

1 **\$2515**

2 THE ALLISON LAW FIRM CHTD.  
3 Noah G. Allison (Bar #6202)  
4 3191 East Warm Springs Road  
5 Las Vegas, Nevada 89120-3147  
6 Tel (702) 933-4444  
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8 [noah@allisonnevada.com](mailto:noah@allisonnevada.com)  
9 Attorney for SR Construction, Inc.

Electronically Filed  
Apr 19 2021 02:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

10  
11 **IN THE SECOND JUDICIAL DISTRICT COURT**

12 **IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA**

13 PEEK BROTHERS CONSTRUCTION,  
14 INC., a Nevada Domestic corporation,

Case No.: CV20-01375

15 Plaintiff,

Dept. No.: 8

16 vs.

**NOTICE OF APPEAL**

17 SR CONSTRUCTION, INC., a Nevada  
18 Domestic Corporation; DOE Defendants 1 -  
19 10.

20 Defendants.

21 Notice is hereby given that SR CONSTRUCTION, INC. ("SR"), defendant above named, hereby  
22 appeals to the Supreme Court of Nevada from the order denying SR's motion to compel arbitration,  
23 entered into this action on the 13<sup>th</sup> day of April, 2021. This appeal is made pursuant to NRS 38.247(1)(a).

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28 ///

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///





**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 13<sup>th</sup> day of April, 2021.

THE ALLISON LAW FIRM CHTD.

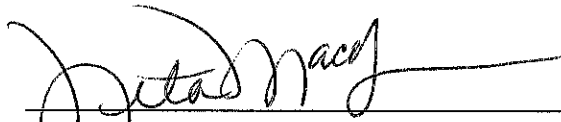
By: 

Noah G. Allison (Bar #6202)  
3191 East Warm Springs Road  
Las Vegas, Nevada 89120-3147  
*Attorney for SR Construction, Inc.*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of THE ALLISON LAW FIRM CHTD., and that on April 13<sup>th</sup>, 2021, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which served the following parties electronically:

Nathan J. Aman, Esq.  
Emilee N. Hammond, Esq.  
VILORIA, OLIPHANT, OSTER & AMAN, LLP  
327 California Ave.  
Reno, Nevada 89509  
*Attorney for Peek Brothers Construction, Inc.*



Employee of The Allison Law Firm Chtd.



THE ALLISON LAW FIRM CHTD.  
Noah G. Allison (Bar #6202)  
Heather Caliguire Fleming (Bar #14492)  
3191 East Warm Springs Road  
Las Vegas, Nevada 89120-3147  
Tel (702) 933-4444  
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[noah@allisonnevada.com](mailto:noah@allisonnevada.com)  
Attorneys for SR Construction, Inc.

**IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA**

PEEK BROTHERS CONSTRUCTION,  
INC., a Nevada Domestic corporation,

Case No.: CV20-01375

Plaintiff,

Dept. No.: 8

vs.

**CASE APPEAL STATEMENT**

SR CONSTRUCTION, INC., a Nevada  
Domestic Corporation; DOE Defendants 1 -  
10.

Defendants.

1. *Name of the appellant filing this case appeal statement:* SR Construction, Inc.
2. *Identify the judge issuing the decision, judgment, or order appealed from:* Honorable Barry L. Breslow.
3. *Identify each appellant and the name and address for counsel of each appellant:*  
Appellant: SR Construction, Inc.  
Counsel: Allison Law Firm Chtd., Noah G. Allison, Esq., Heather Caliguire Fleming, Esq.,  
3191 E. Warm Springs, Las Vegas, NV 89147.
4. *Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):*  
Respondent: Peek Brothers Construction, Inc.





Counsel: Vilorio, Oliphant, Oster & Aman, LLP, Nathan J. Aman, Esq., Emilee N. Hammond, Esq., 327 California Ave., Reno, NV 89509.

5. *Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42:* None.
6. *Indicate whether appellant was represented by appointed or retained counsel in the district court:* No.
7. *Indicate whether appellant is represented by appointed or retained counsel on appeal:* No.
8. *Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:* No.
9. *Indicate the date the proceedings commenced in the district court:* September 2, 2020.
10. *Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:* This case concerns a construction dispute on the Northern Nevada Sierra Medical Center construction project in Reno, Nevada. SR Construction, Inc. ("SR") is the general contractor and Peek Brothers Construction ("Peek Bros.") is the earthwork subcontractor. Non-party Sparks Family Medical Center, Inc. c/o Universal Health Services of Delaware ("UHS") is the owner. The dispute is over change orders sought by Peek Bros. and contested by SR and UHS. It is SR's position that the arbitration clause in the Master Subcontract Agreement between SR and Peek Bros. requires SR, UHS and Peek Bros. to arbitrate the disputed change orders. Peek Bros. disagrees. On October 7, 2020 SR filed a motion to compel arbitration and stay litigation. The court entered an order denying SR's motion on April 13, 2021.
11. *Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:* No.
12. *Indicate whether this appeal involves child custody or visitation:* No.
13. *If this is a civil case, indicate whether this appeal involves the possibility of settlement:* No.

After the court verbally denied SR's motion to compel arbitration, it ordered the parties to



attend a settlement conference before it entered the written order denying SR's motion to compel arbitration. The parties participated in the settlement conference on March 31, 2021 before District Judge Bridget Robb, but they failed to achieve a settlement or achieve any meaningful progress towards a settlement.

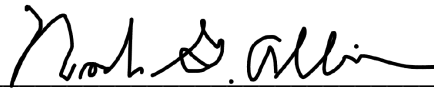
#### **AFFIRMATION**

##### **Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 15th day of April, 2021.

THE ALLISON LAW FIRM CHTD.

By:   
Noah G. Allison (Bar #6202)  
Heather Caliguire Fleming (Bar #14492)  
3191 East Warm Springs Road  
Las Vegas, Nevada 89120-3147  
*Attorneys for SR Construction, Inc.*

#### **CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of THE ALLISON LAW FIRM CHTD., and that on April 15th, 2021, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which served the following parties electronically:

Nathan J. Aman, Esq.  
Emilee N. Hammond, Esq.  
Viloria, Oliphant, Oster & Aman, LLP  
327 California Ave.  
Reno, Nevada 89509  
*Attorney for Peek Brothers Construction, Inc.*

/s/ Nita MacFawn

Employee of The Allison Law Firm Chtd.

**SECOND JUDICIAL DISTRICT COURT  
STATE OF NEVADA  
COUNTY OF WASHOE**

**Case History - CV20-01375**

**Case Description: PEEK BROS CONSTRUCT VS SR CONSTRUCTION (D8)**

---

**Case Number: CV20-01375 Case Type: BUILDING & CONSTRUCTION - Initially Filed On: 9/2/2020**

---

**Parties**

<u>Party Type &amp; Name</u>	<u>Party Status</u>
JUDG - BARRY L. BRESLOW - D8	Active
PLTF - PEEK BROTHERS CONSTRUCTION, INC. - @1241894	Active
DEFT - SR CONSTRUCTION, INC. - @168675	Active
ATTY - Nathan J. Aman, Esq. - 8354	Active
ATTY - Noah G. Allison, Esq. - 6202	Active
ATTY - Emilee N. Hammond, Esq. - 14626	Active

**Disposed Hearings**

- 1 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 11/10/2020 at 12:30:00  
Extra Event Text: MOTION TO COMPEL ARBITRATION AND STAY LITIGATION  
Event Disposition: S200 - 12/17/2020
- 2 Department: D8 -- Event: MOTION ... -- Scheduled Date & Time: 1/14/2021 at 11:00:00  
  
Event Disposition: D355 - 1/14/2021
- 3 Department: D13 -- Event: SETTLEMENT CONFERENCE -- Scheduled Date & Time: 3/31/2021 at 09:00:00  
  
Event Disposition: D480 - 3/31/2021
- 4 Department: D8 -- Event: STATUS HEARING -- Scheduled Date & Time: 4/13/2021 at 11:00:00  
  
Event Disposition: D844 - 4/6/2021
- 5 Department: D8 -- Event: STATUS HEARING -- Scheduled Date & Time: 4/13/2021 at 11:00:00  
  
Event Disposition: D260 - 4/13/2021

**Actions**

<u>Filing Date</u>	<u>-</u>	<u>Docket Code &amp; Description</u>
1	9/2/2020	- \$1425 - \$Complaint - Civil Additional Text: Transaction 8050530 - Approved By: CSULEZIC : 09-02-2020:15:50:00
2	9/2/2020	- PAYRC - **Payment Receipted Additional Text: A Payment of \$255.00 was made on receipt DCDC663191.
3	9/8/2020	- 4090 - ** Summons Issued Additional Text: Transaction 8056313 - Approved By: CSULEZIC : 09-08-2020:12:19:37
4	9/8/2020	- NEF - Proof of Electronic Service Additional Text: Transaction 8056394 - Approved By: NOREVIEW : 09-08-2020:12:20:39

**Report Does Not Contain Sealed Cases or Confidential Information**

- 5 9/16/2020 - 1005 - Acceptance of Service  
Additional Text: NOAH ALLISON ESQ OBO SR CONSTRUCTION - Transaction 8069945 - Approved By: CSULEZIC : 09-16-2020:12:24:47
- 6 9/16/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8069956 - Approved By: NOREVIEW : 09-16-2020:12:25:34
- 7 10/7/2020 - 3975 - Statement ...  
Additional Text: SR CONSTRUCTION, INC.'S CORPORATE DISCLOSURE STATEMENT - Transaction 8105175 - Approved By: YVILORIA : 10-07-2020:18:39:14
- 8 10/7/2020 - 2270 - Mtn to Compel...  
Additional Text: MOTION TO COMPEL ARBITRATION - Transaction 8105175 - Approved By: YVILORIA : 10-07-2020:18:39:14
- 9 10/7/2020 - \$1560 - \$Def 1st Appearance - CV  
Additional Text: SR CONSTRUCTION, INC. - Transaction 8105175 - Approved By: YVILORIA : 10-07-2020:18:39:14
- 10 10/7/2020 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$208.00 was made on receipt DCDC664564.
- 11 10/7/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8105610 - Approved By: NOREVIEW : 10-07-2020:18:40:15
- 12 10/28/2020 - 2645 - Opposition to Mtn ...  
Additional Text: PLAINTIFF'S OPPOSITION TO DEFENDANT SR CONSTRUCTION, INC.'S MOTION TO COMPEL ARBITRATION AND STAY LITIGATION - Transaction 8137900 - Approved By: CSULEZIC : 10-28-2020:14:41:11
- 13 10/28/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8137937 - Approved By: NOREVIEW : 10-28-2020:14:42:14
- 14 11/9/2020 - 3795 - Reply...  
Additional Text: In Support of Motion to Compel Arbitration and Stay Litigation - Transaction 8154309 - Approved By: SACORDAG : 11-09-2020:16:10:01
- 15 11/9/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8154564 - Approved By: NOREVIEW : 11-09-2020:16:12:37
- 16 11/10/2020 - 3860 - Request for Submission  
Additional Text: Transaction 8155880 - Approved By: NOREVIEW : 11-10-2020:12:00:16  
DOCUMENT TITLE: Motion To Compel Arbitration And Stay Litigation  
PARTY SUBMITTING: NOAH ALLISON, ESQ  
DATE SUBMITTED: 11/10/2020  
SUBMITTED BY: SJA  
DATE RECEIVED JUDGE OFFICE:
- 17 11/10/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8155883 - Approved By: NOREVIEW : 11-10-2020:12:01:16
- 18 12/17/2020 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 19 12/17/2020 - 3242 - Ord Setting Hearing  
Additional Text: Transaction 8210958 - Approved By: NOREVIEW : 12-17-2020:17:08:58
- 20 12/17/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8210959 - Approved By: NOREVIEW : 12-17-2020:17:09:48
- 21 12/21/2020 - 2520 - Notice of Appearance  
Additional Text: EMILEE HAMMOND ESQ. FOR PLAINTIFF - Transaction 8213567 - Approved By: NMASON : 12-21-2020:11:40:12



- 22 12/21/2020 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8213756 - Approved By: NOREVIEW : 12-21-2020:11:40:57
- 23 2/18/2021 - 1250 - Application for Setting  
Additional Text: Application for Setting - Transaction 8300531 - Approved By: NOREVIEW : 02-18-2021:09:44:37
- 24 2/18/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8300532 - Approved By: NOREVIEW : 02-18-2021:09:45:34
- 25 2/22/2021 - 3370 - Order ...  
Additional Text: ORDER REGARDING ZOOM VIDEOCONFERENCE OR TELEPHONIC APPEARANCE AT THE UPCOMING SETTLEMENT CONFERENCE - Transaction 8306867 - Approved By: NOREVIEW : 02-22-2021:16:13:02
- 26 2/22/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8306873 - Approved By: NOREVIEW : 02-22-2021:16:16:20
- 27 2/25/2021 - MIN - \*\*\*Minutes  
Additional Text: 1/14/21 HEARING ON MOTION - Transaction 8313517 - Approved By: NOREVIEW : 02-25-2021:12:03:45
- 28 2/25/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8313522 - Approved By: NOREVIEW : 02-25-2021:12:04:44
- 29 3/31/2021 - MIN - \*\*\*Minutes  
Additional Text: from 3-31-2021 SETTLEMENT CONFERENCE - Transaction 8370869 - Approved By: NOREVIEW : 03-31-2021:14:30:54
- 30 3/31/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8370877 - Approved By: NOREVIEW : 03-31-2021:14:31:56
- 31 4/13/2021 - 2842 - Ord Denying Motion  
Additional Text: ORDER DENYING MOTION TO COMPEL ARBITRATION AND STAY LITIGATION - Transaction 8392048 - Approved By: NOREVIEW : 04-13-2021:11:34:20
- 32 4/13/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8392058 - Approved By: NOREVIEW : 04-13-2021:11:35:19
- 33 4/13/2021 - \$2515 - \$Notice/Appeal Supreme Court  
Additional Text: Transaction 8392462 - Approved By: YVILORIA : 04-13-2021:13:40:33
- 34 4/13/2021 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$24.00 was made on receipt DCDC672540.
- 35 4/13/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8392475 - Approved By: NOREVIEW : 04-13-2021:13:43:28
- 36 4/13/2021 - SAB - \*\*Supreme Court Appeal Bond  
Additional Text: SR CONSTRUCTION INC. - Transaction 8392638 - Approved By: YVILORIA : 04-13-2021:14:36:56
- 37 4/13/2021 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$500.00 was made on receipt DCDC672542.
- 38 4/13/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8392808 - Approved By: NOREVIEW : 04-13-2021:14:38:24
- 39 4/14/2021 - 2540 - Notice of Entry of Ord  
Additional Text: Transaction 8394443 - Approved By: NOREVIEW : 04-14-2021:11:36:55

- 40 4/14/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8394445 - Approved By: NOREVIEW : 04-14-2021:11:39:05
- 41 4/15/2021 - 1310 - Case Appeal Statement  
Additional Text: Transaction 8397126 - Approved By: NOREVIEW : 04-15-2021:13:21:04
- 42 4/15/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8397128 - Approved By: NOREVIEW : 04-15-2021:13:21:53
- 43 4/15/2021 - 1350 - Certificate of Clerk  
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 8397759 - Approved By: NOREVIEW : 04-15-2021:15:51:38
- 44 4/15/2021 - 4113 - District Ct Deficiency Notice  
Additional Text: NOTICE OF APPEAL DEFICIENCY - SUPREME COURT FILING FEES (DUE TO PUBLIC CLOSURE OF COURTHOUSE AND APPEALS CLERK UNABLE TO RECEIVE FEE) SUPREME COURT WILL SEND A NOTICE TO PAY ONCE APPEAL IS RECEIVED - Transaction 8397759 - Approved By: NOREVIEW : 04-15-2021:15:51:38
- 45 4/15/2021 - NEF - Proof of Electronic Service  
Additional Text: Transaction 8397762 - Approved By: NOREVIEW : 04-15-2021:15:52:38

2840  
Nathan J. Aman, Esq.  
Nevada Bar No. 8354  
Emilee N. Hammond, Esq.  
Nevada Bar No. 14626  
VILORIA, OLIPHANT,  
OSTER & AMAN L.L.P.  
327 California Ave.  
Reno, Nevada 89509  
(775) 284-8888  
Attorneys for Plaintiff

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WASHOE**

PEEK BROTHERS CONSTRUCTION,  
INC., a Nevada Domestic Corporation.

Case No.: CV20-01375

Plaintiff,

Dept. No.: 8

vs.

SR CONSTRUCTION, INC., a Nevada  
Domestic Corporation; DOE Defendants 1 -  
10.

Defendants.

**ORDER DENYING DEFENDANT'S**  
**MOTION TO COMPEL ARBITRATION AND STAY LITIGATION**

Before the Court is a fully-briefed and submitted *Motion to Compel Arbitration and Stay Litigation* ("Motion") filed on October 7, 2020 by Defendant SR CONSTRUCTION, INC. ("SR Construction") by and through its counsel of record, The Allison Law Firm Chtd. The Court issued an *Order Setting Hearing* on December 17, 2020 requesting oral argument on the *Motion*. The Court heard oral arguments from the parties on January 14, 2021.

Accordingly, after consideration of the papers and pleadings on file in this case, the oral argument presented by the parties, and the applicable law, the Court sets forth its written Order as follows.

~~Proposed~~ Order Denying Motion to Compel Arbitration and Stay Litigation

ATTORNEYS AND  
COUNSELORS AT LAW  
Office: (775) 284-8888 Fax: (775) 284-3838  
P. O. Box 62 ~ RENO, NEVADA 89504  
327 CALIFORNIA AVENUE ~ RENO, NEVADA 89509  
  
VILORIA,  
OLIPHANT,  
OSTER &  
AMAN L.L.P.

1       **I.     FACTUAL BACKGROUND**

2               This litigation arises out of a Master Subcontract Agreement ("Subcontract") entered  
3 into between SR Construction and PEEK BROTHERS CONSTRUCTION, INC. ("Peek  
4 Brothers") in which Peek Brothers agreed to perform earthwork related to the construction of  
5 the Northern Nevada Medical Center ("Project"). SR Construction is the prime contractor  
6 ("Contractor") on the Project, and Sparks Family Medical Center, Inc. c/o Universal Health  
7 Services of Delaware ("UHS") is the owner of the Project.

8               During construction of the Project, a dispute arose between Peek Brothers and SR  
9 Construction, which is the subject of the underlying Complaint. In the Complaint, Peek  
10 Brothers alleges SR Construction directed Peek Brothers to import approximately 150,000  
11 square feet of material ("material" or "structural fill") to bring the building pad to subgrade  
12 elevation prior to Peek Brothers digging up the trenches and footings on the Project site. When  
13 bidding the Project, Peek Brothers assumed it would use the material dug up from the trenches  
14 and footings to bring said building pad to subgrade elevation. Peek Brothers maintains that,  
15 despite importing the material and performing the work as directed by SR Construction, SR  
16 Construction now refuses to pay the excess cost related to said work.

17              Accordingly, Peek Brothers filed a Complaint against SR Construction on September 2,  
18 2020 for Breach of Contract, Attorneys' Fees, Unjust Enrichment, and Violation of NRS  
19 Chapter 624. SR Construction now seeks an order of this Court compelling Peek Brothers to  
20 arbitrate its claims pursuant to an arbitration provision contained under Exhibit D, § W of the  
21 Subcontract.

22       **II.   STANDARD OF REVIEW AND APPLICABLE LAW**

23              In Nevada, the district court has the authority to determine whether an agreement to  
24 arbitrate exists or a controversy is subject to an arbitration agreement. See NRS 38.221; NRS  
25 38.219(2); Philips v. Parker, 106 Nev. 415, 417, 794 P.2d 716 (1990). There must be an  
26 agreement to arbitrate for there to be a presumption of arbitrability. Philips, 106 Nev. at 417,  
27 794 P.2d at 716. Moreover, "arbitrability is usually a question of contractual construction,"  
28

1 which is, in turn, a question of law for the court's determination. State ex rel. Masto v. Second  
2 Judicial Dist. Court ex rel. County of Washoe, 125 Nev. 37, 44, 199 P.3d 828, 832 (2009)  
3 (citing Kennedy & Mitchell, Inc. v. Anadarko Prod. Co., 243 Kan. 130, 754 P.2d 803, 805-06  
4 (1988)).

5 Exhibit D, § W of the Subcontract contains a "Dispute Resolution" provision, which  
6 provides as follows:

7 Contractor and Subcontractor shall **not** be obligated to resolve disputes arising  
8 under this Subcontract by arbitration, unless: (i) the prime contract has an  
9 arbitration requirement; **and** (ii) a particular dispute between Contractor and  
10 Subcontractor **involves issues of fact or law which the Contractor is required**  
**to arbitrate under the terms of the prime contract.**

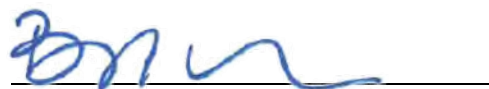
11 Subcontract, Exhibit D, § W (emphasis added). Further, the prime contract only provides that  
12 claims between the owner and the prime contractor shall be subject to binding arbitration. See  
13 AIA Document A133 – 2009, § 9.2 and AIA Document A201 – 2017, § 15.4.1.

14 Based on the foregoing, the Court finds that the dispute between Peek Brothers and SR  
15 Construction does not involve issues of fact or law that must be arbitrated pursuant to the prime  
16 contract because the dispute does *not* involve UHS. Therefore, the arbitration provision  
17 contained in Exhibit D, § W of the Subcontract does not apply, and Peek Brothers is not  
18 obligated to resolve the instant dispute by way of arbitration. As such, SR Construction's  
19 request to compel Peek Brothers to submit its claims to the American Arbitration Association  
20 ("AAA") should be denied.

21 Accordingly, and good cause appearing,

22 **IT IS HEREBY ORDERED** the *Motion to Compel Arbitration and Stay Litigation* is  
23 DENIED.

24 **DATED** this 13 day of ~~January~~  
April, 2021.

25   
26 \_\_\_\_\_  
27 BARRY L. BRESLOW  
28 District Judge

1 2540  
Nathan J. Aman, Esq.  
2 Nevada Bar No. 8354  
Emilee N. Hammond, Esq.  
3 Nevada Bar No. 14626  
VILORIA, OLIPHANT,  
4 OSTER & AMAN L.L.P.  
5 327 California Ave.  
Reno, Nevada 89509  
6 (775) 284-8888  
Attorneys for Plaintiff  
7

8  
9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
10 **IN AND FOR THE COUNTY OF WASHOE**

11 PEEK BROTHERS CONSTRUCTION,  
INC., a Nevada Domestic Corporation.  
12  
13 Plaintiff,

Case No.: CV20-01375

Dept. No.: 8

14 vs.

**NOTICE OF ENTRY OF ORDER**

15 SR CONSTRUCTION, INC., a Nevada  
Domestic Corporation; DOE Defendants 1 -  
16 10.

17 Defendants.  
18

19 PLEASE TAKE NOTICE that an Order Denying Defendant's Motion to Compel  
20 Arbitration and Stay Litigation was entered on April 13, 2021 in the above-captioned matter. A  
21 copy of said Order is attached hereto as Exhibit "1".

22 ///

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**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

**DATED** this 14<sup>th</sup> day of April, 2021.

VILORIA, OLIPHANT,  
OSTER & AMAN L.L.P.

By: 

Nathan J. Aman, Esq.  
Nevada Bar No. 8354  
Emilee N. Hammond, Esq.  
Nevada Bar No. 14626  
327 California Ave.  
Reno, Nevada 89509  
(775) 284-8888  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of VILORIA,  
OLIPHANT, OSTER & AMAN L.L.P., and that on the date shown below, I caused service of a  
true and correct copy of the attached:

**NOTICE OF ENTRY OF ORDER**

to be completed by:

X

electronic service upon electronically filing the within document with the Second  
Judicial District Court addressed to:

The Allison Law Firm Chtd.  
Noah G. Allison  
3191 East Warm Springs Road  
Las Vegas, Nevada 89120  
*Attorneys for Defendants*

**DATED** this 14<sup>th</sup> day of April, 2021

By: 



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INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>	<u>Number of Pages (exclusive of tabs)</u>
1	Order Denying Defendant's Motion to Compel Arbitration and Stay Litigation	3

FILED  
Electronically  
CV20-01375  
2021-04-14 11:33:07 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8394443

**EXHIBIT “1”**

**EXHIBIT “1”**

2840  
Nathan J. Aman, Esq.  
Nevada Bar No. 8354  
Emilee N. Hammond, Esq.  
Nevada Bar No. 14626  
VILORIA, OLIPHANT,  
OSTER & AMAN L.L.P.  
327 California Ave.  
Reno, Nevada 89509  
(775) 284-8888  
Attorneys for Plaintiff

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WASHOE**

PEEK BROTHERS CONSTRUCTION,  
INC., a Nevada Domestic Corporation.

Case No.: CV20-01375

Plaintiff,

Dept. No.: 8

vs.

SR CONSTRUCTION, INC., a Nevada  
Domestic Corporation; DOE Defendants 1 -  
10.

Defendants.

**ORDER DENYING DEFENDANT'S**  
**MOTION TO COMPEL ARBITRATION AND STAY LITIGATION**

Before the Court is a fully-briefed and submitted *Motion to Compel Arbitration and Stay Litigation* ("Motion") filed on October 7, 2020 by Defendant SR CONSTRUCTION, INC. ("SR Construction") by and through its counsel of record, The Allison Law Firm Chtd. The Court issued an *Order Setting Hearing* on December 17, 2020 requesting oral argument on the *Motion*. The Court heard oral arguments from the parties on January 14, 2021.

Accordingly, after consideration of the papers and pleadings on file in this case, the oral argument presented by the parties, and the applicable law, the Court sets forth its written Order as follows.

1       **I.     FACTUAL BACKGROUND**

2               This litigation arises out of a Master Subcontract Agreement ("Subcontract") entered  
3 into between SR Construction and PEEK BROTHERS CONSTRUCTION, INC. ("Peek  
4 Brothers") in which Peek Brothers agreed to perform earthwork related to the construction of  
5 the Northern Nevada Medical Center ("Project"). SR Construction is the prime contractor  
6 ("Contractor") on the Project, and Sparks Family Medical Center, Inc. c/o Universal Health  
7 Services of Delaware ("UHS") is the owner of the Project.

8               During construction of the Project, a dispute arose between Peek Brothers and SR  
9 Construction, which is the subject of the underlying Complaint. In the Complaint, Peek  
10 Brothers alleges SR Construction directed Peek Brothers to import approximately 150,000  
11 square feet of material ("material" or "structural fill") to bring the building pad to subgrade  
12 elevation prior to Peek Brothers digging up the trenches and footings on the Project site. When  
13 bidding the Project, Peek Brothers assumed it would use the material dug up from the trenches  
14 and footings to bring said building pad to subgrade elevation. Peek Brothers maintains that,  
15 despite importing the material and performing the work as directed by SR Construction, SR  
16 Construction now refuses to pay the excess cost related to said work.

17              Accordingly, Peek Brothers filed a Complaint against SR Construction on September 2,  
18 2020 for Breach of Contract, Attorneys' Fees, Unjust Enrichment, and Violation of NRS  
19 Chapter 624. SR Construction now seeks an order of this Court compelling Peek Brothers to  
20 arbitrate its claims pursuant to an arbitration provision contained under Exhibit D, § W of the  
21 Subcontract.

22       **II.   STANDARD OF REVIEW AND APPLICABLE LAW**

23              In Nevada, the district court has the authority to determine whether an agreement to  
24 arbitrate exists or a controversy is subject to an arbitration agreement. See NRS 38.221; NRS  
25 38.219(2); Philips v. Parker, 106 Nev. 415, 417, 794 P.2d 716 (1990). There must be an  
26 agreement to arbitrate for there to be a presumption of arbitrability. Philips, 106 Nev. at 417,  
27 794 P.2d at 716. Moreover, "arbitrability is usually a question of contractual construction,"  
28

1 which is, in turn, a question of law for the court's determination. State ex rel. Masto v. Second  
2 Judicial Dist. Court ex rel. County of Washoe, 125 Nev. 37, 44, 199 P.3d 828, 832 (2009)  
3 (citing Kennedy & Mitchell, Inc. v. Anadarko Prod. Co., 243 Kan. 130, 754 P.2d 803, 805-06  
4 (1988)).

5 Exhibit D, § W of the Subcontract contains a "Dispute Resolution" provision, which  
6 provides as follows:

7 Contractor and Subcontractor shall **not** be obligated to resolve disputes arising  
8 under this Subcontract by arbitration, unless: (i) the prime contract has an  
9 arbitration requirement; **and** (ii) a particular dispute between Contractor and  
10 Subcontractor **involves issues of fact or law which the Contractor is required**  
**to arbitrate under the terms of the prime contract.**

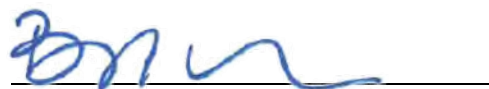
11 Subcontract, Exhibit D, § W (emphasis added). Further, the prime contract only provides that  
12 claims between the owner and the prime contractor shall be subject to binding arbitration. See  
13 AIA Document A133 – 2009, § 9.2 and AIA Document A201 – 2017, § 15.4.1.

14 Based on the foregoing, the Court finds that the dispute between Peek Brothers and SR  
15 Construction does not involve issues of fact or law that must be arbitrated pursuant to the prime  
16 contract because the dispute does *not* involve UHS. Therefore, the arbitration provision  
17 contained in Exhibit D, § W of the Subcontract does not apply, and Peek Brothers is not  
18 obligated to resolve the instant dispute by way of arbitration. As such, SR Construction's  
19 request to compel Peek Brothers to submit its claims to the American Arbitration Association  
20 ("AAA") should be denied.

21 Accordingly, and good cause appearing,

22 **IT IS HEREBY ORDERED** the *Motion to Compel Arbitration and Stay Litigation* is  
23 **DENIED.**

24 **DATED** this 13 day of ~~January~~  
April, 2021.

25   
26 **BARRY L. BRESLOW**  
27 District Judge  
28

**CASE NO. CV20-01375 PEEK BROTHERS CONSTRUCTION, INC. VS. SR CONSTRUCTION**

**DATE, JUDGE  
OFFICERS OF**

**COURT PRESENT**

**APPEARANCES-HEARING**

**CONTINUED TO**

**01/14/2021**

**HONORABLE**

**BARRY**

**BRESLOW**

**DEPT. NO. 8**

**A. DeGayner**

**(Clerk)**

**I. Zihn**

**(Reporter)**

**HEARING ON MOTION**

Nathan Aman, Esq. and Emilee Hammond, Esq. were present on behalf of the Plaintiff, who was not present.

Noah Allison, Esq. was present on behalf of the Defendant, who was not present.

This hearing was held remotely because of the closure of the courthouse at 75 Court Street in Reno, Washoe County, Nevada due to the National and Local emergency caused by COVID-19. The Court and all the participants appeared via simultaneous audiovisual transmission. The court was physically located in Reno, Washoe County, Nevada which was the site of the court session. Counsel acknowledged receipt of Notice that the hearing was taking place pursuant to Nevada Supreme Court Rules – Part 9 relating to simultaneous audiovisual transmissions and all counsel stated they had no objection to going forward in this manner.

DATY Allison addressed the Court and argued in support of the Motion to Compel Arbitration and Stay Litigation.

PATY Aman addressed the Court and argued in opposition to the Motion to Compel Arbitration and Stay Litigation. PATY Aman argued that arbitration would be expensive, cumbersome and time consuming in this matter. PATY Aman advised the Court that this will be a fact-intensive case, the Plaintiff is seeking more than \$140,000.00 and detailed the Plaintiff's view of the factual history of the case.

DATY Allison argued further in support of the Motion to Compel Arbitration and Stay Litigation. DATY Allison advised the Court of the Defendant's view of the factual history of the case. DATY Allison argued that the arbitrator will be a local, single arbitrator and not an expensive panel.

PATY Aman rested on the Plaintiff's opposition to the Motion to Compel Arbitration and Stay Litigation. PATY Aman argued that this is a limited dispute.

**COURT ORDERED:** Motion to Compel Arbitration – DENIED. The Court adopts the analysis in the Opposition to the Motion to Compel Arbitration. PATY Aman to prepare a written order. DATY Allison may submit a contemporaneous proposed order if not in agreement with

**04/21/2021**

**2:00 p.m.**

**Status Hearing**

the Plaintiff's proposed order. The parties are hereby directed, pursuant to Supreme Court Rule 252 and Washoe County District Court Rule 6, to a settlement conference on or before April 15, 2021 with a neutral agreed upon by the parties. If the parties cannot agree on a neutral for the settlement conference, the Court will appoint one. The cost of the settlement event shall be shared equally. This case/litigation is STAYED for 90 days pending the settlement conference.

DATY Allison stated a concern with a timing issue regarding appeals.

**COURT ORDERED:** Entry of order on the Motion to Compel Arbitration HELD IN ABEYANCE pending the settlement conference. Matter CONTINUED to **April 21, 2021 at 2:00 p.m.** for Status Hearing. Court stood in recess.

**APPEARANCES – HEARING**

**SETTLEMENT CONFERENCE**

*Hearing conducted via Zoom video conferencing*

Plaintiff, PEEK BROS CONSTRUCTION represented by TRAVIS PEEK was present by Zoom video with counsel, NATHAN AMAN, ESQ, who appeared by Zoom video. Defendant, SR CONSTRUCTION, INC. represented by Travis Burton was present by Zoom video with counsel, NOAH ALLISON, ESQ. who appeared by Zoom video.

*This hearing was held remotely because of the closure of the courthouse at 1 South Sierra Street, Reno, Washoe County, Nevada due to the National and Local emergency caused by COVID-19. The Court and all the participants appeared via simultaneous audiovisual transmission. The Court was physically located in Reno, Washoe County, Nevada, which was the site of the court session. Counsel/Parties acknowledged receipt of Notice that the hearing was taking place pursuant to Nevada Supreme Court Rules- Part 9 relating to simultaneous audiovisual transmissions and all counsel/parties stated they had no objection to going forward in this manner.*

**9:40 a.m.** Court convened with Court, Mr. Peek, Mr. Burton, and Counsel.

*Mr. Peek and Mr. Burton confirmed they are authorized to enter into an agreement if an agreement is reached today.*

**9:45 a.m.** Court went off the record to caucus with the Parties.

**1:30 p.m.** Court stood in recess.

*The Parties were unable to reach an agreement.*

**DATE, JUDGE  
OFFICERS OF  
COURT PRESENT:**  
3/31/2021  
HONORABLE  
BRIDGET E. ROBB  
DEPT. NO. 13  
K.BRUNSVOLD  
(Clerk)  
LINDA SHAW,  
Court Reporter,  
Sunshine Litigation  
(Recording)

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Code 1350

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**SR CONSTRUCTION, INC., a Nevada  
Domestic Corporation; DOE Defendants  
1-10,**

**Defendants.**

**CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 15th day of April, 2021, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 15th day of April, 2021.

Jacqueline Bryant  
Clerk of the Court  
By /s/YViloria  
YViloria  
Deputy Clerk

Code 4132

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

Case No. CV20-01375

**PEEK BROTHERS CONSTRUCTION,  
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Dept. No. 8

**Plaintiff,**

**vs.**

**SR CONSTRUCTION, INC., a Nevada  
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1-10,**

**Defendants.**

**NOTICE OF APPEAL DEFICIENCY**

TO: Clerk of the Court, Nevada Supreme Court,  
and All Parties or their Respective Counsel of Record:

On April 13<sup>th</sup>, 2021, Attorney Noah Allison, Esq. for SR Construction, Inc., filed a Notice of Appeal with the Court. Attorney Allison was unable to include the Two Hundred Fifty Dollar (\$250.00) Supreme Court filing fee due to the public closure of the Second Judicial District Court Administrative Order 2020-05(E).

Pursuant to NRAP 3(a)(3), on April 15<sup>th</sup>, 2021, the Notice of Appeal will be filed with the Nevada Supreme Court. By copy of this notice. Attorney Allison was notified by email of the deficiency. *(A notice to pay will be issued once the Notice of Appeal is filed in by the Nevada Supreme Court.)*

Dated this 15th day of April, 2021.

Jacqueline Bryant  
Clerk of the Court  
By: /s/YViloria  
YViloria  
Deputy Clerk

CERTIFICATE OF SERVICE

CASE NO. CV20-01375

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County Of Washoe; that on the 15th day of April, 2021, I electronically filed the Notice of Appeal Deficiency with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

NOAH ALLISON, ESQ. for SR CONSTRUCTION, INC.

EMILEE HAMMOND, ESQ. for PEEK BROTHERS CONSTRUCTION, INC.

NATHAN AMAN, ESQ. for PEEK BROTHERS CONSTRUCTION, INC.

/s/YViloria  
YViloria  
Deputy Clerk