in the exterior stucco walls. The building was also found to have separations up to ½ to 1 inch from the exterior flatwork. The interior of the building possessed a concentration of cracking along the eastern side of the structure. Wall cracks ranging from 1/32 to 1/62 inch in width were documented and slab cracks were also documented through the interior floor slab where the steep transitions occurred in the manometer floor level survey. Representative photographs taken at the time of our review are presented in **Appendix B** for reference.

### **4.0 FLOOR-LEVEL SURVEY**

During our site review, a manometer floor-level survey was conducted in the main portion of the structure that had been affected. The purpose of this survey was to evaluate the relative levelness of the foundation system. A manometer is a single-reservoir, direct-reading device commonly used for the purpose of measuring floor elevations. At the free end of the manometer device, water within the clear plastic tubing moves up and down with respect to an inverted scale to allow for the direct reading of elevation changes. The device has a sharp point fixed to the bottom of the scale, which can easily penetrate carpet without damage.

Measurements were taken at close intervals and corrected for varying floor heights and thickness of floor coverings. All point readings have been based on the same datum. By evaluating the different readings, floor deformation can be easily determined by conventional contouring techniques. The attached **Plate 3** presents the results of the manometer survey. As shown, the maximum difference in elevation across the floor is approximately 3.3 inches. The contour pattern indicates a clear downward deformation of the floor toward the east side of the building. On average, most foundation systems are constructed within  $\frac{1}{2}$  of an inch level. The measured floor differential is considered excessive and appears to be related to differential settlement along the eastern portion of the structure along with expansive soil influence.

## **5.0 SUBSURFACE INVESTIGATION**

Our subsurface investigation included the excavation of a test pit (AGTP-1) and drilling of three small-diameter borings (AGSB-1 through AGBS-3).

Test pit AGTP-1 was excavated on the east side of the building between the building foundation and the top of an exterior retaining wall. The excavation was terminated at 8.5 feet below ground surface at the top of a very hard and well cemented soil layer. Fill material consisting generally of a stiff sandy clay was documented for the entire depth of the excavation. The building footing exposed within the excavation was found to have approximately 21 inches of embedment into the soil. Up to a 1.0 inch deep void was also observed directly below the footing and the subgrade soil.

The borings AGBS-1, AGBS-2 and AGBS-3 were drilled within the planter areas located in the east, north and west sides of the building, respectively. The borings were advanced to a maximum depth of approximately 46.5 feet from the ground surface. The materials encountered in all of our borings included silty and sandy clay materials. In boring AGBS-1, a stiff to hard layer was encountered between 2.5 and 4 feet below ground surface. However, below this layer and to a depth of 28 feet, there were interbedded soft to firm silty and sandy clay layers. Below 28 feet, the materials were found to be generally firm to stiff. Similar interbedded soft and stiff soil layers were also encountered in borings AGBS-2 and AGBS-3.

Representative samples of subsurface materials were collected and forwarded to the laboratory for the purpose of estimating material properties for the use in subsequent engineering evaluations. The approximate locations of the test pit and borings are shown on **Plate 2**. Detailed logs are presented in **Appendix C**.



## **6.0 LABORATORY TESTING**

Laboratory testing was performed on samples collected during our field exploration. Samples were tested for the purpose of estimating material properties for the use in subsequent engineering evaluations. Laboratory tests included in-situ moisture/density, maximum density and optimum moisture content, expansion index, swell/collapse potential, direct shear testing and chemical testing. A summary of our laboratory test results is presented in **Appendix D**. As shown in this summary, the soil underlying the site has high expansion characteristics with an Expansion Index (EI) value of 118. Test results also indicate collapse (settlement) potential of site soils.

## **7.0 CONCLUSIONS**

Excessive damage exists generally along the eastern and southeastern portions of the site. The existing distress includes various wall cracks and separations, slab cracking and damage to appurtenant structures. Excessive slab/foundation deformation exists in this area, which corresponds to the damaged areas.

Based on the results of the investigation of the site, it is our opinion that the existing distress to the building and surrounding appurtenant structures is due to a combination of excessive differential settlement and expansive soil activity. As discussed, the soil underlying the site includes interbedded layers of loose and stiff alluvial materials. Laboratory testing of soil samples retrieved from the site indicates that the loose soil layers have collapse or settlement potential when saturated. Settlement occurs as a result of the stresses imposed and most significant stresses usually result from the weight of the structure as well as the self-weight of the earth materials. Settlement can be aggravated by introduction of water to the subsoil. At the site, an up to 4 ½ foot high retaining wall exists near the southeast portion of the building. The building foundation is located in or within the retaining wall backfill. It appears that settlement of retaining wall backfill and/or fill beneath the retaining wall and main structure is also contributing to the damage observed.

The surface soil at the site was found to possess high expansive characteristics. Soil with a significant clay fraction tends to possess expansive characteristics. Expansive soil heaves when water is introduced and shrinks as it dries. Progressive heaving and shrinking associated with moisture changes in the expansive soil can also cause foundation settlement. The existing distress to the building as well as separations in the exterior flatwork appears to be partly related to expansive soil influences. The slab/foundation system and appurtenant structures are not considered adequate for the expansive soil conditions present at the site.

## **8.0 REMEDIAL RECOMMENDATIONS**

The building at the site is likely to be impacted by continuing settlement and expansive soil influences. In order to reduce future problems, we recommend that the eastern portion of the building be underpinned by using a pile-grade beam system. The best method is to underpin the entire interior and exterior building foundations to below depths affected by the soil influences. However, realizing some risk, this underpinning can be limited to the perimeter footing in conjunction with releveling of the affected building area by mud jacking or foam/grout injection. We recommend that the releveling be performed first followed by the underpinning of the perimeter footings. The releveling effort should result in no more than a maximum of 1.0 inch overall differential between the highest and lowest points. The steepest local gradient for floor level tolerance should be limited to 1/4-inch over any 10-foot distance. The contractor should perform elevation surveys before and after the releveling to confirm the levelness of the building floor and provide to the project engineer for review. The contractor would be responsible for selecting grouting locations; however, we recommend that injection points not to exceed 8 feet from center to center. Care should also be taken not to damage the existing utilities and foundation elements during releveling process.

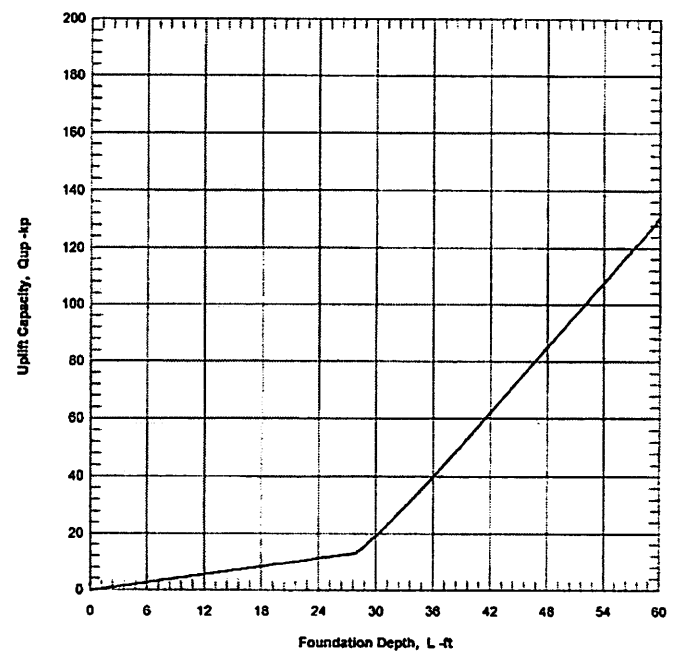
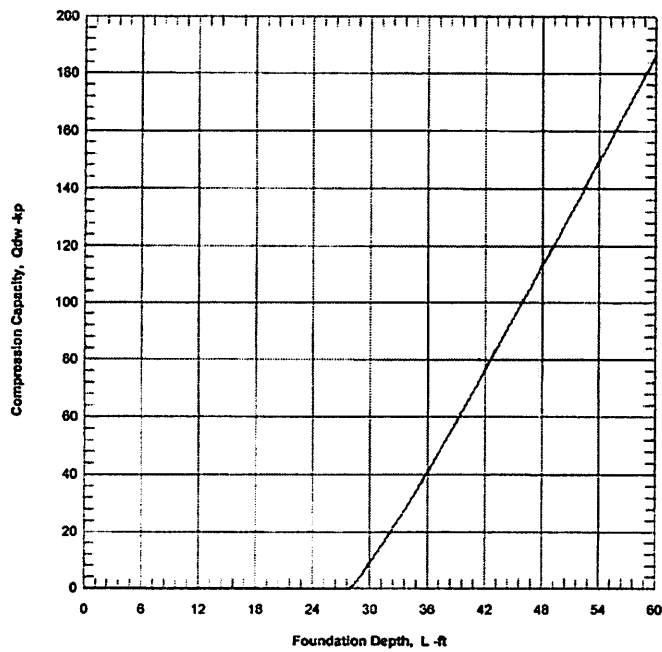
A minimum pile diameter of 2 feet is recommended for the underpinning. The pile spacing should be at least three times the pile diameter. Vertical pile capacity for an isolated, 2-foot diameter friction pile is presented on **Plate 4**. Capacities for other pile sizes can be determined in direct proportion to pile diameters. As shown on Plate 4, the compression capacity of piles within the upper 28 feet is neglected due to the presence of loose soil layers. In determining the pile capacity, end bearing has also been ignored.

For friction piles, care should be taken to ream the pile excavation within the bearing zone in order to clean the excavation side walls of any smear resulting from drilling operations. The bottom of the excavation should be kept free of loose or sloughed material. It should be noted that hard drilling conditions may be encountered during construction of the piles due to the presence of hard cemented soil layers.

After completion of releveling and underpinning of the building, the interior slab should be reviewed and all slab cracks be treated with full-depth epoxy injection. A detailed description of the recommended construction sequence is presented in **Appendix E**.

As requested, we have also performed a preliminary structural design of the underpinning system. A preliminary repair plan/detail as well as supporting structural calculations is also presented in Appendix E.

## ALLOWABLE CAPACITY vs FOUNDATION DEPTH



AMERICAN GEOTECHNICAL

Fire Station 53  
24 inch Diameter Pile

Plate 4 145

In addition to the building repairs, the damaged exterior flatwork, including those affected by the proposed underpinning work, should be replaced. It is recommended that the new slab sections should be a minimum of 6 inches thick and reinforced with No. 4 bars at 12 inches on center, both ways. An approximately 4-inch thick layer of free-draining crushed rock base (e.g., 3/4 inch rock) is recommended below the slab and on top of subgrade. The crushed rock should have no more than ten percent passing the 3/4 inch sieve or more than three percent passing the No. 200 sieve. For larger slab areas, such as patio slabs, minimum 24-inch deep and 18-inch wide cut-off walls should be provided along the edges of the slabs. Movement of slabs adjacent to structures can be mitigated by doweling slabs to perimeter footings. Doweling should consist of No. 4 bars bent around the exterior footing reinforcement. Dowels should be extended at least 2 feet into the exterior slabs. Doweling should be spaced consistent with the reinforcement schedule for the slab. With doweling, 3/8-inch minimum thickness expansion joint material should be provided. Where expansion joint material is provided, it should be held down about 3/8-inch below the surface. The expansion joints should be finished with a color matched, flowing, flexible sealer (e.g., pool deck compound) sanded to add mortar-like texture. As an option to doweling, an architectural separation could be provided between the main structure and abutting appurtenant improvements.

## **9.0 CONCRETE**

Laboratory testing indicated that the surface soil at the site has severe levels of sulfates and as such, sulfate-resistant concrete is required for the project. The concrete for all construction should utilize Type-V cement with a maximum 0.45-water/cementitious ratio. Limited use (subject to approval of mix designs) of a water-reducing agent may be included to increase workability. The concrete should be properly cured to minimize risk of shrinkage cracking. One-inch hard rock mixes should be provided.

## **10.0 CORROSION**

In addition to sulfate, Chloride, pH, and resistivity tests of near-surface site soil were performed. The test results presented in **Appendix D** indicate that the metals (embedded and non-embedded) bear significant corrosion risk. Appropriate design considerations should be made for the risk of damage from this corrosion.



#### 11.0 REMARKS

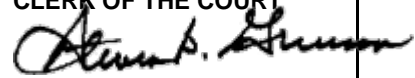
Only a portion of subsurface conditions have been reviewed and evaluated. Conclusions, recommendations, and other information contained in this report are based upon the assumptions that subsurface conditions do not vary appreciably between and adjacent to the observation points. Although no significant variation is anticipated, it must be recognized that variations can occur.

This report has been prepared for the sole use and benefit of our client. The intent of this report is to advise our client on geotechnical matters involving the proposed improvements. It should be understood that the geotechnical consulting provided and the contents of this report are not perfect. Any errors or omissions noted by any party reviewing this report, and/or any other geotechnical aspect of the project, should be reported to this office in a timely fashion.

Other consultants could arrive at different conclusions and recommendations. Typically, "minimum" recommendations have been presented. Although some risk will always remain, lower risk of future problems would usually result if more restrictive criteria were adopted. Final decisions on matters presented are the responsibility of the client and/or the governing agencies. No warranties in any respect are made as to the performance of the project.

**EXHIBIT 15**  
**PETITIONERS' APPENDIX**

**EXHIBIT 15**  
**PETITIONERS' APPENDIX**



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Consultants

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

DEKKER/PERICH/SABATINI LTD.;  
RICHARDSON CONSTRUCTION, INC.;  
NEVADA BY DESIGN, LLC D/B/A  
NEVADA BY DESIGN ENGINEER  
CONSULTANTS; JW ZUNINO &  
ASSOCIATES, LLC; MELROY  
ENGINEERING, INC. D/B/A MSA  
ENGINEERING CONSULTANTS;  
O'CONNOR CONSTRUCTION  
MANAGEMENT INC.; NINYO & MOORE,  
GEOTECHNICAL CONSULTANTS;  
JACKSON FAMILY PARTNERSHIP LLC  
D/B/A STARGATE PLUMBING; AVERY  
ATLANTIC LLC; BIG C LLC; RON  
HANLON MASONRY, LLC; THE  
GUARANTEE COMPANY OF NORTH  
AMERICA USA; P&W BONDS, LLC;  
PAFFENBARGER & WALDEN, LLC;  
DOES I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-19-798346-C

Dept. No. VIII

**Joinder to Nevada By Design, LLC d/b/a  
Nevada By Design Engineering Consultants'  
Motion To Dismiss Or, In The Alternative,  
Motion For Summary Judgment**

**Hearing Date; 9/9/19**

**Hearing Time: 8:30 am**

Defendant, NINYO & MOORE, GEOTECHNICAL CONSULTANTS ("N&M"), by and  
through its attorneys of record, the law offices of WILSON, ELSER, MOSKOWITZ, EDELMAN, &  
DICKER, LLP, hereby joins in Defendant Nevada By Design, LLC d/b/a Nevada By Design  
Engineering Consultants' ("NBD") Reply to Plaintiff's Opposition to Motion To Dismiss Or, In The

1 Alternative, Motion For Summary Judgment. This Joinder incorporates and asserts all the arguments  
2 contained in NBD's reply with regards to the Plaintiff's claim being time barred by Nevada's statute  
3 of repose, as though fully contained herein. NBD's arguments regarding the effective date of the  
4 appropriate statute of repose in effect also applies to N&M and its work on this underlying project.

5 DATED this 6<sup>th</sup> day of September, 2019.

6 WILSON ELSE MOSKOWITZ  
7 EDELMAN & DICKER LLP

8 /s/ Jorge A. Ramirez

9 JORGE A. RAMIREZ, ESQ.

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17 Consultants  
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1 **CERTIFICATE OF SERVICE**

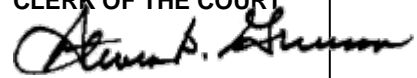
2 Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman &  
3 Dicker LLP, and that on September 6, 2019, I served **Joinder to Nevada By Design, LLC d/b/a**  
4 **Nevada By Design Engineering Consultants' Motion To Dismiss Or, In The Alternative, Motion**  
5 **For Summary Judgment** as follows:

- 6 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed  
7 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- 8 ☒ via electronic means by operation of the Court's electronic filing system, upon each  
9 party in this case who is registered as an electronic case filing user with the Clerk;

10 BY: /s/Annemarie Gourley  
11 An Employee of  
12 WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP  
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**EXHIBIT 16**  
**PETITIONERS' APPENDIX**

**EXHIBIT 16**  
**PETITIONERS' APPENDIX**



**JMOT**

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*Attorneys for Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC*

**Affirmation:**

I the undersigned hereby affirm that this document does not contain the social security number of any persons.  
(Per NRS 239B.030)

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

City of North Las Vegas,

Plaintiff,

vs.

Case No: A-19-798346-C

Dept No: VIII

**HEARING REQUESTED**

Dekker/Perich/Sabatini Ltd.; Richardson Construction, Inc.; Nevada By Design, LLC d/b/a/ Nevada By Design Engineering Consultants; JW Zunino & Associates, LLC; Melroy Engineering, Inc., d/b/a MSA Engineering Consultants; O'Connor Construction Management Inc.; Ninyo & Moore, Geotechnical Consultants; Jackson Family Partnership LLC d/b/a/ Stargate Plumbing; Avery Atlantic, LLC; Big C LLC; Ron Hanlon Masonry, LLC; The Guarantee Company of North America USA; P&W Bonds, LLC; Paffenbarger & Walden, LLC;

**DEFENDANTS PAFFENBARGER & WALDEN, LLC'S AND P & W BONDS, LLC'S LIMITED JOINDER IN NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

DOES I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC, through undersigned counsel, file this limited joinder in Nevada by Design Engineering Consultants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgement. P&W's joinder is limited to Nevada by Design Engineering Consultants' argument that Plaintiff City of North Las Vegas' ("City") claims are barred by the statute of repose. This joinder is more fully supported by the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 13th day of September, 2019.

**JENNINGS, STROUSS & SALMON, P.L.C.**

By: /s/Patrick F. Welch

Patrick F. Welch

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*Attorneys for Paffenbarger & Walden, L.L.C. and P  
& W Bonds, LLC*



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As noted in co-defendant Nevada By Design Engineering Consultants' Motion to Dismiss, the  
4 Plaintiff brought this construction defect lawsuit ten (10) years after issuance of the Certificate of  
5 Occupancy and Notice of Completion of the project. However, N.R.S. 11.202 creates a bright line  
6 six (6) year statute of repose for claims arising out defective construction. Any claims against  
7 Richardson Construction ("Richardson") likewise must be brought before expiration of the period  
8 established by the statute of repose and here Plaintiff filed its suit against Richardson years after the  
9 deadline established by N.R.S. 11.202.

10 Because Plaintiff fails to state a claim against Richardson, its claim against P&W Bonds, LLC  
11 and Paffenbarger & Walden, LLC (collectively "P&W") also fails as a matter of law. As the Court  
12 likely knows, any claim against a surety bond is purely derivative of the claims against the bond  
13 principal (Richardson). Plaintiff's suit against P&W alleges P&W is liable because they issued bonds  
14 as the resident agent on behalf of the surety. But, because the statute of repose bars the Plaintiff's  
15 claim against Richardson as matter of law, then Plaintiff likewise fails to state a claim for relief  
16 against P&W. Most simply stated, no legal basis exists to hold P&W liable if Richardson is not  
17 liable.

18 P&W's joinder in the Nevada By Design Motion is in the alternative to its own Motion to  
19 Dismiss filed separately on August 30, 2019.<sup>1</sup>

20 **II. BECAUSE THE STATUTE OF REPOSE BARS THE CLAIM AGAINST**  
21 **RICHARDSON THEN PLAINTIFF STATES NO CLAIM AGAINST P&W**

22 As noted in the Complaint, Plaintiff entered into a contract with Richardson to construct Fire  
23 Station 53. Nevada law required Richardson to post payment and performance bonds, and co-  
24 defendant GCNA, as surety, issued those bonds on behalf of Richardson. As noted in P&W's  
25 separate Motion to Dismiss, it acted solely as the resident agent on behalf of GCNA to sign off on the

26  
27 <sup>1</sup> The defendants other than P&W are engineers, design professionals and contractors/subcontractors  
28 who the City alleges failed to either properly design the project or failed to properly perform their  
work. The issues and arguments raises by P&W in its separate Motion to Dismiss are unique to it.

1 bonds. Hornbook law establishes that suretyship is a tripartite relationship between a bond principal  
2 (Richardson), a bond obligee (The City)) and a surety (GCNA). *See* Restatement (Third) Suretyship  
3 & Guaranty §§ 1-3. Under this tripartite relationship, the bond principal is the primary obligor, the  
4 bond obligee is the person to whom the principal owes a duty, and the surety is the secondary obligor.  
5 *See id.* In “surety-speak,” GCNA is the “secondary obligor” of the bonded obligation, while  
6 Richardson is deemed the “primary obligor” and the City is the “obligee.” *See id.*

7         The surety’s obligation and liability only comes due in the event the primary obligor breaches  
8 its duty to perform. *See Schmitt v. Ins. Co. of N. America*, 230 Cal.App.3d 245, 257, 281 Cal.Rptr.  
9 261 (1991) (recognizing that in the absence of a default by the bond principal, the surety has no  
10 obligation under its bond); *see also* Restatement (Third) Suretyship & Guaranty, §21. Furthermore, a  
11 surety may generally plead any defense available to its principal and the liability of the surety cannot  
12 exceed that of the principal. *See Thomas v. Valley Bank of Nevada, supra*; *Tr. of Bricklayers Local*  
13 *No. 3 v. Reynolds Elect. Eng’r. Co., Inc.*, 747 F. Supp. 606, 614 (D. Nev. 1990); *Cates Constr., Inc. v.*  
14 *Talbot Partners*, 21 Cal. 4th 28, 40, 980 P.2d 407, 413 (1999)(observing that the obligation of a  
15 surety must be neither larger in amount nor in other respects more burdensome than that of the  
16 principal); *see also* Restatement (Third) Suretyship & Guaranty, §§ 17, 19, and 34 In other words, a  
17 surety is not liable on a bond unless the bond principal is liable, and the surety may use any defense  
18 available to the bond principal; if the bond principal is not liable, then the surety is likewise not liable  
19 to the bond obligee.

20         Here, if the Court finds that the statute of repose bars the City’s claim against Richardson then  
21 the Court must also dismiss the City’s claims against P&W – those claims are completely derivative  
22 of and dependent upon a finding of liability against Richardson.

### 23 **III. CONCLUSION**

24         P&W respectfully requests that the Court grant Nevada by Design Engineering Consultant’s  
25 Motion to Dismiss and enter an order dismissing the Sixth, Seventh and Eighth Claims for Relief  
26 brought by Plaintiff against P&W with prejudice. P&W also requests the Court award P&W its  
27 reasonable attorneys’ fees and costs incurred in defending this action.

1 DATED this 13<sup>th</sup> day of September, 2019.

2  
3 **JENNINGS, STROUSS & SALMON, P.L.C.**

4 By: /s/Patrick F. Welch

5 Patrick F. Welch

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7 Phoenix, AZ 85004-2554

8 *Attorneys for Paffenbarger & Walden, L.L.C. and P*  
9 *& W Bonds, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Jennings, Strouss & Salmon, P.L.C. and that on the 13th day of September, 2019, I caused to be served a true and correct copy of foregoing **DEFENDANTS PAFFENBARGER & WALDEN, LLC'S AND P & W BONDS, LLC'S LIMITED JOINDER IN NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** in the following manner: via Odyssey File and Serve.

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21 *The Guarantee Company of North America USA*

22 /s/ Deborah Sharp  
23 \_\_\_\_\_  
24 An Employee of Jennings, Strouss & Salmon, P.L.C.

**EXHIBIT 17**  
**PETITIONERS' APPENDIX**

**EXHIBIT 17**  
**PETITIONERS' APPENDIX**

ORIGINAL

Electronically Filed  
9/18/2019 3:07 PM  
Steven D. Grierson  
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*Steven D. Grierson*

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14 NEVADA BY DESIGN ENGINEERING CONSULTANTS

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 CITY OF NORTH LAS VEGAS,

18 Plaintiff,

19 vs.

20 DEKKER/PERICH/SABATINI LTD.;

21 RICHARDSON CONSTRUCTION, INC.;

22 NEVADA BY DESIGN, LLC D/B/A NEVADA BY

23 DESIGN ENGINEERING CONSULTANTS; JW

24 ZUNINO & ASSOCIATES, LLC; MELROY

25 ENGINEERING, INC. D/B/A MSA

26 ENGINEERING CONSULTANTS; O'CONNOR

27 CONSTRUCTION MANAGEMENT INC.; NINYO

28 & MOORE, GEOTECHNICAL CONSULTANTS;

JACKSON FAMILY PARTNERSHIP LLC D/B/A

STARGATE PLUMBING; AVERY ATLANTIC,

LLC; BIG C LLC; RON HANLON MASONRY,

LLC; THE GUARANTEE COMPANY OF NORTH

AMERICA USA; P & W BONDS, LLC;

PAFFENBARGER & WALDEN, LLC; DOES I

through X, inclusive; and ROE CORPORATIONS I

through X, inclusive,

Defendants.

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

[HEARING REQUESTED]

DEFENDANT NEVADA BY DESIGN,

LLC d/b/a

NEVADA BY DESIGN ENGINEERING

CONSULTANTS' MOTION TO

CHANGE DATE OF HEARING ON

MOTION TO DISMISS OR, IN THE

ALTERNATIVE, MOTION FOR

SUMMARY JUDGMENT

*ON*  
*Order Shortening Time*

Hearing Date: 9/22/19

Hearing Time: 9:30 A.M. *pw*



**DEFENDANT NEVADA BY DESIGN, LLC d/b/a**  
**NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO CHANGE DATE**  
**OF HEARING ON MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR**  
**SUMMARY JUDGMENT**

Pursuant to Eighth Judicial District Court ("EJDCR") Rule 2.26, the instant Motion represents the first request to change the date of the hearing (presently scheduled to October 21, 2019) on NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' ("NBD") Motion to Dismiss or, in the alternative, Motion for Summary Judgment (hereinafter collectively, the "Motions").

COMES NOW NBD, by and through its attorneys of record, the law firm of WEIL & DRAGE, APC, and pursuant to EJDCR 2.26, hereby respectfully requests that the hearing on NBD's Motions be changed from the current hearing date of October 21, 2019 to the Court's first available hearing date in September, 2019. The hearing on these Motions was initially scheduled for September 9, 2019. On September 6, 2019, the Court continued the hearing to October 21, 2019. Following an inquiry on the reason for the move, counsel for NBD tried to secure consent from counsels for all parties to re-set the hearing in September, 2019 as it would place all parties in the same exact position they occupied on September 9, 2019 and avoid impacting or causing additional arguments and briefing on these fully briefed Motions. Unfortunately, counsel for Plaintiff declined to consent to have NBD's Motions heard in September, 2019 (all other counsels agreed).

NBD's Motion to Change the time for Hearing is supported by the attached Declaration of John T. Wendland, the memorandum of points and authorities, all papers and pleadings on file

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1 herein and any oral argument the Court may require.

2 DATED this 16<sup>th</sup> day of September, 2019.

3  
4 WEIL & DRAGE, APC

5 */s/ John T. Wendland*

6 By: \_\_\_\_\_

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

ANTHONY D. PLATT, ESQ.

(Nevada Bar No. 9652)

2500 Anthem Village Drive

Henderson, NV 89052

Attorneys for Defendant,

NEVADA BY DESIGN, LLC D/B/A NEVADA

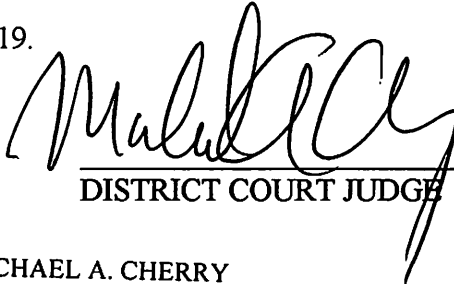
BY DESIGN ENGINEERING CONSULTANTS

**ORDER SHORTENING TIME**

TO: ALL PARTIES AND TO THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that good cause appearing and Pursuant to EJD CR 2.26, therefore, it is hereby ORDERED by the Court that the time and date for the hearing on DFEENDANT NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO CHANGE DATE OF HEARING ON MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT shall be shortened and will be heard before the above-entitled Court on the 27<sup>th</sup> day of September, 2019, at the hour of 9:30 A.m., or as soon thereafter as counsel may be heard.

DATED this 17<sup>th</sup> day of September, 2019.

  
DISTRICT COURT JUDGE

MICHAEL A. CHERRY  
SENIOR DISTRICT COURT JUDGE

Respectfully Submitted By:

WEIL & DRAGE, APC

  
JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

ANTHONY D. PLATT, ESQ.

(Nevada Bar No. 9652)

2500 Anthem Village Drive

Henderson, NV 89052

Attorneys for Defendant,

NEVADA BY DESIGN, LLC d/b/a

NEVADA BY DESIGN ENGINEERING CONSULTANTS

**DECLARATION OF JOHN T. WENDLAND, ESQ. IN SUPPORT OF MOTION TO  
CHANGE DATE OF HEARING ON ORDER SHORTENING TIME PURSUANT TO  
E.J.D.C.R. 2.26**

I, John T. Wendland, subject to the penalties of perjury under the laws of State of Nevada, hereby declare that the following statements are true and correct to the best of my knowledge and belief:

1. I am counsel of record for Defendant NBD in the above entitled action;

2. On August 5, 2019, NBD filed its Motion to Dismiss or in the Alternative, its Motion for Summary Judgment (hereinafter, the "Motions") against Plaintiff North Las Vegas' ("Plaintiff") Complaint. The Motions argued in part that Plaintiff's Complaint was untimely filed in NRS 11.202 six (6) year statute of repose, rendering said pleading a fugitive document. The Motions were duly served on counsel for Plaintiff via eFileNV and all parties in the action at the time.

3. On August 20, 2019, Plaintiff filed its Opposition to NBD's Motions.

4. On August 28, 2019, NBD filed its Reply to Plaintiff's Opposition. Accordingly, as of August 28, 2019, all substantive pleadings were filed with the Court ready for hearing.

5. The Court set the hearing on NBD's Motions for September 9, 2019. *See*, a true and correct copy of the Notice of Hearing attached to this Motion as **Ex. A**.

6. No party in this action objected to the September 9, 2019, hearing date.

7. On September 6, 2019, while preparing for the hearing, NBD's counsel learned that the Court rescheduled the hearing on its Motions to October 21st, 2019. *See*, a true and correct copy of the Notice of Rescheduling of the Hearing attached hereto as **Ex. B**.

8. Unfortunately, the rescheduled hearing date conflicts with a complex AAA arbitration hearing (Frank v. Moser, AAA Case No. 01-18-0003-4590) that counsel for NBD must appear at on October 21, 2019. Accordingly, all counsels for NBD will also be working on the AAA matter on October 21, 2019 and throughout the month of October 2019.

9. Furthermore, a core argument in NBD's Motions pertains to the statute of repose under NRS 11.202. *See*, Motions. Those issues were fully briefed and ready for the Court to decide as of late August 2019. *See*, court docket. Unfortunately, the continuance of the hearing to October 21, 2019 may inadvertently impact one or more of the arguments in the Motions and may require additional supplemental briefing that would not be necessary if the hearing is held in September 2019.

10. Additionally, maintaining the current hearing date of these Motions (October 21, 2019) would mean that the hearing would not occur until nearly three (3) months after the Motions were first filed and nearly two (2) months after the pleadings and issues were fully briefed. As a

{01613267;3}

1 final point, re-scheduling the hearing to the Court's first available date in September, 2019 does not  
2 change any of the fully briefed arguments; does not prejudice any party (matter explained further  
3 below) and would place the parties in the exact same position they were in if the September 9, 2019  
hearing had proceeded.

4 11. Counsel for NBD notified counsels for all parties about re-scheduling the NBD's  
5 Motions from October 21, 2019 to a date in September, 2019. Counsels for all parties, save for  
6 Plaintiff's counsel (and at present, no response from Mr. Parker, counsel for Richardson  
7 Construction), represented that they are available to appear at a hearing in September, 2019. *See*,  
8 true and correct copies of email communications from counsels for the other parties collectively  
9 attached hereto as Ex. C. Furthermore, counsel for Defendants Paffenbarger & Walden, LLC &  
P&W Bonds (collectively hereinafter, "P&W"), the party that filed the latest motion scheduled to  
be heard on October 21, 2019, represented that not only is he available, his motion involves issues  
outside of NBD's Motions and he had no concerns with proceeding with a hearing on NBD's  
Motions in September, 2019. *Id.*

10 12. Unfortunately, after a follow up inquiry, counsel for Plaintiff, Mr. Carley,  
11 represented that his schedule is hectic and he could not "make September work." *See*, a true and  
12 correct email from Mr. Carley attached hereto as Ex. D. He stated the October 21<sup>st</sup> date worked  
for his schedule as well as other dates in October, 2019. *Id.*

13 13. Counsel for NBD has examined the webpage of Mr. Carley's firm, The Law Offices  
14 of Snell & Wilmer ("S&W") and attached hereto, is a true and correct copy taken from S&W's  
15 website by Declarant representing that its Nevada office has approximately fifty (50) lawyers. *See*,  
16 a true and correct copy from webpage taken on September 11, 2019 (at underline inserted for  
17 clarity on the source) attached hereto as Ex. E. While NBD's counsel is appreciative and  
18 understanding of scheduling conflicts, with approximately fifty (50) lawyers, S&W has the ability to  
19 send counsel to a September, 2019 hearing even if Mr. Carley and/or his associate is/are unable to  
attend. By comparison, NBD's attorneys who are physically in the Nevada office (two lawyers)  
number far less than S&W's 50 lawyers. All of NBD's attorneys will be working on the Frank v.  
Moser action.

20 14. Given that the October 21, 2019 hearing creates an actual conflict to NBD's  
21 counsel; given the potential impact to the Motions if heard after October 1, 2019 which may  
22 require further briefing of issues solely arising from the rescheduling of NBD's Motions; and the  
23 fact that Plaintiff's counsels should be able to send an attorney for a hearing in September, 2019,  
NBD respectfully requests that the Court re-set the hearing of its pending Motions to a date in  
September, 2019.

24 15. NBD respectfully contends that good cause exists to hear these Motions in  
25 September, 2019 (NBD's counsel is available any date) and this request is made in good faith and is  
26 not for the purposes of harassment or delay.

27 ///

28 ///

1 16. Accordingly, NBD respectfully requests that the hearings on its Motions be re-  
2 scheduled to the Court's first available date in September, 2019.

3 FURTHER DECLARANT SAYETH NAUGHT

4 DATED this 16<sup>th</sup> day of September, 2019.

5  
6 By: 

John T. Wendland

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 I.

10 **PROCEDURAL ISSUES/LEGAL ARGUMENT**

11 This action arises out of Plaintiff's Complaint filed against NBD and other parties  
12 concerning alleged settlement and expansive soils at a fire station. Plaintiff filed its Complaint on  
13 August 5, 2019 despite the project being substantially completed in July 11, 2009. As the  
14 Complaint is in clear violation of NRS 11.202's six (6) year statute of repose, NBD filed its Motion  
15 to Dismiss or in the alternative, its Motion for Summary Judgment (collectively, the "Motions").  
16 The Court set the hearing on these Motions for September 9, 2019. On September 6, 2019, the  
17 Court re-scheduled these Motions to October 21, 2019. Unfortunately, the new hearing date  
18 conflicts with a complex American Arbitration Association ("AAA") hearing that counsel for NBD  
19 had scheduled for over a year. Moreover, the only other attorney physically in NBD's Nevada  
20 office is also involved in this AAA action.

21 Furthermore, a core argument in NBD's Motions is the application of the statute of repose  
22 that existed on July 11, 2019, when Plaintiff filed its Complaint. Under the six (6) year repose, the  
23 Complaint is untimely and automatically void. Plaintiff's argument is that a new statute of repose  
24 of ten (10) years was passed by the Nevada Legislature (AB 421), which Plaintiff alleges allowed it  
25 to file the Complaint pursuant to a ten (10) year statute of repose. These arguments were fully  
26 briefed in the submitted papers and the parties (in particular, NBD) were ready for the September  
27 9, 2019.

1 On September 6, 2019, the Court re-scheduled NBD's Motions to October 21, 2109. The  
2 rescheduling of the Motions may impact one or more arguments; create potential new  
3 arguments/issues, and/or require additional/supplemental briefing that would not have existed if the  
4 Motions were heard on September 9, 2019.

5 NBD is aware that new parties, Defendants P&W recently filed a separate motion to dismiss  
6 on other legal and factual issues. P&W's motion was scheduled on October 21, 2019. Counsel for  
7 P&W has reviewed NBD's Motions and represented that he has no issues with these Motions being  
8 heard in September 2019.

9 Aside from one other attorney (Mr. Parker who has not responded), all other parties, save  
10 Plaintiff, have stipulated to have the Court hear NBD's Motions in September 2019 as originally  
11 scheduled. Plaintiff's counsel has declined to stipulate, citing scheduling conflicts in September  
12 2019. However, as shown from S&W's own website page, there are at least fifty (50) lawyers in  
13 S&W's Nevada office and it is difficult to believe that S&W could not send an attorney to argue if  
14 the hearing is scheduled in September 2019.

15 The papers have been fully briefed and the parties were ready to argue at the September 9,  
16 2019 hearing. Moving the hearing from October 21, 2019 to a date in September 2019 will not  
17 prejudice any party and it would put the parties in the same position they were in on September 6,  
18 2019, when the court moved the hearing, with no impact or change to any argument that the Court  
19 would have heard on September 9, 2019. Therefore, the prejudice to NBD and the potential of  
20 impacting/complicating the issues presently before the Court (plus judicial efficiency being impacted  
21 by more briefing on new issues created solely from the re-scheduling of the Motions), significantly  
22 outweighs any scheduling issues Plaintiff's counsel may have. This request is made pursuant to  
23 E.J.D.C.R. 2.26 which states:

24 **Rule 2.26. Shortening time.** Ex parte motions to shorten time may not be granted  
25 except upon an unsworn declaration under penalty of perjury or affidavit of counsel  
26 describing the circumstances claimed to constitute good cause and justify shortening of  
27 time. If a motion to shorten time is granted, it must be served upon all parties promptly. An  
28 order which shortens the notice of a hearing to less than 10 days may not be served by  
mail. In no event may the notice of the hearing of a motion be shortened to less than 1 full  
judicial day. A courtesy copy shall be delivered by the movant to the appropriate

1 department, if a motion is filed on an order shortening time and noticed on less than 10  
2 days' notice.

3 **II.**

4 **CONCLUSION**

5 For said reasons, NBD respectfully requests that the Court shorten the hearing date on its  
6 Motions from October 21, 2019 to the Court's first available date in September, 2019. There is  
7 little to no prejudice to Plaintiff's counsel and would allow the Court to hear the pleadings which  
8 have been fully briefed and prepared for decision. Additionally, the P&W motion to dismiss  
9 presently scheduled for October 21, 2019 involves separate issues and facts unique to P&W, and  
10 P&W consented to having its motion heard separately.

11 Maintaining the October 21, 2019 would prejudice NBD as it could impact the decision on  
12 the Motions; create new arguments and additional briefing caused by the rescheduling of the  
13 hearing. Finally, returning the parties to their position if the hearing proceeded on September 9,  
14 2019 is fair and equitable.

15 DATED this 16<sup>th</sup> day of September, 2019.

16 WEIL & DRAGE, APC

17 */s/ John T. Wendland*

18 By: \_\_\_\_\_

19 JOHN T. WENDLAND, ESQ.

20 (Nevada Bar No. 7207)

21 ANTHONY D. PLATT, ESQ.

22 (Nevada Bar No. 9652)

23 2500 Anthem Village Drive

24 Henderson, NV 89052

25 Attorneys for Defendant,

26 NEVADA BY DESIGN, LLC d/b/a

27 NEVADA BY DESIGN ENGINEERING

28 CONSULTANTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18<sup>th</sup> day of September, 2019, service of the foregoing  
**DEFENDANT NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING**  
**CONSULTANTS' MOTION TO CHANGE DATE OF HEARING ON MOTION TO**  
**DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** was  
made this date by electronically serving a true and correct copy of the same, through Clark County  
Odyssey eFileNV, to the following parties:

Justin L. Carley, Esq.  
Aleem A. Dhalla, Esq.  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Attorneys for Plaintiff,  
CITY OF NORTH LAS VEGAS

John T. Wendland, Esq.  
Jeremy R. Kilber, Esq.  
WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, NV 89052  
Attorneys for Defendant,  
DEKKER/PERICH/SABATINI, LTD.

Jeremy R. Kilber, Esq.  
WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, NV 89052  
Attorney for Defendant,  
MSA ENGINEERING CONSULTANTS

Jorge A. Ramirez, Esq.  
Jonathan C. Pattillo, Esq.  
WILSON ELSEER MOSKOWITZ EDELMAN &  
DICKER, LLP  
300 S. 4<sup>th</sup> Street, 11<sup>th</sup> Floor  
Las Vegas, NV 89101  
Attorneys for Defendant,  
NINYO & MOORE GEOTECHNICAL  
CONSULTANTS

Richard L. Peel, Esq.  
Ronald J. Cox, Esq.  
PEEL BRIMLEY, LLP  
3333 E. Serene Avenue, Suite 200  
Henderson, NV 89074  
Attorneys for Defendant,  
JACKSON FAMILY PARTNERSHIP LLC  
dba STARGATE PLUMBING

Shannon G. Splaine, Esq.  
LINCOLN, GUSTAFSON & CERCOS, LLP  
3960 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 89169  
Co-Counsel for Defendant,  
JACKSON FAMILY PARTNERSHIP LLC  
dba STARGATE PLUMBING

Patrick F. Welch, Esq.  
JENNINGS STROUSS & SALMON, P.L.C.  
One East Washington Street, Suite 1900  
Phoenix, AZ 85004-2554  
Attorneys for Defendants,  
PAFFENBARGER & WALDEN LLC and  
P & W BONDS LLC

Theodore Parker, III, Esq.  
PARKER, NELSON & ASSOCIATES, CHTD.  
2460 Professional Court, Suite 200  
Las Vegas, NV 89128  
Attorney for Defendants,  
RICHARDSON CONSTRUCTION, INC. and  
GUARANTEE COMPANY OF NORTH  
AMERICA USA



1 Charles W. Bennion, Esq.  
2 ELLSWORTH & BENNION, CHTD.  
3 777 N. Rainbow Boulevard, Suite 270  
4 Las Vegas, NV 89107  
5 Attorneys for Defendants,  
6 PAFFENBARGER & WALDEN LLC and  
7 P & W BONDS LLC

8 */s/ Joanna Medina*

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Joanna Medina, an Employee of  
WEIL & DRAGE, APC

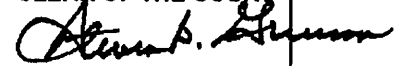
# **Exhibit A**

# **Exhibit A**

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
8/6/2019 8:56 AM  
Steven D. Grierson  
CLERK OF THE COURT



North Las Vegas City of, Plaintiff(s)

Case No.: A-19-798346-C

vs.

Dekker/Perich/Sabatini Ltd, Defendant(s)

Department 8

**NOTICE OF HEARING**

Please be advised that the Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment in the above-entitled matter is set for hearing as follows:

**Date:** September 09, 2019

**Time:** 8:30 AM

**Location:** Phoenix Building 11th Floor 110  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE:** Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Chaunte Pleasant  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Chaunte Pleasant  
Deputy Clerk of the Court

# **Exhibit B**

# **Exhibit B**



DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*


NORTH LAS VEGAS CITY OF,  
PLAINTIFF(S)  
VS.  
DEKKER/PERICH/SABATINI LTD,  
DEFENDANT(S)

CASE NO: A-19-798346-C

DEPARTMENT 8

**NOTICE OF RESCHEDULING MOTIONS TO DISMISS AND JOINDERS**

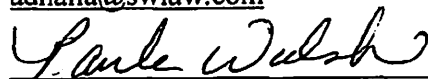
Please be advised that the date and time of all Motions to Dismiss and Joinders presently set in the above matter have been rescheduled to October 21, 2019, at 8:30 a.m.

By:   
Paula Walsh  
Judicial Executive Assistant  
to Judge DC 8 Vacant  
Department 8

**Certificate of Service**

I hereby certify that on the date filed, a copy of this Order was electronically served on all parties registered through the Eighth Judicial District Court EFP system, or emailed or mailed to any party or attorney not registered with the EFT system.

[icarley@swlaw.com](mailto:icarley@swlaw.com)  
[adhalla@swlaw.com](mailto:adhalla@swlaw.com)



PAULA WALSH, Temp Judicial Assistant

# **Exhibit C**

# **Exhibit C**

## **John T. Wendland**

---

**From:** Welch, Patrick F. <PWelch@jsslaw.com>  
**Sent:** Monday, September 9, 2019 5:07 PM  
**To:** John T. Wendland; 'Carley, Justin'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

All:

I am available on Sept. 17-19 or Sept. 24-26 for a hearing on Nevada by Design's motion. I am unavailable the first two weeks of October as I will be in Mexico for a conference followed by vacation. I am available in October beginning on October 17<sup>th</sup>.

Prior to my e-mail response this morning, I had not had a chance to review Nevada by Design's motion to dismiss. The issues raised in that motion are unrelated to those raised in P&W's motion; therefore, I have no objection to the hearing of Nevada by Design's motion being set in September. Moreover, I can appear telephonically at the hearing on Nevada by Design's motion.

Best regards,  
Patrick

**From:** John T. Wendland [mailto:jwendland@weiltdrager.com]  
**Sent:** Monday, September 09, 2019 1:32 PM  
**To:** 'Carley, Justin'; Welch, Patrick F.; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

This message originated outside of Jennings Strouss.

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Justin:

We filed our motion on August 5<sup>th</sup>, the briefing has been long done, and frankly the motion should have been heard and decided today. As you know, the court unilaterally moved the hearing to a date almost two months away without any advance notice, and without confirming our availability. Regarding your call, I don't know who you spoke with, but we have a significant arbitration that will require preparation in early October, as the arbitration is set to take place at the time of the rescheduled hearing.

As the hearing was moved without our knowledge and consent, we simply cannot accommodate it. To this end, we requested the hearing be set to accommodate our conflicts in October. The Court proposed 5 days in September that it can hear our motions. The September dates are reasonable based on when the motion was filed, and the fact that the hearing was originally set for today. We see no reason the motion cannot be heard in September and disagree with the October dates.

With respect to the later filed motions submitted by parties asserting defenses unrelated to those raised in our motions, they have no bearing on what date should be set for our motions. As those motions address issues different from those addressed in our motions, we fail to see how there is any efficiency in trying to find a date

## John T. Wendland

---

**From:** Ramirez, Jorge <Jorge.Ramirez@wilsonelser.com>  
**Sent:** Monday, September 9, 2019 10:27 AM  
**To:** John T. Wendland; 'adhalla@swlaw.com'; Jeremy Kilber; 'rcox@peelbrimley.com'; 'tparker@pnalaw.net'; 'pwelch@jsslw.com'; 'charles@silverstatelaw.com'; Kahn, David  
**Cc:** Joanna Medina  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

**Follow Up Flag:** Moved to Worldox (Client Matters\2022\197\01612907.MSG)

Hi All,

We can be available any of those dates. Just let us know when we should schedule it.

Thanks,

Jorge

Jorge Ramirez  
Attorney at Law  
Wilson Elser Moskowitz Edelman & Dicker LLP  
300 South 4th Street - 11th Floor  
Las Vegas, NV 89101-6014  
702.727.1270 (Direct)  
702.354.6005 (Cell)  
702.727.1400 (Main)  
702.727.1401 (Fax)  
[jorge.ramirez@wilsonelser.com](mailto:jorge.ramirez@wilsonelser.com)

---

**From:** John T. Wendland [<mailto:jwendland@weildrage.com>]  
**Sent:** Monday, September 09, 2019 9:40 AM  
**To:** 'adhalla@swlaw.com' <[adhalla@swlaw.com](mailto:adhalla@swlaw.com)>; Jeremy Kilber <[jkilber@weildrage.com](mailto:jkilber@weildrage.com)>; Ramirez, Jorge <[Jorge.Ramirez@wilsonelser.com](mailto:Jorge.Ramirez@wilsonelser.com)>; 'rcox@peelbrimley.com' <[rcox@peelbrimley.com](mailto:rcox@peelbrimley.com)>; 'tparker@pnalaw.net' <[tparker@pnalaw.net](mailto:tparker@pnalaw.net)>; 'pwelch@jsslw.com' <[pwelch@jsslw.com](mailto:pwelch@jsslw.com)>; 'charles@silverstatelaw.com' <[charles@silverstatelaw.com](mailto:charles@silverstatelaw.com)>; Kahn, David <[David.Kahn@wilsonelser.com](mailto:David.Kahn@wilsonelser.com)>  
**Cc:** Joanna Medina <[jmedina@weildrage.com](mailto:jmedina@weildrage.com)>  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion  
**Importance:** High

Correction September 23-24<sup>th</sup>.

*John T. Wendland, Esq.*  
Partner  
WEIL & DRAGE, APC  
(702) 314-1905, Ext. 419 (Nevada)  
(602) 971-0159 (Arizona)  
Licensed in Nevada & Arizona



---

**From:** John T. Wendland  
**Sent:** Monday, September 9, 2019 9:38 AM  
**To:** 'adhalla@swlaw.com'; Jeremy Kilber; 'Ramirez, Jorge'; 'rcox@peelbrimley.com'; [tparker@pnalaw.net](mailto:tparker@pnalaw.net); 'pwelch@jsslaw.com'; [charles@silverstatelaw.com](mailto:charles@silverstatelaw.com); Kahn, David  
**Cc:** Joanna Medina  
**Subject:** City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion  
**Importance:** High

Good Morning counsels;

Late on Friday, we were notified that the hearing on Nevada By Design's Motion to Dismiss/MSJ was unilaterally moved into October, 2019. The moving of the hearing created a scheduling conflict with our office as we are involved in a complex arbitration hearing during the new hearing date. The Court has graciously provided new alternative hearing dates to accommodate our availability and has requested that we notify you of these for the hearing:

September 16-19 at 9:00 am

September 24-26 at 9:00 am

Please let us know which of the following dates will work for your schedule and we can notify the court of same.

Thank you,

*John T. Wendland, Esq.*

Partner

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---

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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at [www.wilsonelser.com](http://www.wilsonelser.com) or refer to any of our offices.

Thank you.

-Patrick

**From:** Ronnie Cox [<mailto:rcox@peelbrimley.com>]

**Sent:** Monday, September 09, 2019 9:49 AM

**To:** John T. Wendland; 'adhalla@swlaw.com'; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; Welch, Patrick F.; 'charles@silverstatelaw.com'; 'Kahn, David'

**Cc:** Joanna Medina; Ronnie Cox

**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

This message originated outside of Jennings Strouss.

Good morning,

We are available on the 19<sup>th</sup>, 23<sup>rd</sup> and 24<sup>th</sup>.

Sincerely,

**Ronald J. Cox, Esq.**

**Partner**



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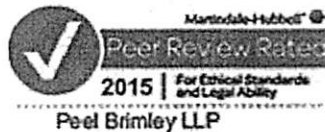
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*(Attorneys licensed to practice in: Nevada • Washington • California • Utah • Arizona • Hawaii • North Dakota • US Court of Federal Claims)*

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# **Exhibit D**

# **Exhibit D**

## John T. Wendland

---

**From:** Carley, Justin <jcarley@swlaw.com>  
**Sent:** Tuesday, September 10, 2019 4:04 PM  
**To:** John T. Wendland; 'Welch, Patrick F.'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

We are unavailable for the last two weeks of September. It's unfortunate that the Court rescheduled the hearings to a date you can't make work, but our schedules are just as hectic. We are fine with the current hearing date (Oct. 21) or almost anything in October with a few exceptions. We will try our best to accommodate you, we just can't make September work.

-Justin Carley  
(702) 784-5250

**From:** John T. Wendland <jwendland@weildrage.com>  
**Sent:** Tuesday, September 10, 2019 10:28 AM  
**To:** 'Welch, Patrick F.' <PWelch@jsslw.com>; Carley, Justin <jcarley@swlaw.com>; 'Ronnie Cox' <rcox@peelbrimley.com>; Dhalla, Aleem <adhalla@swlaw.com>; Jeremy Kilber <jkilber@weildrage.com>; 'Ramirez, Jorge' <Jorge.Ramirez@wilsonelser.com>; 'tparker@pnalaw.net' <tparker@pnalaw.net>; 'charles@silverstatelaw.com' <charles@silverstatelaw.com>; 'Kahn, David' <David.Kahn@wilsonelser.com>  
**Cc:** Joanna Medina <jmedina@weildrage.com>; Sharp, Deborah L. <DSharp@jsslw.com>  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion  
**Importance:** High

[EXTERNAL]

---

Justin: Just following up if you can provide any additional dates in September or not. If not, we will need to seek relief from the court. Let me know.

*John T. Wendland, Esq.*  
Partner  
WEIL & DRAGE, APC  
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Licensed in Nevada & Arizona

---

**From:** Welch, Patrick F. [mailto:PWelch@jsslw.com]  
**Sent:** Monday, September 9, 2019 5:07 PM  
**To:** John T. Wendland; 'Carley, Justin'; 'Ronnie Cox'; Dhalla, Aleem; Jeremy Kilber; 'Ramirez, Jorge'; 'tparker@pnalaw.net'; 'charles@silverstatelaw.com'; 'Kahn, David'  
**Cc:** Joanna Medina; Sharp, Deborah L.  
**Subject:** RE: City of North Las Vegas v. Dekker/Perich/Sabatini, Ltd.; et al./ Rescheduling of Hearing on NV by Design Motion

# **Exhibit E**

# **Exhibit E**

# Las Vegas Law Offices of Snell & Wilmer

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[CONTACT US](#)

[MAP](#)













[Offices](#) • Las Vegas

Located at the Hughes Center, Snell & Wilmer's Las Vegas law office sits in the heart of the city's business sector and is our fastest growing office. Opened in April 2001, our Las Vegas office has approximately 50 attorneys who offer a comprehensive range of transactional, regulatory and litigation services. For a full list of our areas of practice, please see our [Services](#) page.

Attorneys in our Las Vegas office hold leadership positions within the firm and in the Las Vegas, Nevada, American and Federal bar associations. Our Las Vegas attorneys are recurrently recognized for their achievements and dedication to their clients and have been named as Mountain States Super Lawyers, The Best Lawyers in America®, Best Corporate Lawyers in Nevada by Corporate Counsel Magazine, Chambers USA: America's Leading Lawyers for Business® and Lawdragon's 500 Leading Lawyers in America. Our attorneys also value commitment to civil service and have held high positions in many sectors of government.

Our Las Vegas law office deeply values our firm's commitment to community involvement, industry service and leadership. The office was given a Legal Aid Center of Southern Nevada Lied Award for most Pro Bono hours served in 2012, was named "Law Firm of the Year" by the Las Vegas Chapter of the National Bar Association in 2011 and earned the Diversity in Action Award by In Business Las Vegas in 2009. Through charitable and firm-sponsored events and outreach, the office has also provided countless hours and resources to organizations such as Aid for AIDS of Nevada, Communities in School and S.A.F.E. House.

## Las Vegas Attorneys & Professionals

<a href="#">Name</a>	<a href="#">Title</a>	<a href="#">Phone</a>	<a href="#">vCard</a>
 <a href="#">Michael S. Alires</a>	Associate	702.784.5279	
 <a href="#">Bradley Austin</a>	Associate	702.784.5247	
 <a href="#">Brian L. Blaylock</a>	Associate	702.784.5355	
 <a href="#">V.R. Bohman</a>	Associate	702.784.5282	
 <a href="#">Patrick G. Byrne</a>	Partner	702.784.5201	
 <a href="#">Justin L. Carley</a>	Partner	702.784.5250	

PET.APP.002306

**EXHIBIT 18**  
**PETITIONERS' APPENDIX**

**EXHIBIT 18**  
**PETITIONERS' APPENDIX**



Justin L. Carley, Esq.  
Nevada Bar No. 9994  
Aleem A. Dhalla, Esq.  
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[adhalla@swlaw.com](mailto:adhalla@swlaw.com)

*Attorneys for the City of North Las Vegas*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

City of North Las Vegas,

Plaintiff,

vs.

Dekker/Perich/Sabatini Ltd.; Richardson Construction, Inc.; Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants; JW Zunino & Associates, LLC; Melroy Engineering, Inc. d/b/a MSA Engineering Consultants; O'Connor Construction Management Inc.; Ninyo & Moore, Geotechnical Consultants; Jackson Family Partnership LLC d/b/a Stargate Plumbing; Avery Atlantic, LLC; Big C LLC; Ron Hanlon Masonry, LLC; The Guarantee Company of North America USA; P & W Bonds, LLC; Paffenbarger & Walden, LLC; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

**PLAINTIFF'S LIMITED OPPOSITION  
TO NEVADA BY DESIGN, LLC D/B/A  
NEVADA BY DESIGN ENGINEERING  
CONSULTANTS' MOTION TO  
CHANGE DATE OF HEARING ON  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT ON ORDER  
SHORTENING TIME**

The City of North Las Vegas ("City") submits this limited opposition to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' ("NBD") Motion to Change Date of Hearing ("Motion to Change Hearing Date") on Motion to Dismiss or, in the alternative, Motion for Summary Judgment on Order Shortening Time ("Underlying Motion").

## I. INTRODUCTION

The City opposes NBD's request to unfairly advance the hearing date on the Underlying Motion, but it does not oppose changing the hearing date to any of the following dates: October 15, 16, 17, 18, 21, 22, 23, 24, 25, November 5, 6, 7, 11, 12, 13, 14, 15<sup>1</sup> or any other mutually available date after discussion between counsel.

The City already explained that its counsel is unable to attend a hearing in the last two weeks of September, but offered to work with NBD to find a mutually agreeable replacement date.<sup>2</sup> Despite knowing that the City was unavailable, NBD filed the Motion to Change Hearing Date on an Order Shortening Time, forcing the City to make special arrangements to appear at the September 27<sup>th</sup> hearing.<sup>3</sup> It seems that NBD's counsel believes its schedule is more important than the City's or its counsel. Hypocritically, NBD argues that its counsel cannot attend a hearing on *any day* in October but is unwilling to accept that the City's counsel is unavailable for two weeks in September.

Therefore, the City respectfully requests that the Court either keep the October 21<sup>st</sup> hearing date on the Underlying Motion or change it to any of the above dates, or any other mutually available date after discussion between counsel.

## II. PROCEDURAL HISTORY

The City filed its complaint on July 11, 2019 and served NBD on July 22<sup>nd</sup>. NBD filed the Underlying Motion on August 5<sup>th</sup>; the Court noticed the hearing to occur on September 9<sup>th</sup>. Dekker/Perich/Sabatini Ltd. ("Dekker") joined the Underlying Motion on August 6<sup>th</sup>. Melroy Engineering, Inc. d/b/a MSA Engineering Consultants ("MSA") joined the Underlying Motion on August 8<sup>th</sup>. Ninyo & Moore, Geotechnical Consultants ("N&M") joined the Underlying Motion on August 23<sup>rd</sup>. Jackson Family Partnership LLC d/b/a Stargate Plumbing ("Stargate") joined the Underlying Motion on August 23<sup>rd</sup>. P & W Bonds, LLC and Paffenbarger & Walden, LLC (collectively "P&W") joined the Underlying Motion on September 13<sup>th</sup>.

---

<sup>1</sup> Thereafter, the City's counsel will begin a five-week trial.

<sup>2</sup> Mot. to Change Hearing Date, Ex. D.

<sup>3</sup> All attorneys from Snell & Wilmer's commercial litigation practice group were scheduled to be in Scottsdale, Arizona on September 26–27 for the practice group's annual meeting.

1 Other defendants also filed their own dispositive motions, to which the City has had to  
2 respond. Dekker filed its motion to dismiss on August 6<sup>th</sup>. P&W filed its motion to dismiss on  
3 August 30<sup>th</sup>. Richardson Construction, Inc. and The Guarantee Company of North America USA  
4 filed their motion to dismiss on September 4<sup>th</sup>.<sup>4</sup> Given the flurry of related briefing, on September  
5 6<sup>th</sup>, the Court consolidated the hearing on NBD's Underlying Motion with the other defendants'  
6 dispositive motions, setting the hearings for October 21<sup>st</sup>, where they are still currently set. See  
7 Docket, Ex. 1; Mot. to Change Hearing Date, Ex. B.

8 On September 9<sup>th</sup>, NBD's counsel e-mailed all counsel asking to advance the hearing on the  
9 Underlying Motion into the last two weeks of September. Mot. to Change Hearing Date, Ex. C.  
10 Unfortunately, the City was unavailable and explained:

11 We are unavailable for the last two weeks of September. It's  
12 unfortunate that the Court rescheduled the hearings to a date you  
13 can't make work, but our schedules are just as hectic. We are fine  
14 with the current hearing date (Oct. 21) or almost anything in October  
with a few exceptions. ***We will try our best to accommodate you,  
we just can't make September work.***

15 See Mot. to Change Hearing Date, Ex. D (emphasis added).

16 Instead of responding and trying to agree on a date, NBD filed its Motion to Change Hearing  
17 Date on an Order Shorting Time, serving the parties on September 18<sup>th</sup>. The OST set the hearing  
18 on the Motion to Change Hearing date for September 27<sup>th</sup>, a date the City's counsel had already  
19 told NBD was unavailable. And then, on Friday evening, September 20<sup>th</sup>, after the close of  
20 business, NBD e-served a letter stating it had spoken to the Court's clerk and the Court would  
21 instead hear argument on NBD's Underlying Motion at the September 27<sup>th</sup> hearing. See Ex. 2.  
22 However, the Court has not issued an order granting the Motion to Change Hearing Date and the  
23 Court's docket still shows that the Underlying Motion is scheduled to be heard on October 21<sup>st</sup>,  
24 along with the other dispositive motions. *Id.* This makes sense, otherwise it would mean that the  
25 Motion to Change Hearing Date was granted before the City was able to file an Opposition or be  
26 heard on the subject at all. That's the opposite of due process.

27  
28 <sup>4</sup> Stargate also filed its own motion to dismiss on July 31<sup>st</sup>, which it withdrew on August 27<sup>th</sup>  
following the City's August 16<sup>th</sup> motion to strike.

### III. ARGUMENT

The Court should either keep the October 21<sup>st</sup> hearing date for the Underlying Motion or change it to a mutually agreeable date, not one that NBD selects by itself. The Court has the power to control its own calendar. EDCR 1.90(b). Unless the hearing for a motion is vacated or continued, “counsel for all parties to the motion must appear on the date and at the time set for hearing.” EDCR 2.22(a). The interested parties may vacate or continue a hearing date by written stipulation only. EDCR 2.22(b). “Counsel may not remove motions from the calendar by calling the clerk’s office or the judge’s chambers.” *Id.*

Here, the hearing on the Underlying Motion is set for October 21<sup>st</sup>. Ex. 1. The Court vacated the earlier hearing date and consolidated it with the hearings on other dispositive motions. Mot. to Change Hearing Date, Ex. B. NBD is required to attend under EDCR 2.22(a). However, the City understands that NBD’s counsel is unavailable the entire month of October preparing for a “complex AAA arbitration hearing.” Mot. to Change Hearing Date, 5:20–22. Thus, the City is willing to accommodate NBD’s schedule, but September is just not possible.<sup>5</sup> The City is available October 15, 16, 17, 18, 21, 22, 23, 24, 25, November 5, 6, 7, 11, 12, 13, 14, 15 or any other mutually available date after discussion between counsel.

### IV. CONCLUSION

NBD fails to explain the urgency of having the Underlying Motion heard in September. The City is willing to accommodate NBD’s schedule, but the last two weeks of September are just not possible. Therefore, the City requests the Court either keep the October 21<sup>st</sup> hearing date or change it to any of the above dates, or any other mutually available date after discussion between counsel.

Dated: September 26, 2019.

SNELL & WILMER L.L.P.

By: 

Justin L. Carley, Esq. (NV Bar No. 9994)  
Aleem A. Dhalla, Esq. (NV Bar No. 14188)  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
*Attorneys for the City of North Las Vegas*

<sup>5</sup> For the only remaining hearing date in September (Monday, September 30<sup>th</sup>), the City’s new counsel will be in a deposition all day.

**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 this date, I caused to be served a true and correct copy of the foregoing **PLAINTIFF'S LIMITED OPPOSITION TO NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO CHANGE DATE OF HEARING ON MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT ON ORDER SHORTENING TIME** to the following:

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Ronald J. Cox, Esq.  
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-and-  
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-and-  
Paul A. Acker, Esq.  
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*Attorneys for Defendant Jackson Family  
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*Attorney for Defendant Richardson  
Construction, Inc. and The Guarantee  
Company of North America USA*

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*Attorneys for Defendant Nevada By Design,  
LLC d/b/a Nevada by Design Engineering  
Consultants and Dekker/Perich/Sabatini, Ltd.*

Jeremy R. Kilber, Esq.  
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-and-  
Patrick F. Welch, Esq.  
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Phoenix, Arizona 85004  
[pwelch@jsslaw.com](mailto:pwelch@jsslaw.com)  
*Attorneys for Defendants Paffenbarger &  
Walden, LLC and P & W Bonds, LLC*

Dated: September 26, 2019.

/s/ Lyndsey Luxford  
An employee of SNELL & WILMER L.L.P.

# **EXHIBIT 1**

Case No. A-19-798349-C Docket

# **EXHIBIT 1**

Case No. A-19-798349-C Docket

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## REGISTER OF ACTIONS

CASE NO. A-19-798346-C

North Las Vegas City of, Plaintiff(s) vs. Dekker/Perich/Sabatini Ltd,  
Defendant(s)

§  
§  
§  
§  
§  
§

Case Type: **Building and Construction**  
Date Filed: **07/11/2019**  
Location: **Department 8**  
Cross-Reference Case Number: **A798346**

### PARTY INFORMATION

		Lead Attorneys
Defendant	Avery Atlantic LLC	
Defendant	Big C LLC	
Defendant	Dekker/Perich/Sabatini Ltd	<b>John T. Wendland</b> <i>Retained</i> 7023141905(W)
Defendant	Guarantee Company of North America USA	<b>Theodore Parker</b> <i>Retained</i> 7028388600(W)
Defendant	Jackson Family Partnership LLC <i>Doing Business As</i> Stargate Plumbing	<b>Richard L. Peel</b> <i>Retained</i> 7029907272(W)
Defendant	JW Zunino & Associates LLC	
Defendant	Melroy Engineering Inc <i>Doing Business As</i> MSA Engineering Consultants	<b>Jeremy R Kilber, ESQ</b> <i>Retained</i> 702-314-1905(W)
Defendant	Nevada by Design LLC <i>Doing Business As</i> Nevada by Design Engineering Consultants	<b>John T. Wendland</b> <i>Retained</i> 7023141905(W)
Defendant	Ninyo & Moore Geotechnical Consultants	<b>Jorge A. Ramirez</b> <i>Retained</i> 702-727-1400(W)
Defendant	P & W Bonds LLC	<b>Charles W Bennion</b> <i>Retained</i> 702-830-0833(W)
Defendant	Paffenbarger & Walden LLC	<b>Charles W Bennion</b> <i>Retained</i> 702-830-0833(W)
Defendant	Richardson Construction Inc	<b>Theodore Parker</b> <i>Retained</i> 7028388600(W)
Defendant	Ron Hanlon Masonry LLC	
Plaintiff	North Las Vegas City of	<b>Justin L. Carley</b> <i>Retained</i> 7027845200(W)

### EVENTS & ORDERS OF THE COURT

| DISPOSITIONS

**PET.APP.002314**



09/11/2019	<b>Order of Dismissal Without Prejudice</b> (Judicial Officer: Vacant, DC 8) Debtors: O'Connor Construction Management Inc (Defendant) Creditors: North Las Vegas City of (Plaintiff) Judgment: 09/11/2019, Docketed: 09/12/2019
	<b>OTHER EVENTS AND HEARINGS</b>
07/11/2019	<b>Complaint</b> <i>Complaint</i>
07/11/2019	<b>Initial Appearance Fee Disclosure</b> <i>Initial Appearance Fee Disclosure</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/19/2019	<b>Summons Electronically Issued - Service Pending</b> <i>Summons - Civil</i>
07/22/2019	<b>Request for Exemption From Arbitration</b> <i>Request for Exemption from Arbitration</i>
07/31/2019	<b>Motion to Dismiss</b> <i>(8/27/19 Withdrawn) Motion to Dismiss</i>
07/31/2019	<b>Clerk's Notice of Hearing</b> <i>Notice of Hearing</i>
08/05/2019	<b>Initial Appearance Fee Disclosure</b> <i>Initial Appearance Fee Disclosure</i>
08/05/2019	<b>Motion for Summary Judgment</b> <i>Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment</i>
08/06/2019	<b>Clerk's Notice of Hearing</b> <i>Notice of Hearing</i>
08/06/2019	<b>Affidavit of Service</b> <i>Affidavit/Declaration of Service - Dekker/Perich/Sabatini Ltd.</i>
08/06/2019	<b>Affidavit of Service</b> <i>Affidavit/Declaration of Service - Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants</i>
08/06/2019	<b>Affidavit of Service</b> <i>Affidavit/Declaration of Service - Jackson Family Partnership LLC d/b/a Stargate Plumbing</i>
08/06/2019	<b>Affidavit of Service</b> <i>Affidavit/Declaration of Service - JW Zunino &amp; Associates, LLC</i>
08/06/2019	<b>Affidavit of Service</b> <i>Affidavit/Declaration of Service - Melroy Engineering, Inc. d/b/a MSA Engineering Consultants</i>
08/06/2019	<b>Affidavit of Service</b> <i>Affidavit/Declaration of Service - Ninyo &amp; Moore, Geotechnical Consultants</i>
08/06/2019	<b>Affidavit of Service</b> <i>Affidavit/Declaration of Service - O'Connor Construction Management, Inc.</i>
08/06/2019	<b>Affidavit of Service</b> <i>Affidavit/Declaration of Service - Richardson Construction, Inc.</i>
08/06/2019	<b>Affidavit of Service</b> <i>Affidavit/Declaration of Service - Paffenbarger &amp; Walden L.L.C.</i>
08/06/2019	<b>Proof of Service</b> <i>Proof of Service - The Guarantee Company of North America USA</i>
08/06/2019	<b>Initial Appearance Fee Disclosure</b> <i>Initial Appearance Fee Disclosure</i>
08/06/2019	<b>Joinder to Motion For Summary Judgment</b> <i>Defendant Dekker/Perich/Sabatini, LTD.'s Joinder to Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment</i>
08/06/2019	<b>Motion to Dismiss</b> <i>Defendant Dekker/Perich/Sabatini, LTD.'s Motion to Dismiss</i>
08/06/2019	<b>Clerk's Notice of Hearing</b> <i>Notice of Hearing</i>
08/08/2019	<b>Initial Appearance Fee Disclosure</b> <i>Initial Appearance Fee Disclosure</i>
08/08/2019	<b>Notice of Appearance</b> <i>Notice of Appearance of Counsel</i>
08/08/2019	<b>Joinder</b> <i>Defendant Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Joinder to Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment</i>
08/15/2019	<b>Motion to Strike</b> <i>Plaintiff's Motion to Strike and Opposition to Defendant Jackson Family Partnership LLC d/b/a Stargate Plumbing's Motion to Dismiss</i>
08/16/2019	<b>Clerk's Notice of Hearing</b> <i>Notice of Hearing</i>
08/20/2019	<b>Opposition to Motion</b>

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Plaintiff's Opposition to Defendant Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultant's Motion to Dismiss or, in the Alternative, Motion for Summary Judgement

08/20/2019 **Appendix**  
Appendix of Exhibits to Plaintiff's Opposition to Defendant Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultant's Motion to Dismiss or in the Alternative, Motion for Summary Judgement

08/20/2019 **Opposition**  
Plaintiffs Opposition to Defendant Dekker/Perich/Sabatini Ltd.'s Motion to Dismiss

08/20/2019 **Appendix**  
Appendix of Exhibits to Plaintiffs Opposition to Defendant Dekker/Perich/Sabatini Ltd.'s Motion to Dismiss

08/23/2019 **Joinder To Motion**  
Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgement

08/23/2019 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure

08/23/2019 **Joinder To Motion**  
Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgement

08/23/2019 **Disclosure Statement**  
Ninyo & Moore, Geotechnical Consultants' NRCP 7.1 Disclosure Statement

08/23/2019 **Notice of Appearance**  
Notice of Appearance

08/23/2019 **Joinder**  
Jackson Family Partnership LLC dba Stargate Plumbing's Joinder To Nevada By Design, LLC dba Nevada By Design Engineering Consultants Motion To Dismiss Or, In The Alternative, Motion For Summary Judgment

08/24/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

08/27/2019 **Notice of Withdrawal of Motion**  
Notice of Withdrawal of Motion

08/28/2019 **Reply to Opposition**  
Dekker/Perich/Sabatini, Ltd.'s Reply to Plaintiff's Opposition to Its Motion to Dismiss

08/28/2019 **Reply to Opposition**  
Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultant's Reply to Plaintiff's Opposition to Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

08/30/2019 **Filing Fee Remittance**  
Filing Fee Remittance

08/30/2019 **Initial Appearance Fee Disclosure**  
Fee Disclosure

08/30/2019 **Motion to Dismiss**  
Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC's Motion to Dismiss

08/30/2019 **Filing Fee Remittance**  
Filing fee for Ninyo & Moore's Joinder to Nevada by Design's Motion for Summary Judgment

09/04/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

09/04/2019 **Motion to Dismiss**  
Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA s Motion to Dismiss

09/04/2019 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure (NRS Chapter 19)

09/06/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

09/06/2019 **Joinder To Motion**  
Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants Motion To Dismiss Or, In The Alternative, Motion For Summary Judgment

09/06/2019 **Notice of Rescheduling of Hearing**  
Notice of Rescheduling Motions to Dismiss and Joinders

09/06/2019 **Clerk's Notice of Hearing**  
Notice of Hearing

09/09/2019 **CANCELED Motion to Dismiss** (8:30 AM) (Judicial Officer Bonaventure, Joseph T.)  
Vacated - per Law Clerk  
Defendant Jackson Family Partnership LLC's Motion to Dismiss  
09/03/2019 Reset by Court to 09/09/2019

09/09/2019 **CANCELED Motion to Strike** (8:30 AM) (Judicial Officer Bonaventure, Joseph T.)  
Vacated - per Law Clerk  
Plaintiff's Motion to Strike and Opposition to Defendant Jackson Family Partnership LLC d/b/a Stargate Plumbing's Motion to Dismiss  
09/18/2019 Reset by Court to 09/09/2019

09/10/2019 **Association of Counsel**  
Association of Counsel for Defendant Jackson Family Partnership LLC dba Stargate Plumbing

09/11/2019 **Stipulation and Order for Dismissal Without Prejudice**  
Stipulation and Order to Dismiss O'Connor Construction Management Inc. Without Prejudice

09/12/2019 **Notice of Entry**  
Notice of Entry of Stipulation and Order to Dismiss O'Connor Construction Management Inc. Without Prejudice

09/13/2019 **Opposition**  
Plaintiff's Opposition to Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC's Motion to Dismiss

09/13/2019 **Joinder To Motion**  
Defendants Paffenbarger & Walden, LLC's and P & W Bonds, LLC's Limited Joinder in Nevada By Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

09/16/2019 **Opposition to Motion**  
Plaintiff's Opposition to Defendants Richardson Construction, Inc.'s and The Guarantee Company of North America USA's Motion to Dismiss

09/18/2019 **Notice of Association of Counsel**  
2019.09.18 Notice of Association of Counsel for Defendant Jackson Family Partnership, LLC . dba Stargate Plumbing's

09/18/2019 **Motion**  
Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Change Date of Hearing on Motion to Dismiss or, In the Alternative, Motion for Summary Judgment on Order Shortening Time

09/20/2019 **Receipt of Copy**

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	Receipt of Copy		
09/20/2019	<b>Reply in Support</b> Defendants Paffenbarger & Walden, LLC's and P&W Bonds, LLC's Reply in Support of Their Motion to Dismiss		
09/23/2019	<b>Reply in Support</b> Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA s Reply in Support of Motion to Dismiss		
09/27/2019	<b>Motion</b> (9:30 AM) (Judicial Officer Vacant, DC 8) Defendant Nevada By Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Change Date of Hearing on Motion to Dismiss or, in the Alternative Motion for Summary Judgment on Order Shortening Time		
10/21/2019	<b>Motion to Dismiss</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment 09/09/2019 Reset by Court to 10/21/2019		
10/21/2019	<b>Motion to Dismiss</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Defendant Dekker/Perich/Sabatini, LTD.'s Motion to Dismiss 09/09/2019 Reset by Court to 10/21/2019		
10/21/2019	<b>Joinder</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Defendant Dekker/Perich/Sabatini, LTD.'s Joinder to Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment 09/09/2019 Reset by Court to 10/21/2019		
10/21/2019	<b>Joinder</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Defendant Melroy Engineering, Inc. d/b/a MSA Engineering Consultants' Joinder to Defendant Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, In the Alternative, Motion for Summary Judgment 09/09/2019 Reset by Court to 10/21/2019		
10/21/2019	<b>Joinder</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Defendants Ninyo & Moore, Geotechnical Consultants' Joinder to Nevada by Design, LLC d/b/a Nevada by Design Engineering Consultants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment 09/09/2019 Reset by Court to 10/21/2019		
10/21/2019	<b>Joinder</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Jackson Family Partnership LLC dba Stargate Plumbing's Joinder To Nevada By Design, LLC dba Nevada By Design Engineering Consultants Motion To Dismiss Or, In The Alternative, Motion For Summary Judgment 09/09/2019 Reset by Court to 10/21/2019		
10/21/2019	<b>Motion to Dismiss</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Defendants Paffenbarger & Walden, LLC and P & W Bonds, LLC's Motion to Dismiss 10/01/2019 Reset by Court to 10/21/2019		
10/21/2019	<b>Motion to Dismiss</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Defendants Richardson Construction, Inc. and The Guarantee Company of North America USA s Motion to Dismiss		
10/21/2019	<b>Joinder</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Joinder to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants Motion To Dismiss Or, In The Alternative, Motion For Summary Judgment		
10/21/2019	<b>CANCELED Motion to Dismiss</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Vacated - Duplicate Entry Defendants Richardson Construction Inc and the Guarantee Company of North America USA Motion to Dismiss		
10/21/2019	<b>Joinder</b> (8:30 AM) (Judicial Officer Vacant, DC 8) Defendants Paffenbarger & Walden, LLC's and P & W Bonds, LLC's Limited Joinder in Nevada By Design Engineering Consultants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment		

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**FINANCIAL INFORMATION**


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	<b>Defendant Dekker/Perich/Sabatini Ltd</b>		
	Total Financial Assessment		423.00
	Total Payments and Credits		423.00
	<b>Balance Due as of 09/26/2019</b>		<b>0.00</b>
08/06/2019	Transaction Assessment		423.00
08/06/2019	Efile Payment	Receipt # 2019-47987-CCCLK Dekker/Perich/Sabatini Ltd	(423.00)
	<b>Defendant Jackson Family Partnership LLC</b>		
	Total Financial Assessment		423.00
	Total Payments and Credits		423.00
	<b>Balance Due as of 09/26/2019</b>		<b>0.00</b>
07/31/2019	Transaction Assessment		223.00
07/31/2019	Payment (Window)	Receipt # 2019-46638-CCCLK Jackson Family Partnership LLC	(223.00)
08/30/2019	Transaction Assessment		200.00
08/30/2019	Efile Payment	Receipt # 2019-53393-CCCLK Jackson Family Partnership LLC	(200.00)
	<b>Defendant Melroy Engineering Inc</b>		
	Total Financial Assessment		423.00
	Total Payments and Credits		423.00
	<b>Balance Due as of 09/26/2019</b>		<b>0.00</b>
08/08/2019	Transaction Assessment		423.00
08/08/2019	Efile Payment	Receipt # 2019-48560-CCCLK Melroy Engineering Inc	(423.00)

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		<b>Defendant Nevada by Design LLC</b>	
		Total Financial Assessment	423.00
		Total Payments and Credits	423.00
		<b>Balance Due as of 09/26/2019</b>	<b>0.00</b>
08/05/2019	Transaction Assessment		423.00
08/05/2019	Efile Payment	Receipt # 2019-47678-CCCLK	(423.00)
		Nevada by Design LLC	
		<b>Defendant Ninyo &amp; Moore Geotechnical Consultants</b>	
		Total Financial Assessment	423.00
		Total Payments and Credits	423.00
		<b>Balance Due as of 09/26/2019</b>	<b>0.00</b>
09/03/2019	Transaction Assessment		423.00
09/03/2019	Efile Payment	Receipt # 2019-53679-CCCLK	(423.00)
		Ninyo & Moore Geotechnical Consultants	
		<b>Defendant Paffenbarger &amp; Walden LLC</b>	
		Total Financial Assessment	453.00
		Total Payments and Credits	0.00
		<b>Balance Due as of 09/26/2019</b>	<b>453.00</b>
09/04/2019	Transaction Assessment		253.00
09/16/2019	Transaction Assessment		200.00
		<b>Defendant Richardson Construction Inc</b>	
		Total Financial Assessment	253.00
		Total Payments and Credits	253.00
		<b>Balance Due as of 09/26/2019</b>	<b>0.00</b>
09/04/2019	Transaction Assessment		253.00
09/04/2019	Efile Payment	Receipt # 2019-54213-CCCLK	(253.00)
		Richardson Construction Inc	
		<b>Plaintiff North Las Vegas City of</b>	
		Total Financial Assessment	270.00
		Total Payments and Credits	270.00
		<b>Balance Due as of 09/26/2019</b>	<b>0.00</b>
07/11/2019	Transaction Assessment		270.00
07/11/2019	Efile Payment	Receipt # 2019-42414-CCCLK	(270.00)
		City of North Las Vegas	

# **EXHIBIT 2**

September 20, 2019 Letter from John T. Wendland

# **EXHIBIT 2**

September 20, 2019 Letter from John T. Wendland

JEAN A. WEIL (Ret.)  
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September 20, 2019

**VIA E-SERVICE**

ALL COUNSEL

Re: *City of North Las Vegas vs. Dekker/Perich/Sabatini, Ltd.; et al.*  
Case No.: A-19-798346-C  
Our Client: Nevada By Design, LLC dba Nevada By Design Engineering  
Consultants  
Our File No.: 2022.197

Dear Counsels:

Following clarification from the Court clerk, please be advised that the Court will hear Defendant Nevada By Design, LLC d/b/a Nevada by Design Engineering Consultants' ("NBD") Motion to Dismiss or, in the Alternative, Motion for Summary Judgment at the September 27, 2019 hearing. Counsels for all interested parties to said motion, are expected to appear and argue their respective positions on same.

Thank you for your time and attention.

Very truly yours,

WEIL & DRAGE, APC

/s/ *John T. Wendland*

John T. Wendland, Esq.

JTW: jym

cc: Eighth Judicial District Court, Dept. 8

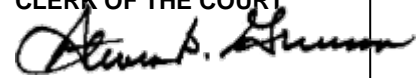
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**EXHIBIT 19**  
**PETITIONERS' APPENDIX**

**EXHIBIT 19**  
**PETITIONERS' APPENDIX**



**RPLY**

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

ANTHONY D. PLATT, ESQ.

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Attorneys for Defendant,

NEVADA BY DESIGN, LLC d/b/a

NEVADA BY DESIGN ENGINEERING CONSULTANTS

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

DEKKER/PERICH/SABATINI LTD.;

RICHARDSON CONSTRUCTION, INC.;

NEVADA BY DESIGN, LLC D/B/A NEVADA BY

DESIGN ENGINEERING CONSULTANTS; JW

ZUNINO & ASSOCIATES, LLC; MELROY

ENGINEERING, INC. D/B/A MSA

ENGINEERING CONSULTANTS; O'CONNOR

CONSTRUCTION MANAGEMENT INC.; NINYO

& MOORE, GEOTECHNICAL CONSULTANTS;

JACKSON FAMILY PARTNERSHIP LLC D/B/A

STARGATE PLUMBING; AVERY ATLANTIC,

LLC; BIG C LLC; RON HANLON MASONRY,

LLC; THE GUARANTEE COMPANY OF NORTH

AMERICA USA; P & W BONDS, LLC;

PAFFENBARGER & WALDEN, LLC; DOES I

through X, inclusive; and ROE CORPORATIONS I

through X, inclusive,

Defendants.

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

**NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN  
ENGINEERING CONSULTANTS'  
REPLY TO PLAINTIFF'S LIMITED  
OPPOSITION TO MOTION TO  
CHANGE DATE OF HEARING**

Hearing Date: 09/27/19

Hearing Time: 9:30 a.m.



**NEVADA BY DESIGN, LLC d/b/a**  
**NEVADA BY DESIGN ENGINEERING CONSULTANTS' REPLY TO PLAINTIFF'S**  
**LIMITED OPPOSITION TO MOTION TO CHANGE DATE OF HEARING**

As correctly stated by Plaintiff City of North Las Vegas ("Plaintiff"), the Court has the power to control its own calendar. *See*, EDCR 1.90(b); *see also*, Limited Opp. at Pg. 4: Lines 4-5. Here, the Court previously moved the hearing on Nevada By Design's Motion to Dismiss/Motion for Summary Judgment from September 9, 2019 to October 21, 2019 on September 6, 2019. This change prejudiced NBD as it conflicted with a pending AAA action and potentially created new issues that did not exist if NBD's Motion was heard on September 9, 2019.

After a failed attempt to secure consent from all counsels to move the hearing to the Court's available dates in September 2019<sup>1</sup>. NBD's prejudice was based on two factors: (1) A scheduling conflict with a AAA matter; (2) the change in the position of the parties after the pleadings were fully briefed and ready for decision; and (3) the potential that one or more arguments in the underlying motion may be impacted and require additional briefing and consideration solely based on the hearing moving past October 1, 2019. *See*, NBD's Motion to Change.

The relief requested was a date in September 2019 which was reasonable, as the matter was previously scheduled for a hearing in September 9<sup>th</sup>, 2019; fully briefed and all interested parties were ready for oral argument. Requesting a date in September 2019 did not result in any prejudice to Plaintiff, as the issues were ready for oral argument and counsel for Plaintiff is from a firm with at least fifty (50) lawyers.

The Court set the hearing for September 27, 2019. Following clarification on what would be heard on September 27, 2019, counsel for NBD conveyed to counsels for all parties the information that the Court would be considering the arguments in NBD's Motion to Dismiss/Motion for Summary Judgment. Thus, Plaintiff's counsel had this information for over a week and on the eve of the hearing has filed a Limited Opposition.

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<sup>1</sup> Plaintiff apparently fails to understand that the motion to move the hearing seeks a date in September 2019 which is September 27, 2019 or another date in September.

1 Plaintiff's Limited Opposition does not dispute (at all) the second reason for which NBD  
2 requested a hearing in September 2019. Therefore, under EDCR 2.20, NBD's justifications to  
3 move the hearing for reasons other than a scheduling conflict, is unopposed and should be deemed  
4 good cause for the requested relief. EDCR 2.26.

5 Turning to the core arguments in the Opposition, Plaintiff clearly does not want the  
6 hearing in September 2019 as the only dates offered are in October or November 2019. While  
7 those dates could resolve the first factor presented, a hearing in October or November 2019 would  
8 still prejudice NBD for the other factors. Ultimately, the requested relief was not to move the  
9 October 21, 2019 hearing but rather to move the hearing to a date in September 2019. See,  
10 Motion to Move. This point seems to be completely ignored by Plaintiff.

11 Ultimately, there does not appear to be unfair prejudice to Plaintiff's counsel. Counsel has  
12 a number of other well qualified attorneys to appear and argue against NBD's Motions. Counsel  
13 also had a week to prepare for the September 27, 2019 hearing including any arguments on the  
14 underlying NBD's Motions. These issues were fully briefed, the Motions filed for a couple of  
15 months now and the parties should be placed in the same position they were on September 9,  
16 2019.

17 For said reasons, NBD respectfully requests that the Motion to Change the Hearing Date to  
18 a date in September 2019 be granted (if it has not been granted under EDCR 2.26) and that the  
19 Court hear the underlying Motion on September 27, 2019.

20 DATED this 26<sup>th</sup> day of September, 2019.

21 WEIL & DRAGE, APC

22 /s/ John T. Wendland

23 By: \_\_\_\_\_

24 JOHN T. WENDLAND, ESQ.

25 (Nevada Bar No. 7207)

26 ANTHONY D. PLATT, ESQ.

27 (Nevada Bar No. 9652)

28 2500 Anthem Village Drive

Henderson, NV 89052

Attorneys for Defendant,

NEVADA BY DESIGN, LLC D/B/A NEVADA

BY DESIGN ENGINEERING CONSULTANTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26<sup>th</sup> day of September, 2019, service of the foregoing **NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' REPLY TO PLAINTIFF'S LIMITED OPPOSITION TO MOTION TO CHANGE DATE OF HEARING** is and was made this date by electronically serving a true and correct copy of the same, through Clark County Odyssey eFileNV, to the following parties:

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Aleem A. Dhalla, Esq.  
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dba STARGATE PLUMBING

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JACKSON FAMILY PARTNERSHIP LLC  
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dba STARGATE PLUMBING

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2460 Professional Court, Suite 200  
Las Vegas, NV 89128  
Attorney for Defendants,  
RICHARDSON CONSTRUCTION, INC. and  
GUARANTEE COMPANY OF NORTH  
AMERICA USA

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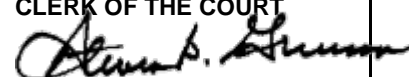
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P & W BONDS LLC

*/s/ Joanna Medina*

\_\_\_\_\_  
Joanna Medina, an Employee of  
WEIL & DRAGE, APC

**EXHIBIT 20**  
**PETITIONERS' APPENDIX**

**EXHIBIT 20**  
**PETITIONERS' APPENDIX**



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*Attorneys for the City of North Las Vegas*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

City of North Las Vegas,

Plaintiff,

vs.

Dekker/Perich/Sabatini Ltd.; Richardson  
Construction, Inc.; Nevada By Design, LLC  
d/b/a Nevada By Design Engineering  
Consultants; JW Zunino & Associates, LLC;  
Melroy Engineering, Inc. d/b/a MSA  
Engineering Consultants; O'Connor  
Construction Management Inc.; Ninyo &  
Moore, Geotechnical Consultants; Jackson  
Family Partnership LLC d/b/a Stargate  
Plumbing; Avery Atlantic, LLC; Big C LLC;  
Ron Hanlon Masonry, LLC; The Guarantee  
Company of North America USA; P & W  
Bonds, LLC; Paffenbarger & Walden, LLC;  
DOES I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

**PLAINTIFF'S SURREPLY TO  
NEVADA BY DESIGN, LLC D/B/A  
NEVADA BY DESIGN ENGINEERING  
CONSULTANTS' MOTION TO  
CHANGE DATE OF HEARING ON  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT ON ORDER  
SHORTENING TIME**

The City of North Las Vegas ("City") submits this Surreply to Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' ("NBD") Motion to Change Date of Hearing ("Motion to Change Hearing Date") on Motion to Dismiss or, in the alternative, Motion for Summary Judgment on Order Shortening Time ("Underlying Motion").

1 Normally, the City would seek leave to file this brief, however, because: (1) NBD obtained  
2 an Order Shortening Time on an *ex parte* basis regarding its Motion to Change Hearing Date, (2)  
3 NBD raised new arguments in its Reply, and (3) on September 27<sup>th</sup>, Justice Cherry continued the  
4 matter for a hearing before Judge Atkin on September 30, 2019, there is no time.

## 5 I. INTRODUCTION

6 As already stated in its Limited Opposition, the City opposes NBD's request to unfairly  
7 advance the hearing date on the Underlying Motion, but it does not oppose changing the hearing  
8 date to any of the following dates: October 15, 16, 17, 18, 21, 22, 23, 24, 25, November 5, 6, 7, 11,  
9 12, 13, 14, 15 or any other mutually available date after discussion between counsel.

10 First, NBD's argument that its Motion to Change Hearing Date should be granted as  
11 unopposed under EDCR 2.20 is flawed. The pertinent portion of the rule reads:

12 (e) Within 10 days after the service of the motion, and 5 days after service of any  
13 joinder to the motion, the opposing party must serve and file written notice of  
14 nonopposition or opposition thereto, together with a memorandum of points and  
15 authorities and supporting affidavits, if any, stating facts showing why the motion  
16 and/or joinder should be denied. Failure of the opposing party to serve and file  
17 written opposition may be construed as an admission that the motion and/or joinder  
18 is meritorious and a consent to granting the same.

19 Thus, the plain language of the rule merely requires an opposition be filed, which the City  
20 did. The rule does not require that an opposition address every argument made in a motion, no  
21 matter how far-fetched or silly they may be.

22 Second, and this is a matter of some consequence, NBD's assertion that hearing the  
23 Underlying Motion before October 1<sup>st</sup> is required for substantive reasons is likewise flawed. As an  
24 initial matter, that is just wrong. The statute of repose at issue will become effective on Tuesday,  
25 October 1<sup>st</sup>, but the Nevada Legislature made it applicable "retroactively to actions in which the  
26 substantial completion of the improvement to the real property occurred before October 1, 2019."<sup>1</sup>  
27 There is no dispute that substantial completion of the improvement at issue here occurred before  
28 that date.

<sup>1</sup> AB 421, 80th Leg. (2019). AB 421 was signed into law by the Governor on June 3, 2019.

Even if this interpretation were wrong, and the Court decided to grant the Motion to Change the Hearing Date and then somehow grant the Underlying Motion itself before October 1<sup>st</sup>, the City could then move to reconsider, at which time the new statute would be effective, so the Court would have to apply it then. NRCP 59(e); see *AA Primo Builder LLC v. Washington*, 245 P. 3d 1190, 1192-93 (2010) (one of the “basic grounds” for a motion to reconsider is a “change in controlling law”).

Furthermore, if this Court disagreed and denied the Motion to Reconsider at that point, and then the City appealed, the Supreme Court of the State of Nevada would have to apply the new statute and reverse. *Witter v. State*, 126 Nev. 770, 367 P.3d 836 (2010)(citing *Hsu v. County of Clark*, 123 Nev. 625, 630, 173 P.3d 724, 728–29 (2007)) (“[W]hen the controlling law of this state is substantively changed during the pendency of a remanded matter at trial or on appeal, courts of this state may apply that change to do substantial justice.”). There are volumes of cases on this point, so taking any action now that would lead to that result would not just be wrong on the merits, but an inefficient and indeed wasteful use of judicial resources.

In sum, NBD’s effort to force the hearing date into September is much ado about nothing. The Court should deny the Motion to Change Hearing Date.

Dated: September 27, 2019.

SNELL & WILMER L.L.P.

By: /s/ Justin L. Carley

Justin L. Carley, Esq. (NV Bar No. 9994)  
Aleem A. Dhalla, Esq. (NV Bar No. 14188)  
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*Attorneys for the City of North Las Vegas*



**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 this date, I caused to be served a true and correct copy of the foregoing **PLAINTIFF'S SURREPLY TO NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO CHANGE DATE OF HEARING ON MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT ON ORDER SHORTENING TIME** to the following:

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-and-  
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Walden, LLC and P & W Bonds, LLC*

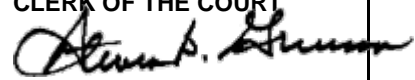
Dated: September 27, 2019.

/s/ D'Andrea Dunn

An employee of SNELL & WILMER L.L.P.

**EXHIBIT 21**  
**PETITIONERS' APPENDIX**

**EXHIBIT 21**  
**PETITIONERS' APPENDIX**



**JOIN**  
THEODORE PARKER, III, ESQ.  
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*Attorneys for Defendants,  
Richardson Construction, Inc. and  
The Guarantee Company of North America USA*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

CITY OF NORTH LAS VEGAS,  
Plaintiff,

v.

DEKKER/PERICH/SABATINI LTD.;  
RICHARDSON CONSTRUCTION, INC.;  
NEVADA BY DESIGN, LLC D/B/A  
NEVADA BY DESIGN ENGINEERING  
CONSULTANTS; JW ZUNINO &  
ASSOCIATES, LLC; MELROY  
ENGINEERING, INC. D/B/A MSA  
ENGINEERING CONSULTANTS;  
O'CONNOR CONSTRUCTION  
MANAGEMENT INC.; NINYO & MOORE,  
GEOTECHNICAL CONSULTANTS;  
JACKSON FAMILY PARTNERSHIP LLC  
D/B/A STARGATE PLUMBING; AVERY  
ATLANTIC, LLC; BIG C LLC; RON  
HANLON MASONRY, LLC; THE  
GUARANTEE COMPANY OF NORTH  
AMERICA USA; P & W BONDS, LLC;  
PAFFENBARGER & WALDEN, LLC;  
DOES I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.: A-19-798346-C  
DEPT. NO.: VIII

**DEFENDANTS RICHARDSON  
CONSTRUCTION, INC. AND THE  
GUARANTEE COMPANY OF NORTH  
AMERICA USA'S JOINDER TO  
NEVADA BY DESIGN, LLC D/B/A  
NEVADA BY DESIGN ENGINEERING  
CONSULTANTS' MOTION TO DISMISS  
OR, IN THE ALTERNATIVE, MOTION  
FOR SUMMARY JUDGMENT**

COME NOW, Defendants, RICHARDSON CONSTRUCTION, INC. and THE  
GUARANTEE COMPANY OF NORTH AMERICA USA (hereinafter collectively referred to as  
"Defendants"), by and through their attorney of record, THEODORE PARKER, III, ESQ. of the law  
firm of PARKER, NELSON & ASSOCIATES, CHTD., and hereby join in Defendant, NEVADA

1 BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' (hereinafter  
2 "NBD") Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, electronically  
3 filed on August 5, 2019.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 Defendants state that the claims raised by Plaintiff, CITY OF NORTH LAS VEGAS,  
6 (hereinafter "Plaintiff") are time barred pursuant to N.R.S. 11.202. Accordingly, any dismissal of  
7 the claims and Complaint against NBD would also apply to Defendants, as Plaintiff's claims and  
8 Complaint against Defendants are also time barred under the six (6) year statute of repose in N.R.S.  
9 11.202 for the reasons stated in NBD's Motion(s). Defendants hereby incorporate by reference as  
10 though fully stated herein all factual allegations, law, and arguments raised in their Motion to  
11 Dismiss electronically filed on September 4, 2019, as though fully stated therein.

12 DATED this 30<sup>th</sup> day of September, 2019.

13 **PARKER, NELSON & ASSOCIATES, CHTD.**

14  
15 /s/ Theodore Parker III  
16 THEODORE PARKER, III, ESQ.  
17 Nevada Bar No. 4716  
18 2460 Professional Court, Suite 200  
19 Las Vegas, Nevada 89128

20  
21 *Attorneys for Defendants,*  
22 *Richardson Construction, Inc. and*  
23 *The Guarantee Company of North America USA*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of the Law Offices of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 30<sup>th</sup> day of September, 2019 and pursuant to NRCP 5(b), I served a true and correct copy of the foregoing **DEFENDANTS RICHARDSON CONSTRUCTION, INC. AND THE GUARANTEE COMPANY OF NORTH AMERICA USA'S JOINDER TO NEVADA BY DESIGN, LLC D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** on the party(s) set forth below by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- ☒ By EFC: by electronic filing and service with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

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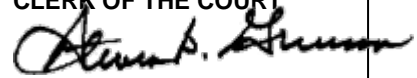
Party	Attorney	E-Mail
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/s/ Eloisa Nuñez  
An employee of PARKER, NELSON & ASSOCIATES CHTD.



**EXHIBIT22**  
**PETITIONERS'APPENDIX**

**EXHIBIT 22**  
**PETITIONERS'APPENDIX**



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Facsimile: 312-863-5099  
*Attorneys for JW Zunino & Associates*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

Dekker/Perich/Sabatini Ltd.; Richardson  
Construction, Inc.; Nevada By Design, LLD  
d/b/a Nevada By Design Engineering  
Consultants; JW Zunino & Associates, LLC;  
Melroy Engineering, Inc. d/b/a MSA  
Engineering Consultants; O'Connor  
Construction Management Inc.; Ninyo &  
Moore, Geotechnical Consultants; Jackson  
Family Partnership LLC d/b/a Stargate  
Plumbing; Avery Atlantic, LLC; Big C LLC;  
Ron Halon Masonry LLC; The Guarantee  
Company of North America USA; P & W  
Bonds, LLC; Paffenbarger & Walden, LLC;  
DOES I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-19-798346-C

Dept. No. XIII

**DEFENDANT JW ZUNINO &  
ASSOCIATES LLC'S JOINDER TO  
DEFENDANT NEVADA by DESIGN  
LLC, D/B/A NEVADA BY DESIGN  
ENGINEERING CONSULTANTS'  
MOTION TO DISMISS, OR IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT**

Defendant JW Zunino & Associates ("JW Zunino"), by and through its attorneys of records,  
the law firm of Foran Glennon Palandech Ponzi & Rudloff PC, hereby joins Defendant NV By  
Design d/b/a Nevada By Design Engineering Consultants' ("NBD") Motion to Dismiss Or, In the

PET.APP.002336

Alternative, Motion for Summary Judgment. This joinder incorporates and asserts all the arguments contained in NBD's motion with regard to the Plaintiff's claims being time barred by Nevada's statute of repose, as though fully contained therein. Further, this Joinder is made and based upon the pleadings and papers on file herein and on any arguments made by counsel at this time of the hearing on this matter that the Court may allow. In addition to the factual and legal arguments made by NDB, JW Zunino adds that any dismissal pursuant to N.R.S. 11.202 that would apply to NBD also applies the JW Zunino. Plaintiff's claims against JW Zunino are also time barred under the six-year statute of repose. JW Zunino understands that the factual allegations and arguments raised by Plaintiff in its August 29, 2019 Opposition to NBD's motion also apply to them as though fully stated in a separate opposition.

Dated: September 30, 2019

FORAN GLENNON PALANDECH PONZI &  
RUDLOFF PC

By: /s/ Dylan P. Todd

Dylan P. Todd, NV Bar No. 10456

Lee H. Gorlin, NV Bar No. 13879

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Henderson, NV 89052

*Attorneys for Defendant JW Zunino & Associates*

**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 this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT JW ZUNINO & ASSOCIATES LLC'S JOINDER TO DEFENDANT NEVADA by DESIGN LLC, D/B/A NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT** by the method indicated below:

- ☐ **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.
- ☒ **BY ELECTRONIC SERVICE:** submitted to the above-entitled Court for electronic service upon the Court's Service List for the above-referenced case.
- ☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

Dated this 30<sup>th</sup> day of September, 2019.

/s/ Rita Tuttle  
An Employee of Foran Glennon

**EXHIBIT 23**  
**PETITIONERS' APPENDIX**

**EXHIBIT 23**  
**PETITIONERS' APPENDIX**



1 RTRAN

2  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 NORTH LAS VEGAS CITY OF ,  
9 Plaintiff,

CASE#: A-19-798346-C  
DEPT. VIII

10 vs.

11 DEKKER/PERICH/SABATINI LTD.,  
12 Defendant,

13  
14 BEFORE THE HONORABLE TREVOR L. ATKIN, DISTRICT COURT JUDGE  
15 MONDAY, SEPTEMBER 30, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **ALL PENDING MOTIONS**

18 APPEARANCES ON PAGE 2:

19  
20  
21  
22  
23  
24 RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER  
25

1 APPEARANCES:

2  
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4 City of North Las Vegas

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ALEEM A. DHALLA, ESQ.

5  
6 For the Defendants:

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PATRICK F. WELCH, ESQ.

8 Jackson Family Partnership LLC  
9 Stargate Plumbing

SHANNON G. SPLAINE, ESQ.  
PAUL A. ACKER, ESQ.  
BLAYNE N. GRONDEL, ESQ.

10 Ninyo & Moore Geotechnical Cons.

JONATHAN P. PATILLO, ESQ.

11 MSA Engineering Inc.

JEREMY R. KILBER, ESQ.

12 Nevada by Design LLC

JOHN T. WENDLAND, ESQ.

13 Richardson Construction Inc.  
14 Guarantee Company of North America  
15

THEODORE PARKER, ESQ.

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Las Vegas, Nevada, Monday, September 30, 2019

[Case called at 9:45 a.m.]

MR. WENDLAND: Good morning, Your Honor, John  
Wendland on behalf of defendant Nevada by Design.

MR. KILBER: Good morning, Your Honor, Jeremy Kilber on  
behalf of MSA Engineering.

MR. PATTILLO: Jonathan Pattillo on behalf of Ninyo &  
Moore.

MR. ACKER: Paul Acker on behalf of Stargate Plumbing.  
Good morning, Your Honor.

THE COURT: Morning. Good to see you.

MR. PARKER: Good morning, Your Honor, Theodore Parker  
on behalf of Richardson and the Guarantee Corporation of North  
America.

THE COURT: Nice to see you, Mr. Parker.

MR. PARKER: Thank you.

MS. SPLAINE: Good morning, Your Honor, Shannon Splaine  
on behalf of Jackson Family Partners LLC doing business as Stargate  
Plumbing.

MR. GRONDEL: Good morning, Your Honor, Blayne Grondel  
on behalf of Stargate Plumbing.

MR. GORDON: Thank you, Your Honor, Richard Gordon, bar  
number 9036, on behalf of the City of North Las Vegas.

MR. DHALLA: Aleem Dhalla, 11488 on behalf of the City of



1 North Las Vega as well.

2 THE COURT: All right.

3 THE RECORDER: We have Patrick Welch on the phone.

4 THE COURT: Thank you.

5 MR. WELCH: Good morning, Your Honor, this is Patrick  
6 Welch on behalf of the P&W entities.

7 THE COURT: Thank you, sir.

8 I don't know who's going to argue this.

9 MR. WENDLAND: I'll go first, Your Honor, thank you.

10 THE COURT: Sure.

11 MR. WENDLAND: We represent Nevada by Design. We're  
12 the moving party. Your Honor, I'd like to open with this is my third  
13 attempt and no disrespect to the Court, my third attempt to have these  
14 motions heard. Essentially in August 5<sup>th</sup>, 2019, Nevada by Design filed  
15 a motion to dismiss, in the alternative motion for summary judgment.  
16 Shortly thereafter the Court set a hearing date of September 9<sup>th</sup>, 2019.  
17 On August 20<sup>th</sup>, 2019 the plaintiffs filed their opposition and August 28,  
18 2019 we filed our reply -- the -- I bring this up because by the end of  
19 August 2019 the matter had been fully briefed.

20 On September 6<sup>th</sup>, 2019 the Court changed the hearing date  
21 from September 9<sup>th</sup>, 2019 to August -- October 21, 2019, Your Honor.  
22 That created two major issues for us. The first issue is we're in a AAA  
23 hearing called Frank v. Moser that starts on October 21<sup>st</sup> 2019. That  
24 was the first.

25 But more importantly than that, Your Honor, the -- a core

1 argument in the case involved what is the law. What is the law as it  
2 pertains to statute of repose? Today, September 30<sup>th</sup>, the law is NRS  
3 11.202 says six years from substantial completion. Tomorrow on  
4 October 1<sup>st</sup>, 2019, AB 421 goes into legal effect and creates a ten year  
5 statute of repose. So because of the Court shifting the hearing date  
6 from September 9 to October 21<sup>st</sup>, it potentially could create new  
7 arguments, new pleadings, new supplementations, new issues that  
8 would change dramatically the position of the parties that we currently  
9 enjoy and would have enjoyed on September 9<sup>th</sup> had this matter been  
10 heard, to October where plaintiff can bring in new arguments and issues  
11 of which the matter which has already been fully briefed would have to  
12 address.

13 And so we all -- we felt because of that -- because of the  
14 scheduling conflict and also because of the potential change in the  
15 position of the parties, that we felt that it was necessary to bring our  
16 motion to seek to move the hearing date from October 21<sup>st</sup> to September  
17 27<sup>th</sup>. Unfortunately all of us arrived September 27<sup>th</sup>. The plaintiffs raised  
18 some arguments at that hearing and it was brought to today, September  
19 30<sup>th</sup>, 2019. So it's our position, Your Honor, that this motion should be  
20 heard today. If you hear it today it will address the two issues that we  
21 have with the conflict on October 21<sup>st</sup> and will allow the Court to hear the  
22 position of the parties that have been fully briefed.

23 Now the plaintiff's position is there's no reason to hear it  
24 October -- September 30<sup>th</sup>. It should be heard on October 21<sup>st</sup> with  
25 these other motions that have been filed. I know counsel's on the

1 phone, but he's one of the parties that filed a late motion that we believe  
2 likely shifted the Court to move it to the October 21<sup>st</sup> date. And I'll let  
3 counsel speak for himself, but he has sent an email saying that his  
4 motion has nothing to do with our motion, the underlying motion to  
5 dismiss and therefore he has no issues moving forward today. In fact  
6 everyone here is here ready to argue the motions. I know there's a  
7 bunch of joinders to the motion.

8           So we first request, Your Honor, to advance the hearing date  
9 to today. And then allow us to proceed to argue the underlying motion.  
10 Plaintiffs have had ample time. I mean, we're talking two months since  
11 full briefing to prepare for today's hearing. And to prepare to argue in  
12 full affect their position with respect to the underlying motions. So with  
13 that, Your Honor, we request that you move the hearing date.

14           Now if Your Honor likes I can make the arguments on the  
15 underlying motion and -- or if you'd like to first render a ruling on our  
16 underlying.

17           THE COURT: Well and as I understand it I was handed this  
18 as I walked in this morning.

19           MR. WENDLAND: You did.

20           THE COURT: Is your -- the fear is as of presently it's a six --  
21 it's going to change to ten and it would irreparably alter.

22           MR. WENDLAND: Yeah, that potential is there, Your Honor.  
23 There will be at a minimum additional briefing. There will be at a  
24 minimum a change in position of the parties on the fully briefed set of  
25 matters. And we see no reason -- this is a -- the statute of repose here,

1 Your Honor, is actually not a very hard argument to determine. I mean,  
2 they themselves put the substantial completion date in their pleading, so  
3 we know it's September 13<sup>th</sup>, 2009. The plaintiffs have admitted that's  
4 the substantial completion date. They filed their underlying complaint on  
5 September 11<sup>th</sup>, 2019 -- or sorry. I keep saying September, I apologize,  
6 July. Thank you. I meant to say July 11<sup>th</sup>, 2019 they filed their  
7 complaint. Their substantial completion date was July 13<sup>th</sup>, 2009.

8 So the bottom line is NRS 11.202 is pretty clear. It's six years  
9 from substantial completion, Your Honor. If Your Honor, rules on the  
10 underlying motion they don't have it. The case is over. And I don't think  
11 that is an overly complicated matter to consider given that the statute is  
12 clear today, given that they've admitted their -- that their complaint would  
13 be time barred under that statute. And we see no reason we cannot go  
14 forward under the statute repose of the current date.

15 Now if you shift it obviously to October 1, they will bring AB  
16 421. Now they've argued AB 421 in their opposition and argued  
17 something called a retroactive application. But, Your Honor, the  
18 effective date of AB 421 is October 1<sup>st</sup>, not today. And that's when it  
19 goes into effect. Now if they want to bring in a retroactive argument  
20 after October 1<sup>st</sup>, Your Honor can rule today. And then obviously they  
21 can bring whatever motions they feel necessary to argue that point. We  
22 feel we would have some counters to that, but nonetheless that's an  
23 issue that I don't believe necessarily has to be analyzed today. And I  
24 believe, Your Honor, can move forward. And I believe all counsels are  
25 ready to move forward with that.

1                   So with that we'd ask that the hearing be advanced and that  
2 Your Honor consider the underlying motion. And based on the  
3 pleadings, based on the information, we're clearly passed the six year  
4 statute of repose and that if Your Honor will rule on the underlying  
5 motion, grant dismissal, they then if they have an argument after  
6 October 1<sup>st</sup> can come and argue that point.

7                   The position of the parties won't change at that point because  
8 they would be arguing some new issues that we can brief and discuss  
9 those matters at that time. So we feel that it should be heard today,  
10 Your Honor.

11                  THE COURT: All right.

12                  MS. SPLAINE: Your Honor, --

13                  MR. GORDON: Your Honor, --

14                  MS. SPLAINE: Your Honor, Shannon Splaine. I joined in Mr.  
15 Wendland's underlying motion. I just wanted to address the Court's  
16 questions about the irreparable harm issue. The issue with not hearing  
17 the underlying motion today, which I'm not going to get into those  
18 arguments is the fact that the law today, which is what the law would  
19 have been if the motion had been heard in early September is different  
20 than what the law is going to be effective tomorrow. So counsel's hope  
21 is that the motion doesn't get heard until the law has changed, which will  
22 change their arguments.

23                  But the law at the time the motion was filed is the same law  
24 that is in effect today, which is that the complaint is improper. The  
25 complaint as it stands today needs to be addressed. And then if we're

1 successful when the law changes plaintiff can file a new complaint  
2 arguing whatever they want to argue that they're entitled to because the  
3 law has changed. That's a different legal issue.

4 But what's happening right now is that plaintiffs are getting the  
5 benefit of the fact that Your Honor wasn't on the bench and the hearing  
6 had to be moved out an extended period of time, which is to the  
7 detriment of the defense because the law will have changed which we  
8 do not believe was the Court's intent when that happened. And  
9 unfortunately that's just factually what's going on. That's why there is  
10 irreparable harm if the Court does not rule today on the underlying  
11 motion.

12 I just wanted to address that because Your Honor asked that  
13 specific question.

14 THE COURT: I appreciate that. Thank you, counsel.

15 MR. GORDON: Thank you, Your Honor. So --

16 MR. WELCH: Your Honor, this is Patrick Welch on behalf of  
17 the P&W entities, may I chime in on my joinder please?

18 THE COURT: Yes.

19 MR. WELCH: Your Honor, we represent the P&W Bonds LLC  
20 and Paffenbarger and Walden LLC, which are the two entities that were  
21 the bonding agents that worked on the project with respect to issuance  
22 of the bonds that were ultimately issued by GCNA, the surety on behalf  
23 of Richardson. Our joinder is to the extent that because the surety's  
24 bond liability is purely derivative of the claims of the bond principle  
25 Richardson, that plaintiff's suit against the P&W entities, if you find that

1 the statute of repose precludes the claims against Richardson, the  
2 surety, as secondary obligor, shares those defenses and there would be  
3 no legal basis to hold P&W liable if Richardson is not liable.

4 I wasn't sure how familiar the Court was with surety law, so if  
5 you have any questions I'm happy to answer.

6 THE COURT: Thank you, Mr. Welch.

7 MR. PARKER: May I, Your Honor?

8 THE COURT: Yes, Mr. Parker.

9 MR. PARKER: I apologize, Your Honor. We -- I represent  
10 Richardson as I said earlier as well as the guarantor, the Guarantee  
11 Company of North America. And we filed our own separate brief.  
12 We've also joined -- we're joining as well in Nevada by Design's  
13 position. But our brief also included the statute of repose arguments.  
14 So I wanted to make sure the Court as aware of that. And our brief was  
15 of course fully briefed, our motion was fully briefed. The opposition was  
16 received. We did a reply as well. So I just wanted to make the Court  
17 aware of that. That's the one that was scheduled when you return from  
18 your judicial college, Your Honor.

19 THE COURT: Right.

20 MR. PARKER: Thank you.

21 THE COURT: Are there any other joinders that want to be  
22 heard?

23 MR. KILBER: Your Honor, we did join the underlying motion.  
24 And we'll -- I don't know if the Court's proceeding with that motion. But  
25 to the extent it is, our joinder is simply that the law existed in July. It was

1 not complied with and the complaint should be dismissed. It's a pretty  
2 straight forward issue.

3 THE COURT: Understood. All right.

4 MR. GORDON: Thank you, Your Honor. Your Honor, this is  
5 actually my first day on this particular case, much like you. I'm in a  
6 similar situation.

7 THE COURT: All right. Welcome to the show.

8 MR. GORDON: It's good to be here. It's good to be here.  
9 This is really -- what's before the Court today a very straight forward  
10 issue and I'm going to address just first procedurally --

11 THE COURT: That's what I'd like to address, --

12 MR. GORDON: Yes, why the Court --

13 THE COURT: -- should I be hearing this today.

14 MR. GORDON: Yes, why the Court can't hear it today and  
15 secondly to allay some of the Court's fears. You've heard multiple  
16 counts today argue irreparable harm. And I'm going to address  
17 substantively why that is not an issue for the Court to consider and try to  
18 address both of those issues.

19 First and foremost, Your Honor, I appreciate perhaps what  
20 defendants wanted to do. What however they did was something  
21 different. The only order and what we are here today on the only motion  
22 set for hearing today is a motion to change the hearing date on the  
23 substantive motions to dismiss. That is the only motion noticed.

24 If there's any doubt about that, Your Honor, the language of  
25 the order shortening time makes that abundantly clear that they did get



1 an order shortening time. But this is what was shortened: The Court  
2 orders that the time and date for the hearing on defendant Nevada by  
3 Design's motion to change the date of hearing was set. They want to  
4 convert that language and that order into an order that isn't there in  
5 order to accelerate the hearing, okay.

6 The Court to date has not granted that motion to accelerate  
7 the hearing. Which we do not, Your Honor, necessarily oppose. We  
8 filed a limited opposition because of the sort of unilateral efforts by  
9 defendants to change the hearing date and ex parte efforts to change  
10 the hearing date. But the only motion for hearing is the motion to  
11 change the hearing date.

12 If the Court were to say well we intended to grant it and move  
13 forward, then that would, by the order shortening time, then we would  
14 have been precluded an opposition. So I don't think the expressed  
15 language of that order makes clear that that did not accelerate the  
16 hearing date to today.

17 And again if there is any doubt about that, Your Honor, you  
18 can look at the Court's docket as of about 5 minutes ago. The hearing  
19 date on the substantive motion to dismiss is still set for October 21<sup>st</sup>.  
20 Today -- and that was reiterated also at the -- in the minutes of the  
21 hearing on Friday, that this hearing would come today on the hearing on  
22 the motion to change the date.

23 If the Court wants to accelerate the hearing and does so  
24 today, at a minimum the hearing still can't be heard until tomorrow,  
25 October 1<sup>st</sup>, because under EDCR 2.26 there's a minimum of one

1 judicial day notice that must be given to accelerate a hearing date. And  
2 a hearing date can't be changed simply by a conversation with  
3 chambers. You know, that's the only thing that defendants put forward  
4 to suggest the hearing date was changed, a conversation with chambers  
5 and a letter to that affect, an ex parte communication with chambers I  
6 might add.

7           So procedurally, Your Honor, there's only one -- it's simple.  
8 There's only one motion before the Court today. The Court should  
9 address that motion. And we have come and we have filed numerous  
10 dates where we are available. And that can be and should be resolved  
11 today as a matter of procedure.

12           Now substantively and I'm not going to get into the merits of  
13 the substantive motion, because I'm only prepared to argue the motion  
14 for changing the hearing date.

15           THE COURT: I understand. So it sounds to me like -- and  
16 counsel, correct me if I'm wrong, your argument is hey there is no  
17 hearing on the Defendant's motion because procedurally it's not until  
18 after today?

19           MR. GORDON: There is hearing on defendant's motion. It's  
20 currently set for October 21<sup>st</sup> and nothing changed that. And the order  
21 shortening time absolutely did not change that. Only the hearing to  
22 change the hearing date --

23           THE COURT: But before --

24           MR. GORDON: -- is set.

25           THE COURT: -- I can get to the underlying motion I have to

1 first make up the decision on whether I'm going to hear this today.

2 MR. GORDON: Absolutely. But, Your Honor, if I could just  
3 quickly address because --

4 THE COURT: Sure, no take your time.

5 MR. GORDON: -- they took a lot of time to, I think, push you  
6 in a certain direction based on irreparable harm based on the October  
7 1<sup>st</sup> date.

8 They do not address this very clear language in the bill signed  
9 by the Governor, AB 421. That the amendment that changed the statute  
10 of repose.

11 THE COURT: So now you're into the underlying motion.

12 MR. GORDON: Well I am -- Your Honor, I agree and I'm  
13 happy to stop talking. I only mention it if the Court wants me to address  
14 what they -- I think the false argument they presented on irreparable  
15 harm.

16 THE COURT: I want to hear their reply relative to my ability --

17 MR. GORDON: Sure.

18 THE COURT: -- to hear this today.

19 MR. GORDON: Sure.

20 MR. WENDLAND: So, Your Honor, please take a look at the  
21 actual motion we filed to change the hearing. It wasn't please change  
22 the hearing to some random date. It expressly asked the Court's first  
23 available hearing date in September of 2019. That was what was  
24 granted. He keeps talking about well the orders only just for changing  
25 the hearing date. But he didn't read the pleading itself. The pleading

1 isn't just asking please move the date. I mean, move the date to any  
2 date. This was asking please move the date to the Court's first available  
3 in September of 2019.

4 On Sept 27<sup>th</sup> we all appeared in front of Judge Cherry --  
5 Justice Cherry and at that point plaintiffs made all these arguments: I'm  
6 flying to Hawaii, I'm not ready; I can't do this. And it was Judge Cherry's  
7 decision at the time to play, quote/unquote: Solomon and move it to  
8 today and have Your Honor decide this.

9 But it's critical that the motion itself be read. And the motion  
10 expressly says please give us a date in September of 2019. That was  
11 the relief requested. Otherwise, as Ms. Splaine has explained, there is  
12 irreparable harm. And if we hear this on October 21<sup>st</sup> or hear it on  
13 October 1<sup>st</sup> or the 5<sup>th</sup>, the 6<sup>th</sup>, any time in October, they will then bring in  
14 new arguments and issues so --

15 THE COURT: I understand.

16 MR. WENDLAND: -- that's the issue we have. We would be  
17 prejudiced, Your Honor.

18 THE COURT: All right.

19 MR. WENDLAND: What -- the motion itself is clear.

20 THE COURT: All right.

21 MR. WENDLAND: It wasn't asking for some random date.

22 THE COURT: You did it before the time and based on that  
23 just -- I'm not going to -- just because the happenstance of Judge --  
24 Justice Cherry was here. He kicked it. You purposefully asked for the  
25 date. And I want to honor that today. So I want to hear the motion.

1 MR. WENDLAND: Thank you, Your Honor.

2 MR. GORDON: Well, Your Honor, I -- can I respond to that --

3 THE COURT: Sure.

4 MR. GORDON: -- because I think there is a fundamental  
5 problem with what counsel just said to persuade you otherwise. The -- I  
6 think I certainly have and I know probably everyone in this room who's  
7 counsel has put things in pleadings that are not reflected in the order.  
8 It's the order, Your Honor, not what they put in the motion that is served  
9 on counsel and gives notice to counsel of what's coming before it.

10 THE COURT: But you were on notice that it was going to be  
11 heard in September.

12 MR. GORDON: No, no we were not. We were on notice only  
13 that the motion to change the hearing date would be heard in  
14 September. We were on no notice that a substantive motion would be  
15 heard; no notice and that's key. The only order in this case changes the  
16 hearing on the motion to change the hearing date. It did not -- and the  
17 Court's docket reflects that. The Court's docket still has the motion to  
18 set -- the motion to dismiss set for October 21<sup>st</sup>. And that motion, the  
19 motion to change the hearing date was never granted. If -- to date has  
20 not been granted yet okay.

21 So if the Court wants to grant the motion today, which again  
22 we don't necessarily oppose except for the limited opposition we made  
23 on dates, at a minimum it still can't be heard today. Because under  
24 EDCR 2.26, Your Honor, really two local rules that would be violated if  
25 the Court accelerates the hearing to now. One, we do not have judicial

1 notice, one day judicial of the change in the hearing date. And local rule  
2 EDCR 2.26 requires that. At a minimum the earliest we can come back  
3 is tomorrow, the earliest to abide by EDCR 2.26.

4 And secondly, Your Honor, the only thing that counsel  
5 provides to suggest anything different is a letter based on an ex parte  
6 communication with chambers. And, Your Honor, it's very clear EDCR  
7 2.22, counsel may not remove motions from the calendar by calling the  
8 Clerk's Office or the Judge's chambers, closed quote. That is all they  
9 have done. There's no order scheduling a substantive motion for today.

10 The only thing is what local rule prohibits for a change in date  
11 under EDCR 2.20. And under EDCR 2.26 at a minimum if the Court  
12 wants to change the date they can, but they can't do it same day. And  
13 procedurally, Your Honor, that should end the analysis.

14 MR. PARKER: Your Honor, may I address that quickly?

15 THE COURT: Yes.

16 MR. PARKER: The -- if you were to accept everything counsel  
17 just said the Court could actually schedule this hearing later on today  
18 and we could do it this afternoon giving counsel an opportunity to be  
19 prepared. And you will have actually accomplished what Judge Cherry  
20 requested. He would have the notice and the ability to be prepared to  
21 argue the factual underlyings of the real motion. He can address all of  
22 our replies. And in fact this information, the underlying merits of this  
23 motion have been briefed a whole month ago. So I don't know why he's  
24 not prepared, but if the Court believes he should be given additional time  
25 let's schedule it for the end of the day. Schedule it for 3:30. We can all

1 come back and have this argued.

2 What we don't want to is face a change in the law that he's  
3 benefited from simply because there's been a change in the Court. And  
4 that's exactly what he's trying to take advantage of right now, Your  
5 Honor.

6 MR. GORDON: Your Honor, if I can address --

7 MS. SPLAINE: Your Honor, let me --

8 THE COURT: One second.

9 MS. SPLAINE: -- let me comment. In addition, Your Honor,  
10 the issue is that we were here on Friday. I wasn't personally, but  
11 someone from my office was here, and Justice Cherry moved it today.  
12 That would be the one judicial days' notice that these issues were  
13 coming up.

14 I understand counsel wants to say that there's ex parte  
15 communications. There was clarification sought because of the  
16 importance and the criticalness of the timing of this. Because the  
17 concern was, as we're hearing, that plaintiff was going to use these  
18 delays to get past the October 1<sup>st</sup> deadline because of the Court's  
19 unavailability. This is a tactic. So Justice Cherry moved it today  
20 because there was claims about who -- who could and couldn't be  
21 available and what was happening.

22 It is clearly another tactic that counsel that comes this morning  
23 says well you can't hear it today because I'm not prepared. This is the  
24 third time this hearing should have been heard. So even if he didn't  
25 think it was going to be heard at the first date in September he knew on

1 Friday that there was a likelihood it was going to be argued today. That  
2 was the judicial notice. So to now come in and say you came here  
3 today it has to be at least tomorrow and I don't care what day it is after  
4 tomorrow because the law changes is the irreparable harm. This is all  
5 tactical.

6 THE COURT: One last thing.

7 MR. GORDON: Yeah, a few very critical things to rebut. First  
8 of all what Judge Cherry did is not what counsel just represented,  
9 moving it to today. What's the it that got moved from Friday to today?  
10 The minutes reflect it. The minutes reflect it. Court ordered motion to  
11 change date of hearing, you know, to -- or in the alternative motion for  
12 summary judgment continued. Motion to change the date of the hearing  
13 was the motion continued, okay. So that is not a judicial day of notice  
14 for the substantive motion. And that is critical and that is critical.

15 And I have to because everyone has now just address why  
16 the irreparable harm for Your Honor is simply not and why it should not  
17 be a concern for the Court to either keep the hearing on October 21<sup>st</sup>.  
18 We provided numerous dates before and after.

19 THE COURT: All right and this bleeds over into the  
20 secondary argument potentially but --

21 MR. GORDON: The --

22 THE COURT: -- based on the irreparable harm argument.  
23 Let me hear it.

24 MR. GORDON: I just want to rebut this because --

25 THE COURT: Okay.



1 MR. GORDON: -- they're using that as a reason to ask you to  
2 hear it today, Your Honor.

3 THE COURT: I understand. Go ahead.

4 MR. GORDON: And that shouldn't be a concern, because  
5 again the expressed language of the bill, the expressed language of the  
6 bill makes it clear that the statute of repose applies retroactively to  
7 actions in which the substantial completion of the improvement to real  
8 property occurred before October 1, 2019. Okay.

9 So the analysis for a Court ultimately is when was substantial  
10 completion? All parties agree, substantial completion occurred before  
11 October 1, 2019. And that means that whether the Court hears the  
12 motion today, next week, next year if there was substantial completion  
13 before October 1, 2019, the application is retroactive.

14 So it's futile, Your Honor, for the Court to think it must have  
15 the hearing today. Because if the Court has the hearing today,  
16 disagrees with our analysis, we file a motion for reconsideration after  
17 October 1. And the retroactive application would then be the operative  
18 law subsequent if it goes beyond that to the Supreme Court where the  
19 retroactive application would be the governing law. So that issue of  
20 irreparable harm, Your Honor, based on the express language of the bill  
21 that was enacted shouldn't be a concern.

22 And, Your Honor, it matters. It matters. The local rules are  
23 not gimmicks and they are not things that should be taken sort of  
24 loosely. They're necessary for due process, you know, notice of a  
25 hearing of this magnitude, necessary for due process. And they have

1 not complied with the rules. Either EDCR 2.20 or 2.22 or EDCR 2.26,  
2 both prohibit the Court from going forward on the substantive motion  
3 today.

4 MR. WENDLAND: Your Honor, I will -- I was here Friday. I  
5 don't have to rely on a minute. I can tell you what Justice Cherry --

6 THE COURT: I'm prepared to move -- I'm prepared to rule on  
7 the motion. I think it would be a matter of form over substance and  
8 happenstance of what was happened when Justice Cherry ruled. So I  
9 do want to go forward with this motion today. I respect your argument  
10 that well what's it matter. I'll file a motion for reconsideration. There's a  
11 change in the law supporting that motion. But I want to be able to rule  
12 on the underlying motion irrespective of EDCR, whatever the rules and  
13 whatever happened by way of phone calls or what was said up here on  
14 Friday. I want to honor that. So I want to go forward and I appreciate  
15 your argument.

16 MR. GORDON: Yeah, sure. Thank you.

17 THE COURT: But I want to go forward with the motion today.

18 MR. WENDLAND: Appreciate it, Your Honor.

19 THE COURT: Now it appears the plaintiffs are ready to argue  
20 this motion. Now if you want to come back later this afternoon I'm happy  
21 to do it or we can argue it now.

22 MR. GORDON: Yeah, I mean, Your Honor, I think that -- you  
23 know, I don't know if the Court's aware of prior procedure here. And I  
24 know that counsel is. Counsel for the City Justin Carley left the firm  
25 Snell and Wilmer and Friday was his last day. I am here today only

1 because I got counsel in another case to extend discovery to allow me  
2 to move a deposition that and I am -- you know, I am fairly booked. I  
3 between now -- so I've had this case for since yesterday basically really  
4 to focus on what was scheduled, what was noticed. And that was to  
5 change the hearing date, prepare to move on that. So I understand the  
6 Court's desire to hear it. I would think that some time would be  
7 beneficial at a minimum.

8 THE COURT: Okay

9 MR. GORDON: But I don't --

10 THE COURT: What --

11 MR. GORDON: Can we have a moment, Your Honor?

12 THE COURT: Sure, sure.

13 MR. GORDON: Can I just confer.

14 MR. WENDLAND: I was just going to add that counsel wrote  
15 on the pleadings is sitting right next to him.

16 MR. GORDON: Yeah, I want to confer with counsel.

17 THE COURT: I get it. I get it.

18 MR. GORDON: I want to confer with counsel if you don't  
19 mind.

20 THE COURT: Why don't you confer with counsel. Why don't  
21 we take a -- like a 5 minute comfort break. Everyone else I apologize.

22 MR. GORDON: Sure

23 THE COURT: I want to get my calendar over with. But why  
24 don't we take a 5 minute recess. You address counsel. I'm going to  
25 take a comfort break personally.

1 THE MARSHAL: Court's in recess.

2 [Recess taken at 10:16 a.m.]

3 [Hearing resumed at 10:29 a.m.]

4 THE RECORDER: Okay. Back to page 9, A798346, North  
5 Las Vegas versus Dekker/Perich/Sabatini.

6 MR. GORDON: Thank you, Your Honor, I just I had a chance  
7 to confer with my co-counsel Mr. Dhalla. He has a conflict this  
8 afternoon. So given the Court's desire to proceed now, today, I think  
9 now is the better time. I just want to make very clear for the record,  
10 proceeding now, you know, we preserve our rights to object under the  
11 fact of proceeding would violate 2.26 and 2.22.

12 MR. WELCH: Excuse me, Your Honor, I don't mean to  
13 interrupt. This is Patrick Welch. Could you please have counsel move  
14 closer to the microphone? I can't hear him.

15 THE RECORDER: Probably the podium is the closest  
16 microphone to mouths.

17 MR. GORDON: Sure. Can you hear me, counsel?

18 MR. WELCH: Yes I can. Thank you.

19 MR. GORDON: Yep. Would you like me to repeat for the  
20 record, Your Honor?

21 THE COURT: No, Mr. Welch -- briefly repeat what -- just for  
22 Mr. Welch benefit.

23 MR. GORDON: Sure. You know, we're electing to proceed  
24 now rather than say afternoon. But in so doing I just want to make clear  
25 for the record that the City isn't waiving it's right to object. That

1 proceeding now is violative of EDCR 2.26 and 2.22.

2 And I would also just ask the Court, I don't know if this could  
3 be lengthy with all of the people here if maybe argument could be limited  
4 to those who filed motions and joinders. And those who didn't file a  
5 joinder maybe we can limit the number of arguments.

6 MR. WENDLAND: I think everyone filed a joinder, Your  
7 Honor, so.

8 MR. PARKER: And, Your Honor, let me just say this as well.  
9 I don't know if we filed a joinder, because we filed our own separate  
10 motion. But it's on the same argument. And I started out this morning  
11 by saying we're joining in the motion.

12 The only other thing I would point out, and Your Honor knows  
13 this because you've been practicing most of 2019 as well, the Chief Civil  
14 Judge suspended the local rules based upon the change in our overall  
15 rules. So I think that's something else counsel should be aware of.

16 THE COURT: Thank you, Mr. Parker.

17 MR. PARKER: Thank you, Your Honor.

18 MR. GORDON: I don't think the local rules have entirely been  
19 suspended, but that's for the record.

20 THE COURT: All right, why don't we go forward with the  
21 motion -- the underlying motion then.

22 MR. WENDLAND: Thank you, Your Honor. So we actually  
23 have a two part motion. The first part is a -- is both a motion to dismiss  
24 and in the alternative a motion for summary judgment. The first part of  
25 our motion deals with, as Your Honor has heard ad nauseam today, the

1 statute of repose.

2           The plaintiffs filed their complaint July 11<sup>th</sup>, 2019. In their  
3 complaint they expressly indicated that the notice of completion date  
4 was July 13<sup>th</sup> 2019. So -- sorry July 13<sup>th</sup> 2009, sorry about that, Your  
5 Honor. And at this juncture their complaint is more than four years  
6 untimely under NRS 11.202, which expressly states six years from the  
7 date of substantial completion. And based thereon, when they filed their  
8 complaint, Your Honor, they filed what we contend is a fugitive  
9 document. Now I haven't got into NRCP 11 -- Rule 11 violations. But  
10 they knew at the time they filed their complaint that they did not have a  
11 valid complaint that was timely under NRS 11.202.

12           Now plaintiffs aren't going to hang their hat on the AB 421.  
13 It's an act that was signed by the Governor in June of 2019. In particular  
14 they're going to cite to a section involving the retroactive application of  
15 that act. Now our motion is even easier to understand than that. AB  
16 421 doesn't go into effect until midnight tonight, Your Honor. So as of  
17 today as I'm standing in front of Your Honor it is still NRS 11.202 under  
18 the six years.

19           Now tomorrow, which is the whole argument we had  
20 previously today, they could -- they're going to argue retroactive  
21 application of the ten years. But that's not today, Your Honor. So we  
22 talk about what is known as the effective date, the date the law goes into  
23 effect which is October 1<sup>st</sup> 2019. Even section 11 -- 11 section 4 talks  
24 about retroactive applications for projects -- substantial completion  
25 completed before October 1<sup>st</sup> 2019, which is a future date.

1           And that's kind of interesting that they're making the argument  
2 that AB 421 applies today. And that's not the case. If it did apply today  
3 then the Nevada Legislature would put into the language of AB 421 that  
4 the act applies September 30<sup>th</sup> of 2019. The act doesn't contain any  
5 such language. In fact if you -- under NRS 218D.330 it states -- section  
6 1 it states respectively if it's not in the act it become effective on October  
7 1<sup>st</sup> of its passage, okay.

8           And Under 218D.330 section 2 until that effective date the  
9 existing law remains in effect. That means the six year statute of  
10 repose. Now it is not in dispute that if Your Honor finds that the six year  
11 statue of repose governs this matter then they are untimely. In fact in  
12 the other motion they filed a surreply where they essentially admitted  
13 that if it goes -- that the effective date is tomorrow. And so their  
14 argument based on the AB 421 is irrelevant because that's not an  
15 argument that exists today.

16           So under the six years repose they're too late. They admitted  
17 that they filed it, you know, based on the dates beyond the six years  
18 repose. And under those rules this matter should be dismissed  
19 completely. And I know everyone's joined in pretty much and they  
20 would make the very same argument, Your Honor.

21           So that's our first section. I don't know if Your Honor wants to  
22 get us into the second section where we talk on certificate on merit?

23           THE COURT: Yes. Go ahead with that.

24           MR. WENDLAND: So the second section, this is now  
25 uniquely for the design professions. NRS 11.258 states whenever you

1 bring any claim, defect claim against a design professional in a non-  
2 residential project, which is this is, this is a fire station so it's a non-  
3 residential project, Your Honor. The obligation is under 11.258 they  
4 have to confer with an appropriate expert in the relevant design field.  
5 And based on that consultation they have to then make a determination  
6 under oath that states that there's a reasonable basis in law and fact to  
7 proceed. Their expert also --

8 THE RECORDER: Can I interrupt for just a second. I really  
9 apologize. Mr. --

10 THE COURT: I hear something.

11 THE RECORDER: -- yes. The gentleman that we have on  
12 the phone, Mr. Welch, can you turn the phone away from your mouth?  
13 Because we have very sensitive microphone and it -- all I hear is you  
14 breathing.

15 MR. WELCH: Sure, I'm happy to.

16 THE RECORDER: I apologize. Thank you.

17 MR. WELCH: I apologize for that.

18 THE RECORDER: Okay. Go ahead.

19 MR. WENDLAND: Okay. I apologize, Your Honor. Can I go  
20 back to statute of repose? There's a couple other pointers I forgot to  
21 add and I'll get to the certificate of merit. The two other pointers I did  
22 wanted to add is they cited as an example the effective date, AB 221.  
23 And in the AB 221 there is actually language that says it's effective  
24 earlier than October 1<sup>st</sup>, 2019, Your Honor.

25 So their own example in their opposition that they cited for



1 their argument shows that the Nevada Legislature has in another act  
2 expressly stated a date for the dates -- that acts effective date. And  
3 that's a very good example of what we don't have here. Under 421  
4 there is no such language.

5 Now I went to the Nevada Legislature's website and I know  
6 Your Honor's seen these attachments. They're very simple. I -- just  
7 looked at them really quick. And it shows October 19 as an effective  
8 date. And I also cited a case from Alaska called *Arco Alaska* and it  
9 expressly says and this is -- goes to their argument. The law's  
10 retroactive date and its effective date are distinctly different concepts.  
11 While a retroactive law applies to pre-enactment conduct the legal affect  
12 produced by the law occurs only after the law's effective date.

13 So he's trying to put the cart before the horse, you know. And  
14 in this case until October 1<sup>st</sup> their entire argument of retroactive  
15 application 421 doesn't apply. So those were the only two pointers I  
16 forgot to add, Your Honor.

17 THE COURT: All right.

18 MR. WENDLAND: Now turning back to certificate of merit.  
19 So the statutes very clear that it requires them to consult. Now they  
20 went and American. Geotechnical Inc. is their expert that they've  
21 consulted. American Geotechnical Inc. is a geotechnical engineering  
22 firm. My client is a civil engineer.

23 More importantly than that Mr. Marsh in his declaration says  
24 and in the attached report says I'm only looking at geotechnical issues in  
25 this case. He has not looked at mechanical. He has not looked at any

1 other issues other than geotechnical matters. So when he writes in his  
2 declaration that there's a reasonable basis to proceed, he's expressly  
3 limiting his statement to what he examined at that time which is  
4 geotechnical issue. He didn't examine any other issues, Your Honor.

5 And I don't want to get into other motions that Your Honor's  
6 going to hearing in October. But with respect to Nevada by Design  
7 specifically we are no the geotechnical of record. We only handle civil  
8 engineering issues. And in this case his report, which counsel relies  
9 upon as the basis of his certificate of merit obligation, has zero opinions,  
10 criticisms, comments outside of the geotechnical world. So the report is  
11 expressly limited to geotechnical matters, which means by extension Mr.  
12 Marsh's declaration is expressly limited. And this is the declaration  
13 where he says there's a reasonable basis for proceeding, is expressly  
14 limited to geotechnical issues only.

15 And then by extension counsel's consultation with Mr. Marsh  
16 is expressly limited to geotechnical matters. Now if Mr. Marsh, who is  
17 their expert, had any opinion in my client's world there would have been  
18 a statement. Because he's obligated under NRS 11.258 to put his  
19 conclusions in the report, there would have been a finding, some sort of  
20 a comment, some of a statement that says what Nevada by Design did  
21 is wrong and here is why. We don't see that anywhere. We don't see  
22 that anywhere in his report, just simply a geotechnical issue. I was only  
23 retained to examine geotechnical matters. I cited that in my motion.

24 And based thereon, Your Honor, it isn't -- NRS 11.258 isn't  
25 just kind of going there and copying and pasting some language from

1 the statute. There has to be compliance with each and every element of  
2 it. And this is the *Otak* case, this is NRS 11.259, if any element is not  
3 complied with then that requires mandatory dismissal, Your Honor,  
4 under those -- under the statutes and under *Otak*.

5 In this case it's our contention that counsel's representation in  
6 its affidavit that he consulted with an expert in the relevant discipline,  
7 which would be civil engineering, and based on that consultation there's  
8 a reasonable basis in law and fact to proceed, which is what he's  
9 required to do, is not that because the actual documentation that  
10 counsel presents to the Court hears our compliance is expressly limited  
11 to geotechnical issues, Your Honor. And because there's no civil issues  
12 there's no expressed findings of civil violations of any kind, there could  
13 be no reasonable basis in law and fact to proceed against a civil  
14 engineer who's -- in which the expert examining the matter only  
15 examined geotechnical matters.

16 By extension Mr. Marsh's report and his report which is  
17 supposed to contain all his findings and conclusions is also incomplete if  
18 there is anything beyond geotechnical matters, which we content there  
19 probably isn't. This is a geotechnical case. Therefore his declaration  
20 that there's a reasonable basis for proceeding as an expert, right, as  
21 expert on behalf of the plaintiff, he's their guy. He has to have -- he's  
22 expressly saying there's reasonable basis to proceed against the civil  
23 engineer in a different discipline without a report that contains a single  
24 allegation relevant to my client.

25 So we contend based thereon in addition to the state of

1 repose issue, they did not comply with NRS 11.258 which serves as a  
2 secondary reason for dismissal of my client here today.

3 THE COURT: Thank you.

4 MR. WENDLAND: Thank you, Your Honor.

5 MS. SPLAINE: Your Honor, Shannon Splaine on behalf of  
6 Stargate. We joined in Mr. Wendland's motion as it related to the statute  
7 of repose issues. Obviously my client who is a plumber is not a design  
8 professional, so it's limited to the statute of repose.

9 I just wanted to in addition to what Mr. Wendland argued and  
10 what we talked about earlier, which is that AB 421 is not the law as we  
11 sit here today. It was not the law at the time that plaintiff filed the  
12 complaint. The law at the time the complaint was filed, which is what  
13 you have to rely upon at that time you file a pleading, says six years.

14 Now as noted in plaintiff's opposition it's their footnote two on  
15 page five, they say there is an exception for fraud. And plaintiff admits  
16 that there are no fraud allegations in this case. So the one exception  
17 that plaintiff could have tried to rely upon to say why their complaint was  
18 valid under the current law, that's still today, they admit is not an  
19 allegation in the case. There's no fraud pled. There's no fraud pled with  
20 specificity, so the six years is what applies. And they did not file within  
21 the six years.

22 Now after October 1<sup>st</sup> when the law that the claim is in effect  
23 now, which is not, goes into actual affect, plaintiff may have different  
24 arguments. But we have to operate on the law at the time you file the  
25 litigation. And that law says six years and they missed it.

1           The other argument that plaintiff tends to expand upon is  
2 argued about statute of limitations versus statute of repose. And as  
3 Your Honor knows the statute of repose was always intended as those  
4 outside limits that we all look at. Plaintiff tries to expand the statute of  
5 limitations to go beyond the statute of repose and that's not what the law  
6 as we stand here today says. The statute of repose is the outside limits.  
7 And any person knows they're potentially on the hook for and that's six  
8 years.

9           Thank you, Your Honor.

10          THE COURT: Thank you.

11          MR. KILBER: Your Honor, Jeremy Kilber on behalf of MSA.  
12 We also joined in the motion. I think the argument today has -- you've  
13 heard enough argument with statute of repose. Our joinder also  
14 pertains to the affidavit of merit. MSA is a mechanical engineer, a  
15 plumbing engineer and an electrical engineer who provided those  
16 services on the project. Similar to the civil engineer there's no -- nothing  
17 the affidavit of merit that comes close to addressing mechanical,  
18 electrical, or plumbing engineering. Those are a subset of engineering  
19 disciplines that require separate licensure, completely from a  
20 geotechnical engineer.

21           So to the extent the expert Mr. Marsh would even seemingly  
22 attempt to opine on the standard of care for a mechanical, electrical, or  
23 plumbing engineer he is not qualified. He cannot -- he does not have  
24 the licensure to even address those issues. So to the extent they're  
25 relying on Mr. Marsh's affidavit of merit with respect to MSA it's invalid

1 and we would press the Court to grant the motion with respect to MSA  
2 on the invalidity of the -- of the compliance with 11.258.

3 THE COURT: Thank you. Any other joinders?

4 MR. PARKER: Your Honor, I'll just be brief. No one has  
5 mentioned the dates, so I figured I'd at least put the dates on the record  
6 for the Court. Typically the order will include dates. But the complaint  
7 was filed 7/11/19.

8 THE COURT: Got it.

9 MR. PARKER: The certificate of occupancy was filed  
10 February 25<sup>th</sup>, 2009. I think that's important for the Court's  
11 consideration. So certainly, Your Honor, not only did they miss six years  
12 but it's closer to ten years.

13 And, Your Honor, we don't have the same argument in terms  
14 of design professional. My client is a general contractor the guarantee  
15 company I mentioned earlier is not a design professional. We're only  
16 joining in terms -- we can only join in terms of the statute of repose.

17 THE COURT: Understood.

18 MR. PARKER: Exactly, Your Honor.

19 THE COURT: Yes.

20 MR. PARKER: And that's the same motion --virtually our  
21 same motion we filed separately and we are now joining. Thank you,  
22 Your Honor.

23 THE COURT: Thank you.

24 Mr. Acker, nothing?

25 MR. DHALLA: Ready?

1 THE COURT: Yes.

2 MR. DHALLA: Thank you, Your Honor. Can I use the  
3 podium?

4 THE COURT: Oh, absolutely.

5 MR. DHALLA: Thank you.

6 MR. WELCH: Your Honor, I don't know all -- everyone in  
7 favor of the motion has had a chance to speak, but if we're there and I  
8 would like to speak, I'd like to have my opportunity now.

9 THE COURT: I forgot about you, Mr. Welch, my apologies.

10 MR. WELCH: Thank you.

11 THE COURT: Go -- proceed.

12 MR. WELCH: Thank you, Your Honor, again Patrick Welch  
13 on behalf of the P&W entities. As I noted earlier we are the bonding  
14 agent that worked in conjunction with co-defendant GCNA to help  
15 Richardson obtain the payment and performance bonds that were  
16 required on this public project. I'd like to note for the Court that we have  
17 filed a separate motion to dismiss the P&W entities as it acted solely as  
18 the resident agent on behalf of GCNA to sign off on the bond.

19 In this case, Your Honor, Hornbook law establishes that  
20 suretyship is a tripart right -- tripartite relationship. We had Richardson  
21 as the bond principal contractor. The City is the obligee and GCNA is  
22 the surety. Under this relationship I'm not sure how much familiarity the  
23 Court has with surety law, so please bear with me if I'm --

24 THE COURT: No go ahead and proceed.

25 MR. WELCH: -- telling you things that you already know.

1 THE COURT: I have a little bit. Go ahead.

2 MR. WELCH: The bond principle is the primary obligor, which  
3 it Richardson in this case. The bond principle is -- excuse me, the bond  
4 obligee is the person to whom the principle owes the duty. In that case  
5 that's the City. And then the third party to the tripartite relationship is the  
6 CGNA which is the secondary obligor. The surety obligation and the  
7 liability only becomes due in the event that the primary obligor, in this  
8 case Richardson, breeches its duty to perform.

9 Furthermore, surety law, including the restatement in cases  
10 from Nevada, recognize that a surety may generally plead any defense  
11 available to its bond principle and the liability of the surety cannot  
12 exceed the principal. Further -- so essentially what that means is a  
13 surety is not liable on a bond unless the bond principal is liable. And the  
14 surety can make use of any defense available to the bond principle, in  
15 this case Richardson.

16 So in this case as the local resident signing agent if  
17 Richardson is found here as the primary obligor to have no obligation  
18 because of the statute of repose to the City, our position is that P&W as  
19 the local resident agent likewise has no liability. And that's because  
20 those claims against P&W are completely derivative of and dependent  
21 upon a finding that Richardson as the primary obligor is liable.

22 If you have any questions I'm happy to answer them.

23 THE COURT: No, thank you. Mr. Welch, thank you. Is that  
24 all?

25 MR. WELCH: [No audible response].



1 THE COURT: Is that all Mr. Welch?

2 MR. WELCH: Yes it is. I'm sorry, Your Honor.

3 THE COURT: All right. Thank you.

4 MR. WELCH: Thank you very much.

5 MR. DHALLA: Good morning, Your Honor, I didn't want to

6 interrupt, but I just wanted to make clear that that P&W Bonds and

7 Paffenbarger Walden's motion to dismiss is not on hearing for today.

8 And that has nothing to do with the statute of repose. It has never been

9 set for any date that's in September. And I'm definitely not prepared to

10 argue against that motion.

11 THE COURT: Okay.

12 MR. DHALLA: So if it's okay I'd like to argue against Nevada

13 by Design's motion that has already been argued.

14 THE COURT: Yes.

15 MR. DHALLA: Okay. To start with the statute --

16 MR. WELCH: Your Honor, I'd like to clarify, again Patrick

17 Welch. We specifically addressed this issue in our joinder, so it is on

18 calendar for today.

19 THE COURT: Okay.

20 MR. DHALLA: I believe their joinder as to NBD's motion is

21 only not towards bond issues. It's to the statute of repose issues.

22 THE COURT: Right.

23 MR. DHALLA: And to the extent that they're joining those

24 issues and that's on calendar for today, that's with me. We can --

25 THE COURT: Okay.

1 MR. DHALLA: -- address all those today.

2 MR. WELCH: Agreed, Your Honor.

3 MR. DHALLA: Okay. So to start with the statute of repose  
4 the ten year the statute of repose applies here. And there is no debate  
5 whether or not the City complied with the ten year statute of repose.

6 I know Mr. Parker said that the February 2009 date about  
7 when substantial completion was achieved is not relevant because  
8 Nevada case law specifically states it's when substantial completion or  
9 the notice of substantial completion is recorded is the date you go off of.  
10 And Mr. Wendland already said that that's 9/13/2009. So that's the date  
11 that we should be going on for calculation of the substantial completion  
12 date.

13 And to that date the City complied with the ten year statute of  
14 repose. And the reason for that is that had NBD or any of the joinders  
15 read the actual language of the AB 421 they would have easily seen that  
16 the newly extended ten year statute of repose applies retroactively. I  
17 know they've cited in their motion that if you look at the Court's website it  
18 says October 21 or if you look at -- or they seem to think that the  
19 retroactivity doesn't apply, but in fact it does.

20 If you look at section 7 of AB 421, that's the section that  
21 extends the ten year statute of repose to ten years. But the effectuating  
22 statute -- or the effectuating section of AB 421 is section 11. And if you  
23 look at section 11 each provision of the statute has a different  
24 effectuating date. And that's important because AB 421 didn't change  
25 the statute of repose for construction defects but changed many other

1 portions.

2 It changed -- if you look at NRS 40.647, which is not  
3 applicable here, but if you look at section 11 of AB 421 and subsection 2  
4 says that the provisions of NRS 40.647 as amended by section 3 apply  
5 to an inspection conducted pursuant to and another statute on or before  
6 -- sorry, sorry, it says on or after October 1, 2019.

7 And that's important not because that particular statute  
8 applies, because the Legislature intended to go through every single  
9 statute that was changed by the bill and have different effective dates for  
10 it. So in that particular instance it says on or after October 1, 2019. And  
11 in subsection 3 it similarly says on or after October 1<sup>st</sup>, 2019.

12 However subsection 4, which is the applicable statute here,  
13 NRS 11.202 specifically states and I'm going to quote it here: The  
14 period of limitations to an action set forth in NRS 11.202 as amended by  
15 section 7 of this act apply retroactively to actions in which substantial  
16 completion on the improvement to the real property occurred before  
17 October 1, 2019. And the important part of that was apply retroactively  
18 to substantial completions that occur on or before October 1, 2019.

19 And I know that you had a lot of people try and convince you  
20 that there would be substantial harm in not hearing the motion today  
21 versus hearing it after October 1. That's false because as of today the  
22 statute as to 11.202 is effective today.

23 THE COURT: Understood.

24 MR. DHALLA: It's effective retroactively. The rest of the  
25 statute is not. And I understand the -- that the Legislature's website

1 says October 1, 2019. And that's incorrect because portions of the bill  
2 are effective after tomorrow, but portions of the bill are effective  
3 retroactively.

4 And there's a reason that makes sense. The reason that  
5 makes sense is that if the Legislature passed a bill in June of this year  
6 but didn't make it effective until October of this year, but made it  
7 effective retroactively through this year, they would have created this  
8 window in between June and October. This retroactive window where  
9 cases like this one would -- you'd have an absurd result. The absurd  
10 result being that starting tomorrow you would have a bill that is effective  
11 but would be effective to this particular case.

12 So they're fine arguing tomorrow that on a motion to  
13 reconsider that the new statute applies. And they've all but admitted  
14 that. Mr. Wendland, when he stood up when you were arguing the  
15 motion to change hearing date, all but admitted that portion. That  
16 effective tomorrow, midnight today it would -- the 11.202 the ten year  
17 statute of repose would apply to this case. We can then address a  
18 motion to reconsider and go through the rigmarole of what happens to  
19 the new statute.

20 But that's for one incorrect because it's an absurd result. And  
21 this Court is not supposed to read statutes into an absurd result. The  
22 absurd result being that the legislature intended to create a window in  
23 between passage and effective date that creates cases that are untimely  
24 but would be timely if the hearing was on a different date, or we have a  
25 motion to reconsider, or if the Nevada Supreme Court then hears it. The

1 law at that time would be the ten year statute of repose. We'd be in the  
2 same place. It would get reversed because the law is retroactive.

3 Affects this case and whether Your Honor addresses it on a  
4 motion to reconsider or on a motion -- or on appeal, both courts this one  
5 or the Supreme Court would have to reverse because the ten year  
6 statute of repose is then applicable including pending litigation such as  
7 this case.

8 So I know they've convinced you that because they have a  
9 stronger position they think that the statute is not applicable today, is  
10 incorrect. The statute is applicable today. The Legislature specifically  
11 made this portion of AB 421 applicable retroactively.

12 But even if Your Honor doesn't consider that. Even if Your  
13 Honor thinks that -- that there's a difference between effective date and  
14 retroactivity date, I don't see the point in coming and arguing it today  
15 and you granting it today just to in ten days reverse it tomorrow. No one  
16 on their side addressed why that's the consideration and why that  
17 consideration shouldn't be what is in the forefront of the Court's mind,  
18 because it will moot within 6 hours, 8 hours, 10 hours.

19 I think they're trying to effectuate an order that then have to  
20 overturn to somehow think that you've got it wrong or to somehow think  
21 that it would be a stronger position for them later. It's a misreading of  
22 the statute. It leads to an absurd result that the Legislature did not  
23 intend. And even if it were it would be an absurd result to give the order  
24 -- to grant the motion today just to overturn it later. All three of them  
25 would be just what the Court should not do.

1           Second, I can address the NRS 11.258, that's the design  
2 professionals, then the affidavit of merit requirement. Regarding 11.258  
3 if you look at the -- what they're calling the affidavit of merit requirement,  
4 what is actually what the expert is required to do before filing a motion  
5 against design professional. It has specific language in the language  
6 that is required in what the attorney affidavit he -- is required, what the  
7 expert report is required, and what the expert's declaration is required.  
8 It has -- it lays out the specific requirements.

9           Instead, NMD and that the other design professional are trying  
10 to add requirements that are not within the statute. They are doing two  
11 specific things. Well -- I'll start with this if you look at page 10 of our  
12 opposition there's a chart side by side what is required within 11.258  
13 and what the City actually stated in both my attorney affidavit and the  
14 expert's declaration in support of the complaint. And these are what's  
15 required when filing a complaint. If you looked on page 10 of the  
16 opposition there's side-by-side comparison of the two.

17           And it's not formulaic as that NBD or other design  
18 professionals will try to say. We did not perform a formulaic recitation of  
19 what's required within 11.258, but rather we did the things that are  
20 required. Instead they're trying to shift the language ever so slightly to  
21 create new requirements, the first being that the argument is that the  
22 City's expert is not an expert in all design professional fields. And  
23 specifically not the specific design professional fields that the design  
24 professional so NDB, Dekker and the other design professionals are.

25           Under their interpretation they would require, under 11.258, to

1 have a separate design -- separate expert for every single design  
2 professional. And that's where they misread *Otak Nevada* case. The  
3 *Otak Nevada* case does not specifically state that a different design -- a  
4 different expert on the complaint by the plaintiff or claimant is required.  
5 So it's not required to do a separate expert to each design professional.  
6 Rather what the Supreme Court said in *Otak Nevada* was that each  
7 particular claimant or plaintiff needs to have their own expert.

8           So for example, if you and I were claimants on one side and  
9 we each sued one particular design professional. I couldn't have and  
10 expert report and then you join or you have a counterclaim and then you  
11 -- sorry, if you have another third party complaint in that instance. It'd be  
12 a third-party complaint and use my affidavit of merit and expert.  
13 Because the affidavit of merit requirement specifically states that you  
14 need to talk to the expert. And there's a couple of reasons for that. But  
15 what the Supreme Court did not say in *Otak Nevada* was that every  
16 claimant needs to have a separate design professional that has a  
17 separate similar degree or similar specialty to the particular design  
18 professional.

19           And if you look at the statute, the statute specifically states  
20 that. And this is where they changed the language. If you look at  
21 11.258 subsection 3(b) and that's the part where it says the expert in a  
22 statement has to say and I quote: the statement that the expert is  
23 experienced in each discipline which is the subject of the report. And  
24 that last part is key. The expert is not required to be an expert in every  
25 design professional field. That would be absurd. The design -- the

1 expert is required to be an expert quote: in each discipline which is the  
2 subject of his report. And that's exactly what Mr. Marsh here is and --  
3 from American Geotechnical. The City's expert is a professional  
4 engineer with multiple specialties particularly in geotechnical  
5 engineering.

6 And more importantly, the statute itself defines what an expert  
7 is. So not only are they trying to say that the -- that the City's expert is  
8 not an expert in their particular field, whether it be landscape design or  
9 plumbing, electrical, all those. They're essentially requiring the City to  
10 get multiple experts in multiple different fields to match their particular  
11 specialties, which is not in the statute itself. They like to gloss over that  
12 particular part and they like to say well they're not our expert. They  
13 don't specifically talk about our specialty. That's not what's required in  
14 the statute. If the Legislature had required it that would be different, but  
15 that's not what the statute says.

16 More specifically, the statute itself defines what an expert is.  
17 NRS 11.258 subsection 3 says that the expert is a person who is among  
18 other things and it's an and -- sorry, subsection 6 says, as used in this  
19 section expert means a person who is licensed in a state to engage in  
20 the practice of quote: professional engineering, land surveying,  
21 architectural, or landscape design. So specifically they could be an  
22 expert in any of those fields, but they're required to be an expert in at  
23 least those fields.

24 Mr. Marsh, the City's expert, is an expert in -- is a professional  
25 engineer. And his resume states that and it was attached to the



1 complaint. So to the extent that the -- that NBD and the other design  
2 professionals try to forward an argument that he is not an expert or he's  
3 not an expert in their particular field the statute doesn't require and to  
4 the statute's actual language he is a qualified expert.

5 Finally, the argument that NBD makes is that he -- Mr. Marsh,  
6 the City's expert, did not specifically name Nevada by Design or the  
7 other design professionals in his actual report. And that's not what's  
8 required in the statute either. He is not required to name in his report  
9 the design professionals that worked on the project. Rather he is  
10 supposed to give an opinion as to what the fault is on the property,  
11 which is what he did. You can look at it. It was attached to the  
12 complaint, his report in full. There's a conclusion section that lists out  
13 his conclusions.

14 Whether or not he named the actual design professional is  
15 irrelevant, because what the statute, NRS 11.258, requires is for the  
16 attorney, me, to consult with him. And that's exactly what I did. We  
17 discussed whether or not there was merit into filing the complaint. We  
18 discussed those issues and we discussed whether or not these  
19 particular individuals, design professionals should be included. He said  
20 yes and we both gave affidavits to that affect. That's what's required in  
21 the statute.

22 You can look more specifically at the pleading papers to see  
23 exactly the language, but quotes during argument that try to manipulate  
24 the statute is what they're trying to do. NBD and the other design  
25 professionals are trying to do. And the Court should not grant the

1 motion on 11.258 and the statute of repose for those reasons.

2 THE COURT: Thank you.

3 MR. DHALLA: Thank you.

4 MR. WENDLAND: All right. Thank you, Your Honor.

5 THE COURT: And as part of your reply I'd like you to  
6 specifically address the argument that counsel made is okay let's say I  
7 say its six and then on a motion for reconsideration it's ten, how do we  
8 avoid this absurd result?

9 MR. WENDLAND: Well first of all I'd start off with it's not an  
10 absurd result. It's the law as it stands today. Now counsel did make a  
11 representation that I want corrected on the record to the extent I can say  
12 it. He said I admitted that he'll prevail in ten days or something to that  
13 effect. I did not say that.

14 THE COURT: No, I'm not considering that.

15 MR. WENDLAND: Okay. Thank you.

16 THE COURT: I just want to know okay I say -- let's say I grant  
17 your motion and just based on the fact that it's six year statute of repose,  
18 what's to prevent them from filing a motion for reconsideration and  
19 saying well here's the change, the law is now such?

20 MR. WENDLAND: Right. So, Your Honor, you have to --

21 THE COURT: And that's for all the joinders too if you're going  
22 to argue.

23 MR. WENDLAND: Right, right. And they'll probably  
24 supplement whatever I say.

25 THE COURT: All right.

1 MR. WENDLAND: But this is the whole thing -- the whole  
2 reason I brought up previously today that there could be unintended  
3 consequences by having this hearing on October 21<sup>st</sup>. And I'm not  
4 going to rehash that too far, but there are additional arguments that state  
5 that the law of the case is at the time they file their complaint that they  
6 had to comply with the six year statute of repose.

7 When I first got this complaint, Your Honor, I was shocked. I  
8 said whoa wait a minute. This is pretty straight forward six years. I  
9 couldn't figure out why they filed the complaint. Under NRCP Rule 11  
10 standards I assume this -- they're very competent counsel that they  
11 would have known that this is untimely. And then they brought up the  
12 AB 421. And I think it's in my opinion established here today that AB  
13 421 goes into effect tomorrow.

14 Now if you grant the motion today this is a motion that ends  
15 the case. That means they would have to refile tomorrow a whole other  
16 complaint bringing up the 421 standard. And that's an issue that they  
17 can address in a separate pleading in a separate action at that time. So  
18 our position is today it should be dismissed with prejudice. And then  
19 they can go ahead and refile if they feel that they have a valid argument  
20 they would have to bring a new complaint. It's a new action.

21 THE COURT: So your argument is it's the date of the filing of  
22 the complaint as opposed to the date the hearing of the motion?

23 MR. WENDLAND: Right, so these are the arguments I didn't  
24 want to get too far into Your Honor because of a -- these were issues  
25 that don't exist today. But they would exist tomorrow like counsel

1 brought up. Well ten days from now what's going to stop me from  
2 bringing up AB 421. And that's fine they can do that. But there are  
3 other arguments that look at the law the date of the filing of the  
4 complaint, Your Honor,. And that's the argument we would present  
5 tomorrow or ten days from now.

6 So what would prevent them is Your Honor would go to and  
7 look at the complaint on the date of the filing, what was the law at the  
8 time of the complaint. And then Your Honor would have to still rule the  
9 six year statute of repose applies. And that's essentially my argument.

10 The other argument and again I did not want to get too far into  
11 that argument, Your Honor. Because these are issue that don't exist  
12 today. Today is very simple. What's the law today? Today is six years,  
13 period. Tomorrow it's ten years.

14 Now I do want to address the retroactive application. I don't  
15 think counsel has once mentioned in his oral argument NRS 218D.330.  
16 And in particular section 1 which says the law becomes effective on  
17 October 1<sup>st</sup>. And I thought in my argument I was clear and if I wasn't I  
18 apologize to the Court. They cited AB 221 a separate -- has nothing to  
19 do with this case, but the fact that they cited it shows an example of the  
20 Nevada Legislature moving up the effective date.

21 Now what they're trying to do is conflate, right, they're trying to  
22 conflate retroactivity with applicability. And in this case we were -- we  
23 cited Alaska court and the statute at hand that says until midnight tonight  
24 it's six years. And no matter how they read that section from AB 421,  
25 AB 421 isn't the law. I think that's just straight forward, it's not the law.

1 And tomorrow when they bring up or ten days from now when they bring  
2 up some -- or attempt to bring up some sort of a motion we can address  
3 that issue at that time. So Your Honor's bound by the law that exists at  
4 today in ruling on this motion.

5 I don't know if I answered Your Honor's question.

6 THE COURT: Somewhat and I guess I'm -- and I don't want  
7 to have to put you in a position, okay in ten days let's hear your  
8 argument. And that may be the case. I --

9 MR. WENDLAND: That is the concern.

10 THE COURT: -- depending on my ruling.

11 MR. WENDLAND: Therefore --

12 THE COURT: But I won't ask you to do that.

13 MR. WENDLAND: I appreciate that, Your Honor. But there  
14 are cases that say you look at the law at the time of the complaint. And  
15 that's essentially the argument. I didn't feel it was relevant today. It  
16 wasn't relevant for my motion because the law today is six years.

17 THE COURT: Understood.

18 MR. WENDLAND: It's relevant ten days from now and I  
19 reserve all my rights to bring that up. But I didn't want to go too far into  
20 that.

21 THE COURT: All right.

22 MR. WENDLAND: Going to the certificate of merit, I thought  
23 my motion was focused on very particular parts of NRS 11.258.  
24 Counsel went on some sidebar conversation about experts. My client is  
25 a civil engineer. I'm not saying Mr. Marsh isn't an expert in geotechnical

1 and I think he even mentioned he's an expert in civil engineering. My  
2 argument is that he had no opinions or conclusions relevant to my  
3 client's scope of work.

4 Now there are other motions, Your Honor, that deal with the  
5 argument that counsel made about experts and their disciplines. And I  
6 don't want to jump the gun, because I do have another motion with the  
7 architect that addressed that particular issue. But with respect to  
8 Nevada by Design the argument is --

9 THE COURT: It's a scope not a qualification.

10 MR. WENDLAND: Right it is. And I think if you look at the  
11 statute it says, you know, he has to consult. And I know he says he  
12 consulted with Mr. Marsh and all that. But there's got to be an opinion.  
13 There's got to be some basis for bringing the claim.

14 And here's the [indiscernible], he brought it against multiple  
15 disciplines. Your Honor, I've been doing construction defect for years.  
16 And typically what we see is a plaintiff will hire a slew of experts. Each  
17 expert will author their own certificate of merit report, which then counsel  
18 would unify into one document and present it. I rarely see a jack of all  
19 trades type situation. In fact this will probably be the first time I've seen  
20 it in many of the cases I've ever dealt with. Generally speaking when  
21 they sue multiple disciplines they have multiple reports and each report  
22 stands on its own and then it's encapsulated in a single statute. That's  
23 how counsel can make the representation that he consulted with the  
24 relevant experts, that there's a reasonable basis in law and fact to  
25 proceed.

1           If he hasn't consulted, and let's just take the mechanical guy  
2 as example. If he doesn't consult with a mechanical engineer how is a  
3 geotechnical engineer going to have any opinions at all? And how  
4 would plaintiff be able to present to this Court the argument that, look  
5 here it is. Here is our reasonable basis for proceeding against the  
6 mechanical engineer using a geotechnical opinion that contains no  
7 opinion relevant to the source.

8           So it is our issue that it is a scope issue in particular for  
9 Nevada by Design. The report is the devoid of any opinions relevant to  
10 my client. And by extension it's a violation of the affidavit of counsel.  
11 But it's also a violation of declaration of Mr. Marsh, because he opines  
12 that there's a reasonable basis to proceed when he has no opinions with  
13 respect to Nevada by Design. So with that as a secondary argument it  
14 is our contention that he's violated parts of NRS 11.258.

15           And under the *Otak* ruling, which our firm was involved in  
16 creating and I personally have written parts of the brief that went into it, I  
17 can attest the Supreme Court and the Nevada Legislature did not intend  
18 to go and hire just one guy to come up at the report. There has to be a  
19 basis for that, a reasonable basis in fact. It cannot just be, hey I can get  
20 a guy in the street to come in and opine on something. And oh by the  
21 way I can sue everybody based thereon. That just defies the intent, the  
22 spirit and the language of the statute. So for that reason we request  
23 dismissal based on NRS 11.202 and NRS 11.258 as a secondary basis.

24           THE COURT: Thank you.

25           MR. WENDLAND: Thank you.

1 MS. SPLAINE: Your Honor, Shannon Splaine. I just want to  
2 address your question briefly about the motion for reconsideration. The  
3 -- and I join in Mr. Wendland's comments. The issue is what we talked  
4 about when we started today. What's the law at the time they filed the  
5 complaint? The law at the time they filed the complaint said six years.  
6 That's still the law today. So the complaint needs to be dismissed  
7 because all have to operate on the laws that are in effect. When  
8 somebody files a complaint we can't operate on hypotheticals of what  
9 may happen in the future. That would be the absurd result.

10 What happens after October 1<sup>st</sup> is plaintiff would need to file a  
11 new complaint, because the law is different and they're arguing under  
12 the law change that their complaint is now valid. But that doesn't renew,  
13 revive a complaint that was illegal filed at the time it was filed.

14 The statute does not say June when the law was signed; it  
15 says October 1<sup>st</sup>. And what plaintiff wants to lead the Court to believe is  
16 because section 4 talks about homes that had completion dates before  
17 October 1<sup>st</sup>, how they differ from homes that completed after October 1<sup>st</sup>.  
18 Think about it this way. They're homes that completed in 2008, so  
19 they're still barred under the new law that goes into effect in October,  
20 because it's more than ten years. They're going to be some homes or  
21 some buildings that don't meet the new law and didn't meet the old law,  
22 because Legislature had to pick a date to make it effective.

23 Counsel wants to misconstrue that October date to allow the  
24 Court to think well I'm in ten days I'm good. So allow me to have my  
25 illegal filing that wasn't proper. The filing was not proper. If this motion



1 had been heard on September 9<sup>th</sup>, it would have been stricken. The  
2 time for reconsideration would have passed and after October 1<sup>st</sup>, if  
3 plaintiff elected they would have filed a new complaint arguing the new  
4 law applies. Just because the timing of this motion got kicked out  
5 doesn't change that fact pattern. The law is the law at the time you file.

6 That's the importance of why dismissal is appropriate now and  
7 why reconsideration isn't the correct route if they choose to go that way.  
8 It would be filing a new complaint and then all of us would have all kinds  
9 of legal arguments about the Legislative intent and what that all means.  
10 And that's an issue for a different day. That's not the issue here today.

11 THE COURT: Thank you, counsel.

12 MR. DHALLA: Can I just add one -- go ahead Jeremy.

13 THE COURT: Yeah, let's hear from all the joinders.

14 MR. KILBER: Your Honor, again I'll just address the 11.258  
15 issues with respect to MSA. I think it's a little disingenuous to argue that  
16 an expert, any expert can opine on any scope of work. The statute  
17 states the expert must be able to opine in each discipline at issue, each  
18 discipline, not whatever issues are there but each discipline. They have  
19 to have the qualifications and licensure to be able to opine on the issue  
20 they're addressing.

21 Additionally the statute requires that they consult an expert in  
22 the relevant discipline. So when you're consulting with Mr. Marsh, who  
23 is a geotechnical engineer, he is not an expert in the relevant discipline  
24 pertaining to mechanical, electrical, and plumbing. They are wholly  
25 separate fields of engineering. And a mechanical engineer cannot do

1 any work in geotechnical fields of work.

2           So the base of knowledge that Mr. Marsh has while he's an  
3 engineer his knowledge is respect to soil. And he is maybe relevant with  
4 respect to soil, but that is not a relevant discipline to mechanical  
5 engineering, electrical engineering, plumbing engineering that have  
6 nothing to do with soils. He has not basis for coming up with any  
7 opinions with respect to mechanical, electrical, or plumbing engineering  
8 when that's not his field of study. It's not his field of work and he does  
9 not have a license to practice in the field of mechanical, electrical, or  
10 plumbing engineering.

11           If you don't have that knowledge base you cannot then opine  
12 that there's some sort of reasonable basis to assert claims against a  
13 field of practice you have nothing to do with. That's why the statute uses  
14 words like each discipline and relevant discipline. So that when you're  
15 consulting with the expert you can ensure that that person has the  
16 qualifications to later give opinions to the Court with respect to that field  
17 of work.

18           If it's their position that they are going to retain Mr. Marsh as  
19 their expert for trial with respect to mechanical, electrical, and plumbing  
20 engineering I welcome that case. I can't wait to depose him on those  
21 issues and get his opinions on what the mechanical, electrical, and  
22 plumbing engineer should have done on the project, because he is not  
23 qualified to opine on those issues. So to use him as their basis for their  
24 affidavit of merit against engineers that don't practice in the same field of  
25 work it's invalid.

1           The purpose of providing an affidavit of merit is to let the Court  
2 know someone with knowledge and experience and training looked at  
3 this and they determined that yes we should proceed against that party.  
4 That does not occur here. There's nothing in Mr. Marsh's report, nothing  
5 in his qualifications that even address the scope of work of MSA. And  
6 for that purpose we submit that his affidavit is invalid with respect to  
7 MSA and they cannot rely upon Mr. Marsh's conclusions to assert  
8 claims against MSA.

9           THE COURT: Thank you, counsel

10          MR. PARKER: Your Honor, Theodore Parker again. While  
11 I've been listening to both sides of this debate I was considering the  
12 practical affect that will occur if the Court makes a decision on a law  
13 that's effective tomorrow versus ruling on the law today -- as of today,  
14 Your Honor.

15          I've held Your Honor in high esteem as a practitioner for many  
16 years. And I'm sure that your skills will transition well onto the bench.  
17 But we've been practical practitioners our entire lives and our entire  
18 legal careers. And what I think is happening here is that the plaintiffs  
19 are asking this Court, I think somewhat hypocritically, to make a decision  
20 on the plain language of the law as it will be in effect tomorrow. And  
21 tomorrow they will suggest to you, Your Honor, you're confined by how  
22 the law is written today. So if you're confined by the way the law is  
23 written today you apply today's laws.

24          Now what will happen and I don't want to invite error into this  
25 case. So what I foresee happening, which I believe is in part what

1 plaintiff's counsel has said. If you were to grant the motion based upon  
2 today's law, the case would be ended. But we know they will refile and  
3 then they will ask this Court to apply the law as it stands as after  
4 October 1. And then the Court will get another bite at the apple. But if  
5 the Court was to deny this motion now then you're inviting an appeal.  
6 And what I don't want to happen is this Court to suffer an appeal that  
7 may be reversed on his first day.

8           Practically I think what will happen is if the motion is granted  
9 they will refile. You will have -- in fact the Court could ask that  
10 jurisdiction remain in this Court. Or they can file a motion of  
11 reconsideration because the law will change pending the order being  
12 signed. But there would be no reason to take it up is my point, to the  
13 Court of Appeals or the Supreme Court. And they would have during  
14 the pendency of the order and opportunity to file the motion for  
15 reconsideration based upon the new law. And then there's no right -- no  
16 reason for an appeal and the Court will have an opportunity to then hear  
17 all of the arguments based on the laws of today versus tomorrow  
18 suffering no further perhaps appellate involvement, Your Honor.

19           THE COURT: Thank you, Mr. Parker.

20           MR. PARKER: Thank you.

21           THE COURT: Mr. Welch?

22           MR. WELCH: Your Honor, thank you. I don't have anything  
23 further to add.

24           THE COURT: Thank you.

25           MR. DHALLA: Two quick points, Your Honor. The first is the

1 law at the time of the filing normally does apply. But it doesn't apply in  
2 cases in which the statutes or the law has changed and the Legislature  
3 has made it effective retroactively. So because the law changed and is  
4 effective retroactively it is applicable to this case. The City would not  
5 need to refile and then use the new law and get a new bite of the apple,  
6 whatever idiom that they've been using. The fact remains that the law  
7 changed effective retroactively.

8 And there is a slew of case law that states that including  
9 statute of limitations, time barring statutes, that the Legislature is  
10 allowed to affect cases that are pending. And that issue wasn't brought  
11 up until they brought it up in the reply, so I don't have those cases in  
12 front of Your Honor, on any of the briefs. I could easily submit them if  
13 you'd like to, but that's a fact of how retroactivity works when the  
14 Legislature is allowed to affect cases that are pending because that is  
15 their prerogative to do so. And I can get you those cases if you'd like.

16 It's -- I don't think that's in debate, but I think that they've  
17 glossed over the fact that they take for granted that the law in effect  
18 today. The law that is in effect today for this 11.202 is the ten year  
19 statute or repose, 11 -- AB 421 changed many things and we don't  
20 disagree. We agree that many of the statutes that were affected by AB  
21 421 are affected tomorrow, but this particular one, the statute of repose  
22 that was changed in AB 421 is effective retroactively. It's the only time  
23 in the statute that the word retroactively has been used. And the  
24 Legislature meant something when they used effective retroactively.

25 They didn't mean to create this window where some litigants

1 would be out of luck or absurd results, right. And I know Your Honor's  
2 concerned with what happens to absurd results. We wouldn't be filing a  
3 new complaint. Just tomorrow you would have to overturn yourself of  
4 the Nevada Supreme Court would have to overturn you. That would be  
5 the only result of ordering this today.

6 But we don't even get to that. I only brought that up just to  
7 show that their argument doesn't make sense. We don't even get to that  
8 because I'm not saying that the ten year statute doesn't apply. In fact it  
9 does. It applied when we filed our complaint. It's because that portion  
10 of AB 421 was effective retroactively.

11 Regarding NRS 11.258, that's the affidavit of merit  
12 requirements. I haven't been practicing as long as Mr. Wendland. His  
13 hair is much more grey than mine. But I know they address a lot of --  
14 they represent a lot of design professionals. And in fact the *Otak*  
15 *Nevada* case was represented by him and his firm. The fact remains  
16 that they would like NRS 11.258 to be expanded and have much more  
17 strict requirements on suing design professionals. But that's not what  
18 the statute says.

19 Specifically they conflate the affidavit requirements in med mal  
20 cases with the affidavit requirement in design professional cases. And  
21 we briefed that issue because if you -- it's important because if you look  
22 at what they're requiring that's what's required in med mal cases. And if  
23 you contrast the two statutes, the -- I can get you the number for the  
24 med mal statute, but it's in our opposition. But the fact remains that the  
25 Nevada Legislature created two different requirements. And if you read

1 them against each other you can see that a lot of the requirements that  
2 the design professionals are trying to make in this case are what would  
3 be required in med mal cases and is very different than 11.258 and the  
4 requirements for design professionals.

5 And the City complied with all the requirements for -- against  
6 design professionals. And specifically it had the expert report, the  
7 expert created an opinion. The opinion needed not say the -- a specific  
8 defendants and design professionals within that opinion. Simply I  
9 needed to consult with him after he created a report and an opinion.  
10 And we needed to consult regarding whether or not this had merit and it  
11 does.

12 They would rather have us -- and now addressing Mr. Kilber's  
13 argument on behalf of MSA. They would like us to prove our entire case  
14 in the complaint. If that were the case we'd just file a notice of judgment  
15 and we'd be done with it. We're not going to have only one expert in the  
16 entire case. Mr. Marsh is only satisfying and is one expert and he's  
17 satisfying the 11.258 requirements. If this case continues into discovery  
18 the City would have much more experts regarding mechanical,  
19 plumbing, all the other design -- landscaping, and all the other design  
20 professional fields to support its case, but that's not what's required in  
21 11.258. Under their interpretation we'd have to prove our entire case  
22 with the complaint and that's not what's in the statute.

23 So that's all Your Honor.

24 THE COURT: Thank you counsel for the argument. I thought  
25 it was -- it helped me out a lot on both sides. I'm going to go ahead and

1 I'm going to grant the motion to dismiss based on the current statute of  
2 repose both at the time of the filing of the complaint as -- and as of  
3 today's date on both counts. Plaintiffs are free to file whatever avenue  
4 of appeal or reconsideration or whatever they want. And either a new  
5 Judge or the Appellate Court, my bosses however they want to rule on  
6 it. But as of today I'm going to make that ruling.

7 MR. WENDLAND: And I assume.

8 THE COURT: Any questions?

9 MR. WENDLAND: Yeah, I assume the NRS 11.258 is moot  
10 now?

11 THE COURT: I consider that a moot point at this time.

12 MR. WENDLAND: Your Honor, I actually have a proposed  
13 order if you'd like to sign off on it.

14 THE COURT: I would want you to run it by counsel.

15 MS. SPLAINE: Your Honor, just to clarify --

16 THE COURT: But my ruling is as of today. I don't want to get  
17 into another thing --

18 MR. WENDLAND: Right.

19 THE COURT: -- the date and the date I signed it.

20 MR. WENDLAND: And all the joinders as well I assume  
21 which is --

22 THE COURT: Yeah, include it all in one order, so we don't  
23 have --

24 MR. WENDLAND: Thank you.

25 MR. PARKER: Thank you, Your Honor.



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THE COURT: Thank you.

MR. PARKER: And congratulations again on your  
appointment, Your Honor.

THE COURT: Thank you, Mr. Parker.

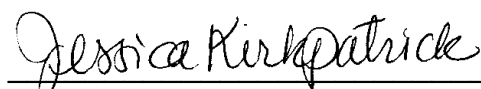
MR. WENDLAND: Yeah, we all join in that.

THE COURT: Thank you.

[Hearing concluded at 11:28 a.m.]

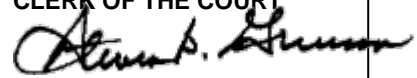
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ATTEST: I do hereby certify that I have truly and correctly transcribed the  
audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Jessica Kirkpatrick  
Court Recorder/Transcriber

**EXHIBIT 24**  
**PETITIONERS' APPENDIX**

**EXHIBIT 24**  
**PETITIONERS' APPENDIX**



1 **NEOJ**

2 JOHN T. WENDLAND, ESQ.

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4 ANTHONY D. PLATT, ESQ.

5 (Nevada Bar No. 9652)

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12 Attorneys for Defendant,

13 NEVADA BY DESIGN, LLC D/B/A NEVADA

14 BY DESIGN ENGINEERING CONSULTANTS

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 CITY OF NORTH LAS VEGAS,

) CASE NO.: A-19-798346-C

18 Plaintiff,

) DEPT. NO.: VIII

19 vs.

20 DEKKER/PERICH/SABATINI LTD.;

) **NOTICE OF ENTRY OF ORDER**

21 RICHARDSON CONSTRUCTION, INC.;

22 NEVADA BY DESIGN, LLC D/B/A NEVADA BY

23 DESIGN ENGINEERING CONSULTANTS; JW

24 ZUNINO & ASSOCIATES, LLC; MELROY

25 ENGINEERING, INC. D/B/A MSA

26 ENGINEERING CONSULTANTS; O'CONNOR

27 CONSTRUCTION MANAGEMENT INC.; NINYO

28 & MOORE, GEOTECHNICAL CONSULTANTS;

JACKSON FAMILY PARTNERSHIP LLC D/B/A

STARGATE PLUMBING; AVERY ATLANTIC,

LLC; BIG C LLC; RON HANLON MASONRY,

LLC; THE GUARANTEE COMPANY OF NORTH

AMERICA USA; P & W BONDS, LLC;

PAFFENBARGER & WALDEN, LLC; DOES I

through X, inclusive; and ROE CORPORATIONS I

through X, inclusive,

Defendants.

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**NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY GIVEN that the ORDER GRANTING NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND ALL JOINDERS TO SAME was entered in the above-captioned matter on the 15<sup>th</sup> day of October, 2019. A copy of said ORDER is attached hereto.

DATED this 17<sup>th</sup> day of October, 2019.

WEIL & DRAGE, APC

*/s/ John T. Wendland*

By: \_\_\_\_\_  
JOHN T. WENDLAND, ESQ.  
(Nevada Bar No. 7207)  
ANTHONY D. PLATT, ESQ.  
(Nevada Bar No. 9652)  
2500 Anthem Village Drive  
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Attorneys for Defendant,  
NEVADA BY DESIGN, LLC D/B/A NEVADA  
BY DESIGN ENGINEERING CONSULTANTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 17<sup>th</sup> day of October, 2019, service of the foregoing  
**NOTICE OF ENTRY OF ORDER** was made this date by electronically serving a true and  
correct copy of the same, through Clark County Odyssey eFileNV, to the following parties:

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RICHARDSON CONSTRUCTION, INC. and  
GUARANTEE COMPANY OF NORTH  
AMERICA USA

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PAFFENBARGER & WALDEN LLC and  
P & W BONDS LLC

*/s/ Joanna Medina*

\_\_\_\_\_  
Joanna Medina, an Employee of  
WEIL & DRAGE, APC

ORIGINAL

Electronically Filed  
10/15/2019 2:57 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

ORDG

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(Nevada Bar No. 7207)

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Attorneys for Defendant,

NEVADA BY DESIGN, LLC d/b/a

NEVADA BY DESIGN ENGINEERING CONSULTANTS

DISTRICT COURT  
CLARK COUNTY, NEVADA

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

DEKKER/PERICH/SABATINI LTD.;

RICHARDSON CONSTRUCTION, INC.;

NEVADA BY DESIGN, LLC D/B/A NEVADA BY

DESIGN ENGINEERING CONSULTANTS; JW

ZUNINO & ASSOCIATES, LLC; MELROY

ENGINEERING, INC. D/B/A MSA

ENGINEERING CONSULTANTS; O'CONNOR

CONSTRUCTION MANAGEMENT INC.; NINYO

& MOORE, GEOTECHNICAL CONSULTANTS;

JACKSON FAMILY PARTNERSHIP LLC D/B/A

STARGATE PLUMBING; AVERY ATLANTIC,

LLC; BIG C LLC; RON HANLON MASONRY,

LLC; THE GUARANTEE COMPANY OF NORTH

AMERICA USA; P & W BONDS, LLC;

PAFFENBARGER & WALDEN, LLC; DOES I

through X, inclusive; and ROE CORPORATIONS I

through X, inclusive,

Defendants.

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

**ORDER GRANTING NEVADA BY  
DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING  
CONSULTANTS' MOTION TO  
DISMISS OR, IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT AND ALL  
JOINDERS TO SAME**

Hearing Date: 9/30/19

Hearing Time: 8:30 am

{01622688;1}

1                                   **ORDER GRANTING NEVADA BY DESIGN, LLC d/b/a**  
2                                   **NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO DISMISS OR, IN**  
3                                   **THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND ALL JOINDERS**  
4                                   **TO SAME**

5           THIS MATTER having come before the Court on September 30, 2019 on Nevada By  
6           Design, LLC d/b/a Nevada By Design Engineering Consultants' ("NBD") Motion to Dismiss, or, in  
7           the alternative, Motion for Summary Judgment and all Joinders to same; and the Court having read  
8           and considered the submitted papers, having heard oral arguments from counsels and finding good  
9           cause, hereby finds and rules as follows

10                                   **FINDINGS**

- 11           1.       The Court finds that Plaintiff City of North Las Vegas ("Plaintiff") filed its Complaint on  
12           July 11, 2019.
- 13           2.       The Court finds that the Plaintiff represented that the Notice of Completion for the subject  
14           project was recorded on July 13, 2009.
- 15           3.       The Courts finds that pursuant to NRS 11.202, no action may be commenced for any  
16           deficiency in design, planning, supervision or observation of construction or the construction of an  
17           improvement to real property more than six (6) years after substantial completion.
- 18           4.       The Court finds that AB 421's Effective Date is October 1, 2019.
- 19           5.       The Court finds that AB 421's Section 11(4) retroactive application is not applicable to  
20           Plaintiff's Complaint.
- 21           6.       The Court finds that the Plaintiff failed to timely file its Complaint and therefore, the  
22           Complaint and claims therein violate NRS 11.202.
- 23           7.       The Court did not address NBD's arguments based on NRS 11.258 as the granting of the  
24           Motion to Dismiss, or in the alternative, the Motion for Summary Judgment based on NRS 11.202  
25           renders these arguments moot.

26           ///

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8. The Court finds that Defendants Richardson Construction, Inc.'s and Guarantee Company of North America USA's (collectively, the "Richardson Parties") motion for summary judgment scheduled for hearing on October 21, 2019 is moot and the hearing is vacated.

9. The Court finds that Defendants P&W Bonds, LLC's and Paffenbarger & Walden, LLC's (collectively, the P&W Parties") motion to dismiss scheduled for hearing on October 21, 2019 is moot and the hearing is vacated.

\*\*\*

**ORDER**

IT IS HEREBY ORDERED that NBD's Motion to Dismiss, or in the alternative, Motion for Summary Judgment and all Joinders to these Motions are hereby GRANTED.

IT IS FURTHER ORDERED that Plaintiff's claims and the Complaint against NBD and all joining parties are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that the Richardson Parties' motion for summary judgment is deemed moot and the hearing for said motion is hereby vacated.

IT IS FURTHER ORDRED that the P&W Parties' motion to dismiss is deemed moot and the hearing for said motion is hereby vacated.

DATED this 14 day of October, 2019.

  
DISTRICT COURT JUDGE  
J. CHARLES THOMPSON 78

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1 Respectfully Submitted by:

2 WEIL & DRAGE, APC

3  
4   
5 \_\_\_\_\_  
6 JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

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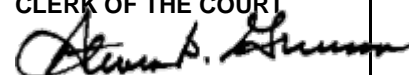
11 NEVADA BY DESIGN, LLC d/b/a

12 NEVADA BY DESIGN ENGINEERING

CONSULTANTS

**EXHIBIT 25**  
**PETITIONERS' APPENDIX**

**EXHIBIT 25**  
**PETITIONERS' APPENDIX**



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Aleem A. Dhalla, Esq.  
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*Attorneys for the City of North Las Vegas*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

City of North Las Vegas,

Plaintiff,

vs.

Dekker/Perich/Sabatini Ltd.; Richardson  
Construction, Inc.; Nevada By Design, LLC  
d/b/a Nevada By Design Engineering  
Consultants; JW Zunino & Associates, LLC;  
Melroy Engineering, Inc. d/b/a MSA  
Engineering Consultants; O'Connor  
Construction Management Inc.; Ninyo &  
Moore, Geotechnical Consultants; Jackson  
Family Partnership LLC d/b/a Stargate  
Plumbing; Avery Atlantic, LLC; Big C LLC;  
Ron Hanlon Masonry, LLC; The Guarantee  
Company of North America USA; P & W  
Bonds, LLC; Paffenbarger & Walden, LLC;  
DOES I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

**MOTION TO ALTER JUDGMENT**

**(HEARING REQUESTED)**

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1 Pursuant to NRCP 59(e), Plaintiff the City of North Las Vegas ("City") moves the Court to  
2 alter the Order Granting Nevada By Design, LLC d/b/a Nevada By Design Engineering  
3 Consultants' ("NBD") Motion to Dismiss or, in the alternative, Motion for Summary Judgment and  
4 All Joinders to the Same ("NBD's Motion") for which notice of entry was served on October 17,  
5 2019 ("Order").

6 The City's Motion is based on the Memorandum of Points and Authorities below, the  
7 pleadings and papers on file, and any argument that this Court may entertain.

8  
9 Dated: November 13, 2019.

SNELL & WILMER L.L.P.

10  
11 By:

  
Richard C. Gordon, Esq. (NV Bar No. 9036)  
Aleem A. Dhalla, Esq. (NV Bar No. 14188)  
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12  
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14 *Attorneys for the City of North Las Vegas*  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Because there is no longer a dispute that ten-year statute of repose is now effective, and because the Legislature made the statute of repose effective retroactively, the City's complaint is timely, and the Court should vacate its Order.<sup>1</sup> Specifically, there was never a dispute that the City's complaint would have been timely under the NRS 11.202 ten-year statute of repose; the parties only dispute when AB 421's amendment to NRS 11.202 became effective. Now, because the parties agree that the ten-year statute of repose is effective, the Court should vacate its order and deny NBD's Motion.

Accordingly, the Court should vacate its Order for three reasons. First, the ten-year statute applies to this case. The Legislature undeniably intended that its amendment to lengthen the statute of repose be effective retroactively, as the bill unequivocally says that the change will "apply retroactively" to actions where substantial completion occurred before October 1, 2019. Indeed, the Legislature specifically discussed *soil issues*, just like the one present in this case, as the purpose for lengthening the statute of repose to protect property owners from deficiencies that commonly manifest many years after substantial completion.<sup>2</sup> Importantly, legislatures have the power to extend time-barring statutes retroactively and make their changes applicable to pending cases, even cases on appeal.<sup>3</sup> This Court has the power under NRCP 59(e) to amend its Order due to changes in law<sup>4</sup> and the Court should interpret the statute of repose broadly to protect the most property owners. Therefore, the Court should vacate its Order and deny NBD's Motion.

---

<sup>1</sup> October 17, 2019 Notice of Entry of Order Granting Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment and All Joinders to the Same ("Order"), attached as Ex. 1.

<sup>2</sup> Minutes of the Senate Committee on Judiciary at 10, 80th Leg. ("Assembly Bill 421 extends the statute of repose period to ten years. Soils is a good example because soil cases do not show up until Years 8, 9 or 10. We had a geotechnical expert testify in the Assembly who explained that in more detail.")

<sup>3</sup> See *The Ecology Ctr. v. Castaneda*, 426 F.3d 1144, 1150 (9th Cir. 2005) ("Congress clearly has the power to amend a statute and to make that change applicable to pending cases."); *Gray v. First Winthrop Corp.*, 989 F.2d 1564, 1570 (9th Cir. 1993) (holding that Congress could amend statute of limitations effective retroactively and impact the pending case).

<sup>4</sup> See *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582 (Nev. 2010). (holding that "Among the basic grounds for a Rule 59(e) motion are correcting manifest errors of law or fact, newly discovered or previously unavailable evidence, the need to prevent manifest injustice, *or a change in controlling law.*") (internal quotation marks removed and emphasis added).

LAW OFFICES

Second, the Court's Order is void because it violated EDCR 2.26. The rule strictly prohibits the Court from shortening the time for a hearing to less than one judicial day. *See* EDCR 2.26 ("In *no event* may the notice of the hearing of a motion be shortened to less than 1 full judicial day.") (emphasis added). This rule is not perfunctory; it not only limits the Court's power but the purpose is to preserve the City's due process right to fair notice. Because the Court granted NBD's motion to change the hearing date on its Motion and shortened the time on the Motion to the same day, the Court violated EDCR 2.26. Therefore, the Order is void and it must, at a minimum, re-set the hearing for a properly noticed date.

Third, the Court should clarify its Order to properly identify the joinders. EDCR 2.20(d) provides that if a party wishes to join a written motion, the party must do so in writing within five days after service of the written motion. The Richardson Parties filed their joinder *after* the hearing on September 30. Similarly, JW Zunino filed its joinder *after* the hearing. Post-hearing joinders are not permitted under EDCR 2.20(d). Because these parties joined after the September 30 hearing—well outside the deadline to file joinders—the Court should clarify that its Order does not apply to them.

## II. FACTS AND PROCEDURE

### A. Factual Background

This case concerns the deficient construction of Fire Station 53 in North Las Vegas (“Project”). Compl. ¶¶ 22–23, attached as Ex. 2 (exhibits removed). The City retained Dekker/Perich/Sabatini Ltd. (“Dekker”) to provide Professional Architectural Services for the design of Fire Station 53 (“Property”). *Id.* As part of the Design Agreement, Dekker was responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by the Dekker and its subconsultants. Ex. 2 ¶¶ 24–25. Dekker contracted with several subconsultants on the Project, including Nevada By Design, JW Zunino, MSA, O’Connor, and Ninyo & Moore. Ex. 2 ¶ 27.

Following completion of the design phase, the City awarded the Project to Richardson Construction, Inc. (“Richardson Construction”). Ex. 2 ¶¶ 36–38. Richardson Construction’s scope of work included site clearing, earthwork, masonry, structural steel roofing, interior finishes,

1 plumbing, fire protection, heating, ventilating and air conditioning systems, electrical systems,  
2 lighting, power, telephone, data-communications, landscaping, utilities, asphalt/concrete drives,  
3 concrete sidewalk and patios, furnishing equipment, and other work included in the Construction  
4 Documents. Ex. 2 ¶ 39. Richardson Construction subcontracted several companies to perform  
5 portions of its scope of work, including Jackson Family Partnership LLC d/b/a Stargate Plumbing,  
6 Avery Atlantic, LLC, Big C LLC, and Ron Hanlon Masonry, LLC. Ex. 2 ¶ 40.

7 The Project reached substantial completion on July 13, 2009 when the notice of completion  
8 was recorded. Ex. 2 ¶ 45 & p. 133. After the Project was completed, the City noticed distress to the  
9 building including wall cracks and separations, and interior slab cracking. Ex. 2 ¶ 46. The City  
10 retained Edred T. Marsh, P.E. of American Geotechnical, Inc. (“American Geotechnical”) to  
11 perform a geotechnical investigation of the site. Ex. 2 ¶ 47. The purpose of this investigation was  
12 to evaluate the site geotechnical conditions and to determine the probable cause of the distress to  
13 the building and surrounding appurtenances. Ex. 2 ¶ 47. Mr. Marsh concluded that the distress to  
14 Fire Station 53 and surrounding appurtenant structures was due to a combination of excessive  
15 differential settlement and expansive soil activity. Ex. 2 ¶ 49. In short, settlement of the building  
16 occurred as a result of stresses from the weight of the structure and self-weight of the earth materials  
17 and was aggravated by introduction of water to the subsoil. Ex. 2 ¶ 52.

18 **B. Procedural History**

19 The City filed its complaint on July 11, 2019. *See* Ex. 2. NBD filed its motion to dismiss  
20 or, in the alternative, motion for summary judgment (“Motion”) on August 5, 2019. *See* NBD  
21 Motion. Dekker joined NBD’s Motion with respect to its statute of repose argument on August 6,  
22 2019. *See* Dekker Joinder, filed August 6, 2019. Melroy Engineering, Inc. d/b/a MSA Engineering  
23 Consultants (“MSA”) joined NBD’s Motion with respect to its statute of repose argument on  
24 August 8, 2019. *See* MSA Joinder, filed August 8, 2019. The City filed its opposition to NBD’s  
25 Motion on August 20, 2019. *See* City Opp.

26 Several defendants joined NBD’s Motion after the City filed its opposition. Ninyo & Moore  
27 joined NBD’s Motion with respect to its statute of repose argument on August 23, 2019. *See* Ninyo  
28 & Moore Joinder, filed August 23, 2019. Jackson Family Partnership LLC d/b/a Stargate Plumbing



1 joined NBD's Motion with respect to its statute of repose argument on August 23, 2019. *See*  
2 Jackson Family Partnership Joinder, filed August 23, 2019. Paffenbarger & Walden, LLC and P &  
3 W Bonds, LLC's (collectively "P&W") joined NBD's Motion with respect to its statute of repose  
4 argument on September 13, 2019. *See* P&W's Joinder, filed September 13, 2019.

5 On September 27, 2019, the Court heard NBD's Motion to change hearing date on its  
6 Motion on an order shortening time ("Motion to Change Date"). The Court continued the hearing  
7 on the Motion to Change Date to September 30, 2019. At the September 30 hearing, the Court  
8 granted the Motion to Change Date and shortened time on the underlying Motion to that same  
9 morning. *See* Order Granting Motion to Change Date, Ex 3. The Court then granted NBD's Motion  
10 as to the statute of repose. *See* Order, Ex. 1. The Order was entered on October 17, 2019. *Id.*

11 Two defendants attempted to join NBD's Motion after the September 30, 2019 hearing.  
12 Richardson Construction and the Guarantee Company of North America USA (collectively  
13 ("Richardson Parties") filed a joinder to NBD's Motion with respect to its statute of repose  
14 argument on September 30, 2019. *See* Richardson Parties Joinder, filed September 30, 2019.  
15 Similarly, JW Zunino filed a joinder to NBD's Motion with respect to its statute of repose argument  
16 on September 30, 2019. *See* JW Zunino Joinder, filed September 30, 2019.

### 17 III. LEGAL STANDARD

#### 18 A. Motion to Alter Judgment

19 A judgment is the final determination of the rights of the parties in the action or proceeding.  
20 *Meyer v. Flood*, 54 Nev. 55, 4 P.2d 305, 305 (1931). Rule 59(e) includes "a broad range of motions,  
21 [with] the only real limitation on the type of motion permitted [being] that it must request a  
22 substantive alteration of the judgment, not merely correction of a clerical error, or relief of a type  
23 wholly collateral to the judgment." *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582  
24 (Nev. 2010). "Among the 'basic grounds' for a Rule 59(e) motion are 'correct[ing] manifest errors  
25 of law or fact,' 'newly discovered or previously unavailable evidence,' the need 'to prevent  
26 manifest injustice,' *or a 'change in controlling law.'*" *Id.* (citing *Coury v. Robison*, 115 Nev. 84,  
27 124–27 (1999)) (emphasis added); *see also, Lytle v. Rosemere Estates Prop. Owners*, 129 Nev.  
28 923, 926 (2013) (holding that Rule 59(e) applies to any appealable order). The requirements for

1 filing a Rule 59(e) motion are minimal; in addition to being timely filed (no later than 28 days after  
2 service of written notice of entry of the judgment under NRCP 59(e), the motion must “be in  
3 writing, . . . state with particularity [its] grounds [and] set forth the relief or order sought.” *Id.* at  
4 581.

5 **B. Motion to Dismiss**

6 “Nevada has not adopted the federal ‘plausibility’ pleading standard.” *Compare McGowen,*  
7 *Tr. of McGowen & Fowler, PLLC v. Second Judicial Dist. Court*, 134 Nev. Adv. Op. 89, 432 P.3d  
8 220, 225 (2018) with NBD Mot. 5:11–17. Rather, Nevada’s notice-pleading standard only “requires  
9 plaintiffs to set forth the facts which support a legal theory.” *Liston v. Las Vegas Metro. Police*  
10 *Dep’t*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995) “Because Nevada is a notice-pleading  
11 jurisdiction, our courts liberally construe pleadings to place into issue matters which are fairly  
12 noticed to the adverse party.” *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

13 Under NRCP 12(b)(5), dismissal is only appropriate “if it appears beyond a doubt that the  
14 plaintiff could prove no set of facts, which, if true, would entitle the plaintiff to relief.” *Facklam v.*  
15 *HSBC Bank USA for Deutsche ALT-A Sec. Mortg. Loan Tr.*, 401 P.3d 1068, 1070 (Nev. 2017)  
16 (internal quotations omitted). In considering a motion to dismiss, the Court “must construe the  
17 pleadings liberally and accept all factual allegations in the complaint as true.” *Blackjack Bonding*  
18 *v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). “Furthermore,  
19 this court must draw every fair inference in favor of the non-moving party.” *Id.*

20 **IV. ARGUMENT**

21 **A. The City’s claims are timely under the retroactively applicable ten-year statute of**  
22 **repose.**

23 The City’s claims are timely. There is no longer a dispute that the ten-year statute of repose  
24 applies. The Nevada Legislature recently extended NRS 11.202—which sets a statute of repose on  
25 claims regarding construction and design deficiencies—from six years to ten years. While the  
26 parties previously disputed the effective date of AB 421, there is no longer a dispute that the ten-  
27 year statute of repose is currently effective. More importantly, because the Legislature explicitly  
28

1 made the lengthened statute of repose *effective retroactively* to actions in which substantial  
2 completion occurred before October 1, 2019, the City's claims are timely.

3 **1. AB 421 amended NRS 11.202 to extend the statute of repose to ten years.**

4 The Nevada Legislature recently amended NRS 11.202 to extend the applicable statute of  
5 repose. AB 421 was signed into law on June 3, 2019. *See* AB 421, Ex. 4. Section 7 of AB 421  
6 extends the statute of repose for claims regarding deficiencies in construction from six to ten years  
7 after substantial completion. *Id.* Specifically, the relevant portion of Section 7 states:

8 Sec. 7. NRS 11.202 is hereby amended to read as follows:

9 11.202 1. No action may be commenced against the owner, occupier  
10 or any person performing or furnishing the design, planning,  
supervision or observation of construction, or the construction of an  
11 improvement to real property more than ~~6~~ 10 years after the  
substantial completion of such an improvement, for the recovery of  
12 damages for:

13 (a) ~~Any~~ *Except as otherwise provided in subsection 2, any*  
deficiency in the design, planning, supervision or observation of  
14 construction or the construction of such an improvement;

15 (b) Injury to real or personal property caused by any such deficiency;  
or

16 (c) Injury to or the wrongful death of a person caused by any such  
17 deficiency.

18 *Id.* (emphasis in original).<sup>5</sup>

19 Here, Defendants argued, and the Court found, that the ten-year statute of repose became  
20 effective on October 1, 2019. Thus, there is no dispute that the current version of NRS 11.202 sets  
21 a ten-year statute for construction and design deficiencies. The only remaining issue is whether the  
22 ten-year statute of repose from NRS 11.202 is effective retroactively.

23 **2. The ten-year statute of repose applies retroactively.**

24 “It is well settled in Nevada that words in a statute should be given their plain meaning  
25 unless this violates the spirit of the act.” *In re Estate of Thomas*, 116 Nev. 492, 495, 998 P.2d 560,

26  
27 <sup>5</sup> AB 421 also added subsection 2 to NRS 11.202 which removes the deadline when an act of fraud caused  
28 the deficiency. The City does not allege a fraud claim in its Complaint, and subsection 2 is not applicable  
here. However, the City does not waive, and expressly reserves, its right to pursue a fraud claim should it  
later discover facts to support such a claim.

1 562 (2000) (quoting *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)).  
2 Further, the Court “must attribute the plain meaning to a statute that is not ambiguous” and should  
3 only look to legislative history if it finds that the text is ambiguous. *State v. Catanio*, 120 Nev.  
4 1030, 1032, 102 P.3d 588, 590 (2004); *State v. Lucero*, 127 Nev. 92, 95–96, 249 P.3d 1226, 1228  
5 (2011). “In addition, no provision of a statute should be rendered nugatory by this court’s  
6 construction, nor should any language be made mere surplusage, if such a result can be avoided.”  
7 *Id.* As a general rule, “statutes operate prospectively, ***unless the Legislature clearly manifests an***  
8 ***intent to apply the statute retroactively.***” *Pub. Employees’ Benefits Program v. Las Vegas Metro.*  
9 *Police Dep’t*, 124 Nev. 138, 154, 179 P.3d 542, 553 (2008) (emphasis added).

10 Importantly, legislatures have the power to amend statutes retroactively and make their  
11 changes applicable to pending cases. *See The Ecology Ctr. v. Castaneda*, 426 F.3d 1144, 1150 (9th  
12 Cir. 2005) (“Congress clearly has the power to amend a statute and to make that change applicable  
13 to pending cases.”). Moreover, this retroactive change also applies to cases currently on appeal. *Id.*  
14 (quoting *Cook Inlet Treaty Tribes v. Shalala*, 166 F.3d 986, 991 (9th Cir. 1999) (finding that  
15 “legislation enacted by Congress while appeal was pending, ‘even if directed at this litigation, does  
16 not violate the separation of powers doctrine because it changes the underlying substantive law.’”).  
17 Legislatures can apply this retroactive change to time-barring statutes. *See Gray v. First Winthrop*  
18 *Corp.*, 989 F.2d 1564, 1570 (9th Cir. 1993) (holding that Congress could amend the Securities  
19 Exchange Act of 1934 retroactively to change the statute of limitations and impact pending cases);  
20 *Axel Johnson Inc. v. Arthur Andersen & Co.*, 6 F.3d 78, 81 (2d Cir. 1993) (same); *Henderson v.*  
21 *Sci.-Atlanta, Inc.*, 971 F.2d 1567, 1569 (11th Cir. 1992) (same); *Mathews v. Kidder, Peabody &*  
22 *Co.*, 161 F.3d 156 (3d Cir. 1998) (holding that if Congress has expressly commanded that a new  
23 statute is to apply retrospectively, the court must apply the statute to pending cases). Thus, if the  
24 Legislature clearly manifests that it intended a change to apply retroactively, the Court must apply  
25 the amended statute to pending cases, including cases on appeal, even when the change is to a time-  
26 barring statute.

Here, the Legislature undeniably intended its change to be retroactive, as it unequivocally said the change will “*apply retroactively*” to actions where substantial completion occurred before October 1, 2019. Specifically, Section 11 states:

4. The period of limitations on actions set forth in NRS 11.202, as amended by section 7 of this act, apply retroactively to actions in which the substantial completion of the improvement to the real property occurred before October 1, 2019.

Ex. 4. The Legislature was clear and unambiguous in that the statute is effective retroactively and the Court should apply the plain meaning of AB 421. To the extent the Court chooses to look beyond the text of the bill to interpret the Legislature’s intent behind giving the statute retroactive effect, the legislative history shows that the Legislature, by lengthening the statute of repose, intended to specifically protect property owners in situations just like that present in this case. *See* Minutes of the Senate Committee on Judiciary at 10, 80th Leg. (Nev., May 15, 2019), Ex. 5, p. 10. In fact, protecting property owners against later discovered soil issues was specially discussed in the legislative history:

Under the current six-year statute of repose, there are many people—and we have experienced it since 2015—who have called us asking for help, but we have had to tell them they are past the six-year statute of repose and there is nothing we can do to help them. It is important to note that the majority of states across the nation actually have a ten-year statute of repose, including the nearby states of California, Montana, Oregon, and Wyoming. Nevada’s six years is definitely on the low end and is not protecting our consumers.

...

I have had a number of homeowners call and we have been unable to help because they have been past the original six-year statute of repose. We had a homeowner testify in the Assembly that she missed the deadline by two months and she has extreme soils movement. She cannot open or close her windows or lock her door. We had another homeowner who was past the six years and the back of her home is falling down the hill.

Assembly Bill 421 extends the statute of repose period to ten years. **Soils is a good example because soil cases do not show up until Years 8, 9 or 10. We had a geotechnical expert testify in the Assembly who explained that in more detail.**

*Id.* at p. 7, 10.

1 The Legislature passed AB 421 to give greater protection to property owners and quite  
2 specifically to protect them against defects such as soil issues that manifest many years after  
3 substantial completion.<sup>6</sup> Considering this, and that the Legislature made the ten-year statute of  
4 repose *effective retroactively*, it would not make sense for the Court to read the statute in such a  
5 way as to create a gap between when the ten-year statute of repose was passed and when it became  
6 effective, such that it would exclude certain claimants from its protection. In short, the amended  
7 ten-year statute of repose “appl[ies] retroactively to actions in which the substantial completion of  
8 the improvement to the real property occurred before October 1, 2019.” Thus, because the Project  
9 certainly reached substantial completion before October 1, 2019, the ten-year statute of repose  
10 applies.<sup>7</sup>

11 **3. The City’s claims are timely.**

12 Under NRS 11.2055, the statute of repose begins on the latest date of either: “(a) The final  
13 building inspection of the improvement is conducted; (b) A notice of completion is issued for the  
14 improvement; or (c) A certificate of occupancy is issued for the improvement.” A notice of  
15 completion is considered issued when it is recorded. *See Dykema v. Del Webb Communities, Inc.*,  
16 132 Nev. Adv. Op. 82, 385 P.3d 977, 979–80 (2016) (“Construing the statutes in harmony with one  
17 another, and consistent with what reason and public policy suggest the Legislature intended, we  
18 conclude that it is the act of recording that signifies that a notice of completion has been ‘issued.’”)

19 Here, the notice of completion was recorded July 13, 2009. Ex. 1. Under the ten-year statute  
20 of repose, the City had until July 13, 2019 to file its complaint; it did so on July 11, 2019. *See* Ex.  
21 1. Thus, the City’s claims are timely, and the Court should grant the City’s Motion and vacate its  
22 Order.

23 <sup>6</sup> Equally important, as a protective statute, NRS 11.202 merits liberal construction under Nevada law. *See*  
24 *State Dep’t of Bus. & Indus., Fin. Institutions Div. v. Dollar Loan Ctr., LLC*, 134 Nev. Adv. Op. 15, 412  
25 P.3d 30, 33 (2018) (“Statutes with a protective purpose should be liberally construed in order to effectuate  
the benefits intended to be obtained.”)

26 <sup>7</sup> Additionally, when the notice of completion was recorded on February 13, 2009, there was a maximum  
27 ten-year statute of repose for deficiencies in construction. *See* NRS 11.203. “The 2015 Legislature  
28 repealed NRS 11.203–11.205, providing for six-, eight-, and ten-year statutes of repose for construction  
defect claims, leaving such claims governed by NRS 11.202, which provides for a six-year statute of  
repose.” *Dykema v. Del Webb Communities, Inc.*, 132 Nev. Adv. Op. 82, 385 P.3d 977, 978 (2016). Thus,  
when the Project was completed, the ten-year statute of limitations was in effect, not the later passed six-  
year statute of repose from NRS 11.202.

1     **B.     The Court’s Order is void because it violated EDCR 2.26.**

2             EDCR 2.26 allows the Court to shorten time on a hearing. This power, however, is not  
3     without limits. The Court “[i]n no event may the notice of the hearing of a motion be shortened to  
4     less than 1 full judicial day.” EDCR 2.26. The Court’s failure to follow the applicable rule and its  
5     decision to shorten the time for a hearing beyond what the rule allows constitutes a reversible error.  
6     *See Cheek v. FNF Const., Inc.*, 112 Nev. 1249, 1255, 924 P.2d 1347, 1351 (1996). The Nevada  
7     Supreme Court “has held that an appellant’s right to notice has nothing to do with the merits of the  
8     case.” *Id.* (citing *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 83, 847 P.2d 731, 735 (1993) (citing  
9     *U.S. Development Corp. v. Peoples Federal Savings and Loan Association*, 873 F.2d 731, 734 (4th  
10    Cir.1989)). Instead, fair notice within the rules is a fundamental due process right. *Id.*

11            Here, the Court violated EDCR 2.26 at the September 30 hearing. At that hearing, the Court  
12    heard and granted NBD’s Motion to Change Date, shortening the hearing date for NBD’s Motion  
13    from October 21 to September 30. Because the Court did not give one full judicial day’s notice,  
14    this violated EDCR 2.26. To be clear, the rule strictly prohibits the Court to shorten the time for a  
15    hearing to less than one judicial day, without exception. *See* EDCR 2.26 (“*In no event* may the  
16    notice of the hearing of a motion be shortened to less than 1 full judicial day.”) (emphasis added).  
17    Thus, the Order is void.

18    **C.     The Richardson Parties and JW Zunino did not timely join NBD’s Motion.**

19            Because the Richardson Parties filed their written joinder *after* the hearing on September  
20    30, the Order is not applicable to them. EDCR 2.20(d) provides that if a party wishes to join a  
21    written motion, the party must do so in writing within five days after service of the motion.

22            Here, the Richardson Parties filed their joinder shortly *after* the hearing on September 30th.  
23    *See* Richardson Parties’ Joinder, Ex. 6. Similarly, JW Zunino filed its joinder later that day after  
24    the hearing. *See* JW Zunino’s Joinder, Ex. 7. Because these post-hearing joinders are not permitted  
25    under EDCR 2.20(d) and because the Court’s ruling only applied to joinders presently on file, the  
26    Court’s order should not include the Richardson Parties or JW Zunino. Nothing prevents these  
27    parties from each filing its own motion to dismiss. However, because these parties joined after the  
28    September 30 hearing—well outside the deadline to file joinders—the Court should clarify that its

1 Order does not apply to them.

2 **V. CONCLUSION**

3 The Court should vacate its Order for three reasons. First, the ten-year statute applies to this  
4 case, as the Legislature undeniably intended that its amendment to lengthen the statute of repose to  
5 be retroactive. Because the City filed its complaint within the ten-year statute of repose, the City's  
6 claims are timely.

7 Second, the Court's Order is void because it violated EDCR 2.26. Under the rule, the Court  
8 "[i]n no event may the notice of the hearing of a motion be shortened to less than 1 full judicial  
9 day." Because the Court violated the rule by shortening the time for the hearing on NBD's Motion  
10 to less than one judicial day, the Order is void.

11 Third, the Court should clarify its Order to properly identify the joinders under EDCR  
12 2.20(d). The Richardson Parties and JW Zunino did not timely join NBD's Motion, filing their  
13 respective joinders after the hearing. Therefore, their joinders are untimely and the Court should  
14 clarify that its Order does not apply as to them.

15  
16 Dated: November 13, 2019.

SNELL & WILMER L.L.P.

17  
18 By: 

19 Richard C. Gordon, Esq. (NV Bar No. 9036)  
20 Aleem A. Dhalla, Esq. (NV Bar No. 14188)  
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21 *Attorneys for the City of North Las Vegas*



**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 this date, I caused to be served a true and correct copy of the foregoing **MOTION TO ALTER JUDGMENT** by method indicated below:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **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.
- ☒ **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 EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

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Dated: November 13, 2019.



An employee of SNELL & WILMER L.L.P.

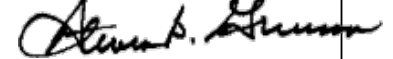
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# **EXHIBIT 1**

October 17, 2019 Notice of Entry of Order Granting Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment and All Joinders to the Same

# **EXHIBIT 1**

October 17, 2019 Notice of Entry of Order Granting Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment and All Joinders to the Same



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14 BY DESIGN ENGINEERING CONSULTANTS

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 CITY OF NORTH LAS VEGAS, ) CASE NO.: A-19-798346-C

18 Plaintiff, ) DEPT. NO.: VIII

19 vs. )

20 DEKKER/PERICH/SABATINI LTD.; ) **NOTICE OF ENTRY OF ORDER**

21 RICHARDSON CONSTRUCTION, INC.; )

22 NEVADA BY DESIGN, LLC D/B/A NEVADA BY )

23 DESIGN ENGINEERING CONSULTANTS; JW )

24 ZUNINO & ASSOCIATES, LLC; MELROY )

25 ENGINEERING, INC. D/B/A MSA )

26 ENGINEERING CONSULTANTS; O'CONNOR )

27 CONSTRUCTION MANAGEMENT INC.; NINYO )

28 & MOORE, GEOTECHNICAL CONSULTANTS; )

JACKSON FAMILY PARTNERSHIP LLC D/B/A )

STARGATE PLUMBING; AVERY ATLANTIC, )

LLC; BIG C LLC; RON HANLON MASONRY, )

LLC; THE GUARANTEE COMPANY OF NORTH )

AMERICA USA; P & W BONDS, LLC; )

PAFFENBARGER & WALDEN, LLC; DOES I )

through X, inclusive; and ROE CORPORATIONS I )

through X, inclusive, )

Defendants. )

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**NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY GIVEN that the ORDER GRANTING NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND ALL JOINDERS TO SAME was entered in the above-captioned matter on the 15<sup>th</sup> day of October, 2019. A copy of said ORDER is attached hereto.

DATED this 17<sup>th</sup> day of October, 2019.

WEIL & DRAGE, APC

*/s/ John T. Wendland*

By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 17<sup>th</sup> day of October, 2019, service of the foregoing  
**NOTICE OF ENTRY OF ORDER** was made this date by electronically serving a true and  
correct copy of the same, through Clark County Odyssey eFileNV, to the following parties:

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*/s/ Joanna Medina*

\_\_\_\_\_  
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WEIL & DRAGE, APC

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Steven D. Grierson  
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NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING CONSULTANTS

DISTRICT COURT  
CLARK COUNTY, NEVADA

CITY OF NORTH LAS VEGAS,

Plaintiff,

vs.

DEKKER/PERICH/SABATINI LTD.;  
RICHARDSON CONSTRUCTION, INC.;  
NEVADA BY DESIGN, LLC D/B/A NEVADA BY  
DESIGN ENGINEERING CONSULTANTS; JW  
ZUNINO & ASSOCIATES, LLC; MELROY  
ENGINEERING, INC. D/B/A MSA  
ENGINEERING CONSULTANTS; O'CONNOR  
CONSTRUCTION MANAGEMENT INC.; NINYO  
& MOORE, GEOTECHNICAL CONSULTANTS;  
JACKSON FAMILY PARTNERSHIP LLC D/B/A  
STARGATE PLUMBING; AVERY ATLANTIC,  
LLC; BIG C LLC; RON HANLON MASONRY,  
LLC; THE GUARANTEE COMPANY OF NORTH  
AMERICA USA; P & W BONDS, LLC;  
PAFFENBARGER & WALDEN, LLC; DOES I  
through X, inclusive; and ROE CORPORATIONS I  
through X, inclusive,

Defendants.

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

ORDER GRANTING NEVADA BY  
DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING  
CONSULTANTS' MOTION TO  
DISMISS OR, IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT AND ALL  
JOINDERS TO SAME

Hearing Date: 9/30/19

Hearing Time: 8:30 am

WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, Nevada 89052  
Phone: (702) 314-1905  
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**ORDER GRANTING NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO DISMISS OR, IN  
THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND ALL JOINDERS  
TO SAME**

THIS MATTER having come before the Court on September 30, 2019 on Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' ("NBD") Motion to Dismiss, or, in the alternative, Motion for Summary Judgment and all Joinders to same; and the Court having read and considered the submitted papers, having heard oral arguments from counsels and finding good cause, hereby finds and rules as follows

## **FINDINGS**

1. The Court finds that Plaintiff City of North Las Vegas (“Plaintiff”) filed its Complaint on July 11, 2019.
2. The Court finds that the Plaintiff represented that the Notice of Completion for the subject project was recorded on July 13, 2009.
3. The Courts finds that pursuant to NRS 11.202, no action may be commenced for any deficiency in design, planning, supervision or observation of construction or the construction of an improvement to real property more than six (6) years after substantial completion.
4. The Court finds that AB 421’s Effective Date is October 1, 2019.
5. The Court finds that AB 421’s Section 11(4) retroactive application is not applicable to Plaintiff’s Complaint.
6. The Court finds that the Plaintiff failed to timely file its Complaint and therefore, the Complaint and claims therein violate NRS 11.202.
7. The Court did not address NBD’s arguments based on NRS 11.258 as the granting of the Motion to Dismiss, or in the alternative, the Motion for Summary Judgment based on NRS 11.202 renders these arguments moot.

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1 8. The Court finds that Defendants Richardson Construction, Inc.'s and Guarantee Company of  
2 North America USA's (collectively, the "Richardson Parties") motion for summary judgment  
3 scheduled for hearing on October 21, 2019 is moot and the hearing is vacated.

4 9. The Court finds that Defendants P&W Bonds, LLC's and Paffenbarger & Walden, LLC's  
5 (collectively, the P&W Parties") motion to dismiss scheduled for hearing on October 21, 2019 is  
6 moot and the hearing is vacated.

7 \*\*\*

8 ORDER

9 IT IS HEREBY ORDERED that NBD's Motion to Dismiss, or in the alternative, Motion for  
10 Summary Judgment and all Joinders to these Motions are hereby GRANTED.

11 IT IS FURTHER ORDERED that Plaintiff's claims and the Complaint against NBD and all  
12 joining parties are hereby dismissed with prejudice.

13 IT IS FURTHER ORDERED that the Richardson Parties' motion for summary judgment is  
14 deemed moot and the hearing for said motion is hereby vacated.

15 IT IS FURTHER ORDRED that the P&W Parties' motion to dismiss is deemed moot and the  
16 hearing for said motion is hereby vacated.

17 DATED this 14 day of October, 2019.

18   
19  
20 DISTRICT COURT JUDGE  
21 J. CHARLES THOMPSON 78

22 ///

23 ///

24 ///

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26 ///

27 ///

1 Respectfully Submitted by:

2 WEIL & DRAGE, APC

3 

4  
5 JOHN T. WENDLAND, ESQ.

6 (Nevada Bar No. 7207)

7 ANTHONY D. PLATT, ESQ.

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14 Attorneys for Defendant,

15 NEVADA BY DESIGN, LLC d/b/a

16 NEVADA BY DESIGN ENGINEERING

17 CONSULTANTS

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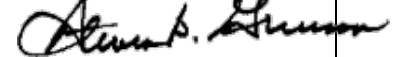
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# **EXHIBIT 2**

## Complaint

# **EXHIBIT 2**

## Complaint



CASE NO: A-19-798346-C  
Department 8

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*Attorneys for the City of North Las Vegas*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

City of North Las Vegas,  
  
Plaintiff,

vs.

Dekker/Perich/Sabatini Ltd.; Richardson  
Construction, Inc.; Nevada By Design,  
LLC d/b/a Nevada By Design Engineering  
Consultants; JW Zunino & Associates,  
LLC; Melroy Engineering, Inc. d/b/a MSA  
Engineering Consultants; O'Connor  
Construction Management Inc.; Ninyo &  
Moore, Geotechnical Consultants; Jackson  
Family Partnership LLC d/b/a Stargate  
Plumbing; Avery Atlantic, LLC; Big C  
LLC; Ron Hanlon Masonry, LLC; The  
Guarantee Company of North America  
USA; P & W Bonds, LLC; Paffenbarger &  
Walden, LLC; DOES I through X,  
inclusive; and ROE CORPORATIONS I  
through X, inclusive,

Defendants.

CASE NO.:

DEPT. NO.:

**COMPLAINT**

EXEMPT FROM ARBITRATION UNDER  
N.A.R. 3(A): SEEKS DAMAGES IN EXCESS  
OF \$50,000

The City of North Las Vegas files its Complaint against Dekker/Perich/Sabatini Ltd.,  
Richardson Construction, Inc., Nevada By Design, LLC d/b/a Nevada By Design Engineering  
Consultants, JW Zunino & Associates, LLC, Melroy Engineering, Inc. d/b/a MSA Engineering  
Consultants, O'Connor Construction Management Inc., Ninyo & Moore, Geotechnical  
Consultants, Jackson Family Partnership LLC d/b/a Stargate Plumbing, Avery Atlantic, LLC, Big  
C LLC, Ron Hanlon Masonry, LLC, The Guarantee Company of North America USA, P & W

**Snell & Wilmer**

LLP  
LAW OFFICES  
3883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
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1 Bonds LLC, Paffenbarger & Walden, LLC, DOES I through X, and ROE CORPORATIONS I  
2 through X (all collectively, “Defendants”), and alleges as follows:

3 **I. PARTIES, JURISDICTION, AND VENUE**

4 1. The City of North Las Vegas (“City”) is a political subdivision of the State of  
5 Nevada.

6 2. Dekker/Perich/Sabatini Ltd. (“DPS”) is a Nevada professional corporation  
7 conducting business in Clark County, Nevada.

8 3. Richardson Construction, Inc. (“Richardson Construction”) is a Nevada corporation  
9 conducting business in Clark County, Nevada.

10 4. Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants  
11 (“Nevada By Design”) is a Nevada limited liability company conducting business in Clark County,  
12 Nevada.

13 5. JW Zunino & Associates, LLC (“JW Zunino”) is a Nevada limited liability company  
14 conducting business in Clark County, Nevada.

15 6. Melroy Engineering, Inc. d/b/a MSA Engineering Consultants (“MSA”) is a Nevada  
16 professional corporation conducting business in Clark County, Nevada.

17 7. O’Connor Construction Management Inc. (“O’Connor”) is a California corporation  
18 conducting business in Clark County, Nevada.

19 8. Ninyo & Moore, Geotechnical Consultants (“Ninyo & Moore”) is a California  
20 corporation conducting business in Clark County, Nevada.

21 9. Jackson Family Partnership LLC d/b/a Stargate Plumbing (“Stargate Plumbing”) is  
22 a Nevada limited liability company conducting business in Clark County, Nevada.

23 10. Avery Atlantic, LLC (“Avery Atlantic”) is a Nevada limited liability company  
24 conducting business in Clark County, Nevada.

25 11. Big C LLC is a Nevada limited liability company conducting business in Clark  
26 County, Nevada.

27 12. Ron Hanlon Masonry, LLC is a Nevada limited liability company conducting  
28 business in Clark County, Nevada.



1           23.     The Design Agreement specified that the City intended to construct Fire Station 53  
2 to generally consist of a new 15,000 square foot building and associated onsite and offsite  
3 improvements on a City-owned parcel on the northeast corner of Simmons Street and Gowan Road  
4 (“Project”) and future Fire Stations 50, 58, 59, 150 through 161, and 163 (“Future Fire Stations”).

5           24.     Under the Design Agreement, DPS agreed to provide the City with the following:  
6                 a.     Final design services, including services related to preparation of  
7 construction Contract Documents and construction cost estimates for the  
8 Project;  
9                 b.     Bidding phase support services, including services intended to support the  
10 City during public bidding of the Project;  
11                 c.     Construction management support services, including services intended to  
12 support the City during construction activities associated with the Project;  
13 and  
14                 d.     Prototype design services, including services intended to provide prototype  
15 designs for both 10,000 and 15,000 square foot Future Fire Stations.

16           25.     As part of the Design Agreement, DPS was responsible for the professional quality,  
17 technical accuracy, timely completion, and coordination of all services furnished by DPS and its  
18 subconsultants.

19           26.     DPS also agreed to promptly correct and revise any errors or deficiencies in its  
20 design, drawings, specifications, reports and other services.

21           27.     DPS contracted with several subconsultants on the Project, including Nevada By  
22 Design, JW Zunino, MSA, O’Connor, and Ninyo & Moore (all collectively with DPS, “Design  
23 Defendants”).

24           28.     DPS retained Ninyo & Moore to perform the preliminary geotechnical evaluation  
25 of the proposed site for Fire Station 53. *See* Ex. 2.

26           29.     Specifically, the purpose of the Ninyo & Moore study was to evaluate the sub-  
27 surface soil conditions at the site and to provide design and construction recommendations  
28 regarding geotechnical aspects of the Project.



1           30.     Ninyo & Moore provided its report to DPS on or about August 29, 2008.

2           31.     According to the Ninyo & Moore report, the site was underlain by about 1.5 feet of  
3 fill over native alluvial soil. Ninyo & Moore recommended that the fill as well as surficial loose  
4 native soils be removed and replaced with a structural fill for the building pad. The recommended  
5 thickness of the structural fill was 36 inches below building foundations or 48 inches below existing  
6 grades.

7           32.     As required by the Design Agreement, DPS created the bid set construction  
8 documents, including the submittal plans and specifications for construction of Fire Station 53  
9 (“Plans and Specs”).

10          33.     On or about October 17, 2007, Ninyo & Moore completed its review of the Plans  
11 and Specs created by DPS.

12          34.     Ninyo & Moore concluded that the Plans and Specs generally conformed with its  
13 geotechnical evaluation report.

14          35.     On or about November 2, 2007 DPS submitted structural calculations for Fire  
15 Station 53 to the City.

16          36.     The City held a public open bid for the Project on December 18, 2007.

17          37.     Richardson Construction submitted the lowest responsive bid and was awarded the  
18 Project.

19          38.     On or about January 16, 2008, the City and Richardson Construction entered into a  
20 construction contract (“Construction Contract”) for the Project. *See* Ex. 3.

21          39.     The Construction Contract outlined Richardson Construction’s scope of work to  
22 include site clearing, earthwork, masonry, structural steel roofing, interior finishes, plumbing, fire  
23 protection, heating, ventilating and air conditioning systems, electrical systems, lighting, power,  
24 telephone, data-communications, landscaping, utilities, asphalt/concrete drives, concrete sidewalk  
25 and patios, furnishing equipment, and other work included in the Construction Documents.

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1           40.     Richardson Construction subcontracted several companies to perform portions of its  
2 scope of work, including Jackson Family Partnership LLC d/b/a Stargate Plumbing, Avery Atlantic,  
3 LLC, Big C LLC, and Ron Hanlon Masonry, LLC (all collectively with Richardson Construction,  
4 “Construction Defendants”).

5           41.     With the Construction Contract, Richardson Construction provided three bonds for  
6 the full value of the Construction Contract, dated January 22, 2018 and issued by the Guarantee  
7 Company and P & W. *See* Ex. 3.

8           42.     These three bonds were the performance bond, bond number 70045090,  
9 (“Performance Bond”), the labor and materials payment bond, bond number 70045090, (“Payment  
10 Bond”), and the guarantee bond, bond number 70045090, (“Guarantee Bond”). *See* Ex. 3.

11          43.     On or about March 5, 2008, the City gave Richardson Construction notice to proceed  
12 with construction of Fire Station 53.

13          44.     A certificate of occupancy was issued for Fire Station 53 on or about February 25,  
14 2009.

15          45.     The notice of completion was recorded on July 13, 2009. *See* Ex. 4.

16          46.     Long after construction of Fire Station 53 was completed, the City noticed distress  
17 to the building including wall cracks and separations, and interior slab cracking.

18          47.     The City retained American Geotechnical, Inc. (“American Geotechnical”) to  
19 perform a geotechnical investigation of the site. The purpose of this investigation was to evaluate  
20 the site geotechnical conditions and to determine the probable cause of the distress to the building  
21 and surrounding appurtenances. The City also asked American Geotechnical to provide remedial  
22 recommendations. *See* Ex. 5.

23          48.     On or about December 13, 2017, American Geotechnical delivered its report to the  
24 City.

25          49.     American Geotechnical concluded that the distress to Fire Station 53 and  
26 surrounding appurtenant structures was due to a combination of excessive differential settlement  
27 and expansive soil activity.  
28

1           50.     Laboratory testing found that the soil underlying the site has high expansion  
2 characteristics.

3           51.     The distress to the building, as well as separations in the exterior flatwork, was  
4 partly related to expansive soil influences.

5           52.     Settlement of the building occurred as a result of stresses from the weight of the  
6 structure and self-weight of the earth materials. Settlement was aggravated by introduction of water  
7 to the subsoil.

8           53.     American Geotechnical concluded that Fire Station 53 likely to be impacted by  
9 continuing settlement and expansive soil influences.

10          54.     In order to reduce future problems, American Geotechnical recommend, in short,  
11 that the eastern portion of Fire Station 53 be underpinned by using a pile-grade beam system.

12          55.     The City retained Horrocks Engineers (“Horrocks”) to provide structural  
13 calculations and provide a solution to the settlement effecting Fire Station 53 while preserving the  
14 existing footings.

15          56.     On or about April 9, 2018, Horrocks provided the City with structural calculations  
16 for structural remediation of Fire Station 53.

17          57.     On or about April 22, 2019, Horrocks created, and the City approved, plans for  
18 structural remediation of Fire Station 53.

19          58.     The City held a public open bid for the Fire Station 53 structural remediation project  
20 on May 22, 2019.

21          59.     The Fire Station 53 structural remediation project generally consisted of excavation,  
22 demolition, leveling, and underpinning of parts of Fire Station 53.

23          60.     On June 10, 2019, the City announced that CMMCM LLC d/b/a Muller  
24 Construction was being recommended for award of the Fire Station 53 structural remediation  
25 project.

26          61.     Following the Fire Station 53 structural remediation project, additional work will  
27 need to be done to the cosmetic condition of Fire Station 53 to repair damage from settling of the  
28 building.

### III. CLAIMS FOR RELIEF

#### First Claim for Relief

##### *Breach of Contract (The Design Agreement)*

##### *Against Design Defendants, DOES I through X, and ROE CORPORATIONS I through X*

62. The City repeats and incorporates every allegation contained in the preceding paragraphs.

63. The Design Agreement is a valid, existing, and enforceable contract.

64. Section VI of the Design Agreement required DPS to incorporate into all of its agreements with subconsultants that all subconsultants be bound by the terms, conditions, and obligations of the Design Agreement.

65. The City performed its obligations under the Design Agreement.

66. The Design Defendants materially breach the Design Agreement by failing to fulfill their obligations including, among other things, failing to complete their work in a good and workmanlike manner as detailed above.

67. As a direct and proximate result of the Design Defendants' breaches of the Design Agreement, the City has been damaged in excess of fifteen thousand dollars (\$15,000).

68. As a further direct and proximate result of Design Defendants' breaches of the Design Agreement, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to enforce its rights and is entitled to recover same from the Design Defendants, with interest.

#### Second Claim for Relief

##### *Breach of Contract (The Construction Contract)*

##### *Against Construction Defendants, DOES I through X, and ROE CORPORATIONS I through X*

69. The City repeats and incorporates every allegation contained in the preceding paragraphs.

70. The Construction Contract is a valid, existing, and enforceable contract.

71. The City performed its obligations under the Construction Contract.

73. As a direct and proximate result of the Richardson Construction breaches of the Construction Contract, the City has been damaged in excess of fifteen thousand dollars (\$15,000).

6           74. As a further direct and proximate result of Richardson Construction's breaches of  
7 the Construction Contract, the City has been compelled to retain counsel and has incurred attorneys'  
8 fees and costs to enforce its rights and is entitled to recover same from the Richardson Construction,  
9 with interest.

***CORPORATIONS I through X***

14 The City repeats and incorporates every allegation contained in the preceding paragraphs.

15           75.       The Design Agreement and the Construction Contract are both valid, existing, and  
16 enforceable contracts.

17           76.     It is well established in Nevada that every contract imposes upon the contracting  
18 parties the duty of good faith and fair dealing.

19                    77.        Under both the Design Agreement and Construction Contract, each of Defendants  
20 individually owes a duty of good faith and fair dealing to the City.

78. Defendants each breached their duty by performing in a manner unfaithful to the purpose of the Design Agreement and/or Construction Contract.

23           79.       Defendants' actions are counter to the purpose and intent of the Design Agreement  
24       and Construction Contract.

25           80. Defendants' denied the City's justified expectations under the Design Agreement  
26 and Construction Contract.

81. As direct and proximate result of Defendants' actions, the City has been damaged in excess of fifteen thousand dollars (\$15,000).



1 89. Fire Station 53 was being used in a normal and reasonably foreseeable manner.

2 90. Defendants failed to perform the work on the Project with care, skill, reasonable  
3 expediency, and faithfulness, and in a workmanlike manner as would be expected for this type of  
4 work.

5 91. As a direct and proximate result of Defendants' breaches of implied warranty, the  
6 City has been damaged in excess of fifteen thousand dollars (\$15,000).

7 92. As a further direct and proximate result of Defendants' breaches of implied  
8 warranty, the City has been compelled to retain counsel and has incurred attorneys' fees and costs  
9 to enforce its rights and is entitled to recover same from the Defendants, with interest.

10 **Sixth Claim for Relief**

11 ***Claim on Performance Bond***

12 ***Against the Guarantee Company and P & W***

13 93. The City repeats and incorporates every allegation contained in the preceding  
14 paragraphs.

15 94. Pursuant to the requirements of NRS 339.025 and the Construction Contract,  
16 Richardson Construction provided the Performance Bond for 100% of the Construction Contract  
17 amount concurrent with execution of the Construction Contract.

18 95. The Guarantee Company issued the Performance Bond in the amount of  
19 \$4,704,000.00 naming the City as the owner/obligee, and the Guarantee Company as surety, with  
20 P & W as resident agent.

21 96. Through the Performance Bond, the Guarantee Company agreed that upon the  
22 failure of Richardson Construction to adequately perform and/or complete the Project as stated in  
23 the Construction Contract, the Guarantee Company would pay the City up to an amount equal to  
24 the full penal sum of the Performance Bond.

25 97. The City has fully performed its obligations under the Construction Contract.

26 98. Defendants have materially breached the Construction Contract, and work on the  
27 Project has not been fulfilled and completed to the satisfaction of the City.  
28

101. As a further direct and proximate result of the Guarantee Company's and P&W's actions, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to enforce its rights, and is entitled to recover same from the Guarantee Company and P&W actions, together with interest.

*Against the Guarantee Company and P & W*

107. Defendants have materially breached the Construction Contract, and work on the Project has not been fulfilled and completed to the satisfaction of the City, with payments outstanding to adequately complete the work performed.



110. As a further direct and proximate result of the Guarantee Company's and P&W's actions, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to enforce its rights, and is entitled to recover same from the Guarantee Company and P&W actions, together with interest.

*Against the Guarantee Company and P & W*

117. Defendants' breaches triggered the Guarantee Company's obligation under the Performance Bond and is now liable to the City for all damages flowing from Defendants' breaches of the Construction Contract.

1 118. As direct and proximate result of the Guarantee Company's and P&W's actions, the  
2 City has been damaged in excess of fifteen thousand dollars (\$15,000).

3 119. As a further direct and proximate result of the Guarantee Company's and P&W's  
4 actions, the City has been compelled to retain counsel and has incurred attorneys' fees and costs to  
5 enforce its rights, and is entitled to recover same from the Guarantee Company and P&W actions,  
6 together with interest.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the City prays for relief as follows:

9 **ON THE FIRST, SECOND, THIRD, FOURTH, AND FIFTH CLAIMS FOR RELIEF**

10 1. For judgment against named Defendants and in favor of the City in an amount to be  
11 proven at trial in excess of fifteen thousand dollars (\$15,000);

12 **ON THE SIXTH CLAIM FOR RELIEF**

13 1. For judgment against the Guarantee Company and P & W in the full penal sum of  
14 the Performance Bond;

15 **ON THE SEVENTH CLAIM FOR RELIEF**

16 2. For judgment against the Guarantee Company and P & W in the full penal sum of  
17 the Payment Bond;

18 **ON THE EIGHTH CLAIM FOR RELIEF**

19 3. For judgment against the Guarantee Company and P & W for the full cost of repairs  
20 to Fire Station 53;

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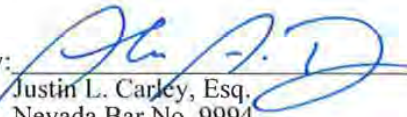
ON ALL CLAIMS FOR RELIEF

1. For attorneys' fees;
2. For costs of the suit; and
3. For such other relief that this Court deems appropriate at the conclusion of this action.

Dated: July 11, 2019

SNELL & WILMER L.L.P.

By:

  
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Aleem A. Dhalla, Esq.  
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*Attorneys for the City of North Las Vegas*

**AFFIDAVIT OF ALEEM A. DHALLA, ESQ.**

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF CLARK         )

I, Aleem A. Dhalla, Esq., being first duly sworn, depose and say as follows:

1. I am an attorney with the law firm of SNELL & WILMER L.L.P., counsel for the City of North Las Vegas in this lawsuit.

2. I have personal knowledge of all matters stated below and would competently be able to testify to them if required to do so.

3. I make this affidavit pursuant to NRS 11.258.

4. In compliance with the requirements of NRS 11.258 (1), I:

- a. Have reviewed the facts of this case;
- b. Have consulted with an expert, American Geotechnical, Inc., regarding this case;
- c. Reasonably believe the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and
- d. Have concluded, based on my review and consultation with the expert, that the action has a reasonable basis in law and fact.

5. Additionally, in compliance with the requirements of NRS 11.258 (3), I have attached:

- a. A resume of the expert consulted in this matter, Edred T. Marsh, P.E. of American Geotechnical Inc (Ex. 6);
- b. A statement that the expert is experienced in each discipline which is the subject of the report, specifically in the fields of geotechnical, civil, and forensic engineering (Ex. 7);
- c. A copy of each nonprivileged document reviewed by the expert in preparing the report (Exs. 2, 8, 9, 10);
- d. The conclusions of the expert and the basis for the conclusions (Ex. 5); and

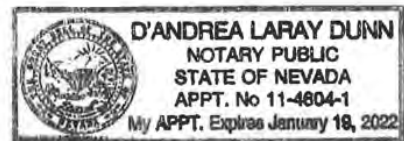
e. A statement that the expert has concluded that there is a reasonable basis for filing the action (Ex. 7).

  
Aleem A. Dhalla, Esq.

STATE OF NEVADA  
COUNTY OF CLARK

Subscribed and sworn to (or affirmed) before me on this  
11<sup>th</sup> day of July, 2019.

  
Notary Public

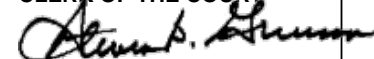


# **EXHIBIT 3**

September 30, 2019 Order Granting Motion to  
Change Date

# **EXHIBIT 3**

September 30, 2019 Order Granting Motion to  
Change Date



1 **NEOJ**  
2 JOHN T. WENDLAND, ESQ.  
3 (Nevada Bar No. 7207)  
4 ANTHONY D. PLATT, ESQ.  
5 (Nevada Bar No. 9652)  
6 WEIL & DRAGE, APC  
7 2500 Anthem Village Drive  
8 Henderson, NV 89052  
9 (702) 314-1905 • Fax (702) 314-1909  
10 [jwendland@weildrage.com](mailto:jwendland@weildrage.com)  
11 [aplatt@weildrage.com](mailto:aplatt@weildrage.com)  
12 Attorneys for Defendant,  
13 NEVADA BY DESIGN, LLC D/B/A NEVADA  
14 BY DESIGN ENGINEERING CONSULTANTS

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

12 CITY OF NORTH LAS VEGAS, ) CASE NO.: A-19-798346-C

13 )  
14 Plaintiff, ) DEPT. NO.: VIII

15 vs. )

16 DEKKER/PERICH/SABATINI LTD.; ) **NOTICE OF ENTRY OF ORDER**

17 RICHARDSON CONSTRUCTION, INC.; )

18 NEVADA BY DESIGN, LLC D/B/A NEVADA BY )

19 DESIGN ENGINEERING CONSULTANTS; JW )

20 ZUNINO & ASSOCIATES, LLC; MELROY )

21 ENGINEERING, INC. D/B/A MSA )

22 ENGINEERING CONSULTANTS; O'CONNOR )

23 CONSTRUCTION MANAGEMENT INC.; NINYO )

24 & MOORE, GEOTECHNICAL CONSULTANTS; )

25 JACKSON FAMILY PARTNERSHIP LLC D/B/A )

26 STARGATE PLUMBING; AVERY ATLANTIC, )

27 LLC; BIG C LLC; RON HANLON MASONRY, )

28 LLC; THE GUARANTEE COMPANY OF NORTH )

AMERICA USA; P & W BONDS, LLC; )

PAFFENBARGER & WALDEN, LLC; DOES I )

through X, inclusive; and ROE CORPORATIONS I )

through X, inclusive, )

Defendants. )

1 **NOTICE OF ENTRY OF ORDER**

2 NOTICE IS HEREBY GIVEN that the ORDER GRANTING DEFENDANT NEVADA  
3 BY DESIGN, LLC d/b/a NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION  
4 TO CHANGE DATE OF HEARING ON MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
5 MOTION FOR SUMMARY JUDGMENT ON ORDER SHORTENING TIME was entered in the  
6 above-captioned matter on the 15<sup>th</sup> day of October, 2019. A copy of said ORDER is attached  
7 hereto.

8 DATED this 17<sup>th</sup> day of October, 2019.

9 WEIL & DRAGE, APC

10 */s/ John T. Wendland*

11 By: \_\_\_\_\_

12 JOHN T. WENDLAND, ESQ.

13 (Nevada Bar No. 7207)

14 ANTHONY D. PLATT, ESQ.

15 (Nevada Bar No. 9652)

16 2500 Anthem Village Drive

17 Henderson, NV 89052

18 Attorneys for Defendant,

19 NEVADA BY DESIGN, LLC D/B/A NEVADA

20 BY DESIGN ENGINEERING CONSULTANTS  
21  
22  
23  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 17<sup>th</sup> day of October, 2019, service of the foregoing  
**NOTICE OF ENTRY OF ORDER** was made this date by electronically serving a true and  
correct copy of the same, through Clark County Odyssey eFileNV, to the following parties:

Aleem A. Dhalla, Esq.  
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RICHARDSON CONSTRUCTION, INC. and  
GUARANTEE COMPANY OF NORTH  
AMERICA USA

///

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Charles W. Bennion, Esq.  
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Phoenix, AZ 85004-2554  
Attorneys for Defendants,  
PAFFENBARGER & WALDEN LLC and  
P & W BONDS LLC

*/s/ Joanna Medina*

\_\_\_\_\_  
Joanna Medina, an Employee of  
WEIL & DRAGE, APC

ORIGINAL

Electronically Filed  
10/15/2019 2:57 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 ORDG

2 JOHN T. WENDLAND, ESQ.

3 (Nevada Bar No. 7207)

4 ANTHONY D. PLATT, ESQ.

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6 WEIL & DRAGE, APC

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12 Attorneys for Defendant,

13 NEVADA BY DESIGN, LLC d/b/a

14 NEVADA BY DESIGN ENGINEERING CONSULTANTS

15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 CITY OF NORTH LAS VEGAS,

18 Plaintiff,

19 vs.

20 DEKKER/PERICH/SABATINI LTD.;

21 RICHARDSON CONSTRUCTION, INC.;

22 NEVADA BY DESIGN, LLC D/B/A NEVADA BY

23 DESIGN ENGINEERING CONSULTANTS; JW

24 ZUNINO & ASSOCIATES, LLC; MELROY

25 ENGINEERING, INC. D/B/A MSA

26 ENGINEERING CONSULTANTS; O'CONNOR

27 CONSTRUCTION MANAGEMENT INC.; NINYO

28 & MOORE, GEOTECHNICAL CONSULTANTS;

JACKSON FAMILY PARTNERSHIP LLC D/B/A

STARGATE PLUMBING; AVERY ATLANTIC,

LLC; BIG C LLC; RON HANLON MASONRY,

LLC; THE GUARANTEE COMPANY OF NORTH

AMERICA USA; P & W BONDS, LLC;

PAFFENBARGER & WALDEN, LLC; DOES I

through X, inclusive; and ROE CORPORATIONS I

through X, inclusive,

Defendants.

CASE NO.: A-19-798346-C

DEPT. NO.: VIII

ORDER GRANTING DEFENDANT  
NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING  
CONSULTANTS' MOTION TO  
CHANGE DATE OF HEARING ON  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT ON ORDER  
SHORTENING TIME

WEIL & DRAGE, APC  
2500 Anthem Village Drive  
Henderson, Nevada 89052  
Phone: (702) 314-1905  
Fax: (702) 314-1909

{01619441;1}

**ORDER GRANTING DEFENDANT NEVADA BY DESIGN, LLC d/b/a  
NEVADA BY DESIGN ENGINEERING CONSULTANTS' MOTION TO CHANGE DATE  
OF HEARING ON MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT ON ORDER SHORTENING TIME**

THIS MATTER having come before the Court on September 30, 2019 on Nevada By Design, LLC d/b/a Nevada By Design Engineering Consultants' ("NBD") Motion to Change the Date of the Hearing on its Motion to Dismiss, or, in the alternative, Motion for Summary Judgment on Order Shortening Time; and the Court having read and considered the submitted papers, having heard oral argument and having found GOOD CAUSE, hereby GRANTS NBD's Motion to Change the Date of the Hearing on the Motion to Dismiss or in the alternative, Motion for Summary Judgment on Order Shortening Time and hereby moves the hearing on NBD's Motion to Dismiss or in the alternative, Motion for Summary Judgment from October 21, 2019 to September 30, 2019.

IT IS SO ORDERED.

DATED this 14 day of October, 2019.

DISTRICT COURT JUDGE

Respectfully Submitted by:

WEIL &amp; DRAGE, APC

JOHN T. WENDLAND, ESQ.

(Nevada Bar No. 7207)

ANTHONY D. PLATT, ESQ.

(Nevada Bar No. 9652)

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Attorneys for Defendant,

NEVADA BY DESIGN, LLC d/b/a

NEVADA BY DESIGN ENGINEERING

## CONSULTANTS

# **EXHIBIT 4**

Assembly Bill 421 –  
80th Session 2019

# **EXHIBIT 4**

Assembly Bill 421 –  
80th Session 2019

CHAPTER.....

AN ACT relating to construction; revising provisions relating to the information required to be included in a notice of a constructional defect; removing provisions requiring the presence of an expert during an inspection of an alleged constructional defect; establishing provisions relating to a claimant pursuing a claim under a builder's warranty; removing certain provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; revising provisions relating to the recovery of damages proximately caused by a constructional defect; increasing the period during which an action for the recovery of certain damages may be commenced; revising the prohibition against a unit-owners' association pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides that before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant: (1) is required to give written notice to the contractor; and (2) if the contractor is no longer licensed or acting as a contractor in this State, is authorized to give notice to any subcontractor, supplier or design professional known to the claimant who may be responsible for the constructional defect. Existing law also requires that such a notice identify in specific detail each defect, damage and injury to each residence or appurtenance that is the subject of the claim. (NRS 40.645) **Section 2** of this bill instead requires that such a notice specify in reasonable detail the defects or any damages or injuries to each residence or appurtenance that is the subject of the claim.

Existing law requires that after notice of a constructional defect is given by a claimant to a contractor, subcontractor, supplier or design professional, the claimant and, if the notice includes an expert opinion concerning the alleged constructional defect, the expert or his or her representative with knowledge of the alleged defect must: (1) be present when a contractor, subcontractor, supplier or design professional conducts an inspection of the alleged constructional defect; and (2) identify the exact location of each alleged constructional defect. (NRS 40.647) **Section 3** of this bill removes the requirement that an expert who provided an opinion concerning the alleged constructional defect or his or her representative be present at an inspection and revises certain other requirements.

Existing law provides that if a residence or appurtenance that is the subject of a claim is covered by a homeowner's warranty purchased by or on behalf of the claimant: (1) the claimant is prohibited from sending notice of a constructional defect or pursuing a claim for a constructional defect unless the claimant has submitted a claim under the homeowner's warranty and the insurer has denied the claim; and (2) notice of a constructional defect may only include claims that were denied by the insurer. (NRS 40.650) **Section 4** of this bill removes such provisions, and **section 1.5** of this bill replaces the term "homeowner's warranty" with





“builder’s warranty” and clarifies that such a warranty is not a type of insurance. **Section 4** provides that if a residence or appurtenance that is the subject of a claim is covered by a builder’s warranty, the claimant is required to diligently pursue a claim under the builder’s warranty. **Section 5.5** of this bill makes conforming changes.

Existing law also provides that if a residence or appurtenance that is the subject of a claim is covered by a homeowner’s warranty purchased by or on behalf of the claimant, statutes of limitation or repose are tolled from the time the claimant submits a claim under the homeowner’s warranty until 30 days after the insurer rejects the claim, in whole or in part. (NRS 40.650) **Section 4** removes this provision.

Existing law establishes the damages proximately caused by a constructional defect that a claimant is authorized to recover, including additional costs reasonably incurred by the claimant for constructional defects proven by the claimant. (NRS 40.655) **Section 5** of this bill removes the requirement that such costs be limited to constructional defects proven by the claimant.

Existing law prohibits an action for the recovery of certain damages against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property, from being commenced more than 6 years after the substantial completion of such an improvement. (NRS 11.202) **Section 7** of this bill increases such a period to 10 years after the substantial completion of such an improvement. **Section 7** also: (1) authorizes such an action to be commenced at any time after the substantial completion of such an improvement if any act of fraud caused a deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement; and (2) exempts lower-tiered subcontractors from such an action in certain circumstances.

Existing law prohibits a unit-owners’ association from instituting, defending or intervening in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or units’ owners relating to an action for a constructional defect unless the action pertains exclusively to common elements. (NRS 116.3102) **Section 8** of this bill requires that such an action for a constructional defect pertain to: (1) common elements; (2) any portion of the common-interest community that the association owns; or (3) any portion of the common-interest community that the association does not own but has an obligation to maintain, repair, insure or replace because the governing documents of the association expressly make such an obligation the responsibility of the association.

Existing law authorizes a unit-owners’ association to enter the grounds of a unit to conduct certain maintenance or remove or abate a public nuisance, or to enter the grounds or interior of a unit to abate a water or sewage leak or take certain other actions in certain circumstances. (NRS 116.310312) **Section 8.5** of this bill provides that such provisions do not give rise to any rights or standing for a claim for a constructional defect.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** (Deleted by amendment.)



**Sec. 1.5.** NRS 40.625 is hereby amended to read as follows:

40.625 ~~["Homeowner's"]~~ **"Builder's** warranty" means a warranty ~~for policy of insurance:~~

~~—1. Issued~~ **issued** or purchased by or on behalf of a contractor for the protection of a claimant . ~~[-or~~

~~—2. Purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive.~~

➔ The term ~~[includes]~~ :

1. ***Includes*** a warranty contract issued by ***or on behalf of a contractor whose liability pursuant to the warranty contract is subsequently insured*** by a risk retention group that operates in compliance with chapter 695E of NRS and insures all or any part of the liability of a contractor for the cost to repair a constructional defect in a residence.

2. ***Does not include a policy of insurance for home protection as defined in NRS 690B.100 or a service contract as defined in NRS 690C.080.***

**Sec. 2.** NRS 40.645 is hereby amended to read as follows:

40.645 1. Except as otherwise provided in this section and NRS 40.670, before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant:

(a) Must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's address listed in the records of the State Contractors' Board or in the records of the office of the county or city clerk or at the contractor's last known address if the contractor's address is not listed in those records; and

(b) May give written notice by certified mail, return receipt requested, to any subcontractor, supplier or design professional known to the claimant who may be responsible for the constructional defect, if the claimant knows that the contractor is no longer licensed in this State or that the contractor no longer acts as a contractor in this State.

2. The notice given pursuant to subsection 1 must:

(a) Include a statement that the notice is being given to satisfy the requirements of this section;

(b) ~~[Identify]~~ ***Specify*** in ~~[specific]~~ ***reasonable*** detail ~~[each defect, damage and injury]~~ ***the defects or any damages or injuries*** to each residence or appurtenance that is the subject of the claim ; ~~[-~~ ***including, without limitation, the exact location of each such defect, damage and injury;***





(c) Describe in reasonable detail the cause of the defects if the cause is known and the nature and extent that is known of the damage or injury resulting from the defects; and

(d) Include a signed statement, by each named owner of a residence or appurtenance in the notice, that each such owner verifies that each such defect, damage and injury specified in the notice exists in the residence or appurtenance owned by him or her. If a notice is sent on behalf of a homeowners' association, the statement required by this paragraph must be signed under penalty of perjury by a member of the executive board or an officer of the homeowners' association.

3. A representative of a homeowners' association may send notice pursuant to this section on behalf of an association if the representative is acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS.

4. Notice is not required pursuant to this section before commencing an action if:

(a) The contractor, subcontractor, supplier or design professional has filed an action against the claimant; or

(b) The claimant has filed a formal complaint with a law enforcement agency against the contractor, subcontractor, supplier or design professional for threatening to commit or committing an act of violence or a criminal offense against the claimant or the property of the claimant.

**Sec. 3.** NRS 40.647 is hereby amended to read as follows:

40.647 1. After notice of a constructional defect is given pursuant to NRS 40.645, before a claimant may commence an action or amend a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant must:

(a) Allow an inspection of the alleged constructional defect to be conducted pursuant to NRS 40.6462;

(b) Be present *or have a representative of the claimant present* at an inspection conducted pursuant to NRS 40.6462 and *, to the extent possible, reasonably* identify the ~~[exact location of each alleged constructional defect]~~ *proximate locations of the defects, damages or injuries* specified in the notice *; [and, if the notice includes an expert opinion concerning the alleged constructional defect, the expert, or a representative of the expert who has knowledge of the alleged constructional defect, must also be present at the inspection and identify the exact location of each alleged constructional defect for which the expert provided an opinion;]* and



(c) Allow the contractor, subcontractor, supplier or design professional a reasonable opportunity to repair the constructional defect or cause the defect to be repaired if an election to repair is made pursuant to NRS 40.6472.

2. If a claimant commences an action without complying with subsection 1 or NRS 40.645, the court shall:

(a) Dismiss the action without prejudice and compel the claimant to comply with those provisions before filing another action; or

(b) If dismissal of the action would prevent the claimant from filing another action because the action would be procedurally barred by the statute of limitations or statute of repose, the court shall stay the proceeding pending compliance with those provisions by the claimant.

**Sec. 4.** NRS 40.650 is hereby amended to read as follows:

40.650 1. If a claimant unreasonably rejects a reasonable written offer of settlement made as part of a response pursuant to paragraph (b) of subsection 2 of NRS 40.6472 and thereafter commences an action governed by NRS 40.600 to 40.695, inclusive, the court in which the action is commenced may:

(a) Deny the claimant's attorney's fees and costs; and

(b) Award attorney's fees and costs to the contractor.

↪ Any sums paid under a ~~homeowner's~~ **builder's** warranty, other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the contractor, must be deducted from any recovery.

2. If a contractor, subcontractor, supplier or design professional fails to:

(a) Comply with the provisions of NRS 40.6472;

(b) Make an offer of settlement;

(c) Make a good faith response to the claim asserting no liability;

(d) Agree to a mediator or accept the appointment of a mediator pursuant to NRS 40.680; or

(e) Participate in mediation,

↪ the limitations on damages and defenses to liability provided in NRS 40.600 to 40.695, inclusive, do not apply and the claimant may commence an action or amend a complaint to add a cause of action for a constructional defect without satisfying any other requirement of NRS 40.600 to 40.695, inclusive.

3. If a residence or appurtenance that is the subject of the claim is covered by a ~~homeowner's~~ **builder's** warranty ~~[that is purchased~~



~~by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive:~~

~~—(a) A claimant may not send a notice pursuant to NRS 40.645 or pursue a claim pursuant to NRS 40.600 to 40.695, inclusive, unless the claimant has first submitted a claim under the homeowner's warranty and the insurer has denied the claim.~~

~~—(b) A claimant may include in a notice given pursuant to NRS 40.645 only claims for the constructional defects that were denied by the insurer.~~

~~—(c) If coverage under a homeowner's warranty is denied by an insurer in bad faith, the homeowner and the contractor, subcontractor, supplier or design professional have a right of action for the sums that would have been paid if coverage had been provided, plus reasonable attorney's fees and costs.~~

~~—(d) Statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, are tolled from the time notice of the claim under the homeowner's warranty is submitted to the insurer until 30 days after the insurer rejects the claim, in whole or in part, in writing.] , a claimant shall diligently pursue a claim under the builder's warranty.~~

4. Nothing in this section prohibits an offer of judgment pursuant to Rule 68 of the Nevada Rules of Civil Procedure or NRS 40.652.

**Sec. 5.** NRS 40.655 is hereby amended to read as follows:

40.655 1. Except as otherwise provided in NRS 40.650, in a claim governed by NRS 40.600 to 40.695, inclusive, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

(a) The reasonable cost of any repairs already made that were necessary and of any repairs yet to be made that are necessary to cure any constructional defect that the contractor failed to cure and the reasonable expenses of temporary housing reasonably necessary during the repair;

(b) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

(c) The loss of the use of all or any part of the residence;

(d) The reasonable value of any other property damaged by the constructional defect;

(e) Any additional costs reasonably incurred by the claimant , ~~[for constructional defects proven by the claimant,]~~ including, but



not limited to, any costs and fees incurred for the retention of experts to:

(1) Ascertain the nature and extent of the constructional defects;

(2) Evaluate appropriate corrective measures to estimate the value of loss of use; and

(3) Estimate the value of loss of use, the cost of temporary housing and the reduction of market value of the residence; and

(f) Any interest provided by statute.

2. If a contractor complies with the provisions of NRS 40.600 to 40.695, inclusive, the claimant may not recover from the contractor, as a result of the constructional defect, any damages other than damages authorized pursuant to NRS 40.600 to 40.695, inclusive.

3. This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.

4. As used in this section, “structural failure” means physical damage to the load-bearing portion of a residence or appurtenance caused by a failure of the load-bearing portion of the residence or appurtenance.

**Sec. 5.5.** NRS 40.687 is hereby amended to read as follows:

40.687 Notwithstanding any other provision of law:

1. A ~~claimant shall, within 10 days after commencing an action against a contractor, disclose to the contractor all information about any homeowner’s warranty that is applicable to the claim.~~

~~2. The~~ contractor shall, no later than 10 days after a response is made pursuant to this chapter, disclose to the claimant any information about insurance agreements that may be obtained by discovery pursuant to rule 26(b)(2) of the Nevada Rules of Civil Procedure. Such disclosure does not affect the admissibility at trial of the information disclosed.

~~3.~~ 2. Except as otherwise provided in subsection ~~4.~~ 3, if ~~either party~~ the contractor fails to provide the information required pursuant to subsection 1 ~~or 2~~ within the time allowed, the ~~other party~~ claimant may petition the court to compel production of the information. Upon receiving such a petition, the court may order the ~~party~~ contractor to produce the required information and may award the ~~petitioning party~~ claimant reasonable attorney’s fees and costs incurred in petitioning the court pursuant to this subsection.



~~[4.]~~ 3. The parties may agree to an extension of time *for the contractor* to produce the information required pursuant to this section.

~~[5.]~~ 4. For the purposes of this section, “information about insurance agreements” is limited to any declaration sheets, endorsements and contracts of insurance issued to the contractor from the commencement of construction of the residence of the claimant to the date on which the request for the information is made and does not include information concerning any disputes between the contractor and an insurer or information concerning any reservation of rights by an insurer.

**Sec. 6.** (Deleted by amendment.)

**Sec. 7.** NRS 11.202 is hereby amended to read as follows:

11.202 1. No action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than ~~[6]~~ 10 years after the substantial completion of such an improvement, for the recovery of damages for:

(a) ~~[Any]~~ *Except as otherwise provided in subsection 2, any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;*

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. *Except as otherwise provided in this subsection, an action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property at any time after the substantial completion of such an improvement, for the recovery of damages for any act of fraud in causing a deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement. The provisions of this subsection do not apply to any lower-tiered subcontractor who performs work that covers up a defect or deficiency in another contractor’s trade if the lower-tiered subcontractor does not know, and should not reasonably know, of the existence of the alleged defect or deficiency at the time of performing such work. As used in this subsection, “lower-tiered subcontractor” has the meaning ascribed to it in NRS 624.608.*

3. The provisions of this section do not apply:



- (a) To a claim for indemnity or contribution.
- (b) In an action brought against:
  - (1) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.

- (2) Any person on account of a defect in a product.

**Sec. 8.** NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association:

- (a) Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws and may adopt and amend rules and regulations.

- (b) Shall adopt and may amend budgets in accordance with the requirements set forth in NRS 116.31151, may collect assessments for common expenses from the units' owners and may invest funds of the association in accordance with the requirements set forth in NRS 116.311395.

- (c) May hire and discharge managing agents and other employees, agents and independent contractors.

- (d) May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community. The association may not institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or units' owners with respect to an action for a constructional defect pursuant to NRS 40.600 to 40.695, inclusive, unless the action pertains ~~exclusively~~ to ~~common~~ :

- (1) *Common* elements ~~[-]~~;

- (2) *Any portion of the common-interest community that the association owns; or*

- (3) *Any portion of the common-interest community that the association does not own but has an obligation to maintain, repair, insure or replace because the governing documents of the association expressly make such an obligation the responsibility of the association.*

- (e) May make contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.

- (f) May regulate the use, maintenance, repair, replacement and modification of common elements.



(g) May cause additional improvements to be made as a part of the common elements.

(h) May acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) May grant easements, leases, licenses and concessions through or over the common elements.

(j) May impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.31032.

(k) May impose charges for late payment of assessments pursuant to NRS 116.3115.

(l) May impose construction penalties when authorized pursuant to NRS 116.310305.

(m) May impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) May impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) May provide for the indemnification of its officers and executive board and maintain directors and officers liability insurance.

(p) May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) May exercise any other powers conferred by the declaration or bylaws.

(r) May exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) May direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or



other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) May exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not limit the power of the association to deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons.

3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

4. The executive board's decision under subsection 3 not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

5. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association may not impose any assessment pursuant to this chapter or the governing documents on the owner of any property in the common-interest community





that is exempt from taxation pursuant to NRS 361.125. For the purposes of this subsection, “assessment” does not include any charge for any utility services, including, without limitation, telecommunications, broadband communications, cable television, electricity, natural gas, sewer services, garbage collection, water or for any other service which is delivered to and used or consumed directly by the property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.

**Sec. 8.5.** NRS 116.310312 is hereby amended to read as follows:

116.310312 1. A person who holds a security interest in a unit must provide the association with the person’s contact information as soon as reasonably practicable, but not later than 30 days after the person:

(a) Files an action for recovery of a debt or enforcement of any right secured by the unit pursuant to NRS 40.430; or

(b) Records or has recorded on his or her behalf a notice of a breach of obligation secured by the unit and the election to sell or have the unit sold pursuant to NRS 107.080.

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit’s owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit’s owner refuses or fails to take any action or comply with any requirement imposed on the unit’s owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.

(b) Remove or abate a public nuisance on the exterior of the unit which:

(1) Is visible from any common area of the community or public streets;

(2) Threatens the health or safety of the residents of the common-interest community;

(3) Results in blighting or deterioration of the unit or surrounding area; and

(4) Adversely affects the use and enjoyment of nearby units.

3. If:



- (a) A unit is vacant;
- (b) The association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031; and
- (c) The association or its employee, agent or community manager mails a notice of the intent of the association, including its employees, agents and community manager, to maintain the exterior of the unit or abate a public nuisance, as described in subsection 2, by certified mail to each holder of a recorded security interest encumbering the interest of the unit's owner, at the address of the holder that is provided pursuant to NRS 657.110 on the Internet website maintained by the Division of Financial Institutions of the Department of Business and Industry,
  - the association, including its employees, agents and community manager, may enter the grounds of the unit to maintain the exterior of the unit or abate a public nuisance, as described in subsection 2, if the unit's owner refuses or fails to do so.

4. If a unit is in a building that contains units divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise common walls between units, and the unit is vacant, the association, including its employees, agents and community manager, may enter the grounds and interior of the unit to:

- (a) Abate a water or sewage leak in the unit and remove any water or sewage from the unit that is causing damage or, if not immediately abated, may cause damage to the common elements or another unit if the unit's owner refuses or fails to abate the water or sewage leak.

- (b) After providing the unit's owner with notice but before a hearing in accordance with the provisions of NRS 116.31031:

- (1) Remove any furniture, fixtures, appliances and components of the unit, including, without limitation, flooring, baseboards and drywall, that were damaged as a result of water or mold damage resulting from a water or sewage leak to the extent such removal is reasonably necessary because water or mold damage threatens the health or safety of the residents of the common-interest community, results in blighting or deterioration of the unit or the surrounding area and adversely affects the use and enjoyment of nearby units, if the unit's owner refuses or fails to remediate or remove the water or mold damage.

- (2) Remediate or remove any water or mold damage in the unit resulting from the water or sewage leak to the extent such remediation or removal is reasonably necessary because the water or



mold damage threatens the health or safety of the residents of the common-interest community, results in blighting or deterioration of the unit or the surrounding area and adversely affects the use and enjoyment of nearby units, if the unit's owner refuses or fails to remediate or remove the water or mold damage.

5. After the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association may order that the costs of any maintenance or abatement or the reasonable costs of remediation or removal conducted pursuant to subsection 2, 3 or 4, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against the unit and has a lien on the unit for any unpaid amount of the charges. The lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

6. A lien described in subsection 5 bears interest from the date that the charges become due at a rate determined pursuant to NRS 17.130 until the charges, including all interest due, are paid.

7. Except as otherwise provided in this subsection, a lien described in subsection 5 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116. If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.

8. A person who purchases or acquires a unit at a foreclosure sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS 107.080 is bound by the governing documents of the association and shall maintain the exterior of the unit in accordance with the governing documents of the association. Such a unit may only be removed from a common-interest community in accordance with the governing documents pursuant to this chapter.

9. Notwithstanding any other provision of law, an association, its directors or members of the executive board, employees, agents or community manager who enter the grounds or interior of a unit pursuant to this section are not liable for trespass.



10. *Nothing in this section gives rise to any rights or standing for a claim for a constructional defect made pursuant to NRS 40.600 to 40.695, inclusive.*

11. As used in this section:

(a) "Exterior of the unit" includes, without limitation, all landscaping outside of a unit, the exterior of all property exclusively owned by the unit owner and the exterior of all property that the unit owner is obligated to maintain pursuant to the declaration.

(b) "Remediation" does not include restoration.

(c) "Vacant" means a unit:

(1) Which reasonably appears to be unoccupied;

(2) On which the owner has failed to maintain the exterior to the standards set forth in the governing documents of the association; and

(3) On which the owner has failed to pay assessments for more than 60 days.

**Secs. 9 and 10.** (Deleted by amendment.)

**Sec. 11.** 1. The provisions of NRS 40.645 and 40.650, as amended by sections 2 and 4 of this act, respectively, apply to a notice of constructional defect given on or after October 1, 2019.

2. The provisions of NRS 40.647, as amended by section 3 of this act, apply to an inspection conducted pursuant to NRS 40.6462 on or after October 1, 2019.

3. The provisions of NRS 40.655, as amended by section 5 of this act, apply to any claim for which a notice of constructional defect is given on or after October 1, 2019.

4. The period of limitations on actions set forth in NRS 11.202, as amended by section 7 of this act, apply retroactively to actions in which the substantial completion of the improvement to the real property occurred before October 1, 2019.

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