IN THE SUPREME COURT OF THE STATE OF NEVADA

INTERNATIONAL ACADEMY OF STYLE,

Appellant,

vs.

DIVISION OF INDUSTRIAL RELATIONS,

Respondents.

Case No.: 82864

APPEAL FROM ORDER OF THE 2ND JUDICIAL DISTRICT COURT WASHOE COUNTY, NEVADA

APPELLANT'S OPENING BRIEF

JASON D. GUINASSO, ESQ.
Nevada Bar No. 8478
ALEX R. VELTO, ESQ.
Nevada Bar No.14961
Hutchison & Steffen, PLLC
5371 Kietzke Lane
Reno, NV 89511
Tel.: 775-853-8746
Fax: 775-201-9611
jguinasso@hutchlegal.com
avelto@hutchlegal.com
Attorneys for International Academy of Style

DISCLOSURE STATEMENT IN COMPLIANCE WITH NRAP 26.1

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 in order that the judges of this Court may evaluate possible disqualification or recusal.

1. International Academy of Style ("IAS").
2. Jason D. Guinasso, Esq. and Alex R. Velto, Esq. of HUTCHISON & STEFFEN, PLLC, are and have been at all times relevant to the District Court case through the current appeal the attorneys of record for IAS. No other attorneys from Hutchison & Steffen are expected to appear before this Court with respect to the appeal now pending.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

APPELLANT'S OPENING BRIEF

Appellant, INTERNATIONAL ACADEMY OF STYLE ("IAS") hereby files this Opening Brief.

I. JURISDICTIONAL STATEMENT

This is an appeal from an order denying IAS's petition for judicial review. The order of the District Court was filed on March 1, 2021. JA 1832. The notice of appeal was filed on April 30, 2021, within the 30 days from when the written notice of entry of judgment or order appealed was served. This Court has jurisdiction under NRAP 3A(b)(1).

II. ROUTING STATEMENT

The Supreme Court should retain this appeal to resolve an important issue of first impression. *See* NRAP 17(a)(11) &(12). This Court should address the parameters of NRS 616B.603's understanding of "independent enterprise" as it relates to, effectively, adjunct faculty. The Appeals Officer and District Court relied heavily on *Meers*'s application to the statutory definition of "independent enterprise," when there is little case applying that test to "independent enterprises." Further, this issue is of extreme importance to employers who retain the services of independent contractors. Therefore, this case warrants Nevada Supreme Court retention pursuant to NRAP 17.

III. ISSUES PRESENTED

A. Whether the cosmetology professionals who contracted with IAS are excluded from the definition of "Employer" under the Nevada Industrial Insurance Act ("NIIA") because they are "independent enterprises?"

B. Whether "independent enterprises" under NRS 616B.603 can be understood as a statute on its face, or it is ambiguous and requires the Court to look to *Meers,* 101 Nev. 283, 286, 701 P.2d 1006, 1007 (1985)?

C. Whether, despite the fact that all cosmetology professionals had workers' compensation coverage either through their own coverage or through coverage provided by IAS, the Division of Industrial Relations ("DIR") determinations issued on March 14, 2017, and assessing a premium penalty in the amount of $251.10 for the period of December 1, 2016 to December 30, 2016, and a premium penalty in the amount of $16,390.94 for the period of December 21, 2010, to November 30, 2015, are supported by the evidence presented and Nevada law?

IV. STATEMENT OF THE CASE

The District Court and Appeals Officer made clear errors of law when they misapplied NRS 616B.603. That portion of statue exempt employers who retain independent enterprises. "Independent enterprises" is a term that is

clearly defined in statute, and both the District Court and Appeals Officer read into the statute additional language and requirements in order avoid exempting IAS from NRS 616B.603. Both entities could have, and should have, applied the statute as written and determined that IAS instructors are "independent enterprise" because they hold themselves out as being engaged in a separate business and hold his or her own occupational license *or* owns, rents, or leases property in furtherance of that business. *See* NRS 616B.603(2)(a)-(b). IAS instructors, in-fact, are not in the business of education. They maintain their own separate businesses and are retained by IAS because of their unique experience. Because of this experience and retention policy, IAS instructors are better classified as "independent enterprises."

This argument is best explained by way of example. The hypothetical of Boyd Law School offers a useful parallel. Just like IAS, Boyd is a law school in the education business. Being in the education business, Boyd retains some full-time professors to provide basic legal education. The professors are in the education business and typically enjoy careers as professors of law. Those professors are clearly employees of Boyd. However, Boyd also engages practicing lawyers from the community from time-to-time to teach seminars, to provide practical instruction in the classroom, and to serve as adjunct

professors. Some of these lawyers are solo practitioners and some work at law firms, etc. These lawyers are not employees of the law school; they are independent contractors. These lawyers are not in the same trade or business as the law school. They are not in the business of education. They are in the business of law. They provide instruction that benefits the students, not the law school. And Boyd does not need to retain them to deliver education.

These adjunct professors at Boyd are analogous to IAS instructors. IAS retains some cosmetology professionals—in addition to their full-time staff—who are solo practitioners or work for established salons. They are not employees of IAS; they are independent contractors. They are not in the business of education; they are in the cosmetology business. But, the instructors are not in the education business.

The District Court and Appeals Officer erred in reading in a preclusion of the independent enterprise statue for independent contractors who are useful and/or necessary for a school. However, that requirement does not exist in statute. All the law requires is: (1) the person entered into a contract (not written contracts, just an agreement) with an independent enterprise who is not in the same business; (2) the person be in a separate business; and (3) the person hold him or herself out as being in a separate business. The record

established that IAS does not need to retain these practitioners to deliver education to their students. If IAS decides not to retain their services, it can still function as a business and deliver education. Every IAS instructor has been retained by IAS as an independent contractor. Because the District Court and Appeals Court arbitrarily heightened the standard and read in new legal requirements, this Court should reverse the lower court and Appeals Officer's decision and remand.

V. STATEMENT OF FACTS

A. Factual Background

i. DIR's action and hearing before Appeals Officer

On March 14, 2017, DIR rendered a determination notifying IAS of the premium penalty owed in the amount of $16,390.94. JA 1707-08**.** Also on March 14, 2017, DIR rendered a determination notifying IAS of the premium penalty owed in the amount of $251.10. JA 1740-41. IAS requested its hearing before the Appeals Officer on March 20, 2017. JA 1075, JA 1738. The Appeals Officer heard the matter on November 8, 2021. JA 1658-59.

The Appeals Officer issued her final order on February 20, 2020. JA 676-689. She found the following relevant facts:

- The Division issued a determination on March 14, 2017 imposing a premium penalty of $16,390.94 for a lapse in coverage from December 21, 2010 through November 30, 2015. JA 878.
- The Division issued a determination imposing a premium penalty of $251.10 for lapse of insurance between December 1, 2016 through December 30, 2016. *Id*.
- IAS sent the Division copies of certificates of general liability insurance for eight instructors. JA 679.
- IAS produced "Independent Instructor Agreements," which were not valid during the first lapse period from 2010 through 2015. *Id*. These agreements declared each instructor "an independent contractor" and "declared [the instructors'] provide cosmetology services, hair design services, licensed instructor services and aesthetician and/or nail technology services." *Id.* Each claimed IAS was an "educational facility licensed pursuant to NRS 644.380 to conduct a school of cosmetology." *Id.*
- All agreements except for one require instructors to pay a monthly chair rental agreement. JA 680.

- Ms. Casteel, the owner of IAS, claimed IAS always had agreements like the ones produced. She testified further that IAS instructors "set their own schedules" and "can teach at other schools." She testified that "instructors perform no other tasks and that a no show does not have any effect on the instructor." *Id.*
- Regarding IAS's claim that instructors are "independent enterprise," not "independent contractors," the Appeals officer concluded the instructors "are clearly furthering the operation of the business of the school by providing instruction necessary to qualify as a cosmetology school. The instructors are also clearly in the same trade business, occupation or profession as Ms. Casteel and Ms. Schultz." JA 681.
- Regarding the five-factor test, the Appeals Officer concluded that Ms. "Casteel was self-serving and appeared scripted and therefore found not credible." She concluded further that the witness statements were not credible. The Appeals Officer relied on the fact that IAS must have proper instruction according to the guidelines of the Board of Cosmetology. *Id*.

For the conclusions of law, the Appeals Officer quoted the following portions of statute and code: NRS 616B.633, NRS 616.200, NRS 616A.110, NRS 616D.200, NRS 616A.255, NRS 616A.210, NRS 616B.603, NRS 616A.350, NRS 644.395, NAC 644.105, NRS 616B.609,

ii. IAS's Petition for Judicial Review before the District Court

IAS timely filed a petition for judicial review before the District Court. It's opening brief, JA 1745-76, argued the Appeals Officer erred for the following reasons: (1) the cosmetology professionals who contract with IAS are expressly precluded from the definition of "Employee" under the Nevada Industrial Insurance Act; (2) IAS is not the employer of cosmetology professionals because they are independent enterprises under statute; (3) IAS is not required to maintain workers compensation coverage on cosmetology professionals for industrial injuries suffered by the professionals; and (4) the penalty assessed against IAS was unlawful.

The Division's answering brief, JA 1777-1820, argued: (1) the faculty and staff of IAS are employees, not independent contractors; (2) IAS is required to maintain workers' compensation coverage regardless of the instructor's employment status; (3) the instructors are employees, not

independent enterprises, and the degree of control test means the instructors are considered employees; and (4) Nevada law prevents IAS from requiring staff to waive rights to workers compensation.

IAS's reply brief, JA 1821-29, argued: (1) the Appeals Officer erred in concluding IAS independent contractor agreements are not permitted; (2) The Appeals Officer's conclusion that the Cosmetology Board's requirement that two instructors be at the school is not supported by evidence; and (3) The instructors are not employees because they are independent enterprises.

The District Court heard argument on the issue on February 12, 2021. JA 1832-33. The Court took the matter under submission.

iii. The District Court's order denying the Petition for Judicial Review

The District Court issued its order denying the Petition for Judicial Review on March 1, 2021. JA 1834-44. It determined that: (1) the record supported the employee classification fining because the test under NRS 616A.110(9) is conjunctive, not disjunctive; (2) the record supported the finding that the instructors are not independent enterprise because, the court determined, the *Meers* test was established, in-part, because there were not written agreements from 2010-2013; and (3) the record supports the

independent contractor finding based on the five factor test. The Court agreed there was some supervision, that there was compensation paid for their services, an unemployment claim was permitted, and Ms. Casteel's testimony was not credible.

VI. STANDARD OF REVIEW

The parameters of judicial review are established by statute. Judicial review of a final decision of an agency must be conducted by the Court without a jury and confined to the record. NRS 233B.135(1). The final decision of the Agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the Court. NRS 233B.135(2). The burden of proof is on the party attacking the decision to show that the final decision is invalid. NRS 233B.135(2). However, a Court may set aside, in whole or in part, a final decision of an administrative agency where substantial rights of the petitioner have been prejudiced because the final decision is in violation of statutory provisions, affected by other error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary, capricious, or characterized by abuse of discretion. NRS 233B.135(3).

There are two (2) steps in the long-established methodology for applying the substantial evidence standard set forth in NRS 233B.135(3)(e)-(f).

First, identifying the law which governs the contested issue, as such law establishes what facts had to be proven, and how such facts had to be proven. *United Exposition Service Co. v. State Indus. Ins. Sys.,* 109 Nev. 421, 424, 851 P.2d 423 (1993); *Horne v. State Indus. Sys.,* 113 Nev. 532, 936 P.2d 839 (1997); *State Emp. Sec. Div. v. Reliable Health Care Servs.,* 115 Nev. 253, 983 P.2d 414 (1999); *Langman v. Nev. Admr's, Inc.,* 114 Nev. 203, 955 P.2d 188 (1998); *Bullock v. Pinnacle Risk Mgmt.,* 113 Nev. 1385, 1388, 951 P.2d 1036 (1997); *Gubber v. Independence Mining Co.,* 112 Nev. 190, 192, 911 P.2d 1191 (1996); *Installation & Dismantle v. State Indus. Ins. Sys.*, 110 Nev. 930, 879 P.2d 58 (1994); *Titanium Metals Corp. v. Clark County,* 99 Nev. 397, 399, 663 P.2d 355 (1983).

Second, reviewing the record on appeal and determining whether the record contains both that quantity and quality of factual evidence which a reasonable person could accept as adequate proof of what the governing law requires. *Id.* If the record on appeal does not contain both that quantity and quality of factual evidence which a reasonable person could accept as adequate proof of what the governing law requires, then the decision of the administrative agency (Appeals Officer in this case) may be deemed by the Court to be clearly erroneous in view of the reliable, probative and substantial

evidence on the whole record, or arbitrary, capricious or characterized by abuse of discretion. NRS 233B.135(3).

This Court has the authority and the responsibility to independently review an Appeals Officer's application of the statutes governing the payment of workers' compensation benefits. *See Amazon.com v. Magee*, 121 Nev. 632 (Nev. 2005); *Washoe Co. School Dist. v. Bowen*, 114 Nev. 879, 882, (1998). Therefore, this Court should address this matter anew, without deference to the Appeals Officer's conclusions.

VII. ARGUMENT

A. The Appeals Officer and the District Court erred as a matter of law by determining IAS is the employer of the instructors because IAS enters written contract with instructors, who are not in the same business as IAS, and the instructors hold their own occupational licenses.

A person is not an employer if the person enters a contract with another person who is an independent enterprise, and the parties are not in the same trade, business, profession, or occupation as each other. *See* NRS 616B.603 (1)(a)-(b). A person is an "independent enterprise" if he or she holds herself out as being engaged in a separate business and holds his or her own occupational license <u>or</u> owns, rents, or leases property in furtherance of that business. *See* NRS 616B.603(2)(a)-(b). "[U]nder NRS 616B.603 and *Meers*,

upon which the statute is based, a person who enters into a contract with an independent enterprise in a different line of work, to perform work not normally carried out by the person's own employees, is not considered a statutory employer." *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 492, 25 P.3d 206, 212 (2001).

The Appeals Officer and District Court erred in their application of NRS 616B.604. The Appeals Officer erred in reading NRS 616B.603 as excluding instructors who "further[ ] the operation of the business of the school," an element not identified in statute. JA 681. Instead, all that is required is that a person hold his or herself out as being engaged in a separate business *or* renting property.

Here, IAS was not an "employer" of the cosmetology professionals with which they have contracted. Instead, the cosmetology professionals are independent enterprises because they have written contracts with IAS, are not in the same business as IAS, and each instructor holds his or her own occupational license.

The IAS instructors definitively hold themselves out as not being engaged in the same business as IAS. IAS instructors are cosmetology professionals who own or work in salons. They make their living from the

performance of cosmetology services; they are not in the business of education, much in the same way a practicing attorney who is an adjunct professor makes his or her living practicing law. The Independent Instructor Agreements indicate that IAS is a "an educational facility." JA 291. They also indicate that they "hold [themselves] out to be engaged in a separate business from IAS, including having [their] own name and/or owning, renting, or leasing property in furtherance of [their] business." JA 296. IAS also supplied affidavits of the instructors that attested they work at separate salons and rent chairs there. JA 412-430. The instructors are not in the same business as IAS because they are in the business of cosmetology practice, whereas the school is in the education business.

The District Court too erred in its interpretation of NRS 616B.603. It relied heavily on the fact that there were not "written agreements" prior to 2013. JA 1842. However, NRS 616B.603 does not require written contracts, it only requires that the independent enterprise "enters into a contract," something that can be done without writing. *Dolge v. Masek,* 70 Nev. 314, 268 P.2d 919 (1954). Further, the District Court seemingly applied a conjunctive test analysis to NRS 616B.603 when the statue is expressly disjunctive. *See Loughrin v. U.S.*, 573 U.S. 351, 357 (2014) ("To read the next

clause, following the word 'or,' as somehow repeating that requirement, even while using different words, is to disregard what "or" customarily means. As we have recognized that term's "ordinary use is almost always disjunctive.").

i. The Appeals Officer erred under substantial evidence in applying its interpretation of NRS 616B.603.

The Appeals Officer also erred in applying NRS 616B.603 under substantial evidence. The record before the Appeals Officer supported this finding and it was an abuse of discretion to decide otherwise. The instructors are an independent enterprise. This is driven by statute, not case law. NRS 616B.613 makes clear that IAS is not a statutory employer because the activities of the cosmetology professionals are not indispensable to IAS and said activities, in this business, are not normally carried on through employees. IAS chooses to have instructors who are not full-time employees, and who have their own separate and distinct careers, because it enriches the learning experience for the students. That choice, however, does not change their classification. In fact, pursuant to NRS 616B.603(2), an "independent enterprise" is a person who holds himself out as being engaged in a separate business and holds a business license in his own name or owns, rents, or leases property used in furtherance of his or her business.

Each instructor signed "independent instructor agreements," W-9 forms, and Nevada State and Reno business licenses. *See, e.g.,* JA 291 - 299. These business licenses were produced because each instructor indicated that he or she provided cosmetology services, hair design and/or aesthetician services in his or her professional capacity. *See* JA 760. The instructors are there to provide additional education that is important but not necessary. *See* JA 761 ("They do practical—their showing them haircuts. You know, what they do in the salon . . . so that the student can visually see it."). The agreements further indicated that IAS was an educational facility JA 1841. Further, each agreement contained a chair rental agreement (except for one). *Id*.

The record supports the conclusion that the instructors hold themselves out to be engage in separate businesses, which is uncontradicted. All cosmetology professionals hold themselves out to be engaged in separate businesses from IAS, including having their own business licenses in their own names and/or owning/renting property in furtherance of their businesses. *See* JA 760. The instructors are free to show up when they want and there is no punishment if they do not. JA 772. There is no obligation the instructors find someone to cover a shift. *Id.* Further, IAS has had these agreements since the beginning of operation. JA 761-63. The Appeals Officer determined that Ms.

Casteel was not credible. However, there was no evidence presented to counter her testimony even if she was not credible. And there was only testimony that she did not need the instructors to perform the essential aspects of her business. JA 761.

ii. The Appeals Officer and District Court erred in applying the *Meers* test and its codification under NRS 616B.603.

The *Meers* normal work test is "not one of whether the subcontractor's activity is useful, necessary, or even absolutely indispensable to the statutory employer's business, since, after all, this could be said of practically any repair, construction or transportation service. The test . . . is whether that indispensable activity is, in that business, normally carried on through employees rather than independent contractors." 101 Nev. at 286, 701 P.2d at 1007 (internal quotations omitted*); see also Oliver v. Barrick Goldstrike Mines,* 111 Nev. 1338, 1349, 905 P.2d 168, 175 (1995) (holding that the "same trade" language in NRS 616.262, replaced by NRS 616B.603, refers to the *Meers* test).

The Appeals Officer erred as a matter of law when she applied the incorrect independent enterprise test. The Appeals Officer found that the instructors were in "the same trade business, occupation or profession of Ms.

Casteel and Ms. Schultz" and were "furthering the operation of the business of the school." This finding does not permit an exclusion under NRS 616B.603. The Statute makes the *Meers* test not necessary. However, the district court and appeals officer should have looked solely at the text of the statute and applied it on its face.

The Appeals Officer's and district Court's use of the *Meers* test was misguided. Under *Meers*, the Nevada Supreme Court stated that the type of work performed by the independent contractor determines whether an employment relationship exits. 101 Nev. 283, 286, 701 P.2d 1006, 1007 (1985). The test is not whether the independent contractor's activity is useful, necessary or even absolutely indispensable to the statutory employer's business; rather, the test is whether that "indispensable activity" is, in that business, normally carried on through employees rather than independent contractors. *Id*. Under this test, the cosmetology professionals are not in the same trade, business, profession or occupation as IAS and are not indispensable. First, the profession is distinct because one is the provision of cosmetology services to the public at a salon and the other is providing education to students who would like to become cosmetology professionals. The services provided by the cosmetology professionals are not indispensable

to IAS. Further, the cosmetology professionals are there to expose the students to a broad range of experience and expertise in the industry merely as an added benefit to the students. The school can operate without any of the cosmetology professionals' services—who provide consulting services and teach at IAS while maintaining their professional practice at salons in Northern Nevada.

B. Substantial evidence does not support the Appeals Officer's decision that the instructors are independent contractors.

Even under the normal work test, substantial evidence supported IAS. For purposes of Nevada's worker's compensation law, an "independent contractor" is defined as:

> [A]ny person who renders service for a specified recompense for a specified result, under the control of the person's principal as to the result of the person's work only and not as to the means by which such result is accomplished.

NRS 616A.255. In determining whether an employer-employee relationship exists, in addition to considering a written agreement, the courts apply a five-factor test, known as "the control test," giving equal weight to the following factors:

> (1) the degree of supervision;
> (2) the source of wages;
> (3) the existence of a right to hire and fire;

> (4) the right to control the hours and location of employment; and
> (5) the extent to which the worker's activities further the general business concerns of the alleged employer.

Clark County v. State Indus. Ins. Sys., 102 Nev. 353, 354 (1986). All of these factors establish that the Appeals Officer's decision was not supported by substantial evidence and the Appeals Officer's decision was arbitrary and capricious. IAS does not supervise the professionals. JA 761. The source of payment (wages) to cosmetology professionals is student tuition monies paid after an invoice is submitted to IAS. JA 761, JA 824, JA 837, JA 843, JA 855, JA 861, JA 867, JA 875, JA 880, JA 886, JA 892, JA 898, JA 904, JA 1052. IAS does not hire and fire the cosmetology professionals. JA 770, JA 771. IAS does not control or have the right to control the hours the cosmetology professionals work other than control over the hours of operation of the school. JA 1174. And, the cosmetology professionals' services do not further the general business concerns of IAS; rather, they provide a unique benefit **to IAS students**. JA 1171. IAS can conduct its business with or without the cosmetology professionals. In other words, IAS contracts with the cosmetology professionals solely for the **students' benefit**, not because they are necessary for IAS to conduct its business of education and instruction. JA 759.

Substantial evidence did not support the Appeals Officer's determination otherwise. First, IAS does not supervise the cosmetology professionals. Rather, IAS merely ensures cosmetology professionals comply with the terms of the independent contractor Agreements. JA 291-92. Second, the source of payment to professionals based on hourly rates for hours worked, and the instructors can come and go as they pleased. JA 771-73. IAS also does not hire and fire the professionals. *Id*. Instead, either party can terminate the agreement at any time. IAS also does not control the hours or time of work. The hours they work are at the sole discretion and control of the instructor pursuant to the Agreement. JA 293. Finally, and as is explained above, the instructors are not in the business of IAS. The instructors are in the business of providing cosmetology services, not education.

VIII. CONCLUSION

DIR misclassified the cosmetology professionals who contract with IAS. IAS is not the "Employer" of the cosmetology professionals they contract with. Instead, cosmetology professionals who contract with IAS are "Independent Contractors" and "Independent Enterprises" under Nevada Law. They are not in the "same trade or business" as IAS. And there is no evidence in the record that any instructor is licensed in the same trade as IAS, which is a school. The

only evidence in the record is that the owners are licensed in the same trade as IAS—which satisfied the Cosmetology Board's requirements and negates the need for workers compensation coverage. Given the Appeals Officer and the District Court's erroneous reading of NRS 616B.603, this Court should reverse and remand with instructions to apply the statute as written.

AFFIRMATION

The undersigned does hereby affirm that **APPELLANT'S OPENING BRIEF** filed under Supreme Court Case No. 82864 does not contain the social security number of any person.

DATED this 5th day of October 2021.

By: */s/ Jason D. Guinasso*

Jason D. Guinasso, Esq.
Nevada Bar No. 8478
Alex R. Velto, Esq.
Nevada Bar No. 14961
Hutchison & Steffen, LLC.
5371 Kietzke Lane
Reno, NV 89511
Tel.: 775-853-8746
Fax: 775-201-9611
Attorneys for IAS

ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2020 in 14 Point Times New Roman Font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

a. Proportionately spaced, has a typeface of 14 points or more and contains 4,759 words and

b. Does not exceed 30 pages.

3. 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 a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand

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

DATED this 5th day of October 2021.

/s/ Jason D. Guinasso

By: _____

Jason D. Guinasso, Esq.
Nevada Bar No. 8478
Alex R. Velto, Esq.
Nevada Bar No. 14961
Hutchison & Steffen, LLC.
5371 Kietzke Lane
Reno, NV 89511
Tel.: 775-853-8746
Fax: 775-201-9611
Attorneys for IAS

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certified that I am an employee of Hutchison & Steffen, PLLC and that on this date I caused to be served a true and correct copy of **APPELLANT'S OPENING BRIEF** on the following as indicated below:

Christopher A. Eccles
Jennifer J. Leonescu
3360 W. Sahara Ave., Ste. 250
Las Vegas, NV 89102
ceccles@dir.nv.gov
jleonescu@dir.nv.gov

(Via Electronic service through the Nevada Supreme Court's Eflex system)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2021, at Reno, Nevada.

/s/ Bernadette Francis

BERNADETTE FRANCIS