IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG MUELLER, Appellant, Vs. CHRISTINA HINDS. Respondent,	))))))))))	No. 83412 Related Dist. Court Case: 8th Jud. Dist. Ct. Case No. D-18-571065-D Dept. C

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APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in NRAP 26.1(a) that must be disclosed.

DATED this 14th day of March, 2022.

Respectfully submitted,

/s/ Michael J. McAvoyAmaya
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COMES NOW, the Appellant, CRAIG MUELLER, by and through his counsel, Michael J. Mcavoyamaya, Esq., of MCAVOY AMAYA & REVERO ATTORNEYS, files the instant appeal of the judgment against him entered in the Eighth Judicial District Court, Clark County, Nevada.

STATEMENT OF JURISDICTION

Jurisdiction before the Nevada Supreme Court is proper because this is a direct appeal from a final judgment entered in "an action or proceeding, commenced in" the Eighth Judicial District Court of Nevada. Nev. Rev. Stat. § 2.090; *see also* NRAP 3A(b). This appeal is timely, the judgment having been entered on July 27, 2021, and the notice of appeal was filed on August 16, 2021.

ROUTING STATEMENT

This matter is presumptively assigned to the Nevada Court of Appeals to hear and decide becuase this appeal involves "family law matters other than termination of parental rights or NRS Chapter 432B proceedings." NRAP 17(b)(10). However, this matter does raise a question of statewide public importance regarding the enforcement of divorce decrees after one party has breached the contract. NRAP

17(a)(12). Additionally, this matter raises an issue of first impression regarding whether it is permissible to grant attorney's fees and costs to a party that was held to have breached the decree first. NRAP 17(a)(11). As such, review by the Nevada Supreme Court may be appropriate.

ISSUES PRESENTED FOR REVIEW

DID THE DISTRICT COMMIT CLEAR ERROR WHEN IT FOUND THAT A VALID CONTRACT EXISTED BETWEEN THE PARTIES?

DID THE DISTRICT COURT COMMIT CLEAR ERROR WHEN RULING PLAINTIFF'S BREACH OF THE MSA WAS NOT A MATERIAL BREACH?

DID THE DISTRICT COURT COMMIT CLEAR ERROR WHEN IT FOUND PLAINTIFF DID NOT COMMIT FRAUD IN THE INDUCEMENT BY TAKING DEFENDANT'S SOLE PROPERTY AND SUBSEQUENTLY SIGNING THE MSA?

DID THE DISTRICT COURT COMMIT CLEAR ERROR WHEN IT FOUND THAT DEFENDANT WAIVED HIS RIGHT TO BRING A MOTION PURSUANT TO NRS 125.150(3)?

DID THE DISTRICT COURT COMMIT CLEAR ERROR WHEN IT FOUND THAT DEFENDANT FAILED TO PROVE THAT PLAINTIFF'S BREACH OF THE MSA MADE DEFENDANT'S PERFORMANCE IMPOSSIBLE?

DID THE COURT COMMIT CLEAR ERROR WHEN IT FOUND THAT PLAINTIFF WAS THE PREVAILING PARTY AND ENTITLED TO ATTORNEY'S FEES?

STATEMENT OF THE CASE

This matter arises from a dispute over the parties' alleged breaches of the Marriage Settlement Agreement included with the Stipulated Decree of Divorce ("Decree") entered by the District Court on July 29, 2019. *See* Appdx. at 002:8-20. On November 8, 2019, Plaintiff Christina Hinds brought the matter back before the Court seeking contempt against Defendant Craig Mueller for his alleged failures to pay $427,500 property equalization, to pay the 2014 Infinity QX80 loan, to pay the children's uncovered healthcare expenses, and to provide dental and vision coverage for the children; and for attorney fees." *Id.* On November 20, 2019, Craig opposed Christina's motion and brought a countermotion **seeking to set aside or modify** the *Decree* and *MSA* to allow Craig credit in the amount of $158,076.73 against his property equalization obligation to Cristina based on Cristina's alleged misappropriation of community funds, to eliminate Craig's obligation to pay the 2014 Infinity QX80 loan, and to award sanctions to Craig based on Cristina's alleged violation of the *Joint Preliminary Injunction* and for attorney fees." *Id.* at 002:19-3:6 (emphasis added).

On December 13, 2019, "the Court denied Defendant's request for relief of the obligation to pay for the 2014 Infinity QX80 loan; denied without prejudice Cristina's request for uncovered healthcare expenses for lack of specificity; and recognized the parties stipulated that Cristina would provide dental and vision insurance for the children and Craig's child support would increase by $51.54 to cover one-half of the cost. All other issues were set for an Evidentiary Hearing." *id.* at 003:7-16. On March 27, 2020, Plaintiff raised additional issues relating to Defendants alleged failure to comply with the Decree. *Id.* at 003:17-4:12. Defendant opposed the motion and moved to set aside the Decree and the MSA. *Id.*

By the time the evidentiary hearing was held on April 1, 2021, the parties had resolved most of the issues Plaintiff raised in her motions. *Id.* at 004:18-5:19. Most of Plaintiff's contempt issues were moot or otherwise abandoned "leaving for resolution at the Evidentiary Hearing Cristina's request to enforce the *MSA* [equalization payment]*;* Craig's request to set aside or modify the *MSA* on the basis of Cristina's alleged violation of the *JPI*, Cristina's fraud in the inducement, assets omitted due to fraud or mistake, Cristina's breach of the *MSA* which made Craig's performance impossible, and/or recharacterization of property; Cristina's request to

find Craig in contempt and sanction him for his violations of the *Decree;* Cristina's request for the Court to determine Craig's manner of payment." *Id.* (emphasis added).

On June 20, 2019, at the deposition of Plaintiff, the parties began negotiations for settlement of this case. *Id.* at 006:11-19, 043-52. "[T]he parties gave up numerous claims against each other, settled their case…acknowledged all material terms were agreed and the matter was concluded pursuant to EDCR 7.50 despite all of the particulars not yet in writing and later worked out the details in their *MSA*." *Id.* at 006:11-7:2, 051. The Court found that the transcript of the settlement "reflected the parties agreed that they would equally divide their savings accounts containing a total of about $160,000 (which is about $80,000 to each party)." *Id.* at 006:3-13, 044. The transcript evidenced that the parties had agreed that Defendant would pay an equalization payment to Plaintiff of $450,000 and "that Craig would have to obtain a loan to pay the obligation." *Id.* at 007:6-13, 045. The Court determined that "all material terms were placed on the record and that any further finalization would be considered merely transitional." *Id.*

The written MSA "contains multiple provisions through which the parties acknowledged that they intended to settle all rights and obligations including any claims that were raised or could have been raised…; they made full and fair disclosures, performed all discovery they wanted, and waived any further discovery they entered into the agreement voluntarily after ample time to review and contemplate the effect of their agreement…; they were represented by counsel of their choosing and fully understood the legal effect of their agreement...; **they represented the *MSA* is the entire agreement which supersedes all prior oral or written agreements or understandings**…; and they expressly represented that their agreement is binding and enforceable." *Id.* at 007:14-8:10 (emphasis added), 193:1-23. The Decree also included provisions promising that "they made a full disclosure of their property…; waived any right to further discovery beyond the discovery performed and received…; agreed to comply with the terms of the Decree," and they read and understood the written MSA. *Id.* at 008:13-9, 194:1-17.

The Court's July 26, 2021 Order made several erroneous conclusions of fact regarding what Defendant knew at the time of the settlement on June 20, 2019, ignoring that Plaintiff had represented that

she returned all money taken from the parties' accounts when she had not. *Id.* at 010:17-16:2, 044 (page 4:1-10). Indeed, while the Court found that Defendant raised the issue of $140,000 in missing money from the Joint Meadows Bank Account, because Plaintiff had presented statements from 2015 showing exactly $140,000.00 had been returned, Defendant could not argue that the $129,841.00 Plaintiff took in 2019 while the Joint Preliminary Injunction ("JPI") was in place did not constitute fraud. *Id.* at 011:4-18.

The District Court willfully ignored the undisputed fact that while the JPI was in place between January 1, 2019 and June 20, 2019 Plaintiff had removed $129,891.00 from the Meadows bank account and expended most of it. On January 1, 2019, the parties joint Meadows Bank Account had a balance of $215,782.71. *See* Appdx. at 066. On January 9, 2019, Plaintiff removed $107,891.00 from the Meadows Bank account in violation of this Court's Joint Preliminary Injunction ("JPI"), which is almost exactly fifty percent of the balance in the account on January 1, 2019. *Id.* at 071. On January 9, 2019, Ms. Hinds opened three separate bank accounts with Citi Bank, account numbers ending in: (1) 2427 ("Citi Checking"); (2) 2435 ("Citi Savings 1"); and (3) 6154 ("Citi Savings 2")

(collectively the "Citi Bank Accounts"). That day, Ms. Hinds deposited $49,000.00 at the bank via the "Teller" in the Citi Checking account, $107,891.00 at the bank via the "Teller" in the Citi Savings 1 account, and $2,002.11 at the bank via the "Teller" in the Citi Savings 2 account. *Id.* at 078-80. It appears from the record that the $49,000.00 deposited into Ms. Hinds Bank of Nevada Account #2159 were removed and deposited into the CitiBank Account #2427. *Id.*

The total amount of money in the CitiBank Accounts on January 31, 2019 was $159,033.94 in community property money subject to the JPI. *Id.* Between January 31, 2019 and May 31, 2019, Ms. Hinds expended $83,842.96 in community property funds for her own use in violation of this Court's orders. *Id.* at 082-96. Ms. Hinds took an additional $15,000.00 and $7,000.00 from the Meadows Bank Account on May 17, 2019, and June 3, 2019 respectively, which does not appear to have been deposited in any of the previously disclosed accounts. *Id.* at 072-73. As such, the total amount of funds Plaintiff took from the Meadows Bank Account on June 20, 2019 was $129,891.00, just $10,109.00 shy of the $140,000.00 Defendant said was missing from the Meadows bank account on June 20, 2019. *Id.* at 011:4-18; *see also*

Hearing Video, 2021.04.01 Part3b, at 00:00-01:21; *see also* Supp. Appdx., at 1. Plaintiff's own counsel admitted that she took the $129,891.00 from the community property funds in the Meadows bank account in 2019 and expended over $100,000.00 of those funds. *Id.* Plaintiff's counsel also acknowledged that she only provided the June 2019 CitiBank Account statement to Defendant, failing to disclose the February-May 2019 CitiBank statements that showed Plaintiff's deposit of the Meadows account money and its subsequent expenditure. *See* Hearing Video, 2021.04.01 Part3b, at 06:00-07:20; *see* Supp. Apdx. At 031-32.

While the Court clearly acknowledged that there were "additional funds that Cristina removed from the community before the parties signed the *Decree* in violation of the *JPI*," the Court falsely asserted that "the amount of the offset Craig asked the Court to find was never clear and hard to follow." *See* Appdx. at 012:1-14. The Court cited Defendant's closing brief asserting that "Craig did not identify a sum." *Id.* This conclusion was patently false. Defendant's closing brief clearly alleged that Plaintiff had "taken the additional $129,891.00 from the account in 2019," citing the video of the proceedings where that evidence was presented, and admitted to by Plaintiff's own attorney. *Id.* at 540:15-28;

see also Hearing Video, 2021.04.01 Part3b, at 00:00-01:21; *see also* Supp. Apdx. At 017. Defendant later noted in that closing brief that at the time the written MSA was entered into "In total, Ms. Hinds expended or otherwise took $105,842.96 of community property" from the Meadows account that was expended or unaccounted for, and an "additional $36,871.00 of Craig's sole property in the Meadows Bank Account before the MSA was signed." *Id.* at 541:12-19.

Thus, Defendant did, in fact, identify the total sum Plaintiff had expended or otherwise was not accounted for from the Meadows account, $105,842.96. *Id.* Defendant also identified the total amount of Defendant's sole property in the Meadows account pursuant to the MSA that Plaintiff took prior to signing the written MSA, $36,871.00. Defendant separated the amounts because Plaintiff had already conceded that she took the $36,871.00 of Defendant's sole property in violation of the MSA. *Id.* at 019:11-14, 20:12-21, 21:1-3. Because it was already established that Defendant was entitled to a judicially ordered offset of $36,871.00, the only disputed figure was the $105,842.96. Defendant identified that figure in both the post-trial brief, and the pre-trial brief. *Id.* at 491:14-24.

Defendant's position was that Plaintiff withdrawing the $129,891.00 from the Meadows account in 2019 and presenting Defendant's counsel with the 2015 statement from the account to represent all money taken from the account had been returned was intentional fraud intended to induce Defendant into believing all money had been returned. *Id.* Indeed, it was not and cannot be disputed that Defendant raised the issue of approximately $140,000.00 being missing from the Meadows account at the June 20, 2019 deposition (though believed to be in 2015), and Plaintiff had taken almost an equal amount of money from the Meadows bank account in 2019, $129,891.00, without disclosing it at that meeting. *Id.* at 540:23-28 *see also* Hearing Video, 2021.04.01 Part3b, at 00:00-01:21; *see also* Supp. Apdx. At 017. It also cannot be disputed that $105,842.96 of that money taken was ultimately not accounted for in the final MSA.

The Court next erroneously found that Defendant can only seek adjudication of funds acknowledged at the June 20, 2019 hearing despite the mistake, and Plaintiff's fraud. *Id.* at 015:15-16:2. This conclusion was flatly contradicted by the MSA itself cited in the Court's own order in the

very next paragraph. *Id.* at 016:3-20. *Id.* at 195:6-24. The written MSA expressly stated that:

> As of June 20, 2019, the parties had the following funds in personal savings accounts that are community property:
> i. Two saving accounts at Citibank in the name of Cristina Hinds, account #2435 and #6145, with a total balance of $75,190.08;
> ii. Joint savings account at Meadows Bank, account #0032, with a balance of $86,039.61; and
> iii. Joint savings account at Bank of Nevada, account #7006, with balance of$29,087.70.
>
> The parties have agreed to equally divide the balances in these accounts as of June 20, 2019, which together total $190,317.39, one-half equals $95,158.69.

Id.

The written MSA itself made clear that the community property money in the parties' accounts on the date the MSA was entered was just over $190,000.00, not $160,000. *Id. see also id.* at 015:15-16:2. The Court repeatedly shifted back and forth between citing the terms of the written MSA when it supported Plaintiff's case, and ignored the written terms of the MSA and cited the transcript also when it supported Plaintiff's case. *Id.* The Court's picking and choosing of terms in the deposition transcript and the written MSA was done repeatedly to excuse Plaintiff's theft of over $142,713.96 (($105,842.96 ("disputed amount") + $36,871.00 ("conceded amount")) in community property during the pendency of the

divorce proceedings, and while the Court's JPI was in place. Indeed, the Court cited the deposition transcript in one paragraph holding that "the only sum Craig could have reasonably relied upon in entering into the parties' agreement on June 20, 2019 is the sum of $80,000 representing 50% of the $160,000 estimated in the accounts" (*id.* at 015:15-16:2), and two paragraphs later cites the express terms of the written MSA that included the $190,317.39 figure to conclude "that the only sum Craig could have reasonably relied upon when he signed the *MSA* is that Craig was to receive the sum of $36,871 from the Joint Meadows Bank Account." *Id.* at 016:8-17:4.

Ultimately the Court could not distort the facts when it came to one critical issue that Plaintiff conceded prior to the evidentiary hearing, to wit: that Plaintiff breached the MSA when she took Defendant's $36,871.00 in the Meadows account. *Id.* at 016:13-17:4. This money was taken after the June 20, 2019 oral settlement, but before Plaintiff signed the final written MSA. *Id.* at 017:18-18:12. As such, it was not and cannot be disputed that Plaintiff breached the written MSA before it was ever entered by the District Court with the decree. *Id.* On the date Plaintiff signed the MSA the Meadows account did not even exist because Plaintiff

had withdrawn all the remaining funds in that account and closed the account. *Id.* at 017:18-18:12. It was undisputed that Defendant received only $29,087.70 from the parties' joint bank accounts because Plaintiff took Defendant's $36,871.00 in the Meadows bank account before she signed the written MSA and as such, Plaintiff materially breached the MSA and committed fraud, and Defendant never received his 50 percent share of the funds. *Id.*

SUMMARY OF THE ARGUMENT

The District Court clearly erred when it failed to faithfully apply clear and long established Nevada law governing contract disputes. Frist, the District Court erred when it found that a valid contract between the parties existed because Plaintiff's liquidating of the Meadows Bank Account rendered several provisions in the MSA false because the account no longer existed. Second, the District Court clearly erred when it concluded that Plaintiff's taking of Defendant's sole property from the Meadows Bank Account was not a material breach. Third, the District Court committed clear error when it concluded that Plaintiff was not guilty of fraud in the inducement despite signing the MSA after removing all the funds from the Meadows Bank Account.

Fourth, the District Court clearly erred when it found that Defendant waived his right to bring a Motion pursuant to NRS 125.150. Fifth, the District Court clearly erred when it failed to consider the missing $105,842.96 in community property funds as "missing" by mistake or fraud pursuant to NRS 125.150 because Plaintiff had provided the Court with clear and a definite amount of the missing funds. Sixth, the District Court committed clear error when it concluded that Plaintiff had no proven that his performance was rendered impossibly by Plaintiff's precipitating breach. Finally, the District Court clearly erred when it determined Plaintiff was the prevailing party after granting Defendant partial offset relief due to Plaintiff's breach of the MSA.

LEGAL ARGUMENT

I. THE DISTRICT COMMITTED CLEAR ERROR WHEN IT FOUND THAT A VALID CONTRACT EXISTED BETWEEN THE PARTIES.

An agreement to settle pending divorce litigation constitutes a contract and is governed by the general principals of contract law. *See* Appdx. at 009:13-19 *citing Grisham v. Grisham,* 128 Nev. ___, 289 P.2d 230, 234 (Adv. Op. No. 60, December 6, 2012). In the context of family law, parties are permitted to contract in any lawful manner. *Id. citing*

Rivero v. Rivero, 125 Nev. 410, 429 (2009); *see also Holyoak v. Holyoak*, 132 Nev. 980 (2016). To be considered an enforceable contract there must be "an offer and acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668, 672 (2005).

The Nevada Supreme Court has consistently held that, in addition to complying with procedural requirements for entering into settlement agreements with the court, "*a stipulated settlement agreement requires mutual assent*, *see Lehrer McGovern Bovis v. Bullock Insulation*, 124 Nev. 1102, 1118 (2008), or a 'meeting of the minds,' *May v. Anderson*, 121 Nev. 668, 672 (2005), on 'the contract's essential terms.'" *Grisham v. Grisham*, 128 Nev. 679, 685 (2012). "'A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite' for a court 'to ascertain what is required of the respective parties' and to 'compel compliance' if necessary." *Id.* That is, the contract terms must be clear and definite, and be free of mistake or fraud, so that the parties can be said to have had a meeting of the minds, and an understanding of the benefit of their bargain. *Waltz v. Waltz*, 110 Nev. 605, 609 (1994).

In the context of marriage and divorce, much of what is permissible in regards to contracts between married parties is prescribed by statute.

NRS 123.080(1) permits agreements between a husband and wife regarding property and the support of either of them or their children during a separation, or divorce. *See* Nev. Rev. Stat. § 123.080(1); *see also* Nev. Rev. Stat. § 125.150. NRS 123.080(2) provides that "[t]he mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in subsection 1." *See* Nev. Rev. Stat. § 123.080(2).

In *Rosenthal v. Rosenthal*, the Nevada Supreme Court found that a college payment provision found in a Marriage Settlement Agreement ("MSA"), which was later approved and incorporated into a divorce decree, was valid and enforceable. 2016 Nev. App. Unpub. LEXIS 298, *5-9, 132 Nev. 1024, 2016 WL 4497225. According to the *Rosenthal* Court, "[t]he record contains substantial evidence of the parties' mutual consent to satisfy the requirement of consideration under NRS 123.080." *Id.* The Court considered several factors including that: (1) "Both parties signed the MSA and abided by its terms without issue for approximately ten years;" (2) "both parties requested the district court to ratify, approve, and confirm the MSA in their complaint and answer for divorce;" and (3) "*in the absence of a claim of fraud or mistake which would undermine the meeting of the minds element of contract formation*, there is sufficient

evidence of mutual consent to support a finding of consideration under NRS 123.080(2)." *Id.* (emphasis added). For those reasons, the Court found the provision enforceable. *Id.*

Here, it is undisputed that when the parties met on June 20, 2019 for the deposition where the settlement was entered into that the parties were negotiating a contract. Defendant does not appeal many of the District Court's factual findings regarding the June 20, 2019 negotiation. The parties did promise "that they would equally divide their savings accounts containing a total of about $160,000 (which is about $80,000 to each party)" at that initial settlement meetings. *See* Appdx. at 007:3-9, 044-52. Defendant promised that he would pay Plaintiff an equalization payment of $450,000.00 that "Craig would have to obtain a loan to pay." *Id.* The parties did assert on the record that "the matter was settled under EDCR 7.50," and that the final details of the MSA would be reduced to writing later. *Id.* at 018:4-12.

The final written MSA did also state that the parties would divide equally the community property cash in their various joint accounts, and that Defendant would receive $36,871.00 from the Meadows bank account. *Id.* at 016:3-17:4. It is also undisputed that "Cristina withdrew

from the Joint Meadows Bank Account the sum of $36,871 that belonged to him between the date of their oral agreement (when the sum was sitting in the Joint Meadows Bank Account) and the signing of the formal agreement (when the sum was no longer sitting in the Joint Meadows Bank Account)." *Id.* at 017:18-18:12. The Court correctly found that "Cristina…withdrew all of the funds and closed the Joint Meadows Bank Account" and closed the account. *Id.* at 019:10-20. The District Court's conclusion that the parties' MSA was not void for fraud or mistake is clearly erroneous because the terms of the contract itself were not true or accurate at the time Defendant signed the MSA.

The MSA stated: (1) that there was $86,039.61 in the Meadows Bank account (*id.* at 195:7-17); (2) that half of the money in the account was Defendant's sole property (*id.*); (3) that the money Defendant was to receive from that account would be used to pay temporary support amounts due to Plaintiff, some of which offset the equalization payment because they occurred after the June 20, 2019 settlement (*id.* at 200:4-23); (4) that Defendant would receive $36,871.00 from the Meadows Bank account as his sole property; and (5) Defendant was to pay the remaining $427,500 lump sum amount of the equalization payment by September

20, 2019. *Id.* at 199:19-27.

None of these very important and clear contract terms were true or able to be performed on the date that Defendant signed the MSA, July 29, 2019. *Id.* at 211:16-18. On July 29, 2019, there was not $86,039.61 in the Meadows Bank account, the 50 percent share of the community property funds was not in the accounts for Defendant to receive, and the Meadows Bank account did not even exist. *Id.* at 017:18-18:12, 019:10-20. Defendant also never received his $36,871.00 of the community property cash funds. *Id.* Defendant also could not reasonably obtain a loan to pay the lump sum equalization payment amount due by September 20, 2019, because doing so would have ultimately resulted in a $36,871.00 overpayment to Plaintiff, which is why the Court had to ultimately modify the MSA by ordering an offset to "the sum of $380,129" to be "reduced to judgment, collectible by all legal means." *Id.* at 036:7-14. This term in the Court's order uses nearly identical language as the MSA, but changes the amount that was due under the MSA. *Id.* at 199:19-27. It must be stressed that when Plaintiff initiated this action against Defendant, she sought the full amount of the equalization payment in the MSA, the $427,500.00. *See* Appdx. at 503.

> Pursuant to Section 9 of the MSA, Cristina was awarded a property equalization payment in the amount of $450,000. The balance of this amount, $427,500 was due, in cash, on or before September 20, 2019. Should Craig fail to pay the property equalization by the September 20, 2019 due date, the balance would begin to accrue interest on the unpaid principal balance at the Nevada Legal Interest rate beginning on September 21, 2019 and continuing until the obligation has been paid in full. As of the filing of this Motion, ***Craig has refused to abide by the MSA by not paying the $427,500 balance, as such, the outstanding balance has accrued approximately $2,671.88 in interest and the outstanding balance is now $430,171.88.***

Id. (emphasis added).

Plaintiff knew at the date she filed this Motion that she had taken Plaintiff's $36,871.00 in the Meadows Bank account and failed to inform the Court that she had done so. *Id.* For this reason, regardless of all the other matters in this case, Defendant was required to move to rescind or modify the MSA because Defendant adhering to its terms as written would have resulted in Plaintiff receiving $36,871.00 in money she was not supposed to receive under the MSA. *Id.*

For a valid, non-void contract to exist under long established Nevada law the contract terms must be: (1) clear and definite; and (2) be free of mistake or fraud, so that the parties can be said to have had a meeting of the minds and an understanding of the benefit of their

bargain. *Waltz*, 110 Nev. at 609. The terms of the MSA cannot be said to be clear and definite because almost all of the significant property distribution terms regarding the parties' community property funds were not true or definite at the time Defendant signed the contract on July 29, 2019, because Plaintiff took Defendant's sole property funds before signing the MSA and subsequently sought to enforce the full amount of the equalization payment. *See* Appdx. at 503. Clearly, Defendant did not have a meeting of the minds on the terms of the contract as money and accounts listed in the MSA he signed did not actually exist at the time Defendant signed the MSA. Because the MSA contract terms were not clear and definite, and were not free of mistake or fraud, the contract was void/voidable.

Plaintiff will and has argued that Defendant's allegation that Plaintiff committed fraud to induce Defendant into entering the agreement "makes no temporal sense" because "on the date of the deposition/settlement, the funds were in the account, and their later removal could not have induced anyone to do anything on an earlier date." *See* Plaintiff Fast Track Response ("FTR"), at 25. While Plaintiff is correct that the money was in the account when the parties agreed to

settle the case on June 20, 2019, Plaintiff's subsequent removal of those funds to her own personal accounts evidences a breach of that tentative agreement. Plaintiff's position in this regard is essentially that parties can make an oral agreement to distribute property on one date, one party can dispose of that property shortly after and then sign a written agreement reflecting that the property was not actually disposed of inducing the other party, who believes the property has not been disposed of to sign the agreement, and that would not be fraud. Plaintiff's signing of the MSA stating that Defendant was to receive the $36,871.00 in the Meadows account when she knew she had closed the account is fraud in the inducement, or at the very least a mistake that invalidates the contract because Defendant understood the account to exist and that he would receive $36,871.00 in cash from that account.

Plaintiff argues/admits that that "the parties reached full agreement on June 20, 2019" and that "One material term was that the parties would equally divide their savings accounts in the amount of "about" $160,000." *See* Plaintiff's FTR, at 26. Plaintiff asserts that "The trial court correctly found that various specifics – including that Craig would receive $36,871 from one specific account as part of his 50% share

– were transitional, not material, to the settlement." *Id.* However, Plaintiff fails entirely to explain how Defendant received his 50% share of the cash in their savings accounts when Plaintiff took more than 50% of the cash that was supposed to go to Defendant. *Id.*

Instead, Plaintiff moves on to present several red herring arguments to excuse her conduct. First, Plaintiff argues that "at the May 28, 2020 hearing (almost a year before the 2021 trial), that Craig was owed an offset of $36,871 from the $427,500 he owed her pursuant to the terms of the MSA, and the judge admonished Craig *not* to got to trial about those conceded and accounted-for funds." *Id.* at 26-27. Defendant does not dispute that the Court admonished him. However, Plaintiff fails to explain how the Court's admonishment renders the contact valid. It simply does not.

Plaintiff next asserts that Defendant is arguing "that because the MSA lists accounts totaling about $190,000, the settlement (at which the parties estimated the totals as being about $160,000) is 'defective.'" *Id.* at 27. Here, Plaintiff misinterprets Defendant's argument that he did not receive his half of the cash in the accounts, regardless of the amount used as the funds in the accounts, to again try and excuse her fraud. *Id.*

Defendant is not arguing that the contract is void because of the use of different amounts reflecting the total funds in the accounts. Rather, Defendant is arguing that whether this Court looks at the $160,000 estimate from the June 20, 2019 deposition/oral settlement, or the $190,000 in the written MSA, it does not matter because Defendant undisputedly did not receive his 50% share because Plaintiff took more than 50% of his share of the funds from the accounts. That is, there was no equal division of the funds in the accounts because Plaintiff took Defendant's share of the funds.

Plaintiff argues that Defendant's argument that he did not receive his equal share "could be permitted to die of self-inflicted wounds, but it should be sufficient to point out that this Court often affirms the equal or proportional division of assets for which no specific valuation is provided or necessary." *See* Plaintiff's FTR, at 28. However, again, Plaintiff fails entirely to explain how Defendant received his equal division of the cash in the accounts when Plaintiff took the majority of his 50% share. *Id.*

Plaintiff finally gets to their only actual argument regarding why Defendant not receiving his 50% share of the cash doesn't matter by arguing that ""money is fungible." *Id.* at 28-29. This amounts to an

admission that Plaintiff to Defendant's share of the cash in the community accounts and Defendant did not receive his 50% share. *Id.* When making this argument Plaintiff asserts that "Craig's second claim appears to be that even though he continued to owe Cristina more than ten times the sum she took out of that one account, her removing those *particular* dollars from that *particular* account between the date of settlement and the MSA rendered the whole settlement invalid." *Id.* This argument should be flatly rejected by this Court. The terms of the contract, regardless of whether this Court or the District Court chooses to look at the oral agreement on June 20, 2019, or the written MSA, were that Defendant would receive 50% of the cash in the accounts.

If Defendant receiving his half of the cash did not matter, the terms at the deposition oral agreement and/or the written MSA agreement would have indicated that Plaintiff could receive all the cash in the accounts. The agreement states Defendant was to receive 50% of the cash in the accounts. Plaintiff took the majority of Defendant's 50% share before either party signed the written MSA. Further, not only was Defendant rendered unable to obtain the loan for lack of cash collateral, Plaintiff's taking of Defendant's share changed the amount of loan

proceeds that Defendant would need to provide in the event of the judicial offset that the District Court ultimately ordered, rendering the provision regarding the amount of the equalization payment false and void for fraud and mistake as well. Indeed, and again, Defendant was required to seek rescinding or modification of the terms of this contract due to Plaintiff taking Defendant's share of cash in the joint accounts. That is, for the sake of argument, if Defendant simply allowed Plaintiff to take the $36,871.00, could have gotten the loan (though he couldn't), and paid the "$427,500 balance" Plaintiff would have received $36,871.00 more than she should have. Further, Plaintiff signed the MSA verifying under "under penalty of perjury that the foregoing agreement is true and correct." *See* Appdx. at 210. Yet when Plaintiff signed the MSA she knew the terms were not true or correct because she took the money in the Meadows account. *Id.*

For these, the contract was rendered void for fraud or mistake by Plaintiff, because Defendant was rendered unable to perform under the contract terms as they were written. The District Court committed clear error in finding the MSA was a valid contract because when it was entered the money that Defendant was supposed to receive had already

been taken by Plaintiff and the accounts did not exist entitling Defendant to void the contract and seek judicial remedy. This is patently clear by the fact that the Court ordered an offset of the equalization payment thereby impermissibly changing the terms of the settlement by judicial decree without the consent of both parties. For these reasons, this Court should reverse and remand.

II. THE DISTRICT COURT COMMITTED CLEAR ERROR WHEN RULING PLAINTIFF'S BREACH OF THE MSA WAS NOT A MATERIAL BREACH.

"Construction of a contractual term is a question of law and this court 'is obligated to make its own independent determination on this issue, and should not defer to the district court's determination.'" *NGA # 2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1158 (1997) *quoting Clark Co. Public Employees v. Pearson*, 106 Nev. 587, 590 (1990). When "interpreting a contract, 'the court shall effectuate the intent of the parties, which may be determined in light of the surrounding circumstances if not clear from the contract itself . . . .'" *Davis v. Nevada National Bank*, 103 Nev. 220, 223 (1987).

"When parties exchange promises to perform, one party's material breach of its promise discharges the non-breaching party's duty to

perform." *Cain v. Price*, 415 P.3d 25, 29 (Nev. 2018). That is, the breaching party's "failure of performance" discharges the beneficiary's right to enforce the contract." *Id.* "Moreover, a material breach of contract also 'gives rise to a claim for damages.'" *Id.* In *Cain*, there was a "Settlement Agreement," which "was an exchange of one promise to perform for another promise to perform." *Id.* The defendant promised to pay the plaintiff "$20,000,000 in exchange for the Cains' promise to release C4's officers from liability for C4's conduct." *Id.* The plaintiff was were bound by that promise until the defendant "materially breached the contract 90 days after February 25, 2010, the date on which C4's $20,000,000 was due. At that point, the Cains were released from their promise not to sue C4's officers." *Id.*

The "standard for deciding materiality *always starts with the language of the contract* under a de novo standard of review." *Irish v. Ghadyan (In re Abulyan)*, No. NV-18-1219-KuLB, 2019 Bankr. LEXIS 3046, at *12-13 (B.A.P. 9th Cir. Sep. 27, 2019) (emphasis added) *citing Cain*, 415 P.3d at 29; *Dynalectric Co. of Nev., Inc. v. Clark & Sullivan Constructors, Inc.*, 255 P.3d 286, 288 (Nev. 2011). Only when "there is no definite language, the court then determines as a factual matter whether

the breach is material by applying the circumstances set forth in the Restatement and applicable case law." *Id.* Where there is definite language in a contract, "[a] breach is material if it affects the purpose of the contract in an important or vital way. A material breach defeats the purpose of the contract and is inconsistent with the intention of the parties to be bound by the contract terms." *Crowley v. EpiCept Corp.*, 883 F.3d 739, 749 (9th Cir. 2018).

"Extrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous written instrument, 'since all prior negotiations and agreements are deemed to have been merged therein.'" *Frei v. Goodsell*, 129 Nev. 403, 409, 305 P.3d 70, 73 (2013) *quoting Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (quoting *Daly v. Del E. Webb Corp.*, 96 Nev. 359, 361, 609 P.2d 319, 320 (1980)). "Generally, parol evidence may not be used to contradict the terms of a written contractual agreement." *Kaldi*, 117 Nev. at 281. "The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein." *Daly v. Del E. Webb Corp.*, 96 Nev. 359, 361, 609 P.2d 319, 320 (1980). "Where 'a written contract is clear and

unambiguous on its face, extraneous evidence cannot be introduced to explain its meaning.'" *Kaldi*, 117 Nev. at 281 *quoting Geo. B. Smith Chemical v. Simon*, 92 Nev. 580, 582, 555 P.2d 216, 216 (1976).

In this matter, if this Court finds that there was a valid contract between the parties the Court's review of the District Court's decision with respect to the breach of contract claim is limited. This is because the District Court expressly found, and Defendant agrees, that Plaintiff "breached the *MSA*" because Plaintiff "promised to equally divide the parties' savings accounts with Craig as part of the global resolution of their divorce case. But before Craig tried to access his half by taking $36,871 from the Joint Meadows Bank Account, Cristina withdrew all of the monies from the Joint Meadows Bank Account, including the sum of $36,871 assigned to Craig, and closed the account." *See* Appdx. at 020:12-19. As such, this Court's review is limited to the issue of whether Plaintiff's breach of the MSA was material.

It must be noted that the District Court's ruling is, essentially, that only the terms it established as material via parol evidence are material to the contract. The District Court's Order states that:

> COURT FINDS that on June 20, 2019, the parties met for Cristina's deposition. Craig was present and

> represented by Attorney Radford Smith, and Christina was present and represent by Judge Dawn Throne.1 During the deposition, the parties took a break and negotiated settlement of their case. As a result of their negotiations, the parties gave up numerous claims against each other, settled their case, were sworn in and canvassed by counsel, acknowledged all material terms were agreed and the matter was concluded pursuant to EDCR 7.50 despite all of the particulars not yet in writing and later worked out the details in their *MSA* which was incorporated into the *Decree*.

See Appdx. at 006-7.

According to the Court, the parol evidence established the contract between the parties and the terms of the actual written instrument were "considered merely transitional." *Id.* The District Court's position in this regard is clearly erroneous, and contradicts over 100 years of Nevada precedent on contracts. Nevada law is clear, parol evidence cannot be used to contradict the terms of a written instrument because all prior negotiations are deemed merged into the written agreement. *Kaldi*, 117 Nev. at 281. Indeed, the MSA itself expressly stated that it was the parties' "intent that this Agreement incorporated and merged into a Decree of Divorce, and that its terms constitute the court's order regarding the division of property and the payment of support" making clear that the written MSA was the binding agreement, not the oral

agreement. *See* Appdx. at 193. As such, the District Court's ruling that Plaintiff's breach was not material because the specific accounts were not referenced in the deposition transcript is clearly erroneous as it is a ruling using parol evidence to contradict the clear and express written terms of the MSA. *See* Appdx. at 020-22.

The District Court clearly held that:

> Cristina promised to equally divide the parties' savings accounts with Craig as part of the global resolution of their divorce case. But before Craig tried to access his half by taking $36,871 from the Joint Meadows Bank Account, Cristina withdrew all of the monies from the Joint Meadows Bank Account, including the sum of $36,871 assigned to Craig, and closed the account. Craig expected to have immediate access to the funds awarded to him pursuant to the parties' agreement. Accordingly, Cristina breached the *MSA*.

Id. at 020:12-19.

The District Court's ruling in this regard evidences the clear materiality of the cash distribution terms of the MSA. Plaintiff "promised to equally divide the parties' savings accounts with Craig as part of the global resolution of their divorce case." *Id.* "before Craig tried to access his half by taking $36,871 from the Joint Meadows Bank Account, Cristina withdrew all of the monies from the Joint Meadows Bank Account, including the sum of $36,871 assigned to Craig, and closed the account."

Id. Defendant "expected to have immediate access to the funds awarded to him pursuant to the parties' agreement." *Id.* The terms of the MSA were clear, as were the parties' promises and expectations. Under these circumstances, Plaintiff's breach was indisputably material under Nevada law. *Irish v. Ghadyan (In re Abulyan)*, No. NV-18-1219-KuLB, 2019 Bankr. LEXIS 3046, at *12-13 *citing Cain*, 415 P.3d at 29; *Dynalectric Co. of Nev., Inc.*, 255 P.3d at 288.

The breach was material because the purpose of the MSA was to divide the parties' community property equally. Plaintiff promised to divide the community property equally. Defendant relied on that promised that he would receive his 50 percent share of the property and expected to have immediate access to his 50% share of the funds. Indeed, Plaintiff admits that "One material term was that the parties would equally divide their savings accounts in the amount of "about" $160,000." *See* Plaintiff's FTR, at 26. Despite this fact, Plaintiff argues that the "trial court correctly found that various specifics – including that Craig would receive $36,871 from one specific account as part of his 50% share – were transitional, not material, to the settlement." *Id.* What Plaintiff fails to explain entirely is how it was all possible for the trial court to conclude

that Defendant received his 50% share of the money in the savings accounts when Plaintiff took Defendant's share. Had Plaintiff turned over $36,871.00 in cash to Defendant by some other means, there likely would not have been a material breach. However, it is undisputed and actually ruled by the District Court that Defendant never actually received his half of the cash assets, which is why the Court ordered an offset. *See* Appdx. at 021:1-3.

Plaintiff makes much ado about the fact that "Cristina conceded at the May 28, 2020 hearing (almost a year before the 2021 trial), that Craig was owed an offset of $36,871 from the $427,500 he owed her pursuant to the terms of the MSA" as if this somehow negates the fact that she took Defendant's share of the savings account money in breach of the MSA. *See* Pltf's FSR, at 26, 29. It is important to note, however, that Plaintiff only admitted to this breach after Defendant filed legal action, and disputed the issue for nearly a year. *Id.* Plaintiff further argues that "It is beyond specious for Craig to assert (at 24) that he did not "receive his 50 percent share of the property" when he kept all the substantial material assets and still owes Cristina about a third of a million dollars to ***equalize*** the property distribution." *Id.* at 29-30.

Plaintiff once again argues a red herring logical fallacy. The parties' other "substantial material assets" are irrelevant. The 50% percent share of the cash in the joint accounts pursuant to the MSA is what is and was at issue. The "a third of a million dollars to ***equalize*** the property distribution" only became a third of a million dollars because the Court ordered a modification of the terms of the MSA to offset the equalization payment by the $36,871.00, Defendant's money that Plaintiff stole from the Meadows account in breach of the MSA. *Id.*

Ultimately, it cannot be disputed that Defendant was denied the benefit of his bargain because Plaintiff took more than 50 percent of the savings account money, and more than 50 percent of Defendant's sole property as defined in the MSA and subsequently sought to enforce the full amount of the equalization payment. *See* Appdx. at 020. In fact, the District Court expressly held that Defendant receiving his half of the savings account money was the benefit of his bargain:

> *Craig was awarded, among other things, over $95,000 in cash* (although some of it was owed to Cristina and *Cristina took $36,871 of that cash*), three real properties, the parties' well established law firm, a yacht, another boat, and two vehicles. *Craig does not get to keep the benefit of the bargain* for himself while forcing Cristina into the further discovery and accounting he expressly waived.

See Appdx. at 023.

However, the District Court clearly erred by concluding that Craig kept the benefit of his bargain, when concluding in the very same paragraph that his half of the cash was taken by Christina. *Id.* Craig did not keep his benefit of his bargain because he never received his half of the cash. *Id.*

A primary issue for determining if there is a valid contract and what terms are material is whether the party receives the benefit of their bargain. *Waltz*, 110 Nev. at 609. Neither the District Court, nor Plaintiff explains how Defendant received the benefit of his bargain to receive his half of the savings account funds, "over $95,000 in cash," when "Cristina took $36,871 of that cash." *See* Appdx. at 023. It appears that the District Court's primary reasoning for determining that Plaintiff's breach was not material was that the $36,871.00 in savings account cash Plaintiff took was less than "the property equalization obligation in the much larger amount of $427,500." *Id.* at 021. Plaintiff parrots this position. *See* Plaintiff's FTR, at 29-30. Defendant could not find any Nevada precedent or other law that has ever held that differences in the funds due under a contract somehow makes a breach of a clear contract term allocating

funds or property not material. Plaintiff has also failed to cite any such case law.

The District Court's conclusion is, essentially, that despite Plaintiff taking $36,871.00 of community funds that did not belong to her, Defendant was still required to obtain a loan for and pay the entire $427,500.00 equalization payment. *See* Appdx. at 007:6-9, 21:4-22:3. Doing so, however, would have still resulted in this litigation because under those conditions Plaintiff would have received $36,871.00 more than she was authorized to receive under the MSA. That is, the District Court erroneously concluded that Defendant was required to take the $36,871.00 theft, perform by paying Plaintiff $427,500.00 and then sue for the missing $36,871.00, rather than the prior breach negating Defendant's duty to perform. This Court should ask itself a very simple question: had Defendant been able to obtain the loan and timely paid the $427,500.00, would Plaintiff's theft of Defendant's $36,871.00 been a material breach under those circumstances? If the answer to that question is yes, the term was material.

The District Court then used Defendant's argument that his performance was rendered impossible by Plaintiff's breach taking his sole

property as his argument of materiality. *Id.* The District Court held that "Craig's [material breach] argument is based upon his alleged need to use the $36,871 as collateral to secure a loan to pay the property equalization obligation to Cristina." *Id.* This was never the case. Defendant's argument that he was unable to secure the loan was that the precipitating breach made Defendant's performance impossible. That argument was separate and ancillary to the materiality argument. Further, the District Court acknowledged that "the evidence indicated that Cristina expected Craig to obtain a loan to pay the $427,500 property equalization obligation on time, Craig's ability to obtain the loan was not a condition to timely payment of the $427,500 property equalization obligation to Cristina." *See* Appdx. at 021. This position was absolutely false as the June 20, 2019 deposition transcript demonstrates that Plaintiff conditioned the settlement on Defendant having "a commitment letter on or before the date the pretrial memorandums are due in this case. Otherwise, we're going to proceed to trial." *See* Appdx. at 045. Plaintiff's demand of the commitment letter or she would go to trial absolutely demonstrates that the settlement was actually conditioned on the loan, and the District Court's selective pulling of terms from the

deposition transcript and written MSA is both biased and clear error. *Id.* In keeping with the agreement at the June 20, 2019 deposition, however, on July 26, 2019 prior to entry of the MSA Defendant provided Plaintiff with the commitment letter negotiated on June 20, 2019. *See* Appdx. at 448-450.

Defendant is entirely unclear how it was even possible for the District Court to come to the conclusion that obtaining the loan was not a contingency in the MSA when Defendant was required to provide the commitment letter before Plaintiff would sign the final MSA. *Id.* The District Court also ignored this evidence when holding that "Craig provided no credible evidence of a loan application, nor evidence of a loan denial." *Id.* at 021. Defendant presented the commitment letter and testified that after he was left with almost no personal cash funds, his bank told him he did not qualify for the loan. Once again, however, the District Court's entire basis for finding that Plaintiff's initial breach was not material involved no analysis of the terms of the MSA or what the promises the parties agreed to were. Instead, it was because (1) the money Plaintiff took was less than the equalization payment; and (2) Defendant did not present a denied loan application. *Id.* at 021-22. These

are not considerations for evaluating materiality for contract terms that are clear and define the purpose of the contract. *Irish*, No. NV-18-1219-KuLB, 2019 Bankr. LEXIS 3046, at *12-13; *Cain*, 415 P.3d at 29; *Dynalectric Co. of Nev., Inc.*, 255 P.3d at 288; *Crowley*, 883 F.3d at 749.

Plaintiff has advanced several arguments for why her breach was material, none of which rely on any Nevada contract law. According to Plaintiff, "First, the trial court's admonishment that the $36,871 issue was already resolved a year before trial and should not be a trial issue, given Craig's unpaid debt to Cristina." *See* Pltf's FTR, at 29. Plaintiff cites to no authority that states that a District Court's admonishment of a party impacts whether a breach is material. This is simply not a consideration. Second, Plaintiff argues the issue of Defendant needing to use the cash as collateral. *Id.* at 30-31. Again, this is not a consideration for determining materiality.

Third, Plaintiff argues that "Craig was given a dollar for dollar credit against the sum of $427,500 he owed to Cristina." *Id.* at 31. The fact that the District Court granted Defendant the dollar for dollar credit in and of itself demonstrates that the material terms of the MSA could not be enforced because Plaintiff took and expended Defendant's

$36,871.00 in cash due to him pursuant to the MSA. *Id.* Plaintiff's argument that "Cristina's removal of the sum of $36,871 from the Joint Meadows Account made no difference, and was not a 'material breach' excusing Craig's payment of the property equalization" is also false, as Defendant ultimately had to sue to rescind the MSA, and the District Court was forced to modify the MSA in order to rule the remainder of it was preserved. Importantly, it also cannot be disputed that Defendant could not obtain a loan for the correct amount due without the Court first modifying the terms of the MSA, otherwise Plaintiff would have received $36,871.00 more than she was entitled to receive under the terms of the MSA. For these reasons, Plaintiff's removal of the $36,871.00 did have a difference, especially considering she sued for the full amount and did not concede her theft of Defendant's sole property for nearly a year after initiating this action.

The dollar for dollar credit against the equalization payment does not negate the fact that equal dividing of the cash assets was a material term of the contract. In fact, in Plaintiff's entire section on materiality she does not cite to a single case or other law where any of those considerations were relevant to determining the materiality of a contract

provision.

Here, regardless of what terms this Court looks at, the deposition or the final MSA, it is patently clear that the parties agreed and promised to divide the cash assets in the savings accounts equally. *See* Appdx. at 020-23. It is undisputed that Defendant did not receive his equal share of the cash assets in the savings accounts because Plaintiff took $36,871.00 of Defendant's share of the cash. *Id.* Equal division of the cash was a material term. *See* Appdx at 023. Defendant never received his half of the cash. For these reasons, Plaintiff's breach was material and Defendant's performance was excused by Plaintiff's material breach and was entitled to bring action against Plaintiff to rescind the MSA.

III. THE DISTRICT COURT ERRED WHEN IT FOUND PLAINTIFF DID NOT COMMIT FRAUD IN THE INDUCEMENT BY TAKING DEFENDANT'S SOLE PROPERTY AND SUBSEQUENTLY SIGNING THE MSA.

"Fraud in the inducement renders the contract voidable." *Havas v. Alger*, 85 Nev. 627, 631 (1969) *citing Bishop v. Stewart*, 13 Nev. 25, 42 (1878). "The person defrauded may rescind,…or he may, if the contract is still executory…*refuse to perform and raise the defense of fraud when sued*." *Id.* (emphasis added). "Fraud is never presumed; it must be clearly and satisfactorily proved." *Id. citing Warren v. De Long*, 57 Nev. 131, 146,

(1936); *Ward*, 54 Nev. at 451; *Nevada Mining and Exploration Co. v. Rae*, 47 Nev. 173, 182 (1923). Credible evidence of fraud in the inducement can invalidate a MSA. *Doucettperry v. Doucettperry*, 2020 Nev. App. Unpub. LEXIS 849, *10, 475 P.3d 63, 2020 WL 6445845. NRCP 60 also provides grounds for relief from judgment, and expressly includes "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." *See* Nev. R. Civ. P. 60. Indeed, fraud of an adverse party is grounds to invalidate a judgment. *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 652 (2009).

To prove fraud by misrepresentation the party alleging fraud must prove "A false representation made by the defendant, knowledge or belief on the part of the defendant that the representation is false -- or, that he has not a sufficient basis of information to make it, an intention to induce the plaintiff to act or to refrain from acting in reliance upon the misrepresentation, justifiable reliance upon the representation on the part of the plaintiff in taking action or refraining from it, and damage to the plaintiff, resulting from such reliance. *Lubbe v. Barba*, 91 Nev. 596, 599 (1975).

Here, Defendant proved that Plaintiff engaged in fraud by both

testimony and documents, and the Court's own order demonstrates that all elements of fraud were met. The District Court found that "Cristina promised to equally divide the parties' savings accounts with Craig as part of the global resolution of their divorce case." *See* Appdx. at 020:12-19. However, "before Craig tried to access his half by taking $36,871 from the Joint Meadows Bank Account, Cristina withdrew all of the monies from the Joint Meadows Bank Account, including the sum of $36,871 assigned to Craig, and closed the account." *Id.*, 17:18-18:2. When Plaintiff signed the MSA she attested and verified under penalty of perjury that the terms of the "agreement is true and correct." *Id.* at 210. Plaintiff also initialed the page discussing distribution of the cash in the joint accounts. *Id.* at 195. Plaintiff initialed this document and signed it under penalty of perjury despite knowing full well that she took all the money in the Meadows account prior to signing the document.

Plaintiff knew the representation was false, as she personally removed all the funds from the Meadows account. Plaintiff then signed the MSA anyway, despite knowing the funds were no longer in the account to induce Defendant to sign the MSA, which he ultimately did. The Court expressly held that "Craig expected to have immediate access

to the funds awarded to him pursuant to the parties' agreement" (*id.* at 020:17-19), and that "the only sum Craig could have *reasonably relied upon* when he signed the *MSA* is that Craig was to receive the sum of $36,871 from the Joint Meadows Bank Account." *Id.* at 016:18-17:2 (emphasis added). The elements of fraud in the inducement were unquestionably met by the District Court's own finding of fact and the evidence. The Court failed to hold Plaintiff accountable for the fraud, citing materiality of the contract terms rather than analyzing the misrepresentations made by Plaintiff. *Id.* at 018:4-12.

The District Court also cited the date of the oral agreement and the fact that the money was in the account on that date as a basis for not finding fraud. *See* Appdx. at 018.

> The Court is not persuaded that Craig has proven a claim for fraud in the inducement. The parties reached their agreement on June 20, 2019 at the time they were sworn in and placed the material terms on the record through the deposition transcript and acknowledged that the matter was settled under EDCR 7.50. One of the material terms was that the parties would equally divide their savings accounts in the amount of about $160,000. Any other specifics – including that Craig would receive $36,871 from the Joint Meadows Bank Account as part of his 50% share -- was acknowledged to be transitional -- not material.

Id.

First, determining materiality and fraud are not the same legal test. Second, while the Court found the specifics of where the 50% of Defendant's share of the cash would come from immaterial, the fact remains that Defendant never received his half of that cash. *Id.*

The District Court clearly erred by applying materiality to the fraud claim. "To establish a cause of action for fraud in the inducement, Craig must establish by clear and convincing evidence that (1) Cristina made a false representation, (2) Cristina had knowledge of the falsity of the representation, (3) Cristina intended to induce Craig to rely on the representation, (4) Craig justifiably relied on the representation, and (5) Craig suffered damages as a result of this reliance." *See* Appdx. at 017 *citing J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.,* 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004).

Here, on July 28, 2019, Plaintiff had knowledge that she took the money in the Meadows bank account because she was the one who personally removed the funds. When Plaintiff initialed the MSA and signed the verification that the terms were true and correct, she made a false representation and knew that representation was false because she took the money from the Meadows account. *See* Appdx. at 195, 210.

Plaintiff intended Defendant to rely on that verification, as it was made under perjury to ensure the parties' agreement was enforceable. *Id.* Defendant relied on Plaintiff's representations signing the document the next day, July 28, 2019. *See* Appdx. at 211. Defendant suffered damages, which the Court later affirmed when it unilaterally modified the MSA to account for the $36,971.00 offset. *See* Appdx. at 021:1-3.

All the elements of fraud in the inducement were met. The District Court simply refused to analyze the facts and evidence based on the correct Nevada legal standard for fraud in the inducement, instead asserting that there was no fraud because the specifics of Plaintiff's misrepresentations were supposedly not material to the contract. *See* Appdx. at 018:1-12. Because Plaintiff committed clear fraud in the inducement the contract was voidable and Defendant was within his rights to not perform under the MSA requiring reversal and remand.

IV. THE DISTRICT COURT COMMITTED CLEAR ERROR WHEN IT FOUND THAT DEFENDANT WAIVED HIS RIGHT TO BRING A MOTION PURSUANT TO NRS 125.150(3).

For a party to succeed with a motion pursuant to NRS 125.150 there "must be (1) community property and (2) omitted by mistake or fraud." *Peterson v. Peterson*, 463 P.3d 467 (Nev. 2020).

The Court acknowledged that Defendant identified a significant amount of money missing from the community property. *See* Appdx. at 011:19-12:5. The Court acknowledged that Defendant "provided evidence of various transactions by Cristina between several bank accounts, totaling up the sums in different ways." *Id.* at 012:9-11. However, instead of ruling on the issue of the missing community property the Court chose to ignore the issue by misrepresenting that the amount of the missing property "was never clear and hard to follow," and that Defendant's closing brief "did not identify a sum and asked instead to throw out the *MSA* and allow the parties to renegotiate the property equalization amount." *Id.* at 012:6-14. The Court's representation in this regard is patently false.

In Defendant's pre-trial brief and closing brief he expressly alleged that "between January 9, 2019, and June 3, 2019 Ms. Hinds removed $129,841.00 from the Meadows Bank account." *See* Appdx. at 492:18-20, 539:21-23. Defendant alleged in both the pre-trial and closing briefs that Plaintiff expended $83,842.96 for her personal account in breach of the written MSA and in violation of the JPI, most of which was expended on attorney's fees. *Id.* at 492:23-25, 539:17-18. Defendant highlighted that

$22,000.00 of the 129,841.00 taken from the Meadows account was unaccounted for as it had never been deposited into Plaintiff's CitiBank accounts. *Id.* at 492:25-27, 540:1-3. As such, "the total amount of missing funds from the community property from the Meadows Bank Account on June 20, 2019 was $105,842.96," the $83,842.96 Plaintiff expended between January 1, 2019 and June 20, 2019, and the $22,000.00 that was never deposited in the CitiBank accounts, and was thus unaccounted for entirely. *Id.* at 491:21-24, 537:21-538:2.

Defendant gave the Court the exact amount of the other missing community property funds on numerous occasions before, during, and after the evidentiary hearing. The District Court simply ignored it. The District Court proceeded to justify excusing Plaintiff's theft of this community property asserting that the transcript of the deposition on June 20, 2019 "flatly rebutted" any claim for the missing funds. *Id.* at 012:15-20. In so finding, the District Court has essentially held that when parties settle a divorce and assert that they are equally dividing a specific amount of community property, that such an expression waives any claim of missing property pursuant to NRS 125.150(3) for any property missing from the final MSA by fraud or mistake.

The District Court's holding is clearly erroneous as a matter of law, as it is squarely contradicted by the plain language of the statute itself. NRS 125.150(3) expressly grants a party to a MSA or Decree of Divorce to "file a postjudgment motion in any action for divorce, annulment or separate maintenance to obtain adjudication of any community property or liability *omitted from the decree* or judgment as the result of fraud or mistake." Nev. Rev. Stat. § 125.150(3)(emphasis added). As the District Court clearly recognized, Defendant identified a significant amount of community property expended from the parties' joint accounts while the JPI was in place. *See* Appdx. at 012:9-11. The District Court also acknowledged that Defendant raised the issue of money missing from the Meadows account at the June 20, 2019 settlement meeting. *id.* at 011:4-18. The Court acknowledged that Plaintiff assured Defendant all the money in the Meadows bank account was put back by using a statement from 2015, but did not disclose he removal of the $129,841.00 in 2019. *Id.* Because there was community property was missing by mistake or fraud, Defendant was entitled to bring the NRS 125.150 motion to seek adjudication of those funds regardless of the terms of the MSA, or Defendant's statements about the property at the settlement meeting.

Plaintiff argues that "When the parties entered into the MSA, they agreed to end discovery and expressly waived any further claims or discovery." *See* Plaintiff's FTR, at 33. According to Plaintiff such an agreement waives a claim of fraud or mistake, even when a party represents that they have returned or otherwise disclosed all assets when making the settlement. Such is not the case, as Nevada NRS 125.150 expressly permits a motion to seek adjudication of missing property after the entry of the MSA, which always include terms waiving entitlement to additional discovery.

Plaintiff argues that "Craig did not identify any assets that were 'missing' at trial." *See* Plaintiff's FTR, at 34. This position is flatly contradicted by the District Court's own order asserting that "During the Evidentiary Hearing, Craig provided evidence of various transactions by Cristina between several bank accounts, totaling up the sums in different ways." *See* Appdx. at 012:6-14. The District Court's decision to deny Defendant's claim was because Defendant supposedly did not clear up the issue in his closing brief, when, in fact, Defendant did by outlining all the money removed by Plaintiff from the accounts between January 2019 and the date of the MSA, and concluding that "the total amount of missing

funds from the community property from the Meadows Bank Account on June 20, 2019 was $105,842.96," the very same amount identified in the pre-trial brief. *See* Appdx. at 536:1-538:2. "*In total, Ms. Hinds expended or otherwise took $105,842.96 of community property that was omitted from the decree*. Ms. Hinds took an additional $36,871.00 of Craig's sole property in the Meadows Bank Account before the MSA was signed." *See* Appdx. at 541:12-19 (emphasis added).

While a party may waive a claim in a contract, the actual language of the alleged waiver term is critical to determining what is waived. *Club Vista Fin. Servs., Ltd. Liab. Co. v. Eighth Judicial Dist. Court of Nev.*, No. 57784, 2012 Nev. Unpub. LEXIS 265, at *7 (Feb. 27, 2012). Further, when fraud is alleged involving a specific term of a contract, waiver is not properly found. *Id.* Here, the District Court never actually identifies what specific provision of the MSA is the provision allegedly waiving other claims. *See* Appdx. at 007-9. The only provisions the District Court cites pertaining to waiver was the provision regarding disclosure and waiver of additional discovery. *Id. see also* 194.

Plaintiff alleges "all other potential claims were waived by the MSA and *Decree*" citing the District Court's Order, not the actual decree or

MSA. The decree includes no provision waiving other claims. *See* Appdx. at 160-66. The MSA does not include any provision waiving other claims. *Id.* at 192-211. For these reasons, it is entirely unclear why the District Court concluded that "when the parties settled, they expressly dissolved the *JPI* and waived any claims as to monies not identified in the *MSA*." *Id.* at 017:6-7, 019:11-20. Rather, the MSA is clearly that the parties waived additional discovery based on a promise that the other party "made full and fair disclosure of the property and interests in property owned or believed to be owned by the other either directly or indirectly prior to the date of their resolution on June 20, 2019." *Id.* at 194. Because Defendant alleges that Plaintiff did not fully disclose the property she took between January and June 20, 2019, any waiver of claims in this provision would be invalidated by fraud, permitting an NRS 125.150 motion. The District Court clearly erred in failing to address Defendant's NRS 125.150 for failure to specify the amount missing and waiver, and this Court should reverse and remand.

V. THE DISTRICT COURT COMMITTED CLEAR ERROR WHEN IT FOUND THAT DEFENDANT FAILED TO PROVE THAT PLAINTIFF'S BREACH OF THE MSA MADE DEFENDANT'S PERFORMANCE IMPOSSIBLE.

"[I]n actions based on a contract, one type of 'affirmative defense

impliedly admits the sufficiency of the underlying contract, but offers an excuse for the defendant's failure to perform'" such as a prior breach rending a contract unenforceable. *Schettler v. RalRon Capital Corp.*, 128 Nev. 209, 221 (2012); *see also Durell v. Sharp Healthcare*, 108 Cal. Rptr. 3d. 682, 697 (Ct. App. 2010).

When deciding that Plaintiff's initial breach of the MSA was not a material breach, the Court cited to Defendant's separate and distinct defense that his "need to use the $36,871 as collateral to secure a loan to pay the property equalization obligation to Cristina" was rendered impossible by Plaintiff's initial breach. *See* Appdx. at 021:4-20. The District Court clearly recognized that "Cristina expected Craig to obtain a loan to pay the $427,500 property equalization obligation." *Id.* The Court, however, excused the effect of Plaintiff's initial breach of the MSA, finding that "Craig's ability to obtain the loan was not a condition to timely payment of the $427,500 property equalization obligation to Cristina." *Id.* This ruling is clearly erroneous for several reasons.

First, while Defendant's ability to obtain the loan was not a condition of timely payment, Plaintiff's initial breach impairing Defendant's ability to obtain the loan gives rise to the impossibility

affirmative defense. *Schettler*, 128 Nev. at 221. The District Court's own rulings negate its conclusion in its order that Defendant's performance was possible or required on the date the $427,500.00 equalization payment was due. This is because the District Court also held that Plaintiff promised to divide the money in the savings accounts equally, that Plaintiff took Defendant's "half by taking $36,871 from the Joint Meadows Bank Account" and closing the account, and that Defendant expected to have immediate access to those funds pursuant to the agreement. *See* Appdx. at 020. At that point, Defendant's full performance under the terms of the MSA by paying the $427,500.00 equalization payment would have resulted in Plaintiff receiving $36,871.00 more money than she was entitled to, which would have required Defendant to sue for material breach of the MSA anyway.

This Court should ask itself why Defendant would be required to obtain a loan and pay Plaintiff the full $427,500.00 equalization payment pursuant to the terms of the MSA when the District Court also concluded that Plaintiff was not entitled to receive $427,500.00 because she breached the MSA by taking Defendant's sole property. *See* Appdx. at 020:12-19, 035:1-7. By taking Defendant's $36,871.00 Plaintiff breached

the MSA and changed the amount that would be have been due. The District Court's decision is, essentially, that Defendant needed to take a $36,871.00 financial hit and pay interest on a loan for years while this matter made its way through the judicial system.

The rule that a party can void a contract or not perform upon another party's initial material breach exists because of this exact type of issue. The non-breaching party should not be subject to additional losses by being forced to perform after the other party's breach. Plaintiff's taking of the $36,871.00 made it impossible for Defendant to perform because doing so would cause him significant financial harm having to pay interest on a $427,500 loan when that amount was not due. Plaintiff's taking of Defendant's sole property made the amount Defendant needed to pay unclear and Court intervention would have been necessary to modify the terms of the MSA if Defendant did not want to rescind the contract.

Plaintiff argues that "Craig's ability to obtain a loan for $427,500 *could* not be conditioned upon having the $36,871 as collateral given the disparity of the dollar amounts." *See* Plaintiff's FTR, at 37. However, Plaintiff taking that $36,871 clearly altered the amount due to her under

the MSA, and the District Court ruled. As such, by changing the amount due upon theft of Defendant's sole property, specific performance under the clear terms of the MSA was rendered impossible without serious financial harm to Defendant, who would have been required to sue Plaintiff anyway.

The District Court also found that there was supposedly "no credible evidence of a loan application, nor evidence of a loan denial, nor convincing evidence that the lack of $36,871 in Craig's hand interfered in any way toward qualifying for a $427,500 loan." *See* Appdx. at 021:13-20. This conclusion was clearly erroneous, as Defendant presented emails exchanged with Old Line Bank, which were sent to Plaintiff's counsel, noting the ability to issue the loan but seeking "the remainder of the financial information requested." *Id.* at 448-450. The remainder of the financial information included the cash funds in the Meadows account that were supposed to be Defendant's sole property, as Defendant testified. *See* Hearing Video, 05/10/2021, Part 8, at 26:00-28:50. Further, at no point in any of Plaintiff's briefs did she dispute the issue of Defendant being unable to get the loan after Plaintiff closed his Meadows bank account.

The Court then held that Defendant "admitted that his poor credit interfered with qualifying for a loan." *Id.* at 021:16-21. However, poor credit clearly did not interfere with getting the loan as the bank was willing to issue the loan to Defendant so long as it received the financial information Defendant was supposed to provide to them after the Decree was entered. *Id.* at 448-450. Plaintiff's initial material breach of the MSA, therefore, interfered or otherwise made it impossible for Defendant to perform by both changing the amount of the loan needed and preventing Defendant from qualifying for the loan. As such, Defendant's performance under the contract was excused and reversal and remand necessary.

VI. THE COURT COMMITTED CLEAR ERROR WHEN IT FOUND THAT PLAINTIFF WAS THE PREVAILING PARTY AND ENTITLED TO ATTORNEY'S FEES.

Attorney's fees must be awarded in accordance with the terms of a contract when a contract so provides. *Rosenthal v. Rosenthal*, 2016 Nev. App. Unpub. LEXIS 298, *10, 132 Nev. 1024, 2016 WL 4497225. A district court abuses its discretion when denying attorney fees "in accordance with the MSA." *Id. citing See Kantor v. Kantor*, 116 Nev. 886, 895: *cf. Davis v. Beling*, 128 Nev. 301, 278 P.3d 501, 515-16, 278 P.3d 501, 515-16 (2012); *Jones v. Jones*, 86 Nev. 879, 885, 478 P.2d 148, 152 (1970);

Lyon v. Walker Boudwin Constr. Co., 88 Nev. 646, 651 (1972).

Here, the District Court correctly held that "the *MSA* provides that '[s]hould either party bring an action to enforce or interpret this Marital Settlement Agreement, the non-prevailing party in the action shall pay the reasonable attorney's fees and costs incurred by the prevailing party in that action.'" *See* Appdx. at 034:15-19. However, despite the District Court acknowledging that: (1) Plaintiff breached the MSA first when she took $36,841.00 in Defendant's sole property cash funds; and (2) that Plaintiff's breach therefore required the Court to order that Defendant "is entitled to an offset in the amount of $36,871" from the equalization payment, the District Court still concluded that Plaintiff was the prevailing party. *Id.* at 035:1-7. This ruling is clearly erroneous.

Plaintiff's initial Motion for Order to Show Cause ("OSC") sought to enforce the $427,500.00 equalization payment balance included in the MSA. *Id.* at 503:9-16. Plaintiff brought the Motion for OSC despite knowing that she had breached the MSA already and taken $36,841.00 of Defendant's sole property. *Id.* Plaintiff's breach of the MSA in taking Defendant's sole property forced Defendant to seek the District Court's intervention "TO MODIFY DECREE OF DIVORCE AND MARITAL

SETTLEMENT AGREEMENT WITH REGARD TO EQUALIZATION PAYMENT TO CHRISTINA HINDS DUE TO CRISTINA HINDS' MISAPPROPRIATION OF COMMUNITY FUNDS." *Id.* at 514. The District Court ultimately ruled that breached the MSA and Defendant was entitled to an offset. *Id.* at 035:1-7.

The District Court awarded the very relief Defendant sought when he filed his Counter-Motion to Modify the Decree and MSA with regards to the equalization payment, finding Defendant was no longer entitled to the $36,841.00 in cash from the Meadows account that was the benefit of his bargain, and instead ordered an offset from the equalization payment. *Id.* Had Plaintiff only sought to enforce the amount of the equalization payment due, rather than dishonestly misrepresenting that she was entitled to the full amount of the MSA, it might not be clearly erroneous to find Plaintiff as the prevailing party.

However, Plaintiff stole the $36,841.00 of Defendant's sole property, expressly denied that Defendant was entitled to any offset, denied removing Defendant's sole property from the Meadows account, and sought to enforce the $427,500.00 figure in the MSA. *Id.* at Appdx. at 528:16-529:28. Plaintiff's initial dishonesty regarding Defendant's sole

property funds that she stole forced Defendant to withhold performance and seek judicial intervention rescinding the MSA and Decree, or modifying it to offset the amount of the stolen funds. The District Court ultimately ruled that Plaintiff breached the MSA, and that Defendant was entitled to an offset, and Plaintiff was not entitled to recover the full $427,500.00 figure in the MSA. Under these facts, it was Defendant that was the prevailing party, and Defendant who was entitled to an award of attorney's fees.

Plaintiff argues that "At the May 28, 2020, hearing, Cristina admitted that Craig was entitled to an offset for those funds, and the trial court admonished Craig not to litigate the motion he filed if that was all he could show." *See* Plaintiff's FTR, at 39. Again, Plaintiff cites this irrelevant fact as if it somehow excuses her conduct. *Id.* The concession does not excuse Plaintiff's breach of the MSA. Plaintiff's concession also does not change the fact that the relief granted by the Court was in Defendant's favor. Plaintiff brought this action seeking to enforce the full amount of the equalization payment. Plaintiff did not obtain that relief. Defendant, in contrast, sought to rescind or modify the MSA. The District Court expressly modified the terms of the MSA. The Court's granting

Defendant the relief he requested makes Defendant the prevailing party.

As Plaintiff recognizes, "In Nevada, "[a] plaintiff may be considered the prevailing party for attorney's fee purposes if it succeeds on any significant issue in litigation achieves some of the benefit is [*sic*] sought in bringing the suit.'" *See* Plaintiff's FTR, at 40 *citing* i*Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 485-86, 851 P.2d 459, 464 (1993) quoting *Hornwood v. Smith's Food King*, 105 Nev. 188, 772 P.2d 1284 (1989). Here, one of Defendant's claims was that Plaintiff stole $36,871. Defendant succeeded on that claim and the District Court ordered an offset. *Id.* In contrast, Plaintiff was not able to enforce the "$427,500 balance" of the equalization payment because an offset was required. *See* Appdx. at 503.

While Plaintiff may have been "successful in obtaining enforcement of the property equalization obligation," she was not successfully in obtaining the full amount because the Court found that "Cristina breached the MSA by taking funds that belong to Craig." *See* Appdx. at 035. In contrast, Defendant's claim was, in part, for an offset. Defendant succeeded in obtaining that relief. The fact that Plaintiff "admitted that Craig is entitled to an offset against his property equalization obligation for those funds" is entirely irrelevant to who is the prevailing party,

especially considering it only came a year after Plaintiff initiated this action seeking the full $427.500.00 amount. *Id.* The District Court's consideration of the concession is also clearly erroneous. Plaintiff's admitted breach of the MSA gave rise to Defendant's reasonable claim that he could rescind the MSA all together, in accordance with clear Nevada law on the issue. The District Court's attempt to coerce Defendant into dropping that meritorious claim via the admonishment does not permit the District Court to declare Plaintiff the prevailing party entitled to attorney fees "after her concession." *Id.* As such, reversal and remand is warranted.

CONCLUSION

For the reasons set forth above, Appellant requests that this Court GRANT his appeal, and reverse the District Court's Order granting Respondents summary judgment.

Respectfully submitted,

MCAVOY AMAYA & REVERO ATTORNEYS

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CERTIFICATE PURSUANT TO NRAP 28.2

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

> [X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook; or
>
> [ ] This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

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

> [X] Proportionately spaced, has a typeface of 14 points or more, and contains 13,892 words, less than the 14,000 word limit; or
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>
> [ ] Does not exceed 30 pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous

or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada.

Dated this **14th** day of **March 2022**.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 24th day of August, 2020. Electronic service of the foregoing document was made in accordance with the Master Service List as follows:

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