19-237

In the Supreme Court of the United States

JAMES R. LAFRIEDA and ELLEN A. LAFRIEDA,

Petitioners,

v.

NANCY A. GILBERT,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Nevada

PETITION FOR WRIT OF CERTIORARI

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AUGUST 12, 2019

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QUESTIONS PRESENTED

In December of 2014, the Center of Ethics at Harvard University issued a report entitled *Measuring Illegal and Legal Corruption in American States: Some Results from the Corruption in America Survey*, wherein it found that the State of Nevada led the nation in legal judiciary corruption, where it was "very common".

James R. and Ellen A. LaFrieda sued Building Concepts, Inc. and Black Eagle Consulting for defects in a related construction defect case. During those proceedings, they learned that their attorney, Nancy A. Gilbert, provided her Clients and the Court with false and misleading information, effectively sabotaging the case. They sued Ms. Gilbert for professional negligence in District Court. The jury returned a verdict that Ms. Gilbert fell below the standard of care and awarded a judgment of $265,000. The defendant moved for dismissal as a matter of law at the close of the Plaintiff's case, but failed to renew at the close of evidence at the defendant's case-in-chief, waiting 42 days after the verdict to file a motion for redirected verdict. Nonetheless, post verdict, the trial judge reversed the judgment as a matter of law that Ms. Gilbert was not proven to be the "proximate cause" of loss. However, this question had been explicitly put to the jury, wherein the jury instructions clearly listed the elements of the offense which included a "proximate cause" requirement. On top of reversing judgment, the trial judge awarded costs of $100,000 to the defendant as the prevailing party under NRCP 68.

QUESTIONS PRESENTED

1. Did the Nevada Supreme Court have the right in its Order of Affirmance to blatantly disregard past

decisions of the U.S. Supreme Court as to statutory interpretation; and to declare that Rule 50(b) of the Nevada Rules of Civil Procedure was ambiguous, and to not follow the law?

2. Did the Nevada Supreme Court and the Trial Court have the right to become the trier of fact and overturn the decision of a Jury, who served for 13 days, while totally ignoring the substantial circumstantial evidence and jury instructions that supported the jury's verdict?

3. Did the Nevada Supreme Court and the Trial Court have the right to remain silent and refuse to acknowledge the numerous nefarious acts of the defendant which entitled the petitioners to have a jury determine punitive damages?

PARTIES TO THE PROCEEDING

Petitioners

- James R. LaFrieda, Plaintiff and Petitioner
- Ellen A. LaFrieda, Plaintiff and Petitioner

Respondent

- Nancy A. Gilbert, Defendant and Respondent

LIST OF PROCEEDINGS

James R. LaFrieda and Ellen A. LaFrieda v. Nancy A. Gilbert
United States District Court, State of Nevada, County of Washoe
Case No. CV13-00291
Decision Dates: July 28, 2017, November 11, 2017

James R. LaFrieda and Ellen A. LaFrieda v. Nancy A. Gilbert
Supreme Court, State of Nevada
Case Nos. No. 73888, No. 74565, No. 74942
Decision Date: February 26, 2019, May 14, 2019

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PETITION FOR WRIT OF CERTIORARI

Petitioners James R. and Ellen A. LaFrieda respectfully request this Court to issue a Writ of Certiorari

- to reverse and remand the decisions made in the Nevada Supreme Court's Order of Affirmance, filed February 26, 2019, and
- to reverse and remand the decisions made in the District Court's July 28, 2017 Order Granting Judgment as a Matter of Law;

Petitioners respectfully request the Law Clerks of the U.S. Supreme Court to read the LaFriedas' attached Petition for Rehearing (App.93a)[1], which was submitted to the Nevada Supreme Court, and observe the dissenting opinion from a very astute and fair Justice who wanted to hear the Respondent's Answer on Rule 50(b).

OPINIONS BELOW

The Nevada Supreme Court's Order Denying Rehearing, filed May 14, 2019 is reprinted in the Appendix hereto at App.48a.

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[1] Unless otherwise noted, all references to the Appellant's Appendix filed with the Nevada Supreme Court shall be in the following format: 8 (Volume), 1810 (Page): 3-15 (Lines). References to the Appendix filed with this Petition shall be in the following format: App.(Page)a: (Lines).

The Nevada Supreme Court's Order of Affirmance, filed February 26, 2019 is reprinted in the Appendix at App.1a.

The Washoe County District Court's Order Granting Judgment as a Matter of Law, filed July 28, 2017 is reprinted in the Appendix at App.22a.

The Washoe Country District Court's Order Granting Costs and Attorney Fees, filed November 11, 2017 is reprinted in the Appendix at App.11a.

The Washoe County District Court's Order After Oral Arguments, filed January 27, 2017, is reprinted in the Appendix at App.41a.

JURISDICTION

A timely Petition for Rehearing, filed on March 18, 2019, was denied by the Supreme Court of Nevada on May 14, 2019. (App.48a). Petitioners seek a writ of certiorari to review a deprivation of fundamental constitutional rights guaranteed by the 7th and 14th Amendments to the United States Constitution. This court has jurisdiction pursuant to 28 U.S.C. § 1257(a) and 28 U.S.C. § 2106.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The following Constitutional and Statutory Provisions are the basis of this Petition:

- U.S. Const. amend. VII

  In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

- U.S. Const. amend. XIV, § 1
  Citizenship: Privileges and Immunities; Due Process; Equal Protection

  All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- NRCP 50(b), Prior to March 1, 2019
  [As amended; effective January 1, 2005]
  Renewing Motion for Judgment After Trial; (b) Alternative Motion for New Trial.

  If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after

service of written notice of entry of judgment and may alternatively request a new trial or join a motion for new trial under Rule 59. In ruling on a renewed motion the court may

(1) If a verdict was returned:

(A) Allow the judgment to stand,

(B) Order a new trial, or

(C) Direct entry of judgment as a matter of law; or

(2) If no verdict was returned:

(A) Order a new trial, or

(B) Direct entry of judgment as a matter of law.

STATEMENT OF THE CASE

A. Introduction

This Petition for a Writ of Certiorari derives from the Nevada Supreme Court's May 14, 2019 Order Denying Rehearing (App.48a); and from its February 26, 2019 Order of Affirmance (App.1a), that affirmed the Trial Court's July 28, 2017 Order Granting Judgment as a Matter of Law (JMOL) (App.22a), all of which followed a 13 day legal malpractice trial in February of 2017, where the Jury [following the jury instructions that it was given] unanimously found that:

- The Defendant, NV Attorney Nancy A. Gilbert, breached the applicable standard of care with

regard to the February 15, 2011 letter that she sent to Nevada Attorney Kent Robison; and

- The Plaintiffs, James R. and Ellen A. LaFrieda accepted a reduced settlement with the design professional defendant Building Concepts Inc. (BCI), specifically caused by Gilbert's letter to Robison. (*See* Special Verdict Form in App.37a)

The Jury awarded the LaFriedas $265,000 in damages on February 22, 2017. The District (Trial) Court never issued a notice of entry of judgment after the jury's verdict; and, without filing a motion for directed verdict at the close of all of the evidence, as required by Rule 50(b) of the Nevada Rules of Civil Procedure, Gilbert filed a Renewed Motion for Directed Verdict, 42 days after the Jury's verdict, on April 5, 2017. Oral Argument on Gilbert's Renewed Motion for JMOL took place on June 20, 2017, with the District Court issuing its Order Granting JMOL (App.22a), on July 28, 2017, and awarding Attorney Gilbert $100,000 in Fees and Costs.

The LaFriedas filed an Appeal with the Nevada Supreme Court on September 5, 2017, which was followed by an unsuccessful attempt at mediation on October 12, 2017.

On December 4, 2018, Oral Argument was heard at the NV Supreme Court in Las Vegas, NV; and on February 26, 2019, the Nevada Supreme Court issued its Order of Affirmance of the District Court's July 28, 2017 Order Granting JMOL. The LaFriedas' submitted a Petition for Rehearing which was denied on May 14, 2019.

For the record: The legal malpractice law firm that represented Gilbert was Lemons, Grundy and Eisenberg (LGE). LGE Co-founder, David R. Grundy, Esq., was the former Chairman of the Board of Directors at ALPS, and is a current ALPS Director; where ALPS is Gilbert's Legal Malpractice Insurer. And, LGE Co-founder Robert L. Eisenberg, whose name was on Gilbert's Answering Brief to the Nevada Supreme Court, but who never appeared at any other time, was the Chairman of the Committee on Rule 50 at the Nevada Supreme Court, who was instrumental in having the clause "at the close of all of the evidence" removed from NRCP Rule 50, effective March 1, 2019.

B. The Legal Proceedings Against the Construction Companies and Consultants Which Gave Rise to the Legal Malpractice.

1. Construction Defects.

The LaFriedas purchased a new home in The Estates at Mt. Rose in Reno, Nevada in March of 2006, for $757,000. In April of 2008, they sued the Developer, its Concrete Subcontractor, and two Design Professionals—Building Concepts, Inc. (BCI) and Black Eagle Consulting Inc. (BEC), alleging that their defective concrete slab-on-grade floors were not properly reinforced, which led to huge cracks in their slab as large as 5/8" in width, in every room of their new home. Their initial construction defect attorney, Bradley Epstein, filed the required Affidavit of Merit along with the required Certificate of Merit and Certified Engineering Report of NV Professional Engineer (P.E.) John M. Siino. Siino wrote several reports after doing extensive coring of the LaFriedas' slab, wherein he found BCI [who wrote the project's plans and specif-

ications] to be negligent for not specifying the type and dosage of the fibermesh product that was used-in place of 6x6x10 welded wire mesh. BEC was not only the project's geotechnical and fault-hazard report engineer, but BEC was the Developer's quality control engineer, who was under contract to perform inspection and testing services during construction of the concrete slabs, in addition to inspecting the construction of the development's rockery retaining walls.

2. Gilbert Became LaFriedas' Attorney in CV07-01717.

In September of 2008, Gilbert substituted in for Epstein, and consolidated the LaFriedas' construction defect case with six other Consolidated Plaintiffs in CV07-01717, all of whom had defective concrete slabs; and five of whom (which included the LaFriedas) had defective rockery retaining walls, with no subdrain at the base of these walls. The lack of a subdrain led to subsurface water pooling and percolating under the foundations—from the snowmelt that came down from the summit at Mt Rose.

3. Gilbert Filed a Supplemental Affidavit of Merit Against Design Professionals.

On March 5, 2010, Gilbert filed a Supplemental Affidavit of Merit against BCI, BEC, and against a third design professional, viz. Summit Engineering, who provided grading and drainage certifications to Washoe County's Dept of Building and Safety. Gilbert's Supplemental Affidavit was supported by the March 4, 2010 Certificate of Merit of NV P.E. John Siino, along with nine (9) certified engineering reports, written by Siino as to the LaFrieda and Taylor homes,

including a March 3, 2010 report about rockery retaining walls and drainage issues.

4. Gilbert Filed Fifth Amended Complaint and Her Legal Malpractice Begins.

On May 6, 2010, the Trial Court granted BEC's and BCI's Motion for More Definite Statement and ordered Gilbert to file an amended complaint within 15 days that specified which plaintiffs were suing BEC and BCI. The Trial Court also announced that it would hold Evidentiary Hearings in June and July of 2010 in order to determine the status of each Consolidated Plaintiffs' compliance with NV's construction defect law, *i.e.* NRS Chapter 40, as to inspection, repair, and mediation.

It was at this point in time that Gilbert committed legal malpractice in construction defect action, CV07-01717. For on May 21, 2010, Gilbert filed the Consolidated Plaintiff's' Fifth Amended Complaint, wherein she sued Summit and BCI for all of the Consolidated Plaintiffs. But fully aware [from BEC Contract #232-06-5] that BEC was under contract and had been negligent in its inspection of the construction of slabs and the 5 rockery retaining walls of her Clients, Gilbert "protected BEC" by only filing claims against BEC for the LaFriedas. (Trial Exhibit 116: 5AA–710-782).

The Trial Court held Evidentiary Hearings on June 16, 2010 and July 13, 2010, at which time Gilbert concealed and failed to disclose to the Trial Court and to her clients that she had sued BCI, as to the slabs and foundations, for all of the Consolidated Plaintiffs, in Paragraph 83 of the Fifth Amended Complaint.

5. Gilbert Fails to Follow September 9, 2010 Court Order.

On September 9, 2010, the Trial Court issued an Order based on the Evidentiary Hearings, wherein the Court stated that the only Consolidated Plaintiff alleging claims against BEC was the LaFriedas; and the only Consolidated Plaintiffs suing BCI were the LaFriedas and Richard Taylor. (Trial Exhibit 118: 5AA–783-787)

Gilbert did not adhere to the Court's September 9, 2010 Order; in that she did not go forward and file NRS Chapter 40 Notices against BCI for the other Consolidated Plaintiffs, and she continued concealing from her Clients that she had sued BCI for all of them, for their defective slab issues.

6. Gilbert Lies to the Eberles and Then Attorney Kent Robison.

In late 2010, one of the six Consolidated Plaintiffs, *viz.*, Mr. Tom Eberle, who had a rockery retaining wall on his lot, where water had come up from his kitchen island, asked NV Attorney Kent Robison to examine Gilbert's conduct and to determine whether she had committed malpractice by not following the Court's September 9, 2010 Order.

On January 24, 2011, the Eberles sent Gilbert a letter, composed by Attorney Robison, asking "What parties are we suing?"; and "What is the status of the Chapter 40 proceedings concerning those claims that had to be remanded for a Chapter 40 procedure as ordered by Judge Steinheimer in September 2010?" Gilbert responded in an e-mail to the Eberles on January 26, 2011, concealing and falsely stating that:

"At this point, in your part of the case, the parties that you are not suing at this time are BEC and BCI." (Trial Exhibit 122; 9AA–1227).

On January 31, 2011, Gilbert notified her Mt. Rose Clients, via an e-mail, that she was withdrawing from being their attorney, and filed a Motion to Withdraw on February 2, 2011. (Trial Exhibit 227; 30AA–2946).

On February 11, 2011, Attorney Robison sent Gilbert a letter asking: "We must immediately know if you filed NRS Chapter 40 Notices against BEC and BCI on behalf of the Eberles"; and "Please give us any evidence that you have that BEC and BCI are not partially responsible for the construction defects at the Eberle residence." (Trial Exhibit 471: 9AA–1018-1025)

7. Gilbert's Infamous and Damaging Letter of February 15, 2011.

On February 15, 2011, Gilbert did not directly answer Attorney Robison's requests, but instead she sent a fax to Mr. Robison making false statements of material facts. (Trial Exhibit 130; 6AA–809-811).

Namely, Gilbert said:

> "Retained experts have not found liability on the part of Black Eagle and are unwilling to prepare a Certificate of Merit alleging such liability against Black Eagle."

and

> "Both retained experts, at this time, do not point to BCI, as to slab liability"

It was this damaging letter, written by Attorney Gilbert on February 15, 2011, which Attorney Robison attached to a pleading, opposing Gilbert's Motion to Withdraw, which led to BEC filing a Motion of Summary Judgment on March 3, 2011; that the LaFriedas now had to oppose, through no fault of their own, but solely because of the professional negligence of Attorney Gilbert. To make matters worse, after the Trial Court granted Gilbert's motion to withdraw, it ordered Gilbert to file an Opposition to BEC's Motion for Summary Judgment. In addition to the "admissions" already made in her February 15, 2011 letter, Gilbert, under the penalty of perjury, made additional false factual "admissions "that there was no merit to the LaFriedas' claims against BEC and BCI, stating that she "gave her candid view on the state of the Consolidated Plaintiffs' case against BEC and BCI."

Gilbert also falsely claimed that her Affidavit of Merit and John Siino's Certificate of Merit, that she had filed on March 5, 2010, was only for "lot drainage and lot retaining walls" and that she did not have a Certificate of Merit, as to the slabs and foundations, for the other homeowners. (Trial Exhibit 141: 7AA–851-935). Based on Gilbert's admissions, the Trial Court concluded that the LaFriedas Certificate of Merit, which it had previously ruled was sufficient, was now faulty and granted BEC's motion for summary judgment on August 8, 2011, along with fees and costs in excess of $58,000. (Trial Exhibit 162; 35AA–3832-3872). The Trial Court dismissed the LaFriedas' negligent misrepresentation claim against BEC, asserting that it fell under the purview of NRS Chapter 40, and the NV Supreme Court agreed with that decision in its July 30, 2014 Order of Affirmance (*See* App.51a).

In its Order of Affirmance, the NV Supreme Court stated: "Finally, while we affirm the district court's judgment, we note that the LaFriedas' remedy, if any, is against previous counsel, *i.e.* Gilbert, rather than BEC." The LaFriedas petitioned for a Writ of Certiorari in June of 2015, *i.e.* No.14-1540, but the Writ was not considered by the U.S. Supreme Court.

Since Gilbert's February 15, 2011 letter was ruled to be admissible evidence which could be used at trial, the LaFriedas were placed in a very difficult situation because Gilbert had intentionally and negligently impugned the integrity and credibility of their expert, Siino, in order to conceal her misdeed of "selling out" her Clients' valid claims to the design professionals, BEC and BCI. She concealed the January 26, 2011 e-mail of NV P.E. Tom Marsh, and the March 7, 2011 e-mail of Siino because these two e-mails showed that the statements that she had made, in her February 15, 2011 letter to Attorney Robison, were false. The LaFriedas sued Gilbert for legal malpractice not only for the loss of all of their construction defect claims against BEC, but because—in addition to paying Gilbert $46,000 in legal fees—they had to pay BEC $58,000 in attorney fees and costs—solely because of Gilbert's false and misleading statements.

C. Procedural Background in the Instant Case (CV13-00291, *LaFrieda v. Gilbert*).

1. Initial Filings at the Trial Court.

The LaFriedas filed their Legal Malpractice Complaint for Damages (Professional Negligence) against Gilbert on February 8, 2013, wherein they claimed that the false and misleading statements that Gilbert

wrote in her February 15, 2011 letter to Attorney Kent Robison caused them to incur huge attorney fees and costs.

In addition, the LaFriedas claimed an inadequate settlement with BCI because Gilbert's letter was deemed to be admissible evidence that BCI could use at trial, and it caused the six (6) Consolidated Plaintiffs to settle with BCI for $700,000 less than their initial mediation demand of $900,000. In sum, the six Consolidated Plaintiffs settled for a total of $200,000, with the LaFriedas receiving $33,000 whereas the cost of repair to replace their defective unreinforced slab, and cracked perimeter footings, which are located in the most seismic area of Reno, was $601,000.

Gilbert immediately filed a Motion to Dismiss on March 4, 2013, wherein, without providing any documentation, she falsely claimed that Exhibit #11 in the copy of the Complaint that she had received was an Offer of Judgment that released all claims against her, when it was not!

The trial court denied Gilbert's Motion to Dismiss on April 7, 2016 (the case had been stayed) stating that the LaFriedas set forth facts in their Complaint sufficient to state a claim for legal malpractice against Ms. Gilbert. The Court stated that the Offer of Judgment, which Gilbert claimed was Exhibit #11 in the complaint that she received, was never signed by the LaFriedas. The Court also stated that the LaFriedas' request for sanctions under NRCP Rule 11 must be filed separately.

2. Order After Oral Arguments on Gilbert's Motion for Summary Judgment.

Although the LaFriedas made a request to settle, Gilbert's insurance company, viz. ALPS, did not wish to settle. Instead, on December 13, 2017, Gilbert filed a 60 page Motion for Summary Judgment (MSJ), with 85 exhibits.

The LaFriedas opposed Gilbert's MSJ and the trial court heard oral arguments on January 25, 2017. Two days later, on January 27, 2017, the trial court issued its Order after Oral Arguments (App.41a), wherein the court stated:

- The questions of causation and damages are material facts in controversy.
- Summary Judgment is denied.
- The Court is unwilling to allow a full trial against BCI on its merits.
- The question of the letter's effect upon settlement, if any, is material and is disputed.
- Ms. Gilbert may make arguments relating to her efforts to obtain a certificate of merit.
- The two attorneys who negotiated the settlement will testify at trial.
- The Jury will consider the LaFriedas' testimony, whether corroborated by the attorneys or not.
- The letter was subsequently cured and had no dispositive legal meaning.

- The Jury will decide the extent to which the letter changed the value of the settlement.
- This Court will make the decision to instruct the jury on punitive damages after all trial evidence is presented.

The trial court would not allow a "case-within-a case" to be held, which was standard practice, in jurisdiction after jurisdiction, for legal malpractice cases that involved an inadequate settlement. The court said that Gilbert had no misconduct and no affirmative concealment. (2AA–0270:8-10). The court initially imposed an unprecedented change in tort law, that required a subjective standard of causation in legal malpractice cases, where the Court wanted a design professional adversary to come into Court, admit liability, and state that he would have not paid a penny more—regardless of the false statement contained within Gilbert's letter—which was the sole basis of BCI's Motion for Summary Judgment. This was contrary to Jury instruction #33.

3. Trial Proceedings.

Trial commenced on February 6, 2017 for a period of 13 days. On February 22, the district court read 35 instructions to the jury. (App.58a), of which three of the most important instructions were #6, #17 and #33.

Jury Instruction #6, informed the Jury that there were two types of evidence, *viz.* direct and circumstantial, and you are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence. It is for you to decide whether a fact has been proved by circumstantial evidence.

Jury Instruction #17 informed the Jury that to prove a claim of legal malpractice, a plaintiff must prove each of the following elements: 1. the existence of an attorney-client relationship; 2. the duty owed to the client by the attorney; 3. breach of that duty; and 4. the breach as proximate cause of the client's damages.

Jury Instruction #33, informed the Jury that a plaintiff who alleges an inadequate settlement in the underlying action must prove that, if not for the malpractice, he would have received more money in settlement or at trial.

The Order granting directed verdict of July 28, 2017 agreed: "Thus, there was evidence for the jury to find the LaFriedas accepted less money than they would have because Ms. Gilbert's letter compromised their potential trial outcome." (*See* 43AA–5735:3-4).

The jury was charged with determining whether the LaFriedas would have recovered more at trial against BCI, if it were not for Gilbert's false statements. The Jury heard from Siino's deposition testimony that he always found BCI to be liable for the LaFriedas' defective slab, and perimeter footings. The Jury heard from Contractor Stephen Gill, as to the cost of repair, which was more than $463,000.

The jury came in with the Special Verdict (*See* App.37a) that Gilbert breached the applicable standard of care with regard to her February 15, 2011, letter to Kent Robison; and they found that the LaFriedas accepted a reduced settlement with BCI specifically caused by Gilbert's letter to Robison and awarded $265,000 in damages.

The extensive circumstantial evidence that supported the jury's verdict consisted of: the testimony of the Plaintiff's Expert on the standard of care, Attorney Mark Gunderson; the testimony of the Plaintiff's Expert on causation, Attorney James Shields Beasley; the testimony of Consolidated Plaintiff Richard Taylor (a homeowner) as to the settlement negotiations with BCI; the testimony of Plaintiffs, James R. and Ellen A. LaFrieda; and the testimony of NV. P.E. Joseph Shields and NV Subcontractor, Mr. Stephen Gill, as to the cost of repair. In addition, the January 5, 2017 deposition of NV P.E. John M. Siino, who provided Gilbert with a Certificate of Merit against BCI on March 4, 2010, was read to the Jury over two days.

Attorney Gunderson informed the Jury that Gilbert's statements in her February 15, 2011 letter were false and misleading, and that, as an Officer of the Court, she was obligated not to lie to the Court, and that a lie is a fraud.

Attorney Beasley informed the Jury that because of Gilbert's statements that the risks were too great to proceed with litigation against BCI because of the credibility issues that the letter created as to the Consolidated Plaintiffs expert's opinions regarding breach of duty of care and the cost of repair, which caused the LaFriedas to accept the lower settlement value of approximately $33,000, whereas the value of the LaFriedas' case was $601,000 prior to the mediation with BCI.

Consolidated Plaintiff Richard Taylor testified that the six (6) Consolidated Plaintiffs went into the mediation with BCI with a demand of $900,000, but ended up settling for a grand total of $200,000, all

because of the infamous letter that Gilbert wrote to Robison, and because the Mediator brought up the fact that Gilbert's letter was admissible and would be used as evidence at trial."

Both of the LaFriedas testified that Gilbert's letter was discussed at the settlement conference and that it weakened the Consolidated Plaintiffs' position at the BCI settlement conference, because the Mediator had said that the letter would be used in litigation with regard to BCI.

The LaFriedas also testified that Gilbert concealed and failed to disclose, for period of over five years, the January 26, 2011 e-mail of NV P.E. Tom Marsh, and the March 7, 2011 e-mail of Siino, which showed up in discovery in December of 2016. (Trial Exhibit 459: 30AA–3118). (Trial Exhibits 476:37AA–4190-4210) (Trial Exhibit 479:37AA–4224). (Trial Exhibit 203:16AA –1753-1754).

Both of these e-mails clearly showed that the statements in Gilbert's February 15, 2011 letter to Attorney Robison, that her retained experts did not find liability as to BEC and BCI, were false and misleading.

As soon as the LaFriedas completed their case-in-chief, Gilbert immediately moved for a directed verdict for Judgment as a Matter of Law (JMOL) regarding damages related to BCI—arguing that the LaFriedas were required to call Mr. Nathan Aman (counsel for BCI in the underlying matter) or Mr. Patrick Clark (the principal of BCI) to testify what they subjectively thought about the effects of Gilbert's statement as to the BCI settlement. Mr. Aman said that he would assert privilege if asked to testify regarding the BCI matter, and though Gilbert's counsel

informed the Jury in Opening Arguments that Mr. Clark would testify as a witness for the defense, Mr. Clark was never called. The trial court denied Gilbert's Rule 50(a) motion, expressly stating:

> "I believe that there is evidence that a jury can consider, and the attorneys may argue." (37AA–4252:2-3)

Upon ruling that there was evidence that a jury can consider, the trial court did not say that there was a deficiency in the Plaintiffs' evidence and that the Court needed to hear from BCI's principal, Mr. Clark. That same day, without waiting until all trial evidence was presented, as the court had earlier stated in its Order after Oral Arguments, the trial court granted Gilbert's NRCP 50(a) motion for directed verdict regarding punitive damages, thus preventing the jury from hearing and considering punitive damages.

4. Defendant's Trial Testimony.

Throughout the proceedings, in her Trial Testimony, Gilbert, who is a NV Attorney, and an Officer of the Court, made the following statements, under the penalty of perjury:

a. That her March 5, 2010 Supplemental Affidavit of Merit that named the design professionals, Black Eagle Consulting, Building Concepts Inc. and Summit Engineering, and the Certified Engineering reports submitted by Siino, which Gilbert attached to her March 5, 2010 Affidavit of Merit, only pertained to "grading, drainage and erosion" issues.

GILBERT: The certificate of merit in March of 2010 is related to the drainage and grading. It had nothing to do with the opposition to the motion for summary judgment a year later dealing with the slabs, or the slab and foundation. (31AA–3164:1-7).

b. That she didn't have a Certificate of Merit as to the slab and foundation for the other homeowners, and that she was trying to get one.

Q: [I]t doesn't seem like you needed another certificate of merit in January of 2011; isn't that true?

GILBERT: No, that's not true. We didn't have a certificate of merit as to the slabs and the foundation as to the other homes. (App.132a) (30AA–2959:19-24)

5. That She Was Trying to Get a Certificate of Merit for the Other Homeowners.

GILBERT: So, in January of 2011, I'm trying to get a certificate of merit for the other homeowners, which include the Eberles, so these—this response, to have been my February 15th, 2011 letter, is answering the question that Mr. Robison has as to the Eberles, not the LaFriedas. (18AA–2121:21-24:2122:1).

The above statements are contrary to the following "clear and convincing evidence", in which she unwittingly testified in her case-in-chief on February 21, 2017 and exposed the fraud that she had been perpetrating: (*See* App.133a-135a)

Her unwitting testimony exposed to the jury that the March 2010 affidavits of merit were indeed for

the slabs for the others, because she applied them to slab issues as to BCI for the others in Paragraph 83 of the Fifth Amended Complaint (App.129a). In that paragraph, she dropped the LaFriedas and Taylor names. Compare with paragraph 83 in the Fourth amended complaint (App.124a), and paragraph 83 in the Third Amended Complaint (App.119a). Paragraphs 83 in both the Third and Fourth Amended Complaints only have the LaFrieda and Taylor names.

This trial testimony exposed that she had no need for another certificate of merit, and that she had sued BCI for all her clients as to their slab/foundation issues in the May 21, 2010 Fifth Amended Complaint

6. Gilbert Concealed That She Protected "BEC" in the Fifth Amended Complaint from Slab and Drainage Claims by Falsely Testifying to Her Counsel's Question.

BROWN: [H]ow come you didn't change paragraph 85 [of the Fifth Amended Complaint] that talks about "Plaintiffs and/or consolidated plaintiffs James R. and Ellen A. LaFrieda"?

GILBERT: Because the certificate of merit in March of 2010 dealt with drainage and erosion issues. And Black Eagle Consulting was only implicated in that issue as to the LaFriedas' home. (30AA–3022:11-18)

The next day she contradicted herself:

Q. You had a certificate of merit from Mr. Siino regarding Black Eagle Consulting as of March 4, 2010; isn't that correct?

GILBERT: As to the drainage and grading on five homes; correct. (31AA–3149:8-12).

Since Gilbert had no credible explanation for her April 26, 2011 email to the LaFriedas, (App.135a), the jury could conclude on this email alone that she was not truthful. She testified that she was speaking with Jim Beasley as to how to bring in or stay in BCI. Testimony differed on February 13, 14, and 21.

7. Trial Court's Order Granting Judgment as a Matter of Law.

Trial ended on February 22, 2017, with defendant Gilbert not filing a Renewed Motion for JMOL per Rule 50(b) at the close of all of the evidence. The trial court did not enter a notice of entry of judgment, with Gilbert filing a Renewed Motion for JMOL on April 5, 2017, *i.e.*42 days later. In sum, the District Court gave Gilbert seven (7) weeks to file a Renewed Motion for JMOL after the Jury's verdict. Oral Argument took place on June 20, 2017, with the District Court issuing its Order Granting JMOL on July 28, 2017.

In its Order Granting JMOL the trial court admits that "the applicability, scope, and accuracy of the letter was in controversy, and a subsequent cure of its contents was in controversy" (App.23a), but then makes his own conclusion about what the jury found —she merely disclosed confidential information, (*See* App.24a,34a), which exposes the persistence in the court's bias in not wanting to admit that the jury could find that she intentionally lied in the contents of the letter, to conceal she sold out her clients, and this lie provides the "but for" causation, which the

order said is lacking. The jury is the trier of fact, not the court. The order stated:

- [T]he applicability, scope, and accuracy of the letter was in controversy, and a subsequent cure of its contents was in controversy.
- The Jury concluded Ms. Gilbert fell below the standard of care when she disclosed confidential information about her experts.
- Gilbert's renewed motion was proper.
- The LaFriedas were required to present evidence that "but for" Ms. Gilbert's letter, BCI would have paid more money to settle the LaFriedas' claim.
- There is no evidence showing how Ms. Gilbert's letter caused BCI to reduce its settlement offer or otherwise alter its litigation strategy or case valuation.
- There is no evidence to answer the question: what would the settlement with BCI have been with BCI have been without Ms. Gilbert's letter?
- There was no evidence regarding other settlement influences, such as insurer participation, BCI efficacy, financial solvency, or ability to pay,
- There was no evidence that BCI would have paid $265,000 (or any additional amount) "but for" Ms. Gilbert's negligent disclosure.
- The LaFriedas asked the jury to "assume the result" that because BCI knew of Ms. Gilbert's

> letter, the letter must have influenced the settlement amount. There is no direct or circumstantial evidence in this regard.

Having stated the above, the District Court conceded in its Order:

- "There was evidence for the jury to find that the LaFriedas accepted less money than they would have because Ms. Gilbert's letter compromised their potential trial outcome." (*See* App.33a)

No mention was made of Jury Instruction #6, #17 and #33.

8. Petitioner's Appeal to the Nevada Supreme Court.

On appeal, Petitioner raised several arguments to the Nevada Supreme Court:

a. Did the District Court err as a matter of law when it granted Defendant Gilbert's Renewed Motion for JMOL after the Jury's Verdict, when Gilbert failed to make a motion for judgment as a matter of law at the close of all evidence as required by the plain and unambiguous language of NRCP 50(b)?

b. Did the District Court err as a matter of law when it granted Gilbert's Renewed Motion for JMOL ignoring the evidence and all inferences most favorably to the LaFriedas when it concluded there is no direct or circumstantial evidence to support the Jury's verdict?

c. Did the District Court err as a matter of law when it failed to view the sufficiency of the evidence in light of the instructions given to the jury when it

decided Gilbert's Renewed Motion for JMOL after having acknowledged at the end of the LaFriedas' case-in-chief: "I am not granting a directed verdict on the BCI reduced settlement. I believe there is evidence that a jury can consider, and the attorney's may argue."?

d. Did the District Court abuse its discretion when it prohibited Plaintiffs from offering evidence to prove the element of proximate cause and damages by the "case-within-a case" method regarding the liability and damages caused by Building Concepts, Inc.?

e. Did the District Court err as a matter of law when it granted Gilbert's motion for directed verdict at the close of the LaFriedas case in chief prohibiting the LaFriedas from seeking punitive damages against Gilbert for all of her nefarious acts of fraud (intentional misrepresentations, deception and concealment, etc.)?

9. Nevada Supreme Court's Order of Affirmance.

The LaFriedas submitted their Opening Appeal Brief to the Nevada Supreme Court on April 9, 2018. Oral Argument took place on December 4, 2018 at the Nevada Supreme Court in Las Vegas, NV. On February 26, 2019, the Nevada Supreme Court issued its Order of Affirmance, (App.1a), wherein it ruled:

- The LaFriedas sued Gilbert in sending the letter to Robison.
- Gilbert may have erred by publishing the letter. (App.7a).
- Gilbert preserved her right to renew her motion for judgment as a matter of law.

- The Nevada Supreme Court concluded that NRCP 50(b) is ambiguous.
- The district court did not err in granting Gilbert's NRCP 50(b) motion.
- The LaFriedas did not show sufficient evidence that Gilbert was the proximate cause of their damages.
- Gilbert's NRCP 50(a) and NRCP 50(b) motions presented the same argument.
- We need not address the LaFriedas' argument that the district court should have ruled as a matter of law that Gilbert breached the standard of care when she failed to obtain a certificate of merit against Summit, as the LaFriedas failed to raise this argument before the district court.
- The LaFriedas failed to present evidence that BCI would have agreed to a higher settlement amount had it not been for Gilbert's letter.
- The District Court did not abuse its discretion by awarding Gilbert attorney fees.
- Gilbert' Offer of Judgment was reasonable in both timing and amount.

REASONS FOR GRANTING THE PETITION

There are several reasons why this Court should grant the petition, overruling the February 26, 2019 Order of Affirmance of the Nevada Supreme Court, as well as the Trial Court's July 28, 2017 Order Granting JMOL, without requiring the Petitioners to spend any further years of their retirement on the gross injustice that has occurred here in the State of Nevada. To date, the elderly LaFriedas have spent over 11 years of their retirement, and over $1M in attorney fees and costs fighting for justice (*See* App.143a)

I. GILBERT FAILED TO PRESERVE THE RIGHT TO MAKE A POST JUDGMENT MOTION FOR JMOL.

The Appellant's Petition for Rehearing has been attached in App.93a to 115a., and provides details as to why holding NRCP 50(b) to be ambiguous is contrary to well established rules of construction.

The Trial Court ruled that Gilbert's renewed motion was proper; and the Nevada Supreme Court decided that—after 53 years—NRCP Rule 50(b) is "ambiguous"; that Gilbert's NRCP 50(a) and NRCP 50(b) motions presented the same argument (which was not the case); and that the Trial Court did not err in granting Gilbert's NRCP 50(b) motion.

All of the above decisions are incorrect; simply because Gilbert's renewed motion was not proper; NRCP 50(b) is not "ambiguous", and Gilbert's post verdict motion considered arguments [such as collect-ability]-which was not in her initial NRCP 50(a) motion,

which was filed at the end of the LaFriedas' case-in-chief.

The LaFriedas argued to the Trial Court, and then on appeal to the Nevada Supreme Court that defendant Gilbert failed to preserve the right to make a post-verdict motion for JMOL, because she failed to make a motion for JMOL at the close of all of the evidence.

The LaFriedas argued that NRCP 50(b) is crystal clear, and explicitly requires a motion at the close of all of the evidence in order to preserve the right to make such a motion post verdict.

As to statutory interpretation, the LaFriedas cited, in their Opening Appeal Brief, the U.S. Supreme Court's unanimous decision in *Digital Realty Trust Inc. v. Somers*, 138 S.Ct, 767, 776, 200 L.Ed.2d 15, 27 (Feb.21, 2018) that:

> "When a statute includes an explicit definition, we must follow that definition."

In *Vanguard Piping v. Eight Judicial Dist. Court*, 129 Nev. Adv. Op.63, 309 P.3d 1017, 1020 (2013), the Nevada Supreme Court stated: "Nevada's Rules of Civil Procedure are subject to the same rules of interpretation as statutes." In *Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611. "Statutory interpretation is a question of law that we review *de novo*." 618, 218 P.3d 1239, 1244 (2009); *Consipio Holding, BV v. Carlberg*, 128 Nev. 282 P.3d 751, 756 (2012). "If a statute is clear and unambiguous, we give effect to the plain meaning of the words, without resort to the rules of construction. *Id.*"

The Nevada Supreme Court previously found: "This court avoid[s] statutory interpretation that

renders language meaningless or superfluous", and "[i]f the statute's language is clear and unambiguous, [this court will] enforce the statute as written: "*Hobbs [v. State]*, 127 Nev. [234] at 236 . . . [2011]" *George J v. State* (In re George J.), 128 Nev. 345, 348 (2013).

Rule 50(b) of the Nevada Rules of Civil Procedure, prior to March 2019, only allowed a Renewal of a Motion for JMOL if one was first made at the close of all the evidence. This has been the rule in Nevada for over 53 years, *Lehtola v. Brown Nev. Corp.*, 82 Nev. 132, 136 (1966) where it states:

> "A 50(a) motion must be made at the close of all of the evidence if the movant wishes to later make a post-verdict motion under that rule."

Prior to 2006, Rule 50 of the Federal Rules of Civil Procedure (FRCP) also had the requirement that a Rule 50(a) motion for JMOL had to be made at the close of all of the evidence. Namely, the only FRCP 50(a) motion that could be renewed before 2006 is one that was made at the close of all of the evidence, not one made at any other time in the case.

Today, there are numerous states, such as Alabama, Alaska, Arkansas, Oregon, Washington, etc., to name a few, where in their Rules of Civil Procedure, unlike the FRCP, they have retained the requirement that a movant may not make a Renewal of a Motion for JMOL, after the case was submitted to the Jury, if they did not make a renewed motion for JMOL at the close of all of the evidence. None of these states have come to the conclusion that Rule 50(b) in their Rules

of Civil Procedure, which retains the clause "at the close of all of the evidence", is ambiguous.

Moreover, whereas, in the case at bar, the Trial Court did not follow Rule 50(b) of the Nevada Rules of Civil Procedure in its July 28, 2017 Order Granting JMOL, just ten months later, on May 18, 2018, the Chief Judge of the Nevada Court of Appeals, in *O'Neal v. Hudson*, No. 70446, ruled:

"A party can move the court for judgment as a matter of law at the close of evidence or at the close of the case, NRCP 50(a)(2). If the Court denies this motion, the moving party may renew it after an entry of judgment under NRCP 50(b). But "a 'renewed motion' filed under subdivision (b) [for "judgment notwithstanding the verdict,"] must have been preceded by a motion filed at the time permitted by subdivision (a)(2)." *See* NRCP 50 drafter's notes to 2004 amendment; *see also Lehtola v. Brown Nev. Corp*, 82 Nev. 132, 136, 412 P.2d, 975 (1966). ("A NRCP 50(a) motion must be made at the close of all of the evidence if the movant wishes to make a post verdict motion under that rule.").

Moreover, case law and advisory notes concerning FRCP 50(b), NRCP 50(b)'s federal analogue concur. *See* FRCP 50(b) advisory notes to 1963 amendment ("A motion for judgment notwithstanding the verdict will not lie unless it was preceded by a motion for directed verdict made at the close of all the evidence."

On May 18, 2018, the NV Court of Appeals did not find NRCP 50 to be ambiguous, and they also cited the NV case law of *Lehtola v. Brown* which has been the law in Nevada for over 53 years! Likewise, prior to the clause "at the close of all of the evidence" being

dropped in the FRCP, the Federal Courts of Appeal, in case after case, have upheld what was the law!

In sum, because Gilbert presented evidence during her case-in-chief, her Rule 50(a) motion was waived, and she was required-by law-to file a motion for directed verdict at the close of all of the evidence, if she later wanted to file a renewed motion for directed verdict that challenged the sufficiency of the evidence. One Justice of the Nevada Supreme Court dissented on the Court's denial of the LaFrieda's Petition for Rehearing; and, in dissent, he stated that he would have asked the Respondent to provide an answer on the Rule 50(b) issue. This is the same Justice who wisely asked Gilbert's Counsel, at Oral Argument; didn't Mr. Beasley's testimony support the decision of the jury?

II. THE JURY'S VERDICT MUST BE RESTORED AND AFFIRMED BECAUSE IT WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE DISTRICT COURT-ITSELF MADE NUMEROUS CONCESSIONS AS TO THE FACT THAT THERE WAS SUBSTANTIAL EVIDENCE.

"Jury verdicts are due considerable deference, and the verdict must be affirmed if supported by substantial evidence." *William Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 668 F.2d 1014, 1026 (9th Cir.1982). "No court is free to weigh the evidence or reach a result that it finds more reasonable as long as the jury's verdict is supported by substantial evidence." *Marquis v. Chrysler Corp.*, 577 F.2d 624, 631 (9th Cir. 1978).

The Trial Court, throughout the proceedings, made a host of concessions, where it conceded that the jury

is the trier of fact; that there was substantial evidence; and that Gilbert's statements were damaging:

A Order After Oral Arguments. (January 27, 2017) (*See* App.41a)

"The jury will decide the extent to which the letter changed the value of the settlement." (*See* 2AA–0367:16)

By stating the above, the trial court reaffirmed Article 1, Section 3 of the Nevada Constitution which provides the unfettered right to ask a jury to hear evidence and be the trier of fact.

B. February 21, 2017 Ruling Denying Gilbert's Directed Verdict.

"I am not granting a directed verdict on the BCI reduced settlement. I believe that there is evidence that a jury can consider, and that the attorneys may argue." (37AA–4252:1-3).

C. Oral Argument on June 20, 2017.

"There is clearly evidence before the jury about how Miss Gilbert's letter affected the LaFriedas and Mr. Beasley." (*See* 43AA–5577:12-14).

"There is enough evidence there for the jury to conclude that there's mischief that should be remedied." (*See* 43AA–5577:14-16).

"Now, was the letter damaging? Absolutely could have been, because Judge Steinheimer ruled that it was admissible in front of the jury, and as Mr. Beasley said, it affected the expert witness's credibility." (*See* 43AA–5577:25; 43AA–5578:1-3

"So I get that this letter affected the plaintiff, the LaFriedas' approach to the settlement conference. It might have even affected their settlement demanded as an influence, the jury could have reached that conclusion." (*See* 43AA–5578:4-7).

"And I know that I respect the jury process regardless of outcome enough to not disturb it because of whatever I may believe." (*See* 43AA–5578:19-21).

"I don't reweigh the jury, I don't second guess them." (*See* 43AA–5579:8-9)

D. Order Granting Judgment as a Matter of Law. (July 28, 2017) (*See* App.22a)

"Though the applicability, scope, and accuracy of the letter was in controversy, the letter itself would have been admissible in the underlying construction defect trial." (*See* 43AA–5726:26; 5727:1-2)

"Thus, there was evidence for the jury to find the LaFriedas accepted less money than they would have because Ms. Gilbert's letter compromised their potential trial outcome." (*See* 43AA–5735:3-4)

III. NEVADA SUPREME COURT'S REFUSAL TO ACKNOWLEDGE CLEAR AND CONVINCING EVIDENCE THAT THE STATEMENTS THAT GILBERT MADE IN HER FEBRUARY 15, 2011 LETTER WERE FALSE AND MISLEADING.

Both the trial court and the Nevada Supreme Court refused to acknowledge the important material fact in the record as to why the LaFriedas sued attorney Gilbert for legal malpractice. It was not—as the trial court erroneously stated in its July 28, 2017 Order—

because Gilbert disclosed confidential information. It was not as the Nevada Supreme Court erroneously stated in its February 26, 2017 Order of Affirmance—because Gilbert sent a letter or may have erred by publishing a letter.

The LaFriedas sued Gilbert for legal malpractice because of the damaging false statements that she made in her letter—that her retained experts did not find liability with regard to the two design professionals, BEC and BCI, and that they would not give her a certificate of merit.

The LaFriedas' claims against BEC had been dismissed by the related district court's August 8, 2011 Order (Trial Exhibit 146; 9AA–1008-1017), which was affirmed by the Nevada Supreme Court's July 30, 2014 Order of Affirmance (*See* App.51a). The sole reason for BEC's dismissal was because of Gilbert's false statements in her letter, in addition to the false factual admission that she made in the Opposition to BEC's Motion for Summary Judgment. Namely, that January 27 and 28, 2011 was the first time she spoke to Siino as to the potential liability of BEC. This admission was false because Gilbert admitted in a December 30, 2009 Declaration, under penalty of perjury, (Trial Exhibit 152; AA32–3515) that she walked the slabs of the other homes with Siino, and observed the same slab and foundation defects that he came across at the LaFrieda and Taylor homes.

It was Gilbert's false statements that led to that district court's finding that our initial Certificate of Merit was faulty. As a result, we lost all of our claims against BEC, and had to pay BEC over $58,000 in attorney fees and costs. This is one reason why the

trial court should have allowed the jury to hear and determine punitive damages. Gilbert never refuted any of the nefarious acts of fraud (intentional misrepresentations, deception and concealment of material facts), which are enumerated in the LaFriedas' Opening Appeal Brief.

Likewise, the Nevada Supreme Court's statement in its Order of Affirmance that "the record is devoid of any evidence showing that Gilbert acted with malicious intent" is erroneous, which is contradicted by the wrongful acts that are enumerated in the LaFriedas' Opening Appeal Brief (*See* OB, 57/16-60/7).

Gilbert repeatedly falsely stated during her trial testimony that her March 5, 2010 Affidavit of Merit was only for grading, drainage, and erosion and that she did not have a certificate of merit as to the slabs for the other homeowners; but she also tampered with and altered Siino's e-mails that were submitted as exhibits in her Motion for Summary Judgment. Compare Siino's opening paragraph in his March 8th email (App.140a) with a different version of the same email, which she forwarded to her Clients (App.139a). Gilbert later made reference to "This is a tough one"; "I ran numbers" in her trial testimony.

For the record, Gilbert received a Public Reprimand by the Oregon Supreme Court and later by the NV State Bar (No. 40729)—for making false statements in two different cases, obstructing justice.

CONCLUSION

Back in 2014, the NV Supreme Court bent and twisted the law, ruling that our negligent misrepresentation claim against the design professional BEC fell under the purview of NRS Chapter 40; which was an unjust finding, because BEC's negligent misrepresentation was not a construction defect but a tort, which took place 9 months after the home was built, in BECs' 1/19/2007 report, and this tort is administered under the Restatement (Second) of Torts, § 552.

Fast forward to February of 2019; this time around the NV Supreme Court bent and twisted the law and came up with the finding that NRCP 50(b) is ambiguous, and did not follow the NV precedent-setting law of *Lehtola v. Brown Nev. Corp*—which has been NV case law for over 53 years, and which was cited and used by the NV Court of Appeals, only 9 months earlier, in *O'Neal v. Hudson.*, where that court did not find NRCP 50(b) to be ambiguous.

The U.S. Supreme Court is the court of last resort that we can appeal to in order to receive justice from the unfair decisions of the NV Supreme Court, who blatantly disregarded the U.S. Supreme Court's decision on statutory interpretation, *i.e.*:

> "When a statute includes an explicit definition, we must follow that definition."

In sum, there is no excuse for not following the law and the decisions of the U.S. Supreme Court.

We respectfully request the U.S. Supreme Court to issue the writ, reverse, remand, overrule the Order of Affirmance of the NV Supreme Court; reinstate the Jury's verdict, and allow us to try Gilbert on punitive damages for the nefarious acts enumerated in the Petitioner's Opening Appeal Brief to the Nevada Supreme Court.

Respectfully submitted,

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AUGUST 12, 2019