IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO A. SALAS an Individual, Appellant, vs. CLARK COUNTY SCHOOL DISTRICT; AND VISION TECHNOLOGIES, INC., A FOREIGN CORPORATION Respondents	CASE NO.: 83105 District Court Case No. A-20-821613-C Appeal from the Eighth Judicial District Court, Clark County, Nevada

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following persons and entities must be disclosed pursuant to NRAP 26.1(a). These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Kimball Jones, Esq., with the Law Offices of **BIGHORN LAW** has appeared for Appellant in this case and is expected to appear for them in this Court.

DATED this 8th day of November, 2021.

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JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal of a final judgment under NRAP 3A.

ROUTING STATEMENT

This appeal may be properly assigned to the Court of Appeals. This case involves an appeal "from a judgment, exclusive of interest, attorney fees, and costs, of $250,000 or less in a tort case." NRAP 17(b)(5). Additionally, this appeal does not involve a "question of first impression involving the United States or Nevada Constitutions or common law" or any other issue under NRAP 17(a) which would demand that the Nevada Supreme Court retain the matter.

ISSUES PRESENTED FOR REVIEW

1. The NIIA is an "exclusive remedy" for Worker's Compensation Victims only when an employer secures and provides compensation for an injured employee. An employer who does not provide benefits for their employee can be sued under N.R.S. 616B.636. Appellant did not receive Worker's Compensation Benefits as they were rejected by his employer. Did the trial court err in determining that Appellant's "exclusive remedy" was the NIIA despite the Respondents' failure to secure and provide compensation?

2. The District Court required Appellant to plead that he had been denied NIIA benefits into his pleadings. This fact would have been necessary only to defeat a later

Affirmative Defense. Did the Trial Court err in requiring Appellant to predict an Affirmative Defense by Defendant?

3. Intentional actions are not covered by the NIIA. Did the Court err in overlooking deliberate and intentional actions spelled out in Appellant's Complaint?

4. Clark County School District was not Appellant's Employer--did the Court err in applying the exclusive remedy of the NIIA to CCSD?

STATEMENT OF THE CASE

On June 28, 2019, at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121, Respondents directed Appellant MARIO A. SALAS to perform Information Technology Services in an area containing a toxic build-up of dust and other particles. The air became ultra-hazardous as Respondents directed the use of compressed air to clean equipment, blowing the toxic particles into the air without ventilation, ensuring Appellant and others would inhale the toxic material. Furthermore, Respondents did not provide Appellant any safety equipment, such as safety masks or safety supplies.

At the time of the subject contamination, division of Respondent Clark County School District, known as User Support Services (hereinafter "USS"), was repurposing used computers that were pulled out of the classroom. USS was using compressed air to clean the dust out of the computers. USS wore dust masks, demonstrating that the dangers of the environment were well known by USS and

Respondents; however, no one else in the building was advised that USS's work would be taking place in the warehouse, nor had they been advised to wear filtration masks or other protective gear. USS's cleaning activities took place indoors in a closed environment, without proper ventilation. The employees working in the space were exposed to the airborne dust. In fact, a co-worker of Appellant, had a severe asthma attack that kept him out of work for several days.

After being exposed, Appellant developed a rash from the toxic dust. When Appellant left work that day he showered and change his clothes, which is not his usual routine.

Despite taking this unusual precaution, within the next twenty-four (24) hours Appellant's arm started to swell and developed blisters. He went to Quick Care and was advised that he had Cellulitis which later went septic. He was given steroids to battle the rash, which was effective at reducing the symptoms for a limited period. When the symptoms would return, steroids were used to temporarily address his complaints. Over the course of the next two (2) months, Appellant developed sepsis, had severe problems with kidney function, and developed pneumonia that ultimately led to a collapsed lung. While he was an inpatient at the hospital, Appellant caught pulmonary Methicillin-resistant Staphylococcus aureus (MRSA). Appellant was then intubated for twelve (12) days while in a medically induced coma, during which time he was administered three (3) separate antibiotics

four (4) times a day for the next six (6) weeks. Appellant was under the care of seven (7) doctors, and lost almost sixty (60) pounds. After his narrow survival, it took one (1) month for Appellant to be able to walk and function again, such that he could be released from the hospital walking with a cane.

On March 9, 2020, Appellant applied for Worker's Compensation Benefits, but was denied by Respondents. APP 72. On June 22, 2020, Appellant re-applied for Worker's Compensation Benefits and was again denied by Respondents. APP 71.

Respondents saw Appellant languishing in a coma due to dust and contaminants that they knowingly placed him in. Respondents knew that Appellant nearly died of sepsis caused by their actions. Respondents still denied him Worker's Compensation Benefits. Appellant, left with no recourse, filed his Complaint on December 8, 2020, alleging negligence and that Respondents "Actively created hazards to [Appellant], and others, by blowing dust and other dangerous particles in dangerous volumes into the air within an enclosed space, without sufficient ventilation." APP 1-31.

Respondents, despite knowing that they denied NIIA benefits to Appellant, asked the Court to dismiss Appellant's case under the "exclusive remedy" provision of the Act. The Court agreed with Respondents and dismissed Appellant's claim. APP105-119.

PROCEDURAL HISTORY

Appellant's complaint was filed on December 8, 2020. APP 1-31. Respondent Vision Technologies, Inc. filed a Motion to Dismiss on January 22, 2021. APP 32-42. Respondent Clark County School District filed a Joinder to the Motion to Dismiss on January 28, 2021. APP 43-52.

On March 31, 2021, the Court Granted Respondents' Motion to Dismiss and rejected Appellant's request to amend his Complaint. APP 105-119

Appellant requested that the Court Reconsider its Order on April 27, 2021. APP 120-207. Respondent Vision Technologies Inc. opposed Appellant's Motion on May 11, 2021. APP208-219. The Court denied Appellant's Motion for Reconsideration on June 21, 2021. APP 220-232.

STATEMENT OF FACTS

On March 9, 2020, Respondents responded to Appellant and stated that Appellant's request for Worker's Compensation Benefits was Denied. APP 72. On June 22, 2020, Respondents again rejected Appellant's request for Worker's Compensation benefits. APP 71.

Appellant filed a Complaint against Respondents on December 28, 2020, alleging negligence and that Respondents "Actively created hazards to [Appellant], and others, by blowing dust and other dangerous particles in dangerous volumes into the air within an enclosed space, without sufficient ventilation." APP 13.

The court dismissed Appellant's Complaint noting:

> This Court cannot, and did not, consider matters outside the Complaint. Nevertheless, Plaintiff's allegations are insufficient. As Plaintiff concedes that he was working within the course and scope of his employment with VTI, the NIIA must be applied as an exclusive remedy. There is no applicable exemption to the exclusive remedy doctrine as Plaintiff does not allege that VTI deliberately and specifically intended to injure Plaintiff. Mere allegation that VTI was aware of the alleged hazardous conditions and failed to correct them or provide safety equipment is inadequate to overcome the NIIA exclusive remedy provision.
>
> Furthermore, Plaintiff admits that his employer, VTI, was hired by CCSD for the work at CCSD's premises; therefore, under N.R.S. § 616A.210, Plaintiff must be deemed to be an employee of the principal contractor, CCSD, for the purposes of NIIA. Thus, again, NIIA exclusive remedy provision is applicable to CCSD. This Court further finds and concludes that Plaintiff's argument that Plaintiff's worker's compensation claim was rejected is irrelevant to the issue at hand. First, Plaintiff did not include this fact in his Complaint. Second, even if the Court entertains this argument that was presented only in Plaintiff's Opposition, N.R.S. § 616C.315 et seq. provides for an appropriate administrative appeal procedure of the rejected claim.
>
> APP 108

The Court also rejected Appellant's request for leave to amend his Complaint if the Court found it wanting. APP 105-119.

SUMMARY OF ARGUMENT

N.R.S. 616B.636, states:

> 1. If any employer within the provisions of NRS 616B.633 **fails to provide and secure compensation under chapters 616A to 616D, inclusive, of NRS, any injured employee or the dependents of the employee may bring an action at law against the employer for damages as if those chapters did not apply.**

2. The injured employee or the dependents of the employee may in such an action attach the property of the employer at any time upon or after the institution of the action, in an amount fixed by the court, to secure the payment of any judgment which is ultimately obtained. The provisions of chapters 31 and 71 of NRS govern the issuance of, and proceedings upon, the attachment.

3. In such an action, the employer does not escape liability for personal injury or accident sustained by the employee, when the injury sustained arises out of and in the course of the employment, because:

(a) The employee assumed the risks:

(1) Inherent or incidental to, or arising out of his or her employment;

(2) Arising from the failure of the employer to provide and maintain a reasonably safe place to work; or

(3) Arising from the failure of the employer to furnish reasonably safe tools, motor vehicles or appliances.

(b) The employer exercised reasonable care in selecting reasonably competent employees in the business.

(c) The injury was caused by the negligence of a coemployee.

(d) The employee was negligent, unless it appears that such negligence was willful and with intent to cause injury or the injured party was intoxicated.

In such cases it is presumed that the injury to the employee was the result of the negligence of the employer and that such negligence was the proximate cause of the injury, and the burden of proof rests upon the employer to rebut the presumption of negligence.

N.R.S. 616B.636 (emphasis added).

The trial court overlooked the fact that Appellant was denied TWICE by Respondent in his attempt to petition for benefits. Curiously, the Court held that Appellant was required to include in his Complaint that he had applied and was denied worker's compensation benefits. This requirement would force Appellant to predict whether Respondents would argue the "exclusive remedy" affirmative

defense and defeat it in their initial pleadings. This is not required by Nevada's Pleading Standard.

Moreover, the Court erred by ignoring that NRS 616B.636 allows for Appellant to sue when his employer fails to "provide and secure" benefits for their injured worker. The Court then declared that "N.R.S. § 616C.315 et seq. provides for an appropriate administrative appeal procedure of the rejected claim pursue an administrative appeal upon rejection of his benefits." APP 108.

The Court's Conclusion constitutes a misreading of NRS 616B.636 as the onus is put on the employer to "provide and secure" benefits for the employee. Upon rejection by Respondents, Appellant was not required to exhaust any administrative remedies—the rejection by Respondents constitutes a rejection of the protections proffered by the NIIA. Under NRS 616B.636, Appellant was free to pursue litigation against Respondent.

Moreover, the Court held that "Plaintiff does not allege that VTI deliberately and specifically intended to injure Plaintiff. Mere allegation that VTI was aware of the alleged hazardous conditions and failed to correct them or provide safety equipment is inadequate to overcome the NIIA exclusive remedy provision." APP 138. This conclusion also constitutes a misreading of the Pleadings made by Appellant. Appellant noted that Respondents, "Actively created hazards to [Appellant], and others, by blowing dust and other dangerous particles in dangerous

volumes into the air within an enclosed space, without sufficient ventilation." The use of the term "created" cannot be underappreciated. This use of creation clearly demonstrates intentional actions—with those intentional actions outlined and enumerated in the Pleadings.

The Court improperly considered these pleadings to be insufficient in adjudging that Appellant failed to argue that he was injured by intentional actions by Respondents. The Court also rejected Appellant's request to amend his Complaint if intentional actions were not sufficiently spelled out. APP

Finally, Clark County School District was not Appellant's employer. NRS 616B.603 provides in part that

1. A person is not an employer for the purposes of [this chapter] if:

(a) He enters into a contract with another person or business which is an independent enterprise; and (b) He is not in the same trade, business, profession or occupation as the independent enterprise.

CCSD is in the business of educating Clark County's children. CCSD then contracted with VTI to work on an Information Technology project. This contracting, by statute, removes CCSD as an "employer" who is immune from liability for Plaintiff's injuries.

This Court should confirm that the NIIA only offers its protections to employers who "provide and secure" benefits for their employees. Furthermore the

Court should ensure that Nevada's Notice Pleading Standard is not chipped away. The district court's dismissal of Appellant's Complaint was improper and this matter should be remanded to the district court for further proceedings.

STANDARD OF REVIEW

This Court reviews a trial court's grant of summary judgment and construction of statutes *de novo*, giving no deference to its findings. *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005).

"This court reviews the denial of a motion for leave to amend a complaint for an abuse of discretion." Gardner v. Eighth Judicial Dist. Court of State , 133 Nev. 730, 732-33, 405 P.3d 651, 654 (2017)

ARGUMENT

A. The trial court erred in determining that the NIIA was the "Exclusive Remedy" for Appellant as Respondents denied Appellant's application for Worker's Compensation Benefits (Issue 1)

Case law and statutory authority make it clear; the "exclusive remedy" protection is only available for companies that comply with their obligation to care for injured workers. In fact, Statute states that it is now **presumed** that these actors injured Appellant

N.R.S. 616B.636 states:

> 1. If any employer within the provisions of NRS 616B.633 **fails to provide and secure compensation under chapters 616A to 616D,**

inclusive, of NRS, any injured employee or the dependents of the employee may bring an action at law against the employer for damages as if those chapters did not apply.

2. The injured employee or the dependents of the employee may in such an action attach the property of the employer at any time upon or after the institution of the action, in an amount fixed by the court, to secure the payment of any judgment which is ultimately obtained. The provisions of chapters 31 and 71 of NRS govern the issuance of, and proceedings upon, the attachment.

3. In such an action, the employer does not escape liability for personal injury or accident sustained by the employee, when the injury sustained arises out of and in the course of the employment, because:

(a) The employee assumed the risks:

(1) Inherent or incidental to, or arising out of his or her employment;

(2) Arising from the failure of the employer to provide and maintain a reasonably safe place to work; or

(3) Arising from the failure of the employer to furnish reasonably safe tools, motor vehicles or appliances.

(b) The employer exercised reasonable care in selecting reasonably competent employees in the business.

(c) The injury was caused by the negligence of a coemployee.

(d) The employee was negligent, unless it appears that such negligence was willful and with intent to cause injury or the injured party was intoxicated.

In such cases it is presumed that the injury to the employee was the result of the negligence of the employer and that such negligence was the proximate cause of the injury, and the burden of proof rests upon the employer to rebut the presumption of negligence.

N.R.S. 616B.636

Respondent Employers have a very compelling carrot to encourage them to "produce and secure benefits" for their injured workers' injuries: being shielded from personal injury litigation. However, there is also a large stick which is used to

ensure that Employers comply with their obligations under the NIIA—they will be presumed to have injured their employee if an action is brought to court.

Respondents shunned the carrot and ignored the stick when they rejected Appellant's requests for benefits on March 29, 2020 and June 22, 2020. APP 71, 72. As a result, under NRS 616B.636, Respondent is then empowered to bring suit against the Respondents.

As the Court has noted, an employer is obligated to provide for his employee's injuries:

> Under Nevada law, every employer, within the provisions of NRS chapter 616, must "provide and secure" compensation for injured employees. NRS 616.270(1). In return for providing such compensation, employers enjoy the benefits of the exclusive remedy and immunity provisions under NRS 616.270(3) and NRS 616.370. These provisions grant an employer, including a principal contractor, immunity from "other liability for recovery of damages or other compensation" for the personal injury of any employee arising out of employment. NRS 616.270(3).
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> Oliver v. Barrick Goldstrike Mines, 111 Nev. 1338, 1342, 905 P.2d 168, 171 (1995).

The onus is on the company to provide compensation, not for a Plaintiff to force the company to grant them benefits when injured. As such, the Trial Court erred in failing to note that Appellant had a right to commence suit against Respondents in this matter due to their denial of his benefits.

B. The trial court erred in requiring Appellant to predict that he needed to note in his Pleadings that he was denied Worker's Compensation Benefits (Issue 2).

As noted above, one of the grounds used by the court in dismissing Appellant's case was, "This Court further finds and concludes that Plaintiff's argument that Plaintiff's worker's compensation claim was rejected is irrelevant to the issue at hand. **First, Plaintiff did not include this fact in his Complaint.** Second, even if the Court entertains this argument that was presented only in Plaintiff's Opposition, N.R.S. § 616C.315 et seq. provides for an appropriate administrative appeal procedure of the rejected claim."

The Court improperly held that Appellant should have pled that his benefits were denied in his pleadings. This requirement violates the letter and spirit of Nevada's notice pleading statute. Appellant is not required in his pleadings to anticipate any arguments and affirmative defenses which a Respondent will make.

Nevada follows the "notice pleading" rule, which requires that a "complaint need only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defendant party has adequate notice of the nature of the claim and relief sought." W. States Coast, Inc. v. Michoff, 108 Nev. 931. 936, 840 P.2d 1220 (1992). The allegations of a complaint need only give fair notice of the nature

and basis of a legally sufficient claim and the relief requested. Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984).

To avoid dismissal, a complaint does not need detailed factual allegations; rather, it must plead "enough facts to state a claim to relief that is plausible on its face." Clemens v. Daimler Chrysler Corp., 534 F.3d 1017, 1022 (9th Cir. 2008); Ashcroft v. Iqbal, - U.S.--, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (stating that a "claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged").

The Court improperly required Appellant to state far more than "enough facts to state a claim for relief" when it required Appellant to include information which would combat a potential affirmative defense by Defendant. As such, the Court's dismissal was error.

C. The trial court erred in overlooking that Appellant properly pled allegations of intentional conduct by the Respondents, or at a minimum, should have granted Appellant's request to amend his complaint (Issue 3)

The Nevada Supreme Court has held, “A viable intentional tort claim, which subjects an employer to liability outside of the workers' compensation statute, requires the employee to plead facts in his or her complaint that establish "the deliberate intent to bring about the injury.” Fanders v. Riverside Resort & Casino, Inc. 126 Nev. 543, 549-50, 245 P.3d 1159, 1163 (2010).

As noted above, Appellant pled that Respondents “Actively created hazards to [Appellant], and others, by blowing dust and other dangerous particles in dangerous volumes into the air within an enclosed space, without sufficient ventilation.”

The Court should have considered this to be an intentional act which falls outside the protections of the NIIA. Indeed, Appellant requested in his Opposition to Respondents’ Motion to Dismiss, that the Court grant leave to amend Appellants’ Complaint should the Court not consider that the Complaint sufficiently pled intentional actions against Respondents.

The trial Court erred in determining that Appellant’s claims were not based on an intentional act by Respondents. Moreover, the Court erred in not allowing Appellant leave to amend his Complaint to more specifically outline that intentional actions were alleged, if the Court believed that such an allegation was unclear.

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Leave to amend a pleading "shall be freely given when justice so requires." NRCP 15(a). "The liberality embodied in NRCP 15(a) requires courts to err on the side of caution and permit amendments that appear arguable or even borderline, because denial of a proposed pleading amendment amounts to denial of the opportunity to explore any potential merit it might have had." Nutton v. Sunset Station, Inc., 131 Nev. 279, 292, 357 P.3d 966, 975 (Ct. App. 2015). Leave to amend, however, "should not be granted if the proposed amendment would be futile." Halcrow, Inc. v. Eighth Judicial Dist. Court, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013). The Nevada Supreme Court has held that "in the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant - the leave sought should be freely given*." Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973).

In this case, it would not have been "futile" to allow amendment. A further statement on intentionality by Respondents would have caused Appellant to survive dismissal. As such, the Court abused its discretion when it refused Appellant's request to amend his Complaint if the Court felt that it lacked specificity.

D. The trial court erred in considering CCSD to be Appellant's "employer" for purposes of the NIIA (Issue 4)

Clark County School District cannot be excluded from this matter due to the exclusive remedy doctrine because they were not Plaintiff's employer. Clark

County School District is undoubtedly engaged in an independent enterprise distinct and separate from Defendant Vision Technologies, Inc., as defined by N.R.S. 616B.603 which states:

> 1. A person is not an employer for the purposes of chapters 616A to 616D, inclusive, of NRS if:
> (a) The person enters into a contract with another person or business which is an independent enterprise; and
> (b) The person is not in the same trade, business, profession or occupation as the independent enterprise.
> 2. As used in this section, "independent enterprise" means a person who holds himself or herself out as being engaged in a separate business and:
> (a) Holds a business or occupational license in his or her own name; or
> (b) Owns, rents or leases property used in furtherance of the business.
> 3. The provisions of this section do not apply to:
> (a) A principal contractor who is licensed pursuant to chapter 624 of NRS.
> (b) A real estate broker who has a broker-salesperson or salesperson associated with the real estate broker pursuant to NRS 645.520.
> 4. The Administrator may adopt such regulations as are necessary to carry out the provisions of this section.

Clark County School District entered into contract with Vision Technologies, Inc., and Vision Technologies, Inc. is not in the same enterprise as Defendant Clark County School District. Surely Defendant Clark County School District's enterprise—education—differs greatly from Defendant Vision Technologies, Inc., which is engaged in profession of support and maintenance of IT systems.

As the Court in *Meers* notes, the NIIA does not provide universal immunity. "While the legislature afforded this umbrella of protection to sub-contractors and

independent contractors, the protection is by no means absolute. There is some limit to its coverage." Meers v. Haughton Elevator, a Div. of Reliance Elec. Co., 101 Nev. 283, 285, 701 P.2d 1006, 1007 (1985).

One of these limits is found in the codification of *Meers* in N.R.S. 616B.603. The Nevada Supreme Court noted that the NIIA is not extended to certain parties in *Lipps*:

> In Meers v. Haughton Elevator, 101 Nev. 283, 701 P.2d 1006 (1985), we adopted the so-called "normal work" test to determine whether the type of work a "subcontractor" does entitles it to NIIA immunity:
> The test (except in cases where the work is obviously a subcontracted fraction of a main contract) is whether that indispensable activity is, in that business, *normally* carried on through employees rather than independent contractors.
> *Id.* at 286, 701 P.2d at 1007 (quoting Bassett Furniture Industries, Inc. v. McReynolds, 216 Va. 897, 224 S.E.2d 323 (1976)).
>
> As we noted in *Tucker*, the 1991 Nevada State Legislature enacted NRS 616.262 (recodified as NRS 616B.603), which provides in part:
> 1. A person is not an employer for the purposes of [this chapter] if:
> (a) He enters into a contract with another person or business which is an independent enterprise; and (b) He is not in the same trade, business, profession or occupation as the independent enterprise.
> ....
> 3. The provisions of this section do not apply to:
> (a) a principal contractor who is licensed pursuant to chapter 624 of NRS.

Lipps v. S. Nevada Paving, 116 Nev. 497, 499–500, 998 P.2d 1183, 1185 (2000).

In the instant case, it is apparent that the exclusive remedy provision of the NIIA is inapplicable to Clark County School District. The work carried on by the

subcontractor Vision Technologies, Inc. is vastly different from the work educating children, which Clark County School District engages in.

The trial court rejected this argument and noted that CCSD was Appellant's employer and was entitled to the protections of the NIIA. The fact that CCSD contracted with VTI would have removed this protection for CCSD. They were not, in fact, Appellant's employer. As such, the immunity provisions of the NIIA are inapplicable and dismissal of Appellant's claims against Clark County School District was erroneous.

CONCLUSION

Respondents failed to "provide and secure" compensation for Appellant. Appellant thus permissibly sought remuneration under common law against Respondents. Moreover, Appellant was not required to anticipate the affirmative defenses which Respondents would later bring in answer to his complaint. Finally, Appellant properly pled that this was an intentional action by Respondent. The Court erred in not considering that the pleading of an intentional act was outside the

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protections of the NIIA, and erred in not allowing Appellant to amend his Complaint if more specificity was required.

DATED this 8th day of November, 2021.

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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 us Times New Romans in 14-size 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)(B), it is proportionately spaced, has a typeface of 14 points or more and contains 4,429 words.

3. I further 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.

Date: November 8, 2021

BIGHORN LAW

/s/ Kimball Jones, Esq.
KIMBALL JONES, ESQ.

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of **BIGHORN LAW** and that I served the foregoing APPELLANT'S OPENING BRIEF on the parties listed below by causing a full, true, and correct copy to be served in the matter identified

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