

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

MARIA DEL ROSARIO CERVANTES-  
GUEVARA, an individual,  
Petitioner,

vs.

CLARK COUNTY DISTRICT COURT,  
THE HONORABLE JUDGE ERIKA  
BALLOU, DISTRICT JUDGE,  
DEPARTMENT 23, Respondents,

AND

MARK THOMAS ANDERSON; THOR  
DEVELOPMENT, LLC, a limited liability  
company, Real Parties in Interest.

Case No. 83156

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**ANSWER TO PETITION FOR WRIT OF MANDAMUS**

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## **NRAP 26.1 Disclosure**

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.

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

Respectfully submitted,

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## STATEMENT OF FACTS

The underlying complaint alleged that Mark Anderson rear ended Maria Cervantes Guevara near the intersection of Freemont Street and S. Eastern Avenue in Las Vegas, Nevada. PA I 0001-0007. Petitioner filed her complaint on January 7, 2020. PA I 0001-0007. The time for Petitioner to serve her complaint on Real Party in Interest Mark Anderson expired on May 6, 2020 (120 days after the filing of the complaint). NRCP 4. Petitioner, through her attorneys, sought an additional 90 days in which to serve her complaint, and permission to serve via publication. On or about May 6, 2020, Petitioner filed an *Ex-Parte* Application to Enlarge Time for Service to serve Mark Anderson via Publication. PA I 0054-0073. Petitioner did not timely begin service via publication, the first publication did not occur until after the additional 90-days granted by the District Court had expired. In fact, Petitioner did not begin the process of service by publication until October 15, 2020. PA I 0076.

### SUMMARY OF ARGUMENT

The District Court properly granted respondent's motion to dismiss for failure to serve. Petitioner received additional time and leave to serve via publication on June 5, 2020. PA I 0074-0075. Petitioner failed to meet the new deadline, or demonstrate excusable neglect as to why she could not complete publication within the time granted by the court. As a result, the District Court properly determined that Petitioner's complaint should be dismissed.

1       Petitioner contends that the COVID related emergency directives excused her  
2 failure to proceed with timely publication. This argument, while inventive, does not  
3 accurately reflect the contents of the emergency directive.

4       In addition to the propriety of the District Court’s order dismissing  
5 Petitioner’s suit, and the lack of merit surrounding Petitioner’s COVID directive  
6 related arguments, Writ relief is improper because Petitioner had an adequate  
7 remedy at law, specifically the opportunity to appeal the district court’s dismissal.

## 8                               **LAW AND ARGUMENT**

### 9       **I.     STANDARD OF REVIEW**

#### 10       **A.     Extraordinary Relief is Not Warranted.**

11       The decision to entertain any petition for extraordinary relief is within this  
12 court’s sole discretion. *Smith v. District Court*, 107 Nev. 674, 677, 818 P.2d 849,  
13 851 (1991). Mandamus is available to control a manifest abuse of discretion, or  
14 where a district court has arbitrarily or capriciously exercised discretion. *State v.*  
15 *District Court (Armstrong)*, 127 Nev. 927, 267 P.3d 777, 779 (2011). The abuse of  
16 discretion must be so serious and extreme that it can be characterized as a manifest  
17 abuse or an arbitrary or capricious abuse of discretion. *Haley v. District Court*, 128  
18 Nev. , 171, 273 P.3d 855, 858 (2012). “Mandamus will not lie to control  
19 discretionary action, unless discretion is manifestly abused or is exercised arbitrarily  
20 or capriciously.” *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603–04, 637

1 P.2d 534, 536 (1981).

2 Here, there is no abuse of discretion, much less a manifest abuse or an  
3 arbitrary or capricious abuse. Instead, the district court properly assessed the law and  
4 facts of this matter and determined that dismissal was appropriate under the  
5 circumstances. PA II 0161-0166.

6 **B. Petitioner’s Adequate Remedy at Law Bars Writ Relief.**

7 Petitioner also has an adequate remedy at law which bars writ relief in this  
8 matter. This Court specifically stated, “the right to appeal is generally an adequate  
9 legal remedy precluding writ relief.” *Haley v. District Court*, 128 Nev., 171, 273  
10 P.3d 855, 858 (2012), *citing Pan v. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841  
11 (2004).

12 Under NRS 34.170, a writ of mandamus is proper only when there is no plain,  
13 adequate and speedy legal remedy. *Int’l Game Tech., Inc. v. Second Judicial Dist.*  
14 *Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

15 On several occasions, the Supreme Court of Nevada previously pointed out  
16 that the right to appeal generally serves as an adequate legal remedy precluding writ  
17 relief. *See e.g., Bradford v. Eighth Judicial Dist. Court of Nev.*, 129 Nev. 584, 588,  
18 308 P.3d 122, 124 (2013); *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468,  
19 474, 168 P.3d 731, 736 (2007); *Pan*, 120 Nev. at 224-25, 88 P.3d at 841; *Dayside*  
20 *Inc. v. Dist. Ct.*, 119 Nev. 404, 75 P.3d 384, 386 (2003) *overruled on other grounds*



1 *by Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1116,  
2 197 P.3d 1032, 1041 (2008); *Pengilly v. Rancho Santa Fe Homeowners*, 116 Nev.  
3 646, 647 n.1, 5 P.3d 569, 570 n.1 (2000); *Guerin v. Guerin*, 114 Nev. 127, 131, 953  
4 P.2d 716, 719 (1998), *overruled on other grounds by Pengilly*, 116 Nev. at 646, 5  
5 P.3d at 569; *Columbia/HCA Healthcare v. Dist. Ct.*, 113 Nev. 521, 525-26, 936 P.2d  
6 844, 847 (1997); *Karow v. Mitchell*, 110 Nev. 958, 962, 878 P.2d 978, 981 (1994);  
7 *Hickey v. District Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989); *Heilig v.*  
8 *Christensen*, 91 Nev. 120, 123, 532 P.2d 267, 269 (1975); *see also* NRS 34.170  
9 (stating that a writ of mandamus may be issued when no adequate and speedy  
10 remedy exists).

11 Pursuant to NRAP 3A(b)(1), an appeal may be taken from a final judgment  
12 entered in an action or proceeding commenced in the court in which the judgment is  
13 rendered. An order granting dismissal, which disposes of all claims and parties  
14 before the district court, is final and appealable. *Lee v. GNLV Corp.*, 116 Nev. 424,  
15 425, 996 P.2d 416, 417 (2000). An order dismissing a case for forum non conveniens  
16 is a final judgment that should be reviewed on appeal. *Pan*, 120 Nev. at 224, 88 P.3d  
17 at 841.

18 Additionally, writ relief is not available to correct an untimely notice of  
19 appeal. *Id.* Even if an appeal is not immediately available because the challenged  
20 order is interlocutory in nature, the fact that the order may ultimately be challenged

1 on appeal from the final judgment generally precludes writ relief. *Id.* at 225 (*citing*  
2 *to Co. of Washoe v. City of Reno*, 77 Nev. 152, 360 P.2d 602 (1961)).

3 In *Pan*, the writ petition challenged a district court order dismissing  
4 petitioners' complaint. Given the order was a final, appealable judgment under  
5 NRAP 3A(b)(1), the Court determined writ relief inappropriate.<sup>1</sup>

6 Here, Petitioner challenges the District Court's Order dismissing her  
7 complaint as to Respondent Anderson. Given the Order is a final, appealable  
8 judgment under NRAP 3A(b)(1), writ relief is inappropriate here. Petitioner may  
9 argue that an appeal was not immediately available as no Order had been issued at  
10 the time she filed her Writ Petition. However, as this Court held in *Pan*, the fact that  
11 the order may ultimately be challenged on appeal from the final judgment generally  
12 precludes writ relief. *Pan*, 120 Nev. at 225, 88 P.3d at 842.

## 13 **II. THE DISTRICT COURT PROPERLY DENIED** 14 **PETITIONER'S SECOND MOTION TO EXTEND TIME FOR** 15 **SERVICE AS UN-TIMELY.**

16 Nevada Rule of Civil Procedure 4(e)(4) states, in its entirety, as follows:

17 (4) Failure to Make Timely Motion to Extend Time. If a plaintiff  
18 files a motion for an extension of time after the 120-day service period  
— or any extension thereof — expires, **the court must first determine**  
**whether good cause exists for the plaintiff's failure to timely file the**  
**motion for an extension before the court considers whether good**

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19 <sup>1</sup> The Court determined that, "[a]lthough this writ petition could be denied solely on procedural grounds because  
20 petitioners had an adequate remedy in the form of an appeal from the district court's order, petitioners' time to appeal  
has run. Given that our prior case law may have misled petitioners to forgo their appeal, we will consider this petition."  
*Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004)

1 **cause exists for granting an extension of the service period.** If the  
2 plaintiff shows that good cause exists for the plaintiff's failure to timely  
3 file the motion and for granting an extension of the service period, the  
court must extend the time for service and set a reasonable date by  
which service should be made.

4 *See* NRCP 4(e)(4)(emphasis added).

5 An analysis of NRCP 4(e)(4) includes two separate prongs. First, whether  
6 good cause exists for a party's failure to file a timely motion seeking an  
7 extension/enlargement of time for service (hereinafter referred to as the "threshold  
8 requirement" or "threshold question"); and second, whether good cause exists for  
9 granting an extension of the service period (hereinafter referred to as the "second  
10 requirement"). Since Petitioner did not satisfy the threshold requirement  
11 demonstrating that good cause exists for her failure to timely file a Motion for an  
12 extension, the District Court's inquiry properly ended at this threshold.

13 This Court interpreted the above rule language as it existed before its most  
14 recent amendment on March 1, 2019. *Saavedra-Sandoval v. Wal-Mart Stores*, 126  
15 Nev. 592, 245 P.3d 1198 (2010). Specifically, in *Saavedra-Sandoval*, this Court  
16 evaluated NRCP 4(i) to determine whether a Plaintiff demonstrated good cause for  
17 failure to file a timely motion to enlarge the 120-day period for effective service of  
18 process. *Id.* at 126 Nev. 592, 596–97, 245 P.3d 1198, 1201 (2010). When this Court  
19 issued *Saavedra-Sandoval* in 2010, NRCP 4(i) read as follows:

20 If a service of the summons and complaint is not made upon a defendant

1 within 120 days after the filing of the complaint, the action shall be  
2 dismissed as to that defendant without prejudice upon the court's own  
3 initiative with notice to such party or upon motion, unless the party on  
4 whose behalf such service was required files a motion to enlarge the  
5 time for service and shows good cause why such service was not made  
6 within that period. If the party on whose behalf such service was  
7 required fails to file a motion to enlarge the time for service before the  
8 120-day service period expires, the court shall take that failure into  
9 consideration in determining good cause for an extension of time. Upon  
10 a showing of good cause, the court shall extend the time for service and  
11 set a reasonable date by which service should be made.

12 *Id.* at 126 Nev. 592, 596, 245 P.3d 1198, 1200 (2010)(citing NRCP 4(i))

13 The “Advisory Committee Notes” regarding the 2019 amendment state in  
14 relevant part that “Rule 4(e) revises former NRCP 4(i) to clarify that the 120-day  
15 period for accomplishing service generally applies to all civil actions.” *See* NRCP  
16 4. Therefore, the *Saavedra-Sandoval* opinion stands as binding law, and the analysis  
17 set forth therein must be applied to the current iteration of NRCP 4. In fact, with the  
18 amendments to NRCP 4(e)(4), this Court incorporated its ruling in the *Saavedra-*  
19 *Sandoval* opinion into the rule itself. Specifically, the rule sets out that two  
20 requirements must be met to enlarge time to serve process; the threshold requirement  
to establish good cause for the failure to file a timely motion seeking enlargement of  
time, and the second requirement of demonstrating good cause to enlarge time for  
service of process. *Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 596-598,  
245 P.3d 1198, 1200-1201 (2010).

This Court ruled in *Saavedra-Sandoval* that in cases where a party does not

1 serve a complaint or seek to enlarge time for service prior to the expiration of the  
2 120-day service period, that party must file a motion that first shows good cause why  
3 they should be allowed to move the court for an extension of time pursuant to NRCP  
4 4. *Id.* at 126 Nev. 592, 596-597, 245 P. 3d 1198, 1201.

5 “Good cause” and “excusable neglect” are distinct standards. Good cause  
6 generally is established when the circumstances causing the failure to act are beyond  
7 the individual's control. *See State v. Williams*, 120 Nev. 473, 477, 93 P.3d 1258,  
8 1260 (2004).

9 The *Saavedra-Sandoval* case involves an alleged injury that occurred in a  
10 Wal-Mart store. The plaintiff's process server timely served the co-manager of the  
11 Wal-Mart store where plaintiff was injured. Wal-Mart argued that the co-manager  
12 was not authorized to accept service and that the plaintiff was required to serve Wal-  
13 Mart's registered agent. The plaintiff then filed a motion to enlarge time to serve,  
14 despite the fact that the 120-day period had lapsed. The district court denied the  
15 plaintiffs' motion finding that plaintiff's improper service of the co-manager was not  
16 good cause for an enlargement of time after the 120-day service period had expired.  
17 Plaintiff appealed. *Saavedra-Sandoval* 126 Nev. 592, 596-597, 245 P.3d 1198, 1201.

18 The analysis in *Saavedra-Sandoval* proceeded as follows. First, this Court  
19 found, “the district court is limited to enlarging the time for service only upon a  
20 motion to enlarge the 120-day service period.” *Id.* 126 Nev. at 596, 245 P.3d at 1201

1 (citing NRCP 4(i) drafter's note). Next, this Court found NRCP 4(i) “creates a  
2 threshold question for the district court, requiring it to first evaluate whether good  
3 cause exists for a party's failure to file a timely motion seeking enlargement of time.  
4 Failure to demonstrate such good cause ends the district court's inquiry.” *Id.* Finally,  
5 this Court concluded, “only upon a showing of good cause to file an untimely motion  
6 to enlarge time for service should the district court then apply *Scrimmer's* good-cause  
7 factors for the delay in service.” *Id.*

8         Again, while this Court evaluated NRCP 4(i) when it issued the *Saavedra-*  
9 *Sandoval* opinion, the opinion clearly applies to the current iteration of NRCP 4. In  
10 fact, NRCP 4(e) makes it even clearer that Plaintiffs must first establish good cause  
11 for the failure to timely file a motion to enlarge time before good cause for the  
12 enlargement itself can be considered. *See* NRCP(e)(4). Here, Petitioner filed her  
13 Second *Ex Parte* Motion on October 28, 2020 (PA I 0077-0098), 145 days after the  
14 District Court’s decision and Order regarding Plaintiff’s First *Ex Parte* Application  
15 was filed. PA I 0074-0076. The District Court’s Order only granted Plaintiff 90  
16 additional days to effectuate service. Therefore, Petitioner’s Second *Ex Parte*  
17 Motion was clearly untimely.

18         In her Second Motion, Petitioner cited efforts to serve Mr. Anderson before  
19 the filing of her First *Ex Parte* Application. More specifically, Petitioner argues that  
20 she “made diligent efforts to serve Defendant MARK THOMAS ANDERSON, but

1 has been unable to serve Mr. Anderson because he “refused to answer the door on  
2 numerous occasions, and the other residents refuse to accept service.” PA I 0082.

3 Moreover, anything that happened before Petitioner filed her First *Ex Parte*  
4 Application was wholly irrelevant to the decision the District Court faced regarding  
5 the threshold question; namely, whether Petitioner established good cause for the  
6 failure to timely file her Second *Ex Parte* Motion to Enlarge Time. Additionally,  
7 and most importantly, even assuming *arguendo* that Mr. Anderson intentionally  
8 evaded service, any such alleged evasion has no bearing on Petitioner's failure to  
9 timely file her Second *Ex Parte* Motion given Petitioner's First *Ex Parte* Application  
10 already indicated her intent to serve by publication at that juncture.

11 The District Court properly focused on the relevant time period, which was  
12 June 5, 2020, the date it granted Petitioner's First *Ex Parte* Application, to October  
13 28, 2020, the date Petitioner filed her Second *Ex Parte* Motion, it is clear that  
14 Petitioner cannot establish good cause for the failure to timely file her Second  
15 Motion. In fact, Petitioner did not even argue good cause for her failure to timely  
16 file the Second Motion. Instead, she cites reasons for her failure to serve Mr.  
17 Anderson as the grounds to grant her Second Motion. PA I 0077-0098.

18 However, whether Petitioner could establish good cause for her failure to  
19 timely serve Mr. Anderson was wholly irrelevant to the threshold question of  
20 whether she demonstrated good cause for the failure to timely file her Second

1 Motion. As set forth repeatedly herein, Petitioner was required to first meet this  
2 threshold requirement before the District Court could consider the second question.  
3 Petitioner failed to demonstrate good cause for the failure to timely file a Motion for  
4 an extension, and the District Court properly ended its inquiry there. *Saavedra-*  
5 *Sandoval*, 126 Nev. at 596, 245 P.3d at 1201.

6 **III. THE DISTRICT COURT PROPERLY DETERMINED THAT**  
7 **THE COVID EMERGENCY DIRECTIVES HAD NO BEARING ON**  
8 **PETITIONER’S FAILURE TO SERVE.**

9 In addition to her allegations that Mr. Anderson and/or his co-residents  
10 “refused to answer the door” and “refused to accept service,” which are addressed  
11 above, and are irrelevant to the threshold question, Petitioner cited Governor  
12 Sisolak’s March 12, 2020, Emergency Order as good cause for her failure to timely  
13 effectuate service. However, through her timeline Petitioner admitted that the  
14 Governor’s Order did not affect her ability to attempt personal service on or after  
15 July 1, 2020. PA 1 81. To the extent Governor Sisolak issued a “stay-at-home”  
16 order that may have limited Plaintiff’s ability to serve Mr. Anderson, such an Order  
17 expired on May 15, 2020.

18 However, it is worth noting that on June 1, 2020 the Eighth Judicial District  
19 Court issued Administrative Order 20-17, which states in relevant part that “effective  
20 July 1, 2020, motions to extend service of process must be filed prior to the  
expiration of time to serve.” *See* PA 1 0029. This rule, announced by Eighth Judicial



1 District Court , internally clarifies that it relates to personal service, not service via  
2 publication, “[t]he Court recognizes that accomplishing personal service may  
3 continue to pose significant challenges...” *Id.* Petitioner already had permission to  
4 serve via publication, so her failure to do so cannot be excused through reliance on  
5 the COVID related directives and orders.

6 The time to serve Mr. Anderson expired on September 3, 2020. Therefore, it  
7 is abundantly clear that Petitioner’s Second Motion was untimely filed. However,  
8 even if this Court gives Petitioner every benefit of the doubt, 100 days passed  
9 between July 1, 2020, and October 28, 2020, when Petitioner filed her Second  
10 Motion. Therefore, every interpretation and calculation leads to only one reasonable  
11 conclusion; namely, that Petitioner failed to timely file her Second Motion and  
12 cannot demonstrate good cause for her failure.

13 Finally, Petitioner did not and could not, cite any reasons for her failure to  
14 serve Mr. Anderson by publication after the District Court Order granting her First  
15 Ex Parte Application was filed on June 5, 2020. PA 1 0074-0075. Nothing, including  
16 the COVID pandemic, could have precluded Plaintiff from serving Mr. Anderson  
17 via publication after June 5, 2020. The calculation of deadlines set forth in  
18 Petitioner’s application for writ relief is nonsensical. On June 5, 2020, the District  
19 Court granted Plaintiff 90 additional days to serve Respondent Mark Thomas  
20 Anderson by Publication. This deadline expired on September 3, 2020.

1       Simply put, Petitioner failed to demonstrate good cause for the failure to  
2 timely file her Second Motion to Enlarge Time, and the District Court appropriately  
3 dismissed her complaint. However, it is abundantly clear that Petitioner's failure to  
4 timely file her Second *Ex Parte* Motion cannot be blamed on the COVID-19  
5 pandemic, especially given that the pandemic did not affect Petitioner's ability to  
6 attempt service by publication.

7       In *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, the plaintiff did not timely  
8 file the Motion to Enlarge Time in part because plaintiff's process server had served  
9 the co-manager of the Wal-Mart store where plaintiff was injured, and incorrectly  
10 stated in an Affidavit that the co-manager was the designated agent authorized to  
11 accept service of process on behalf of Wal-Mart. 126 Nev. 592, 594, 245 P.3d 1198,  
12 1199 (2010). This Court nonetheless ruled that plaintiff failed to demonstrate good  
13 cause for their failure to timely serve a motion to enlarge time.

14       Here, Petitioner cannot demonstrate a single reason for her failure to timely  
15 file her Second Motion, let alone a reason as potentially compelling to the Court as  
16 reasonable reliance on a process server. Petitioner's assertions that Mr. Anderson  
17 evaded service, and the COVID-19 pandemic made it difficult to serve him, may  
18 arguably be relevant to the question of whether good cause exists for an extension  
19 to the service period. However, they cannot excuse the failure to timely seek an  
20 extension to serve when Petitioner had permission to serve by publication and did

1 not attempt to serve by publication until October 15, 2020, when the summons was  
2 first published in Nevada Legal News after the first requested extension to  
3 September 3, 2020 already lapsed.

### 4 **III. THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFF’S** 5 **COMPLAINT**

6 NRCP 4(e)(2) clearly states that if service of the summons and complaint is  
7 not made upon a defendant before the 120-day service period — or any extension  
8 thereof — expires, the court must dismiss the action, without prejudice, as to that  
9 defendant. The word “must” is unambiguous. Like the word “shall,” “ought to be  
10 “construed as mandatory unless a different construction is demanded by the statute  
11 in order to carry out the clear intent of the legislature.” *Thomas v. State*, 88 Nev.  
12 382, 384, 498 P.2d 1314, 1315 (1972) (*quoting Ewing v. Fahey*, 86 Nev. 604, 607,  
13 472 P.2d 347, 349 (1970)) (emphasis added). In the *Thomas v. State* opinion, this  
14 Court stated that “it is always the first great object of the courts in interpreting  
15 statutes, to place such construction upon them as will carry out the manifest purpose  
16 of the legislature.” *Id.* (*quoting Gibson v. Mason*, 5 Nev. 283, 311 (1869)). Based  
17 upon the plain text of the rule, the District Court properly dismissed Petitioner’s  
18 complaint, and had little discretion to do otherwise.

### 19 **CONCLUSION**

20

1 Based on the foregoing, this Court should affirm the judgment entered on  
2 behalf of Respondent, and for any and all other relief deemed appropriate.

3 DATED this 14<sup>th</sup> day of September, 2021.

4 Respectfully submitted,

5 **MESSNER REEVES, LLP**

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1                   **CERTIFICATE OF COMPLIANCE PURSUANT TO NRAP 28.2**

2           I hereby certify that I have read this answering brief, and to the best of my  
3 knowledge, information, and belief, it is not frivolous or interposed for any improper  
4 purpose. I further certify that this brief complies with all applicable Rules of  
5 Appellate Procedure, and in particular NRAP 28(e), which requires every assertion  
6 in the brief regarding matters in the record to be supported by a reference to the page  
7 and volume number of the appendix where the matter relied on is to be found. I  
8 further certify that this brief complies with the formatting requirements of NRAP  
9 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style  
10 requirements of NRAP 32(a)(6) because it has been prepared in a proportionally  
11 spaced typeface using Microsoft Word 2013 in 14-point Times New Roman. I  
12 further certify that this brief complies with the page limitations of NRAP 32(a)(7)  
13 because it does not exceed 30 pages. I understand that I may be subject to sanctions  
14 in the event that the accompanying brief is not in conformity with the requirements  
15 of the Nevada Rules of Appellate Procedure.

16           DATED this 14<sup>th</sup> day of September, 2021.

17                                   **MESSNER REEVES, LLP**

18                                   /s/ Scott Rogers  
19                                   Scott L. Rogers, Esq.  
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