

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARVIZ SAFARI, an individual;
MANDANA ZAHEDI, an
individual; and NOOSHIN
ZAHEDI, an individual,

Appellants,

vs.

HAMID MODJTAHED, an
individual; and MOHAMMAD
MODJTAHED, an individual,

Respondents.

Docket No. 82279

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APPELLANTS' OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed.

1. Appellants Parviz Safari, Mandana Zahedi, and Nooshin Zahedi are individuals. Parviz Safari is also known as Aidan Davis. Mandanza Zahedi is also known as Mandana Safari and Mandana Davis.

2. Before the district court, appellants were represented by Robert A. Ryan and Samuel A. Marshall of Shumway Van; Keen L. Ellsworth of Ellsworth & Bennion, Chtd.; Andrew S. Flahive of Flahive & Associates, Ltd.; and Tom W. Stewart of The Powell Law Firm. Only Mr. Stewart represents appellants before this Court.

Dated January 26, 2022.

/s/ Tom W. Stewart
Tom W. Stewart (14280)

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I. JURISDICTIONAL STATEMENT

Appellants Parviz Safari, Mandana Zahedi, and Nooshin Zahedi (collectively, appellants) timely appealed from a final judgment pursuant to NRAP 3A(b)(1) and from an order denying a motion for new trial pursuant to NRAP 3A(b)(2).¹ 20 Appellants' Appendix (AA) 3392-93 (notice of appeal); 19 AA 3180-88 (final judgment); 20 AA 3384-91 (order denying motion for new trial). Therefore, this Court has jurisdiction over this appeal.

II. ROUTING STATEMENT

This case is presumptively retained by the Supreme Court because it originated in business court, raises as a principal issue a question of first impression involving the common law, and raises as a principal issue a matter of statewide public importance. NRAP 17(a)(9), (11), (12). Indeed, whether the district court must consider a party's net worth, is an issue of first impression and of

¹ A clerical error in the final judgment was later corrected pursuant to NRCP 60(a). See 20 AA 3397-3418 (stipulation regarding correcting the final judgment); 20 AA 3419-27 (corrected final judgment). The Court determined the corrected final judgment provided a jurisdictional basis for this appeal. See *Safari v. Modjtahed*, Docket No. 82279 (Order Reinstating Briefing and Regarding Transcripts, Aug. 4, 2021).

statewide public importance. The Supreme Court should retain this appeal.

III. INTRODUCTION

Despite appellants presenting the district court with documentary evidence demonstrating respondents Hamid and Mohammed Modjtahed's extensive fiscal misfeasance—amounting to more than \$500,000—the district court erred by disregarding that evidence and instead granted summary judgment on nearly all of appellants' claims. That error requires reversal.

Indeed, without the ability to prosecute these claims, appellants lost at trial and the district court imposed a large judgment against them. Then, the district court abused its discretion when it eventually awarded attorney fees and costs against appellants based, in part, on an invalid offer of judgment. That error requires vacatur of the fee award against Parviz, and the impropriety of the summary judgment award requires of the fee award against Mandana. Finally, the district court abused its discretion by evaluating financial condition for purposes of punitive damages by only considering appellants' gross worth, which requires a new trial at least as to punitive damages.

IV. ISSUES ON APPEAL

1. Whether the district court erred in granting summary judgment on appellants' claims for breach of fiduciary duty, intentional interference with prospective economic advantage, embezzlement, and declaratory relief by disregarding documentary and testimonial evidence.

2. Whether the district court erred in assessing attorney fees based upon an invalid offer of judgment.

3. Whether the district court erred in evaluating appellants' financial condition for purposes of punitive damages by only considering gross, not net, worth.

V. STANDARDS OF REVIEW

Summary judgment is reviewed de novo. *Morency v. Dep't of Educ.*, 137 Nev., Adv. Op. 63, 496 P.3d 584, 589 (2021). An award of fees is reviewed for an abuse of discretion. *Gunderson v. D.R. Horton*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014). The district court's imposition of punitive damages is reviewed for an abuse of discretion. *Bongiovi v. Sullivan*, 122 Nev. 556, 581, 138 P.3d 433, 451 (2006). An order denying a motion for new trial is reviewed for an abuse of

discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).

VI. FACTUAL BACKGROUND

A. Meditex's formation

In August 2010, Hamid, Mohammad, Parviz, and Mandana formed Meditex. 16 AA 2817. Each member owned 25% of the company. 16 AA 2818. Meditex was formed to sell medical equipment, industrial safety equipment, and nutritional supplements. 16 AA 2818.

Following the formation, the members signed the Meditex operating agreement, which set forth the members' respective roles and titles. 18 AA 2879-90. Parviz handled day-to-day operations at Meditex as its CEO and general manager. 7 AA 1338. Hamid was the overseas manager, overseeing the foreign shipment of goods, 7 AA 1339, and Mohammad was the medical services director, 7 AA 1339. Mandana was a board member but did not work as an employee of the company. 7 AA 1338.

Additionally, the Meditex operating agreement provided, in relevant part, that "[t]he prevailing party in any lawsuit for . . . damages against a [m]ember . . . [of Meditex] for breach of [the]

agreement shall be indemnified by the losing party for its reasonable attorneys fees and out-of-pocket costs which in any way relate to, or were precipitated by, the breach.” 18 AA 2887.

B. Safari uncovers the Modjtaheds’ misfeasance.

In 2014 and 2015, Safari began to uncover evidence of various suspicious transactions being orchestrated by the Modjtaheds. 1 AA 5-8. Notably, Safari discovered massive discrepancies between incoming and outgoing shipments rates on a large order being sent to Iran through Canada. 1 AA 5-8. In response to Safari’s attempts to remediate the problems, the Modjtaheds threatened violence upon Safari and his family, resulting in several restraining orders. 1 AA 8.

VII. PROCEDURAL HISTORY

A. Appellants commence the underlying litigation regarding the Modjtaheds’ malfeasance.

Having discovered the Modjtaheds’ malfeasance, Parviz and Mandana sued the Modjtaheds, along with their son Ali Modjtahed, on behalf of Meditex for a litany of claims—breach of fiduciary duty, intentional interference with prospective economic advantage, embezzlement, declaratory relief, and accounting. 1 AA 1-17.

In response, the Modjtaheds brought counterclaims against, among others, Parviz, Mandana, and Nooshin, alleging derivative and individual claims for breach of contract, contractual breach of the implied covenant of good faith and fair dealing, tortious breach of the implied covenant of good faith and fair dealing, unjust enrichment, fraud, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, civil conspiracy, concert of action, constructive fraud, and accounting. 1 AA 18-57.

B. The Modjtaheds serve an invalid, joint, unapportioned offer of judgment.

On August 3, 2017, the Modjtaheds served a joint, unapportioned offer of judgment to appellants for \$190,000. 18 AA 3029-30. The offer did not identify the “same entity, person, or group authorized to decide whether to settle the claims against the offerees.”² 18 AA 3029-30.

² NRCP 68(c)(3) mandates that an offer made to multiple plaintiffs will invoke the penalties of NRCP 68 only if:

(A) the damages claimed by all the offeree plaintiffs are solely derivative, such as where the damages claimed by some offerees are entirely derivative of an injury to the others or where the damages claimed by all offerees are derivative of an injury to another; and

C. The district court improperly grants summary judgment on appellants' claims against the Modjtaheds.

On February 9, 2019, the Modjtaheds filed several motions for summary judgment, including a motion seeking summary judgment on all of Parviz and Mandana's claims against them. 1 AA 73-128. In support of their motion, the Modjtaheds argued simply that Parviz and Mandana had provided adduced insufficient evidence to support their claim at trial. 1 AA 73-128.

In opposition, Parviz and Mandana presented a declaration, invoices, and tax returns demonstrating that the Modjtaheds misappropriated over \$573,000 from Meditex in 2014 alone. 3 AA 420-54. Indeed, Parviz and Mandana attached documentary and testimonial evidence to their opposition—invoices to Meditex showing nearly \$1.3 million sales and tax returns showing only \$748,000 being reported—demonstrating the Modjtaheds' fiscal malfeasance. 3 AA 420-54.

On reply, the Modjtaheds argued the evidence was not credible enough to overcome summary judgment. 3 AA 520-66. However, in

(B) the same entity, person, or group is authorized to decide whether to settle the claims of the offerees.

doing so, the Modjtaheds implicitly asked the district court to weigh that evidence in deciding summary judgment. 3 AA 520-66.

After giving the matter short shrift at the hearing on summary judgment, 4 AA 609-30, the district court granted summary judgment on nearly every claim against the Modjtaheds, with Parviz and Mandana's sole remaining claim for trial being accounting. 4 AA 673-83. In doing so, however, the district court assessed the credibility of the evidence when analyzing whether it supported summary judgment as to the claims against the Modjtaheds. *See* 4 AA 679 (“[Safari and Mandana’s] only support for this allegation are a few random Meditex invoices, some of which were previously undisclosed and were not bates stamped, and Meditex’s tax returns” . . . which “standing alone” does not create a genuine issue of material fact.”); 4 AA 680-81.

D. Appellants proceed to trial unable to assert the claims regarding the Modjtaheds’ documented malfeasance.

Hamstrung by the district court’s improper summary judgment ruling, Safari and Mandana proceeded to trial without the ability to present claims regarding the Modjtaheds’ documented fiscal malfeasance. *See* 5 AA 768-16 AA 2807. The district court’s premature

grant of summary judgment left appellants unable to properly prosecute claims to adjudicate that malfeasance.³ *See* 5 AA 768-16 AA 2807.

Trial resulted in a \$405,475 damage award against Parviz, \$111,675 against Mandana, and \$91,700 against Nooshin. 16 AA 2860.

E. The district court relies, in part, upon an invalid offer of judgment in assessing attorney fees.

On October 16, 2019, the Modjtaheds filed a motion for attorney fees and costs, seeking over \$500,000 in attorney fees and over \$100,000 in costs. 17 AA 2862-18 AA 3031. The Modjtaheds argued that the Meditex operating agreement and the joint, unapportioned offer entitled them to fees and costs. 17 AA 2862-74.

After hearing sparse argument in support of the motion for attorney fees, 18 AA 3086-92, the district court awarded the Modjtaheds' costs and fees against Parviz (based upon the invalid offer

³ Near the end of trial, appellants' trial counsel orally moved to amend the pleadings to conform to the evidence pursuant to NRCP 15(b) to add a claim for unjust enrichment. 15 AA 2580-86. However, while the district court granted the motion, 15 AA 2586, the district court then found against Safari and Mandana in a three-sentence section of the final order that did not cite to any portion of the transcript or any single exhibit admitted during trial. 16 AA 2838-39.

of judgment) and Mandana (based upon the operating agreement).
18 AA 3098-3106.

F. The district court imposes substantial punitive damages looking only to appellants' gross income.

On July 15, 2020, the district court conducted a half-day, punitive-damages bench trial. 19 AA 3107-79. At the district court's suggestion, the hearing focused on Safari, Mandana, and Nooshin's financial situation. 19 AA 3129. The Modjtaheds' case in chief regarding Safari, Mandana, and Nooshin's financial situation focused entirely on deposits being made into bank accounts purportedly under appellants' control. 19 AA 3144-63. In seeking to establish Safari, Mandana, and Nooshin's financial situation, however, the Modjtaheds failed to offer any testimony or evidence that took into account the expenditures from the accounts, or the overall liabilities of Safari, Mandana, or Nooshin, including any mortgages, car loans, or other common liabilities. 19 AA 3144-63. In other words, because the Modjtaheds considered only assets, not liabilities, the district court considered the gross, not net, worth of Safari, Mandana, and Nooshin, to establish their financial position. *See, e.g., Net worth*, Black's Law Dictionary (11th ed. 2019)

(“A measure of one’s wealth, calculated as the excess of total assets over total liabilities.”).

However, examination of the net deposits in each bank account revealed a drastically different financial picture. 19 AA 3204-06. Indeed, the true assets in each bank account—as demonstrated by the monthly debits, checks, and service fees—were miniscule in comparison to the figures the Modjtaheds sought to use in describing Safari, Mandana, and Nooshin’s net worth. 19 AA 3204-06. Rather than the hundreds of thousands of dollars of net worth that the Modjtaheds claimed appellants’ bank accounts demonstrated, each account carried significant liabilities—most of which resulted in a negligible profit or net loss. 19 AA 3204-06.

On September 23, 2020, the district court entered its order imposing punitive damages against appellants. 19 AA 3180-88. In that order, the district court exclusively relied on the deposits, with no mention of appellants’ liabilities, as its basis for assessing punitive damages. 19 AA 3180-88. Having considered only the influx of money, and not the outflow, the district court assessed \$810,950.00 in punitive

damages against Parviz, \$223,350 against Mandana, and \$183,400 against Nooshin.

G. The district court denies appellants' motion for new trial.

Following the order imposing punitive damages, appellants filed a motion to alter or amend the judgment and for new trial. *See* 19 AA 3202-58.

In doing so, appellants first argued that that the court's findings regarding punitive damages were manifestly unjust. Appellants reasoned that the imposition of such hefty punitive damages after being given only a sliver of the relevant information demonstrated that the district court should amend its findings regarding the financial status of appellants—namely, findings of fact no. 5 through no. 9—under NRCP 52(b)⁴ because, “upon all the evidence,”—including evidence that was admitted and considered by the court during the bench trial—“it is clear that a wrong conclusion has been reached.” 19 AA 3210 (citing *Brechan v. Scott*, 92 Nev. 633, 634, 555 P.2d 1230, 1230 (1976)).

⁴ NRCP 52(b) provides that “[o]n a party's motion filed no later than 28 days after service of written notice of entry of judgment, the court may amend its findings — or make additional findings — and may amend the judgment accordingly.”

Appellants then argued the conclusions of law based upon the erroneous presentation of appellants’ true financial status—a presentation that failed to “examin[e] the liabilities side of the [appellants’] balance sheet”—required amendment under NRCP 59(a)⁵

⁵ NRCP 59(a) provides:

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues—and to any party—for any of the following causes or grounds materially affecting the substantial rights of the moving party:

- (A) irregularity in the proceedings of the court . . . or adverse party or in any order of the court . . . , or any abuse of discretion by which either party was prevented from having a fair trial;
- (B) misconduct of the . . . prevailing party;
- (C) accident or surprise that ordinary prudence could not have guarded against;
- (D) newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial;
- (E) manifest disregard by the jury of the instructions of the court;
- (F) excessive damages appearing to have been given under the influence of passion or prejudice; or
- (G) error in law occurring at the trial and objected to by the party making the motion.

(2) Further Action After a Nonjury Trial. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions

because such amendment is “necessary to correct manifest errors of law or fact upon which the judgment is based.” 19 AA 3210-11. Appellants noted that many courts have recognized the party seeking punitive damages must generally supply “evidence of [the other party’s] net worth, not gross assets” to satisfy constitutional due process concerns. 19 AA 3210-11 (citing *Viasphere International, Inc. v. Vardanyan*, 2017 WL 1065191 (N.D. Cal. Mar. 21, 2017); *Boyle v. Lorimar Prods.*, 13 F.3d 1357, 1360-61 (9th Cir. 1994)). As a result, appellants argued the district court should amend its conclusions of law—namely, conclusion of law no. 38—to reflect that the bank account testimony and evidence adduced during trial did not demonstrate that appellants’ financial position supported an award of punitive damages. 19 AA 3211.

Finally, appellants argued that the district court should “open the judgment . . . , take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the

of law or make new findings and conclusions, and direct the entry of a new judgment.

Amendment under NRCP 59 is appropriate when, as here, amendment is “necessary to correct manifest errors of law or fact upon which the judgment is based.” 11 Wright & Miller, *Fed. Prac. & Proc. Civ.* § 2810.1 (3d ed.) (interpreting federal analog).

entry of a new judgment,” 19 AA 3211 (quoting NRCP 59(a)(2)) based upon the manifest errors of fact and law occurring during the punitive damages bench trial which “materially affect[ed] the substantial rights of” appellants, 19 AA 3211 (quoting NRCP 59(a)(1)). Appellants argued that to do otherwise—to assess massive punitive damages without “evidence of the entire financial picture,”—would be to impermissibly fiscally “cripple[e] or destroy[]” appellants. 19 AA 3211.

The district court denied appellants’ motion for new trial after considering it on its merits. 20 AA 3384-91. This appeal follows. 20 AA 3392-93.

VIII. LEGAL ARGUMENT

A. The district court erred by improperly weighing evidence in granting summary judgment on the claims against the Modjtaheds.

The district court’s fundamental error stems from its order granting summary judgment on the claims against the Modjtaheds. In doing so, the district court summarily disregarded evidence presented in opposition to summary judgment, running afoul of the strictures of NRCP 56.

Indeed, in ruling on a motion for summary judgment, “[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A “judge’s function” at summary judgment is not “to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Tolan v. Cotton*, 572 U.S. 650, 656-57 (2014) (citing *Liberty Lobby*, 477 U.S. at 249). Summary judgment is appropriate only if “the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” NRCP 56(a). By failing to credit evidence that contradicted some of its key factual conclusions, the court improperly “weigh[s] the evidence” and fails to resolve disputed issues in favor of the moving party, *Liberty Lobby*, 477 U.S. at 249.

Here, although appellants submitted evidence demonstrating the veracity and viability of their claims—Safari submitted documentary and testimonial evidence demonstrating that the Modjtaheds improperly siphoned hundreds of thousands of dollars from Meditex—the district court disregarded that evidence and weighed the inferences

drawn from that evidence in the Modjtaheds' favor. The evidence presented demonstrated that Meditex invoices showed nearly \$1.3 million sales and tax returns showed only \$748,000 being reported—revealing an unaccounted-for \$573,000. 3 AA 420-54. Weighing this inference in appellants' favor—that the Modjtaheds skimmed that \$573,000—would certainly create a genuine issue of material fact as to appellants' claims for breach of fiduciary duty, intentional interference with prospective economic advantage, and embezzlement. Because the district court did not properly view that evidence in appellants' favor, this Court should reverse the order granting summary judgment and order a new trial.

B. The district court abused its discretion in awarding attorney fees based upon The Modjtaheds' joint, unapportioned offer of judgment was invalid.

Next, the district court abused its discretion in awarding fees based on an invalid joint, unapportioned offer of judgment. A joint, unapportioned offer of judgment is presumptively invalid. *See RTTC Commc'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 41-42, 110 P.3d 24, 29 (2005). Indeed, unless the Modjtaheds can demonstrate that “there is a single common theory of liability against all the offeree

defendants” and “the same entity, person, or group is authorized to decide whether to settle the claims against the offerees,” the joint unapportioned offer is not valid and, thus, cannot invoke fee-award penalties incurred by the rejection of a valid offer of judgment. *See* NRCP 68(c)(2)-(3); NRCP 68(f)(1)(B).

Here, the Modjtaheds failed to present any evidence demonstrating that “the same entity, person, or group is authorized to decide whether to settle the claims against the offerees.” The Modjtaheds instead simply stated, in a single, cursory sentence, that appellants operated in a common scheme or plan. 17 AA 2868. No evidence was offered regarding this point at the hearing on the motion for fees; rather, the Modjtaheds offered only the arguments of counsel, which “are not evidence and do not establish the facts of the case.” *Nevada Ass’n Servs., Inc. v. Eighth Jud. Dist. Ct.*, 130 Nev. 949, 957, 338 P.3d 1250, 1255 (2014). Because of this, the offer was not valid and cannot serve as a basis for attorney fees against Safari. This requires, at a minimum, reversal of the fee award against Safari.⁶

⁶ Additionally, in reversing the district court’s erroneous order granting summary judgment, this Court should reverse the fee award entered against Mandana because the Modjtaheds would no longer be a

C. The district court erred in evaluating financial condition by only considering gross, not net, worth of the parties

Finally, the district court erred in imposing punitive damages based solely on appellants' gross worth, as opposed their net worth.⁷ That error requires a new trial as to punitive damages.

Although state courts have discretion over the imposition of punitive damages, the due process clause of the Fourteenth Amendment "prohibits grossly excessive or arbitrary punitive damage awards." *Bongiovi v. Sullivan*, 122 Nev. 556, 582, 138 P.3d 433,451 (2006). Further, statute allows examination of the financial condition of the party against whom punitive damages are sought. See NRS 42.005(4). To establish a party's financial condition and support an award of

"prevailing party" pursuant to the Meditex operating agreement. 18 AA 2887.

⁷ Whether the district court must consider a party's net worth in imposing punitive damages is an issue of first impression and of statewide public importance in Nevada. However, California courts require the examination of net worth, and Nevada often looks to California courts. See, e.g., *Commercial Standard Ins. Co. v. Tab Constr., Inc.*, 94 Nev. 536, 583 P.2d 449, 451 (1978) (Nevada courts often look to California law where Nevada law is silent); *City of Las Vegas Downtown Redevelopment Agency v. Pappas*, 119 Nev. 429, 446, 76 P.3d 1, 13 (2003) (same); *Cheung v. Eighth Judicial Dist. Court*, 121 Nev. 867, 880, 124 P.3d 550, 559 (2005) (Becker, C.J., concurring) (same).

punitive damages, the party seeking punitive damages must generally supply “evidence of [the other party’s] net worth, not gross assets.” *Viasphere International, Inc. v. Vardanyan*, 2017 WL 1065191 (N.D. Cal. Mar. 21, 2017); *see also Boyle v. Lorimar Prods.*, 13 F.3d 1357, 1360-61 (9th Cir. 1994). In most cases, “evidence of earnings or profit alone are not sufficient without examining the liabilities side of the balance sheet.” *Embotelladora Electropura S.A. de C.V. v. Accutek Packaging Equip. Co., Inc.*, 2020 WL 730921, at *13 (S.D. Cal. Feb. 13, 2020). Evidence of the profits alone gained by a party against whom punitive are sought is inadequate as “it gives only the assets without the liabilities.” *Id.* “[I]n examining assets without examining liabilities,” or without “evidence of the entire financial picture,” courts run the risk of “crippling or destroying the [party subject to punitive damages].” *Kelly v. Haag*, 145 Cal. App. 4th 910, 915, 2006 WL 3386863 (Cal. Ct. App. 2006).

Here, the court imposed over a million dollars in punitive damages without having an opportunity to examine the true nature of appellants’ financial situation. Indeed, the Mojtaheds offered, at best, a glimpse into certain gross assets appellants received over a several year period;

the Mojtaheds did not, however, provide any explanation of any of appellants' liabilities. Doing so was an abuse of discretion, and the Court should order a new punitive damages bench-trial with instructions to consider the net, not gross, worth of the parties.

IX. CONCLUSION

The district court erred by disregarding documentary and testimonial evidence at the summary judgment stage. That error requires reversal. Then, the district court abused its discretion by awarding attorney fees and costs against appellants based, in part, on an invalid offer of judgment. That error requires vacatur of the fee award against Parviz, and the impropriety of the summary judgment award requires of the fee award against Mandana. Finally, the district court abused its discretion by failing to consider appellants' net worth in imposing punitive damages, which requires a new trial as to punitive damages.

Dated January 26, 2022.

/s/ Tom W. Stewart
Tom W. Stewart (14280)
Attorney for Appellants

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either: proportionally spaced, has a typeface of 14 points or more and contains 4,714 words; or does not exceed pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject

to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated January 26, 2022.

/s/ Tom W. Stewart
Tom W. Stewart (14280)

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Appellants' Opening Brief** with the Nevada Supreme Court on January 26, 2022. Electronic Service of the document shall be made in accordance with the Master Service List as follows:

Jonathan Blum, Esq.
Eric Walther, Esq.
Adam Bult, Esq.

/s/ Tom W. Stewart
Tom W. Stewart