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*Attorneys for Respondent  
Clark County Department of Aviation*

Electronically Filed  
Jul 23 2021 05:31 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

CLARK COUNTY  
DEPARTMENT OF AVIATION,  
a political subdivision of the State  
of Nevada,

Appellant,

vs.

SOUTHERN NEVADA LABOR  
MANAGEMENT  
COOPERATION COMMITTEE,  
by and through its Trustees Terry  
Mayfield and Chris  
Christophersen; and OFFICE OF  
THE LABOR  
COMMISSIONER,

Respondent.

SUPREME COURT NO. 83252  
(District Court Case No. A-18-  
781866-J)

**EMERGENCY MOTION UNDER  
NRAP 27(e) TO STAY (1)  
ENFORCEMENT OF ORDER  
ON MOTION FOR  
RECONSIDERATION, (2)  
ENFORCEMENT OF ORDER  
GRANTING PETITION FOR  
JUDICIAL REVIEW, AND (3)  
ANY PROCEEDINGS BEFORE  
THE OFFICE OF THE LABOR  
COMMISSIONER OR  
ALTERNATIVELY MOTION  
FOR PRELIMINARY  
INJUNCTION PENDING  
BRIEFING AND  
CONSIDERATION OF THE  
ABOVE REQUESTED STAY**

**EMERGENCY MOTION UNDER  
NRAP 27(E) – STAY  
REQUESTED BY: 11:00AM ON  
MONDAY, JULY 26, 2021 (TIME  
OF PREHEARING  
CONFERENCE BEFORE THE  
LABOR COMMISSIONER)**

Respondent Clark County Department of Aviation (“DOA”), by and through its undersigned counsel, hereby moves this Court for an Emergency Order staying the following: (1) enforcement of the June 25, 2021 Order (“Order”) on Clark County Department of Aviation’s Motion for Reconsideration, (2) enforcement of the February 4, 2020 (“February Order”) Order granting the Southern Nevada Labor Management Cooperation Committee (“LMCC”)’s Petition for Judicial Review, and (3) any actions of the Nevada Office of the Labor Commissioner (“OLC”) in connection with Case No. NLC-17-001486 pending resolution of the DOA’s appeal of this matter to the Supreme Court of Nevada (hereinafter “Motion” or “Motion to Stay”). In the alternative, the DOA moves for an Emergency Preliminary Injunction Staying the Enforcement of the Orders and OLC Proceedings (including the Pre-Hearing Conference set for **11:00am on Monday, July 26, 2021**) as noted above, until such time as the Motion for Stay can be fully briefed and considered by the Court.

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1 This Motion is made and based on the pleadings and papers on file  
2 herein, together with the following Memorandum of Points and Authorities.

3 Dated this 23rd day of July, 2021.

4 Respectfully submitted,  
5 FISHER & PHILLIPS LLP

6 /s/ Allison L. Kheel, Esq.  
7 MARK J. RICCIARDI, ESQ.  
8 ALLISON L. KHEEL, ESQ.  
9 300 S. Fourth Street, Suite 1500  
10 Las Vegas, NV 89101  
11 Attorneys for Respondent Clark  
12 County Department of Aviation

13 **MEMORANDUM OF POINTS AND AUTHORITIES IN**  
14 **SUPPORT OF MOTION TO STAY ENFORCEMENT**

15 **I. ARGUMENT**

16 **A. A Stay Pending Appeal Must Issue As A Matter of Right**

17 The DOA's appeal seeks review of the District Court's June 25, 2021  
18 Order on Clark County Department of Aviation's Motion for  
19 Reconsideration (hereinafter the "Order") for abuse of discretion and  
20 manifest disregard of the law<sup>1</sup> and of the substantial evidence in the Record.  
21 See Declaration of Allison L. Kheel Esq., attached hereto as **Exhibit A** and  
22 Order attached as **Exhibit 1 to Exhibit A**. The Order purports to clarify and  
23 modify its prior Order entered February 4, 2020 ("February Order") (the  
24 "Order" and the "February Order" collectively referred to as the "Decision")  
25 to address issues identified by the Supreme Court in the prior appeal. See  
26 February Order attached as **Ex. 2 to Ex. A**, p. 2:6-8.

27 The February Order granting the Petition for Judicial Review is a final  
28 judgment of the District Court and immediately appealable under Nevada

<sup>1</sup> The DOA reserves its right to assert all errors in its appeal to the Nevada Supreme Court, notice of which is filed concurrently herewith.

1 Rule of Appellate Procedure (“NRAP”) 3A(b)(1). *See also* Ex. A, at ¶ 19.  
2 The DOA’s Motion for Reconsideration was considered a post-judgment  
3 tolling motion. *See AA Primo Builders v. Washington*, 126 Nev. 578, 245  
4 P.3d 1190 (2010). Nevada Rule of Civil Procedure (“NRCP”) 62 authorizes  
5 the District Court to stay the enforcement of a judgment pending appeal.<sup>2</sup>  
6 NRAP 8(a)(1) requires any party aggrieved by a judgment or order of the  
7 District Court to first seek a stay from the issuing court pending appeal.  
8 However, the District Court denied the DOA’s Motion for Stay pending  
9 appeal.

10 A stay to preserve the *status quo* and prevent enforcement of the  
11 challenged final judgment is presumptively reasonable and must be granted  
12 as a matter of right. *Clark County Office of Coroner/Medical Examiner v.*  
13 *Las Vegas Review Journal*, 134 Nev. 174, 176-177 (2018). Under NRCP  
14 62(e), when an appeal is taken by the State or by any county, city, town, or  
15 other political subdivision of the State, the requested stay of the operation or  
16 enforcement of the judgment should issue without requiring a bond,  
17 obligation, or other security from the appellant. *Id.* at 176-177. As the DOA  
18 is a local government entity and political subdivision of Clark County, the  
19 requested stay must issue as a matter of right without requiring the DOA to  
20 post a bond.

21 **B. The Supreme Court Should Issue a Stay Under Nevada**  
22 **Rule of Appellate Procedure 8**

23 The District Court incorrectly denied the DOA’s request for a Stay  
24 pending Appeal and the Court should grant a Stay to avoid unfair prejudice  
25 to the DOA. Ex. A, ¶ 17. The District Court incorrectly found that the DOA

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26 <sup>2</sup> The DOA has filed its appeal in the alternative and seeks in as an alternative  
27 to the appeal a writ of prohibition to prohibit the District Court from  
28 exercising jurisdiction beyond its statutory authority on the petition for  
judicial review.



1 is not entitled to stay as a matter of right because this matter did not involve  
2 a “money judgment.” Ex. A ¶ 18. This finding incorrectly narrows the  
3 scope of when a stay should issue and as explained above the stay pending  
4 appeal should be granted as a matter of right.

5 Moreover, the DOA should be granted a Stay of the District Court’s  
6 Decision pending appeal for the reasons set forth in NRAP 8(c). NRAP  
7 8(c)(“In deciding whether to issue a stay or injunction, the Supreme Court .  
8 . . will generally consider the following factors: (1) whether the object of the  
9 appeal or writ petition will be defeated if the stay or injunction is denied; (2)  
10 whether appellant/petitioner will suffer irreparable or serious injury if the  
11 stay or injunction is denied; (3) whether respondent/real party in interest will  
12 suffer irreparable or serious injury if the stay or injunction is granted; and  
13 (4) whether appellant/petitioner is likely to prevail on the merits in the  
14 appeal or writ petition.”).

15 i. The Object Of The Appeal Will Be Defeated If The  
16 Labor Commissioner Is Permitted To Proceed And The  
17 Stay Is Denied

18 The object of the appeal will be defeated if the Labor Commissioner  
19 is permitted to hold a hearing a make a determination of money owed as  
20 prevailing wage without being able to consider the issue of whether or not  
21 the project/work was “maintenance” (and thus not prevailing wage work  
22 under the statute). The Decision of the District Court improperly limited the  
23 scope of the OLC’s power on remand, and it is that improperly limited scope  
24 that is the subject of the present appeal. Moreover, if the appeal ultimately  
25 remands the matter to the OLC with instructions to make a finding as to  
26 whether or not the work is maintenance, the DOA will potentially be  
27 prejudiced by the OLC prior determination of an amount due.  
28

ii. The DOA Will Suffer Irreparable Injury If The Stay Is Denied

The Appellant (DOA) will suffer irreparable injury and potentially face a significant monetary judgment if the OLC's proceedings are not stayed. In accordance with the Decision, **the OLC has scheduled a pre-hearing conference for July 26, 2021 at 11:00 a.m. See Ex. A, ¶¶ 7-10 and Ex. 4 to Ex. A.** Consequently, the DOA will be unfairly prejudiced if the OLC proceeds to hold a hearing while the Decision (and the question of the proper scope of the Labor Commissioner's authority on remand) is pending appeal and could be modified or reversed. A stay of enforcement of the Decision is necessary to preserve the *status quo* and avoid irreparable harm to the DOA while its Appeal is pending resolution. The DOA will be subject to simultaneous and conflicting proceedings in two forums and the potential that all the proceedings before the OLC will be invalidated upon conclusion of the appeal. Enforcement of the Decision can also create conflicting decisions, which in turn can cause further litigation. Enforcement also further violates the automatic stay presumption in NRCP 62(a)(1) that no enforcement action will occur until 30 days have passed after service of written notice of the entry of the judgment (in this case the Decision).<sup>3</sup> NRCP 62(a)(1).

Contrary to the conclusion of the District Court, simultaneous and potentially irrelevant proceedings do not serve the interests of judicial efficiency and economy. Nor should the OLC be forced to spend a significant amount of time considering evidence and making a determination regarding an amount of wages if the OLC ultimately determines the work is maintenance and thus no prevailing wages are due.

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<sup>3</sup> The Notice of Entry of the Order is dated June 28, 2021, meaning no Enforcement should occur prior to Wednesday, July 28, 2021.

1                   iii.     There Is No Potential Harm to Respondents If The Stay  
2                             Is Granted

3             There is no potential harm to the LMCC or OLC from granting a stay.  
4     The District Court found (as argued by the LMCC in its Opposition to the  
5     Motion to Stay) that the primary justification for denying the stay is the  
6     potential for spoliation of evidence and the OLC's need to collect and  
7     preserve evidence. *See Ex. 7 to Ex. A*, at p. 3. This conclusion is not  
8     supported by the law or the evidence in the record.

9             Ultimately, the carpet installation work at issue in this case was  
10     performed by a third-party contractor — Nevada Contract Carpet Inc.  
11     ("NCC"). *Ex. A*, ¶ 12. This was not a prevailing wage contract for the DOA  
12     and there are no certified payroll records in the possession of the DOA. NCC  
13     is not a party to this case and the DOA has no control or authority over the  
14     NCC's wages records, time cards or NCC's routine record destruction  
15     practices. *Ex. A*, ¶¶ 12-13, and *Ex. 5 to Ex. A*. Conversely, the DOA, as a  
16     party to this litigation is obligated to prevent spoliation of evidence in its  
17     possession, custody or control throughout the course of the litigation. The  
18     arguments at the hearing on the Motion to Stay made clear that it was the  
19     potential loss of NCC's records (and not the DOA's records) that were of  
20     concern to the OLC. However, the collection of this evidence can be  
21     accomplished via subpoena and can be accomplished without the  
22     involvement of the DOA or need to hold a hearing or make a determination  
23     of the amount of money owed. Thus, there is no potential harm to the  
24     Respondents (either the OLC or the LMCC) that would justify denying the  
25     stay.

26                   iv.     The DOA Is Likely To Prevail On The Merits Of Its  
27                             Appeal

28             Finally, the DOA has demonstrated a substantial likelihood of success  
on the merits. The DOA's Appeal argues that the District Court exceeded

1 its authority by limiting the Labor Commissioner’s authority and scope of  
2 review on remand to “ministerial” determinations of “the value of wages  
3 due.” *See Ex. 2 to Ex. A* at pp. 2:26-3:2. The Appeal also argues that the  
4 Decision reached the conclusion that the project was “not maintenance”  
5 without *any* evidence in the Record actually describing the work; and even  
6 if there had been a complete evidentiary record (which there was not), the  
7 District Court still exceeded its statutory authority on a Petition for Judicial  
8 Review by making additional findings beyond the sole “public money”  
9 findings set forth in the final agency determination of the OLC. *See Revert*  
10 *v. Ray*, 95 Nev. 782, 603 P.2d 262 (Nev. 1979). For these reasons, the  
11 DOA’s Appeal seeks that the District Court’s Decision be reversed and set  
12 aside, and the matter remanded back to the Labor Commissioner to hold a  
13 full and complete (unlimited) hearing and make a determination regarding  
14 whether the project was “maintenance” and, thus, exempt from prevailing  
15 wage.

16 As communications with the OLC have indicated that the OLC plans  
17 to proceed with the hearing absent a court order staying this matter, good  
18 cause exists to hear this on an expedited basis. *See Ex. A* at ¶¶ 7-10, and  
19 **Exs. 3 & 4 to Ex. A.**

20 **C. The Court Should Hear This Matter And Issue A Stay On**  
21 **An Expedited Basis**

22 The Court should hear this matter and issue a stay on an expedited  
23 basis. The DOA has shown that if a stay is not immediately granted by the  
24 Court, the OLC will proceed to hold a pre-hearing conference on Monday,  
25 July 26, 2021, and subsequently schedule a hearing and ultimately make a  
26 determination pursuant to the improperly limited scope and authority  
27 granted to the OLC on remand by the Decision of the District Court. *See*  
28 **Ex. A at ¶ 22.** There is nothing in the Decision that would limit the OLC to

1 simply collecting evidence from a third-party contractor, Because the  
2 present appeal directly challenges the scope of the OLC’s review on remand,  
3 and argues that the OLC must have the authority to determine that the  
4 project/work is maintenance (and thus not prevailing wage work), and  
5 forcing the DOA to participate in any part of the OLC proceedings will cause  
6 irreparable harm to the DOA.

7 As the first proceeding before the OLC is scheduled for **Monday,**  
8 **July 26, 2021 at 11:00am,** “good cause” exists for hearing this matter on an  
9 expedited basis. See **Ex. A** at ¶¶ 12-13, 22, and **Ex. 4 to Ex. A**. The Court  
10 must grant a Stay of Enforcement of the Decision pending appeal in  
11 accordance with NRS § 233B.140, NRCP 62 and NRAP 8, and thus good  
12 cause exists to hear this Motion on an expedited basis to avoid unfair  
13 prejudice to the DOA while its Appeal is pending before the Supreme Court.

## 14 **II. CONCLUSION**

15 For the reasons set forth above, the Court should grant the DOA’s  
16 Emergency Motion to Stay the Enforcement of the District Court’s Decision  
17 and all proceedings before the OLC while the DOA’s Appeal is pending. In  
18 the alternative, the DOA requests the Court grant an Emergency Preliminary  
19 Injunction staying the above proceedings and enforcement pending briefing  
20 and decision on the DOA’s Motion to Stay.

21 Dated this 23rd day of July, 2021.

22 FISHER & PHILLIPS LLP

23 /s/ Allison L. Kheel, Esq.

24 MARK J. RICCIARDI, ESQ.

25 ALLISON L. KHEEL, ESQ.

26 300 South Fourth Street, Suite 1500

27 Las Vegas, Nevada 89101

28 Attorneys for Appellant (Respondent  
Below) Clark County Department of  
Aviation

# Exhibit A

**DECLARATION OF ALLISON L. KHEEL, ESQ. IN SUPPORT OF CLARK COUNTY DEPARTMENT OF AVIATION'S EMERGENCY MOTION UNDER NRAP 27(e) TO STAY (1) ENFORCEMENT OF ORDER ON MOTION FOR RECONSIDERATION, (2) ENFORCEMENT OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW, AND (3) ANY PROCEEDINGS BEFORE THE OFFICE OF THE LABOR COMMISSIONER**

Allison L. Kheel, Esq. states as follows:

1. I am an attorney representing the Appellant (Respondent in the District Court), Clark County Department of Aviation ("DOA") in this proceeding. I have personal knowledge of, and am competent to testify to, the facts set forth herein. I make this Declaration in Support of DOA's Motion To Stay (1) Enforcement Of Order On Motion For Reconsideration, (2) Enforcement Of Order Granting Petition For Judicial Review, And (3) Any Proceedings Before The Office Of The Labor Commissioner On An Order Shortening ("Motion" or "Motion to Stay").

2. Attached as **Exhibit 1** is a true and correct copy of the Notice of Entry of Order Dated June 28, 2021 on the District Court's June 25, 2021 Order on Clark County Department of Aviation's Motion for Reconsideration (hereinafter the "Order").

3. The Order purports to clarify and modify its findings set forth in its prior Order Granting the Labor Management Cooperation Committee ("LMCC")'s Petition for Judicial Review entered February 4, 2020 ("February Order").

4. Attached as **Exhibit 2** is a true and correct copy of the Notice of Entry of Order Dated February 7, 2020 on the District February Order dated February 4, 2020.

5. The Order and the February Order must be read together and are collectively referred to in the Motion as the "Decision."

6. On June 29, 2021, immediately following the District Court's Order, the Nevada Office of the Labor Commissioner ("OLC") reached out to the parties in this case to schedule a pre-hearing conference in Case No. NLC-17-001486.

7. The DOA requested that the OLC delay scheduling the pre-hearing conference as the DOA was planning to file an appeal of the Decision to the Nevada Supreme Court.

1           8.       A true and correct copy of the E-mail Trail between parties and Labor  
2 Commissioner, Shannon Chambers is attached hereto as **Exhibit 3**.

3           9.       The OLC proceeded to schedule the pre-hearing conference for July 26,  
4 2021 at 11:00am.

5           10.      A true and correct copy of the Notice of Telephonic Pre-Hearing  
6 Conference from the OLC setting the Pre-Hearing Conference for 11:00am on July 26,  
7 2021 is attached hereto as **Exhibit 4**.

8           11.      In the Notice of Telephonic Pre-Hearing Conference, the Labor  
9 Commissioner Orders that the DOA respond to the August 18, 2017 letter requesting  
10 evidence “on or before July 26, 2021.” *See Ex. 4*, p.2.

11          12.      The DOA’s prior response to this letter, dated September 22, 2017 is  
12 already contained in the Administrative Record and a true and correct copy of the  
13 September 22, 2017 response without the attached exhibits is attached hereto as  
14 **Exhibit 5**. The DOA’s Response clearly identifies the contractor who performed the  
15 work as Nevada Contract Carpet Inc. *See Ex. 5*.

16          13.      The DOA is not aware of any attempts to subpoena records from Nevada  
17 Contract Carpet Inc. at any point during these proceedings.

18          14.      On July 16, 2021, the DOA filed its Appeal to the Supreme Court and  
19 contemporaneously filed its Motion To Stay (1) Enforcement Of Order On Motion For  
20 Reconsideration, (2) Enforcement Of Order Granting Petition For Judicial Review, And  
21 (3) Any Proceedings Before The Office Of The Labor Commissioner (“Motion to  
22 Stay”) On An Order Shortening Time (“OST”) with the District Court.

23          15.      The District Court granted the OST and Notice of the OST was entered  
24 on July 16, 2021. A true and correct copy of the Notice of Entry of the OST is attached  
25 hereto as **Exhibit 6**.

26          16.      A true and correct copy of the LMCC’s Opposition dated July 20, 2021  
27 is attached hereto as **Exhibit 7**.

28          17.      On July 22, 2021, the District Court held a hearing on the DOA’s



1 Motion to Stay, but announced at the hearing that the request for the Stay pending  
2 appeal was denied.

3 18. The District Court found that the DOA was not entitled to a stay as a  
4 matter of right and NRCP 62(d) and the case of *Clark Cty. Office of the*  
5 *Coroner/Medical Exam'r v. Las Vegas Review-Journal*, 134 Nev. 174, 177-78, 415  
6 P.3d 16, 19 (2018) were not applicable because this was not a “money judgment.”

7 19. The District Court further stated that judicial economy will be served  
8 and that no prejudice will come to any party by having wage records produced,  
9 potential wage claims calculated, and potential wage claimants identified in the OLC’s  
10 proceedings during the pendency of the appeal.

11 20. The District Court stated that the Court’s decision was final and the  
12 matter was properly pending appeal.

13 21. The DOA has ordered a transcript of the hearing and will supplement  
14 this declaration with a copy thereof along with a copy of any order submitted to and/or  
15 signed by the District Court.

16 22. The DOA will be unfairly prejudiced if forced to engage in simultaneous  
17 proceedings before the OLC and the Supreme Court over the proper scope of the  
18 District Court’s Decision and whether it was proper for the District Court to limit the  
19 OLC’s power on remand. The Object and purpose of the appeal will be defeated if the  
20 activities of the OLC are not stayed pending appeal.

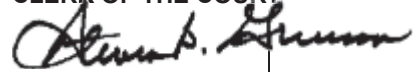
21 23. I declare under penalty of perjury that the foregoing is true and correct.

22 Executed on this 23<sup>rd</sup> day of July, 2021.

23  
24 

25 \_\_\_\_\_  
26 Allison L. Kheel, Esq.  
27  
28

# **Exhibit 1 to Exhibit A**



NEOJ  
CHRISTENSEN JAMES & MARTIN  
EVAN L. JAMES, ESQ.  
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*Attorneys for Petitioner*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SOUTHERN NEVADA LABOR  
MANAGEMENT COOPERATION  
COMMITTEE, by and through its  
Trustees Terry Mayfield and Chris  
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,  
DEPARTMENT OF AVIATION, a  
political subdivision of the State of  
Nevada; and THE OFFICE OF THE  
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**NOTICE OF ENTRY OF ORDER**

Please take notice that the attached order was entered on June 25, 2021.

Dated June 28, 2021.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James  
Evan L. James, Esq.  
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CERTIFICATE OF SERVICE

On the date of filing with the Court, I caused a true and correct copy of the foregoing Notice of Entry of Order to be served as follows:

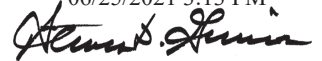
☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

- |                        |                             |
|------------------------|-----------------------------|
| Natalie Saville        | nat@cjmlv.com               |
| Allison L. Kheel, Esq. | akheel@fisherphillips.com   |
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CHRISTENSEN JAMES & MARTIN

By:       /s/ Natalie Saville      

Natalie Saville



CLERK OF THE COURT

**ORDR**  
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SOUTHERN NEVADA LABOR  
MANAGEMENT COOPERATION  
COMMITTEE, by and through its  
Trustees Terry Mayfield and Chris  
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,  
DEPARTMENT OF AVIATION, a  
political subdivision of the State of  
Nevada; and THE OFFICE OF THE  
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**ORDER ON CLARK COUNTY  
DEPARTMENT OF AVIATION'S  
MOTION FOR RECONSIDERATION**

Respondent Clark County Department of Aviation's ("DOA") Motion for Reconsideration ("Motion") came before the Court on March 31, 2020. ~~The hearing was held in accordance Administrative Order 20-01 of the Eighth Judicial District Court.~~ At (KED) that time, all parties believed the Respondents' appeal to the Nevada Supreme Court divested the Court of jurisdiction. As such, the Court elected to treat the Motion as one for clarification. The Nevada Supreme Court disagreed and entered an order to show cause on June 5, 2020, compelling DOA to show cause why the appeal should not be dismissed for lack of jurisdiction. The Supreme Court identified the following four substantive allegations asserted by the DOA in its Motion: that the "district court order erroneously

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1 retained jurisdiction, contained an improper conclusion of law regarding whether the  
2 project constituted maintenance, incorrectly made new factual findings, and improperly  
3 limited the manner in which the administrative agency makes its determination.”

4 The Court hereby enters its order on the Motion. The Motion must be denied as  
5 one for reconsideration under EDCR 2.24 because it fails to present new evidence or  
6 identify misapprehension of law. Nevertheless, the Court takes this opportunity to clarify  
7 its prior Order entered February 4, 2020 (“February Order”) and address the issues  
8 identified by the Supreme Court.

9 Retention of jurisdiction.

10 The Court clarifies that paragraph 7 on page 8 of the February Order was intended  
11 to allow the Court to enforce and interpret the February Order, *See Travelers Indem. Co.*  
12 *v. Bailey*, 129 S.Ct. 2195, 2205, 557 U.S. 137, 151 (2009), and not to interfere with the  
13 Labor Commissioner in the performance of her duties. The Labor Commissioner is free  
14 to perform her duties, but ~~the Labor Commissioner and the other parties are not free~~  
~~she nor the other parties are free to disobey this Court’s Order.~~

(KED)

15 Improper conclusion of law regarding maintenance.

16 The administrative record and argument presented to the Court by the DOA  
17 indicated that the Labor Commissioner treated the contract at issue as a maintenance  
18 contract paid for with repair and maintenance funds. The Court disagreed ~~and entered its~~  
~~the contract at issue is not a maintenance contract, which findings are~~  
19 ~~findings consistent with the administrative record, which also addressed the presented~~  
~~whether~~  
20 ~~argument that the contract at issue was a maintenance contract.~~

(KED)

21 Incorrectly made new factual findings.

22 The Court made no new factual findings. The Court’s findings were based upon  
23 the administrative record as presented and argued to the Court.

24 Improper limitation on agency’s decision making.

25 In remanding the matter to the Labor Commissioner, the Court intends for the  
26 Labor Commissioner to use applicable prevailing wage rates to determine the value of  
27

1 wages due and ensure that the unpaid wages are properly paid. The Court considers these  
2 tasks to be ministerial in nature.

3 In response to the concern raised by the Labor Commissioner regarding the  
4 possible discovery of additional work, the Court recognized that the Labor Commissioner  
5 could encounter a situation where work was performed on the project that fell outside the  
6 flooring contract. To be clear, if wages were earned for work performed on the project  
7 pursuant to the flooring contract and its scope of work, those wages are to be paid at the  
8 applicable prevailing wage rate because they were earned pursuant to a public works  
9 construction contract. However, if the Labor Commissioner discovers that certain work  
10 performed on the project fell outside the scope of work described in the flooring contract,  
11 the Labor Commissioner may evaluate that work as she sees fit because it is not subject  
12 to the contract at issue or these proceedings.

13 The February Order and this Order shall be construed together for purposes of  
14 meeting the Court's stated intent and directives.

Dated this 25th day of June, 2021

15 ~~Dated: September \_\_\_\_\_, 2020.~~

16   
District Court Judge Kathleen Delaney

17  
18 Submitted by:

19 CHRISTENSEN JAMES & MARTIN

20 By: /s/ Evan L. James

21 Evan L. James, Esq.  
22 Nevada Bar No. 006735  
23 7440 W. Sahara Avenue  
24 Las Vegas, NV 89117  
25 Tel.: (702) 255-1718  
26 elj@cjmlv.com  
27 Attorneys for Petitioners

369 E30 22B6 7207  
Kathleen E. Delaney  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Southern Nevada Labor  
Management Cooperation  
7 Committee, Petitioner(s)

CASE NO: A-18-781866-J

DEPT. NO. Department 25

8 vs.

9 Clark County Nevada  
10 Department of Aviation,  
11 Respondent(s)

12  
13 **AUTOMATED CERTIFICATE OF SERVICE**

14 This automated certificate of service was generated by the Eighth Judicial District  
15 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 6/25/2021

17 Allison Kheel akheel@fisherphillips.com

18 Natalie Saville nat@cjmlv.com

19 Evan James elj@cjmlv.com

20 Andrea Nichols anichols@ag.nv.gov

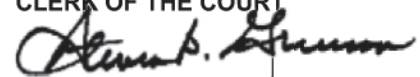
21 Sarah Griffin sgriffin@fisherphillips.com

22 Melissa Flatley mflatley@ag.nv.gov

23  
24  
25  
26  
27  
28



# **Exhibit 2 to Exhibit A**



1 **NEOJ**  
2 **CHRISTENSEN JAMES & MARTIN**  
3 EVAN L. JAMES, ESQ.  
Nevada Bar No. 07760  
4 7440 W. Sahara Avenue  
Las Vegas, Nevada 89117  
5 Tel.: (702) 255-1718  
Facsimile: (702) 255-0871  
6 Email: [elj@cjmlv.com](mailto:elj@cjmlv.com)  
*Attorneys for Petitioner*

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 SOUTHERN NEVADA LABOR  
MANAGEMENT COOPERATION  
10 COMMITTEE, by and through its  
Trustees Terry Mayfield and Chris  
11 Christophersen,

12 Petitioner,

13 vs.

14 CLARK COUNTY NEVADA,  
DEPARTMENT OF AVIATION, a  
15 political subdivision of the State of  
Nevada; and THE OFFICE OF THE  
16 LABOR COMMISSIONER,

17 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**NOTICE OF ENTRY OF ORDER**

18  
19 Please take notice that the attached order was entered on February 4, 2020.

20 DATED this 7th day of February 2020.

21 CHRISTENSEN JAMES & MARTIN

22 By: /s/ Evan L. James

23 Evan L. James, Esq.  
Nevada Bar No. 7760  
24 7440 W. Sahara Avenue  
Las Vegas, NV 89117  
25 Tel.: (702) 255-1718  
26 Fax: (702) 255-0871  
27

CHRISTENSEN JAMES & MARTIN, CHTD.  
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117  
PH: (702) 255-1718 § FAX: (702) 255-0871

**CERTIFICATE OF SERVICE**

On February 7, 2020, I caused a true and correct copy of the foregoing notice to be served as follows:

☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

Mark J. Ricciardi, Esq.      mricciardi@fisherphillips.com

Holly E. Walker, Esq.      hwalker@fisherphillips.com

Andrea Nichols, Esq.      anichols@ag.nv.gov

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville  
Natalie Saville



FFCO  
CHRISTENSEN JAMES & MARTIN  
EVAN L. JAMES, ESQ.  
Nevada Bar No. 07760  
DARYL E. MARTIN, ESQ.  
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Tel.: (702) 255-1718  
Facsimile: (702) 255-0871  
elj@cjmlv.com  
dem@cjmlv.com  
*Attorneys for Petitioner*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SOUTHERN NEVADA LABOR  
MANAGEMENT COOPERATION  
COMMITTEE, by and through its  
Trustees Terry Mayfield and Chris  
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,  
DEPARTMENT OF AVIATION, a  
political subdivision of the State of  
Nevada; and THE OFFICE OF THE  
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER GRANTING  
PETITION FOR JUDICIAL REVIEW**

The Court hereby enters findings of fact and conclusions of law in granting the  
Petition for Judicial Review. The Court remands the matter to the Nevada State Labor  
Commissioner for further proceedings consistent with this Court's findings, conclusions  
and order.

**FINDINGS OF FACT**

1. The Clark County Nevada Department of Aviation (hereinafter "DOA") operates  
the McCarran International Airport ("Airport") in Clark County, Nevada.
2. The DOA is part of the Clark County, Nevada government.

CHRISTENSEN JAMES & MARTIN, CHTD.  
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117  
PH: (702) 255-1718 § FAX: (702) 255-0871

1 3. The Airport is funded by two primary sources. Revenue from Airport operations  
2 such as charges to airlines and lease payments from vendor operations is one source of  
3 income. Revenue from grants from the United States Government Federal Aviation  
4 Administration ("FAA") is another source of income. However, to receive revenue from  
5 the FAA, the DOA is contractually required to be financially self-sustaining and not  
6 dependent upon revenue from government sources separate from its own operations.

7 4. The DOA has operated the Airport as a financially self-sustaining operation for  
8 many years, consistent with its contractual obligations with the FAA.

9 5. The DOA, in 2016, published an Invitation to Bid, Bid No. 17-604273, for the  
10 removal and replacement of 12,000 square feet (approximately the area of two football  
11 fields) of carpet and 5,000 linear feet (approximately the distance of one mile) of base  
12 cove (collectively referred to herein as "Project").

13 6. The DOA advertised and proceeded with the Project pursuant Nevada's Local  
14 Governments Purchasing Statue, NRS 332 et seq. and specifically NRS 332.065.

15 7. The Southern Nevada Labor Management Cooperation Committee ("LMCC")  
16 exists pursuant to 29 U.S.C. §§ 175a(a) and 186(c)(6) and a collective bargaining  
17 agreement between the International Union of Painters and Allied Trades Local Union  
18 No. 1512 and employers engaged in the floorcovering industry.

19 8. LMCC was created and is governed by an Agreement and Declaration of Trust  
20 ("Trust Agreement") and is "established for the purpose of improving labor management  
21 relationships, job security, organizational effectiveness, enhancing economic  
22 development or involving workers in decisions affecting their jobs including improving  
23 communication with respect to subjects of mutual interest and concern."

24 9. LMCC also exists pursuant to NRS § 613.230 for the purpose of "dealing with  
25 employers concerning grievances, labor disputes, wages, rates of pay, hours of  
26 employment, or other conditions of employment."

1 10. To achieve its purposes, the LMCC works to ensure that labor laws are followed,  
2 including prevailing wage laws, which laws and associated activity are a matter of public  
3 concern and public policy.

4 11. On April 28, 2017, the LMCC filed a complaint with the State of Nevada Office of  
5 the Labor Commissioner ("OLC") alleging that the DOA had violated numerous labor  
6 laws with regard to the Project, including violations of NRS 338 et seq.

7 12. On May 2, 2017, the OLC issued a notice to the DOA of the LMCC's complaint.

8 13. The DOA answered the complaint on May 23, 2017, admitting that it is a political  
9 subdivision of the state of Nevada, but generally denying the complaint's allegations due  
10 lack of information.

11 14. The OLC proceeded to conduct an investigation of the matter and requested and  
12 received documents from the DOA.

13 15. The OLC did not hold a hearing, but certain investigatory meetings were held,  
14 including one on January 10, 2018.

15 16. On February 12, 2018, the DOA sent a letter to the OLC wherein it asserted that  
16 the Project was not a public work subject to NRS 338. The DOA further asserted that the  
17 Project work constituted maintenance by replacing up to 12,000 square feet of carpet and  
18 5,000 feet of base cove over the course of a year and that none of the work is paid for  
19 with public money because the Airport is a financially self-sustaining operation. The  
20 DOA further asserted that the carpet and base cove replacement was performed in smaller  
21 sections and so as not to interfere with Airport operations.

22 17. On March 12, 2018, the DOA sent a letter to the OLC asserting that the Project  
23 constituted normal maintenance and further asserting that the Project did not constitute  
24 public funds as defined by NRS 338.010(17) because it was not "financed in whole or in  
25 part from public money."  
26  
27



1 18. On June 4, 2017, the DOA, through counsel, sent an email to the OLC further  
2 asserting that the Project is not subject to NRS 338 et seq. because the Airport is self-  
3 funded.

4 19. On June 13, 2017, the OLC requested documents from the DOA confirming the  
5 sources of the Airport's revenue.

6 20. On June 27, 2017, the DOA responded, through counsel, that the Airport's 2018  
7 fiscal year budget consisted of \$556,500,000 and that \$23,703,000 of that money was  
8 budgeted for what the DOA self characterizes as maintenance.

9 21. On August 30, 2017, the OLC issued a determination that acknowledged the DOA's  
10 argument that the Project was maintenance. The OLC accepted the DOA's representation  
11 that "[n]one of the repairs and maintenance funds are financed in any part through taxes  
12 or public money."

13 22. The Special Conditions section of the Project's bid documents state that "[f]looring,  
14 adhesive and base cove are OWNER supplied, successful bidder installed."

15 23. The DOA separated Project material costs from Project labor costs.

16 24. The DOA intended for the Project to be completed in smaller sections such as  
17 individual rooms or smaller areas.

18 25. The DOA did not bid the Project pursuant to NRS 338 requirements.

19 26. At oral argument, counsel for the DOA questioned whether or not the LMCC had  
20 a right to bring the original complaint filed with the Labor Commissioner.

#### 21 CONCLUSION OF LAW

22 1. The DOA, as a political subdivision of the State of Nevada, is subject to all the laws  
23 of the State of Nevada. The DOA cannot, whether intentionally or unintentionally,  
24 selectively choose what laws it will or will not follow.

25 2. The Airport, its operations, and its funding, consisting of hundreds of millions of  
26 dollars, are a matters of public concern because the Airport services all of southern  
27 Nevada and its presence and use has a financial impact on the entire State of Nevada.

1 3. Governmental compliance with established law is a matter of public concern.

2 4. Moreover, prevailing wage laws are a matter of public policy and their application  
3 and impact are a matter of public concern because they have an economic impact on the  
4 community and affect the community by impacting the construction industry.

5 5. Because the LMCC is established and exists under both federal and state law to  
6 address matters of public concern and public policy within the construction industry, it  
7 has a direct interest in ensuring that laws within the construction industry are adhered to  
8 and followed, giving the LMCC standing to challenge the DOA's conduct in regard to  
9 NRS 338 et seq. and the payment of prevailing wages.

10 6. There is no definition of "public money" in NRS 338 et seq. The Court finds the  
11 reasoning and arguments regarding public money as set forth in the LMCC's briefing  
12 persuasive, being consistent with statute and case law.

13 7. The DOA's contractual relationship with the FAA does not excuse compliance with  
14 Nevada law. Contractual relationships under 49 U.S.C. § 47101, upon which the DOA  
15 relies, for the purposes of receiving grants are voluntary. There is no indication in 49  
16 U.S.C § 47101 that the United States Congress intended to preempt state laws of  
17 generally applicability. Nevertheless, allowing a party, such as the DOA, to contract  
18 around state law would create the unchecked ability to nullify Nevada law where there  
19 was no congressional intent to do so. *See California Trucking Association v. Su*, 903 F.3d  
20 953, 963 (9th Cir. 2018). In addition, the DOA's obligations under 49 U.S.C. § 47101(a)  
21 specifically require that "the [A]irport will be available for public use...." The DOA is  
22 therefore legally obligated to operate the Airport for the benefit of the public regardless  
23 of the source of its funding. The Court concludes that contractual obligations that the  
24 Airport be self-sustaining do not nullify Nevada law. The Court further concludes that  
25 because the DOA is legally obligated to operate the Airport for a public purpose the  
26 money it uses for Airport operations is intended for a public purpose.



1 8. There is no definition of “public money” in NRS 338 et seq. The Court must  
2 therefore look elsewhere for an appropriate definition. The Nevada Supreme Court  
3 addressed the issue of “public money” in the case of *Bombardier Transportation*  
4 *(Holdings) USA, Inc. v. Nevada Labor Commissioner*, 433 P.3d 248, 251 (Nev., 2019).<sup>1</sup>  
5 The DOA was a party to the *Bombardier* case and made the same public money argument  
6 that it now makes to this Court. The DOA argued to the Nevada Supreme Court that  
7 money from its “normal operating funds” is not subject to Nevada’s prevailing wage laws  
8 because the Airport operates “without the County’s general tax fund revenue.” The  
9 Nevada Supreme Court rejected that argument, noting that “Bombardier’s arguments are  
10 belied by the plain language of NRS 338.010(15) ... the financing language in the statute  
11 does not require a particular type of funding, only that the project be financed by public  
12 money, which the contract was.” *Bombardier* at 248 n. 3. The Court concludes that  
13 pursuant to *Bombardier*, the Airport’s funds, the funding of which is common between  
14 the *Bombardier* case and the Project, are in fact public money within the meaning of NRS  
15 338.010(17).

16 9. The Court also concludes that the funds by which the Airport operates are in fact  
17 public money even in the absence of the *Bombardier* holding. The Nevada Supreme  
18 Court provided guidance of what constitutes public money in the case of *Carson-Tahoe*  
19 *Hosp. v. Building & Const. Trades Council of Northern Nevada*, 128 P.3d 1065, 1068,  
20 122 Nev. 218, 222 (2006) (“For example, a private project constructed to a public  
21 agency’s specifications as part of an arrangement for the project’s eventual purchase by  
22 the public agency would be a public work.”) The Airport is owned and operated by a  
23 public entity. The Airport is for public use. The money by which the Airport operates,  
24 regardless of source, is therefore public and within the meaning of “public money” as  
25 used in NRS 338 et seq.

26  
27 <sup>1</sup> The OLC did not have the benefit of the *Bombardier* decision when issuing her  
determination because the opinion was issued after the determination.

1 10. Subject to the remand order below, the Court concludes that the Project did not  
2 constitute maintenance. The DOA's unilateral separation of the Project into smaller  
3 construction units and the separation of material costs and labor costs violated Nevada  
4 law. "A unit of the project must not be separated from the total project, even if that unit  
5 is to be completed at a later time...." NRS 338.080(3). Replacing 12,000 square feet of  
6 carpet and 5,000 linear feet of base cove involves a significant amount of work and is not  
7 reflective of the type of work constituting maintenance as articulated in *Bombardier*. The  
8 Nevada Supreme Court articulated maintenance as involving "such activities like  
9 window washing, janitorial and housekeeping services, [and] fixing broken windows."  
10 *Bombardier* at 255. The Court concludes that the OLC's accepting the DOA's assertion  
11 that the Project constituted maintenance is contrary to fact and law. The Project was bid  
12 with the potential of replacing carpeting that would cover approximately two football  
13 fields and base cove that extended for approximately a mile. The intent of the bid and  
14 Project execution was clearly an effort to manage costs. The DOA's assertion that it may  
15 or may not have replaced 12,000 feet of carpet and 5,000 linear feet of base cove is  
16 inconsequential because the intent of the bid and the Project allowed for a large volume  
17 of repair work. Accepting an argument allowing the DOA to incrementally finish the  
18 Project's scope of work "would run afoul of NRS Chapter 338's purpose and would allow  
19 parties to insulate themselves from the statutes' applicability by simply including repair  
20 work in a maintenance contract." See *Bombardier* at 254. The law does not allow the  
21 DOA to bid large repair projects to be completed through smaller projects purported to  
22 qualify as "maintenance."

23 11. The Court concludes that the OLC's determination was arbitrary, capricious and  
24 inconsistent with fact.

25 12. Although the bid and intent of the Project violated Nevada law, the *Bombardier*  
26 Court holding suggests that the OLC should conduct a post construction analysis to  
27

1 determine what, if any, of the completed work actually constituted maintenance and what  
2 constituted repair, being subject to prevailing wage rates.

3 ORDER

4 1. The Court Orders that matters set forth in its Conclusions of Law may also be  
5 considered findings of fact to the extent necessary to maintain the coherence of its  
6 conclusions.

7 2. The LMCC's Petition for Judicial Review is granted. The OLC's Determination is  
8 hereby vacated and reversed as arbitrary, capricious and inconsistent with fact.

9 3. The Court rules and Orders that the money received by the Airport is public money  
10 within the meaning of NRS 338 and that the Project did not constitute maintenance within  
11 the meaning of NRS 338 et seq.

12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of  
13 determining the amount, if any, of the completed work that constitutes maintenance and  
14 to whom and how much additional wages should be paid for work subject to NRS 338 et  
15 seq.'s prevailing wage requirements. In making any such determinations, the OLC must  
16 not separate the Project into smaller units as doing so is in violation of Nevada law.

17 5. This Order does not preclude the OLC from issuing administrative fines and similar  
18 assessments pursuant to her statutory and regulatory authority.

19 6. The Court further Orders that the LMCC must be included in the proceedings on  
20 remand as a proper and interested party with appropriate standing to participate.

21 7. The Court further Orders that it retains jurisdiction over any subsequent  
22 proceedings that may be necessary for the collection of information, the enforcement of  
23 this Order or for further review, if any, as may be sought by the parties.

24 Dated: January 28, 2020.

25   
District Court Judge Kathleen Delaney  
26  
27



1 Submitted by:  
2 CHRISTENSEN JAMES & MARTIN  
3 /s/ *Evan L. James*  
4 By: \_\_\_\_\_  
5 Evan L. James, Esq.  
6 Nevada Bar No. 006735  
7 7440 W. Sahara Avenue  
8 Las Vegas, NV 89117  
9 Tel.: (702) 255-1718  
10 elj@cjmlv.com  
11 *Attorneys for Petitioners*  
12  
13 Reviewed as to form and content:  
14 FISHER & PHILLIPS, LLC  
15  
16 By: *Refused to sign* \_\_\_\_\_  
17 Holly E. Walker, Esq.  
18 Nevada Bar No. 14295  
19 300 South Fourth Street, Suite 1500  
20 Las Vegas, NV 89101  
21 hwalker@fisherphillips.com  
22 *Attorneys for Respondent Clark*  
23 *County Department of Aviation*  
24  
25  
26  
27 ATTORNEY GENERAL AARON FORD  
By: /s/ *Andrea Nichols* (email approval given)  
Andrea Nichols, Esq.  
Senior Deputy Attorney General,  
Nevada Bar No. 6436  
Office of the Attorney General  
100 N. Carson Nevada 89701  
Carson City, NV 89701  
Tel.: (775) 684-1218  
anichols@ag.nv.gov  
*Attorneys for Respondent Office*  
*of the Labor Commissioner*

# **Exhibit 3 to Exhibit A**

## Kheel, Allison

---

**From:** Shannon Chambers <shannonchambers@labor.nv.gov>  
**Sent:** Wednesday, July 14, 2021 7:51 AM  
**To:** Evan James; Kheel, Allison  
**Cc:** Walker, Holly; Dylan Lawter; Ricciardi, Mark; Kerr, Darhyl  
**Subject:** Re: So. NV Labor v Clark County Aviation

Good morning,

A pre-hearing conference will be set for July 26, 2021, at 11:00 a.m. A notice will be sent out with the details and call-in information.

Thank you.

---

**From:** Evan James <elj@cjmlv.com>  
**Sent:** Monday, July 12, 2021 11:37 AM  
**To:** Kheel, Allison <akheel@fisherphillips.com>; Shannon Chambers <shannonchambers@labor.nv.gov>  
**Cc:** Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>  
**Subject:** Re: So. NV Labor v Clark County Aviation

Dear Commissioner Chambers,

At present, there is no stay in the litigation. Thus, it is incumbent upon all involved to comply with the Court's Order.

The matter to be resolved before your office is the value of the unpaid wages to the workers and the payment of wages to the underpaid workers. This is a simple calculation and collection of money owed. Unfortunately, the DOA has refused to provide payroll and work records that will allow for the calculations to be made. Given the passage of time, the LMCC is concerned that records and workers will be lost and that workers will not be paid. It is the LMCC's position that records need to be collected, workers identified, and unpaid wage calculations made as soon as possible and regardless of any appeal that the DOA may make.

Thank you,

Evan L. James, Esq.  
Christensen James & Martin  
7440 W Sahara Ave.  
Las Vegas, Nevada 89117  
(702) 255-1718

---

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IRS CIRCULAR 230 DISCLOSURE: To the extent this communication (or any attachment) addresses any tax matter, it may not be relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter herein addressed.

---

**From:** Kheel, Allison <akheel@fisherphillips.com>

**Sent:** Friday, July 9, 2021 4:49 PM

**To:** Shannon Chambers <shannonchambers@labor.nv.gov>

**Cc:** Evan James <elj@cjmlv.com>; Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>; Kheel, Allison <akheel@fisherphillips.com>

**Subject:** Re: So. NV Labor v Clark County Aviation

Dear Ms. Chambers,

The Department of Aviation will be appealing this matter and will be seeking a stay of any proceedings before the Labor Commissioner as part of that Appeal as the District Court did not have the authority to limit the Labor Commissioner's power to hold a full hearing and make determinations regarding the type, designation and scope of the work in this matter.

Thus, it is the DOA's position that holding any kind of prehearing conference would be premature until the Supreme Court can rule on the Appeal and Stay.

If you have any questions please feel free to contact me directly at 702-467-1066.

Very Truly Yours,  
Allison Kheel

Sent from my iPhone

On Jul 9, 2021, at 1:58 PM, Shannon Chambers <shannonchambers@labor.nv.gov> wrote:

Good morning Mr. Ricciardi,

Please see the email below along with the original email string. If you could please let me know what attorney is assigned to this matter for Clark County Aviation and dates of availability for a pre-hearing.

Good morning Ms. Kheel,

Could you please provide your availability for a pre-hearing conference in this matter by close of business today?

Thank you.

Shannon M. Chambers  
Labor Commissioner  
State of Nevada

---

**From:** Evan James <elj@cjmlv.com>

**Sent:** Friday, July 9, 2021 10:47 AM

**To:** Shannon Chambers <shannonchambers@labor.nv.gov>; hwalker@fisherphillips.com  
<hwalker@fisherphillips.com>  
**Cc:** Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark  
<mricciardi@fisherphillips.com>  
**Subject:** Re: So. NV Labor v Clark County Aviation

Commissioner Chambers,

You may wish to reach out to Mark Ricciardi who practices with Allison. He is copied on this email.

Thank you,

Evan L. James, Esq.  
Christensen James & Martin  
7440 W Sahara Ave.  
Las Vegas, Nevada 89117  
(702) 255-1718

---

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---

**From:** Shannon Chambers <shannonchambers@labor.nv.gov>  
**Sent:** Friday, July 9, 2021 8:12 AM  
**To:** Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>  
**Cc:** Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>  
**Subject:** Re: So. NV Labor v Clark County Aviation

Good morning Ms. Kheel,

Could you please provide your availability for a pre-hearing conference in this matter by close of business today?

Thank you.

Shannon M. Chambers  
Labor Commissioner  
State of Nevada

---

**From:** Shannon Chambers <shannonchambers@labor.nv.gov>  
**Sent:** Tuesday, June 29, 2021 12:44 PM  
**To:** Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>  
**Cc:** Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>  
**Subject:** Re: So. NV Labor v Clark County Aviation



Good afternoon,

Thank you, Mr. James.

Will wait to hear back from Ms. Kheel.

---

**From:** Evan James <elj@cjmlv.com>

**Sent:** Tuesday, June 29, 2021 12:22 PM

**To:** Shannon Chambers <shannonchambers@labor.nv.gov>; hwalker@fisherphillips.com  
<hwalker@fisherphillips.com>

**Cc:** Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>

**Subject:** Re: So. NV Labor v Clark County Aviation

I believe Ms. Walker is no longer employed at Fisher Phillips. Allison Kheel is the attorney now handling the case for the Department of Aviation. She is copied on this email.

My current availability for July is as follows:

Thursday, 8th all day.

Friday, 9th all day.

Tuesday, 13th after 2:00 p.m.

Wednesday, 14th all day.

Thursday, 15th, after 1:00 p.m.

Friday, 16th before 12:00 p.m.

Monday, 19th after 1:00 p.m.

Tuesday, 20th all day.

Thursday, 22nd all day.

Friday, 23rd all day.

Monday, 26th all day.

Tuesday, 27th all day.

Wednesday, 28th all day.

NAC 307.300(7) requires the parties to make a good faith effort to settle the matter at the prehearing conference. The LMCC is a labor organization governed by trustees. One group of trustees represents employers. Another group of trustees represents the unions. It is impermissible for a single trustee to make a unilateral determination. As such, an employer trustee and a labor trustee must be designated to attend the conference as representatives of the LMCC. If agreeable to you Commissioner Chambers and to Allison, I would like three dates in July that the conference may be held on and then present those dates to the clients so that representatives may be selected to attend.

Also, if settlement is really going to be discussed, we will need to have a valuation of unpaid wages. To date, I am unaware of any wage documents being supplied by the Department of Aviation despite the Office of the Labor Commissioner's request to produce them. See the August 18, 2017 letter that is attached to this email.

Best wishes,

Evan L. James, Esq.  
Christensen James & Martin  
7440 W Sahara Ave.  
Las Vegas, Nevada 89117  
(702) 255-1718

---

CONFIDENTIALITY NOTICE: This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.

IRS CIRCULAR 230 DISCLOSURE: To the extent this communication (or any attachment) addresses any tax matter, it may not be relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter herein addressed.

---

**From:** Shannon Chambers <shannonchambers@labor.nv.gov>

**Sent:** Tuesday, June 29, 2021 7:07 AM

**To:** Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>

**Subject:** So. NV Labor v Clark County Aviation

Good morning Mr. James and Ms. Walker,

Based on the most recent orders (attached), the Labor Commissioner would like to set up a pre-hearing conference with the parties in the next 30-days. It is anticipated that the pre-hearing conference will be by telephone or webex.

If you could please provide your availability over the next 30-days.

Thank you.

Shannon M. Chambers  
Labor Commissioner  
State of Nevada

# **Exhibit 4 to Exhibit A**

1 **BEFORE THE NEVADA STATE LABOR COMMISSIONER**  
2 **CARSON CITY, NEVADA AND LAS VEGAS, NEVADA**  
3  
4  
5

6 IN THE MATTER OF: )

Case No. NLC-17-001486

7 Southern Nevada Labor Management )  
8 Cooperation Committee, by and through its )  
9 Trustees Terry Mayfield & Chris )  
Christophersen, )

10 Complainants, )

11 v. )

12 Clark County Department of Aviation and )  
The Office of the Labor Commissioner, )

13 Respondents. )

14 Clark County Department of Aviation )  
15 Project: McCarran International Airport )  
16 Bid No. 17-694273, Carpet and Base Cove )  
Installation )

**FILED**

**JUL 14 2021**

NEVADA  
LABOR COMMISSIONER-CC

17 **NOTICE OF TELEPHONIC PRE-HEARING CONFERENCE**

18 On April 28, 2017, Southern Nevada Labor Management Cooperation  
19 Committee (LMCC) filed a complaint against Clark County Department of Aviation  
20 (CCDOA) for possible violations of Nevada Revised Statutes (NRS) sections 338.010  
21 to 338.090, inclusive, and/or Nevada Administrative Code (NAC) sections 338.005 to  
22 338.125, inclusive, on Bid No. 17-694273, Carpet and Base Cove Installation at  
23 McCarran International Airport (Project). The Office of the Labor Commissioner  
24 (OLC) issued an order on August 30, 2018, that the compliance review conducted did  
25 not reveal violations of Nevada labor laws with regards to NRS Chapter 338 or  
26 NAC Chapter 338 and closed the matter.

27 LMCC filed a Petition for Judicial Review on September 27, 2018, in the 8th  
28 Judicial District Court in Clark County, Nevada (Court) as Case No. A-18-7818660J in

1 Dept. No. 25, asking the Court to reverse the OLC's ruling. On June 25, 2021, the  
2 Court ordered this matter be remanded back to the OLC.

3 NOTICE IS HEREBY GIVEN that a Telephonic Pre-Hearing Conference will be  
4 held before Labor Commissioner, Shannon M. Chambers, commencing on **Monday,**  
5 **July 26, 2021, at 11:00 AM. The call-in information is: 1 (888) 782-2120 and**  
6 **Pass Code 7822120.**

7 The matters to be addressed at the Pre-Hearing Conference may include, but  
8 are not limited to:

- 9 1. Clearly identifying the issue(s) in dispute.
- 10 2. Providing all claimants/parties with an opportunity to resolve any or all  
11 issues in dispute.
- 12 3. Set a date and time for the Hearing if necessary.

13 The legal authority and jurisdiction for the Pre-Hearing Conference is pursuant  
14 to Nevada Administrative Code (NAC) section 607.300 - Prehearing conference.

15 1. If any party disputes a claim or complaint, the Commissioner may  
16 require the parties to appear before him or her at a prehearing  
17 conference at a time and place designated by the Commissioner to  
establish the issues to be resolved at the hearing and discuss the  
settlement of the matter.

18 2. The Commissioner may enter reasonable orders governing the  
19 conduct of the prehearing conference and, for good cause, allow a party  
to appear via telephone.

20 3. The parties may be represented by counsel at the prehearing  
conference. An attorney representing a party at the prehearing  
conference must comply with subsection 2 of NAC 607.090.

21 4. The parties shall present all evidence then known to them that  
22 substantiates their respective positions during the prehearing conference.

23 5. A prehearing conference conducted pursuant to this section may  
not be recorded.

24 6. Offers of settlement discussed at the prehearing conference may  
25 not be used as an admission at any subsequent hearing, and the  
Commissioner will so inform the parties at the beginning of the  
prehearing conference.

26 7. At the prehearing conference, the parties shall make a good faith  
effort to resolve the matter through settlement or stipulation.

27 8. If the Commissioner determines that the matter cannot be resolved  
28 at the prehearing conference, he or she may issue a determination in the  
matter pursuant to NAC 607.065.

1 On or before July 26, 2021, CCDOA shall provide a response to the OLC's  
2 letter dated August 18, 2017, which requested information and/or documents and  
3 records from the CCDOA.

4 IT IS HEREBY ORDERED.

- 5 1. A Telephonic Pre-Hearing Conference be held on Monday, July 26,  
6 2021, at 11:00 AM and all parties be in attendance.
- 7 2. CCDOA shall provide a response to the OLC's letter dated August 18,  
8 2017, on or before July 26, 2021.

9 Dated this 14th day of July 2021.

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11   
12 Shannon M. Chambers  
13 Labor Commissioner  
14 State of Nevada  
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1 **CERTIFICATE OF MAILING**

2 I, Rosiland M. McCloud, do hereby certify that I mailed a true and correct copy  
3 of the foregoing **NOTICE OF PRE-HEARING CONFERENCE**, via the United States  
4 Postal Service, Carson City, Nevada, in a postage-prepaid envelope to the following:

5 Evan L. James, Esq.  
6 CHRISTENSEN JAMES & MARTIN  
7 7440 W. Sahara Avenue  
8 Las Vegas, Nevada 89117

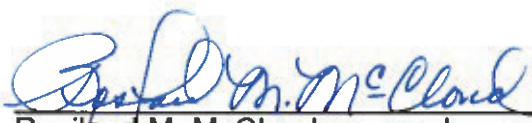
9 Clark County Department of Aviation  
10 Administration Bldg., 3rd Floor  
11 845 E. Russell Road  
12 Las Vegas, Nevada 89119

13 Timothy Baldwin, Esq.  
14 Clark County District Attorney  
15 500 So. Grand Central Pkwy.  
16 Las Vegas, Nevada 89106

17 Allison Kheel, Esq.  
18 FISHER PHILLIPS  
19 300 So. 4th St., Suite 1500  
20 Las Vegas, Nevada 89101

21 Andrea Nichols, Sr. Deputy Attorney General  
22 Office of the Attorney General  
23 5420 Kietzke Lane, #202  
24 Reno, Nevada 89511

25 Dated this 14th day of July 2021.

26   
27 Rosiland M. McCloud, an employee of the  
28 Nevada State Labor Commissioner

# **Exhibit 5 to Exhibit A**





September 22, 2017

Mary M. Huck  
Deputy Labor Commissioner  
Office of the Labor Commissioner  
3300 West Sahara Avenue, Suite 225  
Las Vegas, NV 89102



Certified Mail: 91 7199 9991 7034 4065 4719

**RE: REQUEST FOR DOCUMENTS CASE # NLC-17-001486  
BID NO 17-604273, CARPET AND BASE COVE INSTALLATION**

We are in receipt of the letter issued by the Office of the Labor Commissioner dated August 18, 2017 requesting additional documentation regarding the subject agreement. In response, the Clark County Department of Aviation offers the following responses:

**A. Name/address of contractor & its responsible officers**

- This bid was awarded to Nevada Contract Carpet Inc (NCC). Attachment A consists of several documents to identify this firm and its owners/principals. This attachment includes a disclosure of ownership document, Form W-9, and several state & county licenses.

**B. 1. Name/address of prime contractor & its officers**

- See Item A above.

**2. Name/address of any intermediate subcontractor & its officers**

- N/A, NCC did not propose to utilize any subcontractors.

**C. Copy of the contract, including bid acceptance deadline, award date & scope of work**

- A copy of Invitation to Bid 17-604273 for Carpet and Base Cove Installation follows as Attachment B. The award date of December 8, 2016 is marked at the top of the first page. This first page also indicates the bid submission deadline of 2:00 PM PST on December 1, 2016. The complete scope of work is contained in the body of this document. The bid was awarded pursuant to Nevada Revised Statute (NRS) 332. No work has been performed against this contract.

**D. Copies of payroll reports submitted by contractor/subcontractor**

- N/A, there are no payroll reports since the work associated with this contract was awarded pursuant to NRS 332 and is not public work. Furthermore, no work has been performed against this contract.

**E. Copies of purchase orders and receipts for material used**

- Attachment C is the purchase order that was issued for this contract, however, no work has been performed against this contract and no materials have been used to date.

Sincerely,

Edward Munzing  
Purchasing Administrator

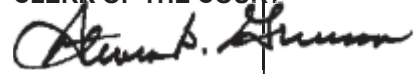
cc: Timothy Baldwin, Deputy District Attorney  
Michael Foran, Senior Purchasing Analyst  
File



**Clark County Board of Commissioners**

Steve Sisolak, Chairman • Chris Giunchigliani, Vice Chair  
Susan Brager • Larry Brown • James B. Gibson • Marilyn Kirkpatrick • Lawrence Weekly

# **Exhibit 6 to Exhibit A**



FISHER & PHILLIPS LLP  
MARK J. RICCIARDI, ESQ.  
Nevada Bar No. 3141  
ALLISON L. KHEEL, ESQ.  
Nevada Bar No. 12986  
300 South Fourth Street, Suite 1500  
Las Vegas, NV 89101  
Telephone: (702) 252-3131  
Facsimile: (702) 252-7411  
E-Mail: [mricciardi@fisherphillips.com](mailto:mricciardi@fisherphillips.com)  
E-Mail: [akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)  
*Attorneys for Respondent*  
*Clark County Department of Aviation*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SOUTHERN NEVADA LABOR ) Case No. A-18-781866-J  
MANAGEMENT COOPERATION )  
COMMITTEE, by and through its ) Department No.: 25  
Trustees Terry Mayfield and Chris )  
Christophersen, )

Petitioner, )

vs. )

CLARK COUNTY NEVADA, )  
DEPARTMENT OF AVIATION, a )  
political subdivision of the State of )  
Nevada; and THE OFFICE OF THE )  
LABOR COMMISSIONER, )

Respondents. )

**NOTICE OF ENTRY OF ORDER**  
**ON MOTION TO STAY ON**  
**ORDER SHORTENING TIME**

PLEASE TAKE NOTICE that an Order Granting Respondents' Motion to Stay

///

//

///

///

1 on an Order Shortening time was entered in the above-captioned matter on July 16,  
2 2021. A true and correct copy of that Order is attached here to as Exhibit A.

3 Dated this 16th day of July, 2021.

4 FISHER & PHILLIPS LLP

5 /s/ Allison L. Kheel, Esq.  
6 MARK J. RICCIARDI, ESQ.  
7 ALLISON L. KHEEL, ESQ.  
8 300 S. Fourth Street  
9 Suite 1500  
10 Las Vegas, NV 89101  
11 Attorneys for Respondent Clark County  
12 Department of Aviation  
13  
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15  
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**CERTIFICATE OF SERVICE**

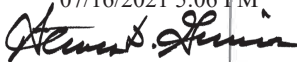
This is to certify that on the 16th day of July, 2021, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **NOTICE OF ENTRY OF ORDER ON MOTION TO STAY ON ORDER SHORTENING TIME** via the Court's e-file and e-service system on those case participants who are registered users.

Andrea Nichols, Esq.  
Deputy Attorney General  
100 N. Carson  
Carson City, Nevada 89701  
*Attorneys for Respondent  
Office of the Labor  
Commissioner*

Evan L. James, Esq.  
7440 W. Sahara Avenue  
Las Vegas, Nevada 89117  
*Attorneys for Petitioner  
Southern Nevada Labor  
Management Cooperation  
Committee*

By: /s/ Darhyl Kerr  
An employee of Fisher & Phillips LLP

# EXHIBIT A



CLERK OF THE COURT

FISHER & PHILLIPS LLP  
MARK J. RICCIARDI, ESQ.  
Nevada Bar No. 3141  
ALLISON L. KHEEL, ESQ.  
Nevada Bar No. 12986  
300 South Fourth Street, Suite 1500  
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Telephone: (702) 252-3131  
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E-Mail: [mricciardi@fisherphillips.com](mailto:mricciardi@fisherphillips.com)  
E-Mail: [akheel@fisherphillips.com](mailto:akheel@fisherphillips.com)  
*Attorneys for Respondent*  
*Clark County Department of Aviation*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SOUTHERN NEVADA LABOR  
MANAGEMENT COOPERATION  
COMMITTEE, by and through its  
Trustees Terry Mayfield and Chris  
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,  
DEPARTMENT OF AVIATION, a  
political subdivision of the State of  
Nevada; and THE OFFICE OF THE  
LABOR COMMISSIONER,

Respondents.

Case No. A-18-781866-J

Department No.: 25

**MOTION TO STAY  
(1) ENFORCEMENT OF  
ORDER ON MOTION FOR  
RECONSIDERATION,  
(2) ENFORCEMENT OF  
ORDER GRANTING PETITION  
FOR JUDICIAL REVIEW, AND  
(3) ANY PROCEEDINGS  
BEFORE THE OFFICE OF THE  
LABOR COMMISSIONER ON  
AN ORDER SHORTENING  
TIME**

**Hearing Requested**

Respondent Clark County Department of Aviation ("DOA"), by and through its undersigned counsel, hereby moves this Court for an order staying the following: (1) enforcement of the June 25, 2021 Order ("Order") on Clark County Department of Aviation's Motion for Reconsideration; (2) enforcement of the February 4, 2020 ("February Order") Order granting the Southern Nevada Labor Management

Cooperation Committee ("LMCC")'s Petition for Judicial Review; and (3) any actions of the Nevada Office of the Labor Commissioner ("OLC") in connection with Case No. NLC-17-001486 pending resolution of the DOA's appeal of this matter to the Supreme Court of Nevada. The DOA further moves this Court, pursuant to EDCR 2.26, for an Order Shortening Time on which a hearing is to be held and a decision issued on the DOA's Motion for a Stay (hereinafter "Motion" or "Motion to Stay")

This Motion is made and based on the pleadings and papers on file herein, together with the following Memorandum of Points and Authorities.

Dated this 16th day of July, 2021.

Respectfully submitted,

FISHER & PHILLIPS LLP

/s/ Allison L. Kheel, Esq.

MARK J. RICCIARDI, ESQ.

ALLISON L. KHEEL, ESQ.

300 S. Fourth Street, Suite 1500

Las Vegas, NV 89101

Attorneys for Respondent Clark County

Department of Aviation

**ORDER SHORTENING TIME ON CLARK COUNTY DEPARTMENT OF  
AVIATION'S MOTION TO STAY (1) ENFORCEMENT OF ORDER ON  
MOTION FOR RECONSIDERATION, (2) ENFORCEMENT OF ORDER  
GRANTING PETITION FOR JUDICIAL REVIEW, AND (3) ANY  
PROCEEDINGS BEFORE THE OFFICE OF THE LABOR COMMISSIONER**

The Court having considered the Motion for Order Shortening Time on the Motion To Stay filed by DOA and finding that good cause exists to hear said Motion on an expedited basis, the Court otherwise being fully advised in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED that a hearing on the DOA's Motion to Stay Enforcement be held on July 22, 2021 at the hour of 9:00 a.m. before the Honorable District Court Judge Kathleen Delaney, Department 25 of the Regional Justice Center at 200 Lewis Avenue, Las Vegas, Nevada. This Order shall be served on the OLC



and LMCC promptly by personal or electronic service. The OLC and the LMCC will have until July 20, 2021 at 5:00 p.m. to file an opposition, ~~and the DOA will have until July \_\_\_\_\_, 2021 at 5:00 p.m. to file a reply brief.~~

DATED this \_\_\_\_\_ day of July, 2021.

Dated this 16th day of July, 2021

  
DISTRICT COURT JUDGE  
KATHLEEN DELANEY

Submitted by:  
FISHER & PHILLIPS LLP

**ED9 CAC E462 5F96**  
**Kathleen E. Delaney**  
**District Court Judge**

By /s/ Allison L. Kheel, Esq.  
Mark J. Ricciardi, Esq.  
Allison L. Kheel, Esq.  
300 South Fourth Street, Suite 1500  
Las Vegas, Nevada 89101  
*Attorneys for Respondent*  
*Clark County Department of Aviation*

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that the CLARK COUNTY DEPARTMENT OF AVIATION'S MOTION TO STAY (1) ENFORCEMENT OF ORDER ON MOTION FOR RECONSIDERATION, (2) ENFORCEMENT OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW, AND (3) ANY PROCEEDINGS BEFORE THE OFFICE OF THE LABOR COMMISSIONER ON AN ORDER SHORTENING will be heard before District Court Judge Kathleen Delaney in Department 25 on the \_\_\_\_\_ day of July, 2021 at the hour of \_\_\_\_\_ a.m./p.m.

DATED this \_\_\_\_\_ day of July, 2021.

FISHER & PHILLIPS LLP

/s/ Allison L. Kheel, Esq.  
MARK J. RICCIARDI, ESQ.  
ALLISON L. KHEEL, ESQ.  
300 S. Fourth Street, Suite 1500  
Las Vegas, NV 89101  
Attorneys for Respondent Clark County  
Department of Aviation

**MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO STAY ENFORCEMENT**

**I. ARGUMENT**

**A. Stay Pending Appeal Must Issue As A Matter of Right**

The February Order granting the Petition for Judicial Review is a final judgment of the District Court and immediately appealable under Nevada Rule of Appellate Procedure (“NRAP”) 3A(b)(1). Nevada Rule of Civil Procedure (“NRCP”) 62 authorizes the District Court to stay the enforcement of a judgment pending appeal.<sup>1</sup> NRAP 8(a)(1) requires any party aggrieved by a judgment or order of the District Court to first seek a stay from the issuing court pending appeal. A stay to preserve the *status quo* and prevent enforcement of the challenged final judgment is presumptively reasonable and must be granted as a matter of right. *Clark County Office of Coroner/Medical Examiner v. Las Vegas Review Journal*, 134 Nev. 174, 176-177 (2018). Under NRCP 62(e), when an appeal is taken by the State or by any county, city, town, or other political subdivision of the State, the requested stay of the operation or enforcement of the judgment should issue without requiring a bond, obligation, or other security from the appellant. *Id.* at 176-177. As the DOA is a local government entity and political subdivision of Clark County, the requested stay must issue as a matter of right without requiring the DOA to post a bond.

**B. The Court Should Hold A Hearing And Issue A Stay On An Order Shortening Time**

EDCR. 2.26 allows for motions to be heard on an expedited basis on a showing of “good cause.” As set forth in the Declaration of Allison L. Kheel, Esq. (hereinafter “Kheel Decl.” and attached hereto as **Exhibit C**), and based on the content thereof, good cause exists for hearing the Motion and issuing a stay on an expedited basis because allowing the OLC to hold a hearing and make a determination while the DOA is seeking review of the Decision of the District Court and arguing that the Decision inappropriately

---

<sup>1</sup> The DOA has filed its appeal in the alternative and seeks in as an alternative to the appeal a writ of prohibition to prohibit the District Court from exercising jurisdiction beyond its statutory authority on the petition for judicial review.

1 narrowed the authority of the OLC to fully consider this matter on remand would  
2 necessarily result in prejudice to the DOA and the potential for simultaneous litigation  
3 and conflicting orders. In the interest of judicial efficiency, the Court should hear the  
4 Motion for a Stay on an expedited basis so the decision to grant or deny a stay can be  
5 decided prior to the prehearing conference presently set for July 26, 2021.

6 Contemporaneous with submitting this Motion, the DOA has filed its Notice of  
7 Appeal seeking review of the District Court's June 25, 2021 Order on Clark County  
8 Department of Aviation's Motion for Reconsideration (hereinafter the "Order") for abuse  
9 of discretion and manifest disregard of the law<sup>2</sup> and of the substantial evidence in the  
10 Record. *See* Order attached hereto as **Exhibit A**. The Order purports to clarify and  
11 modify its prior Order entered February 4, 2020 ("February Order") (the "Order" and the  
12 "February Order" collectively referred to as the "Decision") to address issues identified  
13 by the Supreme Court. *See* February Order attached as **Exhibit B, Ex. A** at p. 2:6-8.

14 The DOA's Appeal argues that the District Court exceeded its authority by  
15 limiting the Labor Commissioner's authority and scope of review on remand to  
16 "ministerial" determinations of "the value of wages due." *See Ex. B* at pp. 2:26-3:2.  
17 The Appeal also argues that the Decision reached the conclusion that the project was "not  
18 maintenance" without *any* evidence in the Record actually describing the work; and even  
19 if there had been a complete evidentiary record (which there was not), the District Court  
20 still exceeded its statutory authority on a Petition for Judicial Review by making  
21 additional findings beyond the sole "public money" findings set forth in the final agency  
22 determination of the OLC. *See Revert v. Ray*, 95 Nev. 782, 603 P.2d 262 (Nev. 1979).  
23 For these reasons, the DOA's Appeal seeks that the District Court's Decision be reversed  
24 and set aside, and the matter remanded back to the Labor Commissioner to hold a full  
25 and complete (unlimited) hearing and make a determination regarding whether the  
26 project was "maintenance" and, thus, exempt from prevailing wage.

27 <sup>2</sup> The DOA reserves its right to assert all errors in its appeal to the Nevada Supreme Court, notice  
28 of which is filed concurrently herewith.

1           However, in accordance with the Decision, **the OLC has scheduled a pre-**  
2 **hearing conference for July 26, 2021 at 11:00 a.m.** See Kheel Decl., and Notice of  
3 Prehearing Conference from the OLC (**Exhibit 2 to Ex. C.**) Consequently, the DOA  
4 will be unfairly prejudiced if the OLC proceeds to hold a hearing while the Decision (and  
5 the question of the proper scope of the Labor Commissioner's authority on remand) is  
6 pending appeal and could be modified or reversed. A stay of enforcement of the Decision  
7 is necessary to preserve the *status quo* and avoid irreparable harm to the DOA while its  
8 Appeal is pending resolution.

9           Enforcement of the Decision while the Appeal is pending will expose the DOA  
10 to litigation in multiple forums and create the potential for conflicting decisions.  
11 Enforcement also further violates the automatic stay presumption in NRCP 62(a)(1) that  
12 no enforcement action will occur until 30 days have passed after service of written notice  
13 of the entry of the judgment (in this case the Decision).<sup>3</sup> NRCP 62(a)(1). As  
14 communications with the OLC have indicated that the OLC plans to proceed with the  
15 hearing absent a court order staying this matter, good cause exists to hear this on an  
16 expedited basis. See Kheel Decl., Ex. C at ¶¶ 7-10, and **Exhibit 1 to Ex. C.**

17           The Court must grant a Stay of Enforcement of the Decision as a matter of right  
18 in accordance with NRS § 233B.140, NRCP 62 and NRAP 8, and thus good cause exists  
19 to hear this Motion on an expedited basis to avoid unfair prejudice to the DOA while its  
20 Appeal is pending before the Supreme Court.

## 21 **II. CONCLUSION**

22           For the reasons set forth above, the Court should grant the DOA's Motion to Stay  
23 the Enforcement of the District Court's Decision on an order shortening time while the  
24 DOA's Appeal is pending. The DOA urges the Court to immediately grant a stay of  
25 ///

27 <sup>3</sup> The Notice of Entry of the Order is dated June 28, 2021, meaning no Enforcement should occur  
28 prior to Wednesday, July 28, 2021.

1 enforcement of the Decision and all proceedings before the OLC pending appeal, to  
2 immediately docket the notice of appeal and forward the record to the Nevada Supreme  
3 Court.

4 Dated this 16<sup>th</sup> day of July, 2021.

5 FISHER & PHILLIPS LLP

6 /s/ Allison L. Kheel, Esq.

7 MARK J. RICCIARDI, ESQ.

8 ALLISON L. KHEEL, ESQ.

9 300 South Fourth Street, Suite 1500

10 Las Vegas, Nevada 89101

11 Attorneys for Respondent

12 Clark County Department of Aviation

# EXHIBIT A



1 **NEOJ**  
2 **CHRISTENSEN JAMES & MARTIN**  
3 EVAN L. JAMES, ESQ.  
4 Nevada Bar No. 07760  
5 7440 W. Sahara Avenue  
6 Las Vegas, Nevada 89117  
7 Tel.: (702) 255-1718  
8 Facsimile: (702) 255-0871  
9 Email: [elj@cjmlv.com](mailto:elj@cjmlv.com)  
10 *Attorneys for Petitioner*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 SOUTHERN NEVADA LABOR  
14 MANAGEMENT COOPERATION  
15 COMMITTEE, by and through its  
16 Trustees Terry Mayfield and Chris  
17 Christophersen,

18 Petitioner,

19 vs.

20 CLARK COUNTY NEVADA,  
21 DEPARTMENT OF AVIATION, a  
22 political subdivision of the State of  
23 Nevada; and THE OFFICE OF THE  
24 LABOR COMMISSIONER,

25 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**NOTICE OF ENTRY OF ORDER**

26 Please take notice that the attached order was entered on June 25, 2021.

27 Dated June 28, 2021.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James

Evan L. James, Esq.  
Nevada Bar No. 7760  
7440 W. Sahara Avenue  
Las Vegas, NV 89117  
Tel.: (702) 255-1718  
Fax: (702) 255-0871  
Attorneys for Petitioner

CHRISTENSEN JAMES & MARTIN, CHTD.  
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117  
PH: (702) 255-1718 § FAX: (702) 255-0871

CERTIFICATE OF SERVICE

On the date of filing with the Court, I caused a true and correct copy of the foregoing Notice of Entry of Order to be served as follows:

☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

Natalie Saville nat@cjmlv.com

Allison L. Kheel, Esq. akheel@fisherphillips.com

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By: /s/ Natalie Saville

Natalie Saville



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*Attorneys for Petitioner*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SOUTHERN NEVADA LABOR  
MANAGEMENT COOPERATION  
COMMITTEE, by and through its  
Trustees Terry Mayfield and Chris  
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,  
DEPARTMENT OF AVIATION, a  
political subdivision of the State of  
Nevada; and THE OFFICE OF THE  
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**ORDER ON CLARK COUNTY  
DEPARTMENT OF AVIATION'S  
MOTION FOR RECONSIDERATION**

Respondent Clark County Department of Aviation's ("DOA") Motion for Reconsideration ("Motion") came before the Court on March 31, 2020. ~~The hearing was held in accordance Administrative Order 20-01 of the Eighth Judicial District Court.~~ At (KED) that time, all parties believed the Respondents' appeal to the Nevada Supreme Court divested the Court of jurisdiction. As such, the Court elected to treat the Motion as one for clarification. The Nevada Supreme Court disagreed and entered an order to show cause on June 5, 2020, compelling DOA to show cause why the appeal should not be dismissed for lack of jurisdiction. The Supreme Court identified the following four substantive allegations asserted by the DOA in its Motion: that the "district court order erroneously

1 retained jurisdiction, contained an improper conclusion of law regarding whether the  
2 project constituted maintenance, incorrectly made new factual findings, and improperly  
3 limited the manner in which the administrative agency makes its determination.”

4 The Court hereby enters its order on the Motion. The Motion must be denied as  
5 one for reconsideration under EDCR 2.24 because it fails to present new evidence or  
6 identify misapprehension of law. Nevertheless, the Court takes this opportunity to clarify  
7 its prior Order entered February 4, 2020 (“February Order”) and address the issues  
8 identified by the Supreme Court.

9 Retention of jurisdiction.

10 The Court clarifies that paragraph 7 on page 8 of the February Order was intended  
11 to allow the Court to enforce and interpret the February Order, *See Travelers Indem. Co.*  
12 *v. Bailey*, 129 S.Ct. 2195, 2205, 557 U.S. 137, 151 (2009), and not to interfere with the  
13 Labor Commissioner in the performance of her duties. The Labor Commissioner is free  
14 to perform her duties, but ~~the Labor Commissioner and the other parties are not free~~  
~~she nor the other parties are free to disobey this Court’s Order.~~ (KED)

15 Improper conclusion of law regarding maintenance.

16 The administrative record and argument presented to the Court by the DOA  
17 indicated that the Labor Commissioner treated the contract at issue as a maintenance  
18 contract paid for with repair and maintenance funds. The Court disagreed ~~and entered its~~, finding that  
19 ~~the contract at issue is not a maintenance contract, which findings are~~  
~~findings consistent with the administrative record, which also addressed the presented~~  
20 ~~argument that the contract at issue was a maintenance contract.~~  
(KED)

21 Incorrectly made new factual findings.

22 The Court made no new factual findings. The Court’s findings were based upon  
23 the administrative record as presented and argued to the Court.

24 Improper limitation on agency’s decision making.

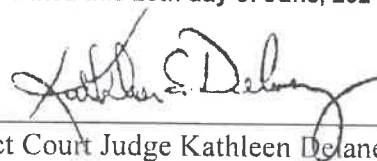
25 In remanding the matter to the Labor Commissioner, the Court intends for the  
26 Labor Commissioner to use applicable prevailing wage rates to determine the value of  
27

1 wages due and ensure that the unpaid wages are properly paid. The Court considers these  
2 tasks to be ministerial in nature.

3 In response to the concern raised by the Labor Commissioner regarding the  
4 possible discovery of additional work, the Court recognized that the Labor Commissioner  
5 could encounter a situation where work was performed on the project that fell outside the  
6 flooring contract. To be clear, if wages were earned for work performed on the project  
7 pursuant to the flooring contract and its scope of work, those wages are to be paid at the  
8 applicable prevailing wage rate because they were earned pursuant to a public works  
9 construction contract. However, if the Labor Commissioner discovers that certain work  
10 performed on the project fell outside the scope of work described in the flooring contract,  
11 the Labor Commissioner may evaluate that work as she sees fit because it is not subject  
12 to the contract at issue or these proceedings.

13 The February Order and this Order shall be construed together for purposes of  
14 meeting the Court's stated intent and directives. **Dated this 25th day of June, 2021**

15 ~~Dated: September \_\_\_\_\_, 2020.~~



District Court Judge Kathleen Delaney

18 Submitted by:

19 CHRISTENSEN JAMES & MARTIN

20 By: /s/ Evan L. James

21 Evan L. James, Esq.

22 Nevada Bar No. 006735

23 7440 W. Sahara Avenue

24 Las Vegas, NV 89117

25 Tel.: (702) 255-1718

26 elj@cjmlv.com

27 Attorneys for Petitioners

**369 E30 22B6 7207**  
**Kathleen E. Delaney**  
**District Court Judge**

1 CSERV

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Southern Nevada Labor  
7 Management Cooperation  
8 Committee, Petitioner(s)

CASE NO: A-18-781866-J

DEPT. NO. Department 25

9 vs.

10 Clark County Nevada  
11 Department of Aviation,  
12 Respondent(s)

13 **AUTOMATED CERTIFICATE OF SERVICE**

14 This automated certificate of service was generated by the Eighth Judicial District  
15 Court. The foregoing Order was served via the court's electronic eFile system to all  
16 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 6/25/2021

17 Allison Kheel	akheel@fisherphillips.com
18 Natalie Saville	nat@cjmlv.com
19 Evan James	elj@cjmlv.com
20 Andrea Nichols	anichols@ag.nv.gov
21 Sarah Griffin	sgriffin@fisherphillips.com
22 Melissa Flatley	mflatley@ag.nv.gov

23  
24  
25  
26  
27  
28

# **EXHIBIT B**



1 **NEOJ**  
2 **CHRISTENSEN JAMES & MARTIN**  
3 **EVAN L. JAMES, ESQ.**  
4 Nevada Bar No. 07760  
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6 Las Vegas, Nevada 89117  
7 Tel.: (702) 255-1718  
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9 Email: [elj@cjmlv.com](mailto:elj@cjmlv.com)  
10 *Attorneys for Petitioner*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 **SOUTHERN NEVADA LABOR**  
14 **MANAGEMENT COOPERATION**  
15 **COMMITTEE, by and through its**  
16 **Trustees Terry Mayfield and Chris**  
17 **Christophersen,**

18 **Petitioner,**

19 **vs.**

20 **CLARK COUNTY NEVADA,**  
21 **DEPARTMENT OF AVIATION, a**  
22 **political subdivision of the State of**  
23 **Nevada; and THE OFFICE OF THE**  
24 **LABOR COMMISSIONER,**

25 **Respondents.**

Case No.: A-18-781866-J

Dept. No.: 25

**NOTICE OF ENTRY OF ORDER**

26 Please take notice that the attached order was entered on February 4, 2020.

27 DATED this 7th day of February 2020.

**CHRISTENSEN JAMES & MARTIN**

By: /s/ Evan L. James

Evan L. James, Esq.

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1 **CERTIFICATE OF SERVICE**

2 On February 7, 2020, I caused a true and correct copy of the foregoing notice to  
3 be served as follows:

4 ☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the  
5 Eighth Judicial District Court of the State of Nevada, the document was electronically  
6 served on all parties registered in the case through the E-Filing System.

7 Mark J. Ricciardi, Esq. mricciardi@fisherphillips.com

8 Holly E. Walker, Esq. hwalker@fisherphillips.com

9 Andrea Nichols, Esq. anichols@ag.nv.gov

10 CHRISTENSEN JAMES & MARTIN

11 By: /s/ Natalie Saville  
12 Natalie Saville



FFCO  
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SOUTHERN NEVADA LABOR  
MANAGEMENT COOPERATION  
COMMITTEE, by and through its  
Trustees Terry Mayfield and Chris  
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Petitioner,

vs.

CLARK COUNTY NEVADA,  
DEPARTMENT OF AVIATION, a  
political subdivision of the State of  
Nevada; and THE OFFICE OF THE  
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER GRANTING  
PETITION FOR JUDICIAL REVIEW**

The Court hereby enters findings of fact and conclusions of law in granting the  
Petition for Judicial Review. The Court remands the matter to the Nevada State Labor  
Commissioner for further proceedings consistent with this Court's findings, conclusions  
and order.

**FINDINGS OF FACT**

1. The Clark County Nevada Department of Aviation (hereinafter "DOA") operates  
the McCarran International Airport ("Airport") in Clark County, Nevada.
2. The DOA is part of the Clark County, Nevada government.

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NOV 20 2019



1 3. The Airport is funded by two primary sources. Revenue from Airport operations  
2 such as charges to airlines and lease payments from vendor operations is one source of  
3 income. Revenue from grants from the United States Government Federal Aviation  
4 Administration ("FAA") is another source of income. However, to receive revenue from  
5 the FAA, the DOA is contractually required to be financially self-sustaining and not  
6 dependent upon revenue from government sources separate from its own operations.

7 4. The DOA has operated the Airport as a financially self-sustaining operation for  
8 many years, consistent with its contractual obligations with the FAA.

9 5. The DOA, in 2016, published an Invitation to Bid, Bid No. 17-604273, for the  
10 removal and replacement of 12,000 square feet (approximately the area of two football  
11 fields) of carpet and 5,000 linear feet (approximately the distance of one mile) of base  
12 cove (collectively referred to herein as "Project").

13 6. The DOA advertised and proceeded with the Project pursuant Nevada's Local  
14 Governments Purchasing Statute, NRS 332 et seq. and specifically NRS 332.065.

15 7. The Southern Nevada Labor Management Cooperation Committee ("LMCC")  
16 exists pursuant to 29 U.S.C. §§ 175a(a) and 186(c)(6) and a collective bargaining  
17 agreement between the International Union of Painters and Allied Trades Local Union  
18 No. 1512 and employers engaged in the floorcovering industry.

19 8. LMCC was created and is governed by an Agreement and Declaration of Trust  
20 ("Trust Agreement") and is "established for the purpose of improving labor management  
21 relationships, job security, organizational effectiveness, enhancing economic  
22 development or involving workers in decisions affecting their jobs including improving  
23 communication with respect to subjects of mutual interest and concern."

24 9. LMCC also exists pursuant to NRS § 613.230 for the purpose of "dealing with  
25 employers concerning grievances, labor disputes, wages, rates of pay, hours of  
26 employment, or other conditions of employment."  
27

1 10. To achieve its purposes, the LMCC works to ensure that labor laws are followed,  
2 including prevailing wage laws, which laws and associated activity are a matter of public  
3 concern and public policy.

4 11. On April 28, 2017, the LMCC filed a complaint with the State of Nevada Office of  
5 the Labor Commissioner ("OLC") alleging that the DOA had violated numerous labor  
6 laws with regard to the Project, including violations of NRS 338 et seq.

7 12. On May 2, 2017, the OLC issued a notice to the DOA of the LMCC's complaint.

8 13. The DOA answered the complaint on May 23, 2017, admitting that it is a political  
9 subdivision of the state of Nevada, but generally denying the complaint's allegations due  
10 lack of information.

11 14. The OLC proceeded to conduct an investigation of the matter and requested and  
12 received documents from the DOA.

13 15. The OLC did not hold a hearing, but certain investigatory meetings were held,  
14 including one on January 10, 2018.

15 16. On February 12, 2018, the DOA sent a letter to the OLC wherein it asserted that  
16 the Project was not a public work subject to NRS 338. The DOA further asserted that the  
17 Project work constituted maintenance by replacing up to 12,000 square feet of carpet and  
18 5,000 feet of base cove over the course of a year and that none of the work is paid for  
19 with public money because the Airport is a financially self-sustaining operation. The  
20 DOA further asserted that the carpet and base cove replacement was performed in smaller  
21 sections and so as not to interfere with Airport operations.

22 17. On March 12, 2018, the DOA sent a letter to the OLC asserting that the Project  
23 constituted normal maintenance and further asserting that the Project did not constitute  
24 public funds as defined by NRS 338.010(17) because it was not "financed in whole or in  
25 part from public money."  
26  
27

1 18. On June 4, 2017, the DOA, through counsel, sent an email to the OLC further  
2 asserting that the Project is not subject to NRS 338 et seq. because the Airport is self-  
3 funded.

4 19. On June 13, 2017, the OLC requested documents from the DOA confirming the  
5 sources of the Airport's revenue.

6 20. On June 27, 2017, the DOA responded, through counsel, that the Airport's 2018  
7 fiscal year budget consisted of \$556,500,000 and that \$23,703,000 of that money was  
8 budgeted for what the DOA self characterizes as maintenance.

9 21. On August 30, 2017, the OLC issued a determination that acknowledged the DOA's  
10 argument that the Project was maintenance. The OLC accepted the DOA's representation  
11 that "[n]one of the repairs and maintenance funds are financed in any part through taxes  
12 or public money."

13 22. The Special Conditions section of the Project's bid documents state that "[f]looring,  
14 adhesive and base cove are OWNER supplied, successful bidder installed."

15 23. The DOA separated Project material costs from Project labor costs.

16 24. The DOA intended for the Project to be completed in smaller sections such as  
17 individual rooms or smaller areas.

18 25. The DOA did not bid the Project pursuant to NRS 338 requirements.

19 26. At oral argument, counsel for the DOA questioned whether or not the LMCC had  
20 a right to bring the original complaint filed with the Labor Commissioner.

21 CONCLUSION OF LAW

22 1. The DOA, as a political subdivision of the State of Nevada, is subject to all the laws  
23 of the State of Nevada. The DOA cannot, whether intentionally or unintentionally,  
24 selectively choose what laws it will or will not follow.

25 2. The Airport, its operations, and its funding, consisting of hundreds of millions of  
26 dollars, are a matters of public concern because the Airport services all of southern  
27 Nevada and its presence and use has a financial impact on the entire State of Nevada.

1 3. Governmental compliance with established law is a matter of public concern.  
2 4. Moreover, prevailing wage laws are a matter of public policy and their application  
3 and impact are a matter of public concern because they have an economic impact on the  
4 community and affect the community by impacting the construction industry.  
5 5. Because the LMCC is established and exists under both federal and state law to  
6 address matters of public concern and public policy within the construction industry, it  
7 has a direct interest in ensuring that laws within the construction industry are adhered to  
8 and followed, giving the LMCC standing to challenge the DOA's conduct in regard to  
9 NRS 338 et seq. and the payment of prevailing wages.  
10 6. There is no definition of "public money" in NRS 338 et seq. The Court finds the  
11 reasoning and arguments regarding public money as set forth in the LMCC's briefing  
12 persuasive, being consistent with statute and case law.  
13 7. The DOA's contractual relationship with the FAA does not excuse compliance with  
14 Nevada law. Contractual relationships under 49 U.S.C. § 47101, upon which the DOA  
15 relies, for the purposes of receiving grants are voluntary. There is no indication in 49  
16 U.S.C. § 47101 that the United States Congress intended to preempt state laws of  
17 generally applicability. Nevertheless, allowing a party, such as the DOA, to contract  
18 around state law would create the unchecked ability to nullify Nevada law where there  
19 was no congressional intent to do so. *See California Trucking Association v. Su*, 903 F.3d  
20 953, 963 (9th Cir. 2018). In addition, the DOA's obligations under 49 U.S.C. § 47101(a)  
21 specifically require that "the [A]irport will be available for public use...." The DOA is  
22 therefore legally obligated to operate the Airport for the benefit of the public regardless  
23 of the source of its funding. The Court concludes that contractual obligations that the  
24 Airport be self-sustaining do not nullify Nevada law. The Court further concludes that  
25 because the DOA is legally obligated to operate the Airport for a public purpose the  
26 money it uses for Airport operations is intended for a public purpose.  
27

1 8. There is no definition of “public money” in NRS 338 et seq. The Court must  
2 therefore look elsewhere for an appropriate definition. The Nevada Supreme Court  
3 addressed the issue of “public money” in the case of *Bombardier Transportation*  
4 (*Holdings*) *USA, Inc. v. Nevada Labor Commissioner*, 433 P.3d 248, 251 (Nev., 2019).<sup>1</sup>  
5 The DOA was a party to the *Bombardier* case and made the same public money argument  
6 that it now makes to this Court. The DOA argued to the Nevada Supreme Court that  
7 money from its “normal operating funds” is not subject to Nevada’s prevailing wage laws  
8 because the Airport operates “without the County’s general tax fund revenue.” The  
9 Nevada Supreme Court rejected that argument, noting that “Bombardier’s arguments are  
10 belied by the plain language of NRS 338.010(15) ... the financing language in the statute  
11 does not require a particular type of funding, only that the project be financed by public  
12 money, which the contract was.” *Bombardier* at 248 n. 3. The Court concludes that  
13 pursuant to *Bombardier*, the Airport’s funds, the funding of which is common between  
14 the *Bombardier* case and the Project, are in fact public money within the meaning of NRS  
15 338.010(17).

16 9. The Court also concludes that the funds by which the Airport operates are in fact  
17 public money even in the absence of the *Bombardier* holding. The Nevada Supreme  
18 Court provided guidance of what constitutes public money in the case of *Carson-Tahoe*  
19 *Hosp. v. Building & Const. Trades Council of Northern Nevada*, 128 P.3d 1065, 1068,  
20 122 Nev. 218, 222 (2006) (“For example, a private project constructed to a public  
21 agency’s specifications as part of an arrangement for the project’s eventual purchase by  
22 the public agency would be a public work.”) The Airport is owned and operated by a  
23 public entity. The Airport is for public use. The money by which the Airport operates,  
24 regardless of source, is therefore public and within the meaning of “public money” as  
25 used in NRS 338 et seq.

26  
27 <sup>1</sup> The OLC did not have the benefit of the *Bombardier* decision when issuing her  
determination because the opinion was issued after the determination.

1 10. Subject to the remand order below, the Court concludes that the Project did not  
2 constitute maintenance. The DOA's unilateral separation of the Project into smaller  
3 construction units and the separation of material costs and labor costs violated Nevada  
4 law. "A unit of the project must not be separated from the total project, even if that unit  
5 is to be completed at a later time...." NRS 338.080(3). Replacing 12,000 square feet of  
6 carpet and 5,000 linear feet of base cove involves a significant amount of work and is not  
7 reflective of the type of work constituting maintenance as articulated in *Bombardier*. The  
8 Nevada Supreme Court articulated maintenance as involving "such activities like  
9 window washing, janitorial and housekeeping services, [and] fixing broken windows."  
10 *Bombardier* at 255. The Court concludes that the OLC's accepting the DOA's assertion  
11 that the Project constituted maintenance is contrary to fact and law. The Project was bid  
12 with the potential of replacing carpeting that would cover approximately two football  
13 fields and base cove that extended for approximately a mile. The intent of the bid and  
14 Project execution was clearly an effort to manage costs. The DOA's assertion that it may  
15 or may not have replaced 12,000 feet of carpet and 5,000 linear feet of base cove is  
16 inconsequential because the intent of the bid and the Project allowed for a large volume  
17 of repair work. Accepting an argument allowing the DOA to incrementally finish the  
18 Project's scope of work "would run afoul of NRS Chapter 338's purpose and would allow  
19 parties to insulate themselves from the statutes' applicability by simply including repair  
20 work in a maintenance contract." See *Bombardier* at 254. The law does not allow the  
21 DOA to bid large repair projects to be completed through smaller projects purported to  
22 qualify as "maintenance."

23 11. The Court concludes that the OLC's determination was arbitrary, capricious and  
24 inconsistent with fact.

25 12. Although the bid and intent of the Project violated Nevada law, the *Bombardier*  
26 Court holding suggests that the OLC should conduct a post construction analysis to  
27



1 determine what, if any, of the completed work actually constituted maintenance and what  
2 constituted repair, being subject to prevailing wage rates.

3 ORDER

4 1. The Court Orders that matters set forth in its Conclusions of Law may also be  
5 considered findings of fact to the extent necessary to maintain the coherence of its  
6 conclusions.

7 2. The LMCC's Petition for Judicial Review is granted. The OLC's Determination is  
8 hereby vacated and reversed as arbitrary, capricious and inconsistent with fact.

9 3. The Court rules and Orders that the money received by the Airport is public money  
10 within the meaning of NRS 338 and that the Project did not constitute maintenance within  
11 the meaning of NRS 338 et seq.

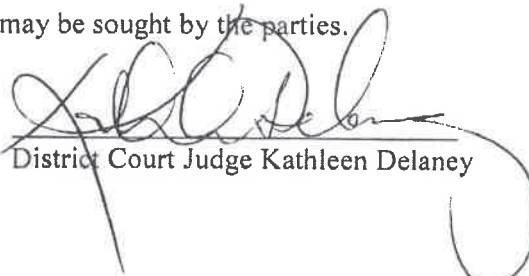
12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of  
13 determining the amount, if any, of the completed work that constitutes maintenance and  
14 to whom and how much additional wages should be paid for work subject to NRS 338 et  
15 seq.'s prevailing wage requirements. In making any such determinations, the OLC must  
16 not separate the Project into smaller units as doing so is in violation of Nevada law.

17 5. This Order does not preclude the OLC from issuing administrative fines and similar  
18 assessments pursuant to her statutory and regulatory authority.

19 6. The Court further Orders that the LMCC must be included in the proceedings on  
20 remand as a proper and interested party with appropriate standing to participate.

21 7. The Court further Orders that it retains jurisdiction over any subsequent  
22 proceedings that may be necessary for the collection of information, the enforcement of  
23 this Order or for further review, if any, as may be sought by the parties.

24 Dated: January 28, 2020.

25   
26 District Court Judge Kathleen Delaney  
27

1 Submitted by:  
2 CHRISTENSEN JAMES & MARTIN  
3 By: /s/ Evan L. James  
4 Evan L. James, Esq.  
5 Nevada Bar No. 006735  
6 7440 W. Sahara Avenue  
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8 Tel.: (702) 255-1718  
9 elj@cjmlv.com  
10 *Attorneys for Petitioners*  
11 Reviewed as to form and content:  
12 FISHER & PHILLIPS, LLC  
13 By: Refused to sign  
14 Holly E. Walker, Esq.  
15 Nevada Bar No. 14295  
16 300 South Fourth Street, Suite 1500  
17 Las Vegas, NV 89101  
18 hwalker@fisherphillips.com  
19 *Attorneys for Respondent Clark*  
20 *County Department of Aviation*  
21 ATTORNEY GENERAL AARON FORD  
22 By: /s/ Andrea Nichols (email approval given)  
23 Andrea Nichols, Esq.  
24 Senior Deputy Attorney General,  
25 Nevada Bar No. 6436  
26 Office of the Attorney General  
27 100 N. Carson Nevada 89701  
Carson City, NV 89701  
Tel.: (775) 684-1218  
anichols@ag.nv.gov  
*Attorneys for Respondent Office*  
*of the Labor Commissioner*



# EXHIBIT C

**DECLARATION OF ALLISON L. KHEEL, ESQ. IN SUPPORT OF CLARK COUNTY DEPARTMENT OF AVIATION'S MOTION TO STAY (1) ENFORCEMENT OF ORDER ON MOTION FOR RECONSIDERATION, (2) ENFORCEMENT OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW, AND (3) ANY PROCEEDINGS BEFORE THE OFFICE OF THE LABOR COMMISSIONER ON AN ORDER SHORTENING TIME**

Allison L. Kheel, Esq. states as follows:

1. I am an attorney representing the Appellant (Respondent in the District Court), Clark County Department of Aviation ("DOA") in this proceeding. I have personal knowledge of, and am competent to testify to, the facts set forth herein. I make this Declaration in Support of DOA's Motion To Stay (1) Enforcement Of Order On Motion For Reconsideration, (2) Enforcement Of Order Granting Petition For Judicial Review, And (3) Any Proceedings Before The Office Of The Labor Commissioner On An Order Shortening ("Motion" or "Motion to Stay").

2. Attached as **Exhibit A** to the Motion is a true and correct copy of the Notice of Entry of Order Dated June 28, 2021 on the District Court's June 25, 2021 Order on Clark County Department of Aviation's Motion for Reconsideration (hereinafter the "Order").

3. The Order purports to clarify and modify its findings as set forth in its prior Order Granting the LMCC's Petition for Judicial Review entered February 4, 2020 ("February Order").

4. Attached as **Exhibit B** to the Motion is a true and correct copy of the Notice of Entry of Order Dated February 7, 2020, on the District Court's February Order dated February 4, 2020.

5. The Order and the February Order must be read together and are collectively referred to in the Motion as the "Decision."

6. On June 29, 2021, immediately following the District Court's Order, the Nevada Office of the Labor Commissioner ("OLC") reached out to the parties in this case to schedule a pre-hearing conference in Case No. NLC-17-001486.

Executed on this 16<sup>th</sup> day of July, 2021.

Allison L. Kheel, Esq.

**EXHIBIT 1**  
**to**  
**EXHIBIT C**

## Kheel, Allison

---

**From:** Shannon Chambers <shannonchambers@labor.nv.gov>  
**Sent:** Wednesday, July 14, 2021 7:51 AM  
**To:** Evan James; Kheel, Allison  
**Cc:** Walker, Holly; Dylan Lawter; Ricciardi, Mark; Kerr, Darhyl  
**Subject:** Re: So. NV Labor v Clark County Aviation

Good morning,

A pre-hearing conference will be set for July 26, 2021, at 11:00 a.m. A notice will be sent out with the details and call-in information.

Thank you.

---

**From:** Evan James <elj@cjmlv.com>  
**Sent:** Monday, July 12, 2021 11:37 AM  
**To:** Kheel, Allison <akheel@fisherphillips.com>; Shannon Chambers <shannonchambers@labor.nv.gov>  
**Cc:** Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>  
**Subject:** Re: So. NV Labor v Clark County Aviation

Dear Commissioner Chambers,

At present, there is no stay in the litigation. Thus, it is incumbent upon all involved to comply with the Court's Order.

The matter to be resolved before your office is the value of the unpaid wages to the workers and the payment of wages to the underpaid workers. This is a simple calculation and collection of money owed. Unfortunately, the DOA has refused to provide payroll and work records that will allow for the calculations to be made. Given the passage of time, the LMCC is concerned that records and workers will be lost and that workers will not be paid. It is the LMCC's position that records need to be collected, workers identified, and unpaid wage calculations made as soon as possible and regardless of any appeal that the DOA may make.

Thank you,

Evan L. James, Esq.  
Christensen James & Martin  
7440 W Sahara Ave.  
Las Vegas, Nevada 89117  
(702) 255-1718

---

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---

**From:** Kheel, Allison <akheel@fisherphillips.com>

**Sent:** Friday, July 9, 2021 4:49 PM

**To:** Shannon Chambers <shannonchambers@labor.nv.gov>

**Cc:** Evan James <elj@cjmlv.com>; Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>; Kheel, Allison <akheel@fisherphillips.com>

**Subject:** Re: So. NV Labor v Clark County Aviation

Dear Ms. Chambers,

The Department of Aviation will be appealing this matter and will be seeking a stay of any proceedings before the Labor Commissioner as part of that Appeal as the District Court did not have the authority to limit the Labor Commissioner's power to hold a full hearing and make determinations regarding the type, designation and scope of the work in this matter.

Thus, it is the DOA's position that holding any kind of prehearing conference would be premature until the Supreme Court can rule on the Appeal and Stay.

If you have any questions please feel free to contact me directly at 702-467-1066.

Very Truly Yours,  
Allison Kheel

Sent from my iPhone

On Jul 9, 2021, at 1:58 PM, Shannon Chambers <shannonchambers@labor.nv.gov> wrote:

Good morning Mr. Ricciardi,

Please see the email below along with the original email string. If you could please let me know what attorney is assigned to this matter for Clark County Aviation and dates of availability for a pre-hearing.

Good morning Ms. Kheel,

Could you please provide your availability for a pre-hearing conference in this matter by close of business today?

Thank you.

Shannon M. Chambers  
Labor Commissioner  
State of Nevada

---

**From:** Evan James <elj@cjmlv.com>

**Sent:** Friday, July 9, 2021 10:47 AM

**To:** Shannon Chambers <shannonchambers@labor.nv.gov>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>  
**Cc:** Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>  
**Subject:** Re: So. NV Labor v Clark County Aviation

Commissioner Chambers,

You may wish to reach out to Mark Ricciardi who practices with Allison. He is copied on this email.

Thank you,

Evan L. James, Esq.  
Christensen James & Martin  
7440 W Sahara Ave.  
Las Vegas, Nevada 89117  
(702) 255-1718

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---

**From:** Shannon Chambers <shannonchambers@labor.nv.gov>  
**Sent:** Friday, July 9, 2021 8:12 AM  
**To:** Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>  
**Cc:** Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>  
**Subject:** Re: So. NV Labor v Clark County Aviation

Good morning Ms. Kheel,

Could you please provide your availability for a pre-hearing conference in this matter by close of business today?

Thank you.

Shannon M. Chambers  
Labor Commissioner  
State of Nevada

---

**From:** Shannon Chambers <shannonchambers@labor.nv.gov>  
**Sent:** Tuesday, June 29, 2021 12:44 PM  
**To:** Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>  
**Cc:** Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>  
**Subject:** Re: So. NV Labor v Clark County Aviation

Good afternoon,

Thank you, Mr. James.

Will wait to hear back from Ms. Kheel.

---

**From:** Evan James <elj@cjmlv.com>  
**Sent:** Tuesday, June 29, 2021 12:22 PM  
**To:** Shannon Chambers <shannonchambers@labor.nv.gov>; hwalker@fisherphillips.com  
<hwalker@fisherphillips.com>  
**Cc:** Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>  
**Subject:** Re: So. NV Labor v Clark County Aviation

I believe Ms. Walker is no longer employed at Fisher Phillips. Allison Kheel is the attorney now handling the case for the Department of Aviation. She is copied on this email.

My current availability for July is as follows:

Thursday, 8th all day.  
Friday, 9th all day.

Tuesday, 13th after 2:00 p.m.  
Wednesday, 14th all day.  
Thursday, 15th, after 1:00 p.m.  
Friday, 16th before 12:00 p.m.

Monday, 19th after 1:00 p.m.  
Tuesday, 20th all day.  
Thursday, 22nd all day.  
Friday, 23rd all day.

Monday, 26th all day.  
Tuesday, 27th all day.  
Wednesday, 28th all day.

NAC 307.300(7) requires the parties to make a good faith effort to settle the matter at the prehearing conference. The LMCC is a labor organization governed by trustees. One group of trustees represents employers. Another group of trustees represents the unions. It is impermissible for a single trustee to make a unilateral determination. As such, an employer trustee and a labor trustee must be designated to attend the conference as representatives of the LMCC. If agreeable to you Commissioner Chambers and to Allison, I would like three dates in July that the conference may be held on and then present those dates to the clients so that representatives may be selected to attend.

Also, if settlement is really going to be discussed, we will need to have a valuation of unpaid wages. To date, I am unaware of any wage documents being supplied by the Department of Aviation despite the Office of the Labor Commissioner's request to produce them. See the August 18, 2017 letter that is attached to this email.



Best wishes,

Evan L. James, Esq.  
Christensen James & Martin  
7440 W Sahara Ave.  
Las Vegas, Nevada 89117  
(702) 255-1718

---

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---

**From:** Shannon Chambers <shannonchambers@labor.nv.gov>  
**Sent:** Tuesday, June 29, 2021 7:07 AM  
**To:** Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>  
**Subject:** So. NV Labor v Clark County Aviation

Good morning Mr. James and Ms. Walker,

Based on the most recent orders (attached), the Labor Commissioner would like to set up a pre-hearing conference with the parties in the next 30-days. It is anticipated that the pre-hearing conference will be by telephone or webex.

If you could please provide your availability over the next 30-days.

Thank you.

Shannon M. Chambers  
Labor Commissioner  
State of Nevada

**EXHIBIT 2**  
**to**  
**EXHIBIT C**

1                   **BEFORE THE NEVADA STATE LABOR COMMISSIONER**  
2                   **CARSON CITY, NEVADA AND LAS VEGAS, NEVADA**  
3  
4  
5

6   IN THE MATTER OF:                   )

Case No. NLC-17-001486

7   Southern Nevada Labor Management                   )  
8   Cooperation Committee, by and through its                   )  
9   Trustees Terry Mayfield & Chris                   )  
10   Christophersen,                   )

11                   Complainants,                   )

12                   v.                   )

13   Clark County Department of Aviation and                   )  
14   The Office of the Labor Commissioner,                   )

15                   Respondents.                   )

16   Clark County Department of Aviation                   )  
17   Project: McCarran International Airport                   )  
18   Bid No. 17-694273, Carpet and Base Cove                   )  
19   Installation                   )

**FILED**

JUL 14 2021

NEVADA  
LABOR COMMISSIONER-CC

20                   **NOTICE OF TELEPHONIC PRE-HEARING CONFERENCE**

21           On April 28, 2017, Southern Nevada Labor Management Cooperation  
22   Committee (LMCC) filed a complaint against Clark County Department of Aviation  
23   (CCDOA) for possible violations of Nevada Revised Statutes (NRS) sections 338.010  
24   to 338.090, inclusive, and/or Nevada Administrative Code (NAC) sections 338.005 to  
25   338.125, inclusive, on Bid No. 17-694273, Carpet and Base Cove Installation at  
26   McCarran International Airport (Project). The Office of the Labor Commissioner  
27   (OLC) issued an order on August 30, 2018, that the compliance review conducted did  
28   not reveal violations of Nevada labor laws with regards to NRS Chapter 338 or  
29   NAC Chapter 338 and closed the matter.

30           LMCC filed a Petition for Judicial Review on September 27, 2018, in the 8th  
31   Judicial District Court in Clark County, Nevada (Court) as Case No. A-18-7818660J in

1 Dept. No. 25, asking the Court to reverse the OLC's ruling. On June 25, 2021, the  
2 Court ordered this matter be remanded back to the OLC.

3 NOTICE IS HEREBY GIVEN that a Telephonic Pre-Hearing Conference will be  
4 held before Labor Commissioner, Shannon M. Chambers, commencing on **Monday,**  
5 **July 26, 2021, at 11:00 AM. The call-in information is: 1 (888) 782-2120 and**  
6 **Pass Code 7822120.**

7 The matters to be addressed at the Pre-Hearing Conference may include, but  
8 are not limited to:

- 9 1. Clearly identifying the issue(s) in dispute.
- 10 2. Providing all claimants/parties with an opportunity to resolve any or all  
11 issues in dispute.
- 12 3. Set a date and time for the Hearing if necessary.

13 The legal authority and jurisdiction for the Pre-Hearing Conference is pursuant  
14 to Nevada Administrative Code (NAC) section 607.300 - Prehearing conference.

15 1. If any party disputes a claim or complaint, the Commissioner may  
16 require the parties to appear before him or her at a prehearing  
17 conference at a time and place designated by the Commissioner to  
establish the issues to be resolved at the hearing and discuss the  
settlement of the matter.

18 2. The Commissioner may enter reasonable orders governing the  
19 conduct of the prehearing conference and, for good cause, allow a party  
to appear via telephone.

20 3. The parties may be represented by counsel at the prehearing  
conference. An attorney representing a party at the prehearing  
conference must comply with subsection 2 of NAC 607.090.

21 4. The parties shall present all evidence then known to them that  
22 substantiates their respective positions during the prehearing conference.

23 5. A prehearing conference conducted pursuant to this section may  
not be recorded.

24 6. Offers of settlement discussed at the prehearing conference may  
25 not be used as an admission at any subsequent hearing, and the  
Commissioner will so inform the parties at the beginning of the  
prehearing conference.

26 7. At the prehearing conference, the parties shall make a good faith  
effort to resolve the matter through settlement or stipulation.

27 8. If the Commissioner determines that the matter cannot be resolved  
28 at the prehearing conference, he or she may issue a determination in the  
matter pursuant to NAC 607.065.

1 On or before July 26, 2021, CCDOA shall provide a response to the OLC's  
2 letter dated August 18, 2017, which requested information and/or documents and  
3 records from the CCDOA.

4 IT IS HEREBY ORDERED.

- 5 1. A Telephonic Pre-Hearing Conference be held on Monday, July 26,  
6 2021, at 11:00 AM and all parties be in attendance.
- 7 2. CCDOA shall provide a response to the OLC's letter dated August 18,  
8 2017, on or before July 26, 2021.

9 Dated this 14th day of July 2021.

10   
11 Shannon M. Chambers  
12 Labor Commissioner  
13 State of Nevada  
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**CERTIFICATE OF MAILING**

I, Rosiland M. McCloud, do hereby certify that I mailed a true and correct copy of the foregoing **NOTICE OF PRE-HEARING CONFERENCE**, via the United States Postal Service, Carson City, Nevada, in a postage-prepaid envelope to the following:

Evan L. James, Esq.  
CHRISTENSEN JAMES & MARTIN  
7440 W. Sahara Avenue  
Las Vegas, Nevada 89117

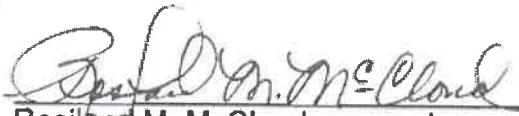
Clark County Department of Aviation  
Administration Bldg., 3rd Floor  
845 E. Russell Road  
Las Vegas, Nevada 89119

Timothy Baldwin, Esq.  
Clark County District Attorney  
500 So. Grand Central Pkwy.  
Las Vegas, Nevada 89106

Allison Kheel, Esq.  
FISHER PHILLIPS  
300 So. 4th St., Suite 1500  
Las Vegas, Nevada 89101

Andrea Nichols, Sr. Deputy Attorney General  
Office of the Attorney General  
5420 Kietzke Lane, #202  
Reno, Nevada 89511

Dated this 14th day of July 2021.

  
Rosiland M. McCloud, an employee of the  
Nevada State Labor Commissioner

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Southern Nevada Labor  
Management Cooperation  
7 Committee, Petitioner(s)

CASE NO: A-18-781866-J

DEPT. NO. Department 25

8 vs.

9 Clark County Nevada  
10 Department of Aviation,  
11 Respondent(s)

12  
13 **AUTOMATED CERTIFICATE OF SERVICE**

14 This automated certificate of service was generated by the Eighth Judicial District  
15 Court. The foregoing Order Shortening Time was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 7/16/2021

17 Allison Kheel akheel@fisherphillips.com

18 Natalie Saville nat@cjmlv.com

19 Evan James elj@cjmlv.com

20 Andrea Nichols anichols@ag.nv.gov

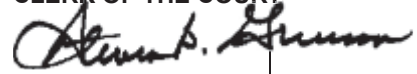
21 Sarah Griffin sgriffin@fisherphillips.com

22 Melissa Flatley mflatley@ag.nv.gov

23  
24  
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28

# **Exhibit 7 to Exhibit A**





OPPS  
CHRISTENSEN JAMES & MARTIN  
EVAN L. JAMES, ESQ.  
Nevada Bar No. 07760  
7440 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Tel.: (702) 255-1718  
Facsimile: (702) 255-0871  
Email: elj@cjmlv.com  
*Attorneys for Petitioner*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SOUTHERN NEVADA LABOR  
MANAGEMENT COOPERATION  
COMMITTEE, by and through its  
Trustees Terry Mayfield and Chris  
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,  
DEPARTMENT OF AVIATION, a  
political subdivision of the State of  
Nevada; and THE OFFICE OF THE  
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**OPPOSITION TO MOTION TO STAY  
(1) ENFORCEMENT FOR ORDER ON  
MOTION FOR RECONSIDERATION,  
(2) ENFORCEMENT OF ORDER  
GRANTING PETITION FOR  
JUDICIAL REVIEW, AND (3) ANY  
PROCEEDINGS BEFORE THE  
OFFICE OF THE LABOR  
COMMISSIONER**

Petitioner hereby opposes Respondent Clark County Nevada Department of  
Aviation's Motion to Stay (1) Enforcement for Order on Motion for Reconsideration, (2)  
Enforcement of Order Granting Petition for Judicial Review, and (3) any Proceedings  
Before the Labor Commissioner that was filed on July 16, 2021.

Dated July 20, 2021.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James  
Evan L. James, Esq. (7706)  
7440 W. Sahara Avenue  
Las Vegas, NV 89117  
Tel.: (702) 255-1718  
Fax: (702) 255-0871  
Attorneys for Petitioner

CHRISTENSEN JAMES & MARTIN, CHTD.  
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117  
PH: (702) 255-1718 § FAX: (702) 255-0871

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Dear Ms. Chambers,

Thus, it is the DOA's position that holding any kind of prehearing conference would be premature until the Supreme Court can rule on the Appeal and Stay.

The undersigned, on behalf of the Petitioner, responded as follows:

At present, there is no stay in the litigation. Thus, it is incumbent upon all involved to comply with the Court's Order.

*See Ex. 2, July 12, 2021 Email from Evan James to Commissioner Shannon Chambers.*

Good afternoon,

1 This matter is pending before the Labor Commissioner until such  
2 time as an Order granting the Clark County Department of  
3 Aviation's request for a Stay is received by this office.

4 **The concerns of Mr. James would be similar to those shared by**  
5 **the Labor Commissioner. A request for records/information**  
6 **from the Labor Commissioner to the Clark County Department**  
7 **of Aviation has been pending for several years.**

8 A pre-hearing conference will be set in this matter and the Clark  
9 County Department of Aviation should produce records and/or a  
10 response why they have not produced the requested records prior to  
11 the pre-hearing conference.

12 *See* Ex. 3, Email from Commissioner Shannon Chambers dated July 12, 2021 (emphasis  
13 added).

#### 14 ARGUMENT

##### 15 **1. The Court must not allow serious and irreparable harm to occur.**

16 The Court should allow for the preservation of evidence by not interfering with the  
17 Labor Commissioner's activities. The Labor Commissioner needs to collect evidence,  
18 evaluate the evidence for sufficiency, and calculate wages to identify wage claimants.  
19 "Spoliation occurs when a party fails to preserve evidence it knows or reasonably should  
20 know is relevant to actual or anticipated litigation, [so] ... courts have inherent authority  
21 to manage the judicial process so as to achieve the fair, orderly, and expeditious disposition  
22 of cases [, which allows them to address spoliation issues]." *MDB Trucking, LLC v. Versa*  
23 *Prods. Co.*, 136 Nev. Adv. Rep. 72, 475 P.3d 397, 402-03 (Nev. 2020). The Labor  
24 Commissioner has expressed her concern about evidence and her desire to perform her  
25 duties based upon the evidence. The Court should allow her to do so as no harm will come  
26 to DOA.

27 ///

///

///

1 **2. DOA is not entitled to a stay because no money judgment was issued and serious**  
2 **and irreparable harm to wage claimants exists.**

3 The DOA's argument that it is entitled to a stay as a "matter of right" is premised upon  
4 an incomplete application of *Clark Cty. Office of the Coroner/Medical Exam'r*. Here is the  
5 holding from that case:

6 We conclude that NRCP 62(d) must be read in conjunction with  
7 NRCP 62(e), such that, **upon motion**, state and local government  
8 appellants are generally entitled to a stay of a **money judgment**  
9 pending appeal, without needing to post a supersedeas bond or other  
10 security. Further, in this case, LVRJ concedes that **no irreparable**  
11 **or serious harm** will ensue if the stay is granted. Therefore, the  
Coroner's Office is entitled to a stay of the attorney fees and costs  
judgment pending appeal, and the stay motion is granted pending  
further order of this court.

12 *Clark Cty. Office of the Coroner/Medical Exam'r v. Las Vegas Review-Journal*, 134 Nev.  
13 174, 177-78, 415 P.3d 16, 19 (2018) (emphasis added). Application of that holding  
14 requires the government to meet three requirements: (A) It must file a motion to stay; (B)  
15 The judgment to be stayed must be a money judgment; (C) No irreparable or serious harm  
16 will ensue if the stay is granted.

17 A. Filed Motion. The DOA has filed a motion to stay. This requirement is met.

18 B. Money Judgment. No money judgment was issued. Because no money  
19 judgment was issued, this requirement is not met, so DOA is not entitled to  
20 a stay as a matter of right.

21 C. Serious or Irreparable Harm. The Labor Commissioner has expressed her  
22 concern that wage records may be disappearing and that DOA has – for  
23 years – failed to comply with her request to produce wage records. Wage  
24 records date back to at least 2017. The inability to identify unpaid workers  
25 and calculate wages due because records are lost is a serious and irreparable  
26 harm, so this requirement is not met.

1 **3. The LMCC agrees with DOA that the status quo should be preserved, and to do**  
2 **so the Labor Commissioner must calculate wages and identify claimants to**  
3 **preserve wage claims.**

4 The only way to preserve the status quo is to let the Labor Commissioner do her job  
5 by collecting wage information and identifying potential wage claimants by calculating  
6 their unpaid wages.

7 **4. No harm will come to DOA by letting the Labor Commissioner do her job.**

8 DOA has pointed to no harm it will suffer by letting the Labor Commissioner do her  
9 job. If DOA is successful on appeal, then the Labor Commissioner may adjust her findings  
10 accordingly.

11 Notably, no one is arguing that workers should be given the unpaid wages while the  
12 appeal is pending. Thus, DOA has no risk of loss or harm.

13 **CONCLUSION**

14 DOA's motion should be denied for the above reasons.

15 Dated July 20, 2021.

CHRISTENSEN JAMES & MARTIN

16 By: /s/ Evan L. James  
17 Evan L. James, Esq. (7706)  
18 7440 W. Sahara Avenue  
19 Las Vegas, NV 89117  
20 Tel.: (702) 255-1718  
21 Fax: (702) 255-0871  
22 Attorneys for Petitioner  
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CERTIFICATE OF SERVICE

On the date of filing with the Court, I caused a true and correct copy of the foregoing Notice of Entry of Order to be served as follows:

☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

- |                        |                             |
|------------------------|-----------------------------|
| Natalie Saville        | nat@cjmlv.com               |
| Allison L. Kheel, Esq. | akheel@fisherphillips.com   |
| Andrea Nichols, Esq.   | anichols@ag.nv.gov          |
| Melissa Flatley, Esq.  | mflatley@at.nv.gov          |
| Evan L. James, Esq.    | elj@cjmlv.com               |
| Sara Griffin           | sgriffin@fisherphillips.com |

CHRISTENSEN JAMES & MARTIN

By:       /s/ Natalie Saville      

Natalie Saville

DECL  
CHRISTENSEN JAMES & MARTIN  
EVAN L. JAMES, ESQ.  
Nevada Bar No. 07760  
7440 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Tel.: (702) 255-1718  
Facsimile: (702) 255-0871  
Email: elj@cjmlv.com  
*Attorneys for Petitioner*

DISTRICT COURT  
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR  
MANAGEMENT COOPERATION  
COMMITTEE, by and through its  
Trustees Terry Mayfield and Chris  
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,  
DEPARTMENT OF AVIATION, a  
political subdivision of the State of  
Nevada; and THE OFFICE OF THE  
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

DECLARATION OF EVAN L. JAMES

I hereby declare as follows:

1. A have personal knowledge of the matters asserted and am competent to testify.
2. Exhibit 1 is a true and correct copy of a July 9, 2021, email from Allison Kheel to Commissioner Shannon Chambers.
3. Exhibit 2 is a true and correct copy of a July 12, 2021, email from myself to Commissioner Shannon Chambers.
4. Exhibit 3 is a true and correct copy of a July 12, 2021, email from Commissioner Shannon Chambers.

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

Executed on July 20, 2021.

*Evan L. James*

# **EXHIBIT**

**1**



**Re: So. NV Labor v Clark County Aviation**

Kheel, Allison <akheel@fisherphillips.com>

Fri 7/9/2021 4:50 PM

To: Shannon Chambers <shannonchambers@labor.nv.gov>

Cc: Evan James <elj@cjmlv.com>; Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>; Kheel, Allison <akheel@fisherphillips.com>

Dear Ms. Chambers,

The Department of Aviation will be appealing this matter and will be seeking a stay of any proceedings before the Labor Commissioner as part of that Appeal as the District Court did not have the authority to limit the Labor Commissioner's power to hold a full hearing and make determinations regarding the type, designation and scope of the work in this matter.

Thus, it is the DOA's position that holding any kind of prehearing conference would be premature until the Supreme Court can rule on the Appeal and Stay.

If you have any questions please feel free to contact me directly at 702-467-1066.

Very Truly Yours,  
Allison Kheel

Sent from my iPhone

On Jul 9, 2021, at 1:58 PM, Shannon Chambers <shannonchambers@labor.nv.gov> wrote:

Good morning Mr. Ricciardi,

Please see the email below along with the original email string. If you could please let me know what attorney is assigned to this matter for Clark County Aviation and dates of availability for a pre-hearing.

Good morning Ms. Kheel,

Could you please provide your availability for a pre-hearing conference in this matter by close of business today?

Thank you.

Shannon M. Chambers  
Labor Commissioner  
State of Nevada

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**From:** Evan James <elj@cjmlv.com>

**Sent:** Friday, July 9, 2021 10:47 AM

## **EXHIBIT**

**Re: So. NV Labor v Clark County Aviation**

Evan James <elj@cjmlv.com>

Mon 7/12/2021 11:37 AM

**To:** Kheel, Allison <akheel@fisherphillips.com>; Shannon Chambers <shannonchambers@labor.nv.gov>  
**Cc:** Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>

Dear Commissioner Chambers,

At present, there is no stay in the litigation. Thus, it is incumbent upon all involved to comply with the Court's Order.

The matter to be resolved before your office is the value of the unpaid wages to the workers and the payment of wages to the underpaid workers. This is a simple calculation and collection of money owed. Unfortunately, the DOA has refused to provide payroll and work records that will allow for the calculations to be made. Given the passage of time, the LMCC is concerned that records and workers will be lost and that workers will not be paid. It is the LMCC's position that records need to be collected, workers identified, and unpaid wage calculations made as soon as possible and regardless of any appeal that the DOA may make.

Thank you,

Evan L. James, Esq.  
Christensen James & Martin  
7440 W Sahara Ave.  
Las Vegas, Nevada 89117  
(702) 255-1718

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**From:** Kheel, Allison <akheel@fisherphillips.com>  
**Sent:** Friday, July 9, 2021 4:49 PM  
**To:** Shannon Chambers <shannonchambers@labor.nv.gov>  
**Cc:** Evan James <elj@cjmlv.com>; Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>; Kheel, Allison <akheel@fisherphillips.com>  
**Subject:** Re: So. NV Labor v Clark County Aviation

Dear Ms. Chambers,

The Department of Aviation will be appealing this matter and will be seeking a stay of any proceedings before the Labor Commissioner as part of that Appeal as the District Court did not have

## **EXHIBIT**

**Re: So. NV Labor v Clark County Aviation**

Shannon Chambers <shannonchambers@labor.nv.gov>

Mon 7/12/2021 2:36 PM

To: Evan James <elj@cjmlv.com>; Kheel, Allison <akheel@fisherphillips.com>

Cc: Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>

Good afternoon,

This matter is pending before the Labor Commissioner until such time as an Order granting the Clark County Department of Aviation's request for a Stay is received by this office.

The concerns of Mr. James would be similar to those shared by the Labor Commissioner. A request for records/information from the Labor Commissioner to the Clark County Department of Aviation has been pending for several years.

A pre-hearing conference will be set in this matter and the Clark County Department of Aviation should produce records and/or a response why they have not produced the requested records prior to the pre-hearing conference.

Thank you.

Shannon M. Chambers  
Labor Commissioner  
State of Nevada

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**From:** Evan James <elj@cjmlv.com>

**Sent:** Monday, July 12, 2021 11:37 AM

**To:** Kheel, Allison <akheel@fisherphillips.com>; Shannon Chambers <shannonchambers@labor.nv.gov>

**Cc:** Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>

**Subject:** Re: So. NV Labor v Clark County Aviation

Dear Commissioner Chambers,

At present, there is no stay in the litigation. Thus, it is incumbent upon all involved to comply with the Court's Order.

The matter to be resolved before your office is the value of the unpaid wages to the workers and the payment of wages to the underpaid workers. This is a simple calculation and collection of money owed. Unfortunately, the DOA has refused to provide payroll and work records that will allow for the calculations to be made. Given the passage of time, the LMCC is concerned that records and workers will be lost and that workers will not be paid. It is the LMCC's position that records need to be collected, workers identified, and unpaid wage calculations made as soon as possible and regardless of any appeal that the DOA may make.

Thank you,

**NRAP 27(e) CERTIFICATE**

I, Allison L. Kheel, Esq. do hereby certify the following:

1. I am an attorney representing the Appellant (Respondent in the District Court), Clark County Department of Aviation (“DOA”) in this proceeding.

2. The Respondents involved in the Appeal, the Labor Management Cooperation Committee (“LMCC”) (Petitioner Below) and The Office of the Labor Commissioner (“OLC”)(Respondent Below), are both represented by counsel, with the following contact information:

Evan L. James, Esq.

Nevada Bar No. 07760

7440 W. Sahara Avenue

Las Vegas, Nevada 89117

Email: [elj@cjmlv.com](mailto:elj@cjmlv.com)

Phone:

*Attorney for Respondent (Petitioner in District Court)*

*Southern Nevada Labor Management Cooperation Committee*

Andrea Nichols, Esq.

Senior Deputy Attorney General

Nevada Bar No. 6436

100 N. Carson Street

Carson City, Nevada 89701

Email: [anichols@ag.nv.gov](mailto:anichols@ag.nv.gov)

Phone:

*Attorney for Respondent (Respondent in District Court)*

*Office of the Labor Commissioner*

3. The DOA’s Appeal seeks review of the District Court’s June 25, 2021 Order on Clark County Department of Aviation’s Motion for Reconsideration (the “Order”) and prior Order entered February 4, 2020 Granting the LMCC’s Petition for Judicial Review (“February Order”) (Order and February Order collectively referred to as “Decision”) in Case A-18-781866-J. The DOA is appealing the District Court’s Decision for

1 abuse of discretion and manifest disregard of the law and of the substantial  
2 evidence in the Record, because the District Court exceeded its authority by  
3 limiting the Labor Commissioner’s authority and scope of review on remand  
4 to “ministerial” determinations of “the value of wages due.” The Appeal  
5 also argues that the Decision reached the conclusion that the project was  
6 “not maintenance” without any evidence in the Record actually describing  
7 the work; and even if there had been a complete evidentiary record (which  
8 there was not), the District Court still exceeded its statutory authority on a  
9 Petition for Judicial Review by making additional findings beyond the sole  
10 “public money” findings set forth in the final agency determination of the  
11 OLC.

12 4. The issue of the proper scope of the OLC’s review on remand  
13 and ability to determine whether or not the project was “maintenance work”  
14 (and not subject to prevailing wage requirements) is the fundamental object  
15 and purpose of the Appeal.

16 5. Thus, permitting the OLC to proceed to hold hearings and make  
17 determinations will irreparably harm the DOA if a stay of these proceedings  
18 pending appeal is not granted.

19 6. The OLC has scheduled a prehearing conference for **11:00am**  
20 **on Monday, July 23, 2021.**

21 7. The OLC indicated in correspondence that it will not stay its  
22 proceedings unless there is a court order directing the proceedings to be  
23 stayed.

24 8. Thus, an Emergency Stay is necessary to avoid the DOA  
25 having to participate in the proceedings that are the subject of the current  
26 appeal, and that Emergency Stay must issue before 11:00am on Monday,  
27 July 26, 2021.

10. Additionally, Counsel for the DOA noted during the July 22, 2021 hearing before the District Court that it intended to file a motion seeking a stay with the Supreme Court as soon as feasible, thus Counsel for the Respondents already reasonably expects the Emergency Motion.

Executed on this 23rd day of July, 2021.

Attorneys for Appellant (Respondent Below) Clark County Department of Aviation