IN THE SUPREME COURT OF THE STATE OF NEVADA

NATIONAL CASUALTY COMPANY, a Foreign Corporation, Petitioner, vs. EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; THE HONORABLE MARK RALPH DENTON, DISTRICT COURT JUDGE, Respondents, and PHILIP BOUCHARD Real Party in Interest.	Supreme Court Case No.: 83501 District Court Case: A-20-813355-C

REAL PARTIES IN INTEREST PHILIP BOUCHARD'S RESPONSE TO PETITIONER, NATIONAL CASUALTY COMPANY'S PETITION FOR WRIT OF PROHIBITION OR MANDAMUS

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DISCLOSURE STATEMENT 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. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

Philip Bouchard– Real Party in Interest , is an individual.

Since the inception of the case, Appellant, has been solely represented by Jordan P. Schnitzer, Esq. of THE SCHNITZER LAW FIRM. There are no administrative agency actions in this case and no other attorneys are expected to appear on Appellant's behalf.

DATED this 15th day of November 2021.

THE SCHNITZER LAW FIRM

BY: /s/ Jordan P. Schnitzer, Esq.
JORDAN P. SCHNITZER, ESQ.
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Attorney for Real Party in Interest
Philip Bouchard

I. STATEMENT OF THE CASE

This petition and the motion at issue is simply an attempt by National Casualty Company ("NCC") to avoid bad faith claims brought in the instant action. Writ relief is inappropriate in this case because extraordinary circumstances do not exist to review a discretionary decision. Even if this Court were to consider the matter on the merits, the first-to-file rule does not and should not be applied in a case like this where the first filed action will not and cannot provide complete relief to the parties. Doing so would create an unjust situation where Mr. Bouchard has no venue to proceed with his bad faith claims because the Federal Court already declined jurisdiction over those claims.

II. ISSUES PRESENTED

1. Whether extraordinary relief related to a discretionary act is appropriate where, as here, petitioner has an adequate and speedy remedy at law, there are factual disputes and there is no law that requires clarification.
2. Whether the first-to-file rule applies where, as here, the first case cannot and will not provide complete relief of all causes of action.
3. Whether, giving equity considerations, the first-to-file rule should not be applied in this case where Mr. Bouchard has no other avenue available to him to pursue bad faith allegations and other considerations require NCC's presence in the current litigation.

III. STATEMENT OF FACTS

The following facts are facts that are either contrary NCC factual statement or relevant facts NCC omitted from its petition:

1. On July 27, 2016, Real party in interest, Philip Michael Bouchard ("Bouchard") filed a complaint against Efren Isaac Sotelo ("Efren"), Juan Sotelo ("Juan") and Now Services of Nevada, LLC dba Cool Air Now ("Cool Air") Nevada State Court Case No. A-16-740711-C ("State Action"). *See* Real Party in Interest's Appendix, ("RPA") pp. 1-8. The basis for the State Action was that Efren negligently caused an accident where Bouchard was seriously injured. Efren was driving a pick-up truck owned by Cool Air. National Casualty Insurance ("National") was the insurer for said vehicle.

2. Specifically, the Complaint alleged:

> 12. Upon information and belief, SOTELO was employed by COOL AIR NOW and, at all relevant times, SOTELO was operating the Pick- Up Truck with the express or implied permission of his employer.

Id.

3. Additionally, the Complaint contains additional allegations that Efren had permission to use the truck:

> 30. COOL AIR NOW, J. SOTELO and DOE I breached that duty by knowing entrusting their dangerous vehicle to another whom they knew or should have known was likely to use it in a manner involving unreasonable risk of harm to others…

> 41. COOL AIR NOW, J. SOTELO and DOE I breached that duty by failing to properly supervise SOTELO by allowing him to operate the vehicle and do so in the manner described above.

See RPA, pp. 1-8.

4. On September 9, 2016, Bouchard filed a "Three Day Notice of Intent to Default". *See* RPA, pp. 9-11. National's counsel was served with this notice of intent to Default. *Id.*

5. In the state court case, there was also evidence supporting the allegations against Efren Sotelo:

    a. The truck in question was Efren Sotelo's work truck that he was free to take home. *See* RPA, pp. 21 at 34:16-23.

    b. The car was left at Efren and Mr. Sotelo's house the morning of the incident. *See* RPA, pp. 24 at 47:12-49:20.

    c. Mr. Sotelo did not report the car stolen until after the accident. *See* RPA, pp. 24 at 47:7-9.

    d. Mr. Bouchard testified that Juan Sotelo stated at the scene that he should have taken the keys from Efren Sotelo. *See* RPA, pp. 11 at 82:10-12.

    e. Efren Sotelo testified he made the spare key while he was employed in case he got locked out of his truck. *See* RPA, pp. 142 at 48:1-25.

    f. Ms. Sotelo testified that employees routinely and permissively

made these spare keys. *See* RPA, pp. 172 at 53:24 – pp. 173, 54:23.

g. Even though employees made these spare keys, the owner of the truck never asked Efren Sotelo for the extra key. *See* RPA, pp. 22 at 40:13- pp. 23, 44:2.

h. Efren Sotelo's employee file stated that he was employed on December 12, 2014, the date of the incident. *See* RPA, pp. 178.

6. The Order specifically deemed all allegations in the Complaint as true. *See* RPA, pp. 187-191.

7. Efren Sotelo was living at home with his parents at the time of the incident, making him a resident relative insured under his parents Coast National Policy. *See* RPA, pp. 162 at13:14-20.

8. Although Efren signed an affidavit that he took the truck without permission, the entire Sotelo family has credibility issues:

9. Efren admitted he used the company card to buy gift cards to acquire heroin:

Q: Now your dad believes the reason you used the company card to buy gift cards was to buy drugs. Are you aware of that?
A: Yeah, I`m aware of that.
Q: Is that true?
A: I guess you could say that.
Q: Yes?
A: Yes.

See RPA, pp. 137 at 26:12-19.

10. Additionally, Mr. Sotelo knew his son was a heroin addict:

Q: So my question is, prior to the day of the accident, did they try to do anything to help you with the fact that they thought you were on drugs?
A: I mean, yeah.· They`ve tried.
Q: Like what?
A: Clinics.
Q: What kind of clinics?
A:Methadone clinics
Q: This was before the accident?
A: Yeah.
Q: When approximately?
A: I couldn`t tell you the dates. I couldn`t tell you--
Q: I understand.· Approximately, was it the same year?
A: No, I think it was the year before.
Q: Just one time?
A: No. Three or twice, I think. Might have been three times.
Q: Before the accident?
A: Mm-hmm.
Q: And all three were methadone clinics?
A: Yeah.
Q: Methadone is specifically for heroin users, correct?
A: Yeah.
Q: So, no one`s there because they`re addicted to marijuana, correct?
A: No.
Q: Okay. No one`s there because they`re alcoholics, correct?
A: No.
Q: It`s specifically heroin?
A: Yeah. Opiate use.
Q: Okay. Pills or heroin?
A: Yeah.

See RPA, pp. 149 at 76:8- pp. 150;79:18.

11. In fact, Mr. Sotelo helped pay for his rehab:

Q: When you went to rehab the three times out here in Vegas, did your dad pay for those?
A: The clinics, I paid for some of them.
Q: Did your dad pay for some of them?
A: He paid. I mean, there was times...because it was weekly, so we have weeks where I would
Pay, If I didn`t have money, I would ask them If they had it, they would help me out.
Q: So at least part of it, he paid for you?
A: Yeah.

See RPA, pp. 156 at 105:12-21.

12. Mr. Sotelo was also aware of several of Efren's arrests:

Q: Is your dad aware... I want to talk about on the date of the accident. Was your dad aware of the burglary charges against you?
A: From before?
Q: On the date of the accident, did your dad know that you had the burglary charges from 2008?
A: Well, yeah. He would know.
Q: What about the pills charge?
A: Well, yeah.
Q: The firearms charges?
A: Yes.
Q: In some of these police reports, your dad said that he believed you were on drugs.
A: Mm-hmm.
Q: You said I was, I was doing heroin.
A: Yeah, I was that time.

See RPA, pp. 137 at 29:22- pp. 138; 30:12.

13. Yet, Mr. Sotelo denied any knowledge of heroin use:

Q: And it talks about drug history. On the day of the accident, were you aware that Efren had some type of drug history?
A: I was not aware. Well, I was aware of history, but not here.
Q: What history are you referring to?

A: I mean, when he was a teenager, he hung around with the wrong crowd, and I guess they were doing – smoking marijuana.
Q: Any other drugs?
A: Not that I know of.
Q: Just marijuana?
A: That's what I know…

See RPA, pp. 28 at 63:20-64:7.

14. In fact, one of the first answers out of Efren's mouth was untrue – for seemingly no reason other than to hide the truth:

Q: Okay, how did you get here today?
A: An Uber.
Q: You got an Uber?
A: Mm-hmm.
Q: I saw you get out of a truck that said Cool Air Now in the parking lot.
A: Mm-hmm.
Q: That was an Uber?
A: Oh no that was my mom, I`m leaving in an Uber.

See RPA, pp. 132 at 7:10-19.

15. Similarly, Efren Sotelo provided a false statement to the state court regarding something more substantive in a separate affidavit when he tried to have his default set aside. *See* RPA, pp. 179. In the Affidavit, he stated he was visiting his great-grandmother in Mexico. The truth was that he was in rehab. Even in his deposition, he did not admit the truth until presented with the evidence:

Q: Were you in rehab when you were there?
A: No.

Q: Are you aware that your dad told Ms. Stephenson you were in rehab when you were in Tijuana?
A: No. I was not aware…
Q: If your dad said you were in rehab, is that not true?...
A: I don't get what's going on her.
Q: You were in rehab, correct?
A. Okay. For a period, I was there in rehab for a while.
Q: In Tijuana?
A: MM-hmm.
Q: Yes?
A: Yes.

See RPA, pp. 156 at 103:1-104:5.

16. Efren pled guilty to petit larceny, which is not the same as stealing the truck. Petitioner's Appendix ("PA") Vol. I, at pp. 0154-0155.

17. NCC stated in the Federal Court action in the pretrial memorandum that, "The only issue remaining in this action is whether National Casualty Company (NCC) owed a duty to pay the judgment…" PA Vol. II, at pp. 0334. As a result, NCC has acknowledged that the duty to defend issue is no longer being decided by the Federal Court.

18. District Court has now stayed the underlying action pending this Court's resolution of NCC's petition. *See* RPA, pp. 180-186.

19. NCC already lost the argument that Stephenson and Dickinson was fraudulently joined. The same Federal Court that is handling the declaratory relief action found that Stephenson and Dickinson were not fraudulently joined and declined to exercise supplemental jurisdiction

over this case, remanding it back to state court. *See* RPA, pp. 189-192.

IV. SUMMARY OF THE ARGUMENT

1. The Court reviews the application of the first to file rule for abuse of discretion. *Mesi v. Mesi*, 136 Nev. Adv. Op. 89, 478 P.3d 366, 371 (2020).
2. Writ relief is inappropriate because there is an adequate and speedy remedy at law, there are factual disputes and there is no law that requires clarification. *Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel. County of Washoe*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *Mesi v. Mesi*, 136 Nev. Adv. Op. 89, 478 P.3d 366, 371 (2020)(setting forth law related to the first-to-file rule).
3. The first-to-file rule does not apply in the first instance because the Federal Court action cannot provide complete resolution of the claims. *Kohn Law Group, Inc. v. Auto Parts Mfg. Mississippi, Inc*., 787 F.3d 1237, 1240 (9th Cir. 2015); *Attwood v. Mendocino Coast Dist. Hosp*., 886 F.2d 241, 243 (9th Cir. 1989).
4. Mr. Bouchard's bad faith claims will exist regardless of the coverage action because bad faith claims exist even in the absence of coverage. *Turk v. TIG Ins. Co.*, 616 F. Supp.2d 1044, 1054 (D. Nev. 2009).
5. Equity requires the Court to decline to adhere to the first-to-file rule

because Mr. Bouchard has no other available avenue for his bad faith claims and to resolve primary/secondary coverage because the Federal Court declined jurisdiction over those claims. *Mesi v. Mesi*, 136 Nev. Adv. Op. 89, 478 P.3d 366, 371 (2020); *Pacesetter Sys., Inc. v. Medtronic, Inc*., 678 F.2d 93, 95 (9th Cir. 1982).

V. LEGAL ARGUMENT

1. STANDARD OF REVIEW

"A District Court's application of the first to file rule is reviewed for abuse of discretion." *Mesi v. Mesi*, 136 Nev. Adv. Op. 89, 478 P.3d 366, 371 (2020)(citations omitted). Therefore, the District Court's decision not to dismiss or stay the case based upon the first to file rule is reviewed for abuse of discretion.

2. A WRIT IS INAPPROPRIATE

In the context of a discretionary ruling, a writ usually is only appropriate to "control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel. County of Washoe*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (citations omitted).

An arbitrary or capricious exercise of discretion is "one founded on prejudice or preference rather than reason, or contrary to the evidence or established rules of law." *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931–32, 267 P.3d 777, 780 (2011) (internal citation and quotation marks omitted).

In this case, NCC made no argument that the District Court's decision was founded on prejudice or preference rather than reason. Therefore, it can only be assumed that NCC's position is that the District Court's ruling was contrary to the evidence or established rule of law. NCC's arguments simply rehash the same arguments from the District Court without applying it to the abuse of discretion standard.

In, *Int'l Game Tech, Inc.* the Court held:

> Writ relief is not available, however, when an adequate and speedy legal remedy exists. Accordingly, because an appeal from the final judgment typically constitutes an adequate and speedy legal remedy, we generally decline to consider writ petitions that challenge interlocutory district court orders denying motions to dismiss.
>
> Even when writ relief is available because an appeal from the final judgment is not an adequate and speedy legal remedy, this court's general policy, as stated in State ex rel. Department of Transportation v. Thompson, is to decline to consider writ petitions challenging district court orders denying motions to dismiss because such petitions rarely have merit, often disrupt district court case processing, and consume an "enormous amount" of this court's resources. Nonetheless, we have indicated that we will consider petitions denying motions to dismiss when either (1) no factual dispute exists and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule, or (2) an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.

Int'l Game Tech. 124 Nev. at 197-198, 179 P.3d at 558-559. (Citations omitted).

NCC does not claim it lacks an adequate or speedy legal remedy in the form of an appeal from a final judgment. The petitioner bears the burden of demonstrating that extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). The reason is that NCC does, indeed, have the adequate and speedy remedy of an appeal available to it after a final judgment in this matter. As a result, a writ is inappropriate.

Even if this Court determined NCC lacked an adequate or speedy legal remedy for reasons that NCC failed to articulate, a writ would still not be available because (1) factual disputes exist; and (2) there is no issue of law that needs clarification.

"When disputed factual issues are critical in demonstrating the propriety of a writ of mandamus, the writ should be sought in the district court, with appeal from an adverse judgment to this court." *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981). As discussed above, the parties significantly disagree as to the scope of the Federal Dec Action and how much any decision in that case will resolve the issue in the instant matter.

Writ relief is also unavailable because there is no issue of law the needs clarification. The Nevada Supreme Court recently adopted a three-step test for Court's to use in evaluating the applicability of the first-to-file rule. *Mesi v. Mesi*, 136 Nev. Adv. Op. 89, 478 P.3d 366, 370 (2020). NCC failed to even cite to *Mesi*,

let alone raise an argument that the case requires clarification. As *Mesi* and the first-to-file rule requires no clarification, writ relief is inappropriate.

3. THE FIRST-TO-FILE RULE DOES NOT APPLY AND SHOULD NOT BE APPLIED

The Nevada Supreme Court recently adopted the three-step test for applying the first-to-file rule. *Mesi v. Mesi*, 136 Nev. Adv. Op. 89, 478 P.3d 366, 370 (2020). The three steps are: (1) Does the rule apply in the first instances; (2) If so, is there some equitable reason not to apply the rule; and (3) If the rule applies, a court should determine the second-filed suit be dismissed or merely stayed. *Id.* Importantly, NCC failed to cite to the *Mesi* case in its District Court pleadings seeking dismissal or a stay.

ii. <u>The First-to-File Rule Does Not Apply</u>

In order to determine if the first-to-file rule applies, a Court must analyze three factors: "chronology of the lawsuits, similarity of the parties, and similarity of the issues." *Kohn Law Group, Inc. v. Auto Parts Mfg. Mississippi, Inc*., 787 F.3d 1237, 1240 (9th Cir. 2015).

Here, there is no dispute the federal district court case was filed first. Mr. Bouchard disputes that the parties are substantially similar. While the Federal Court action involved only Mr. Bouchard, Mr. Sotelo and NCC, the state court action involves Mr. Bouchard, NCC, Coast National Insurance Company, dba Foremost

Insurance Group and Selman Breitman LLP, and Stephenson & Dickinson. The state court action will necessarily include a determination of primary/secondary coverage between NCC and Coast National. Importantly, none of the other parties filed a timely joinder to NCC's motion. Unnecessarily staying this case will cause unnecessary delays for the other parties, as well as run the risk of losing evidence due to fading memories and document retention policies.

Mr. Bouchard also disputes that the issues are substantially similar. To determine whether two suits involve substantially similar issues, we look at whether there is "substantial overlap" between the two suits. *Kohn Law Group, Inc. v. Auto Parts Mfg. Mississippi, Inc*., 787 F.3d 1237, 1241 (9th Cir. 2015).

NCC's Federal Court action only asked for declaratory relief regarding the duty to defend and the duty to indemnify. *See* PA Vol. I, at pp. 0185-0189. The Federal Court action has since been limited as NCC stated the only issue remaining for trial involves the duty to indemnify based upon the contract. *See* PA Vol. II, at pp. 0334;25-28. Conversely, Mr. Bouchard brought a complaint for the following causes of action:

1. Breach of Contract
2. Breach of the Implied Covenant of Good Faith and Fair Dealing
3. Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing
4. Declaratory Relief

See PA Vol. II, pp. 260-268.

Importantly, a claim for breach of the implied covenant of good faith and fair dealing does not fail in the absence of insurance coverage. *Turk v. TIG Ins. Co.*, 616 F. Supp.2d 1044, 1054 (D. Nev. 2009) (denying a dismissal of the implied covenant of good faith and fair dealing cause of action when the insurer contended there was no coverage under the policy). Therefore, the federal Dec Action will not be dispositive of all claims against NCC. As a result, staying the case will only serve to further crowd the Court's docket without getting the parties discovery needed to potentially discuss resolution of the case.

NCC fails to acknowledge well established case law cited above that an insurer has duties and can act in bad faith even in the absence of coverage. Indeed, NCC fails to cite a single case that bad faith claims turn solely on coverage questions.

Here, the District Court correctly declined to stay or dismiss the current action. The reasons for such denial are plentiful including that the first-to-file rule does not apply:

> When a district court decides to dismiss or stay under Colorado River, it presumably concludes that the parallel state-court litigation will be an adequate vehicle for the ***complete*** and prompt resolution of the issues between the parties. If there is any substantial doubt as to this, it would be a serious abuse of discretion to grant the stay or dismissal at all.

Attwood v. Mendocino Coast Dist. Hosp., 886 F.2d 241, 243 (9th Cir. 1989) (emphasis added) citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 103 S. Ct. 927, 943 (1983). As the Ninth Circuit later noted, "if the issues or parties

involved in the two suits were not the same, adherence to the first-to-file rule would be reversible error for it would constitute a misapplication of the law." *Alltrade, Inc.* at 946 F.2d 622, n.13 (9th Cir. 1991).

Given the allegations of bad faith, as well as the involvement of a second insurance policy, the Federal Court case will not and cannot provide ***complete*** relief of all of the issues between the parties. Therefore, the first-to-file rule is inapplicable.

iii. Even If The First to File Rule Was Applicable, Equity Requires the Court to Decline to Apply It

The first to file rule "is not a rigid or inflexible rule to be mechanically applied, but rather is to be applied with a view to the dictates of sound judicial administration." *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir. 1982). "The most basic aspect of the first-to-file rule is that it is discretionary…" *Alltrade, Inc. v. Uniweld Products, Inc*., 946 F.2d 622, 628 (9th Cir. 1991).

As the United State Supreme Court noted, the first-to-file rule is generally left to the discretion of the trial court:

> Wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation, does not counsel rigid mechanical solution of such problems. The factors relevant to wise administration here are equitable in nature. Necessarily, an ample degree of discretion, appropriate for disciplined and experienced judges, must be left to the lower courts.

Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co., 72 S. Ct. 219, 221 (1952).

Here, equity precludes the Court from dismissing the instant action. As NCC noted, the federal dec relief action is set to go to trial in less than two months and in all likelihood will be completed by the time this Court renders a decision. The only issue raised in the pleading is the duty to defend and the duty to indemnify and the only issue going to trial involves the contractual duty to indemnify. Thus, the bad faith allegations will not be part of the federal action. Of note, Mr. Bouchard was not assigned the bad faith rights against NCC until April 3, 2020, which was after deadline to amend and the close of discovery date in the federal action. *See* RPA, pp. 187-198.

Given that the Federal Court has declined jurisdiction over this matter, it would be improper and unjust to dismiss the case because dismissing the instant matter would preclude Mr. Bouchard from litigation the bad faith claims. *See* RPA, pp. 199-204.

Similarly, dismissing the matter as to NCC would preclude Coast National from litigating issues related to primary/secondary coverage against NCC. Given all of these issues, it was well within the District Court's discretion to decline to dismiss or stay the case.

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iv. Even if the Court Things The Rule Applies, A Stay Rather Than Dismissal Is Appropriate

Initially, Mr. Bouchard is opposed to any application of the first-to-file rule because a stay would cause time to elapse, memories to fade and would delay justice to Mr. Bouchard. However, if this Court is considering dismissal, a stay is more appropriate. As discussed above, the federal action only addresses a small portion of the totality of the instant matter but will not resolve all issues. The decision in Federal Court could simply be applied as necessary on theories of issue or claim preclusion to prevent duplicative litigation of the issues ultimately resolved in Federal Court. The stay would alleviate the highly prejudicial effect of precluding the bad faith claims and preventing the other insurer from addressing primary/secondary insurance coverage issues.

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VI. CONCLUSION

Writ relief is inappropriate in this matter because review of a discretionary action prior to a final judgment is limited to certain circumstances that do not exist in this case. Even if the Court were to consider the merits of the case, the first-to-file rule does not and should not apply because the federal action cannot provide relief regarding the bad faith claims. In fact, the Federal Court declined jurisdiction over those claims. Therefore, this Court should deny the petition.

DATED this 15th day of November 2021.

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CERTIFICATE OF COMPLIANCE

I 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word 14 pt Times New Roman 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 proportionally spaced, has a typeface of 14 points or more, and contains 4,733.

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 Civil 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.

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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 15th day of November 2021.

THE SCHNITZER LAW FIRM

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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 15th day of November 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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