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Elizabeth A. Brown
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10 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

11 JUSTIN D. PORTER,
12 Appellant,
13 vs.
14 STATE OF NEVADA,
15 Respondent.

Case No. 85782

**APPELLANT'S MOTION TO
ENLARGE TIME TO FILE
THE OPENING BRIEF AND
APPENDIX (2nd Request)**

16 Appellant JUSTIN D. PORTER, by and through his counsel, THOMAS A.
17 ERICSSON, ESQ., of Oronoz & Ericsson, LLC, respectfully submits this Motion to
18 Enlarge Time to File Opening Brief and Appendix.

19 **FACTUAL AND PROCEDURAL BACKGROUND**

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21 On April 26, 2001, the State of Nevada, by way of Information, charged
22 Appellant Justin Porter with over forty (40) felony counts, including sexual assault,
23 kidnapping, murder, burglary, and robbery, related to nine events over a four-month
24 period, involving 12 victims. On May 2, 2001, an Amended Information was filed in
25 open court to correct a typographical error. On October 11, 2001, a Second Amended
26 Information was filed in reducing the total charges to 38 counts. Counts 30, 31 and 32
27 alleged burglary while in possession of a deadly weapon, attempt robbery with use of a
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1 deadly weapon, and murder with use of a deadly weapon respectively. These three
2 counts involve a single victim.

3 On May 15, 2008, Appellant filed a motion to sever counts 30-32 from the
4 remainder of the charges. On June 18, 2008, the court granted the motion to sever and
5 ordered that murder event counts be tried separately. On April 30, 2009, the state filed
6 a Third Amended Information charging the three counts that were severed from the
7 large group of charges.
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10 On May 8, 2009, a jury found Appellant guilty on count three of second-degree
11 murder with use of deadly weapon. He was found not guilty on counts one and two.
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13 On September 30, 2009, the trial court sentenced Appellant to the Nevada
14 Department of Corrections to 120 months to life, plus a consecutive term of 120
15 months to life for the use of a deadly weapon. The judgment of conviction was filed on
16 October 13, 2009.
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18 On September 6, 2022, the State of Nevada filed a Fourth Amended
19 Information charging Mr. Porter with 35 counts, including: Count One, Burglary While
20 In Possession Of A Deadly Weapon; Count Two, First Degree Kidnapping With Use
21 Of A Deadly Weapon; Count Three, Sexual Assault With Use Of A Deadly Weapon;
22 Count Four, Sexual Assault With Use Of A Deadly Weapon; Count Five, Sexual
23 Assault With Use Of A Deadly Weapon; Count Six, Sexual Assault With Use Of A
24 Deadly Weapon; Count Seven, Robbery With Use Of A Deadly Weapon; Count Eight,
25 Burglary While In Possession Of A Deadly Weapon; Count Nine, First Degree
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1 Kidnapping With Use Of A Deadly Weapon With Substantial Bodily Harm; Count 10,
2 Sexual Assault With Use Of A Deadly Weapon With Substantial Bodily Harm; Count
3 11, Attempt Murder With Use Of A Deadly Weapon; Count 12, Sexual Assault With
4 Use Of A Deadly Weapon With Substantial Bodily Harm; Count 13, Robbery With
5 Use Of A Deadly Weapon; Count 14, First Degree Arson; Count 15, Burglary While In
6 Possession Of A Deadly Weapon; Count 16, First Degree Kidnapping With Use Of A
7 Deadly Weapon; Count 17, Sexual Assault With Use Of A Deadly Weapon; Count 18,
8 Robbery With Use Of A Deadly Weapon; Count 19, Burglary While In Possession Of
9 A Deadly Weapon; Count 20, Sexual Assault With Use Of A Deadly Weapon, Victim
10 65 Years Of Age Or Older; Count 21, Robbery With Use Of A Deadly Weapon,
11 Victim 65 Years Of Age Or Older; Count 22, Burglary While In Possession Of A
12 Deadly Weapon; Count 23, Robbery With Use Of A Deadly Weapon, Victim 65
13 Years Of Age Or Older; Count 24, Robbery With Use Of A Deadly Weapon, Victim 65
14 Years Of Age Or Older; Count 25, Burglary While In Possession Of A Deadly
15 Weapon; Count 26, Burglary While In Possession Of A Deadly Weapon; Count 27,
16 First Degree Kidnapping With Use Of A Deadly Weapon; Count 28, Sexual Assault
17 With Use Of A Deadly Weapon; Count 29, Robbery With Use Of A Deadly Weapon;
18 Count 30, Burglary While In Possession Of A Deadly Weapon; Count 31, Robbery
19 With Use Of A Deadly Weapon; Count 32, Attempt Robbery With Use Of A Deadly
20 Weapon; Count 33, Attempt Robbery With Use Of A Deadly Weapon; Count 34,
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1 Attempt Murder With Use Of A Deadly Weapon; and Count 35, Battery With Use Of
2 A Deadly Weapon.

3 On September 20, 2022, a jury rendered a verdict as follows: Count One, Guilty
4 Of Burglary While In Possession Of A Deadly Weapon; Count Two, Guilty Of First
5 Degree Kidnapping With Use Of A Deadly Weapon; Count Three, Guilty Of Sexual
6 Assault With Use Of A Deadly Weapon; Count Four, Not Guilty Of Sexual Assault
7 With Use Of A Deadly Weapon; Count Five, Guilty Of Sexual Assault With Use Of A
8 Deadly Weapon; Count Six, Not Guilty Of Sexual Assault With Use Of A Deadly
9 Weapon; Count Seven, Not Guilty Of Robbery With Use Of A Deadly Weapon; Count
10 Eight, Guilty Of Burglary While In Possession Of A Deadly Weapon; Count Nine,
11 Guilty Of First Degree Kidnapping With Use Of A Deadly Weapon With Substantial
12 Bodily Harm; Count 10, Guilty Of Sexual Assault With Use Of A Deadly Weapon
13 With Substantial Bodily Harm; Count 11, Guilty Of Attempt Murder With Use Of A
14 Deadly Weapon; Count 12, Guilty Of Sexual Assault With Use Of A Deadly Weapon
15 With Substantial Bodily Harm; Count 13, Guilty Of Robbery With Use Of A Deadly
16 Weapon; Count 14, Guilty Of First Degree Arson; Count 15, Guilty Of Burglary While
17 In Possession Of A Deadly Weapon; Count 16, Guilty Of First Degree Kidnapping
18 With Use Of A Deadly Weapon; Count 17, Guilty Of Sexual Assault With Use Of A
19 Deadly Weapon; Count 18, Guilty Of Robbery With Use Of A Deadly Weapon; Count
20 19, Guilty Of Burglary While In Possession Of A Deadly Weapon; Count 20, Guilty
21 Of Sexual Assault With Use Of A Deadly Weapon, Victim 65 Years Of Age Or Older;
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1 Count 21, Guilty Of Robbery With Use Of A Deadly Weapon, Victim 65 Years Of
2 Age Or Older; Count 22, Guilty Of Burglary While In Possession Of A Deadly
3 Weapon; Count 23, Guilty Of Robbery With Use Of A Deadly Weapon, Victim 65
4 Years Of Age Or Older; Count 24, Guilty Of Robbery With Use Of A Deadly Weapon,
5 Victim 65 Years Of Age Or Older; Count 25, Not Guilty Of Burglary While In
6 Possession Of A Deadly Weapon; Count 26, Guilty Of Burglary While In Possession
7 Of A Deadly Weapon; Count 27, Guilty Of Second Degree Kidnapping With Use Of A
8 Deadly Weapon; Count 28, Guilty Of Sexual Assault With Use Of A Deadly Weapon;
9 Count 29, Guilty Of Robbery With Use Of A Deadly Weapon; Count 30, Guilty Of
10 Burglary While In Possession Of A Deadly Weapon; Count 31, Guilty Of Robbery
11 With Use Of A Deadly Weapon; Count 32, Guilty of Attempt Robbery With Use Of A
12 Deadly Weapon; Count 33, Guilty Of Attempt Robbery With Use Of A Deadly
13 Weapon; Count 34, Not Guilty Of Attempt Murder With Use Of A Deadly Weapon;
14 and Count 35, Guilty Of Battery.

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19 On December 1, 2022, Appellant filed a *pro se* notice of appeal.

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21 On December 27, 2022, the State of Nevada filed a Fifth Amended Information.
22 The Fifth Information added the three counts Appellant was tried on during his first
23 trial to the counts contained in the Fourth Amended Information. Those counts are as
24 follows: Count 36, Burglary While In Possession Of A Deadly Weapon; Count 37,
25 Attempt Robbery With Use Of A Deadly Weapon; and Count 38, Murder With Use Of
26 A Deadly Weapon (Open Murder).
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On February 15, 2023, the trial court filed a Judgment of Conviction and sentenced Appellant as follows: in addition to the \$25.00 Administrative Assessment Fee, and \$250.00 Indigent Defense Civil Assessment Fee plus \$3.00 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: COUNT 1 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of FIVE (5) YEARS in the Nevada Department of Corrections (NDC); COUNT 2 - LIFE with a MINIMUM parole eligibility of FIVE (5) YEARS in the Nevada Department of Corrections (NDC), plus a CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of FIVE (5) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon; COUNT 3 - LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC), plus CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to Counts 1 and 2; COUNT 5 - LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC), plus CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 3; COUNT 8 - MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC), CONCURRENT with Count 5; COUNT 9 - LIFE with a MINIMUM parole eligibility of FIFTEEN (15) YEARS in the Nevada

1 Department of Corrections (NDC), plus CONSECUTIVE term of LIFE with a
2 MINIMUM parole eligibility of FIFTEEN (15) YEARS in the Nevada Department of
3 Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 8;
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5 COUNT 10 - LIFE with a MINIMUM parole eligibility of FIFTEEN (15) YEARS in
6 the Nevada Department of Corrections (NDC), plus CONSECUTIVE term of LIFE
7 with a MINIMUM parole eligibility of FIFTEEN (15) YEARS in the Nevada
8 Department of Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to
9 Count 9; COUNT 11 - MAXIMUM of TWENTY (20) YEARS with a MINIMUM
10 parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC)
11 plus CONSECUTIVE term of a MAXIMUM of TWENTY (20) YEARS with a
12 MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of
13 Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 10;
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15 COUNT 12- LIFE with a MINIMUM parole eligibility of FIFTEEN (15) YEARS in
16 the Nevada Department of Corrections (NDC) plus CONSECUTIVE term of LIFE
17 with a MINIMUM parole eligibility of FIFTEEN (15) YEARS in the Nevada
18 Department of Corrections (NDC) for use of a deadly weapon, CONCURRENT with
19 Count 11; COUNT 13 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM
20 parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC)
21 plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a
22 MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of
23 Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 12;
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COUNT 14 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), CONSECUTIVE to Count 13; COUNT 15 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), CONCURRENT with Count 14; COUNT 16 - LIFE with a MINIMUM parole eligibility of FIVE (5) YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of FIVE (5) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 15; COUNT 17 - LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to Count 16; COUNT 18 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC), plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 17; COUNT 19 - a MAXIMUM of FIFTEEN (15) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), CONCURRENT with Count 18; COUNT 20 - LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE term

1 of LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada
2 Department of Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to
3 Count 19; COUNT 21 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM
4 parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC)
5 plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a
6 MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of
7 Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 20;
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9 COUNT 22 - a MAXIMUM of FIFTEEN (15) YEARS and a MINIMUM of TWO (2)
10 YEARS in the Nevada Department of Corrections (NDC), CONCURRENT with
11 Count 21; COUNT 23 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM
12 parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC)
13 plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a
14 MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of
15 Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to Count 22;
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17 COUNT 24 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole
18 eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) plus
19 CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM
20 parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC)
21 for use of a deadly weapon, CONCURRENT with Count 23; COUNT 26 - a
22 MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM of TWO (2) YEARS in the
23 Nevada Department of Corrections (NDC), CONCURRENT with Count 24; COUNT
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27 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 26; COUNT 28 - LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE term of LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to Count 27; COUNT 29 - to a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 28; COUNT 30 - a MAXIMUM of FIFTEEN (15) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), CONCURRENT with Count 29; COUNT 31 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) plus CONSECUTIVE term of a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of TWO (2) YEARS in the Nevada Department of Corrections (NDC) for use of a deadly weapon, CONSECUTIVE to Count 30; and COUNT 32 - a MAXIMUM of TEN (10)

1 YEARS with a MINIMUM parole eligibility of ONE (1) YEAR in the Nevada
2 Department of Corrections (NDC) plus CONSECUTIVE term of a MAXIMUM of
3 TEN (10) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR in the
4 Nevada Department of Corrections (NDC) for use of a deadly weapon,
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6 CONCURRENT with Count 31; COUNT 33 - a MAXIMUM of TEN (10) YEARS
7 with a MINIMUM parole eligibility of ONE (1) YEAR in the Nevada Department of
8 Corrections (NDC) plus CONSECUTIVE term of a MAXIMUM of TEN (10) YEARS
9 with a MINIMUM parole eligibility of ONE (1) YEAR in the Nevada Department of
10 Corrections (NDC) for use of a deadly weapon, CONCURRENT with Count 32; and
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12 COUNT 35 - SIX (6) MONTHS in the Clark County Detention Center (CCDC),
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14 CONCURRENT with Count 33; with EIGHT THOUSAND ONE HUNDRED
15
16 TWELVE (8,112) DAYS credit for time served. The AGGREGATE TOTAL sentence
17 is a MAXIMUM of LIFE with a MINIMUM of ONE HUNDRED TWENTY-SIX
18 (126) YEARS in the Nevada Department of Corrections (NDC). COURT FURTHER
19
20 ORDERED; these charges are to run CONSECUTIVE to COUNT 38 - MURDER
21 (SECOND DEGREE) as listed in the Fifth Amended Information.

22 On February 16, 2023, Appellant timely filed a Notice of Appeal.

23
24 This is an extremely complicated case, both factually and procedurally. The
25 most recent trial on the larger number of charges was twelve trial days. Appellant is
26 facing an aggregate sentence of 146 years to life.
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28 The final transcript was filed in the district court case on June 7, 2023.

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GOOD CAUSE EXISTS TO ENLARGE THE TIME TO FILE
APPELLANT’S OPENING BRIEF AND APPENDIX

Nevada Rule of Appellate Procedure 26(b)(1)(A) provides in relevant part:

For good cause, the court may extend the time prescribed by these Rules or by its order to perform any act or may permit an act to be done after that time expires.

Additionally, Nevada Rule of Appellate Procedure 31(b)(3) provides in relevant part:

Motions for Extensions of Time. A motion for extension of time for filing a brief may be made no later than the due date for the brief and must comply with the provisions of this Rule and Rule 27.

(A) Contents of Motion. A motion for extension of time for filing a brief shall include the following:

(i) The date when the brief is due;

(ii) The number of extensions of time previously granted (including a 14-day telephonic extension), and if extensions were granted, the original date when the brief was due;

(iii) Whether any previous requests for extensions of time have been denied or denied in part;

(iv) The reasons or grounds why an extension is necessary (including demonstrating extraordinary and compelling circumstances under Rule 26(b)(1)(B), if required); and

(v) The length of the extension requested and the date on which the brief would become due.

1 The Appellant's Opening Brief and Appendix are currently due on September
2 21, 2023. One extension has previously been granted. The Appellant is requesting a
3 seventy-five (75) day extension of time due to the size and complexity of the trial
4 record.
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6 Good cause exists to enlarge the time to file the Opening Brief because this case
7 involves complex trial and evidentiary issues that must be thoroughly researched and
8 briefed. The final transcript was not filed in the district court case until June 7, 2023.
9 Upon deeper review of the trial record, appellate counsel has identified several
10 additional critical issues that require further investigation and case law research.
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13 Accordingly, Counsel requests an additional seventy-five (75) days to finalize
14 the research and develop each of the Appellant's issues for the Opening Brief.
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16 Because the Appellant is serving a sentence of 146 years to life in prison, it is
17 imperative that Counsel and Appellant have enough time to finalize all the issues
18 before filing the Opening Brief. Therefore, good cause exists for this Court to enlarge
19 the time to file the Appellant's Opening Brief by seventy-five (75) days.
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CONCLUSION

Based on the foregoing, good cause exists to enlarge the time to file the Opening Brief. Therefore, Appellant respectfully moves this Court for an order enlarging the time to file the Opening Brief by seventy-five (75) days.

DATED September 18, 2023.

Respectfully submitted,

By: /s/Thomas A. Ericsson
Thomas A. Ericsson, Esq.
Nevada Bar No. 4982

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 18, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

STEVEN B. WOLFSON
Clark County District Attorney

THOMAS A. ERICSSON
Counsel for Appellant

By: /s/ Mariela Ramirez
An employee of Oronoz & Ericsson, LLC