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IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO A. SALAS, an individual, Appellant, vs. CLARK COUNTY SCHOOL DISTRICT; VISION TECHNOLOGIES, INC., Respondents.	Supreme Court No. 83105 District Court Case No. A-20-826012-C **RESPONDENT VISION TECHNOLOGIES, INC.'S RESPONSE IN OPPOSITION TO MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF**

Respondent, Vision Technologies, Inc., by and through its counsel, Michelle D. Alarie, Esq. of the law firm Armstrong Teasdale LLP, hereby submits this response in opposition to the Motion for Extension of Time to File Reply Brief (the "Motion to Extend") filed by Appellant Mario Salas on March 11, 2022. This opposition is based upon the following Memorandum of Points and Authorities and the papers already on file in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION & PROCEDURAL HISTORY

By way of the instant Motion to Extend, Appellant Mario Salas ("Salas") seeks to extend the deadline to file his reply brief. The Motion to Extend should be denied for two clear reasons: first, the Motion to Extend is untimely under NRAP 31(b)(3),

Docket 83105 Document 2022-08257

and second, Salas present no good cause to extend the reply brief deadline.

By way of this appeal, Salas objects to the district court's order correctly dismissing his personal injury action alleging an on-the-job injury brought against his employer, Respondent Vision Technologies, Inc. ("Vision Technologies"), as barred by the exclusive remedy provision of Nevada's Industrial Insurance Act. Salas timely filed his Opening Brief and Appendix on November 8, 2021. Respondents Vision Technologies and Clark County School District timely filed their Answering Briefs (and Vision Technologies also filed a supplemental Appendix) on January 7, 2022. Thus, any reply brief was due no later than February 7, 2022. *See* NRAP 31(a)(1)(C) ("The appellant's reply brief must be served and filed within 30 days after the respondent's brief is served.")

Salas did not file his reply brief. Salas also did not move for an extension of time to file his reply brief before the reply brief deadline. Instead, more than a month[1] after the deadline expired, Salas now asks this Court to extend his reply brief deadline on the grounds that counsel's staff failed to calendar the reply brief deadline and counsel was otherwise busy with a trial and a personal vacation.

The Motion to Extend should be denied. Calendaring mistakes and counsel's busy schedule are not good cause to extend a missed deadline. Briefing should be closed, and this appeal decided on the timely filed briefing and record presently before

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[1] Based on the March 11, 2022, filing date of the Motion for Extension of Time to File Reply Brief. It is noted that Salas attempted to file the motion on February 24, 2022, but the Clerk of the Court rejected the filing because filing counsel, Mark A. Rouse, Esq., of Bighorn Law was required to first file a notice of appearance as counsel for Salas in this appeal. Mr. Rouse filed his Notice of Appearance on March 3, 2022, and the Motion for Extension of Time to File Reply Brief was re-filed on March 11, 2022.

this Court.

II. LEGAL ARGUMENT

Salas correctly points out that NRAP 31(b)(3)[2] prohibits this Motion to Extend as untimely because he is moving to extend a briefing deadline *after* that deadline already expired more than a month ago on February 7, 2022. *See* NRAP 31(b)(3) ("A motion for extension of time for filing a brief may be made no later than the due date for the brief and must comply with the provisions of this Rule and Rule 27"). For this reason alone, this Court should deny the Motion as untimely.

Nevertheless, Salas argues that this Court may, pursuant to NRAP 26(b)(1), extend the time prescribed by the appellate rules or permit an act to be done after that time expired "for good cause shown." Salas is not saved in this instance because he is unable to demonstrate good cause for his failure to timely file his reply brief or timely move for an extension of time to do so.

Circumstances constituting "good cause" is within this Court's discretion; however, this Court's jurisprudence when considering "good cause" (although mostly unpublished) recognizes that where a failure to timely comply with a deadline is the product of the movant's own conduct, like in the case of a calendaring mistake, good cause generally cannot be demonstrated. *See e.g., Dougan v. Gustaveson*, 108 Nev. 517, 520, 835 P.2d 795, 797 (1992), *abrogated on other grounds by Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007) (concluding that a calendar mistake did not constitute good cause to justify untimely service of process).

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[2] Salas' improperly references NRAP 37.

In sum, Salas' counsel places the blame for missing the reply deadline on a (former) paralegal failing to calendar the reply deadline. Further compounding this mistake, lead counsel assigned to this appeal, Kimball Jones, Esq., was busy with trial preparation the week the reply brief was due, attending trial the following week, and then a personal vacation starting on February 19, 2022. No information is provided about Mr. Jones' activities from January 7, 2022 (the date the Answering Briefs were filed) through the subsequent 30 days permitted by the court rules to file the reply brief. The calendaring mistake was subsequently discovered on February 21, 2022, by new counsel temporarily handling Mr. Jones' caseload during Mr. Jones absence.

Failing to calendar a deadline, while unfortunate, is entirely within the control of counsel, and thus does not constitute good cause to extend Salas' reply deadline or justify this untimely Motion to Extend. And, even more, timely discovering a calendaring mistake is similarly within the control of counsel. Yet, in this case, no action was taken to timely correct the mistake. Indeed, counsel admits that the paralegal responsible for calendaring this instant reply deadline ended employment with the law firm on February 4, 2022 (which was before the reply brief deadline) for failing her job duties. Nevertheless, it appears that no action was taken in the weeks following the paralegal's departure to ensure her work was reviewed for accuracy. Rather, the calendaring issue was only discovered weeks later during a case review conducted by new counsel temporarily handling Mr. Jones' caseload in his absence.

If a party could demonstrate good cause based on purported impediments solely created by the party's own actions or inactions, then good cause would have no real meaning. Here, the impediments to Salas timely filing his reply brief and moving to

extend were the result of his own conduct, and, therefore, do not demonstrate good cause to extend the reply brief deadline.

For the foregoing reasons, Vision Technologies respectfully requests that this Court deny Appellant Mario Salas' Motion for Extension of Time to File Reply Brief. Vision Technologies submits that this appeal should be deemed submitted based on the timely filed briefing and record already on file in this appeal.

Dated this 15th day of March, 2022.

ARMSTRONG TEASDALE LLP

By: */s/ Michelle D. Alarie*

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2022 the foregoing was served to the parties below as follows:

☒ via electronic service through the Supreme Court's E-Flex filing system pursuant to NEFCR 9 and NRAP 25(c)(1)(E) to:

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☐ by mailing a copy thereof, first class mail, postage prepaid, to:

/s/ Christie Rehfeld
An employee of Armstrong Teasdale LLP