IN THE SUPREME COURT OF THE STATE OF NEVADA

E&T VENTURES, LLC, a Nevada Limited Liability Company,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JOANNA KISHNER, DISTRICT JUDGE,

Respondents,

EUPHORIA WELLNESS, LLC, a Nevada Limited Liability Company,

Real Party in Interest.

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Supreme Court No.: 84336

District Court No.: A-19-796919-B

REAL PARTY IN INTEREST EUPHORIA WELLNESS, LLC'S ANSWERING BRIEF

NICOLE E. LOVELOCK, ESQ. (Nevada State Bar No. 11187)
JUSTIN C. JONES, ESQ. (Nevada State Bar No. 8519)
MARTA D. KURSHUMOVA, ESQ. (Nevada State Bar No. 14728)
JONES LOVELOCK
6600 Amelia Earhart Ct., Suite C
Las Vegas, Nevada 89119
Telephone: (702) 805-8450
Fax: (702) 805-8451
nlovelock@joneslovelock.com
jjones@joneslovelock.com
mkurshumova@joneslovelock.com
Attorneys for Euphoria Wellness, LLC

NRAP 26.1 DISCLOSURE

The undersigned counsel of record hereby 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 for this court to evaluate possible disqualification or recusal.

1. Euphoria Wellness, LLC has no parent company. The following entities own 10% or more of Euphoria Wellness, LLC's stock or has other ownership interest: Rizzo, LLC; and Have a Wonderful Life, LLC.

2. Euphoria Wellness, LLC is represented by Jones Lovelock, PLLC in this appellate matter and in the underlying district court action. No other law firm is expected to appear on behalf of Euphoria Wellness, LLC in the appellate action.

Dated: June 10, 2022.

JONES LOVELOCK

/s/ *Nicole E. Lovelock, Esq.*
Nicole E. Lovelock, Esq. (NVBN 11187)
nlovelock@joneslovelock.com
Justin C. Jones, Esq. (NVBN 8519)
jjones@joneslovelock.com
Marta D. Kurshumova, Esq. (NVBN 14728)
mkurshumova@joneslovelock.com
6600 Amelia Earhart Ct., Suite C
Las Vegas, NV 89119

Attorneys for Real Party In Interest Euphoria Wellness, LLC

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I. ROUTING STATEMENT

This is a case originating in business court. Based upon the foregoing, pursuant to NRAP 17(a)(9), this matter is retained by the Supreme Court.

II. ISSUES PRESENTED

1. Whether pursuant to NRS 1.235 the Honorable Judge Bell, the presiding judge of the Eighth Judicial District Court, had authority to hear and determine the disqualification of the Honorable Judge Kishner when the parties to the litigation had not agreed to another judge to make such a determination.

2. Whether a motion to reconsider the denial of Petitioners' motion to disqualify, which does not present a new affidavit that complies with NRS 1.235(1) and is not served on the District Court, must be treated as a new request for disqualification under NRS 1.235 such that the District Court cannot proceed with scheduled hearings in an action.

III. STATEMENT OF THE CASE

Euphoria Wellness, LLC has state and local approval to own and operate a medical and recreational production cannabis production facility within Clark County, Nevada. Euphoria Wellness, LLC had a contract with Petitioner for Petitioner to manage said production facility. However, the contract was terminated following a series of breaches by Petitioner, which included Petitioner violating Nevada laws and regulations and stealing highly regulated cannabis product from Euphoria. The underlying district court action regards claims related thereto. However, Petitioner's Writ does not relate to any claim in the underlying district court action and instead focuses solely upon Petitioner's claims that the Honorable Judge Kishner is biased based solely upon the judge ruling against Petitioner in some instances.

IV. SUMMARY OF ARGUMENT

Petitioner's writ is based upon two baseless arguments. First, Petitioner argues that the presiding judge of the Eighth Judicial District Court (the Honorable Chief Judge Linda Bell) lacked authority to rule upon Petitioner's motion to disqualify. Specifically, Petitioner claims that the parties had not disagreed as to the judge who should hear the motion to disqualify under NRS 1.235 and, therefore, the motion to disqualify should not have been heard by the presiding judge of the Eighth Judicial District Court. Yet, it is undisputed that the parties *had never agreed* upon a judge to hear the motion to disqualify. Thus, without an agreement among the parties pursuant to NRS 1.235(6), a motion to disqualify is to be heard by the presiding judge, who was Chief Judge Linda Bell. NRS 1.235(6)(a). Thus, Petitioner's writ must be denied.

Second, Petitioner erroneously claims that its filed motion to reconsider Judge Bell's decision constituted a new affidavit under NRS 1.235(1) that required the Honorable Judge Kishner to transfer the case pursuant to NRS 1.235(5) or file a written answer pursuant to NRS 1.235(6). Said motion to reconsider sets forth arguments why Judge Bell's ruling should be reconsidered but did not include the requisite "affidavit specifying the facts upon which the disqualification is sought." NRS 1.235(1). Thus, Petitioner's writ must be denied.

V. STATEMENT OF THE FACTS RELATED TO WRIT

A. Petitioners' Attempts to Avoid an Evidentiary Hearing on Potential Sanctions.

Petitioner is engaged in a long-standing and elaborate scheme to prevent the District Court from hearing sanctions motions filed by Real Party in Interest, Euphoria Wellness, LLC ("Euphoria").[1] On October 18, 2021, the District Court entered a discovery order ("Discovery Order") compelling the Petitioner and Third-Party Defendants[2] to supplement their response to Euphoria's written discovery requests, including requests for production of documents. RA1-17.[3] Thereafter, Petitioner and Third-Party Defendants served supplemental discovery responses that were insufficient and false. Accordingly, on November 24, 2021, Euphoria filed a Motion for Discovery Sanctions against Petitioner and the Third-Party Defendants for failing to abide by the Discovery Order ("Motion for Sanctions"). RA 18-45.[4]

On January 4, 2022, the District Court heard the Motion for Sanctions and ruled that the responses were impermissibly nonresponsive and inconsistent with the record and set an Evidentiary Hearing. RA 46-190. On January 25, 2022, the

[1] After the filing of the instant writ petition, the District Court ruled upon the sanctions motion that Petitioner has been trying to avoid. RA 257-278

[2] Miral Consulting, LLC, Happy Campers, LLC, and CBD Supply Co, LLC are "Third-Party Defendants."

[3] Euphoria's Appendix is referred to as the "RA" throughout this brief.

[4] The Appendix to the Motion for Sanctions is not being included in the RA.

District Court entered its written order, detailing the Court's order from the bench. RA 191-198.

To avoid the evidentiary hearing, the Petitioner filed a Petition for Writ of Prohibition or, in the Alternative, Petition for Writ of Mandamus, in Case No. 84133 and sought a stay of the District Court proceedings. This Court issued an Order Denying Petition for Writ of Mandamus or Prohibition. Petitioner then decided to change tactics and, in an attempt to further avoid the evidentiary hearing on the Motion for Sanctions, attempted to disqualify the Honorable Judge Kishner.

B. Petitioner's First Attempt to Disqualify the Honorable Judge Kishner is Denied.

On February 2, 2022, the Petitioner filed an Application to Disqualify ("Motion to Disqualify") the Honorable Judge Kishner and Affidavit Pursuant to NRS 1.235.[5] AA0005-236.[6] Petitioner filed an errata that same day.[7] RA 199-202. Petitioner did not, within its Motion to Disqualify, request that any particular judge hear the Motion to Disqualify. *See generally* AA005-236. Nor did Petitioner contact Euphoria to propose that the parties agree upon the judge to hear the Motion to Disqualify. *See generally id.*; *see also* AA0276-279. Instead, the Petitioner simply

[5] It is notable that Petitioner's basis for the Motion to Disqualify was the Court's consideration of the Motion for Sanctions and decision to schedule an evidentiary hearing on the same.

[6] Petitioner's Appendix is referred to as "AA" throughout this brief.

[7] For some reason, Petitioner has excluded its Errata from its Appendix. The Application and Errata are collectively referred to throughout this brief as the "Motion to Disqualify."

filed its Motion to Disqualify.

Pursuant to NRS 1.235(6), on February 7, 2022, the Honorable Judge Kishner filed an affidavit denying the allegations contained in the affidavit in support of the Motion to Disqualify. AA0242-255. Still, Petitioner did not reach out to Euphoria to propose that the parties reach an agreement as to which judge should hear the Motion to Disqualify. Instead, on February 9, 2022—a week after Petitioner's Motion to Disqualify was filed and two days after the Honorable Judge Kishner responded to the Motion to Disqualify—Euphoria wrote to Petitioner: "We haven't heard from you regarding your motion to disqualify the Judge." AA0278. Euphoria went on to direct Petitioner to NRS 1.235(6) and state that it was Euphoria's intent to file a notice that no agreement had been reached by the parties as to which judge was to hear the Motion to Disqualify. *Id*. Petitioner objected, claiming that Euphoria was acting in "bad faith" to represent to the District Court that no agreement was reached when "no attempt was made" by the parties to agree to the judge to hear the Motion to Disqualify. *Id*.

Based on Petitioner's objection, Euphoria provided a list of judges to which Euphoria would agree to hear the Motion to Disqualify including, but not limited to the presiding judge of the Eighth Judicial District Court (the Honorable Chief Judge Bell). *Id*. When Petitioner failed to respond to Euphoria, Euphoria followed-up to request that Petitioner respond by 9:00 a.m. the next day (i.e., February 10, 2022).

Id. Euphoria made clear that if no response was received, there was no agreement by the parties and Euphoria intended to file a notice of the same. *See id*.

Petitioner's only response was to confirm that it did not intend to respond to Euphoria's proposed list of judges before Euphoria intended to file its notice that no agreement had been reached by the parties. *Id*. **Consequently, the parties never agreed to have the Motion to Disqualify heard by any particular judge**. On February 10, 2022—eight (8) days after Petitioner's Motion to Disqualify was filed—Chief Judge Bell issued a Decision and Order ("Decision") on the Motion to Disqualify.

C. Following the Supreme Court's Denial of Petitioner's Writ Petition on the Order Setting Evidentiary Hearing, the District Court Re-Calendared the Evidentiary Hearing on the Motion for Sanctions.

On February 10, 2022, this Court issued an Order Denying Petitioner's Petition for Writ of Mandamus or Prohibition, challenging the District Court's Order Setting Evidentiary Hearing. RA 203-204. In light of that decision, on February 10, 2022, the District Court then issued an Amended Order setting the evidentiary hearing on the Motion for Sanctions for February 11, 2022 at 3:00 p.m. AA 0284-286

D. Petitioner Then Files a Motion for Reconsideration on the *Same* Basis as the Motion to Disqualify.

Later that night, in a blatant attempt to avoid the evidentiary hearing on the Motion for Sanctions, Petitioner then filed a Motion for Reconsideration styled as a Motion for Withdrawal/Reconsideration, Evidentiary Hearing on Disqualification,

Or Alternatively for Stay Pending Writ Petition to Nevada Supreme Court ("Motion for Reconsideration"). AA 265-286. Petitioner's Motion for Reconsideration raised three arguments: (1) that Chief Judge Bell's Decision was premature because the parties had not yet agreed on which judge was going to hear and decide the Motion to Disqualify; (2) that Chief Judge Bell's Decision ignored the alleged misrepresentations made by the Honorable Judge Kishner in her February 7, 2022 response to the Motion to Disqualify; and (3) that Petitioners raised enough grounds to support an inference of bias or prejudice that an evidentiary hearing on the Motion to Disqualify should have been heard. *See id*. ***Petitioner did not, however, raise any <u>new</u> reasons for the Honorable Judge Kishner's disqualification***. *See id*. Nor did counsel's "Affidavit/Declaration/Certification" included in the Motion for Reconsideration raise any new grounds for potential disqualification. *Id*. at AA 0275. Instead, it only stated:

1. I am counsel of record for E&T Ventures, LLC, a Nevada limited liability company ("E&T")—the Plaintiff in the above-referenced case.

2. Joseph Kennedy is the sole manager and member of E&T.

3. The motion for disqualification (including my affidavit) filed on February 2, 2022 was served in accordance with NRS 1.235 via the district court's e-service system on February 2, 2022 and delivered to the chambers of Judge Kishner on February 3, 2022. The motion for disqualification (including my affidavit) and the above motion (and this affidavit/declaration/certification) have been filed in good faith and not interposed for delay.

4. The facts set forth in the above motion are true and accurate. Such facts support withdrawal/reconsideration of the decision by Chief Judge Bell, an evidentiary hearing concerning the disqualification of Judge Kishner, and/or a stay of the case pending resolution of the issue of disqualification. I have personal knowledge of the facts contained in this filing unless otherwise qualified by information and belief or such knowledge is based on the record in this case, and I am competent to testify thereto, and such facts are true and accurate to the best of my knowledge and belief.

5. The exhibits attached to the above motion are true, accurate and complete.

Id.

E. Because Petitioner Failed to Serve the Motion for Reconsideration Pursuant to NRS 1.235(4), the District Court Proceeded With the Hearing on the Motion for Sanctions.

The following day, on February 11, 2022, the parties appeared before the District Court for the hearing on the Motion for Sanctions. At the beginning of the hearing, Petitioner advised the Court that it had filed a motion for reconsideration at 7:10 p.m. the night prior and took the position that the District Court was not

permitted to proceed with the hearing. RA 205-256 (at 5:4-16).[8] The District Court was obviously confused because no affidavit had been served on the Court. *Id*. at 5:17-24) ("The Court - - obviously it wouldn't have been submitted to me. Never got served with anything. Don't know anything related thereto."). Petitioner then misrepresented the Motion for Reconsideration to the District Court, stating: "the motion for disqualification that was filed on February 11th - - I'm sorry, that was filed on February 10th, 2022 at 7:10. It was filed in your department. *There's an affidavit attached to it.* ***It has an independent and <u>new</u> basis for disqualification***." *Id*. at 11:15-20 (emphasis added).

The District Court made clear that any "new" affidavit had ***<u>not</u>*** been served on the Court pursuant to NRS 1.235(4) and even went so far as to check with the Court staff on the record. *Id*. at 12:13-21; 13:23-16 ("[T]his Court has been here. There has not been anyone who has served this Court with anything . . . there's cameras all over the courthouse, okay. There has not been any service, okay, of anything, right, to the Court or a member of my team."). After a long colloquy on the record, Petitioner finally conceded that the District Court may not have been served with any affidavit (or the Motion for Reconsideration). *Id*. at 20:7-20 ("A

[8] Petitioner notably fails to include a copy of the February 11, 2022 transcript to its Writ Petition. Petitioner's decision to exclude the hearing transcript is likely intentional as the hearing transcript belies Petitioner's arguments in its Writ that Judge Kishner overruled Petitioner's objection despite having "actual notice of the motion." Petitioner's Writ at 10.

copy was sent to you personally. Whether you received it or not is not my particular concern at this point, but I will certainly follow up with my paralegal and the process server for purposes of sending it down.") Nonetheless, the Petitioner inexplicably took the position that e-service of the Motion for Reconsideration and accompanying affidavit constituted service under NRS 1.235(4) and thus, the District Court lacked jurisdiction to proceed with the hearing. *Id*. at 20:7-20; 21:8-18.

After the District Court again confirmed that it had not been served with any new affidavit or Motion for Reconsideration, the District Court proceeded to hear argument on the Motion for Sanctions. *Id*. at 22:1-25. However, the District Court did not rule on the Motion for Sanctions on February 11, 2022 and scheduled a subsequent date for continuation of the evidentiary hearing.

F. Chief Judge Bell Subsequently Denied Petitioner's Motion for Reconsideration.

On March 3, 2022, Chief Judge Bell subsequently denied Petitioner's Motion for Reconsideration. AA00333-337. In doing so, Chief Judge Bell made clear that Petitioner's Motion for Reconsideration was just that—a motion for reconsideration—and that Petitioner's Motion for Reconsideration did not raise any new grounds for disqualification.

VI. ARGUMENT

A. This Court Should Deny Petitioner's Writ as a Matter of Law.

Rule 60(b) of the Nevada Rules of Civil Procedure permits the reconsideration

of a district court order. However, the grounds for reconsideration are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or (6) any other reason that justifies relief.

NRCP 60(b). This Court reviews a district court order denying NRCP 60(b) relief for an abuse of discretion. *Ford v. Branch Banking & Tr. Co*., 131 Nev. 526, 528, 353 P.3d 1200, 1202 (2015). Petitioner has failed to demonstrate that the district court's order denying the Motion for Reconsideration was an abuse of discretion. To the contrary, Chief Judge Bell's Order was consistent with NRS 1.235. Therefore, Petitioner's Writ should be denied.

1. The Motion for Reconsideration Was Properly Denied Because Chief Judge Bell's Decision to Deny the Motion to Disqualify Was Not "Premature."

Petitioner, as the party seeking relief based on NRCP 60(b)(1) bore the burden of establishing a right to relief from Chief Judge Bell's decision on the Motion to Disqualify by a preponderance of the evidence. *Willard v. Berry-Hinckley Indust*., 136 Nev. 467, 470, 469 P.3d 176, 179-80 (2020). Petitioner failed to carry its burden and Chief Judge Bell's decision to deny the Motion to Disqualify was supported by substantial evidence. Thus, Judge Bell's decision should not be disturbed on appeal. *See id*., citing *Keife v. Logan*, 119 Nev. 372, 374, 75 P.3d 357,

359 (2003) ("[T]his court will not disturb a district court's findings of fact if they are supported by substantial evidence.").

Petitioner first contends that Chief Judge Bell abused her discretion in failing to find that the Decision on the Motion to Disqualify was not premature. In essence, Petitioner takes the position that Chief Judge Bell only had "conditional" power and authority to decide the Motion to Disqualify if, and only if, the parties first informed the district court that they had reached or failed to reach an agreement on the district court judge to decide the Motion to Disqualify. *See* Petitioner's Writ at 9. Petitioner's position is inconsistent with the plain language of NRS 1.235.

NRS 1.235(6) provides:

> The question of the judge's disqualification must thereupon be heard and determined by another judge agreed upon by the parties or, if they are unable to agree, by a judge appointed:
>
> (a) If the judge is a district judge, by the presiding judge of the judicial district in judicial districts having more than one judge . . . .

NRS 1.235(6). The leading rule of statutory construction is to ascertain the intent of the legislature enacting the statute by beginning with the plain language and meaning of the statute. *See e.g., Dezzani v. Kern & Assocs*., 134 Nev. 61, 64, 412 P.3d 56, 59 (2018). Petitioner would have this Court read language into the statute that is just not there. NRS 1.235(6) ***does not*** state that a disqualification motion cannot be heard until the parties agree or disagree upon a judge; rather, the statute provides that the question of a judge's disqualification "must thereupon be heard," *i.e.*, must be heard

expeditiously upon the filing of a motion to disqualify. NRS 1.235(6). Courts avoid a reading of statutes which "would render any part thereof redundant or meaningless, where that part may be given a separate substantive interpretation," which is precisely what Petitioner advocates for. *See Bd. of Cty. Comm'rs of Clark Cty. v. CMC of Nev., Inc*., 99 Nev. 739, 744, 670 P.2d 102, 105 (1983). The Court must presume that the Legislature intended to use words in their usual and natural meaning. *See e.g., McGrath v. State Dep't of Pub. Safety*, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007); *see also Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809, 109 S. Ct. 1500 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."). Black's Law Dictionary defines "thereupon" as "Immediately; without delay; promptly." Thereupon, Black's Law Dictionary (11th ed. 2019). The Law Dictionary similarly defines "thereupon" as "At once; without interruption; without delay or lapse of time." Thereupon, The Law Dictionary, available at https://thelawdictionary.org/thereupon/.

Because disqualification halts proceedings and requires a prompt response, once the judge has responded to a disqualification request, the matter is procedurally ready to be decided. Petitioner has failed to demonstrate how Chief Judge Bell abused her discretion in ruling on the Motion to Disqualify, particularly when her decision was not made until February 10, 2022—eight (8) days after Petitioner's

Motion to Disqualify was filed and three (3) days after Judge Kishner responded to the affidavit alleging bias or prejudice. If anything, the record demonstrates that Chief Judge Bell appropriately acted without delay as the statute requires.

Moreover, NRS 1.235(6) does ***not*** require that the parties first file something with the District Court, stating whether they have agreed, or are unable to agree, upon a judge to hear the disqualification. Again, the Petitioner tries to graft language onto the statute that does not exist. In this case, Petitioner's argument is particularly specious because Euphoria (not Petitioner) had attempted to discuss potentially agreeable judges to hear the Motion to Disqualify and it was Petitioner who refused to substantively respond. AA0278. It is undisputed that the parties did not have an agreement for a certain judge to hear the Motion to Disqualify. Therefore, pursuant to NRS 1.235(6), Chief Judge Bell, as the "presiding judge of the judicial district," was designated by statute to hear the Motion to Disqualify.

Put simply, Petitioner's contention that Chief Judge Bell abused her discretion in denying the Motion for Reconsideration based on the "premature" ruling on the Motion to Disqualify falls flat.

B. The Motion for Reconsideration Was Properly Denied Because it Did Not Raise *New* Basis For Potential Disqualification.

Petitioner next argues that Chief Judge Bell abused her discretion in denying the Motion for Reconsideration by failing to consider the "new basis for disqualification" set forth in the motion as supported by Petitioner's affidavit

pursuant to NRS 1.235(1). But Petitioner's Writ is intentionally devoid of any discussion of the alleged "new basis for disqualification" because no such "new basis" was presented. *See gen*. Petitioner's Writ. Rather, Petitioner's Motion for Reconsideration simply raised many of the same arguments made on appeal now—i.e., that Chief Judge Bell's decision was "premature" because she decided the matter before the parties reached an agreement to have another district court hearing the Motion to Disqualify (*see* AA 0268) and that Judge Kishner's decision to order a non-party to appear for a hearing was improper (*see* AA 0269). In addition, Petitioner argued in the Motion for Reconsideration that Judge Kishner "misrepresent[ed] the record in her written response filed on February 7, 2022 to justify her abuse of judicial power" (*see* AA 0269-272) and that Chief Judge Bell should have scheduled an evidentiary hearing on the Motion to Disqualify instead of denying it summarily (*see* AA 0272-273), arguments that are *not* presented in Petitioner's Writ Petition.

A review of the "Affidavit/Declaration/Certificate" of counsel, supporting the Motion for Reconsideration" also demonstrates that Petitioner's Motion for Reconsideration did not present any new allegation of bias or prejudice to be considered. Rather, Petitioner has consistently (and repeatedly) attempted to shoehorn the Motion for Reconsideration under this Court's decision in *Towbin Dodge, LLC v. Eighth Judicial Dist*., 121 Nev. 251, 112 P.3d 1063 (2005). But

Towbin does not apply here because it only applies to "new grounds for a judge's disqualification [that] are discovered after the time limits in NRS 1.235(1) have passed." 121 Nev. at 260, 112 P.3d at 1069. In this case, Petitioner only presented the same grounds for disqualification in its Motion for Reconsideration. Because Petitioner failed to meet its burden of proving a right to relief, by a preponderance of evidence, the Motion for Reconsideration was properly denied. *See Willard*, 136 Nev. at 470, 469 P.3d at 179-180.

C. Judge Kishner Did Not Act in Violation of NRS 1.235 By Proceeding With the Motion for Reconsideration Before She Was Served With the Motion for Reconsideration.

Finally, Petitioner contends (*albeit*, in passing) that Judge Kishner improperly refused to transfer the case to another department and proceeded with the February 11, 2022 hearing while the Motion for Reconsideration was pending. Petitioner's Writ at 5, 7, 10. Petitioner asks this Court to: (i) disqualify Judge Kishner from continuing to preside over the case, (ii) instruct the clerk of the court to re-assign the case to another business court judge, and (iii) vacate any orders entered by Judge Kishner after the initial Motion to Disqualify was filed. But Petitioner provides no support whatsoever for its requests.

Petitioner's arguments and requests also ignore the record. Rather, Petitioner's contentions and requests are premised on representations that twist the record beyond recognition.

Again, this Court need only look to the plain language of the statute to deny

Petitioner's arguments. NRS 1.235(1) requires that "[a]ny party to an action or proceeding pending . . . who seeks to disqualify a judge for actual or implied bias or prejudice must file an affidavit specifying the facts upon which the disqualification is sought." The statute further provides: "At the time the affidavit is filed, ***a copy must be served upon the judge*** sought to be disqualified. ***Service must be made by delivering the copy to the judge personally or by leaving it at the judge's chambers with some person or suitable age and discretion employed therein***." NRS 1.235(4) (emphasis added). As discussed *supra*, Petitioner's Motion for Reconsideration did not specify any new basis upon which disqualification was sought. Therefore, it did not (and cannot) constitute a "new" affidavit pursuant to NRS 1.235(1).

In addition, Petitioner did ***not*** serve the affidavit supporting the Motion for Reconsideration (or the Motion for Reconsideration itself) upon the Court, as required by NRS 1.235(4), prior to the February 11, 2022 hearing.[9] Petitioner apparently concedes that it failed to serve Judge Kishner by recognizing, in its Writ Petition, that Judge Kishner was only "provided notice of the motion (since the motion was filed on the docket in her department." Petitioner's Writ 6. But that

[9] Petitioner also ignores the time requirements set forth in NRS 1.235 which require that any affidavit to disqualify a judge for actual or implied bias or prejudice must be filed "[n]ot less than 3 days before the date set for the hearing of any pretrial matter." NRS 1.235(1). Petitioner intentionally filed its Motion for Reconsideration the night before the Court's February 11, 2022 hearing on the Motion for Sanctions. Consequently, it was not timely under NRS 1.235(1).

does not constitute proper service under the statute. *See* NRS 1.235(4). Moreover, while Petitioner now claims that "[a] paper copy was also sent to Judge Kishner's chambers for personal service," that claim is also belied by the record. *Id*., citing AA 0289-325. Petitioner did not send a "courtesy copy" of the Motion for Reconsideration to the Department until *after* the February 11, 2022 hearing and even then, that "courtesy copy" was only provided by e-mail which is not proper service under NRS 1.235(4). *See* AA00318-319 (reflecting a 5:35 p.m. email from Petitioner's counsel to Judge Kishner's Judicial Executive Assistant, attaching a "courtesy copy of the notices filed"). Petitioner did not actually serve Judge Kishner with a copy of the Motion for Reconsideration by delivering it to her chambers until *February 14, 2022*—four (4) days after the Motion for Reconsideration was filed and three (3) days after Judge Kishner held the February 11, 2022 hearing. AA00322-325.

Put simply, Petitioner failed to comply with the clear service requirements set forth in NRS 1.235(4). As a result, Judge Kishner was entitled to proceed with the February 11, 2022 hearing as scheduled. This Court, consequently, has no basis upon which to unwind her decision or demand a transfer of the action.

VII. CONCLUSION

For the above reasons, Euphoria respectfully requests that the Court deny the relief sought in Petitioner's Writ.

Dated: June 10, 2022.

JONES LOVELOCK

/s/ *Nicole E. Lovelock, Esq.*

Nicole E. Lovelock, Esq. (NVBN 11187)
nlovelock@joneslovelock.com
Justin C. Jones, Esq. (NVBN 8519)
jjones@joneslovelock.com
Marta D. Kurshumova, Esq. (NVBN 14728)
mkurshumova@joneslovelock.com
6600 Amelia Earhart Ct., Suite C
Las Vegas, NV 89119

Attorneys for Real Party In Interest Euphoria Wellness, LLC

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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman Font.

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 proportionally spaced, has a typeface of 14 points or more and contains 4,166 words.

3. Finally, I hereby certify that I have read this 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 were 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: June 10, 2022.

JONES LOVELOCK

/s/ *Nicole E. Lovelock, Esq.*

Nicole E. Lovelock, Esq. (NVBN 11187)
nlovelock@joneslovelock.com
Justin C. Jones, Esq. (NVBN 8519)
jjones@joneslovelock.com
Marta D. Kurshumova, Esq. (NVBN 14728)
mkurshumova@joneslovelock.com
6600 Amelia Earhart Ct., Suite C
Las Vegas, NV 89119

Attorneys for Real Party In Interest Euphoria Wellness, LLC

CERTIFICATE OF SERVICE

This is to certify that on June 10, 2022, a true and correct copy of the foregoing **REAL PARTY IN INTEREST EUPHORIA WELLNESS, LLC'S ANSWERING BRIEF** was served on the following by the Supreme Court Electronic Filing System:

LAW OFFICE OF MITCHELL STIPP
MITCHELL STIPP, ESQ. (Nevada Bar No. 7531)
1180 N. Town Center Drive, Suite 100
Las Vegas, Nevada 89144
Telephone: 702.602.1242
mstipp@stipplaw.com

By /s/ *Julie Linton*
An Employee of JONES LOVELOCK