IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

HOLGA FLORES-REYES and ANTHONY VERDON,

Appellants,

vs.

EDEL RAMIREZ-NAVARRETE,

Respondent.

Case No.: 82455

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APPEAL FROM JUDGMENT
EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, COUNTY OF CLARK
HONORABLE NANCY L. ALLF, DISTRICT JUDGE

APPELLANTS' OPENING BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

*** * * * ***

HOLGA FLORES-REYES and ANTHONY VERDON, Appellants, *vs.* EDEL RAMIREZ-NAVARRETE, Respondent.	**Case No**.: 82455

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made so in order that the justices may evaluate the possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: *None*.

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear I this court: *Pyatt Silvestri*.

3. If litigant is using a pseudonym, the litigant's true name: *N/A*.

DATED: August 24, 2021.

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I.
Jurisdictional Statement

The Court has jurisdiction over this appeal pursuant to NRAP 3A(b)(l) and N.A.R 18(F). A judgment entered pursuant to N.A.R 18(F) "shall have the same force and effect as a final judgment of the court in a civil action and may be appealed in the same manner… [but review is] limited to the order striking, denying, or dismissing the trial de novo request." Further, "[w]hen a district court strikes a request for trial de novo, the decision is treated for purposes of jurisdiction as a final order, subject to appellate review." *Gittings v. Hartz*, 996 P.2d 898, 901 (Nev. 2000).

Timeliness of the appeal is established as follows: Defendants/Appellants filed a Request for Trial De Novo on October 8, 2020. 1 Appellants' Appendix ("A. App") 34-36. Plaintiff/Respondent filed a Motion to Strike the Request for Trial De Novo on the grounds that Defendants/Appellants did not participate in good faith, on October 21, 2020. 1 A. App 31-33. The District Court granted that motion by Order entered December 10, 2020. 1 A. App 145-149. A judgment on the arbitration award was entered against Defendants/Appellants on December 28, 2020. 1 A. App 150-156; a notice of entry of "default judgment" was entered and served on January 4, 2021. 1 A. App. 160-168; a final amended notice of entry of judgment was entered and served on January 5, 2021. 1 A. App. 169-177.

Defendants/Appellants timely filed a Notice of Appeal and the Case Appeal Statement on February 4, 2021. 1 A. App. 178-184.

II.
Routing Statement

This case is presumptively assignable to the Court of Appeals of the Nevada Supreme Court pursuant to NRAP 17(b)(5) This Appeal arises from a civil action tort case where the judgment, exclusive of interest, attorney's fees, and costs is less than $250,000.00. See NRAP 17(b)(5).

III.
Issues Presented for Review

1. Did the trial court abuse its discretion by striking Defendants'/Appellants' request for trial de novo, in finding that Defendants'/Appellants did not participate in good faith during the arbitration?

IV.
Statement of the case

This appeal challenges the district court's striking of a request for trial de novo. This case arises out of a rear-end auto accident in the Paris Casino employee parking garage between Plaintiff/Respondent Edel Ramirez-Navarrete ("Ramirez") and Defendants/Appellants Holga Flores-Reyes ("Flores"), the driver, and Anthony Verdon ("Verdon"), owner of the vehicle. Ramirez alleged Negligence against Flores and Negligent Entrustment against Verdon. 1 A. App 1-9, 38, 55. Pursuant to the Nevada Arbitration Rules, this case was referred to the mandatory

court annexed arbitration program. The arbitration hearing was held September 10, 2020, with arbitrator Lynn MacNabb, Esq. 1 A. App. 25.

An arbitration award was issued on September 15, 2020, in favor of Ramirez against Flores and Verdon. 1 A. App. 25. The award consisted of total past damages in the amount of $13,500.00.[1] 1 A. App. 25. Ramirez then filed for fees, costs, and interests, the arbitrator granted Ramirez costs of $1,141.34, interest of $959.19, and attorney's fees of $1,000.00. 1 A. App. 29-30.

As a result, a demand for removal from the short trial program and a request for Trial de Novo was filed on October 8, 2020 by Flores and Verdon. 1 A. App 31-36. Arguably, there was a good faith reason in filing a request for Trial de Novo because the arbitration award was significantly more than was warranted given Ramirez's alleged soft tissue injuries to his neck and likely age-related degenerative MRI findings. 1 A. App. 86.

Plaintiff filed a Motion to Strike Defendants' Request for Trial de Novo on October 21, 2020, arguing that Flores and Verdon did not participate in the arbitration in good faith. 1 A. App 37-46. The hearing regarding Verdon's Motion to Strike was heard by the Honorable Nancy L. Allf in the District Court on December 3, 2020. 1 A. App 127. Flores and Verdon argued that they participated in good faith because initial disclosures were served, there was an attempt to

[1] The arbitration award did not include a breakdown of damages. i.e., past medical damages, future pain and suffering, property damage, etc.

depose Ramirez, an arbitration brief was submitted, liability was conceded in the arbitration brief, an arbitration was still held, and counsel for Flores appeared to cross-examine Verdon. 1 A. App. 25-26, 85-91, 135-137.

Despite the clear examples of participation, the district court entered an Order that found that Flores and Verdon failed to participate in the arbitration in good faith. 1 A. App. 146. Judgment was entered against Flores and Verdon in the total amount of $16,600.54 on January 5, 2021. 1 A. App. 169-177. Flores and Verdon filed their notice of appeal on February 4, 2021. 1 A. App. 183-184.

V.
Statement of the Facts

1. General Facts.

On February 15, 2019, a rear end auto accident ("the Accident") between the parties occurred near the employee parking garage at the Paris Casino in Las Vegas. 1 A. App. 3-4, 37-38, 54-57, 85. 6 months later, August 19, 2019, Ramirez filed a Complaint alleging Negligence against Flores and Negligent Entrustment against Verdon. 1 A. App 1-9. This case was then placed into the court annexed arbitration program because there was a probable jury award value not in excess of $50,000, pursuant to N.A.R. 3(A). Arbitrator, Lynn MacNabb, Esq., was then appointed and issued a discovery order on December 17, 2019. 1 A. App. 19-21.

2. Facts relevant to meaningful participation at Arbitration.

On January 20, 2020, the deposition of Ramirez was noticed, which was later vacated. 1 A. App. 135, 140. Flores and Verdon also properly served disclosures, which included a recorded statement by Flores. 1 A. App. 51-58, 135.

On April 28, 2020, Ramirez served written discovery, which ultimately went unanswered despite Appellants' counsel's due diligence in attempting to contact Flores and Verdon throughout the course of litigation, after the filing of the Answer.1 A. App 60-63, 65-70, 73-79,137, However, around the same time the discovery was served, Appellants' counsel's office had several employees that were infected with Covid-19 and as a result were operating with a skeletal staff, of which Respondent's counsel was aware. 1 A. App 23, 134. Covid-19 effected Appellants' counsel's office to the extent that it caused it to be closed twice during the time they were served with the instant discovery requests. 1 A. App 134. Importantly, Verdon never filed a motion for summary judgment in the lower court for an admission of any of his propounded discovery to Appellants.

On September 2, 2020, the arbitrator issued a Request for Extension of Time to extend the time hold an arbitration from the date of the arbitrator's appointment, due to unusual circumstances pursuant to N.A.R. 12(B). 1 A. App 22-24. The initial set date of the arbitration had to be moved because it was, "virtually impossible to hold when several employees at Appellants' counsel's office became

infected with Covid-19." 1 A. App 22-23. Then it was continued to August 25, 2020, due to the request of Respondent's counsel. 1 A. App 23. Thus, arbitration was continued at least once by each party. 1 A. App 22-23. The Arbitration was finally set for September 10, 2020. 1 A. App 23. Importantly, the Arbitrator indicated that the request for extension of time was made in good faith and not for the purpose of delay. 1 A. App 23.

Flores and Verdon served their arbitration brief on September 10, 2020. 1 A. App 85. In attendance at the arbitration hearing was counsel for both parties, and Ramirez. 1 A. App. 25. Importantly however, the Arbitrator does not make any finding that parties were unable to attend or that the lack of attendance caused any type of delay to the proceeding. In fact, the Arbitrator's award states, "[p]resent at the hearing were the above identified attorneys and the parties in the present action." 1 A. App. 25.

Flores and Verdon in their arbitration brief admitted liability (duty and breach) and only argued causation and damages and so attendance by them was not relevant to this case because they could add nothing to the issue of causation and damages.1 A. App 85-86. Given the non-complex nature of this run of the mill rear-end auto accident, Flores and Verdon's arguments were aimed at the findings of Ramirez's MRI results. It was argued at arbitration that diagnoses found in Ramirez's cervical MRI were due to age-related degenerative conditions, and not

due to the Accident. 1 A. App. 86. This argument was supported by the fact that no doctor conclusively stated that Ramirez's findings were a sign of injury impacted from the Accident. 1 A. App. 86. Appellants' brief also pointed out that Ramirez had previously injured his back and suffered from chronic low back pain. 1 A. App. 86. Flores and Verdon argued that only a "common sense evaluation" was required for Ramirez's injuries, which goes to show the simple nature of this case and the injuries suffered by Ramirez. 1 A. App 87. Appellants' arbitration brief pointed out that Ramirez did not go to the emergency room and waited six days prior to presenting for any medical treatment. 1 A. App. 86. Clearly, Flores and Verdon made sincere and meaningful arguments against Ramirez's damages, which was the only issue to be resolved at arbitration, and an expert was not required for such, nor could an expert have added any value to this case.

Thereafter, an arbitration award was rendered in favor of Ramirez, issued on September 15, 2020. 1 A. App. 25. The award consisted of total past damages in the amount of $13,500.00. 1 A. App. 25. The arbitrator did not make any specific findings as to any category of damages, rather the award just generally stated an amount of $13,500.00, despite Respondent's counsel's misrepresentation to the district court that property damage was specifically outlined in the award. 1 A. App. 25, 138. Subsequently, the arbitrator granted Ramirez costs in the amount of

$1,141.34, interest of $959.19, and attorney's fees consisting of $1,000.00. 1 A. App. 29.

VI.
Summary of Argument

The district court abused its discretion in striking Flores and Verdon's Request for Trial De Novo. They meaningfully participated in the arbitration process by submitting an arbitration brief which they were not required to do under N.A.R 13, cross-examined Respondent at arbitration, and made counter arguments as to Respondent's injuries due to his age-related degenerative findings in his MRI. 1 A. App. 85-86. Nevada case law supports that attendance by Flores and Verdon at the arbitration was also not required given that liability was conceded, and they could not add anything to the causation arguments. See, *Chamberland v. Labarbera*, 877 P.2d 523, 525 (Nev. 1994) (despite failing to conduct discovery or attend arbitration hearing, appellant meaningfully participated in arbitration where liability was not at issue by engaging in cross-examination and disputing alleged injuries). See also, N.A.R. 15.

Discovery responses by Flores and Verdon are ultimately irrelevant since the only issue that was to be decided at arbitration was the extent of pain and suffering that should be awarded to Respondent. Discovery responses could not add anything to that portion of Respondent's damages. Further several employees including Flores and Verdon's counsel, were infected with Covid-19 which caused

their office to be closed down twice during the time discovery was served upon them. Additionally, retaining an expert would not have added any value to defending Flores and Verdon at arbitration because the arbitration process is designed to be a simple cost-effective means to resolve meager claims, such as this one.

For those reasons, the district court abused its discretion by not considering the factual circumstances involving this case and ignoring controlling law regarding meaningful participation at arbitration, especially when liability is not in dispute.

Finally, denying a Flores and Verdon their right to further participate in the litigation process following arbitration is a severe and "draconian" sanction. This is because the constitutional right to a jury trial is important. *Gittings v. Hartz*, 996 P.2d 898, 900-901 (Nev. 2000); see also *Campbell v. Maestro*, 996 P.2d 412, 415 note 5 (Nev. 2000) (recognizing the importance the Nevada Supreme Court attaches to the right to a jury trial in all civil matters). The important constitutional right to a jury trial is not waived simply because individuals can disagree over the most effective way to represent a client at an arbitration proceeding. *Gittings*, 996 P.2d at 901. As such, the Appellants respectfully request that this Court follow well settled caselaw and reverse the district Order Granting Respondent's Motion

to Strike Appellants' Request for Trial De Novo, Request for Removal from the Short Trial Program, and the resulting Arbitration Award of $13,500.

VII.
Argument

A. Standard of Review

The standard of review on appeal of a district court order denying a request for trial de novo is abuse of discretion. *Gittings*, 996 P.2d at 901; See also, *Casino Properties, Inc. v. Andrews*, 911 P.2d 1181, 1183 (Nev. 1996); *Chamberland*. 877 P.2d at 525. A district court abuses its discretion where it disregards controlling law or its factual findings are not based on substantial evidence. *MB Am., Inc. v. Alaska Pac. Leasing Co*., 367 P.3d 1286, 1292 (Nev. 2016); *Campbell*. 996 P.2d at 414. While the power to sanction a party is ordinarily reviewed for an abuse of discretion, "a somewhat heightened standard of review" is applied to sanctioning orders that terminate legal proceedings. *Chamberland*, 877 P.2d at 525.

B. Holga Flores-Reyes and Anthony Verdon's Participation in the Court Annexed Non-Binding Arbitration Process Constituted Meaningful Participation.

The purpose of Nevada's Court Annexed Arbitration Program "is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." N.A.R 2(A). N.A.R 22(A) provides that "[t]he failure of a party or an attorney to either prosecute or defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo." For purposes

of requesting a trial de novo, the courts have equated "good faith" with "meaningful participation" in the arbitration proceedings. *Casino Properties, Inc.*, 911 P.2d at 1182-1183. However, the important constitutional right to a jury trial is not waived simply because individuals can disagree over the most effective way to represent a client at an arbitration proceeding. *Gittings*, 996 P.2d at 901, citing *Chamberland,* 877 P.2d at 525. The Nevada Supreme Court has further stated that a parties' "meaningful participation" in the arbitration proceedings must be viewed in light of the fact that "arbitration matters often involve simple disputes and meager claims for damages that do not warrant expensive pre-arbitration discovery or sophisticated "trial" techniques." *Chamberland*, 877 P.2d at 525.

The Nevada Supreme Court, on several prior occasions, has refused to uphold the lower court's order granting a motion to strike a request for a trial de novo where party has alleged an absence of meaningful participation. The Court, in reviewing cases where a defending party has essentially done nothing during the course of the arbitration process, still found that such conduct did not arise to the level of absence of meaningful participation, and found that striking a request for trial de novo was an abuse of discretion.

One such case is *Gittings v. Hartz*, 996 P.2d 898 (Nev. 2000). In that case, Gittings allegedly ran a red light and struck the passenger side of Hartz's vehicle. *Id*. at 899. While Gittings served interrogatories and request for production of

documents, she did not attend the arbitration hearing, did not call any witnesses to testify at the hearing and did not contest liability. *Id*. at 902. The arbitrator found in favor of Hartz and awarded him $9,000 plus pre-judgment interest and taxable costs. *Id*. at 900. Gittings filed a timely request for a trial de novo and Hartz moved to strike the request asserting that Gittings had "failed to arbitrate in good faith." *Id*. The district court allowed Hartz's motion to strike and Gittings appealed. *Id*.

The Nevada Supreme Court reversed and remanded, holding that the evidence did not prove Gittings' bad faith in the arbitration. *Id*. at 898. The Court reasoned that the mere failure of a party to attend or call witnesses in an arbitration hearing does not amount to bad faith or a lack of meaningful participation. *Id*. at 902. The Court further explained that the Court Annexed Arbitration Program is intended to be a simplified, informal procedure to resolve certain types of civil cases. *Id*. It is designed to give the arbitrator a good understanding of the essential factual disputes and the legal positions of the parties. *Id*. The decisions issued by the arbitrators are intended to promote settlement of cases at an early stage of the proceedings. *Id*. The Court explained that a hearing is meaningless only when a party simply "goes through the motions" and does not seriously attempt to convey valid objections to the opposing party's evidentiary or legal contentions. *Id*. The Court also agreed with Gittings that personal attendance at the arbitration was not required because liability was not at issue. *Id*.

The same rationale in *Gittings* was applied by the Nevada Supreme Court in the earlier case of *Chamberland v. Labarbera,* 877 P.2d at 523, 525 (Nev. 1994). In that case, Chamberland crashed his car into the back of Labarbera's vehicle. *Id*. at 523. Chamberland failed to conduct any pre-arbitration discovery and did not attend the arbitration hearing. *Id*. at 525. The arbitrator found in favor of Labarbera and awarded her approximately $16,000 in damages. *Id*. at 523-524. Chamberland filed a request for a trial de novo and Labarbera moved to strike that request, arguing that Chamberland failed to participate in the arbitration process in good faith. *Id*. at 524. The district court granted Labarbera's motion to strike and Chamberland appealed. Id. at 524.

The Nevada Supreme Court overturned the district court decision holding that even though Chamberland did not conduct any discovery and failed to attend the arbitration, the district court abused its discretion in concluding that he failed to meaningfully participate in the arbitration process. *Id*. at 524-525. The Court reasoned that Arbitration matters often involve simple disputes and meager claims for damages that do not warrant expensive pre-arbitration discovery or sophisticated "trial" techniques. *Id*. at 525.

This Court has struck a balance that preserves parties' rights to a jury trial while furthering the goals of court-annexed arbitration to reduce cost and delay in litigation. See *Campbell v. Maestro*, 116 Nev. 380, 386 n.5, 996 P.2d 412, 416 n.5

(2000) (reversal of order striking request for trial de novo was "in large part a recognition of the importance we attach to the right to a trial by jury in all civil matters"). "[T]he important right to a jury trial is not waived simply because individuals can disagree over the most effective way to represent a client at an arbitration proceeding." *Gittings*, 116 Nev. at 391, 996 P.2d at 901.

To reiterate, this Court has held that the following facts do not justify striking a request for trial de novo:

- A defendant's absence from an arbitration hearing when the entire dispute revolved around the extent of the plaintiff's damages. *Gittings*, 116 Nev. at 392, 996 P.2d at 902; *Chamberland*, 110 Nev. at 705, 877 P.2d at 525.
- Not calling witnesses. *Gittings*, 116 Nev. at 392, 996 P.2d at 902; *Chamberland*, 110 Nev. at 705, 877 P.2d at 525.
- Not seeking an independent medical examination. *Gittings*,116 Nev. at 392, 996 P.2d at 902.
- Conducting no discovery when liability was not a "serious issue," and the plaintiff provided all evidence of damages. *Id.*
- Contesting damages. *Campbell*, 116 Nev. at 384, 996 P.2d at 414-15.

Flores and Verdon did not simply "go through the motions" and render the arbitration hearing meaningless. Rather, they did enough to satisfy defending the case. They meaningfully participated in the arbitration process by submitting an

arbitration brief, cross-examining Ramirez at arbitration, and made sound arguments against the age-related degenerative MRI findings of Ramirez. 1 A. App. 86. Another distinction in this case is that Flores and Verdon at least attempted to conduct pre-arbitration discovery by setting Ramirez's deposition, unlike counsel in *Chamberland*, who did nothing. *Chamberland*, 877 P.2d at 523, 525 (Nev. 1994). 1 A. App. 135, 140.

Importantly, the attendance of Flores and Verdon was not required because liability was not at issue since this was admitted in their Arbitration brief and they could not add anything substantive even if they did appear at arbitration. 1 A. App. 85. Ramirez also acknowledges that liability was not at dispute, because Flores admitted it in her recorded statement, which was provided to them via disclosures, despite their claim that they believed liability was being contested. 1 A. App. 38, 56-57, 135. Thus, there was never an issue as to liability in this case, and even deposing Flores would not have added anything to this argument or to Ramirez's damages. Therefore, liability was not a serious issue in this case.

The other side of the spectrum regarding requests for trial de novo review is the case of *Casino Properties, Inc. v. Andrews*, 112 Nev. 132, 135, 911 P.2d 1181, 1182-83 (1996). In that case, the party seeking a trial de novo (1) refused to produce documents during discovery, (2) did not deliver a pre-arbitration statement, and (3) failed to produce key witnesses. *Id*. The facts of *Casino*

Properties are more complex than just a simple rear-end auto accident. That case involved a situation in which security guards of a hotel performed a "lock out" of two hotel rooms, which in turn caused damages to the respondents. *Id*. at 134. The respondents in that case issued written discovery to obtain the security manuals to determine the nature of the lock-out procedures but were unable to obtain them because they were not produced by the appellant. *Id*. Since there was a dispute as to liability in that case, the attendance of key witnesses at arbitration (the security guards) and the ability to cross-examine them was necessary. While that case resulted in a striking of a trial de novo request, it is distinguished significantly here. In this case, Appellants provided an arbitration brief which conceded liability, provided initial disclosures including a recorded statement by Flores which gave Ramirez all of the information he needed for their arbitration brief. 1 A. App. 51-58, 85-90, 135. Further, Ramirez did not need to call any additional witnesses at arbitration due to the simple nature of the case and Appellant's counsel still cross-examined Ramirez at arbitration. 1 A. App. 51-58, 85-90, 135.

All of the above demonstrates the Flores and Verdon meaningfully participated in the arbitration process and that the District Court abused its discretion in finding otherwise.

C. An expert is not required at arbitration because it is meant to be a simplified procedure for equitable resolution.

Respondent makes the claim that Appellant did not retain a medical expert for arbitration.1 A. App. 42-43. The purpose of arbitration "is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." N.A.R 2(A); *see also Casino Prop. Inc.*, 112 Nev. at 135, 911 P.2d at 1182. Therefore, it would defeat the purpose of the Court Annexed Arbitration Program if appellants were required to hire experts in all cases, let alone this case where there was no dispute as to liability and it was not a serious issue.

Moreover, in this case it made sense not to hire any medical expert. Ramirez bore the burden of proving every element of his case. *Banks v. Sunrise Hosp*., 120 Nev. 822, 840, 102 P.3d 52, 65 (2004) ("[P]laintiff must prove by a preponderance of the evidence that the defendant was negligent and that the negligence was the proximate cause of the plaintiff's injuries...."). Flores and Verdon did not need to prove anything they had "no affirmative duty to do more than meet the plaintiff step by step." *Knight v. Pac*. Gas & Elec. Co., 3 Cal. Rptr. 600, 604 (Ct. App. 1960) (quoting *Gunner v. Van Ness Garage*, 310 P.2d 32, 33 (Cal. Ct. App. 1957)).

Further, the amount at stake was small (certainly no more than $13,500 awarded by the arbitrator). 1 A. App. 25. Discovery was not economical to the point where it demanded hiring an expert witness to counter the medical arguments

of Ramirez's providers, given the injuries largely consisted of soft tissue injuries. 1 A. App. 86, 89. In fact, this case did not even necessitate an independent medical examination. Thus, preparing an arbitration brief and cross-examining Ramirez was an appropriate and sufficient defense. Neither the district court nor Ramirez has ever explained what information Appellants should have obtained in discovery, why it would have mattered, why Appellants should have testified, or why cross-examination was not an appropriate way to point out discrepancies in Ramirez's proof.

The district court merely faulted Flores and Verdon for not conducting unnecessary discovery. Ramirez may point out that not being able to cross-examine them about the "low impact" nature of the auto accident may have been detrimental to his claim, but ultimately this did not matter because liability was accepted by the Appellants. Flores and Verdon respectfully submits that given the totality of the circumstances, and during the Covid-19 pandemic, they undertook meaningful participation in the arbitration process, and the district court abused its discretion by finding otherwise.

D. Flores-Reyes and Verdon are entitled to a Trial by Jury on all issues.

Article 1, Section 3 of the Nevada Constitution, providing a litigant with the right to a jury trial in a civil action, should not be taken lightly and should be afforded critical scrutiny by this Court. The Supreme Court commented that such a

review involves a "somewhat heightened standard of review applied to sanctioning orders that terminated the legal proceedings." *Chamberland*, 877 P.2d at 525.

Given that there is a sound basis that Flores and Verdon meaningfully participated in the arbitration process, their right to a jury trial should not be taken away from them. Appellants seek a trial on the merits and to assert their constitutional right to a jury trial on all issues. Such should be afforded pursuant to NRCP 38 because Flores and Verdon engaged in meaningful participation in the underlying matter, as discussed above. [2]

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[2] NRCP 38 states as follows: Right to a Jury Trial; Demand (a) Right Preserved. The right of trial by jury as declared by the state constitution or as given by a state statute is preserved to the parties inviolate. (b) Demand; Deposit of Jurors' Fees. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand - which may be included in a pleading - at any time after the commencement of the action and not later than the time of the entry of the order first setting the case for trial;

(2) filing the demand in accordance with Rule 5(d); and

(3) unless the local rules provide otherwise, depositing with the court clerk an amount of money equal to the fees to be paid the trial jurors for their services for the first day of trial.

(c) Specifying Issues. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may - within 14 days after being served with the demand or within a shorter time ordered by the court - serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) Waiver; Withdrawal.

(1) A party's failure to properly file and serve a demand constitutes the party's waiver of a jury trial.

VIII.
Conclusion

Based on the facts articulated above and the evidence presented to the district court below, as well as the legal authority cited in this brief, Appellants Holga Flora-Reyes and Anthony Verdon, requests the following relief:

1. An order and Decision reversing the lower court's Order Granting Plaintiff's/Respondent's Motion to Strike Defendants'/Appellants' Request for Trial De Novo and Request for Removal from the Short Trial Program and resulting Arbitration Award of $13,500.

DATED: August 24, 2021.

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(continued)
(2) A proper demand for a jury trial may be withdrawn only if the parties consent, or by court order for good cause upon such terms and conditions as the court may fix.

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 of style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type style.

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/ / /

/ / /

2. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of appellate procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to 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: August 24, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 24rd day of August 2021, I deposited in the United States Mail at Las Vegas, Nevada a copy of the foregoing document entitled **APELLANTS OPENING BRIEF** in a sealed envelope, mailed regular U.S. mail, upon which first class postage was fully prepaid addressed to the following:

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/s/ ALONDRA REYNOLDS
Employee, **PYATT SILVESTRI**