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8 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

9 TARA KELLOGG, A/K/A TARA  
10 KELLOGG-GHIBAUDO,

11 Appellant,

12 vs.

13 ALEX B. GHIBAUDO,

14 Respondent.

No. 84778  
Case No. D-15-522043-D

**Appellant's Opening Brief**

16 **APPEAL**

17 From the Eighth Judicial District Court, Clark County

18 The Honorable T. Arthur Ritchie

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1                                   **Attorney's Certificate of Compliance**

- 2       1. I certify that this brief complies with the formatting requirements  
3           of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and  
4           the type style requirements of NRAP 32(a)(6) because it has been  
5           prepared in a proportionally spaced type face using Microsoft  
6           Word 2013 in 14 point Century School Book.
- 7       2. I further certify that this brief complies with the page – or type -  
8           volume limitations of NRAP 32(a)(7) because, excluding the parts  
9           of the brief exempted by NRAP 32(a)(7)(C), it is proportionally  
10          spaced, has typeface of 14 points or more, and contains \_\_\_\_\_  
11          words.

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1 3. Finally, I certify that I have read this petition, and to the best of  
2 my knowledge, information, and belief, it is not frivolous or  
3 interposed for any improper purpose. I further certify that this  
4 petition complies with all applicable Nevada Rules of Appellate  
5 Procedure, in particular NRAP 28(e)(1), which requires every  
6 assertion in the petition regarding matters in the record to be  
7 supported by a reference to the page and volume number, if any of  
8 the transcript or appendix where the matter relied on is to be  
9 found. I understand that I may be subject to sanctions in the event  
10 that the accompanying petition is not in conformity with the  
11 requirements of the Nevada Rules of Appellate Procedure.

12 Dated this 29<sup>th</sup> day of September 2022

13 Schwab Law Firm PLLC

14 /s/ *Evan Schwab*

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The Nevada Supreme Court may hear the instant appeal as it pertains as set forth in NRAP 17(a)(11) to “[m]atters raising as a principal issue a question of first impression involving the United States or Nevada Constitutions or common law...” Likewise, the Nevada Supreme Court may hear this appeal pursuant to NRAP 17(a)(12) as it pertains to “[m]atters raising as a principal issue a question of statewide public importance, or an issue upon which there is an inconsistency in the published decisions of the Court of Appeals or of the Supreme Court or a conflict between published decisions of the two courts.”

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Lansford W. Levitt, Settlement Judge  
Schwab Law Firm PLLC  
JK Nelson Law LLC  
Alex B. Ghibauda, P.C.

An Employee of Schwab Law Firm PLLC

## Jurisdictional Statement

This is an appeal from the District Court's Findings of Fact, Conclusions of Law, and Order filed on April 14, 2022. [Appellant's Appendix – 065 through 072]. Appellant timely filed a Notice of Appeal on May 13, 2022. Pursuant to NRAP 3(a)(1) Appellant filed the Notice of Appeal “no later than 30 days after the date that written notice of entry of judgment or order appealed from is served.” This appeal is authorized pursuant to NRAP 3A(a) as Appellant is a “party who is aggrieved by an appealable judgment or order.” The subject of the appeal is an appealable determination pursuant to NRAP 3A(b)(1) as it is an appeal from a “final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” Likewise, the subject of the appeal is an appealable determination pursuant to NRAP 3A(b)(8) as a “special order entered after final judgment, excluding an order granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after the entry of the default judgment.” Where a post-judgment Order substantially changes what was agreed to, ordered, or otherwise bargained for that post-judgment Order is most certainly appealable. See e.g. Gumni v. Mainor, 118 Nev. 912, 920, 59 P.3d 1220 (Nev. 2002).

No actions or filings tolled the time for appeal under NRAP 4(a)(4). NRAP 4(a)(4) provides in the pertinent part as follows with regard to what constitutes a “tolling motion”:

### RULE 4. APPEAL—WHEN TAKEN

#### (a) Appeals in Civil Cases.

...

1 (4) Effect of Certain Motions on a Notice of Appeal. If  
2 a party timely files in the district court any of the  
3 following motions under the Nevada Rules of Civil  
4 Procedure, the time to file a notice of appeal runs for all  
5 parties from entry of an order disposing of the last such  
6 remaining motion, and the notice of appeal must be filed  
7 no later than 30 days from the date of service of written  
8 notice of entry of that order:

9 (A) a motion for judgment under Rule 50(b);

10 (B) a motion under Rule 52(b) to amend or make  
11 additional findings of fact;

12 (C) a motion under Rule 59 to alter or amend the  
13 judgment;

14 (D) a motion for a new trial under Rule 59.

15 Dated this 29<sup>th</sup> day of September 2022

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**Statement of Issues Presented for Review**

1. Did the District Court err in findings of fact that Appellant had disseminated hearing videos before and after the entry of a Confidentiality Agreement and Protective Order filed on 3-26-2020 (“3-26-2020 Agreement”)?
2. Did the District Court err in findings of fact and as a matter of law in concluding that Husband timely objected to the dissemination of hearing videos?
3. Did the District Court err as a matter of fact and law in finding that dissemination of hearing videos was in breach of the 3-26-2020 Agreement?
4. Did the District Court err as a matter of fact and law in ordering that the hearing videos are private and not accessible to the public and shall be removed from public inspection?
5. Did the District Court err as a matter of fact and law in entering orders pursuant to EDCR 5.210 and/or NRS 125.110?
6. Did the District Court err as a matter of fact and law in ordering that the distribution of videos from the Court proceedings immediately cease?

## Statement of the Case and Facts

The instant action arises from a Complaint for Divorced filed by Appellant in the Clark County District Court on October 1, 2015. [Appellant's Appendix – 001 through 003]. The Parties had one Minor Child at the time of filing for divorce, but there are no now Minor Children. [Appellant's Appendix – 004 through 031]. The Decree of Divorce granted the Parties the legal status of divorce and set Husband/Respondent's spousal support obligation. [Id.]

On November 10, 2020, the Court entered Findings of Fact, Conclusions of Law and Judgment ("11-10-2020 FFCL"). [Appellant's Appendix – 045 through 046]. The District Court adjudicated a number of post-decree of divorce issues.

Prior to the 11-10-202 FFCL, the Parties entered into a Stipulated Confidentiality Agreement and Protective Order ("Protective Order"). [Appellant's Appendix – 032 through 044]. The Protective Order in no way shape or form contemplated hearing videos or matters outside of discovery and was entered into "to facilitate the disclosure of information..." as "this action involves or may involve the disclosure of documents and information potentially entitled to protection under N.R.C.P. Rule 16.2 and Rule 26(c)." [Appellant's Appendix – 033]. The Protective Order defined "Confidential Material" as follows:

"Confidential Material" shall mean all nonpublic or proprietary documents, material, and information potentially entitled to protection under N.R.C.P. Rule 16.2 and/or Rule 26(c) and shall apply to all documents and information received by a party in response to formal interrogatories, requests for production of documents, subpoena and/or as part of Mandatory Disclosures,

1 including all such documents and information received and/or  
2 issued in this matter prior to entry of this agreement.

3 [Appellant's Appendix – 033]

4 The Protective Order went on to elaborate what could constitute  
5 Confidential Material, stating as follows:

6 By way of example, but not limitation, Confidential Material includes  
7 the information, records and data concerning a party's financial  
8 information, healthcare and records; business affairs of Alex B.  
9 Ghibaud, Esq., and/or Alex B. Ghibaud, P.C., including information  
10 concerning acquisition of business development opportunities, the  
11 identities of the current, former or prospective clients, suppliers and  
12 customers of that entity, development, transition and transformation  
13 plans, methodologies and methods of doing business, strategic,  
14 marketing and expansion plans, financial and business plans or  
15 analysis, financial data or statements, records from financial  
16 institutions, tax returns, bank statements, credit card statements,  
17 accounting records, communications by or to an Affiliate,  
18 agreements, contracts, corporate records, minutes of meetings,  
19 pricing information, employee lists and telephone numbers, location  
20 of suppliers, customers or sales representatives, new and existing  
21 customer supplier programs and services, customer or supplier  
22 terms, customer service and integration processes, requirements and  
23 costs of providing products, services, support or equipment.

24 [Appellant's Appendix – 033 through 034]

25 The Protective Order might apply in a scenario in which Appellant  
26 received business records of Respondent during discovery and broadcasted  
27 the same all over the internet. Hearing videos are not items created or  
28

1 exchanged in discovery and fall well outside the scope of the Protective  
2 Order. Hearing Videos were likewise never marked as Confidential  
3 Material as would be required under the Protective Order. [Appellant's  
4 Appendix – 034 through 035]. Hearing Videos were certainly not marked  
5 as Confidential Materials prior to any alleged dissemination of hearing  
6 videos. Furthermore, the Protective Order itself states that materials that  
7 are obtained outside of discovery are not given enhanced protections of this  
8 Protective Order. The Protective Order specifically states as follows:

9           Nothing here shall impose any different or greater duties or  
10           obligations upon any party respecting documents, materials, or  
11           information obtained from other sources or by means other  
12           than discovery solely because those documents, materials, or  
13           information may have been designated as Confidential Material  
14           when produced in discovery herein; provided however that the  
15           embodiment of the material fact that has been designated  
16           hereunder shall itself be treated as Confidential Material.

17           [Appellant's Appendix – 039]

18           The District Court held an evidentiary hearing on contempt issues as  
19 they pertain to Respondent's failure to pay family support on February 15,  
20 2022. [Appellant's Appendix – 057 through 064]. In retaliation,  
21 Respondent caused a hearing to be held on Respondent's claims of hearing  
22 video disclosures on March 21, 2022. [Appellant's Appendix – 65 through  
23 72]. On April 14, 2022, the District Court entered the Findings of Facts,  
24 Conclusion of Law, and Order ("4-14-2022 FFCL") dealing with the  
25 hearing video posting issues. [Appellant's Appendix – 65 through 72].

26           The 4-14-2022 FFCL marked a rapid departure from any rights and  
27 obligations ever contemplated by the Parties in the Protective Order.

1 [Appellant's Appendix – 065 through 072, 032 through 044]. In example,  
2 the 4-14-2022 FFCL stated that the Protective Order “expressly provides  
3 that both of the parties have an expectation of privacy in these divorce  
4 proceedings (which encompasses videos of the proceedings in this case)  
5 stemming from these divorce proceedings and the decree of divorce issued  
6 February 2, 2017.” [Appellant's Appendix – 066]. As set forth above, the  
7 Protective Order in no way shape or form contemplated hearing videos and  
8 dealt with discovery issues. [Appellant's Appendix – 032 through 044]. The  
9 4-14-2022 FFCL goes on to incorrectly state that “the dissemination of  
10 videos of hearings and proceedings in this case is a direct violation of the  
11 Confidentiality Agreement and Protective Order filed on this on March 26,  
12 2020.” [Appellant's Appendix – 066]. The 4-14-2022 FFCL states with no  
13 evidentiary basis or support whatsoever that “Plaintiff has admitted that  
14 she has posted videos before and after the Confidentiality Agreement and  
15 Protective Order was executed or that she has facilitated the  
16 dissemination and posting of videos from these hearings before and after  
17 the Confidentiality Agreement was executed and that Plaintiff objects to  
18 such conduct.” [Appellant's Appendix – 067]. The 4-14-2022 FFCL further  
19 states as follows:

20 ...a dissemination of videos from hearings in these proceedings  
21 violates Nevada law (NRS 125.110), violates Eighth Judicial  
22 District Court Rules (EDCR 5.210), and violates the express  
23 contract the parties executed...and balanced against the  
24 constitutional rights that both parties have in this case,  
25 dissemination of materials in this case, including but not  
26 limited, to videos from hearings in this case, is not allowed.

27 [Appellant's Appendix – 067]  
28



1 The 4-14-2022 FFCL went even further, stating as follows:

2 THE COURT FURTHER ORDERS that Plaintiff is  
3 directed to take active measures to remove videos of  
4 hearings from these proceedings previously posted  
5 publicly and videos stemming from the decree of divorce  
6 in these private proceedings previously posted publicly  
7 from public access.

8 [Appellant's Appendix – 068]

9 The 4-14-2022 FFCL further adopted “as an order of the Court EDCR  
10 5.210 et seq. [Appellant's Appendix – 069].

11 **Summary of the Argument**

12 The District Court made a number of errors in entering the 4-14-2022  
13 FFCL. The District Court found a number of facts that were not supported  
14 by evidence on the record (e.g. dissemination of videos). The District Court  
15 completely rewrote and perverted the purpose of the Protective Order from  
16 a discovery shield to a sword to be wielded against Appellant for conduct  
17 clearly outside of the Protective Order. The District Court erred as well in  
18 applying and entering as Orders the statutory provisions of EDCR 5.210  
19 and 125.110. In short, the District Court made something that was one  
20 thing (the Protective Order) wholly another thing and imposed obligations  
21 and rights upon the Parties that were never contemplated.

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1 **Argument**

2 **A. Standard of Review for Errors of Law and Errors of Fact**

3 The Court reviews errors of fact under the abuse of discretion standard.  
4 See e.g. Harrah’s Las Vegas, LLC v. Muckridge, 473 P.3d 1020 (Nev. 2020).  
5 Walker v. Second Judicial District, 476 P.3d 1194 (Nev. 2020). The Court  
6 reviews errors of law under the de novo review standard. *Id.*

7 **B. The District Court Erred in Findings of Fact that Appellant**  
8 **had Disseminated Hearing Videos Before and After the Entry**  
9 **of the Protective Order**

10 The District Court found that “Plaintiff has admitted that she has  
11 posted videos before and after the Confidentiality Agreement and  
12 Protective Order was executed or that she has facilitated the  
13 dissemination and posting of videos from these hearings before and after  
14 the Confidentiality Agreement was executed...” [Appellant’s Appendix  
15 067]. The District Court makes no findings as to where these admissions  
16 were made (e.g. in a pleading or in open court), to whom these videos were  
17 allegedly disseminated to, when specifically these videos were  
18 disseminated (even a ballpark) or other components of who, what, when,  
19 where and why that would support the finding. [Id.]

20 The Court erred in finding facts that Appellant disseminated videos  
21 before or after the Protective Order. A mere conclusion is not a finding of  
22 fact where the conclusion fails to state the basis for the conclusion. See e.g.  
23 Pundyk v. State, 467 P.3d 605 (Nev. 2020)(discussing admissible evidence  
24 of facts versus mere conclusions).

25 [Remainder of Space Intentionally Left Blank]  
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1       **C. The District Court Erred in Findings of Fact and as a Matter**  
2       **of Law that Respondent Timely Objected to the**  
3       **Dissemination of Hearing Videos**

4       The District Court found that Respondent timely objected to the alleged  
5 posting of hearing videos. [Appellant's Appendix – 066 through 067]. The  
6 Protective Order was entered on March 26, 2020. [Appellant's Appendix –  
7 032 through 044]. Respondent alleges that hearing videos from the family  
8 law case were being disseminated before March 26, 2020 and after March  
9 26, 2020. Respondent waits, however, until 2022 to raise any issues about  
10 these postings. The timeliness of an objection may be governed by a court  
11 rule, case law or statute. See e.g. Bahena v. Goodyear, 235 P.3d 592 (Nev.  
12 2010). At minimum, an objection must be made within a reasonable period  
13 of time where other authorities are lacking as to the appropriate time. See  
14 e.g. Wood v. State, 96 P.2d 441, 59 Nev. 445 (Nev. 1939). Nye County v.  
15 Washoe Medical Center, 839 P.2d 1312, 108 Nev. 896 (Nev. 1992). Parties  
16 to a contract are likewise expected to enforce their rights within a  
17 reasonable period of time or they run the risk of waiving their rights. See  
18 e.g. Hennessey v. Price, 604 P.2d 355, 96 Nev. 33 (Nev. 1980). Mosso v. Lee,  
19 295 P. 766, 53 Nev. 176 (Nev. 1931).

20       The evidence on the record indicates that Respondent filed requests for  
21 relief as it pertains to hearing video issues in retaliation for Appellant  
22 enforcing her family support obligations. [Appellant's Appendix – 057  
23 through 064, 065 through 072]. Specifically, the Decision and Order on  
24 family support issues was entered on February 16, 2022. [Appellant's  
25 Appendix – 057 through 064]. Around the same time, Respondent then  
26 decides to raise the video issues. [Appellant's Appendix – 065 through  
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072]. At minimum, the Court erred in concluding that Respondent had filed a timely and appropriate objection to the video issues.

**D. The District Court Erred as a Matter of Fact and Law in Finding that Disseminating Hearing Videos was in Breach of the Protective Order**

The District Court concluded that “a dissemination of videos from hearings in these proceedings...violates the express contract the parties executed (Confidential Agreement and Protective Order filed March 26, 2020).” The Protective Order in no way shape or form contemplated hearing videos or matters outside of discovery and was entered into “to facilitate the disclosure of information...” as “this action involves or may involve the disclosure of documents and information potentially entitled to protection under N.R.C.P. Rule 16.2 and Rule 26(c).” [Appellant’s Appendix – 033]. The Protective Order defined “Confidential Material” as follows:

“Confidential Material” shall mean all nonpublic or proprietary documents, material, and information potentially entitled to protection under N.R.C.P. Rule 16.2 and/or Rule 26(c) and shall apply to all documents and information received by a party in response to formal interrogatories, requests for production of documents, subpoena and/or as part of Mandatory Disclosures, including all such documents and information received and/or issued in this matter prior to entry of this agreement.

[Appellant’s Appendix – 033]

The Protective Order went on to elaborate what could constitute Confidential Material, stating as follows:

1 By way of example, but not limitation, Confidential Material includes  
2 the information, records and data concerning a party's financial  
3 information, healthcare and records; business affairs of Alex B.  
4 Ghibaud, Esq., and/or Alex B. Ghibaud, P.C., including information  
5 concerning acquisition of business development opportunities, the  
6 identities of the current, former or prospective clients, suppliers and  
7 customers of that entity, development, transition and transformation  
8 plans, methodologies and methods of doing business, strategic,  
9 marketing and expansion plans, financial and business plans or  
10 analysis, financial data or statements, records from financial  
11 institutions, tax returns, bank statements, credit card statements,  
12 accounting records, communications by or to an Affiliate,  
13 agreements, contracts, corporate records, minutes of meetings,  
14 pricing information, employee lists and telephone numbers, location  
15 of suppliers, customers or sales representatives, new and existing  
16 customer supplier programs and services, customer or supplier  
17 terms, customer service and integration processes, requirements and  
18 costs of providing products, services, support or equipment.

19 [Appellant's Appendix – 033 through 034]

20 A contract must be interpreted in accordance with the contract's plain  
21 meaning unless there's an ambiguity that would otherwise require looking  
22 beyond the plain meaning. See e.g. Galardi v. Naples Polaris LLC, 301  
23 P.2d 364 (Nev. 2013). The Protective Order in this matter spells out what  
24 is protected materials ad nauseum from business records, bank statements  
25 and the like. [Appellant's Appendix – 032 through 044]. The Protective  
26 Order is focused on discovery materials. [Id.] None of the expansive  
27 definition of Confidential Material includes hearing videos. [Id.] A Court  
28

1 cannot rewrite a contract for the Parties merely because one of the Parties  
2 might like that or wishes for different terms, breadth and scope. See e.g.  
3 *Gartland v. Giesler*, 604 P.2d 1238, 96 Nev. 53 (Nev. 1980). In the instant  
4 matter, Parties entered into an agreement about discovery materials and  
5 Respondent now wishes to weaponize this as a tool against any and all  
6 discussion of divorce proceedings regardless of whether it includes  
7 Confidential Material or not. Respondent cannot be permitted to turn a  
8 sword into a shield.

9 The Court erred in findings of fact and determinations of law in how it  
10 interpreted the contract and the underlying facts on the ground (e.g.  
11 hearing video dissemination versus bank records). In order to have  
12 breached a contract, one must have violated the terms. See e.g. *Golden v.*  
13 *McKim*, 37 Nev. 205, 141 P. 676, 678 (1914). In the instant matter,  
14 Appellant could not have breached the Protective Order as hearing videos  
15 were not contemplated by the Protective Order. Where the Court concludes  
16 hearing videos were contemplated this is a reversible determination under  
17 the de novo standard of review for questions of law. See e.g. *Walker v.*  
18 *Second Judicial District*, 476 P.3d 1194 (Nev. 2020).

19 **E. The District Court Erred as a Matter of Fact and Law in**  
20 **Ordering that Hearing Videos are Private and Not Accessible**  
21 **to the Public and Shall be Removed from Public Inspection**

22 The District Court first ruled that the hearing videos were private  
23 pursuant to the Protective Order. [Appellant's Appendix – 065 through  
24 072]. The factual and legal errors with this conclusion are set forth above  
25 in detail.

26 Second, the District Court ruled that the hearing videos were private,  
27 not accessible to the public and to be removed from public inspection  
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1 pursuant to NRS 125.110. NRS 125.110 provides in the pertinent part as  
2 follows:

3 NRS 125.110 What pleadings and papers open to public  
4 inspection; written request of party for sealing.

5 1. In any action for divorce, the following papers and  
6 pleadings in the action shall be open to public inspection in  
7 the clerk's office:

8 (a) In case the complaint is not answered by the  
9 defendant, the summons, with the affidavit or proof of  
10 service; the complaint with memorandum endorsed  
11 thereon that the default of the defendant in not  
12 answering was entered, and the judgment; and in case  
13 where service is made by publication, the affidavit for  
14 publication of summons and the order directing the  
15 publication of summons.

16 (b) In all other cases, the pleadings, the finding of the  
17 court, any order made on motion as provided in Nevada  
18 Rules of Civil Procedure, and the judgment.

19 2. All other papers, records, proceedings and evidence,  
20 including exhibits and transcript of the testimony, shall, upon  
21 the written request of either party to the action, filed with the  
22 clerk, be sealed and shall not be open to inspection except to  
23 the parties or their attorneys, or when required as evidence in  
24 another action or proceeding.

25 In *Abrams v. Schneider*, the Clark County District Court dealt with  
26 the scope of a sealing order pursuant to NRS 125.110(2). 2017 Nev. Dist.  
27 867. A video of the hearing was circulated subsequent to that Order. The  
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1 Judge in the matter, Judge Elliot, noted that she would not enforce  
2 sealing of the video even though it was circulated after the date of a  
3 sealing order because NRS 125.110(2) “reads as if it is limited to  
4 documents only and does not give proper notice to anyone as to the  
5 prohibitory use of a hearing video as a hearing transcript. *Id.* Judge Elliot  
6 also noted that “it is ‘unquestionably vague as to how the parties  
7 were...harmed by the posting of information online.” *Id.* Although Judge  
8 Elliot did note that she personally believed it was not “appropriate  
9 to...post the vide on the internet” where the parties’ children might have  
10 access to it, she acknowledged “there is nothing this Court can do in this  
11 case to enforce this viewpoint.” Further, the opinion states that “a  
12 hearing is ‘closed’ sealed does not change the fact that it is conducted in  
13 a publicly-funded courtroom and presided over by a taxpayer-paid and  
14 citizen elected judge, nor does it alter the fact that members of the public  
15 have a vested interest in access to information about court proceedings  
16 and access to justice.” *Id.*

17 The Nevada Supreme Court has recognized that court proceedings are  
18 presumptively public, and can be sealed from public review “only where  
19 the public’s right of access is outweighed by competing interests.”  
20 *Howard v. State*, 128 Nev. Adv. Op. 67, 291 P.3d 137, 141 (Nev. 2012).  
21 Moreover, the Nevada Supreme Court state made it clear that “the desire  
22 to avoid unnecessary embarrassment...alone is insufficient to warrant  
23 sealing court record from public inspection.” *Id.* at 144.

24 As Judge Elliot noted in *Abrams*, NRS 125.110 is constitutionally  
25 vague. It does not expressly include language about whether videos from  
26 hearings are sealed. The statute is entitled, “pleadings and papers open  
27 to public inspection” implying that it only applies to pleadings, papers or  
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documents. Likewise, the Court can view the plain meaning of NRS 125.110 to conclude that it does not encompass videos. See e.g. Young v. Nevada Gaming Control Board, 473 P.3d 1034 (Nev. 2020)(discussing how the Court must first look to the plain meaning of the statute before adding additional interpretation). When EDCR 5.210 was enacted later in 2020, it clearly indicates language prohibiting the distribution of videos. Specifically, EDCR 5.210(e) states in the relevant portion, “no party or agent shall distribute, copy, or facilitate the distribution or copying of the record of a private hearing or hearing in a sealed case (including electronic and video records of such a hearing).” Clearly if the legislature had intended NRS 125.110 to include sealing videos of hearings, they could have expressly included the language in the statute. They did not. Further, if the legislative intent was to prevent the distribution of such videos, that language could have also been included in the statute, but it was not. Videos of hearings are not pleadings and papers and therefore are not sealed pursuant to NRS 125.110.

As NRS 125.110 is vague and seems only to seal specific documents and access of third-parties to such documents and there is a longstanding notion that the public have a vested interest in access to information about court proceedings and access to justice, Appellant would be well within her rights to access videos from hearings and distribute them accordingly. What occurs in a court room is a matter of public concern and interest.

Third, the District Court made errors of fact and law in applying EDCR 5.210. EDCR 5.210 provides in the pertinent part as follows.

Rule 5.210. Trial and hearings may be private pursuant to NRS 125.080.

1 (a) Except as otherwise provided by another rule or statute,  
2 the court shall, upon demand of either party, direct that the  
3 hearing or trial in an action for divorce be private.

4 (b) Except as otherwise provided in subsections (c) or (d),  
5 upon such demand of either party, all persons must be  
6 excluded from the court or chambers wherein the action is  
7 tried, except:

- 8 (1) The officers of the court;
- 9 (2) The parties;
- 10 (3) The counsel for the parties and their staff;
- 11 (4) The witnesses (including experts);
- 12 (5) The parents or guardians of the parties; and
- 13 (6) The siblings of the parties.

14 (c) The court may, upon oral or written motion of either party  
15 or on its own motion, exclude the parents, guardians, or  
16 siblings of either party, or witnesses for either party, from the  
17 court or chambers wherein the hearing or trial is conducted.  
18 If good cause is shown for the exclusion of any such person,  
19 the court shall exclude any such person.

20 (d) If the court determines that the interests of justice or the  
21 best interest of a child would be served, the court may permit  
22 a person to remain, observe, and hear relevant portions of  
23 proceedings notwithstanding the demand of a party that the  
24 proceeding be private.

25 (e) The court shall retain supervisory power over its own  
26 records and files, including the electronic and video records of  
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1 proceedings. Unless otherwise ordered, the record of a private  
2 hearing, or record of a hearing in a sealed case, shall be  
3 treated as confidential and not open to public inspection.  
4 Parties, their attorneys, and such staff and experts as those  
5 attorneys deem necessary are permitted to retain, view, and  
6 copy the record of a private hearing for their own use in the  
7 representation. Except as otherwise provided by rule, statute,  
8 or court order, no party or agent shall distribute, copy, or  
9 facilitate the distribution or copying of the record of a private  
10 hearing or hearing in a sealed case (including electronic and  
11 video records of such a hearing). Any person or entity that  
12 distributes or copies the record of a private hearing shall cease  
13 doing so and remove it from public access upon being put on  
14 notice that it is the record of a private hearing.

15 EDCR 5.210 did not go into effect until January 1, 2020. It should be  
16 noted that the Protective Order was entered before this date and did not  
17 contemplate any incorporation of EDCR 5.210. [Appellant's Appendix –  
18 032 through 044]. Any Order sealing the divorce case would pre-date the  
19 current version of EDCR 5.210. EDCR 5.210(a) states, "the court shall,  
20 upon the demand of either party, direct that the hearing or trial in action  
21 for divorce be private." In the instant matter, there was no written  
22 demand pursuant to EDCR 5.210 to seal a hearing or trial. Additionally,  
23 EDCR 5.210 would seal a case pursuant to NRS 125.080 and not NRS  
24 125.110.

25 Citizens have a freedom of speech under the First Amendment of the  
26 United States Constitution as well as the Nevada Constitution provide  
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1 for freedom of speech. The Nevada constitution provides in the pertinent  
2 part as follows:

3           Sec: 9. **Liberty of speech and the press.** Every citizen  
4           may freely speak, write and publish his sentiments on all  
5           subjects being responsible for the abuse of that right; and no  
6           law shall be passed to restrain or abridge the liberty of speech  
7           or of the press. In all criminal prosecutions and civil actions  
8           for libels, the truth may be given in evidence to the Jury; and  
9           if it shall appear to the Jury that the matter charged as  
10          libelous is true and was published with good motives and for  
11          justifiable ends, the party shall be acquitted or exonerated.

12 The United States Supreme Court acknowledged that “[t]he explicit  
13 guaranteed rights to speak and to publish concerning what takes place  
14 at trial would lose meaning if access to observe the trial could, as it was  
15 here, be foreclosed arbitrarily.” *Richmond Newspapers v. Virginia*, 448  
16 U.S. 555, 576-77, 100 S. Ct. 2814 2827 (1980). Many of the federal circuits  
17 have long recognized the right of access to civil proceedings. See e.g.  
18 *Westmoreland v. CBS*, 752 F.2d 16 (2d Cir. 1984). *Publicker Industries*  
19 *Inc. v. Cohen*, 733 F.2d 1059 (3d. Cir. 1984) (“Therefore, to limit the  
20 public’s access to civil trials there must be a showing that the denial  
21 serves an important governmental interest and there is no less restrictive  
22 way to serve the governmental interest.”) *In re Cont’l III. Sec. Litig.*, 732  
23 F.2d 1302, 1308 (7<sup>th</sup> Cir. 1984)(“The public’s right of access to judicial  
24 records has been characterized as ‘fundamental to a democratic state.’”  
25 *First Amendment Rights Courthouse News Service v. Planet*, 947 F.3d  
26 581, 590 (9th Cir. 2020)(“Indeed, every circuit to consider the issue has  
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1 uniformly concluded that the right applies to both civil and criminal  
2 proceedings.”)

3 **F. The District Court Erred as a Matter of Fact and Law in**  
4 **Entering Orders Pursuant to EDCR 5.210 and/or NRS**  
5 **125.110**

6 The District Court entered an Order that “adopts as an order of the  
7 Court EDCR 5.210 et. seq.” [Appellant’s Appendix – 065 through 072]. A  
8 detailed discussion of how EDCR 5.210 and NRS 125.110 are  
9 unconstitutional and run afoul of the public access to the Courts is  
10 contained above. Additionally, these statutes are in violation of the  
11 protections contained in the First Amendment of the United States  
12 Constitutional and Nevada Constitution. A detailed discussion of these  
13 issues is contained above. Where a statute or court rule offends the  
14 constitution and violates the same, said statute or court rule is  
15 unconstitutional in part or whole. See e.g. Déjà v. Nevada Department of  
16 Taxation, 334 P.3d 392 (Nev. 2014).

17 **G. The District Court Erred as a Matter of Fact and Law in**  
18 **Ordering that the Distribution of Videos from the Court**  
19 **Proceedings Immediately Cease**

20 The District Court entered an Order directing that distribution of  
21 videos from the court proceedings immediately cease. [Appellant’s  
22 Appendix – 065 through 072]. The District Court based its ruling on the  
23 following documents and Court Rules: (a) the Protective Order; (b) EDCR  
24 5.210; and (c) NRS 125.110. The unconstitutionality and defectiveness  
25 with the application of each of these rationales is discussed in detail  
26 above. In example, the Protective Order never contemplated nor was  
27 meant to contemplate hearing videos, but was a discovery based remedy.

1 [Appellant's Appendix – 032 through 044]. Likewise, EDCR 5.210 and  
2 NRS 125.110 are unconstitutional as it pertains to hearing videos.

3 **Conclusion**

4 For the reasons stated above, Appellant respectfully requests that the  
5 Court find that the District Court made errors of fact and law in the April  
6 14, 2022 Findings of Fact, Conclusions of Law and Order ("4-14-2022  
7 FFCL") and reverse the orders entered in the same.

8 Dated this 29<sup>th</sup> day of September 2022

9 Schwab Law Firm PLLC

10 /s/ *Evan Schwab*  
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