IN THE SUPREME COURT OF THE STATE OF NEVADA

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CRAIG A. MUELLER, Appellant/Cross-Respondent, vs. CRISTINA A. HINDS, Respondent/Cross-Appellant.	S.C. NO. 84122/84077 D.C. NO: D-18-571065-D

RESPONDENT/CROSS-APPELLANT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal. In the course of these proceedings leading up to this appeal, Respondent has been represented by the following attorneys:

Marshal S. Willick, Esq. and Lorien K. Cole of the WILLICK LAW GROUP.

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There are no corporations, entities, or publicly-held companies that own 10% or more of Appellant's stock, or business interests.

DATED this 4th day of April, 2022.

Respectfully Submitted By:
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//s// Marshal S. Willick

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JURISDICTIONAL STATEMENT

We concur that this Court has jurisdiction to consider this appeal.

ROUTING STATEMENT

We concur that this case is presumptively assigned to the Court of Appeals per NRAP 17(b)(10) as it involves family law matters other than the termination of parental rights or NRS Chapter 432B proceedings. This appeal and No. 84077 should be routed together.

STATEMENT OF THE ISSUES[1]

1. Whether the district court correctly enforced the parties' Marital Settlement Agreement and *Decree* requiring Craig to pay equalization to Cristina when he kept the vast majority of the community property of the parties.

2. Whether Cristina was the prevailing party in litigation where Craig's demand to set aside the Marital Settlement Agreement was denied and he was held in contempt of multiple orders.

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[1] Some of the "issues" listed in the *Opening Brief* either were not decided by the lower court at all or assume false "facts"; where necessary, they are addressed below.

STATEMENT OF CASE

This is Craig's appeal from a post-*Decree* order refusing to set aside the parties' Marital Settlement Agreement and *Decree* requiring Craig to pay equalization to Cristina for the community property he retained; the Hon. Rebecca Burton, District Court Judge, Department C, presiding.

STATEMENT OF FACTS[2]

Cristina Hinds ("Cristina") filed a *Complaint for Divorce* against Craig Mueller ("Craig") on May 16, 2018; on December 27, 2018, a *Joint Preliminary Injunction* ("JPI") was issued.[3] The parties are both attorneys who have practiced law for more

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[2] NRAP 28(b) provides that Respondent may provide a Statement of Facts if "dissatisfied" with that of the Appellant. Appellant's factual rendition is inaccurate and incomplete, and in some places unintelligible, containing cryptic citations and references (including unverified and impermissible video record cites) and large cut-and pastes from Cristina's original Fast-Track Response. We request the Court refer to this Statement of Facts instead.

[3] VIII RA 1384.

than 15 years.[4] During the divorce litigation, the Court issued an *Order to Show Cause* against Craig for his multiple violations of the JPI.[5]

In discovery, Cristina disclosed all bank accounts and their balances on her February 13, 2019, *Financial Disclosure Form*.[6]

Cristina's deposition was set for June 20, 2019. Both parties were present and represented by experienced family law counsel: Radford Smith for Craig, and Dawn Throne for Cristina.[7]

During that June 20, 2019, meeting the parties negotiated, gave up numerous claims against one another, settled the case, were sworn in and canvassed by counsel,

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[4] VIII RA 1387.

[5] IV RA 721.

[6] VIII RA 1391.

[7] VIII RA 1384 (now "Judge Throne," referred to here as "Ms. Throne").

and acknowledged all material terms were agreed and that the matter was concluded pursuant to EDCR 7.50.[8]

The transcript from the deposition/settlement reflected the parties' agreement that the basic structure of the settlement was an equal division of community property. Craig was to keep the law firm, various real properties, a yacht, and other items valued at nearly a million dollars and so was to make an equalization payment to Cristina in the amount of $450,000 (less some offsets, reducing the equalization payment to $427,500). As part of the property division, the parties were to divide their savings accounts, believed to contain a total of about $160,000 (with about $80,000 going to each party).[9] Craig's pending Order to Show Cause for taking multiple fund withdrawals in violation of the JPI were waived.

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[8] *Id.*

[9] VIII RA 1385.

It had been contemplated during the settlement discussion on June 20 that Craig might have to obtain a loan to pay the equalization,[10] but no terms relating to a loan were ever suggested or placed in any of the documents. The reason the *Marital Settlement Agreement* ("MSA") signed in July did not require a loan was explained by Ms. Throne at the 2021 evidentiary hearing:

> Ms. Throne: [A]s of June 20th, [Craig] getting that loan commitment letter so that we knew he could get the loan was the deal breaker. . . . And then we renewed negotiations and there was some give and take on things like the cash being applied, some of the cash that would've gone to [Craig] being applied to things he owed [Cristina] or to prepaying some of the payments and stuff, that was a negotiation afterwards. And so, and as well as the negotiation that we didn't need [it]; it was moot at that point – the loan commitment letter. Somehow he needed to get the money, whether he sold it, got a loan, sold an asset or two was irrelevant.
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> . . . .

[10] VIII RA 1385.

Ms. Cole: [T]hen the commitment to get a loan wasn't actually a part of the parties' final agreement that they made in their decree and in their MSA?

Ms. Throne: Correct. Yeah. We didn't care how he got the money, as long as he got the money.[11]

As Ms. Throne explained, after the June 20 meeting, the attorneys drafted and negotiated a few remaining transitional terms that did not materially alter the terms of the settlement but moved some items from one side of the balance sheet to the other as offsets or to provide Craig's payment of some sums he owed.[12] To ensure all parties were informed of the amounts in the bank accounts, Cristina's counsel sent

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[11] Craig's Supplemental Appendix ["Supp. App."] 29-30. The "transcript" Craig filed is unofficial and computer-generated, and contains many typographical and speaker-identification errors, all in violation of NRAP 9; also see NRAP 3E(c)(2)(E).

[12] IV RA 723; VIII RA 1395. Craig owed $6,700 in temporary support arrears, and was to prepay a portion of the property equalization. VIII RA 1394.

Craig's counsel an email on July 28 with the draft MSA listing exact amounts in the parties' savings accounts and attaching statements.[13]

The parties signed and initialed every page of the MSA on July 28-29.[14] The *Stipulated Decree of Divorce* ("*Decree*") incorporating the MSA and Parenting Agreement, and the *Notice of Entry of Order*, were all filed and served on July 29, 2019.[15] No appeal was taken.

The MSA included several terms relevant to this appeal. The first page included an express waiver of any further claims related to the parties' marriage and divorce:

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[13] IV RA 723-724.

[14] I RA 1-20 (Cristina signed the MSA on July 28, 2019; Craig signed it on July 29).

[15] I RA 21-54; VIII RA 1380-1385.

> The purpose of this Agreement is to make a final and complete settlement of all rights and obligations between them, including their respective property rights and rights to support, **including the resolution of any and all claims raised, or that could have been raised**, in the case of *Cristina Hinds v. Craig Mueller*, D-18-571065-D, in Department "C" of the Eighth Judicial District Court, Clark County, Nevada. It is their intent that this Agreement be 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.[16]

The MSA also recited that the parties had made full and fair disclosures, performed all desired discovery and expressly waived any further disclosures or discovery;[17] entered into the agreement voluntarily after ample time to review and contemplate the effect of their agreement;[18] were represented by counsel of their

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[16] I RA 2 (emphasis added).

[17] I RA 2-3.

[18] I RA 14.

choosing and fully understood the legal effect of their agreement;[19] agreed the MSA was the entire agreement superseding any and all prior oral or written agreements or understandings;[20] and expressly represented that their agreement was binding and enforceable.[21]

All terms of the MSA were merged into the *Decree*, which also contained multiple waivers, acknowledgments of disclosure and related terms and formally dissolved the JPI.[22]

Some of the estimated values discussed on June 20 were not exact. For example, the "approximate $160,000" in savings turned out to actually be a bit over

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[19] I RA 14-15.

[20] I RA 15-16.

[21] I RA 17; VIII RA 1385-1386.

[22] I RA 25-27

$190,000 as of June 20,[23] so instead of receiving some $80,000 each, the parties were entitled to some $95,000 each.

After the negotiated offsets and pre-payments discussed above, Craig was supposed to receive $36,871 from the Meadows bank account,[24] but when Cristina transferred the remaining sums to a different account, she moved all of it, including the $36,000.[25] No one apparently noticed or complained about the error.

In the following months, Craig failed to make multiple payments required of him. On November 8, 2019, Christina sought contempt against Craig for his failure to pay the $427,500 property equalization, the 2014 Infiniti QX80 loan, the children's

[23] I RA 4.

[24] I RA 9.

[25] Supp. App. 8.

uncovered healthcare expenses, and to provide dental and vision coverage for the children, and sought attorney fees.[26]

On November 20, Craig opposed Christina's *Motion* and brought a countermotion to set aside or modify the *Decree* and MSA to allow Craig credit in the amount of $158,076.73 based on Cristina's alleged "misappropriation" of community funds and violations of the JPI during the marriage, to eliminate Craig's obligation to pay the 2014 Infiniti QX80 loan, and for attorney's fees.[27]

On December 13, the trial court denied Craig's request to be relieved of the obligation to pay for the 2014 Infiniti QX80 loan, denied without prejudice Cristina's request for uncovered healthcare expenses, and resolved the child insurance issue.[28]

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[26] VIII RA 1380.

[27] VIII RA 1380-1381.

[28] VIII RA 1381.

All other issues were set for an Evidentiary hearing on April 7, 2020 (subsequently rescheduled due to the pandemic to April 1, 2021).[29]

On March 27, 2020, Cristina raised additional issues of contempt against Craig, including reimbursement of uncovered child healthcare expenses, violation of the behavioral order, failure to enroll in Our Family Wizard ("OFW") as ordered, and sought additional attorney fees.[30]

On April 17, Craig opposed Cristina's motion and again asked the Court to set aside or modify the *Decree* and MSA to eliminate the restrictions on the children's sleeping arrangements and to "recognize" the yacht as Craig's separate property to reduce the property equalization obligation.[31]

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[29] VIII RA 1381.

[30] VIII RA 1382.

[31] VIII RA 1382.

On May 28, the trial court set a date for Craig's compliance with enrollment in OFW, and denied Craig's requests regarding the children's sleeping arrangements.[32]

The same day (nearly a year before the Evidentiary hearing), Cristina noticed and conceded that Craig was entitled to an offset of $36,871 from his $427,500 property equalization obligation to her[33] because he had not received that sum out of one of the accounts going to Cristina. The trial court warned Craig that it did not want to have an entire evidentiary hearing over $36,872 that had already been conceded and resolved.[34]

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[32] VIII RA 1382.

[33] VIII RA 1399.

[34] IV RA 729-730.

Craig remained non-compliant with the terms of the *Decree* and insisted on going ahead with the Evidentiary hearing seeking to set aside the MSA and *Decree* entirely.

On April 1, 2021, at the Evidentiary hearing, the parties stipulated that one day earlier, on March 30, Craig had paid all unreimbursed healthcare expenses and insurance premiums, the overdue payments on the 2014 Infiniti QX80, and had joined OFW.[35]

The parties also agreed that in the nearly two years that had passed since the divorce, Craig had paid and therefore would be credited $10,500, plus the $36,871 Cristina kept that had been awarded to Craig from the Meadows Bank account, against the $427,500 property equalization he owed to her.[36]

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[35] VIII RA 1382-1383.

[36] VIII RA 1383.

Craig claimed several defenses to avoid enforcement of his property equalization obligation, including: 1) alleging Cristina violated the JPI during the divorce; 2) alleging Cristina "fraudulently induced" Craig to sign the MSA; 3) alleging there was community property omitted by fraud or mistake; and/or 4) that Cristina breached the MSA making Craig's performance impossible.[37]

Craig accused Cristina of taking $140,000 from the parties' joint Meadows Bank Account.[38] However, trial testimony and evidence established the money had been borrowed and returned in 2015 and that the issue had been resolved at the 2019 settlement conference.[39] Attorney Smith (Craig's divorce attorney) testified that bank

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[37] VIII RA 1388-1389. (Craig also asked to re characterize the yacht as his separate property to allow him credit against his property equalization obligation to Cristina, but never presented any evidence at trial related to this issue.)

[38] VIII RA 1389.

[39] VIII RA 1389.

statements provided to him at the deposition proved that those funds had been returned long before the divorce.[40] Mr. Smith also testified that Craig did not personally review those statements because he chose to leave the room.[41] The trial court found that the $140,000 from the Joint Meadows Bank Account was not missing or omitted.[42]

The trial court further found that, "switching gears," Craig then made a confusing argument that the issue was not the $140,000 from the Joint Meadows Bank Account (although he kept bringing it up), but "really" was about some unspecified "additional" funds that Cristina allegedly spent before the parties signed the *Decree*.[43]

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[40] VIII RA 1389.

[41] VIII RA 1389.

[42] VIII RA 1389-1390.

[43] VIII RA 1389-1390.

The amount of the offset Craig asked the trial court to find in his substitute argument was never made clear.[44] The trial court found that Craig's *Opposition and Countermotion* (filed November 20, 2019) originally sought an offset of $158,076.73, but at trial, Craig addressed various transactions by Cristina among several bank accounts during the marriage, totaling up the sums in several different ways.[45]

Craig claimed the Meadows Bank Account held a balance of nearly $216,000 in January 2019, and that he had "relied" upon receipt of that sum when he agreed to settle the case, but the deposition transcript showed the parties understood they were equally dividing a total of $160,000 from ***all*** of their savings accounts (including that

[44] VIII RA 1390.

[45] VIII RA 1390.

one), which meant Craig would only receive $80,000 from all accounts.[46] This was corroborated by the bank statements provided to everyone before signing the MSA.[47]

As detailed above, some of the accounts turned out to have more in them than had been estimated on June 20, so Craig received an extra $15,000 in the overall distribution from what had been agreed to, but did not receive the $36,000 from the Meadows Bank account, leaving him some $21,000 short of what had been agreed to on June 20.

The trial court found that Cristina had provided Craig all relevant bank statements, and that she did not make a false representation of the balance of the Joint Meadows Bank Account when the terms of settlement were placed on the record.[48]

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[46] VIII RA 1390.

[47] VIII RA 1392.

[48] VIII RA 1392.

Craig testified he was angry, felt betrayed, only "skimmed" the MSA before signing it, and was "too busy" to review any documents throughout his own divorce case.[49] The trial court found that Craig made an agreement and signed the MSA,[50] and that as a litigator who had practiced law in Nevada for many years he certainly knew the consequences of signing a document he claimed he did not read.[51]

Craig alternatively argued that he relied upon receiving $190,000 when he agreed to settle the case, but the trial court found that the only sum Craig could have reasonably relied upon was $80,000 representing 50% of the $160,000 total estimated to be in the accounts during the settlement on June 20.[52]

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[49] VIII RA 1393.

[50] VIII RA 1393.

[51] VIII RA 1393.

[52] VIII RA 1393-1394.

By the conclusion of the Evidentiary hearing, several of Craig's contempts became moot or were abandoned, leaving: Cristina's request to enforce the MSA; Craig's request to set aside or modify the MSA on the basis of Cristina's alleged JPI violations during the marriage; Craig's claim of "fraud in the inducement"; whether there were assets omitted due to fraud or mistake; Craig's claim that Cristina's taking the $36,871 earmarked for Craig from one account made his performance "impossible"; Craig's multiple contempts; Cristina's request for a payment schedule; and fees.[53]

Despite continually arguing that Cristina owed Craig an offset of "some" never identified or quantified money, Craig's *Closing Brief* ***still*** did not identify a sum, but asked instead to throw out the MSA and "renegotiate" the property equalization.[54]

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[53] VIII RA 1383.

[54] VIII RA 1390.

The trial court denied all of Craig's requests. In a highly detailed 38-page order the Court found: Craig did not prove that Cristina made any false representations inducing him to enter into the MSA[55]; Craig did not prove that *any* asset had been omitted[56]; while Cristina breached the MSA by failing to give Craig $36,871 from the Meadows Account, Craig did not prove her breach was "material" to the overall settlement given how much more money he still owed her;[57] Craig owed Cristina a net property equalization balance of $427,500, reduced by the $10,500 he had paid over two years and the $36,871 conceded by Cristina, for an outstanding remaining sum of $380,129 plus statutory interest[58]; and Cristina proved by clear and

[55] VIII RA 1396.

[56] VIII RA 1397-1398.

[57] VIII RA 1400.

[58] VIII RA 1401.

convincing evidence that Craig committed 14 acts of contempt between August 2019 and January 2020, which was grounds for attorney's fees as sanctions.[59]

The trial court ordered: 1) Craig's request to set aside the MSA on the basis that the JPI had been violated during the marriage was denied; 2) Craig's request to set aside the MSA on the basis of "fraud in the inducement" was denied; 3) Craig's request to adjudicate allegedly omitted community property by fraud or mistake was denied; 4) Craig's request to find that Cristina materially breached the MSA, excusing his non-payment of the equalization sum or voiding the MSA was denied; 5) Craig's request to re-characterize the yacht as his separate property was denied; 6) Cristina's request for $5,000 minimum monthly payments was denied; 7) Cristina's request to hold Craig in contempt for his communications with Cristina and her mother was denied; 8) Cristina's request to hold Craig in contempt for his failure to pay Ms.

[59] VIII RA 1410-1411.

Throne $8,000 was denied; 9) Craig committed 14 acts of contempt; and 9) no later than August 10, 2021, Cristina was to file a *Memorandum of Fees and Costs* to quantify her fees incurred.[60]

Notice of Entry of Order was filed on July 26, 2021[61]; Craig filed his *Notice of Appeal* on August 16.

[60] VIII RA 1414-1416.

[61] VIII RA 1377.

STANDARD OF REVIEW AND SUMMARY OF THE ARGUMENT

Preliminarily, Craig's claim in wanting to remove this case from the fast track program and completely re-brief it – that the issues are "too numerous and complex to be resolved" in the original briefing – is false. He makes only one real claim, spun half a dozen different ways: that when Christina removed $36,000 from the Meadows Bank account that was supposed to be left for Craig, she somehow entitled him to keep the million dollars in property that he received without paying her the equalization he owes. All of his rationalizations for doing so are specious sophistry.

In violation of NRAP 28(a)(10), Craig never suggests a standard of review.[62] The applicable standard is abuse of discretion, which applies to most decisions of family law issues.[63] Generally, a court abuses its discretion when it makes a factual

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[62] He repeatedly recites, but never explains, the words "clear error."

[63] *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), partially

finding which is not supported by substantial evidence and is "clearly erroneous."[64] An open and obvious error of law can also be an abuse of discretion,[65] as can a court's failure to exercise discretion when required to do so.[66] Also, a court can err in the exercise of personal judgment and does so to a level meriting appellate intervention when no reasonable judge could reach the conclusion reached under the particular

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reversed on other grounds by *Romano v. Romano*, 138 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 1, Jan. 13, 2022); *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

[64] *Real Estate Division v. Jones*, 98 Nev. 260, 645 P.2d 1371 (1982).

[65] *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 598 P.2d 1147 (1979).

[66] *Massey v. Sunrise Hospital*, 102 Nev. 367, 724 P.2d 208 (1986).

circumstances.[67] A court does not abuse its discretion, however, when it reaches a result which could be found by a reasonable judge.[68]

In pretty much every divorce – including this one – there is a marital balance sheet in which one party gets some assets, the other party gets others, and there is an equalizing payment to balance the totals. There is no requirement to split each individual item or account, and it is absurd to suggest otherwise; money is fungible.

The settlement agreement of June 20 settled all material terms; between then and July 28, the parties tweaked some of the terms and adjusted the sums to conform to the actual balances in the accounts. It was a binding agreement, settled between

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[67] *Franklin v. Bartsas Realty, Inc*., supra; *Delno v. Market Street Railway*, 124 F.2d 965, 967 (9th Cir. 1942).

[68] *Goodman v. Goodman*, 68 Nev. 484, 236 P.2d 305 (1951).

two experienced attorney-parties, each of whom was assisted and represented by independent competent counsel.

The settlement was to evenly split the community property. Cristina did not "materially breach" the MSA by taking $36,000 out of one account that was supposed to be left there for Craig, as he was fully credited for that sum and still owes Cristina hundreds of thousands of dollars to equalize the property he kept. At this moment, he has possession of about 90% of the community property of the parties.

There was no "fraud in the inducement." Craig knew exactly what he was getting, and if he now claims that he had insufficient knowledge when he settled the case, he bears the full risk of any mistake he now claims he made.

There is no "omitted asset" or "missing funds." During the divorce litigation, both parties continued living, but only Craig was identified as having violated the JPI by withdrawing and spending excessive amounts. That is why an OSC was pending

against him and set for resolution at trial. The parties expressly agreed to relinquish any claims that were or might have been litigated about their spending during the marriage and divorce as part of their settlement; it is beyond hypocritical for Craig to ignore his own established JPI violations while attempting to resurrect his unsubstantiated allegations against Cristina during the same period.

Nothing made Craig's performance "impossible." Under the terms of the *Decree* Craig's ability or inability to get a loan was immaterial to his obligation to pay the equalizing payment, and he failed to present any cogent evidence regarding his alleged inability to get a loan in any event.

The evidentiary hearing was about Crag's effort to set aside the MSA and *Decree*. All of his arguments were rejected, he was found in contempt on 14 counts, and the *Decree* was enforced in Cristina's favor. There is no doubt whatsoever that Cristina was the prevailing party.

ARGUMENT

I. Introduction: the Equal Division of Community Property is Required, and Was Done Here.

Buried in the middle of Craig's *Opening Brief* (at 34) is a true statement – that "the purpose of the MSA was to divide the parties' community property equally." That makes sense, since Nevada statutory and case law requires as equal a division of community property as practicable absent written findings of compelling reasons to do otherwise.[69]

And an equal division of community property is what *has* been done here – or more accurately, what *will* be done once Craig pays the equalizing note, since he has had a million dollars worth of community property assets since the divorce in 2019

[69] NRS 125.150; *Forrest v. Forrest*, 99 Nev. 602, 668 P.2d 275 (1983); *Blanco v. Blanco*, 129 Nev. 723, 311 P.3d 1170 (2013).

and has not paid Cristina any but a small fraction of what he owes her for keeping all of that property.

As a matter of community property theory and practice, it is the exceedingly rare case in which each marital asset is physically divided – our review of this Court's decisions for the past 10 years do not reveal any such case. Rather, assets and debts are balanced and offset, typically on a "marital balance sheet," with one party owing the other some amount for equalization at the end.[70]

Craig's entire brief is posited on the false assertion that a specific bank account balance had to be physically divided in order for the district court to properly divide

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[70] *See*, *e.g.*, Melissa Attanasio & Richard Teichner, *Net Operating Losses and Capital Losses: How They Might Be Treated as Marital Assets*, 21 Nev. Fam. L. Rep., Winter 2008, at 6.

the community property. The assertion is nonsense, and the balancing and offsetting done by the parties at settlement, and then by the district court on motion, is exactly the normal process done every day in family court. The remainder of this brief will address the half a dozen ways Craig asserts that same proposition, showing how each is meritless.

II. The District Court Properly Found that a Valid Contract Existed Between the Parties.

Craig first (at 15-28) attacks the legitimacy of the stipulated divorce. He correctly recites the governing law about family law contracts.[71] But Craig does not

[71] AOB at 16, citing to *Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012); *Holyoak v. Holyoak*, No: 67490, Order of Affirmance (Unpublished Disposition, May 19, 2016); *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254,

and cannot dispute that the parties met on June 20, 2019, fully settled the case, were canvassed by counsel, and put the settlement of all material terms on the record pursuant to EDCR 7.50, all of which were later memorialized in an MSA which was then incorporated in the stipulated *Decree*.[72]

One term of settlement was that the parties would equally divide their savings accounts in the amount of "about" $160,000.[73] The trial court correctly found that various specific details – including that Craig would receive $36,871 from one specific account as part of his 50% share – were transitional, not material, to the settlement.[74]

1257 (2005).

[72] VIII RA 1384-1385, 1396.

[73] VIII RA 1396.

[74] *Id*.

Craig does not object to – or even acknowledge – that the total in the accounts was about $30,000 higher than estimated on June 20, so Craig got some $15,000 more than was agreed to; he simply complains about a specific $36,000 that he did *not* receive. The net change to Craig, between the sums that were greater than expected at settlement, and the sum he did not receive our of that one account, was abut $21,000 out of the million dollars of property and other assets distributed.

As noted above, no one even noticed, nevertheless complained about that error for about six months after the divorce. Once it was noticed, Cristina conceded at the May 28, 2020 hearing (almost a year before the 2021 evidentiary hearing), 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.[75] He went forward anyway, and proved absolutely nothing else than the offset that had been agreed to a year earlier.

Similarly bogus is Craig's claim of error (AOB at 19) that because the MSA lists accounts totaling about $190,000, the settlement (at which the parties estimated the totals as being about $160,000) was "void for fraud or mistake" because the totals agreed to on June 20 were not "true or accurate."

As the trial court pointed out, $190,000 was "the actual total of the parties' itemized savings accounts (which means the accounts contained about $30,000 more than referenced at the deposition which is to Craig's benefit) – the MSA equally divides that sum between the parties ...."[76] Craig received the full benefit of his half of the extra money.

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[75] IV RA 729-730.

[76] VIII RA 1394 (emphasis in original).

It is difficult to discern exactly the legal basis on which Craig disputes the "legitimacy" of the contract reached at the deposition/settlement, later detailed in the MSA, and incorporated in the *Decree*. There appear to be two claims.

The first is that "equally dividing" an estimated sum that turned out to be higher somehow made the agreement not "clear and definite." That assertion 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.[77] As this Court has noted, "imprecision" of amounts does not constitute "ambiguity."[78]

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. It should be sufficient to note

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[77] *See*, *e.g.*, *Gemma v. Gemma*, 105 Nev. 458, 778 P.2d 429 (1989) (defined benefit pension plan of unspecified value divided per "time rule"); *Kilgore v. Kilgore*, 135 Nev. 357, 449 P. 3d 843 (2019) (equally dividing sick and vacation pay of unspecified values).

[78] *See*, *e.g.*, *Love v. Love*, 114 Nev. 572, 581, 959 P.2d 523, 529 (1998) (concluding that "educational expenses" was not ambiguous and included tuition at a private school, as the provision did not expressly exclude private school tuition).

that "money is fungible"[79] and there was nothing whatsoever special about that particular $36,000 that could not be dealt with by offset on the balance sheet of what Craig continued (and continues) to owe Cristina. Craig's repeated insistence that these particular dollars were special or magical has a "Cousin Vinny" ring to it,[80] and

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[79] *See*, *e.g.*, *Holder v. Humanitarian Law Project*, 561 U.S. 1, 37, 130 S. Ct. 2705, 177 L. Ed. 2d 355 (2010); 53A Am. Jur. 2d Money § 18 (2006) ("Money is in its nature severable; one coin or note has the same essential qualities and value possessed by any other of like denomination. In other words, money is fungible or interchangeable") (footnotes omitted); *Williams Mgmt. Enters., Inc. v. Buonauro*, 489 So. 2d 160, 164 (Fla. 5th DCA 1986) ("[A]s Blackstone noted, normally money is fungible property, like grain, cotton, etc., which, if commingled with other similar money, is incapable of specific identification . . . .").

[80] *My Cousin Vinny* (Twentieth Century Fox 1992), retrieved from

he actually complains (at 26-27) that he would have to borrow *less* to pay Cristina her equalization since he was credited for the money from the Meadows Bank account.

Craig claims (at 6) that he "expected" that the accounts had a lot more in them, and complains that if he had known more about the parties' actual assets he would not have settled the case. The district court properly rejected that assertion as "flatly rebutted" based on the record of the settlement and Craig's explicit waiver of any right to further disclosures or discovery,[81] and this Court has repeatedly held that

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https://www.imdb.com/title/tt0104952:

> Are we to believe that boiling water soaks into a grit faster in your kitchen than on any place of the face of the Earth? . . . Well perhaps the laws of physics cease to exist on your stove! Were these magic grits? I mean, did you buy them from the same guy who sold Jack his beanstalk beans?

[81] VIII RA 1389-1395.

when a party chooses to settle a case based on what the party later asserts was inadequate information, the burden of any lack of knowledge falls to that party.[82]

III. The District Court Properly Found that Plaintiff Did Not "Materially Breach" the MSA.

At pages 28-43 Craig again addresses the $36,871, claiming that it not being left in that account was a "material breach" that entitles him to set aside and reopen the entire case. The assertion is meritless for multiple reasons.

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[82] *See*, *e.g.*, *Anderson v. Sanchez*, 132 Nev. 357, 373 P.3d 860 (2016) (if a "party is aware at the time he enters into the contract 'that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient,'" the court will allocate the risk of mistake to that party).

First, Craig's legal standard (at 28) is wrong; this case has nothing to do with "construction of a contractual term" – everyone agrees what was required on both sides, and the district court properly and accurately recited that Cristina should not have removed the money from Meadows Bank that should have been left for Craig, *and* that Craig has refused to make the multiple payments he was obligated to make under the terms of the *Decree*. The question was what to do about those facts, once discovered.

Craig was given a dollar for dollar credit against the sum of $427,500 he owed to Cristina. Accordingly, Cristina's removal of the sum of $36,871 from the Joint Meadows Account made no difference to the total that he owed her – the ***extent*** of his non-payment is just a bit smaller than it otherwise would have been.

There are multiple rabbit-holes in that 15-page discussion, including (at 31-35) an utterly irrelevant excursion into "parol evidence," apparently because the district

court decision recites the history of the case as part of its decision of the case. It is largely a collection of non-sequiturs with only a few relevant comments.

One is at page 35, where Craig concedes that "Had [Cristina] turned over $36,871.00 in cash to [Craig] by some other means," there would have been no breach of the agreement. And she did – the full amount was put on her side of the ledger, reducing the sum Craig continues to owe her, penny for penny.

Craig argues (at 35-37) that the fact that he got (and still has) the vast bulk of the parties' community property and simply owes Cristina a few dollars less than he otherwise would have is somehow a "red herring logical fallacy," again claiming that all other property is "irrelevant" and that the one bank account had some kind of magical specialness. The assertion defies further analysis.

During Craig's rambling discussion of "materiality," he makes (at 39-43) the false assertion that settlement of the case was dependent on him getting a loan. Two comments are appropriate.

First, as detailed above, Ms. Throne made it clear that between June 20 and July 28, the parties' agreements for various offsets and pre-payments made the loan irrelevant because no one cared how or where he was to get the money to pay the equalization sum owed.

Second, we note that Craig's assertion that there was some kind of condition for settlement not stated in the MSA and *Decree* contradicts his own position that only the terms of the MSA are relevant, ***and*** the terms of that document which expressly state that it supersedes "all prior oral or written agreements, commitments, or understandings."[83]

[83] I RA 15.

Money is fungible. Whether the balance in any particular account turned out to be somewhat greater (or lesser) after the date of the settlement agreement to divide the community property equally is irrelevant. Craig continues to owe Cristina hundreds of thousands of dollars in equalization, and nothing about the (unnoticed) Meadows Bank account transfer was a "material breach" of the MSA and *Decree* or excuses Craig's non-payment of the property equalization.

IV. The District Court Properly Found no "Fraud in the Inducement."

Craig argued below, and repeats on appeal, that because Cristina withdrew from one account $36,871 that was supposed to be left for him between the date of their settlement under EDCR 7.50 and the signing of the MSA, Cristina somehow "lied" at the time of settlement to induce Craig into entering the agreement.[84]

[84] VIII RA 1395-1396; AOB at 43-48.

First, the allegation makes no temporal sense; 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. As the district court concluded, the "specifics" of which dollars in which accounts would be used to equalize the division of the community property "were acknowledged to be transitional – not material" terms of the settlement.[85]

More importantly, the detail of the dollars in that specific account were a trivial detail of the overall settlement to divide the community property. Craig kept about a million dollars worth of assets; that is why he owed (and owes) Cristina nearly a half million dollars in equalization payment.

Again, little in Craig's rambling exposition of irrelevant case law requires much discussion here – it largely repeats assertions addressed above. The district

[85] VIII 1395-1396.

court's conclusion was clear, concise, and correct: "Craig did not meet his burden to prove . . . that Cristina made any false representation inducing Craig to [enter] into the parties' agreement."[86]

V. There Was No Finding That Craig Waived His Right to Bring a Motion under NRS 125.150(3).

Below, Craig argued that there were "omitted assets" (referring to the sums that Cristina lived on during the marriage and divorce, which he asserted were spent in violation of the JPI). On appeal, he asserts (at 48-54) that the district court wrongly found that he "waived his right" to make such a request.

The main problem with his argument is that no such thing happened; no finding of any kind of "waiver of right to file a motion" ever occurred. The district court

[86] VIII RA 1396.

found, correctly that the parties stipulated to dissolve the JPI and waived any claims to any sums not identified in the MSA.[87] Further, the district court correctly noted that "Craig did not identify any assets that were missing," noting that the $36,000 was not "missing" and was fully accounted for, and that the parties expressly waived any further claim to any funds used by either of them during the marriage.[88]

But Craig ignores all of that, first making an irrelevant exposition into the history of NRS 125.150(3), and then claiming that the money Cristina lived on during the marriage somehow is a "missing asset." It isn't; Craig completely misunderstands and misrepresents the function and purpose of Nevada's omitted asset law.[89]

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[87] VIII RA 1395.

[88] VIII RA 1396-1398.

[89] *See* Marshal Willick, *The New/Old Law of Partition of Omitted Assets*, 28 Nev. Fam. L. Rep., Fall, 2015, at 8; Marshal Willick, "Partition Actions: What Every Nevada Divorce Lawyer Needs to Know" in *Advanced Family Law* (State Bar of

Along the way, Craig simply denies (at 53-54) the existence of the language of the MSA quoted above expressly waiving the bringing of all claims of any kind that were or might have been brought during the divorce litigation.[90]

Craig's failure to pay attention to or read documents, and his choice not to conduct further discovery, did not constitute a "lie" by Cristina as to anything.[91] It did not entitle Craig to a belated retrospective accounting of Cristina's expenditures

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Nevada), Las Vegas, Nevada, 2015, posted at https://www.willicklawgroup.com/cle-materials/.

[90] I RA 2.

[91] VIII 1397.

during the marriage predating the parties' agreement[92]; all other potential claims were waived by the MSA and *Decree*.[93]

Little more need be said on this issue; the parties' pre-MSA spending was expressly part of their settlement – and ironically, Craig received the far better end of that deal, since he was facing an order to show cause at the impending trial for his massive and unexcused JPI violations,[94] which were forgiven as part of the overall settlement.

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[92] *See*, *e.g.*, *Putterman v. Putterman*, 113 Nev. 606, 939 P.2d 1047 (1997) ("Obviously, when one party to a marriage contributes less to the community property than the other, this cannot, especially in an equal division state, entitle the other party to a retrospective accounting of expenditures made during the marriage . . . .")

[93] I RA 2; VIII RA 1397.

[94] IV RA 721.

VI. The District Court Properly Found That Nothing Made Craig's Performance "Impossible."

Craig's fifth re-hash of his complaint about the withdrawal of $36,871 from Meadow's Bank (at 54-59) is that it somehow made his paying her $427,500 in property equalization "impossible."

Below, Craig argued (without any evidence) that he needed to use that particular $36,871 as collateral to secure a loan to pay the $427,500 property equalization obligation to Cristina.[95]

As the district court noted, while Cristina expected Craig to borrow money to pay the property equalization, Craig's ability to obtain a loan was not a condition to his payment of the property equalization.[96] Craig provided "no credible evidence of

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[95] VIII RA 1399.

[96] VIII RA 1399.

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."[97] And he admitted at trial that his poor credit interfered with qualifying for a loan in any event.[98]

At other points in the litigation, Craig argued that he was going to use that particular $36,871 to purchase a home so he would not be in contempt of other provisions of the stipulated *Decree* about where the children would sleep[99] – and his stories are mutually exclusive; if he had used the funds to buy a house, he obviously would not have still had the cash as "collateral." In any event, the credit Craig got for Meadow's Bank funds ***lowered*** the sum he owed, making any kind of borrowing he might have to do that much easier.

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[97] VIII RA 1399.

[98] VIII RA 1399.

[99] III RA 323-324.

But as detailed above, no one apparently even noticed the net $21,000 loss of cash to Craig until many months after the divorce, and there is zero evidence that at any time during that period Craig made any effort to borrow funds, sell assets, or pay Cristina what he owed (and owes) her for property equalization. The district court noted that Craig obtained a "dollar for dollar credit against the sum he owed to Cristina."[100]

Craig's argument refers (at 58) to his un-indexed and improper "appendix" containing his entire book of proposed exhibits, but he never shows that any of it was ever admitted into evidence at the evidentiary hearing, and his citations include unverifiable citations to hearing videos. His citation to supposed emails from people not even called as witnesses were apparently not part of the evidentiary hearing, and

[100] VIII RA 1399.

would prove nothing even if they ***were*** admissible and had been admitted. All of that is sanctionable.[101]

In any event, the district court's conclusion that Craig provided nothing showing that anything Cristina did rendered his performance of his obligations under the MSA and *Decree* "impossible" has not been meaningfully addressed, nevertheless demonstrated, on appeal.

VII. The District Court Properly Found that Cristina was the Prevailing Party and Entitled to Attorney's Fees.

As set out above, the MSA provided for fees to the prevailing party in any action to enforce or interpret it.[102] The trial court properly found that Cristina was

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[101] NRAP 28(e)(1).

[102] *See* I RA 10; VIII RA 1412.

successful in obtaining enforcement of the property equalization obligation, but that she took $36,781 that belonged to Craig (against the $427,500 Craig owed Cristina that remained unpaid).[103]

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.[104]

It is beyond specious for Craig to assert repeatedly 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. In the words of the district court:

> 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

[103] VIII RA 1413.

[104] IV RA 729-730.

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.

Craig's position on appeal, however (at 59-64), is that he should be entitled to do exactly that – that Cristina's concession of an offset somehow makes her not the prevailing party in the litigation that Craig insisted on a year after that concession, at which he lost on every contested point. His contention makes no sense.

Craig's unfocused claims for litigation of never-established "omitted assets" was denied. His request to set aside the MSA and property distribution was denied. He was found to be in contempt of multiple orders – 14 counts – several of which he delayed for years and resolved the day before the hearing.

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.'"[105] Cristina prevailed on all significant disputed issues. Fees were specifically required to be awarded by the terms of the MSA and *Decree*, and this Court has repeatedly held that when there is such a contract, denial of fees to the prevailing party is reversible error.[106] The trial court properly found that Cristina was entitled to an award of her reasonable attorney fees.[107]

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[105] *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).

[106] *See Kantor v. Kantor*, 116 Nev. 886, 895, 8 P.3d 825, 830-31 (2000); *cf. Davis v. Beling*, 128 Nev. 301, 306, 278 P.3d 501, 515-16 (2012) (providing that prevailing party was entitled to recover reasonable attorney fees in defending against a breach of contract claim where the parties' agreement entitled prevailing party to fees).

[107] VIII RA 1413.

Craig has demonstrated no error and the trial court's order as to her receiving an award of fees should be affirmed.

VIII. Sanctions Are Appropriate Against Craig.

This case was originally set under the Fast Track program. Craig insisted on re-briefing the entire case under the regular briefing rules, but he provided nothing of substance in his additional briefing, and has only caused the amount of time and money spent by both parties to multiply without any valid cause.

NRAP 3E(2)(E) provides: "Relevant portions of the trial or hearing that were audio recorded or video recorded shall be submitted in typewritten form. The court will not accept audio- or videotapes in lieu of transcripts." There was a complete record of the evidentiary hearing; Craig failed to supply it.

Instead, Craig repeatedly, improperly, and inaccurately referenced videos that were not submitted in his Appendix or his Statement. Even if the video had been submitted, it would be improper.[108]

This Court has repeatedly held that it is an appellant's responsibility to supply an adequate appellate record, and the failure to do so will generally warrant affirmance.[109] Not doing so makes it impossible for the Court to fully ascertain what arguments and evidence the parties presented below.[110] Such an omission makes it

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[108] NRAP 3E(c)(2)(E).

[109] *See Carson Ready Mix, Inc. v. First Nat. Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (noting this Court "cannot consider matters not properly appearing in the record on appeal").

[110] *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (this Court will generally not review on appeal arguments that were not advanced below).

effectively impossible to meaningfully review a record for sufficiency of evidence,[111] and in the absence of a transcript, this Court necessarily presumes the existence of adequate support for the district court's decision.[112]

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[111] *See Thomas v. Hardwick*, 126 Nev. 142, 147, 231 P.3d 1111, 1114-15 (2010) (appellant's failure to provide a necessary transcript prevented the Court from reviewing the issue); *Toigo v. Toigo*, 109 Nev. 350, 849 P.2d 259 (1993) (failure to provide transcript detailing alleged error mandates affirmance).

[112] *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that the appellant is responsible for making an adequate appellate record, and when "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision"); *see also* NRAP 30(a) and (b).

Given there is no record that support Craig's arguments, the trial court's decision should be affirmed. Should this Court nevertheless entertain the merits of the appeal, it should affirm based on the detailed findings and decisions identified by the trial court in its *Decision and Order*.

Craig's original filing, and his current briefing, contain unintelligible arguments, an improper Appendix, gross sloppiness making any effort to even discern his arguments that much harder,[113] improper citation to inadmissible documents not part of the record as detailed above, and a host of other procedural and technical deficiencies, all making the task of constructing a proper *Answering Brief* that much

[113] *E.g.*, "Plaintiff had no proven that his performance was rendered impossibly." AOB at 15.

more difficult and expensive, and bringing Craig's filings into the range of sanctions to be imposed on appeal.[114]

CONCLUSION

Craig's appeal is entirely frivolous. He has identified no legitimate question of either fact or law requiring review, and his entire position boils down to: "Cristina mistakenly took some dollars in one account that I was supposed to receive, so I get to keep a million dollars of community property and give her nothing."

One question never addressed by Craig in his multiple demands that the decision be "reversed and remanded" is "remanded to do ***what***?" The district court remains required to equally divide the community property of the parties, and it has already done so.

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[114] *See Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005).

The district court's thorough and well-reasoned decision should be affirmed.

Sanctions should be imposed against Craig.

Dated this 4th day of April, 2022.

Respectfully submitted,
WILLICK LAW GROUP

//s// Marshal S. Willick
Marshal S. Willick, Esq.
Attorney for Respondent

CERTIFICATE OF COMPLIANCE

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

[**X**] This brief has been prepared in a proportionally spaced typeface using Corel WordPerfect Office 2021, Standard Edition in font size 14, and the type style of Times New Roman; 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*].

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

[**X**] Proportionately spaced, has a typeface of 14 points or more and contains 8,543 words; or

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[ ] Does not exceed _____ pages.

3. 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 Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is

not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 4th day of April, 2022.

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//s// Marshal S. Willick

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 4th day of April, 2022, documents entitled *Respondent's Opening Brief* were filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

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