IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY KVAM,

Appellant,

v.

BRIAN MINEAU; AND LEGION INVESTMENTS, LLC,

Respondents.

_____/

Supreme Court Case No. 84443

District Case No. CV18-00764

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

Respondents BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq. and Mark H. Gunderson, Esq., file this *Answer* to the *Petition for Review* ("Petition") filed by Appellant JAY KVAM ("Kvam"). This *Answer* is filed pursuant to NRAP 40B and this Court's *Order Directing Answer to Petition for Review* filed January 25, 2023.

I. INTRODUCTION

This dispute arose out of the parties' joint efforts to acquire the property located at 7747 S. May Street, Chicago, Illinois ("Property"), renovate it, and sell it for a profit. The Property was a dilapidated home in Chicago's "South Side" and was inexpensive to acquire and renovate, providing for a potentially profitable return

on investment in a relatively short period. The parties purchased the Property and hired a contractor, who agreed to complete the renovation within approximately ten weeks for a flat fee of $80,000.00. Unfortunately, the contractor breached its contract and failed to complete the renovation which it was hired and paid to perform.

Legion and Mineau undertook reasonable and good faith efforts to compel the contractor to finish the project in compliance with the contract, but after months of excuses and broken promises from the contractor, Kvam declared "the project a failure" and demanded that Legion/Mineau "refund" Kvam's investment in the Property, plus interest. Legion and Mineau offered to assign all interest in the project to Kvam in accordance with the parties' agreement, but Kvam refused. Rather than pursue a new contractor to finish the job and salvage the project, or file suit against the contractor to recover the money Kvam paid directly to the contractor for work that was never performed, Kvam filed suit against Legion and Mineau, blaming them for the project's failure.

After extensive discovery, Kvam was unable to identify any admissible evidence to meaningfully substantiate his claims that Legion or Mineau were somehow legally responsible for the losses all parties suffered when the contractor breached its contract. The district court entered summary judgment in Legion's and

Mineau's favor, enforcing the remedy set forth in the parties' agreement as written. The Court of Appeals affirmed the district court's decision in its entirety.

This is a standard appeal from a business dispute. Kvam's bare and unsubstantiated allegations were insufficient to survive summary judgment before the district court and were found by the Court of Appeals to be "built on gossamer threats of whimsy, speculating, and conjecture." Supreme Court review of these issues is not warranted.

II. SUMMARY OF ARGUMENTS

Kvam petitions this Court for review on four grounds. *Petition* pp. 1-2.

First, Kvam argues that the district court committed reversible error by entering judgment against him on Legion and Mineau's counterclaim for declaratory relief based upon what Kvam refers to as the district court's "deemed admitted theory." *Petition* p. 1. Kvam claims that Legion and Mineau's counterclaim could not form the basis for entry of judgment or for undenied allegations to be "deemed admitted" because Legion and Mineau abandoned their counterclaim by not re-filing it along with their answers to Kvam's first and second amended complaints. Kvam's arguments are contrary to the Nevada Rules of Civil Procedure and sound public policy. Regardless, the Court of Appeals correctly determined that this issue need not be resolved on the merits because any error in this regard was harmless.

Second, Kvam argues that the Court of Appeals misconstrued the record when it stated that the district court notified the parties of its intent to grant summary judgment in favor of Mineau on his declaratory relief counterclaim pursuant to NRCP 56(f) and offered Kvam the opportunity to respond, but "Kvam declined." *Petition* pp. 1-2. The Court of Appeals correctly recited the record in this regard. Both parties filed nearly identical declaratory relief claims, and Legion and Mineau moved for summary judgment on Kvam's declaratory relief claim, not on their own declaratory relief counterclaim. The district court notified the parties pursuant to NRCP 56(f) that, since Legion and Mineau were the moving parties, the district court intended to enter judgment on Legion and Mineau's declaratory relief counterclaim rather than on Kvam's declaratory relief claim. The district court afforded Kvam the opportunity to respond to the extent his briefing would change under this technical difference. Kvam declined. Regardless, the Court of Appeals again correctly determined that any error in this regard was harmless.

Third, Kvam argues that the district court committed reversible error by ruling that the written agreement "is a complete, integrated agreement, that precludes parole [sic] evidence," and whether the Court of Appeals overlooked or misapprehended Kvam's arguments to the contrary. *Petition* p. 2. The district court made no such ruling. In fact, the district court determined was that there was no meeting of the minds regarding any terms other than those contained in the Terms

of Agreement. The Court of Appeals correctly understood and affirmed the district court in this regard.

Fourth, Kvam generically asserts that "the Court of Appeals committed errors of law and misapprehended or overlooked evidence of record which create genuine issues of material fact on Kvam's other causes of actions." *Petition* p. 2. The Court of Appeals' affirmation was detailed, well-reasoned, and accurate.

Supreme Court review is not warranted in this case.

III. STATEMENT OF RELEVANT FACTS

In late 2016 / early 2017, the parties began formulating a plan to purchase the Property, renovate it, and sell it for a profit. 7 JA 1034 ¶ 5. On February 13, 2017, the parties entered into a document entitled *Terms of Agreement between Legion Investments LLC (its Members) And Jay Kvam (Initial Funding Member of Same) RE: 7747 S. May Street, Chicago Illinois* ("Terms of Agreement"). 7 JA 1041. The Terms of Agreement reads, in its entirety, as follows:

> With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest due on funds dispersed. Initial purchase is being funded by Jay Kvam, who is there by assigned any remedies due should the transaction fail in anyway. Initial funder will be due a 7% annual return on any funds provided due from date of disbursement. There is expected to be 3 renovation draws necessary on this project. First draw to be funded by Mr. Kvam, Due to present and ongoing business dealings between Jay and Michael, Michael has

> agreed to allot %50 of his 1/3 profit to Mr. Kvam for both initial funding's.

Id (all typographical errors in original).

On March 23, 2017, Legion entered into a Contractor Agreement with TNT Complete Facility Care Inc. ("TNT"). 7 JA 1054-67. Pursuant to the Contractor Agreement, TNT agreed to fully renovate the Property for a flat fee of $80,000.00. 7 JA 1065. Progress payments were to be made pursuant to a defined schedule. Id. TNT agreed to complete the project by June 1, 2017. Id.

Kvam sent an initial $20,000.00 payment directly to TNT. 7 JA 1069-70. Kvam was also in direct contract with Derek Cole, TNT's field operations vice president, and Todd Hartwell, TNT's CEO, before wiring the second progress payment directly to TNT. 7 JA 1080-87. Thereafter, Kvam and Cole communicated directly regarding project progress, including Kvam making the third progress payment directly to TNT. 7 JA 1035-37; see also 7 JA 1089-1142. However, TNT failed to complete the project, and by December 2017, Kvam deemed the project a failure. 8 JA 1192-93; see also 8 JA 1201-03.

Kvam initiated this action on April 11, 2018. 1 JA 1-9.

Legion and Mineau filed their *First Amended Counterclaim* on October 5, 2018 ("FACC"). 2 JA 114-127. On January 9, 2019, the district court entered an order adjudicating all of Legion and Mineau's counterclaims except their third claim

for relief for declaratory relief. 3 JA 376-378. Kvam never filed an answer to Legion and Mineau's FACC.

On January 31, 2019, Kvam filed his *First Amended Verified Complaint*. 3 JA 379-389. On February 19, 2019, Legion and Mineau filed their *Answer to First Amended Verified Complaint*. 3 JA 390-394. Legion and Mineau's pending counterclaim was not re-pled as there were no revisions to it.

On September 11, 2019, Kvam filed his *Second Amended Verified Complaint*. 5 JA 756-768. On September 25, 2019, Legion and Mineau filed their *Answer to Second Amended Verified Complaint*. 5 JA 769-773. Legion and Mineau's pending counterclaim was not re-pled as there were no revisions to it.

On January 14, 2020, the district court held a pretrial conference. 13 JA 1760-1788. At that pretrial conference, Kvam's attorney expressly acknowledged that Legion and Mineau's "only remaining counterclaim is for declaratory relief, which really is a mirror of what's in our complaint" and that "both parties are moving for a declaration." 13 JA 1768-1769. Kvam offered no argument or indication of any belief that Legion and Mineau had abandoned or withdrawn their FACC. Id.

On June 5, 2020, the district court entered an *Order Granting, in Part, and Denying, in Part Defendants' Motion for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant to Court's NRCP 56 Notice* (identified in Kvam's *Petition* as "Order #1"). 14 JA 1948-1992. On March 10, 2022, the district

court entered an *Order Granting Plaintiff's Motion for Partial Summary Judgment*, disposing of the few remaining claims for relief (identified in Kvam's *Petition* as "Order #2"). 14 JA 2147-2156.

IV. ARGUMENT

The district court properly entered summary judgment and the Court of Appeals properly affirmed the district court's decision in its entirety. Kvam's claims against Legion and Mineau were based upon conspiracy theories which never had evidentiary support, and the district court properly enforced the contractual remedy set forth in the parties' Terms of Agreement.

A. The Court Of Appeals Properly Affirmed The District Court's Entry Of Declaratory Judgment.

The first question posed in Kvam's *Petition* is whether the district court committed reversible error by granting summary judgment in Legion and Mineau's favor on their counterclaim for declaratory relief. *Petition* p. 1. Kvam claims that the district court improperly relied upon what Kvam calls a "deemed admitted theory," and that Legion and Mineau's counterclaim had been abandoned when Legion and Mineau failed to re-plead it in their answers to Kvam's amended complaints. Id. Kvam's *Petition* mischaracterizes the district court's decision and ignores the Court of Appeals' reasoning in affirming the district court's decision.

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The district court's Order #1 included references to a handful of background facts which the district court "deemed admitted" due to Kvam's failure to file an answer to Legion and Mineau's FACC. 14 JA 1961, 1963 fn. 5, & 1972. On appeal, Kvam argued that this was improper because Legion and Mineau abandoned their counterclaim by not re-pleading it along with their answers to Kvam's first and second amended complaints. The Court of Appeals declined to address Kvam's argument on the merits because Kvam was not prejudiced by the ruling against him in this regard. *Order of Affirmance* p. 5. Contrary to Kvam's argument, the actual decisions by the district court and the Court of Appeals were based upon a simple, standard, and correct application of the Nevada Rules of Civil Procedure.

1. A defendant does not abandon a counterclaim by failing to re-plead it along with an answer to an amended complaint.

The issue of whether a defendant abandons a counterclaim when it fails to re-plead the counterclaim along with an answer to an amended complaint has never been addressed in Nevada. However, the issue has been extensively addressed in federal courts.[1] A commonly adopted approach comes from the Western District of

[1] "Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." Exec. Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (internal quotations omitted).

Pennsylvania, which held that a defendant is not required to replead a counterclaim in response to an amended complaint, stating:

> Rule 13, which governs counterclaims, requires only that a counterclaim be set forth in a pleading—it does not mandate that it be contained in an answer. Further, an answer responds to allegations in a complaint, a counterclaim is something independent. Revisions to a complaint do not require revisions to a counterclaim.

Dunkin' Donuts, Inc. v. Romanias, No. CIV.A.00-1886, 2002 WL 32955492, at *2 (W.D. Pa. May 29, 2002) (internal quotations omitted). This approach has been adopted by the Western District of Washington (Umouyo v. Bank of Am., N.A., No. 2:16-CV-01576-RAJ, 2019 WL 359268, at *2 (W.D. Wash. Jan. 29, 2019)), the District Court of Idaho (Ada Cty. Highway Dist. v. Rhythm Eng'g, LLC, No. 1:15-CV-00584-CWD, 2017 WL 1502791, at *7 (D. Idaho Apr. 25, 2017)), the Central District of California (AnTerra Grp. Inc. v. KiVAR Chem. Techs., No. SACV1300734JVSANX, 2014 WL 12589631, at *3 (C.D. Cal. May 23, 2014)), and the District of Maryland (Ground Zero Museum Workshop v. Wilson, 813 F. Supp. 2d 678, 706 (D. Md. 2011)), among others.

Holding that a defendant is not required to re-plead a counterclaim in response to an amended complaint is consistent with sound public policy. At best, an overly-formalistic requirement that a counterclaimant must re-file an existing counterclaim whenever answering another party's amended complaint (and that the counterclaim defendant must re-file its answer to that counterclaim) would waste time, money,

and judicial resources, in violation of Rule 1's policy that the rules be construed to secure the just, speedy, and inexpensive determination of every action. AnTerra, supra. At worst, a grave failure of justice could result if a plaintiff was able to nullify an unwary defendant's counterclaims simply by amending its own complaint.

Furthermore, NRCP 15 requires leave to amend a pleading, including a counterclaim or an answer to a counterclaim. Requiring counterclaims (and answers to those counterclaims) to be re-filed manifests a risk that the re-filed pleadings will not be identical to the originals. An innocent mistake could create confusion concerning which version of the counterclaim (or answer to the counterclaim) is properly pending. Worse, an unscrupulous party might take advantage of this opportunity to modify its counterclaim (or answer to the counterclaim) without leave, in violation of Rule 15. Either way, forcing parties to re-file pleadings that should not have changed will require careful review and scrutiny by all to ensure that the re-filed pleadings are identical to the originals. Again, these concerns would easily be avoided by not requiring a party to re-file counterclaims (and answers to those counterclaims) when answering an amended complaint.

In his *Petition*, Kvam cites a differing line of cases which held that failing to re-plead counterclaims in response to an amended complaint amounts to a voluntary dismissal of those counterclaims. *Petition* pp. 15-17. However, this logic violates Rule 41 and creates an incredibly unclear record. A counterclaim may only be

voluntarily dismissed by the claimant before a responsive pleading is served or upon a court order. NRCP 41(c)(1). Allowing a counterclaimant to voluntarily dismiss a counterclaim by simply not re-pleading it in response to an amended complaint circumvents Rule 41. Such an outcome also creates an incredibly unclear record and vast uncertainty as to when final judgment is entered in a case. Such a policy should not be adopted in Nevada.

Nevada law does not, and should not, require a defendant to re-plead a counterclaim in response to an amended complaint. Legion and Mineau's FACC was properly pending before the district court.

2. The district court's decision was not tantamount to a default judgment.

Kvam does not dispute that he failed to file an answer to the FACC, nor does he dispute that any allegation is deemed admitted if a responsive pleading is required and the allegation is not denied. Nonetheless, Kvam argues that doing so was tantamount to entering a default judgment. This argument simply ignores the Nevada Rules of Civil Procedure.

"An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied." NRCP 8(b)(6). "Judicial admissions … have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." 2 McCormick on Evid.

§ 254 (7th ed.); see Palmer v. Pioneer Inn Assocs., Ltd., 118 Nev. 943, 954 n.31, 59 P.3d 1237, 1244 n.31 (2002) (noting a judicial admission "is conclusively binding"). Allegations which are deemed admitted are narrow, limited to the specific allegation pled, and an important part of streamlining the litigation process. The fact that a party has admitted certain allegations does not preclude them from presenting arguments, conducting discovery, offering evidence of affirmative defenses, prosecuting their own claims, or otherwise participating in the adversarial process. By contrast, a defaulted party has limited to no rights to right to participate in the litigation. NRCP 55; see also Hamlett v. Reynolds, 114 Nev. 863, 866–67, 963 P.2d 457, 459 (1998) (holding "The extent to which a defaulting party will participate in prove-up is a decision properly delegated to the trial courts."). Deeming an unanswered allegation as admitted under NRCP 8(b)(6) is not tantamount to entering default judgment.

Kvam also greatly overstates the impact of the so-called "deemed admitted theory." Only 7 of the 74 Undisputed Material Facts identified in Order #1 were "deemed admitted" with no other undisputed evidence [14 JA 1963-71, ¶¶ 8, 11, 12, 13, 19, 65, and 72], and none of those were relied upon in any of the conclusions or findings in Order #1. Indeed, Kvam fails to identify any specific factual allegation(s) which he claims were wrongly "deemed admitted" by the district court that impacted

the ultimate outcome of this case. The district court's decision complied with the Nevada Rules of Civil Procedure and was far from tantamount to a default judgment.

3. The Court of Appeals correctly determined that Kvam was not prejudiced by the district court's ruling.

Finally, the Court of Appeals did not substantively address Kvam's "deemed admitted" argument because the Court of Appeals determined that Kvam was not prejudiced by this ruling. *Order of Affirmance* p. 5. "At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantive rights." NRCP 61.

Here, both parties filed nearly identical declaratory relief claims. 13 JA 1768. On June 5, 2020, the district court entered Order #1, granting (among other things) Legion and Mineau's motion for summary judgment on their declaratory relief claim. 14 JA 1948-1992. On March 10, 2022, the district court entered Order #2, granting (among other things) Kvam's motion for summary judgment on his declaratory relief claim, entering identical relief. 14 JA 2147-2156. In other words, Order #1 and Order #2 took different paths to enter the same judgment. Kvam appealed from Order #1 but not Order #2. The Court of Appeals correctly determined that any error the district court committed in entering Order #1 was harmless because the same judgment was entered in Order #2, but was not

challenged on appeal, and would therefore not be disturbed. *Order of Affirmance* p. 5. The Court of Appeals correctly applied NRCP 61.

The district court properly entered judgment in Legion and Mineau's favor on their counterclaim for declaratory relief, and the Court of Appeals correctly declined to reverse that judgment. Supreme Court review is not warranted in this regard.

B. The Court Of Appeals Did Not Misconstrue The Record.

The second question posed in Kvam's *Petition* is whether the Court of Appeals misconstrued the record when it asserted that "Kvam declined" an opportunity to respond to the district court's notice that it was considering entering summary judgment independent of a motion pursuant to FRCP 56(f). *Petition* p. 1. Kvam asserts that review is warranted in this regard because the district court's "sua sponte grant of summary judgment without adhering to NRCP 56(f) creates [an issue] of statewide public importance. Id. p. 3. However, Kvam's *Petition* offers no other argument or reason(s) whatsoever explaining why he believes review is warranted in this regard.

The Court of Appeals correctly recited the record. Both parties filed nearly identical declaratory relief claims [13 JA 1768], and Legion and Mineau moved for summary judgment on Kvam's declaratory relief claim, but not on their own declaratory relief counterclaim. 7 JA 1003 – 8 JA 1225. The district court notified the parties pursuant to NRCP 56(f) that, since Legion and Mineau were the moving

parties, the district court intended to enter judgment on Legion and Mineau's declaratory relief counterclaim rather than on Kvam's declaratory relief claim. 13 JA 1878-83. The district court afforded Kvam the opportunity to respond to the extent his briefing would change under this technical difference. Id. Kvam initially accepted the opportunity, but later changed his mind and declined. 13 JA 1889-90. This is precisely how the Court of Appeals construed the record. *Order of Affirmance* pp. 3-4.

Regardless, the Court of Appeals again correctly determined that Kvam was not prejudiced in this regard because the district court ultimately entered identical declaratory relief in Kvam's favor in Order #2, which Kvam did not challenge on appeal. *Order of Affirmance* p. 5.

Supreme Court review is not warranted in this regard.

C. The Court Of Appeals Did Not Overlook Or Misapprehend The Evidence.

The third question posed in Kvam's *Petition* is whether the district court committed reversible error by ruling that the Terms of Agreement "is a complete, integrated agreement, that precludes parole [sic] evidence," and whether the Court of Appeals overlooked or misapprehended the evidence submitted by Kvam. *Petition* p. 2. Kvam does not explain why Supreme Court review in this regard is

warranted under NRAP 40B: rather, Kvam apparently simply seeks rehearing on portions of his appeal. Supreme Court review is not warranted.

The district court did not rule that the Terms of Agreement "is a complete, integrated agreement," nor did the district court preclude parol evidence concerning the Terms of Agreement. Rather, the district court determined that Kvam "failed to bring forth specific evidence that the parties, at the time of contracting, shared a misconception about a vital fact upon which they based their bargain, or that the Terms of Agreement fail to conform to the true intention of the parties or the parties' previous understanding or agreement." 14 JA 1976 ¶ 28. Although Kvam offered evidence of *discussions* between the parties which were not encapsulated in the Terms of Agreement, he never offered any evidence of *agreements* between the parties which were not encapsulated in the Terms of Agreement. *Discussions* are not *agreements*. The Court of Appeals understood the record in this regard, correctly stating that "The parties discussed costs and potential profit margins but did not incorporate those discussions into a written agreement." *Order of Affirmance* p. 1.

Kvam next argues that the Court of Appeals' analysis of Kvam's third cause of action does not fairly reflect the record because the Court of Appeals held that Kvam "did not present evidence that the joint venture agreement required that he be reimbursed in the event the project failed." *Petition* p. 18. The Court of Appeals went on to say, "Indeed, Kvam did not present any evidence that the agreement

obligated Mineau to personally repay Kvam." Id. This is a critical part of the Court of Appeals' decision because, even if Kvam could establish that he was due an unconditional 7% annual return on his investment, Kvam never introduced any evidence establishing *who* would be obligated to make that payment if the project was not profitable. The fact that the Terms of Agreement includes an interest rate is grossly insufficient to establish that the Terms of Agreement constitutes a loan which Legion and/or Mineau were personally obligated to repay. The Court of Appeals correctly understood the record in this regard.

Kvam next begins an argument concerning his claim for tortious breach of the covenant of good faith and fair dealing, but cuts his argument short due to the word count limitation imposed by NRAP 40B(d). *Petition* p. 19. Legion and Mineau cannot substantively respond beyond citing to the Court of Appeals' decision in this regard, which correctly held that Kvam's allegations "fail as they are built on 'gossamer threads of whimsy, speculation, and conjecture.'" *Order of Affirmance* p. 8 (quoting Wood, 121 Nev. at 732, 121 P.3d at 1031).

Kvam's *Petition* does little more than repeat the same failed, unsupported arguments he made before the district court and the Court of Appeals. Supreme Court review is unwarranted.

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D. The Court Of Appeals Did Not Commit Errors Of Law.

The fourth question posed in Kvam's *Petition* is whether "the Court of Appeals committed errors of law and misapprehended or overlooked evidence of record which create genuine issues of material fact on Kvam's other causes of actions." *Petition* p. 2. Kvam asserts that review is warranted in this regard because the Court of Appeals' "analysis of Kvam's specific causes of action also involve issues of statewide public importance…." Id. p. 3. Supreme Court review in this regard is inappropriate and unnecessary.

Kvam states that, "To the extent the Court of Appeals questioned whether one joint venturer can sue another in tort, that question is answered by NRS 87.4337(2) …." *Petition* p. 20. The Court of Appeals fully comprehended the meaning of NRS 87.4337, as plainly set forth on the last page of the *Order of Affirmance*.

Kvam also states that the "Court of Appeals unwittingly … injected an affirmative defense of supervening cause" by seeming "to suggest that TNT was responsible for Kvam's losses, not Mineau." *Petition* p. 21. The Court of Appeals did not affirm the district court's decisions based upon the theory of supervening cause. Supreme Court review is not necessary to assist Kvam in understanding the Court of Appeals' decision.

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V. CONCLUSION

"Although Kvam is understandably dismayed with the results of the joint venture, that is insufficient to sustain his theories of liability." *Order of Affirmance* p. 8. Kvam's claims against Legion and Mineau have been repeatedly and resoundingly rejected by every court that has reviewed them. The district court properly entered summary judgment against Kvam and the Court of Appeals properly affirmed the district court in its entirety. Supreme Court review is unwarranted.

AFFIRMATION

The undersigned does hereby affirm that the preceding document, **RESPONDENTS' ANSWER TO PETITION FOR REVIEW**, filed in the Supreme Court of the State of Nevada, does not contain the social security number of any person.

DATED this 10th day of February, 2023.

GUNDERSON LAW FIRM

By: */s/ Austin Sweet*
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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 proportionately spaced typeface using Microsoft Word 395 in Times New Roman font size 14.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40B because it does not contain more than 4,667 words. *Respondents' Answer to Petition for Review* contains 4,395 words based on the word count of Microsoft Office 365 Word Version 2206 used to prepare the brief.

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, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. I further certify that this brief complies with all applicable Nevada Rules of Civil Procedures and Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references 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 10th day of February, 2023.

GUNDERSON LAW FIRM

By: */s/ Austin Sweet*
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 10th day of February, 2023, I electronically filed a true and correct copy of the **RESPONDENTS' ANSWER TO PETITION FOR REVIEW**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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/s/ Kelly Gunderson
Kelly Gunderson