No. 19-1375

IN THE

SUPREME COURT OF THE UNITED STATES

AARON L. KATZ,

Petitioner,

v.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT,

Respondent.

On Petition for Writ of Certiorari To the Supreme Court of the State of Nevada

BRIEF FOR RESPONDENT

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I

INTRODUCTION

Respondent, Incline Village General Improvement District (hereinafter "IVGID"), respectfully requests this Court deny the Petition for Writ of Certiorari which seeks the reversal of a decision of the Nevada Supreme Court affirming a lower court's award of attorneys' fees in favor of IVGID. Because the petition contains a number of misstatements which are designed to mislead the Court as to the basis for the lower courts' decisions, and to mask from the Court an entirely independent basis upon which the lower courts' decisions can be affirmed, IVGID has taken this opportunity under Supreme Court Rule 15 to provide an accurate description of the underlying action.

Although it is difficult to understand the arguments presented by the petitioner, it appears his challenge is premised upon two separate theories. First, it appears that the petitioner is claiming that the Nevada Supreme Court improperly refused to apply a limited First Amendment immunity to this case because it was not an antitrust case. Second, the petitioner claims the Nevada Supreme Court's decision to affirm the award of attorneys' fees was in error because neither that court nor the trial court found the petitioner's claims to be "baseless." Instead, the petitioner claims that the award of fees was premised entirely upon a finding that his lawsuit was improperly motivated by a desire to harass IVGID. Petitioner now asserts that because there was no finding that his lawsuit was baseless, he should be completely immunized as his motivation in bringing the action is entirely immaterial. For the reasons set forth below, both

arguments are wrong.

In presenting these arguments, the petitioner has grossly misrepresented the findings of both the Nevada Supreme Court and the Nevada District Court. As will be detailed below, the trial court made explicit findings that the petitioner's claims were entirely baseless, meritless and unreasonably maintained. In addition, the trial court found that the lawsuit was pursued for improper purposes. On appeal, the Nevada Supreme Court expressly found that the record fully supported the trial court's conclusions. Thus, when the full record below is properly considered, this Court will see that the petitioner has improperly narrowed the lower courts' conclusions in an effort to create a basis for this appeal.

Equally significant is the fact that the petitioner has completely failed to reveal the existence of an entirely separate and independent basis upon which the award was premised, namely the vexatious manner in which the petitioner pursued his claims through the Nevada court system. In this case, the lower courts' rulings and the record below clearly demonstrate that the award of fees was also fully warranted by the well-recognized inherent power of the courts to award fees for willful disobedience of court orders, or when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Octane Fitness, LLC. v. ICON Health & Fitness, Inc.*, 572 U. S. 545, 557, 134 S.Ct. 1749, 1759 (2014).

As IVGID will detail herein, for more than five years, the petitioner consistently and blatantly ignored and violated the trial court's rules and orders. He filed claim after claim, completely ignoring the court's previous rulings and orders. After

witnessing five years of his antics, the courts properly concluded the action was brought in bad faith and that his true motivation was to harass and disrupt the public entity. This conduct, by itself, fully supports the award of fees.

Finally, IVGID will reveal how this Court has, on two prior occasions, refused to accept review of cases which presented the identical issues raised herein, and which were based upon a factual history which is far more compelling than this case. In those cases, the challenged award of fees was not further premised upon the abuses of the judicial system which permeated the current matter.

II

REASONS FOR DENYING THE PETITION

The petition should be denied because the Nevada courts repeatedly found that the petitioner's entire lawsuit was not only baseless, but also motivated by a desire to harass IVGID. The petition should also be denied because it improperly raises arguments that were not raised in the courts below. Finally the petition should be denied because this Court has repeatedly denied review of similar cases with far more compelling underlying facts.

In Supreme Court Rule 10, this Court has specified the standards upon which the Court will review decisions from the highest court of a state. Before addressing the specifics of the rule, it is important to recognize that review on a writ of certiorari is not a matter of right, but of judicial discretion. In addition, a petition will be only be granted for compelling reasons. This case does not fall within any of the articulated categories of reviewable cases. Moreover, there are no compelling reasons why this

Court should accept review of the case, especially when the Court has on two previous requests refused to accept certiorari in similar, albeit far more compelling cases.

In this case, Petitioner appears to premise his appeal upon SCR 10(c) which provides that the Court may consider a case where a state court has decided an important federal question in a way that conflicts with rulings of this Court. *See, Petition, Statement of Basis For Jurisdiction, p. 1.* However, the petitioner has failed to identify the actual rulings of this Court which the Petitioner contends are in conflict with the challenged decision of the Nevada Supreme Court. The best that IVGID can tell, Mr. Katz appears to contend that the challenged ruling conflicts with the holdings of *Bill Johnson Restaurants, Inc. v. NLRB,* 461 U.S. 731, 103 S.Ct. 2161 (1983), and *BE&K Construction Co. v. NLRB,* 536 U.S. 516, 122 S.Ct. 2390 (2002).[1] In this regard, at page 24 of his petition Mr. Katz argues that the Nevada Supreme Court declined to extend the *Noerr-Pennington* doctrine to the challenged award of attorneys' fees because it was of the opinion that said doctrine *only* applied in the antitrust context. Mr. Katz then claims that said ruling was fundamentally wrong based upon this Court's holdings in these identified cases. Petitioner never really explains how the Nevada court's decisions conflict with these cases.

Pursuant to SCR 15, the respondent may file a brief in opposition to the petition for writ of certiorari where the respondent perceives any misstatement of fact or law which may bear upon the issues sought to be considered by the Court were it to grant

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[1] The petitioner also claimed that said ruling was contrary to the holding of the California Case of *Equilon Enterprises, LLC. v. Consumer Cause, Inc*., 29 Cal.4th 53, 52 P.3d 685 (2002).

certiorari. In fact, the respondent may be deemed to have waived any such objection if it is not called to the Court's attention in the brief in opposition. In this case, Mr. Katz has misrepresented the findings of the Nevada Supreme Court in order to create the appearance of a conflict between the lower court's orders and the decisions of this Court.

As alluded to above, the petitioner has mischaracterized the holdings of both lower courts by suggesting that no Nevada court ever found his lawsuit to be "baseless." In this regard, at page 10 of his petition he contends that he "sued IVGID on multiple theories, none of which have ever been declared baseless." He further contends that IVGID never contended that his claims were "groundless" and that the Nevada Supreme Court never found his action to be frivolous or baseless. Specifically, Petitioner stated as follows:

> "Moreover, nowhere in that OOA [Order of Affirmance] did the Nevada Supreme Court use the words "frivolous" or "baseless." Nor did it suggest Petitioner's suit had been unreasonably brought or maintained."

This is a blatant misstatement of the findings of the Nevada Supreme Court.

At page 4 of its decision, the Nevada Supreme Court specifically found that "[T]he district court granted IVGID's request [for attorney's fees], finding that Katz's lawsuit was baseless, unreasonable and brought to harass IVGID." The Nevada Supreme Court went on to conclude that the district court did not abuse its discretion in granting the motion "because the record supports the district court's findings and the district court did not base its decision on an erroneous view of the law." *Id at p. 4.*

Finally, the Nevada Supreme Court specifically found as follows:

> "The record supports the district court's findings that Katz's lawsuit was baseless and unreasonable."

The Nevada Supreme Court also explicitly held that the district court did not abuse its discretion when it determined that Mr. Katz's lawsuit was frivolous. *Id. at p. 6.* And finally, the Nevada Supreme Court found that the record supported the district court's determination that Mr. Katz brought and maintained his lawsuit to harass IVGID. *Id. at p. 6.*

Without question, the petitioner has misrepresented the findings of the Nevada courts in an effort to convince this Court that he should be immunized by the First Amendment because his lawsuit was never found to be "baseless." In addition, Mr. Katz mischaracterized the rulings of the lower courts when he stated that "*nowhere* in its attorney's fees order did it [the district court] point to *any* claim for relief *clearly foreclosed* by statute and/or case law." He further argued that the court did not "identify any cause of action which was allegedly frivolous nor without basis in law of fact." *Petition, pp. 18, 19.* This, of course, is nothing more than the petitioner mincing words. While it may be true that the Nevada courts did not specifically identify which of the petitioner's claims were "baseless," "meritless," "unreasonable" or "frivolous," the truth of the matter is that there was no need to do so because the courts found that all of his claims fell within those categories. The fact that the courts did not address the 24+ claims individually does not mean that they were not baseless.

This, of course, is a perfect example of the sort of logic, reasoning and arguments proffered by the petitioner throughout the entirety of this litigation. It was this sort of reasoning which ultimately prompted the Nevada courts to conclude that the petitioner's entire action was so utterly frivolous and harassing that an award of IVGID's fees was fully warranted.

Based upon the foregoing, this Court should find that the petitioner has materially misrepresented the findings and conclusions of the Nevada courts as a means by which to convince this Court that it should accept review of this case. For the reasons set forth above, this Court should summarily reject that invitation.

III

THE LOWER COURTS' DECISIONS

As the petitioner vaguely noted, the predicate for his lawsuit was a challenge to an annual $800 beach and recreation fee. The case started out rather innocuously, however, over the course of five years of endless litigation it morphed into 24 separate claims for relief as Mr. Katz soon recognized that in order for his elaborate scheme to succeed, he would have to make this litigation as burdensome and costly as possible for IVGID. The underlying litigation ultimately spanned more than five years and produced a record on appeal consisting of more than 5,000 pages. After the petitioner was allowed to pursue his case to conclusion, IVGID filed a motion for attorney's fees pursuant to Nevada Revised Statute 18.010(2)(b), which allows a court to make an allowance of attorney's fees to a prevailing party:

> Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

On July 15, 2016, the trial court issued an eight-page decision granting IVGID's motion for an award of attorney's fees and costs. In granting that motion, the court specifically noted that IVGID contended that Mr. Katz's claims were brought "in bad faith and were frivolous, harassing and vexatious." Citing to the Nevada decision in *Rodriguez v. Primadonna Co., LLC,* 125 Nev. 578, 588, 216 P.2d 793 (2009), the court first held that NRS 18.010(2)(b) allowed a district court to award attorney's fees to the prevailing party when it finds that the opposing party brought or maintained a claim without reasonable grounds **or** to harass the prevailing party. To determine whether the claim was maintained without reasonable grounds, the court must inquire whether the claim was supported by any credible evidence. Citing to the cases of *Townsend v. Holman Consulting Corp.,* 929 F.2d 1358, 1362 (9th Cir.1990) and *Bergmann v. Boyce,* 109 Nev. 670, 856 P.2d 560, 564 (1993), the court held that a frivolous claim is one that is both **baseless and made without a reasonable and competent inquiry**.

(emphasis added).

Finding it was clear that the "entire suit was a pretext for Mr. Katz to obstruct and impede IVGID's operation to the detriment of thousands of other [IVGID] residents," the court noted that only one-half of one of the 24 causes of action survived summary adjudication, and the remaining claim was dismissed at trial. This, the court concluded, was evidence that the suit was "a clear abuse of the judicial system."

The trial court went on to detail how Mr. Katz's claims journeyed through a Complaint, an Amended Complaint, and an Amendment to Amended Complaint to finally reach the Second Supplemental Amendment to Amended Complaint in which Mr. Katz sought to add a 25th cause of action in direct contravention of the court's previous order of April 10, 2014. The court further made an explicit finding that Mr. Katz had produced no credible evidence to support the claims he made. This, the court found, was demonstrated by the fact that "virtually every claim was dismissed before trial" and "the evidence [adduced] at trial demonstrated that Katz's records requests were designed to harass and distract the employees of IVGID which impeded their ability to serve the community at large."

The trial court then explicitly noted how NRS 18.010(2)(b) directed courts to "liberally construe [the statute] in favor of awarding attorney's fees in all appropriate situations," and that the Nevada Legislature had expressed a clear intent to award attorney's fees "to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business

and providing professional services to the public." The court found this language to be unambiguous, and based upon the clear grant of authority, the court "examined the merits of [Mr. Katz's] suit and found none" existed.

Having first found that Mr. Katz's claims were frivolous, the trial court then moved on to reflect upon the harassing manner in which the petitioner had litigated the action. In this regard, the court stated as follows:

> Prior to trial, Mr. Katz continuously evaded, avoided and ignored this court's rules and orders. His filings were untimely, repetitive, burdened with an avalanche of exhibits, often duplicative, and rarely supported by case law or good faith arguments.

The trial court found petitioner's conduct prior to, during, and even after the two-day bench trial particularly insightful as to his motives. What the court found to be most revealing was a statement Mr. Katz made to the IVGID Board of Trustees in response to the court's ruling in favor of IVGID. The court described petitioner's statement as follows:

> This statement reveals an unfounded sense of entitlement that goes far beyond the bounds of what Nevada public records laws allow for, and further illustrates Mr. Katz's contempt for both this court and the orderly operation of IVGID.
>
> While Mr. Katz may fancy himself a community watchdog, his actions, taken as a whole, lead this court to one undeniable conclusion: this was a frivolous lawsuit.

The court then concluded with the following astute remark:

> What began as a quest by Mr. Katz to invalidate the $800 recreation fee he was required to pay as a resident of Incline Village, morphed into an obsession with obstructing the

> staff of IVGID with burdensome records requests and contentious litigation. Neither courts nor the laws of Nevada exist so that those who detest their local governments can bully them into submission. At some point these actions must come to an end. That point has now been reached.

In reaching its conclusion, the court took special note of the fact that this was not the first instance in which Mr. Katz had filed actions against governmental entities which were dismissed for his failure to follow procedural rules. In this regard, the court specifically referred to Mr. Katz's actions in *Katz v. Mountain View-Whisman School District*, No. H029307, 2006 WL 3293747 (Cal. Ct. App., Nov. 14, 2006) and *Katz v. Campbell Union High Sch. Dist.*, 144 Cal . App. 4th 1024, 50 Cal. Rptr. 3d 839 (2006).

And, as he always did following an adverse ruling, Mr. Katz sought reconsideration of the trial court's decision to award IVGID its fees. This challenge came by way of a motion to alter or amend the judgment. The trial court denied this motion as well and spawned a number of additional rulings from the trial court.[2] In the order denying this motion, the court made a special finding that the petitioner's litigation was "vexatious" which the court defined as "an action or conduct without reasonable or probable cause or excuse, other than to harass or annoy." Expanding upon this point, the court went on to conclude as follows:

> Looking at the history of this case and the nature to which Plaintiff's claims are made, this Court can find no other explanation for Plaintiff's actions other than to

[2] The petitioner failed to reference this order, nor did he attached it to his brief. The obvious reason therefore is because this order specifically found that his litigation was baseless and unreasonably pursued. Respondent has attached a copy of this key order in its Appendix.

> unnecessarily prolong this litigation with **baseless and unreasonable** claims. (Emphasis added).

The trial court concluded with the following finding:

> Throughout this litigation, Plaintiff has shown that the motives for his claims were nothing more than to harass and burden the Defendant with excessive public records requests. In addition, Plaintiff's actions throughout this litigation have been nothing less than appalling and a waste of judicial resources. Again, by his actions, Plaintiff has led this Court to one undeniable conclusion: this was a frivolous lawsuit.

Based upon the foregoing, it is clear that the Nevada courts did, in fact, find the petitioner's action to be baseless, unreasonable, frivolous and vexatious. Thus, to the extent that the current petition is based upon any argument that the award violated Mr. Katz's First Amendment rights, it is entirely specious. As he readily admits, the First Amendment provides no protection whatsoever for "baseless" litigation.

IV

THE RULINGS OF THE NEVADA COURT ARE EQUALLY SUPPORTED BY THE INHERENT POWER OF COURTS TO REGULATE THE CONDUCT OF LITIGANTS APPEARING BEFORE THEM

In this case, the petitioner has gone to great lengths to conceal the fact that the challenged award of attorneys' fees was also premised upon the petitioner's conduct in litigating the case. He, of course, realizes that the courts have an inherent power to regulate the conduct of litigants and that if this Court finds that his conduct in litigating this case would justify the award regardless of the merits of his claims, his appeal would be futile. IVGID will now review the history of this case as it pertains to this separate justification for the award.

Before reviewing that evidence, it is important to note that "[i]t is well settled that First Amendment rights are not immunized from regulation when they are used as an integral part of conduct which violates a state statute." *California Motor Transport Co. v. Trucking Unlimited*,404 U.S. 508, 514, 92 S.Ct. 609, 613 (1972). It is equally clear that "First Amendment rights may not be used as the means or the pretext for achieving 'substantive evils' . . . . which the legislature has the power to control." *Id. at 515.* In this case, there can be no doubt but that NRS 18.010(2) is nothing more than codification of the inherent power of the court to control the actions of parties before a court.

As this Court stated in *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U. S. 545, 557, 134 S.Ct. 1749, 1759 (2014), "[w]e have long recognized a common-law exception to the general "American rule" against fee-shifting–an exception, "inherent" in the "power [of] the courts" that applies for" " 'willful disobedience of a court order' " or "when the losing party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons. . .' " citing, *Alyeska Pipeline Service, Co. v. Wilderness Society,* 421 U.S. 240, 258-259, 95 S.Ct. 1612 (1975)(finding that these exceptions are "unquestionably assertions of inherent power in the court to allow attorneys' fees in particulate situations unless forbidden by Congress.") *See, also, Christiansburg Garment Co. v. EEOC,* 434 U.S. 412, 419, 98S.Ct. 694,699 (1978)(even in the absence of statutory authorization, attorneys' fees may be awarded against a party who has proceeded in bad faith).

Mr. Katz has repeatedly suggested that his lawsuit was a legitimate, good faith,

but unsuccessful, "pure petition for redress of grievances of public concern" brought by one citizen for the benefit of the other residents of Incline Village. In truth, it was a well-orchestrated litigation scheme brought by a suspended California attorney who masquerades as a "citizen watchdog" in order to extort thousands of dollars from local government entities in order to avoid an endless barrage of frivolous and vexations claims. Mr. Katz is not the idealist who fights for the little guy against rogue government, instead he is a convicted felon who fashions himself as an expert in local government taxation law.[3] He is an opportunist who abuses his legal knowledge and skills to prey upon small, unsuspecting public entities for monetary gain.

Shortly after moving to Lake Tahoe, he discovered that IVGID, like many of his previous small public entity victims, was heavily dependent upon public financing in order to maintain its very existence. Mr. Katz believed that if he could raise enough concern about the manner in which IVGID collected its public funding, IVGID, like the others, would simply pay him what amounted to an extortion fee to avoid the enormous legal fees it was incurring to respond to Mr. Katz's Blitzkrieg litigation onslaught, comprised of a juggernaut of vexatious and frivolous claims. Unfortunately for Mr. Katz, IVGID refused to be victimized by his scheme and instead defended the case to the very end.

To make this case as difficult as possible to defend, Mr. Katz continuously

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[3] Plaintiff was convicted in 1983 on one felony count of perjury involving a personal tax avoidance scheme and subsequently suspended from the practice of law for three years by the State Bar of California. *See, In re: Aaron Lee Katz*, 1991 WL 84192 (Cal. Bar Rev. Dep't, May 21, 1991). A copy of the Opinion on Review from the California State Bar was attached as Exhibit 1 to IVGID's Motion for Attorney's Fees.

ignored the court's established procedural rules as well as various orders issued by the district court. Almost without exception, Mr. Katz would file briefs and pleadings which grossly exceeded the court's size limits, or which would include a host of mind-numbing supplemental briefings in the form of personal declarations or requests for judicial notice which were nothing more than a pretext for additional argument. In virtually every instance Mr. Katz refused to accept adverse rulings of the Court. Thus, most every ruling was met with a host of additional requests for reconsideration or review.[4]

Mr. Katz commenced this lawsuit with a fairly simple complaint which was filed on May 4, 2011. Before he even served the complaint, he filed a 51-page Amended Complaint which included 191 separate charging paragraphs comprising 13 separate claims for relief. Although this amended complaint contained a plethora of separate and repetitive claims for relief, in one form or another they all focused upon the beach and recreation fee which Mr. Katz continuously characterized as an illegal tax.[5]

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[4] This practice continued throughout the state appeal process. When the Nevada Supreme Court affirmed the trial courts dismissal of all of Mr. Katz's claims, he first petitioned that court for reconsideration. When that failed, he petitioned the court for *en banc* reconsideration. That too was refused. Then, after the Nevada Supreme Court affirmed the trial court's award of attorney's fees and costs in an a separate appeal, Mr. Katz again petitioned the court for reconsideration. That request was also denied, so he once again asked the court for *en banc* reconsideration. That request, was, of course, also refused. All together, Mr. Katz has asked the Nevada Supreme Court on six separate occasions to review the dismissal of his underlying lawsuit and the award of attorney's fees and costs.

[5] Through the entirety of the underlying action, Mr. Katz repeatedly argued that IVGID lacked the power to levy taxes to support its services and facilities. These arguments were entirely specious in that Nevada law expressly authorized IVGID to not only utilize special assessments to cover its incurred costs, Nevada law expressly authorized IVGID to levy taxes to support its public functions. *See, NRS 318.225 to 240, and NRS 318.197.* Mr. Katz never once offered any explanation for how his claims could survive in the face of this explicit grant of taxing authority.

On November 23, 2011, Mr. Katz filed his first Amendment to Amended Complaint wherein he added a 14th claim for relief. He later filed a "Supplemental Amendment" to his Amended Complaint on July 18, 2012. In this supplemental complaint, he added three additional claims for relief (15th through 17th). This brought Mr. Katz's total of charging paragraphs to 250. When his complaints and supplements thereto were combined they totaled more than 73 pages.

On November 7, 2011, the trial court issued a pretrial order which placed limits on the size of legal memoranda submitted in support of any motion. Mr. Katz continuously ignored this order which finally prompted the court to note the following in an order dated August 7, 2013:

> The Court's patience has been continuously challenged by the Plaintiff's inability to file simple and succinct pleadings. NRCP 1 provides that the Rules of Civil Procedure 'shall be construed and administered to secure the just, speedy and inexpensive determination of every action.' NRCP 8(a) commands that a pleading 'shall contain (1) a short plain statement of the claim. . .' These pleadings have contained everything but 'short and plain statements.' This Court, much less any party in these proceedings, should not be forced to solve this Minotaur's Maze. Plaintiff is cautioned to adhere to this Court's Pretrial Order and conform all further pleadings to the Nevada Rules of Civil Procedure.

This order was prompted in part by Mr. Katz's actions which began in April of 2012, when he filed his first motion for summary judgment. Despite the afore-mentioned Pretrial Order (which limited briefs to 15 pages), Mr. Katz's memorandum of points and authorities in support of motion totaled 61 pages. Along with that motion, Mr. Katz filed a supporting declaration which totaled an additional 37 pages.

With that he filed a separate Request for Judicial Notice and a list of exhibits which totaled 46 separate exhibits. These actions spawned a host of additional motions and cross motions after which the court finally denied Mr. Katz's motion.

It the order denying petitioner's motion, the court specifically advised Mr. Katz that he had a statutory remedy pursuant to which he could seek the removal of the trustees if he did not like the decisions they made. The court further noted that the proper way to challenge IVGID's establishment of its rates was through the political or legislative process, not the courts.[6] This, of course, did nothing to dissuade Mr. Katz's relentless pursuit of his meritless claims.

As the trial court slowly chiseled away at his claims, Mr. Katz's disdain for both the court and IVGID increased. Having suffered the dismissal of ten of his claims, Mr. Katz attempted to resurrect his claims through yet another motion to amend. Mr. Katz first sought to supplement his 6th and 15th claims and to add nine additional claims for relief via a pleading entitled Second Supplemental Amendment to Amended Complaint. If granted, this would result in what would be the plaintiff's fifth amended complaint consisting of 348 separate charging paragraphs in a pleading which would total more than **109** pages. On August 7, 2013, the district court granted the motion in part, allowing the plaintiff to supplement his 6th and 15th claims, but denied the

[6] Mr. Katz actually ran for an open position on the board of trustees earlier in 2012. However, he failed to garner even 5% of the qualified electors' vote. This fully demonstrated that his views were not shared by even a small percentage of the residents of Incline Village. Thus, contrary to his current claim, he did not lack other remedies to vindicate his grievances, he simply lacked any support from the community. His sound defeat at the election box only emboldened Mr. Katz's efforts to harass IVGID.

motion in all other respects.

Mr. Katz then waited more than four months (until December 23, 2013) before he actually filed his Second Supplemental Amendment to Amended Complaint. RA:V1:152-63. By this point in time, his filing was more than four months *after* the Court's previously imposed deadline for the filing of any amendments to the complaint. Much more critically, the Second Supplemental Amendment was recrafted to actually include several of the claims the trial court had expressly refused to allow him to pursue. Because of his actions, IVGID was forced to file yet another motion to bring petitioner's defiant actions to the Court's attention.

Not surprisingly, the court was not amused with Mr. Katz's blatant disregard of the court's previous order. Therefore, on April 10, 2014, the court filed what it later described as its "prescient" order wherein the court recounted how it had "previously cautioned [Mr. Katz] regarding his inability to adhere to Nevada's Rules of Civil Procedure and this court's orders." In describing the importance of compliance with the court's orders, the trial judge went on to provide as follows:

> Procedural requirements are not mere suggestions. '[I]t is imperative that the parties follow the applicable procedural rules and that they comply in a timely fashion with [court] directives. (Citations omitted). A party's blatant disregard for the rules of procedure is not just troublesome; failure to abide by terms of prior court orders is cause for contempt. NRS 22.010(3).

After detailing the history which led to the plaintiff's Second Supplemental Amendment to the Complaint, the court described how the docket revealed Mr. Katz's "conflagrant disregard for this court's prior rulings." He summarily rejected Mr. Katz's

arguments that this was nothing more than an issue of interpretation of the court's previous ruling, finding that "[T]here was nothing opaque about [the court's] *Order.*" The court then concluded as follows:

> While this court has allowed Plaintiff to amend his pleadings with caution (and some concern), this Plaintiff has conflated accommodation with abuse. * * * Such continuing abuse of this court's scant judicial resources is inexcusable. In this litigation, Plaintiff has displayed a history of multiple filings which has caused needless expense to the other parties and has posed a burden on this court. (Citations omitted). While this court is ever-mindful of protecting every citizen's right to access to justice, there are practical restraints, particularly when court filings do not implicate fundamental rights and impose needless expense to other litigants. Plaintiff's motives call into question his motives in pursuing this litigation.

After the trial court struck Mr. Katz's Second Supplemental Amendment to Amended Complaint, Mr. Katz had the audacity to file a motion to file a Third Supplemental Amendment to Complaint. In this motion, Mr. Katz again sought to assert additional claims which would clearly be barred by the Court's previous rulings. IVGID opposed this motion detailing how the court's prior rulings would apply to the additional claims and how Mr. Katz had already attempted to resurrect these claims both through his motions for reconsideration and his attempts to amend his complaint through the previously mentioned motion to file Second Supplemental Amendment to Complaint. Not surprisingly, the court denied Mr. Katz's motion. By this point, the court apparently concluded that further warnings to Mr. Katz would be futile as the order denying Mr. Katz's motion gave no explanation for the denial.

By January of 2015, all that remained of Mr. Katz's numerous claims was his

12th claim for relief which alleged that IVGID had failed to produce claimed public records. Because this claim did not identify the records Mr. Katz claimed had been wrongfully withheld, IVGID served him with discovery seeking that information.[7] Finally, on December 13, 2015, Mr. Katz responded to IVGID's discovery requests. However, rather than provide a list of the allegedly withheld documents, Mr. Katz responded by saying that he had not yet had an opportunity to compile a list. *Id.* In a subsequent motion to dismiss the public records claim, IVGID explained to the Court that this response came **1229 days after** Mr. Katz first filed his public records claims. Mr. Katz opposed that motion with a 12-page opposition that was accompanied by a 29-page personal declaration in which Mr. Katz essentially stated that he would respond to IVGID's discovery request when it was convenient for him to do so. In what can only be described as a magnanimous gesture, the district court denied IVGID's motion (without prejudice) and gave Mr. Katz an additional 60 days to respond to IVGID's discovery to identify the documents that he claimed (almost four years earlier) IVGID had wrongfully withheld from him.

The public records claim finally proceeded to a two-day trial and after hearing all the evidence, the court found in favor of IVGID. As noted previously, the court later found that not only was Mr. Katz's public records claim "baseless and unreasonable," the court further found that Mr. Katz's dogged actions pertaining to the claim revealed "an unfounded sense of entitlement that went far beyond the bounds of what the

[7] As of the date Mr. Katz first filed his public records claim, IVGID had produced to him more than 3,500 pages of public records he had requested.

Nevada public records laws allow for," and further illustrated what the court found was a "contempt for the court and the orderly operation of IVGID."

Based upon the foregoing, it becomes clear that if this Court considers the entirety of the record below, the decisions of the Nevada court are equally justified by what this Court has described as a long-recognized inherent power possessed by all courts to protect the integrity of the judicial process. *Octane Fitness, supra,* 572 U.S. 545 (2014).

V

THIS COURT HAS REFUSED TO GRANT PETITIONS FOR CERTIORARI IN TWO PRIOR CASES WHICH RAISED THE IDENTICAL ISSUES AND WHICH PRESENTED FAR MORE COMPELLING FACTS

The petitioner seeks to convince this Court to accept this case for review, claiming that it presents a unique set of facts because it involves a direct action against a governmental entity by a citizen who simply petitions the government for redress of his grievances. He has further requested that this Court not only reverse the decision of the Nevada Supreme Court, but that the Court also overrule and vacate two California cases, one of which is *Vargas v. City of Salinas,* 200 Cal. App. 4th 1331, 134 Cal. Rptr. 3d 244 (2011).

In making this argument, Mr. Katz conveniently failed to reveal that this Court already rejected a Petition for Writ of Certiorari in the *Vargas* case. *See, Vargas v. City of Salinas,* 568 U.S. 958, 133 S.Ct. 424 (2012). Given the fact that this Court already refused to overturn the *Vargas* decision, it is a foregone conclusion that this Court is not now going to overturn that decision here, especially when this Court recognizes

that the facts in the *Vargas* case are far more compelling than the facts in this matter.

Just like this case, the plaintiffs in *Vargas* were two concerned citizens who brought a "public interest lawsuit" against the City of Salinas challenging the city's use of public funds to influence the outcome of an election. This, of course, is the exact scenario Mr. Katz claims in this case when he argues that he was merely petitioning the government for redress of his grievances. And, like the plaintiffs in *Vargas*, the Mr. Katz was ordered to pay the defendant's incurred attorney's fees of $226,928.00 under a similar statute.[8] The *Vargas* plaintiffs claimed that the award was unconstitutional because there was no claim or finding that the lawsuit was objectively baseless or that it was brought for an improper purpose.[9]

Just like Mr. Katz, the plaintiffs in *Vargas* claimed that they were seeking review of an issue "expressly left unresolved" in *BE&K Construction v. NLRB* 536 U.S.516 (2002). *See, Petition, p.i.* This suggestion is patently untrue. *BE&K* in no way left this issue open. The case had absolutely nothing to do with private citizens petitioning government for "redress of their grievances." In fact, the Court in *BE&K* made a special note of the fact that it was in no way foreclosing the liability for the conduct which the petitioner is now asking this Court to immunize. In this regard, this Court stated as follows:

> Nothing in our holding today should be read to question the

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[8] Oddly, this is just $461.20 more than the Nevada court ordered Mr. Katz to pay in this case.

[9] Clearly, in this case it was not only alleged, but proven that Mr. Katz's suit was brought for an improper purpose, namely to harass IVGID.

> validity of common litigation sanctions imposed by courts themselves–such as those authorized under Rule 11 of the Federal Rules of Civil Procedure–or the validity of statutory provisions that merely authorize the imposition of attorney's fees on a losing plaintiff.

Mr. Katz suggests that this passage is mere dicta. IVGID disagrees. IVGID submits that this statement is a reflection of the importance this Court places upon the rights of all courts to control the administration of justice in the judicial system. In this regard, this Court further noted that it had "emphasized that such immunity [First Amendment] did not extend to "illegal and reprehensible practice[s] which may corrupt the . . . judicial proces[s]." *BE&K, supra,* 536 U.S. 516, 525 (2002). It should be noted that just like the Nevada Supreme Court in this case, the court in *Vargas* specifically held that the *Noerr-Pennington* doctrine had no application to their case. Despite that fact, this Court refused to grant Certiorari. And, like the Nevada court, the *Vargas* court found that being charged with the costs a suit created is not the same thing as being civilly liable for having filed the suit. Again, this Court apparently found that to be an insufficient basis upon which to grant review.

What is probably most compelling about this Court's refusal to accept Certiorari in *Vargas* is that unlike the current case, the award of fees in *Vargas* was not based upon a statute which required proof that the lawsuit was frivolous or filed for harassment as is required by NRS 18.010(2). In *Vargas,* the statute involved was an anti-SLAPP statute which allowed for an award of attorney's fees as a matter of right when the challenged suit was dismissed. Despite that fact, neither this Court nor the California Supreme Court found it necessary to review the decision.

It is worth noting this Court denied review of the *Vargas* decision despite the fact the court relied upon a California Supreme Court decision in the case of *City of Long Beach v. Bozek,* 31 Cal.3d 527, 532, 183 Cal. Rptr.86, 645 P.2d 137 (1982), which specifically held that an award of fees in favor of a governmental entity under a statute virtually identical to Nevada's was constitutional. *See, Vargas,* 200 Cal.App.4th 1331,1345 (2011). In this regard, the California court found that by specifically allowing a governmental defendant recovery of attorney's fees under such statutes did not per se violate a plaintiff's constitutional right of petition since the *Bozek* case taught that an individual's right to sue the government does not come free of cost. The court concluded by finding that despite the fact that the statutes might actually chill some legitimate petitioning activity, it is settled that the right of petition may be restricted by a narrowly drawn regulation designed to protect others' exercise of protected rights. Thus, the court concluded as follows:

> [T]he general right of persons to file lawsuits–even suits against the government– does not confer the right to clog the court system and impair everyone else's right to seek justice. Thus, the vexatious litigant statutes may constitutionally impose special requirements upon litigants who abuse the system. (Emphasis added)

Id. at 1348.

This Court might also recognize that when it denied the plaintiffs' petition in *Vargas,* it did so despite two *amicus* briefs which implored the Court to accept review of the case. *See, Motion for Leave to file Amicus Brief by Californians Aware, First Amendment Project,* 2012 WL 39914373, *Motion for Leave to File Amicus Brief by*

Pacific Legal Foundation, 2012 WL 2786043. Additionally, this Court subsequently denied a petition for writ of certiorari in yet another case virtually identical to *Vargas*. *See, The Peterson Law Firm v. City of Los Angeles, No. B220030, 2011 WL 1380059 (Cal. Ct. App. Apr. 13, 2011, cert. Denied,* 132 S.Ct. 1101, 181 L.Ed.2d 979 (2012).

If this Court were not willing to directly review the *Vargas* case which allowed for an award of attorney's fees by a governmental entity against an unsuccessful plaintiff who merely failed to survive an anti-SLAPP motion, it would seem that this case, which affirmed an award of fees for baseless, frivolous and vexatious litigation practices and abuses, would never satisfy the "compelling reasons" requirements of SCR 10.

VI

THE PETITION IS A THINLY VEILED ATTEMPT TO HAVE THIS COURT REVIEW THE FACTUAL FINDINGS OF THE LOWER COURTS

As alluded to in Footnote 4 above, what the petitioner is actually asking this Court to do is review the Nevada court's factual findings or its application of NRS 18.010(2) to those findings. In this regard, the petitioner seeks to convince this Court that his underlying claims were not baseless. This is actually the petitioner's seventh attempt to convince a court of review that his claims had merit. The petitioner first appealed the dismissal of all his claims to the Nevada Supreme Court. He filed appellate briefs that totaled 100 pages. When the Nevada Supreme Court rejected that appeal he filed lengthy briefs in a petition for rehearing as well as a petition for *en banc* reconsideration, both of which were denied. In each of these exhaustive briefs,

the petitioner sought to convince the Nevada Supreme Court that his numerous claims had merit. Of course, he was unsuccessful in this endeavor.

Then, in the second appeal, the petitioner sought a reversal of the challenged award of attorney's fees. He filed a 90-page opening brief along with a 39-page reply. Again, he endeavored to convince the Court that at least one of his 25 separate claims had merit. He, of course, was unsuccessful. So, once again, he filed an extensive petition for rehearing and when that was denied, he filed another extensive petition for *en banc* reconsideration. Both were denied.

Although he misrepresents to this Court that the Nevada courts never found his lawsuit to be baseless, frivolous, unreasonable or meritless, he nonetheless has asked this Court to review the lower courts' factual findings and the application of those findings to NRS 18.010(2) to determine if his case had arguable merit. SCR 10 provides that certiorari is rarely granted in such circumstances. This is not one of the rare and/or compelling circumstances that would justify such a review.

When counting Mr. Katz's efforts to first convince the trial court in the merits of his suit in response to IVGID's motion for fees, Mr. Katz has had eight separate attempts to convince the courts that his suit had merit.[10] They all failed. Mr. Katz has had more than a fair opportunity to convince the courts that his claims were not baseless. This Court should summarily reject his attempt to do so again.

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[10] The eight attempts does not even count all the supplemental briefs he filed along with his opposition to IVGID's original motion for fees. He filed a motion to retax costs, two requests to take judicial notice, as well as the motion to alter or amend the judgment.

VII

PETITIONER'S ARGUMENTS RAISED FOR THE FIRST TIME ON APPEAL SHOULD BE SUMMARILY REJECTED

In section V of his petition, Mr. Katz argued that *Noerr-Pennington* immunity extends to *extra-judicial* conduct incidental to a lawsuit or ancillary to litigation. These arguments were never raised in the courts below. Therefore, this Court should reject the attempt to raise them for the first time in this Court. *Walters v. City of St. Louis, Missouri*, 347 U.S. 231, 233 (1954) (United States Supreme Court will not undertake to review what the court below did not decide); *U.S. v. New York Telephone Co.*, 326 U.S. 638, 650 n.18 (1946) (a point raised for the first time before the Supreme Court would not be considered); *Duignan v. U.S.*, 274 U.S. 195, 200 (1927) (it is only in exceptional cases coming here from the federal court that questions not pressed or passed upon below are reviewed).

Where the lower courts have acted responsibly and attempted faithfully to apply the correct legal rule, the Supreme Court should not grant a petition for writ of certiorari. *Salazar-Limon v. City of Houston, Texas*, ____U.S. ____, ____137 S.Ct. 1277,1278 (2017) (J. Alito, concurring). A review of the underlying orders indicates that the Nevada courts took great effort to comply with established underlying law. Such good faith attempted compliance with established law does not augur well for a grant of Certiorari. "[I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where

there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals." *Layne & Bowler Corp. v. W. Well Works*, 261 U.S. 387, 393, 43 S. Ct. 422, 423, 67 L. Ed. 712 (1923).

VIII

PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES

Petitioner claims that this appeal seeks a "constitutional interpretation" of NRS 18.010(2)(b). *See,* Petition, p.3. In essence, he is asking this Court to find the statute unconstitutional as applied in this case. However, in Nevada, if statute or ordinances are alleged to be unconstitutional, the Attorney General must be served with a copy of the proceeding and is entitled to be heard. *See*, NRS 30.130; *City of Reno v. Saibini*, 83 Nev. 315, 321-22, 429 P.2d 559, 563 (1967) (NRS 30.130 requires the Attorney General to be served with a copy of the proceedings and to be given opportunity to be heard in a constitutional attack on any statute, ordinance or franchise in any proceeding); *State Office of Attorney General v. Justice Court of Las Vegas Township*, 133 Nev. 78, 82, 392 P.3d 170, 173 (2017). *See, also* FRCP Rule 5.1 (Federal analog of notice to Attorney General in face of constitutional challenge to statute).

In this case, Mr. Katz failed to exhaust his administrative remedies and therefore this Court should summarily deny the petition.

IX

CONCLUSION

For the reasons set forth herein, the petition for writ of certiorari should be denied.

RESPECTFULLY SUBMITTED this 27th day of July, 2020.

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APPENDIX

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AARON L. KATZ,

Plaintiff,

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, et al.,

Defendant.

_____/

Case No.: CV11-01380

Dept. No.: 7

ORDER

Before the Court is Plaintiff's AARON L. KATZ's *Motion for Leave to File Motion* and *Motion to Alter or Amend Judgement*, filed on July 25, 2016. On August 10, 2016, Defendant INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT filed its *Opposition to Plaintiff's Motion to Alter Judgment.* Plaintiff requested this matter be submitted for decision on August 19, 2016.

Applicable Law

NRCP 59(e) requires that a motion to alter or amend the judgment be filed no later than 10 days after service of written notice of entry of the judgment. A motion to alter or amend is permitted as to any appealable order. *Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. Adv. Op. 98, 314 P.3d 946 (2013). It must request a substantive alteration or vacation of judgment, and not merely a clerical error or relief that is collateral to the matter. *AA Primo Builders, LLC, v. Washington.* 126

Nev. Adv. Op. 53, 254 P.3d 1190 (2010). A motion to alter or amend judgment is not limited in scope so long as it is timely, in writing, complies with procedural requirements, and state the grounds with particularity and relief sought. *Id.* at 1192; *United Pac. Ins. Co. v. St. Denis*, 81 Nev. 103, 399 P.2d 135 (1965). A motion to alter or amend judgment should only be granted to correct manifest errors of law or fact, to prevent a manifest injustice, change controlling law, or is based on newly discovered or previously unavailable evidence. *Id.* at 1193.

A decision may be reconsidered "if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). A motion for reconsideration or rehearing should be granted only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached. *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). A district court has the inherent authority to reconsider its prior orders. *Trail v. Farretto*, 91 Nev 401, 536 P.2d 1026 (1975). However, there is virtue in finality of litigation.

Summary

In this case, Plaintiff is asking this Court to reconsider our July 15, 2016, *Order* which awarded attorney's fees to Defendant. Plaintiff (again) directs our attention to Nevada Assembly Bill 110 (2015), which was a bill that would have amended NRS 18.010 had it been enacted. The bill passed in the Assembly, but was not acted upon in the Senate.[1] For the following reasons, the *Motion for Leave to File Motion* is GRANTED and the *Motion to Alter or Amend Judgment and/or for Reconsideration* of the Court's Order awarding attorneys' fees to Defendant Incline Village General Improvement District is DENIED.

[1] *See*, https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?BillName=AB110

Analysis

Plaintiff attached a copy of Nevada Assembly Bill 110 as "Exhibit 11" to his *Declaration* in support of his *Opposition to Defendant's Motion for Attorney's Fees*. Plaintiff asserts that the proposed language in Nevada Assembly Bill 110 contradicts the Court's interpretation of NRS 18.010(2)(b) as it is presently enacted. Plaintiff argues that because the proposal of Nevada Assembly Bill 110 specifically addresses unrepresented litigants, the statute as it stands does not apply to those unrepresented, such as the Plaintiff. Plaintiff also contends that the lack of specificity as to whom attorney fees can be rendered against under NRS 18.010(2)(b), requires the Court to look to NRS 7.085, which pertains to sanctions only against attorneys. Ergo, because Plaintiff is appearing *proper persona*[2], NRS 18.0101(2)(b) does not authorize any award of attorney fees against him for frivolous litigation. This is nonsense.

NRS 18.010(2)(b) is unambiguous. The Nevada Legislature directs all courts to "liberally construe the provisions of this paragraph in favor of awarding attorney's fees in **all appropriate situations.**"(emphasis added). Clearly, the intent of the Nevada Legislature in awarding attorney's fees under NRS 18.010(2)(b) is to "punish for and deter **frivolous or vexatious claims** and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public."(emphasis added). The evil to which the statute is addressed is the filing of frivolous litigation, whomever files it; it is directed at the action, not the actors.

Therefore, it is clear this Court has the authority to award attorney's fees against a party who has brought a frivolous or vexatious claim. The Nevada

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[2] Although appearing as *proper persona*, Mr. Katz is no stranger to the practice of law or court procedure. Throughout this litigation, Mr. Katz has held an inactive bar license from the State of California. As a point of emphasis, this would mean that Mr. Katz attended a three year law school program and successfully taken the State of California Bar Examination.

Supreme Court has defined a "frivolous" claim as one that is "both baseless and made without a reasonable and competent inquiry." *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993). Further, "vexatious" is defined as an action or conduct without reasonable or probable cause or excuse, other than to harass or annoy. Black's Law Dictionary 1701 (9th ed. 2009). Looking at the history of this case and the nature to which Plaintiff's claims are made, this Court can find no other explanation for Plaintiff's actions other than to unnecessarily prolong this litigation with baseless and unreasonable claims.

In Plaintiff's briefing and attached exhibits, there is discussion about a possible "chilling" effect on the filing of potential claims if courts are to award attorney's fees against unrepresented litigants. As stated above, the intent of NRS 18.010(2)(b) is to prevent the waste of judicial resources and unnecessary costs of litigation for the opposing party by implementing a deterrent (attorney's fees) for parties who file **frivolous or vexatious** lawsuits. Thus, the scope to which NRS 18.010(2)(b) applies is properly limited to such claims that are deemed **frivolous or vexatious**. The result would not be a "chilling" effect on potential claims, but rather the retention of valuable resources by deterring **frivolous or vexatious** claims.

In Nevada, courts have the discretion to determine when an award of attorney fees is appropriate. Here, this Court has found that the award of attorney's fees to Defendant was appropriate. Throughout this litigation, Plaintiff has shown that the motives for his claims were nothing more than to harass and burden the Defendant with excessive public records requests. In addition, Plaintiff's actions throughout this litigation have been nothing short of appalling and a waste of judicial resources. Again, by his actions, Plaintiff has led this Court to one undeniable conclusion: this was a frivolous lawsuit.

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Accordingly, this Court finds that its July 15, 2015 *Order* awarding attorney fees to Defendant should not be disturbed and Plaintiff's *Motion to Alter or Amend Judgment* is DENIED.

IT IS SO ORDERED.

DATED this 21st day of September, 2016.

Patrick Flanagan

PATRICK FLANAGAN
District Judge

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 21st day of September, 2016, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Thomas Beko, Esq. and Keith Loomis, Esq. for Incline Village General Improvement District; and

Richard F Cornell, Esq., for Aaron L. Katz.

Kim Ost

~~Judicial Assistant~~ Court Clerk