

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUTT PREMSRIRUT, an
individual; MAXWELL
STEINBERG, an individual;
VALTUS REAL ESTATE, LLC,

Appellants

v.

REPUBLIC SILVER STATE
DISPOSAL INC., DBA
REPUBLIC SERVICES, and
DOES 1 through 10, and ROE
ENTITIES 1 through 10 inclusive,

Respondents.

SUPREME COURT CASE No. 74237
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Clerk of Supreme Court

Dist. Ct. Case No. A-16-747496-C

APPELLANT'S OPENING BRIEF

Appellant's Opening Brief in the Appeal from the Eighth Judicial

District Court of the State of Nevada in and for the County of Clark,

Department 31, the Honorable Judge Joanna Kishner.

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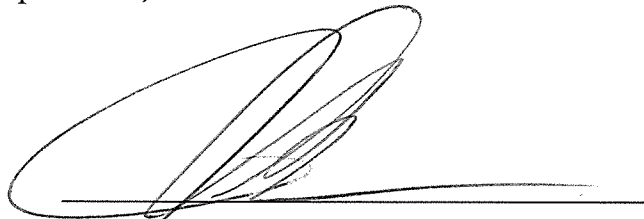
Clark County Ordinance 9.04.250(b)	1,2,15,17,18,20
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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as required by NRAP 26.1(a), and must be disclosed.

Appellants are Nevada residents. The following attorneys have appeared for the Appellants: James R. Adams, Esq., of Adams Law Group. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Date this 17th day of September, 2018.

A handwritten signature in black ink, appearing to read 'James R. Adams', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

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JURISDICTIONAL STATEMENT

This matter falls under the jurisdiction of the Nevada Supreme Court pursuant to Rule 3A(b)(1) of the Nevada Rules of Appellate Procedure ("NRAP") as it is a final order of the Eighth Judicial District Court.

ROUTING STATEMENT

This case is presumptively retained by the Nevada Supreme Court under NRAP 17(a)(10), which include “Matters raising as a principal issue a question of first impression involving the United States or Nevada Constitutions or common law.”

STATEMENT OF ISSUES ON APPEAL

The issues on appeal as set forth by Appellants against Respondent are as follows”

- A. Did the District Court err in concluding that the plain and unambiguous language of NRS 444.520 and Clark County Ordinance 9.04.250 permits multiple perpetual liens to be recorded by Republic Services on a single property for non-payment of trash collection services;

- B. Did the District Court err when it determined “the clear and unambiguous language of Clark County Ordinance 9.04.250(b) permits Republic to recover two administrative fees: an administrative fee incurred for filing and maintaining the lien, and an administrative fee

for the release of the lien.”

Appellants hereby submit their opening brief in support of their opposition to the District Court’s determinations.

I

INTRODUCTION

Respondent charged Appellants too much money regarding trash collection fees. Not only did Respondent charge multiple unlawful lien fees which should have been charges as a single “perpetual” lien, but also charged fees for multiple lien removals that it was not entitled to charge. Regarding fees authorized for Republic Services to charge its customers for "administrative charges," Clark County Ordinance 9.04.250 states, in part, the

following:

The administrative charge shall, as of July 1, 2011, not exceed sixty dollars per lien for the filing and maintenance of the lien or sixty dollars for the release of the lien, adjusted each year thereafter effective on July 1 for any increase in the annual average CPI-U for the twelve-month period ending December 31, immediately preceding the effective date of the maximum lien administration fee adjustment.

Notably, the word "OR" is used in the ordinance. In short, Republic Services can charge up to \$60.00 for the filing of the lien, OR \$60.00 for the release of the lien. The word "AND" is not used in the ordinance. Therefore, according to the plain language of the ordinance, Republic may charge \$60.00 for one OR the other, but not both. Historically, Republic has charged both to its customers. To use a colloquial example, a parent may tell a child that

she may have pie OR pudding for desert. That does not mean the child gets both. It is one OR the other. Unfortunately, to the detriment of its customers, Republic has gotten its pie AND pudding too and, thus, has been unjustly enriched, has converted the monies of the people of the State of Nevada, has been negligent in the performance of its duties, and through its threats of negative credit reporting, has coerced the people of this State to pay monies to Defendant they do not owe.

II

FACTS

As the First Amended Complaint on file recites, on or about December 3, 2014, Plaintiffs Maxwell Steinberg and Valtus Real Estate, LLC., acquired

residential property located at 2628 Starfish Court, Clark County, City of Las Vegas, Nevada (APN 138-16-713-096) (the "Starfish Property"). (AA 302-315). Against the Starfish Property, Defendant filed liens for waste management services on the following dates: (AA304-306)

May 21, 2011	Lien	201105240000423
November 2, 2011	Lien	201111040002858
August 3, 2012	Lien	201208030002467
January 31, 2013	Lien	201301310004354
August 1, 2013	Lien	201308010003418
February 3, 2014	Lien	201402030000948
August 6, 2014	Lien	201408060002774

On January 2, 2015, Defendant sent a "Notice of Delinquency and Intent to Lien" to Plaintiffs Maxwell Steinberg and Valtus Real Estate, LLC, the owners of the Starfish Property which specifically stated, "NOTICE IS HEREBY GIVEN that: REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES Has provided solid waste collection services to the premises located at: 2628 STARFISH CT. The charges for said services, including any applicable late penalties, is in the amount of \$88.84 for the period from 09/01/2014 to 02/28/2015. The total balance on the account is \$2,135.60. This balance is past due and if payment is not received within fifteen (15) days from the date of mailing this notice, no further notice will be sent and a lien will be recorded against your real property located at:

2628 STARFISH CT COUNTY OF CLARK, LAS VEGAS, NEVADA as authorized by the following: NEVADA REVISED STATUTES, CHAPTER 444.520. Additional lien filing and release fees, up to the maximum allowed by the ordinance at the time of the filing or release, will be added to the above if a lien is recorded. Dated this 2nd of January, 2015" (AA 304-305).

The Notice also stated, "PLEASE BE ADVISED THAT IF REPUBLIC SERVICES IS FORCED TO PLACE A LIEN ON YOUR PROPERTY, THIS MAY AFFECT YOUR CREDIT ADVERSELY. REPUBLIC SERVICES RETAINS THE RIGHT TO REPORT THIS TO CREDIT AGENCIES, AND THIS MAY REMAIN A PART OF YOUR." This Notice was sent to: STEINBERG MAXWELL, 3930 HOWARD HUGHES PKWY #360, VALTUS REAL ESTATE LLC, LAS VEGAS, NV 89169. Plaintiffs

Maxwell Steinberg and Valtus Real Estate, LLC., paid the liens off on or before 3/17/2015 whereupon the liens were released. (AA 304-305). As ¶45 of the First Amended Complaint states, "Defendant, therefore, threatened conduct that would adversely impact Plaintiffs' and the proposed Class' credit ratings." (AA 309).

On or about August 19, 2014, Plaintiff Rutt Premsrirut acquired a property located at 1871 Continental Avenue, County of Clark, City of Las Vegas, Nevada (APN:140-22-311-039) (the "Continental Property"). Against the Continental Property, Defendant filed liens for waste management services on the following dates:

November 30, 2012	Lien	201211300000593
May 23, 2013	Lien	201305230003212

December 4, 2013	Lien	201312040000802
June 3, 2014	Lien	201406030003498
December 2, 2014	Lien	201412020003350
March 8, 2017	Lien	201703080001300

Likewise, Defendant sent to Rutt Premsrirut a notice which stated, "PLEASE BE ADVISED THAT IF REPUBLIC SERVICES IS FORCED TO PLACE A LIEN ON YOUR PROPERTY, THIS MAY AFFECT YOUR CREDIT ADVERSELY. REPUBLIC SERVICES RETAINS THE RIGHT TO REPORT THIS TO CREDIT AGENCIES." Plaintiff Premsrirut paid the liens off on or before 10/16/2015 whereupon the liens were released. (AA 305-306).

In each instance of property obtained by Plaintiffs, Defendant charged excessive lien fees and related charges in excess of what Clark County permits. For example, ¶34 of the First Amended Complaint states, "Defendant routinely liened Plaintiffs and the proposed Class members' properties multiple times, charging repetitious and redundant administrative lien fees and release fees far exceeding \$60 per property." ¶38 of the First Amended Complaint states, "Defendant knew that it was filing multiple liens against a singular property and demanding, charging and collecting more than the administrative fee maximum, from Plaintiff and the members of the proposed Class." (AA 307-308).

The First Amended Complaint goes on to state, in each instance of property obtained by Plaintiffs and the proposed Class Members, Defendant

would not release the lien recorded and maintained against the properties if the payoff demand was not paid, thereby preventing clear title and the ability to transfer property free and clear of Defendant's lien. Indeed, the Defendant knowingly recorded multiple liens and made demands upon the Plaintiffs and proposed Class members which included administrative lien charges for Defendant's waste management services that exceeded the maximum amount permitted by Clark County Ordinance. (¶37, First Amended Complaint). ¶ 42 goes on to state, "In addition, liens routinely included unlawful amounts and that such payments were "authorized by Nevada Revised Statutes, Chapter 444.520." ¶ 43 states, "Defendant also threatened additional lien filing and release fees when Defendant had already included prior administrative charges for its multiple liens." (AA 307-309).

III

ARGUMENT

The Nevada Supreme Court “has the power to modify or reverse the judgment and order judgment to be entered by the trial court.” *Cobb v. Osman*, 83 Nev. 415, 422, 433 P.2d 259, 263 (1967). Errors must be affirmatively shown; the Nevada Supreme Court will not reverse when “the record is as susceptible of one conclusion as another.” *Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1051, 881 P.2d 638, 644 (1994).

An error is harmless when it does not affect a party's substantial rights. NRCP 61. When an error is harmless, reversal is not warranted. *Id.*; *see also Countrywide Home Loans*, 124 Nev. at 747, 192 P.3d at 257. But if the moving party shows that the error is prejudicial, reversal may be appropriate. *Cook v. Sunrise Hospital & Medical Center*, 124

Nev. 997, 1006–07, 194 P.3d 1214, 1219–20 (2008). To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached. *Id.* at 1007, 194 P.3d at 1220; *El Cortez Hotel, Inc. v. Coburn*, 87 Nev. 209, 213, 484 P.2d 1089, 1091 (1971). The inquiry is fact-dependent and requires us to evaluate the error in light of the entire record. *Carver v. El-Sabawi*, 121 Nev. 11, 14, 107 P.3d 1283, 1285 (2005); *Boyd v. Pernicano*, 79 Nev. 356, 359, 385 P.2d 342, 343 (1963).

Wyeth v. Rowatt, 244 P.3d 765, 778 (Nev. 2010). “A judgment which is right will not be reversed merely because a wrong reason is given” in support of the same. *Richards v. Vermilyea*, 42 Nev. 294, 180 P. 121, 121 (1919).

However, when the evidence does not sustain a judgment, it will be reversed regardless of reasoning. *Id.* Depending on the nature of the issue raised on

appeal, the Nevada Supreme Court is to apply a different legal standard of appellate review. In this instance, there are three different standards of review to be applied.

A. THE DISTRICT ERRED IN ITS INTERPRETATION OF THE LAW

When a homeowners' association files a lien for unpaid assessments against a homeowner's property, it files one lien. It does not file a separate lien for every month that assessments are not paid. Why? Because the one lien encumbers the property for as long as any outstanding amount is owed. For example, if after 24 months of not paying assessments, the association has not filed 24 liens against the homeowner. A homeowner simply makes a request to payoff the one lien and the association sends to the homeowner

an amount which includes all of those 24 months of delinquent monthly assessments. The monthly assessments are simply added to the lien.

So why then, does Defendant Republic Services file a new lien every several months when a homeowner fails to pay his trash bill? A lien is a lien. One lien encumbers the property as much as 100 liens. In fact, Republic Services lien is even "perpetual." (See Clark County Ordinance 9.04.250(b), "Until paid, any fee or charge levied pursuant to this chapter of the Code constitutes a perpetual lien against the property served, pursuant to the provisions of NRS 444.520."). How many "perpetual liens" does one trash company need on a single property to collect all past due and accruing quarterly garbage pick-up fees? The answer is one... after all, the first lien is perpetual. After the one perpetual lien is filed, a homeowner would simply

make a request to payoff the lien and Republic would send out a demand for its full amount of fees and costs to present (just like a homeowners' association does). Republic would get all of its past due fees for garbage service, and its single "perpetual" lien fee and costs, and the customer would not be embarrassingly gouged by a company whose motives are easily questioned. The simplicity of the Ordinance and its logical interpretation and application are vital to the people of Clark County. It is now time for Republic Services to be held accountable for its consumer fraud, its violation of the law and the harm it has inflicted upon thousands of captive and powerless customers.

Nevada statutory law (NRS 444.520) declares, "The governing body of any municipality which has an approved plan for the management of solid

waste may, by ordinance, provide for the levy and collection of other or additional fees and charges and require such licenses as may be appropriate and necessary to meet the requirements of NRS 444.460 to 444.610, inclusive." Clark County Ordinance 9.04.250(b) relevantly provides:

(b) Until paid, any fee or charge levied pursuant to this chapter of the Code constitutes a perpetual lien against the property served, pursuant to the provisions of NRS 444.520. The franchisee may pass through to the owner of the property for which a lien has been filed any fees charged by the county recorder's office for the filing and the release of the lien. In addition to the fees charged by the county recorder's office the franchisee may include in the total amount to be assessed to the property owner an administrative fee to recover costs incurred by the franchisee for filing and maintaining the lien and an administrative fee for the release of the lien. The administrative charge shall, as of July 1, 2011, not exceed sixty dollars per lien for the filing and maintenance of the lien

or sixty dollars for the release of the lien, adjusted each year thereafter effective on July 1 for any increase in the annual average CPI-U for the twelve-month period ending December 31, immediately preceding the effective date of the maximum lien administration fee adjustment.

Therefore, Respondent has a perpetual lien against a homeowners' property for any fee or charge for trash pick-up. If the County Recorder's Office charges Respondent for the filing of the lien OR the lien release, one OR the other may be passed onto the customer homeowner. In addition to the Recorder's filing fees, the Respondent can charge its customer an administrative fee to recover its costs for filing, maintaining or releasing the perpetual lien.

Regardless, Respondent routinely liened Appellants' properties multiple times, charging repetitious and redundant administrative lien fees and release fees far exceeding \$60 per property for a single "perpetual" lien and/or \$60 for a release of the "perpetual" lien. Indeed, the Respondent knowingly recorded multiple liens and made demands upon the Appellants which included administrative lien charges for Respondent's waste management services that exceeded the maximum amount permitted by Clark County Ordinance.

Respondent knew that it was filing multiple liens against a singular property and demanding, charging and collecting more than the administrative fee maximum from Appellants. Respondent unlawfully charged more than \$60 for the singular, perpetual lien and unlawfully stated

such amounts were due and owing in direct violation of Clark County Ordinance 9.04.250. In each instance, the Appellants were prevented from obtaining and/or delivering clear title to their respective properties unless the unlawful amounts were paid. (AA308).

In addition, the liens routinely included unlawful amounts and that such payments were "authorized by Nevada Revised Statutes, Chapter 444.520." Respondent also threatened additional lien filing and release fees when Respondent had already included prior administrative charges for its multiple liens. Respondent further advised Plaintiff and the proposed Class Members that if a lien is placed on Plaintiff's property (or against the properties of the proposed Class Members), "THIS MAY AFFECT YOUR CREDIT ADVERSELY. REPUBLIC SERVICES RETAINS THE RIGHT

TO REPORT THIS TO CREDIT AGENCIES. . ." Respondent, therefore, threatened conduct that would adversely impact Plaintiff's and the proposed Class' credit ratings. (AA308-309).

NRS 444.520, regarding municipal solid waste management systems: additional fees and charges; unpaid fees and charges which constitute a lien against property, states:

1. The governing body of any municipality which has an approved plan for the management of solid waste may, by ordinance, provide for the levy and collection of other or additional fees and charges and require such licenses as may be appropriate and necessary to meet the requirements of NRS 444.460 to 444.610, inclusive.

2. The fees authorized by this section are not subject to the limit on the maximum allowable revenue from fees established pursuant to NRS 354.5989.

3. Until paid, any fee or charge levied pursuant to subsection 1 constitutes a perpetual lien against the property served, superior to all liens, claims and titles other than liens for general taxes and special assessments. The lien is not extinguished by the sale of any property on account of nonpayment of any other lien, claim or title, except liens for general taxes and special assessments. The lien may be foreclosed in the same manner as provided for the foreclosure of mechanics' liens.

4. A lien against the property served is not effective until a notice of the lien, separately prepared for each lot affected, is:

(a) Mailed to the last known owner at the owner's last known address according to the records of the county in which the property is located;

(b) Delivered to the office of the county recorder of the county in which the property is located;

(c) Recorded by the county recorder in a book kept for the purpose of recording instruments encumbering land; and

(d) Indexed in the real estate index as deeds and other conveyances are required by law to be indexed.

(Added to NRS by 1971, 1179; A 1991, 1672; 2005, 809)

It should be initially noted that the plural of the word "lien" is never used in the statute regarding the management of solid waste (which would indicate the Legislature contemplated a single "perpetual" lien for all waste management fees.) Secondly, Supreme Court precedent should also be examined wherein a statute is vague or ambiguous:

When the language of a statute is clear on its face, "this court will not go beyond [the] statute's plain language." *Great Basin Water Network v. State Eng'r*, 126 Nev. —, —, 234 P.3d 912, 918 (2010).

However, if a statute is ambiguous, we examine legislative history and interpret the statute " 'in light of the policy and the spirit of the law, and the interpretation should avoid absurd results.' " Westpark Owners' Ass'n v. Dist. Ct., 123 Nev. 349, 357, 167 P.3d 421, 427 (2007) (quoting Hunt v. Warden, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995)). "Statutory language is ambiguous if it is capable of more than one reasonable interpretation. J.E. Dunn Nw., Inc. v. Corus Const. Venture, LLC, 127 Nev. 72, 79, 249 P.3d 501, 505 (2011)

The plain language of the statute and ordinance uses the word "lien," not "liens." Therefore, Respondent's multiple lien theory must be immediately be discounted as the Court shall not go beyond the statute's plain language. However, if the Court concludes the statute is ambiguous, it must

interpret the statute to avoid absurd results. Thus, does Respondent's multiple lien theory end in absurd results?

Appellants' position is that Republic only need file one "perpetual" lien for all unpaid waste management fees. This is much like every other lien filed by any company authorized to do so (the most recent examples are the homeowners' associations).

However, in examining Respondent's position, it believes it can legally file multiple liens every time a trash bill is not paid (and charge to its customers multiple lien filing fees and release fees). So, the following example is posited for a hypothetical address located at 1234 Main Street, Las Vegas, NV:

1. 1/1/2016 - Republic files a lien for unpaid trash fees for Quarter 4 of 2015;
2. 4/1/2016 - Republic files a lien for unpaid trash fees for Quarter 1 of 2016;
3. 7/1/2016 - Republic files a lien for unpaid trash fees for Quarter 2 of 2016;
4. 10/1/2016 - Republic files a lien for unpaid trash fees for Quarter 3 of 2016;
5. 1/1/2017 - Republic files a lien for unpaid trash fees for Quarter 4 of 2016.

Now, all liens are delinquent. Which lien does Republic foreclosure upon?

If it forecloses upon the first lien filed on 1/1/2016, it forecloses itself out of

B. LEGISLATIVE HISTORY OF THE STATUTE AND COUNTY ORDINANCE

In reviewing legislative history for any evidence of the use of the plural form of the word "lien," one looks to Senate Bill 354 (Revises provisions governing municipal solid waste management systems. (BDR 40-1153). In introducing the Senate Bill, Jennifer Lazovich of Republic Services states:

We have made every effort to involve all concerned with S.B. 354 in creating this amendment (Exhibit E). The current language in the NRS gives the authority to each municipality to create, by adoption of an ordinance, a perpetual lien against a property for unpaid fees. This is a way for garbage companies to collect on unpaid bills.

In commenting upon the single lien, Senator Care asks:

If the lien is attached, would it be an automatic charge? Would it be a \$5 lien as opposed to a \$300 or \$400 lien?

In expressing that multiple trash collection fees (for multiple quarters) do not need multiple liens, Ms. Lazovich of Republic states:

Republic Services is not permitted to refuse garbage pickup for nonpayment. The lien would be in the amount of the overdue bill. The customers are billed approximately \$33 per quarter, on a quarterly basis. If they are two quarters in arrears, the lien would be in the amount of \$66. (AA240)

Thus, Republic's own representative admits that a single lien for multiple quarters of non-paid fees is proper. Thus, by its own admission, Respondent's multiple lien theory is not only an absurd interpretation of an otherwise clear statute, but it is not even supported by Republic's own representatives. Never is the plural version of the word "lien" used by

Republic Services or the Legislature.

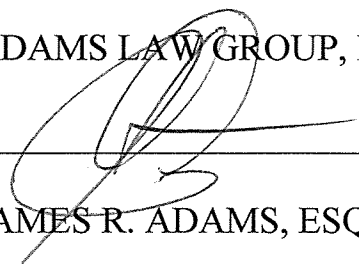
IV.

CONCLUSION

The District Court's determinations of law as to the Respondent should be reversed and remanded as the District Court made multiple manifest errors in law. Reversal and remand should be granted by and through this Honorable Court's independent de novo review of the law.

DATED this 17th day of September, 2018.

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ATTORNEY'S CERTIFICATE OF COMPLIANCE PURSUANT TO

RULE 28A

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 WordPerfect 12 in 14 point Times New Roman font. 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 either:

Proportionately spaced, has a typeface of 14 points or more, and contains 4,626 words; or

Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

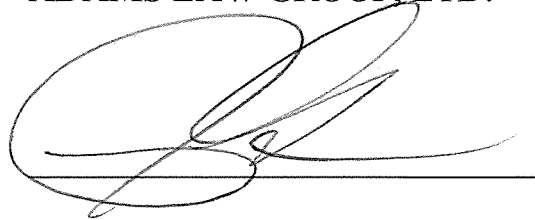
Does not exceed _____ pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of 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 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 17th day of September, 2018.

ADAMS LAW GROUP, LTD.

A handwritten signature in black ink, appearing to read 'J.R. Adams', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke at the end.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of September, 2018, a copy of the **APPELLANTS' OPENING BRIEF** was served on the following party by:

	Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;
	Hand Delivery
	Facsimile
	Overnight Delivery
	Certified Mail, Return Receipt Requested.
X	Electronic Mailing or Email, Delivery Receipt Requested

addressed as follows:

Tamara Peterson, Esq.

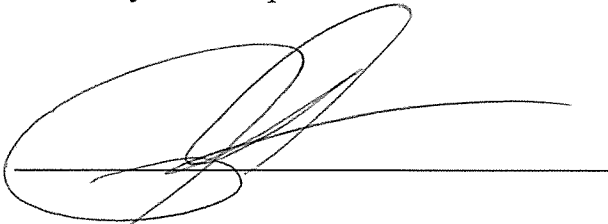
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Attorney for Respondent

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An Employee of Adams Law Group, Ltd.