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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 LAS VEGAS METROPOLITAN  
4 POLICE DEPARTMENT and CANNON  
5 COCHRAN MANAGEMENT  
SERVICES, INC.

6 Appellants,

7  
8 v.

9 ROBERT HOLLAND,

10 Respondent.  
11

Supreme Court Case No.: 82843  
District Court Case No.: A-20-818754-J  
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12 **APPELLANTS' OPENING BRIEF**  
13

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1. The Respondent, CANNON COCHRAN MANAGEMENT SERVICES, INC. (CCMSI), states that it does not have any parent corporation, or any publicly held corporation that owns 10% or more of its stock, nor any publicly held corporation that has a direct financial interest in the outcome of the litigation. NRAP 26.1(a).

3. The following counsel has appeared in the subject proceedings as counsel of record for CCMSI and LVMPD: DANIEL L. SCHWARTZ, ESQ., JOEL P. REEVES, ESQ., and L. MICHAEL FRIEND, ESQ., OF LEWIS BRSBOIS BISGAARD & SMITH, LLP.

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These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

DATED this 3<sup>rd</sup> day of November 2021.

LEWIS BRISBOIS BISGAARD &amp; SMITH LLP

By: /s/ L. Michael Friend  
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I.

**JURISDICTIONAL STATEMENT**

On July 27, 2020, the Appeals Officer rendered a Decision and Order affirming Appellant’s denial of Claimant’s request for coverage under NRS 617.457 (commonly referred to as “the heart and lung bill” with NRS 617.455). Claimant timely petitioned the District Court for review of that decision on July 29, 2020. NRS 233B.130. Following briefing and oral arguments, the District Court ordered a reversal of the Appeals Officer’s decision. Claimant filed the Notice of Entry of Order on April 6, 2021. Appellants timely and properly filed an appeal of the Order Granting Petition for Judicial Review with this Honorable Court on April 27, 2021. See NRS 233B.150; NRAP Rule 3; NRAP Rule 4. Accordingly, this Court has jurisdiction over the instant appeal.

II.

**ROUTING STATEMENT**

Under NRAP 17(b)(10), this case would be presumptively assigned to the Court of Appeals as it concerns a Petition for Judicial Review of an administrative agency’s final decision. However, Appellants respectfully request that the Supreme Court retain review as the issue of predisposing conditions found in NRS 617.457 appears with great regularity in industrial insurance claims, but there is little guidance on how to apply the statute.

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**III.**

**STATEMENT OF THE ISSUES**

1. Whether the District Court erred as a matter of law by adding new requirements under NRS 617.457(11) regarding how to determine whether a claimant has a predisposing condition and whether he had the ability to correct it.

2. Whether the District Court improperly reweighed the evidence in contradiction to NRS 233B.135.

3. Whether substantial evidence supports the Appeals Officer's conclusion that Claimant did not meet his burden of establishing a compensable claim under NRS 617.457.

**IV.**

**STATEMENT OF THE CASE**

This is a workers' compensation case stemming from an occupational heart disease claim filed by retired police officer ROBERT HOLLAND (hereinafter "Claimant") in May 2019. Claimant worked for LVMPD from 1987 to 2012, when he retired. His annual physicals from 2008 to 2012 indicate he had conditions predisposing him to heart disease and advising him of corrective actions to take. In May 2019, Claimant requested heart benefits under NRS 617.457 after having two heart attacks. CCMSI denied the industrial insurance claim because Claimant had failed to take action to correct predisposing conditions. Claimant appealed.



1 The Hearing Officer affirmed claim denial on September 17, 2019, which  
2 Claimant timely appealed. On July 27, 2020, the Appeals Officer also concluded  
3 that Claimant had not met his burden of establishing a compensable heart claim  
4 and affirmed CCMSI's claim denial determination. Claimant petitioned the District  
5 Court for review.  
6

7  
8 On April 5, 2021, the District Court reversed the Appeals Officer finding  
9 that the evidence did not support that he was advised of predisposing conditions,  
10 how to correct them, or that they were within his ability to correct. Notice of Entry  
11 of Order was filed on April 6, 2021.  
12

13 Appellants dispute the District Court's reversal of the Appeals Officer's  
14 Decision and Order and seek review by this Honorable Court.  
15

16 **V.**

17 **STATEMENT OF FACTS**

18 Claimant, ROBERT HOLLAND, (hereinafter referred to as "Claimant"), a  
19 retired police officer, alleges that on May 26, 2019, "while washing my vehicle I  
20 began to experience chest pain that radiated into my left arm. On Monday,  
21 5/27/2019, I experienced the same symptoms occurred [*sic*] as I was leaving the  
22 gym." Dr. Wattoo completed two separate C-4 forms both indicating that Claimant  
23 had two heart attacks. Claimant was taken off from work as a security officer for  
24 MGM from May 27, 2019, to June 17, 2019. (App. Vol. 1 pp. 48-49.)  
25  
26  
27

1 Appellant Employer Las Vegas Metropolitan Police Department (hereinafter  
2 referred to as “LVMPD”) completed a C-3 form on June 13, 2019, stating it was  
3 investigating Claimant’s cardiac episode. (App. Vol. 1 p. 50.)  
4

5 During his tenure with LVMPD, Claimant was consistently informed of  
6 predisposing conditions he needed to correct to ensure he would not be ineligible  
7 for coverage under the heart and lung bill:  
8

9 On February 12, 2008, Claimant’s examining physician noted Claimant’s  
10 weight was 220 lbs. and he had elevated triglycerides. (App. Vol. 1 p. 52.) He was  
11 advised to take corrective action including a low-fat diet and that failure to do so  
12 may make him ineligible for coverage under the heart and lung bill. (App. Vol. 1 p.  
13 52.) Claimant signed acknowledgement of his predisposing conditions and  
14 suggestive corrective measures, including that he was “responsible for the  
15 corrective actions listed as well as notifying Health and Safety Services, within a  
16 reasonable length of time, of any and all corrective measures taken by me to  
17 resolve.” (App. Vol. 2 p. 205.)  
18  
19  
20

21 On March 9, 2009, Claimant was again ordered to correct elevated  
22 triglyceride and cholesterol levels. (App. Vol. 1 pp. 58-59.) He again signed off on  
23 his understanding that failure to correct conditions may make him ineligible for  
24 coverage under the heart and lung bill. (App. Vol. 1 p. 228.)  
25  
26

27 . . .

1 On February 22, 2010, Claimant was ordered to correct abnormal labs  
2 including low HDL. His weight was 219 lbs. (App. Vol. 1 pp. 66-67.) He again  
3 signed off on his understanding that failure to correct conditions may make him  
4 ineligible for coverage under the heart and lung bill. (App. Vol. 2 p. 264.)  
5

6 On January 24, 2011, Claimant was informed of the need to correct elevated  
7 triglycerides, which were at 159, and he was again advised to have a low-fat diet,  
8 as well as taking niacin daily. His weight was 221 lbs. (App. Vol. 1 pp. 74-75.) He  
9 signed off on his understanding that failure to correct conditions may make him  
10 ineligible for coverage under the heart and lung bill. (App. Vol. 2 p. 279.)  
11  
12

13 On April 9, 2012, Claimant's last physical with LVMPD prior to retirement,  
14 Claimant was again informed of the need to correct elevated triglycerides, which  
15 had risen to 181 since the last examination, and was advised to have a low-fat diet,  
16 increase cardio and take omega 2 daily. (App. Vol. 1 p. 85.) His weight had  
17 increased to 231 lbs. (App. Vol. 1 p. 84.) He was again advised that failure to take  
18 these corrective measures may make him ineligible for coverage under the heart  
19 and lung bill. (App. Vol. 2 p. 305.)  
20  
21  
22

23 Claimant retired on December 29, 2012.

24 Claimant stated he was diagnosed with high blood pressure in 2015, for  
25 which he treated with Dr. J. Tyler. (App. Vol. 1 pp. 124-125.)  
26

27 . . .

1 Claimant was hospitalized at Summerlin Hospital Medical Center from May  
2 29, 2019, through June 4, 2019, due to a heart attack. (App. Vol. 1 pp. 92-118.) Dr.  
3 Chaudhry performed cardiac catheterization procedures on June 3, 2019.  
4 Claimant's triglycerides were noted as being **348**, almost double what they were in  
5 2012 when he was last informed to correct the same. (App. Vol. 1 pp. 70, 117.)  
6  
7

8 On July 23, 2019, CCMSI issued a determination advising Claimant his  
9 claim was denied. (App. Vol. 1 pp. 128-131.) Claimant appealed. (App. Vol. 1 p.  
10 134.)  
11

12 Following Hearing No. 2001960-JK, a Decision and Order was issued on  
13 September 17, 2019, which affirmed the denial of the claim. (App. Vol. 1 pp. 136-  
14 137.) Claimant appealed. (App. Vol. 1 p. 138.)  
15

16 On July 27, 2020, after receiving written briefs, the Appeals Officer  
17 affirmed claim denial given that Claimant was ordered on multiple occasions to  
18 correct his triglycerides while he was employed but let them rise to almost double  
19 what they were when he was last warned. (App. Vol. 1 pp. 3-12.) Of note, the  
20 Appeals Officer meticulously went through the evidence and converted the data  
21 into a chart to assist with her analysis. (App. Vol. 1 p. 15.)  
22  
23

24 Claimant filed a Petition for Judicial Review with the Clark County District  
25 Court. (App. Vol. 2 pp. 340-352.)  
26

27 . . .

1 On April 5, 2021, after receiving written briefs and hearing oral argument,  
2 the District Court reversed the Appeals Officer, finding that: (1) although Claimant  
3 was explicitly instructed to correct predisposing conditions, the instructions did not  
4 inform Claimant as to how he might correct those conditions; (2) that there was no  
5 evidence that correction was within Claimant's ability; (3) that Claimant was  
6 deemed able to continue employment despite being warned of conditions which  
7 would predispose him to heart disease; and (4) Claimant had proven a good faith  
8 attempt to correct his predisposing conditions because he was never prescribed  
9 medication for any heart condition. (App. Vol. 2 pp. 413-418.) Notice of Entry of  
10 Order was filed on April 6, 2021. (App. Vol. 2 pp. 419-426.)  
11  
12  
13

14 Appellants dispute the District Court's reversal of the Appeals Officer's  
15 Decision and Order.  
16

## 17 VI.

### 18 SUMMARY OF THE ARGUMENT

19  
20 The Appeals Officer affirmed CCMSI's denial of Claimant's request for  
21 coverage under NRS 617.457 for an occupational heart disease. The Appeals  
22 Officer determined Claimant met the prerequisites of NRS 617.457(1) for a  
23 conclusive presumption that his heart disease arose out of and in the course and  
24 scope of his employment. However, she concluded Claimant was excluded from  
25  
26  
27

1 coverage per NRS 617.457(11) for failure to correct predisposing conditions within  
2 Claimant's ability as ordered to do so following his annual physical examinations.  
3

4 The Appeals Officer reviewed the evidence and determined that during  
5 Claimant's annual physicals he was informed of predisposing conditions and  
6 preventative measures within his control to correct. The Appeals Officer concluded  
7 that the evidence did not support that Claimant took steps to correct these  
8 predisposing conditions, and, therefore, he was excluded from coverage under  
9 NRS 617.457(11).  
10  
11

12 The District Court reversed the Appeals Officer and granted Claimant's  
13 petition for judicial review. The District Court determined that (1) although  
14 Claimant was explicitly instructed to correct predisposing conditions, the  
15 instructions did not inform Claimant as to how he might correct those conditions;  
16 (2) that there was no evidence that correction was within Claimant's ability; (3) that  
17 Claimant was deemed able to continue employment despite being warned of  
18 conditions which would predispose him to heart disease; and (4) Claimant had  
19 proven a good faith attempt to correct his predisposing conditions because there  
20 was no evidence he was ever prescribed medication for any heart condition.  
21  
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23

24 Appellants posit that the District Court not only improperly reweighed the  
25 evidence, but that it committed error of law and acted arbitrarily and capriciously  
26  
27

1 by adding new requirements to NRS 617.457(11). Therefore, the District Court's  
2 order cannot stand.

## 3 4 **VII.**

### 5 **ARGUMENT**

#### 6 **A. Standard of Review**

7  
8 Judicial review of a final decision of an agency is governed by NRS  
9 233B.135. A court may set aside, in whole or in part, a final decision of an  
10 administrative agency where substantive rights of the petitioners have been  
11 prejudiced because the final decision is in violation of constitutional or statutory  
12 provisions; affected by other error of law; clearly erroneous in view of the reliable,  
13 probative, and substantial evidence on the whole record; or arbitrary, capricious, or  
14 characterized by abuse of discretion.  
15  
16

17 Questions of law, including the interpretation of statutes and constitutional  
18 provisions, are subject to de novo review. Nassiri v. Chiropractic Physicians' Bd.  
19 of Nev., 130 Nev. 245, 327 P.3d 487, 489(2014) (*statutory interpretation*); Grupo  
20 Famsa, S.A. de C.V. v. Eighth Judicial Dist. Court, 132 Nev. 334, 337, 371 P.3d  
21 1048, 1050 (2016) (*constitutionality*). Statutes should be given their plain meaning.  
22 Alsenz v. Clark Co. School Dist., 109 Nev. 1062, 1065, 864 P.2d 285, 286 (1993).  
23  
24 This court has consistently upheld the plain meaning of the statutory scheme in  
25 workers' compensation laws. State Indus. Ins. Sys. v. Prewitt, 113 Nev. 616, 619,  
26  
27

1 939 P.2d 1053, 1055 (1997). (See also Charlie Brown Constr. Co. v. Boulder City,  
2 106 Nev. 497, 502, 797 P.2d 946, 949 (1990)

3  
4 In regard to review of factual determinations, this Court reviews an appeals  
5 officer's factual findings for substantial evidence. North Las Vegas v. Public  
6 Service Comm'n., 83 Nev. 278, 429 P.2d 66 (1967); McCracken v. Fancy, 98 Nev.  
7 30, 639 P.2d 552 (1982). Substantial evidence is that quantity and quality of  
8 evidence which a reasonable man would accept as adequate to support a  
9 conclusion. Nassiri, 327 P3d at 471; Maxwell v. State Indus. Ins. Sys., 109 Nev.  
10 327, 331, 849 P.2d 267, 270 (1993); Horne v. State Indus. Ins. Sys., 113 Nev. 532,  
11 537, 936 P.2d 839 (1997).

12  
13  
14 Factual findings are clearly erroneous when there is no evidence or  
15 testimony in the record for their support. Hermann v. Varco-Pruden Buildings, 106  
16 Nev. 564, 566-67, 796 P.2d 590, 592 (1990). Agency rulings also lack substantial  
17 evidentiary support whenever they are based on implicit findings not found in the  
18 record. State Indus. Sys. v. Christensen, 106 Nev. 85, 87, 787 P.2d 408, 409  
19 (1990). An agency ruling without substantial evidentiary support is arbitrary and  
20 capricious and, therefore, unsustainable. Id. at 88, 787 P.2d at 410. Although  
21 administrative proceedings need not strictly follow the rules of evidence, the fact-  
22 finder is charged with making a decision based on evidence of a type and amount  
23  
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1 that will ensure a fair and impartial hearing. Nassiri, 130 Nev. at 245, 327 P.3d at  
2 490.

3  
4 NRS 616A.010 is clear that Nevada no longer has liberal construction.  
5 Issues must be decided on their merits, and not according to the common law  
6 principle that requires statutes governing workers' compensation to be liberally  
7 construed. That means workers' compensation statutes must not be interpreted or  
8 construed broadly or liberally in favor of any party.  
9

10 **B. Claimant failed to prove a compensable heart claim because the**  
11 **evidence shows he failed to correct predisposing conditions within his**  
12 **control.**

13 The District Court committed reversible error by reweighing the evidence  
14 and by adding new requirements to claims filed under NRS 417.457. It is  
15 Appellants' position that the Appeals Officer properly weighed the evidence,  
16 properly applied the law, and therefore was entitled to deference. The District  
17 Court's decision to essentially retry the case was not within its purview under NRS  
18 233B.135.  
19  
20

21 This is a claim for workers' compensation benefits under the police  
22 officer/firefighter heart and lung bill. Specifically, the crux of the issue before this  
23 Court concerns NRS 617.457(11), which provides in pertinent part:  
24

25 11. Failure to correct predisposing conditions which  
26 lead to heart disease when so ordered in writing by the  
27 examining physician subsequent to a physical  
examination required pursuant to subsection 4 or 5

1 excludes the employee from the benefits of this section if  
2 the correction is within the ability of the employee.

3 In an industrial insurance claim, the injured worker has the burden of  
4 proving entitlement to any benefits under any accepted industrial insurance claim  
5 by a preponderance of all the evidence. State Indus. Ins. Sys. v. Hicks, 100 Nev.  
6 567, 688 P.2d 324 (1984); Johnson v. State ex rel. Wyoming Worker's  
7 Compensation Div., 798 P.2d 323 (1990); Hagler v. Micron Technology, Inc., 118  
8 Idaho 596, 798 P.2d 55 (1990).  
9  
10

11 In attempting to prove his case, a claimant has the burden of going beyond  
12 speculation and conjecture. That means that a claimant must establish all facets of  
13 the claim by a preponderance of all the evidence. To prevail, he must present and  
14 prove more evidence than an amount which would make his case and his  
15 opponent's "evenly balanced." Maxwell, 109 Nev. at 331, 849 P.2d at 270.; State  
16 Indus. Ins. Sys. v. Khweiss, 108 Nev. 123, 825 P.2d 218 (1992); State Indus. Ins.  
17 Sys. v. Kelly, 99 Nev. 774, 671 P.2d 29 (1983); 3, A. Larson, the Law of  
18 Workmen's Compensation, § 80.33(a).  
19  
20  
21

22 Here, Appellants do not dispute that Claimant has been diagnosed with heart  
23 disease; that he was disabled by his heart disease; and that he has the necessary  
24 service with the Las Vegas Metropolitan Police Department for coverage under  
25 NRS 617.457. Indeed, the Appeals Officer properly concluded that Claimant made  
26 the necessary showing to qualify for the conclusive presumption of claim  
27

1 compensability afforded by NRS 617.457. However, under NRS 617.457(11),  
2 Claimants are excluded from that conclusive presumption if their annual  
3 examining physician orders them in writing to correct a condition which  
4 predisposes them to heart disease, and they fail to correct any predisposing  
5 conditions within their ability to correct.  
6

7  
8 This Court has addressed this topic in the case of Emplrs. Ins. Co. of Nev. v.  
9 Daniels, 122 Nev. 1009, 145 P.3d 1024 (2006), holding that “[a]n employer can  
10 defend a claim by showing that the employee failed to correct a predisposing  
11 condition, such as smoking or being overweight, after being warned to do so in  
12 writing.” If the employer can make that showing, per the last clause of NRS  
13 617.457(11), it is then incumbent upon the Claimant to prove that correction of the  
14 predisposing condition was not within his ability.  
15  
16

17 Here, between 2008 and 2012, Claimant was consistently warned about his  
18 cholesterol levels, specifically high triglycerides. (App. Vol. 1 pp. 51-52, 58-59,  
19 66-67, 74-75.) He was specifically directed to maintain a low-fat diet. (App. Vol. 1  
20 pp. 52, 75.) By 2012, when his weight had increased 10 lbs. and his triglycerides  
21 had increased 30 points, he was told not only to maintain a low-fat diet, but also to  
22 increase cardio and take omega twice daily. (App. Vol. 1 pp. 84-85.) After he  
23 retired, the evidence shows he was diagnosed with high blood pressure in 2015.  
24 (App. Vol. 1 p. 124.)  
25  
26  
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1 After each annual physical, Claimant signed acknowledgement of his  
2 predisposing conditions and suggestive corrective measures, including that he was  
3 “responsible for the corrective actions listed as well as notifying Health and Safety  
4 Services, within a reasonable length of time, of any and all corrective measures  
5 taken by me to resolve.” (App. Vol. 1 p. 205, 228; and Vol. 2 pp. 264, 279.)  
6  
7 Claimant presented no evidence that he took any corrective measures or that he  
8 notified his employer about the same.  
9

10 The Appeals Officer meticulously went through the evidence and converted  
11 the data into a chart to assist with her analysis. (App. Vol. 1 p. 15.) In relation to  
12 triglycerides, she noted they increased from 130 in 2010, to 159 in 2011, to 181 in  
13 2012, to 348 upon admission to the hospital in 2019 (almost doubling).  
14  
15

16 The evidence also shows from 2008 to 2011, Claimant maintained a weight  
17 of around 220 lbs.; however, by 2012 his weight had increased to 231 lbs.  
18 (Compare App. Vol. 1 pp. 52, 59, 66, and 74 to App. Vol. 1 p. 84.) There is no  
19 evidence that Claimant took *any* steps to either correct his preexisting conditions or  
20 even attempt to improve his health.  
21  
22

23 Despite substantial evidence to support the Appeals Officer’s decision, the  
24 District Court decided essentially to rehear the case. In its reversal, the District  
25 Court found that (1) although Claimant was explicitly instructed to correct  
26 predisposing conditions, the instructions did not inform Claimant as to how he  
27

1 might correct those conditions; (2) that there was no evidence that correction was  
2 within Claimant's ability; (3) that Claimant was deemed able to continue  
3 employment despite being warned of conditions which would predispose him to  
4 heart disease; and (4) Claimant had proven a good faith attempt to correct his  
5 predisposing conditions because he was never prescribed medication for any heart  
6 condition. (App. Vol. 2 pp. 413-418.)  
7

9       There is no foundation in NRS 617.457 to support any of the requirements  
10 the District Court determined were dispositive of this issue. The District Court  
11 reweighed the evidence against newly created presumptions to reverse the Appeals  
12 Officer. Specifically:  
13

- 14       • There is no requirement for claimant's to be given explicit instructions  
15       on how to correct predisposing conditions (because the District Court  
16       determined following a low-fat diet, increasing cardio, and taking  
17       niacin and omega supplements were not specific enough, App. Vol. 2  
18       pp. 411-412).  
19
- 20       • There is no requirement that claimants be deemed unfit for duty for  
21       failure to correct predisposing conditions (because the District Court  
22       speculated that because he remained acceptable for employment he  
23       must be trying to correct his predisposing conditions, App. Vol. 2 p.  
24       412.)  
25  
26  
27

- 1           • There is no requirement that medications be prescribed for cholesterol  
2           (because the District Court found that because he was not being  
3           prescribed medications for cholesterol it illustrated he “in good faith,  
4           was doing what he was supposed to be doing.” See App. Vol. 2 p.  
5           412.)  
6

7  
8           It is Claimant’s burden to establish by a preponderance of the evidence that  
9           he has a compensable heart condition. He presented no evidence to support that he  
10          took any steps to correct predisposing conditions. The Appeals Officer relied on  
11          the evidence which showed undisputedly that in the years before his retirement,  
12          Claimant was ordered to correct predisposing conditions and was explicitly  
13          informed that failure to correct the same would exclude him from benefits under  
14          NRS 617.457. It is also supported by the evidence that Claimant’s triglycerides had  
15          almost doubled between his last physical and when he was admitted to the hospital.  
16          The Appeals Officer’s decision was proper and supported by substantial evidence.  
17  
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1 **VIII.**

2 **CONCLUSION**

3  
4 Based upon the foregoing, not only did the District Court improperly weigh  
5 the evidence, but it also acted arbitrarily and capriciously by unilaterally adding  
6 new requirements to NRS 617.457(11). Appellants respectfully request that this  
7  
8 Court reverse the District Court and affirm the Appeals Officer Decision and Order  
9 finding that Claimant did not meet his burden of establishing that he was entitled to  
10 benefits under NRS 617.457 because he was excluded from coverage per NRS  
11 617.457(11).  
12

13 Dated this 3<sup>rd</sup> day of November 2021.

14 Respectfully submitted,

15  
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17 /s/ L. Michael Friend

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19 Nevada Bar No. 005125

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2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 4,647 words and 630 lines of text.

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1 4. I understand that I may be subject to sanctions in the event that the  
2 accompanying brief is not in conformity with the requirements of the Nevada  
3 Rules of Appellate Procedure.  
4

5 Dated this 3<sup>rd</sup> day of November 2021.

6 Respectfully submitted,  
7

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9 /s/ L. Michael Friend

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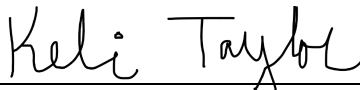
1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on  
3 the 3<sup>rd</sup> day of November 2021, service of the attached **APPELLANTS'**  
4 **OPENING BRIEF** was made this date by depositing a true copy of the same for  
5 mailing, first class mail, and/or electronic service as follows:

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