BEFORE THE DEPARTMENT OF BUSINESS & INDUSTRY

LAS VEGAS, NEVADA

IN THE MATTER OF: DIVISION OF MORTGAGE LENDING, Claimant, v. SIERRA MOUNTAIN CAPITAL LLC, d/b/a or a/k/a SIERRA MOUNTAIN MORTGAGE, d/b/a or a/k/a SIERRA MOUNTAIN LLC, Mortgage Broker License Nos. UNL, and DAVID LOHREY, Mortgage Broker / Agent License No. UNL, Respondents.	MLD Case No.: 2018-004 **FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER**

On March 1, 2019, a hearing in the above-captioned matter was held before Gary J. Mathews, Esq., serving in his capacity as Administrative Law Judge in accordance with Chapter 645B of the Nevada Revised Statutes ("NRS"), and Chapter 645B of the Nevada Administrative Code ("NAC"). David Lohrey ("Lohrey"), Mortgage Broker, and registered agent for Sierra Mountain Capital LLC., Sierra Mountain Mortgage, and Sierra Mountain, LLC., was present and represented himself. Harmony Lohrey ("Harmony"), Managing Member; Amanda McIntyre, ("McIntyre") Office Manager; Jeff Brown ("Brown"); and Mike Lucas ("Lucas"), Qualified Employee; were also present as witnesses for Respondents.

Appearing on behalf of the Mortgage Lending Division of the Nevada Department of Business and Industry ("MLD") was Dennis Belcourt, Deputy Attorney General. Diane Martinez ("Martinez") Compliance Investigator was also present as a witness for MLD.

After hearing the allegations and the respective arguments of the parties, and having considered all the evidence introduced and admitted by both parties, the undersigned Administrative Law Judge finds and concludes as follows:

I. PROCEDURAL HISTORY

This matter commenced on April 19, 2018, when the MLD issued an "Order to Cease and Desist, Order Imposing an Administrative Fine and Investigative Costs, and Notice of Opportunity for Administrative Hearing" (the" Complaint") for violations of NRS 645B and NAC 645B activities against Respondents.

On June 11, 2018, Respondents notified MLD that they disagreed with the Complaint and requested a hearing. The hearing took place on March 1, 2019. Through stipulation by both parties, MLD's documentary evidence SMLLC0001 through SMLLC0539, marked as Exhibit 1, was admitted into evidence.

II. FINDINGS OF FACT

There is substantial evidence in the record, which contains the legal evidence presented at the hearing, to establish each of the facts hereinafter set forth in these Findings of Fact:

A. DIANA MARTINEZ

Diana Martinez testified to the following:

1. That she has been employed as a Compliance Audit Investigator for MLD since May of 2007.

2. That the Nevada Labor Commission referred Respondents' case to MLD. [1]

3. That she observed www.sierramountainmortgage.com, a website posted by the Respondents (the "Website") advertising that the Respondents were a mortgage broker named Sierra Mountain Mortgage ("SMM") in Reno, Nevada.

4. That SMM was not licensed with the Nevada Department of Mortgage

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[1] State's Exhibit 1, pages SMLLC0030,0031,0083.

Lending.[2]

5. That the Website advertised two mortgage lending locations: 50 West Liberty Street, Suite 1040, Reno Nevada 89501; and 9090 Double Diamond Parkway, Suite A, Reno, Nevada 89521. The Website also provided a direct phone number, fax number, and a toll-free number for each mortgage lending location.[3]

6. That Lohrey's photograph and biography appeared on the Website representing that he was a managing member of SMM at the West Liberty address. The Website stated in part, "In 2015, Mr. Lohrey founded Sierra Mountain Mortgage, servicing the Reno and Lake Tahoe region with residential Mortgage Programs."[4]

7. That the Nevada Secretary of State's website indicated that Sierra Mountain, LLC was formed on November 19, 2015 and listed David and Harmony Lohrey as the managing members and David Lohrey as the Registered Agent located at 6058 Plumas Street, #B, Reno, Nevada 89519.[5]

8. That the Nevada Secretary of State's website indicated that Sierra Mountain Capital, LLC was formed on May 27, 2016 and listed David and Harmony Lohrey as the managing members and David Lohrey as the Registered Agent located at 50 West Liberty Street, Suite 1040, Reno, Nevada 89501.[6]

9. That the entity SMM is a "Reserved Name" through the Nevada Secretary of State's Office with David Lohrey as the Reservation Holder located at 50 West Liberty Street, Reno, Nevada 89501.

10. That on August 1, 2016, Rodriguez sent a letter to Lohrey stating in part, "The State of Nevada, Division of Mortgage Lending (the "Division") is in receipt of

[2] State's Exhibit 1, page SMLLC0033.
[3] State's Exhibit 1, page SMLLC0035.
[4] State's Exhibit 1, page SMLLC0037.
[5] State's Exhibit 1, page SMLLC0016.
[6] State's Exhibit 1, page SMLLC0014.

information indicating that Sierra Mountain Mortgage LLC (the "Company") may be engaged in activity requiring licensure as a mortgage broker under Chapter 645B of the Nevada Revised Statutes, NRS 645B.010 *et seq.* (the "Act"). Division records do not reflect that the Company is properly licensed under the act."[7]

11. That the August 1, 2016 letter was generated to inquire about the two Reno business locations as stated on the SMM website and as to why the website showed a Nationwide Mortgage Licensing System & Registry ("NMLS") number for a business named Renew Lending.

12. That the businesses named Sierra Mountain Capital LLC, Sierra Mountain Mortgage, or Sierra Mountain LLC., were never a DBA of Renewed Lending.

13. That on August 15, 2016 Lohrey responded to MLD's letter. Lohrey stated that SMM is a DBA of Renew Lending but has not taken any loan applications in Nevada. The office at 50 West Liberty Street was leased in April of 2016 and opened for business in June of 2016. Lohrey further stated that Scott Madens, a loan agent with Renew Lending helped him get the office up and running. Lohrey attached a SMM marketing flyer for Scott Madens. Lohrey further stated that he was getting ready to submit for SMM licensing.[8]

14. That the flyer "<u>Residential Mortgage Checklist</u>" attached to Lohrey's August 15, 2016 letter indicated that Scott Madens, Operations Manager of SMM, was headquartered at 50 West Liberty Street, Suite 1040, Reno, Nevada 89501. That the information provided specified the necessary requirements SMM needed to process a residential loan, including Scott Madens' phone number, email address, and website address for "Sierra Mountain Mortgage," but failed to indicate that SMM was a subsidiary

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[7] State's Exhibit 1, pages SMLLC0080-0081.
[8] State's Exhibit 1, pages SMLLC0277-0280.

of Renew Lending. [9]

15. That in February of 2017, after correspondence between MLD and Lohrey resulted in noncompliance, Rodriguez decided to make a site visit to SMM. Rodriguez met with Lohrey at the 50 West Liberty Street address and observed "Sierra Mountain Mortgage, Suite 1040" on the lobby's directory, and a sign on the front door to Suite 1040 stating, "Sierra Mountain, LLC." Inside 50 West Liberty Street, Rodriguez observed several employees at the office. The office was outfitted with furniture, computers and office equipment.[10]

16. That around the same time Rodriguez visited SMM's Double Diamond location and observed signage in the window displaying," Sierra Mountain Mortgage, Please call our downtown office if this office is closed." [11]

17. That Rodriguez discussed the ongoing violations concerning the two Reno locations with Lohrey. Lohrey stated that no loans were processed, and he would not process any loans until proper licensing was obtained. Rodriguez again told Lohrey that the website and signage must be removed immediately from both locations.

18. That after Lohrey continued to fail to comply with demands to obtain licensing, Rodriguez issued a letter on May 23, 2017 stating:

> This correspondence is concerning the investigation that the Division of Mortgage Lending ("Division") is currently conducting of Sierra Mountain Mortgage LLC, Sierra Mountain Capital LLC and Sierra Mountain LLC. The Division has reviewed your response dated May 19, 2017 and has determined that the response is inadequate and unacceptable. Currently your information will be submitted to management for further review and possible enforcement action.[12]

19. That Lohrey responded that it was Renew Lending's obligation to file a

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[9] State's Exhibit 1, page SMLLC0280.
[10] State's Exhibit 1, pages SMLLC0055-0059.
[11] State's Exhibit 1, page SMLLC0055.
[12] State's Exhibit 1, page SMLLC0068.

DBA and other necessary paperwork in Nevada to make SMM a legal entity. Lohrey continually expressed that he thought the licensing had been taken care of since he signed a marketing agreement with Renew Lending. However, Lohrey has never produced an executed marketing agreement between Renew Lending and Respondents.

B. DAVID LOHREY

David Lohrey testified to the following:

20. That a relationship was created in California with Renew Lending around February of 2016, with the idea of Lohrey expanding to the Reno area in April of 2016.

21. That Lohrey entered into an agreement with Renew Lending around March 2016 that lead to the lease of two locations in the Reno area. Both locations became operational by July of 2016.

22. That Renew Lending was responsible for filing all the necessary paperwork for Lohrey to operate as a branch office of Renew Lending in Reno.

23. That in September of 2016 Lohrey discovered that Renew Lending did not follow through with any of the licensing requirements for SMM.

24. That Lohrey should not be held responsible for Renew Lending's failure to obtain licensing for SMM.

25. That the only license obtained by Lohrey was a Washoe County Business License.

26. That all websites and business cards for SMM reflected the 50 West Liberty Street address.

27. That SMM was for residential lending and Sierra Mountain Capital LLC was for commercial lending.

28. That after Lohrey signed the agreement, Renew Lending was very

uncooperative, and Respondents had extreme difficulties processing loans through Renew Lending.[13]

29. That Lohrey received a letter from MLD in August of 2016 stating that Renew Lending's license was on hold and Sierra Mountain Mortgage was no longer able to use Renew Lending.

30. That on September 12, 2016, Lohrey sent an email to McIntyre stating:

> The main component in our growth has been the issue with Renew Lending while everyone remembers that we would operate as branch offices of Renew they have been very slow and uncooperative in the terms of getting things up to speed in a fashion that would have helped accelerate our growth. In fact, I've just recently found that they have some licensing issues of their own in Nevada and those such as creating an obstacle for us moving forward. As our plan we have now submitted our application to the mortgage lending Department in Nevada and should have a response and hopefully approval within the next 6 to 8 weeks. I have engaged a very well-known Real Estate Attorney Law Firm here in reno [sic] Holland and Hart which has been processing and putting together our application for the Nevada state application.[14]

31. That for eight months in 2016, Lohrey was under the impression that Sierra Mountain Mortgage was legally licensed and capable of processing loans.

32. That Lohrey never received, posted or displayed any type of MLD licensing for either Reno office location.

33. That all contractual documents with Renew Lending were signed electronically and were kept in a fire proof safe at the Liberty address. In 2018 Lohrey moved out of the Liberty office and deliberately left the safe there. As a result, Lohrey claims he has no way to produce evidence or executed documents.

C. AMANDA MCINTYRE

Amanda McIntyre testified to the following:

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[13] State's Exhibit 1, page SMLLC0325 paragraph 4.
[14] State's Exhibit 1, page SMLLC0410 line 24.

34. That she was an Office Manager for SMM.

35. That she never saw any MLD Licensing for either Reno location.

36. That the Reno Offices were opened in June of 2016 and closed in December of 2017.

D. HARMONY LOHREY

Harmony Lohrey testified to the following:

37. That she was part owner and manager of SMM.

38. That plans were made to open the Reno offices right after SMM signed the agreement with Renew Lending around March of 2016.

39. Harmony stated:

> We wanted to be a preferred lender for a large real estate company in Reno, so we immediately rented two locations in Reno and set them up with furniture, conference rooms, computer equipment, security systems and IT systems so we could be ready to take on business. We realized it would be a long time for us to get our own licensing, so we decided to be a branch office of Renew Lending. No one ever mentioned Sierra Mountain Mortgage had anything wrong with its licensing.

40. That she never saw a DBA for either Reno location, but did see one for the Truckee location.

E. MICHAEL LUCAS

Michael Lucas testified to the following:

41. That in August of 2016 he was hired by Lohrey to work at SMM's 50 West Liberty office for $5,000.00 a month as a "qualified employee."[15] His sole purpose was to originate loans in Nevada.

42. That from the time he was hired, SMM was capable of processing loans

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[15] NAC 645B.008 defines a "Qualified employee" as "a natural person who is designated by a mortgage broker to act on behalf of the mortgage broker and who is approved by the Commissioner pursuant to NAC 645B.055."

through Renew Lending. As the qualified employee it was his responsibility to see that SMM was compliant with all laws and regulations. When hired, he was not aware of any licensing problems with Renew Lending.

43. That he procured four loan applications while working at SMM and had difficulties processing them through Renew Lending. He stated at the hearing, "Once we found out Renew Lending was not licensed in Nevada we had to stop trying to process loans."

44. That Lucas was not licensed through NMLD, MLD or sponsored by SMM or Renew Lending.

45. That it appeared to Lucas that SMM was a fully functional mortgage brokerage company. Once he found out that SMM could not process loans through Renew Lending he tried reaching out to other lenders.

46. Any finding of fact more appropriately considered a conclusion of law, and vice versa, shall be so deemed.

III. CONCLUSIONS OF LAW

1. Lohrey contends that in February of 2016 he signed an agreement with Renew Lending to act as SMM, a branch office of Renew Lending in Reno.[16] He further contends that according to the agreement, Renew Lending had full and total control over the obligation to acquire SMM licensing with NMLA, MLD and the State of Nevada. Lohrey set up two SMM Reno locations assuming that all licensing was obtained.

2. Lohrey argues that Renew Lending acted in bad faith by not acquiring the proper licensing, and that Respondents had no intentions of operating illegally.

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[16] State's Exhibit 1, pages SMLLC0394-0409.

3. MLD contends that by opening and operating offices in Reno, Lohrey violated the provisions of Chapter 645B of the Nevada Revised Statutes. Specifically, NRS 645B.900 states:

> NRS 645B.900 Unlawful to conduct business of mortgage broker or mortgage agent without being licensed or exempt from licensing. It is unlawful for any person to offer or provide any of the services of a mortgage broker or mortgage agent or otherwise to engage in, carry on or hold himself or herself out as engaging in or carrying on the business of a mortgage broker or mortgage agent without first obtaining the applicable license issued pursuant to this chapter, unless the person:
>
> 1. Is exempt from the provisions of this chapter; and
>
> 2. Complies with the requirements for that exemption.

4. NRS 645B.0127 "Mortgage broker" defined.

1. "Mortgage broker" means a person who directly or indirectly:

(a) Holds himself or herself out for hire to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien on real property;
(b) Holds himself or herself out for hire to serve as an agent for any person who has money to lend, if the loan is or will be secured by a lien on real property;
(c) Holds himself or herself out as being to make loans secured by liens on real property;
(d) Holds himself or herself out as being able to buy or sell notes secured by liens on real property; or
(e) Offers for sale in this State any security which is exempt from registration under state or federal law and purports to make investments in promissory notes secured by liens on real property.

5. NRS 645B.690 Duty of Commissioner to take disciplinary action for certain violations.
1. If a person offers or provides any of the services of a mortgage broker or mortgage agent or otherwise engages in, carries on or holds himself or herself out as engaging in or carrying on the business of a mortgage broker or mortgage agent and, at the time:
(a) The person was required to have a license pursuant to this chapter and the person did not have such a license;
(b) The person was required to be registered with the Registry and the person was not so registered; or

(c) The person's license was suspended or revoked pursuant to this chapter,

the Commissioner shall impose upon the person an administrative fine of not more than $50,000 for each violation and, if the person has a license, the Commissioner may suspend or revoke it.

2. If a mortgage broker violates any provision of subsection 1 of NRS 645B.080 and the mortgage broker fails, without reasonable cause, to remedy the violation within 20 business days after being ordered by the Commissioner to do so or within such later time as prescribed by the Commissioner, or if the Commissioner orders a mortgage broker to provide information, make a report or permit an examination of his or her books or affairs pursuant to this chapter and the mortgage broker fails, without reasonable cause, to comply with the order within 20 business days or within such later time as prescribed by the Commissioner, the Commissioner shall:

(a) Impose upon the mortgage broker an administrative fine of not more than $25,000 for each violation;

(b) Suspend or revoke the license of the mortgage broker; and

(c) Conduct a hearing to determine whether the mortgage broker is conducting business in an unsafe and injurious manner that may result in danger to the public and whether it is necessary for the Commissioner to take possession of the property of the mortgage broker pursuant to NRS 645B.630.

3. If a mortgage broker:

(a) Makes or offers for sale in this State any investments in promissory notes secured by liens on real property; and

(b) Receives the lowest possible rating on two consecutive periodic standard examinations pursuant to NRS 645B.060,

the Commissioner shall suspend or revoke the license of the mortgage broker.

6. The law in Nevada explicitly states that no person either directly or indirectly can hold themselves out for hire to serve as an agent in attempts to obtain a loan on real property. That means under **no circumstances** can anyone act as a mortgage broker without first being properly licensed.

7. Around March of 2016, Lohrey allegedly signed an agreement with Renew Lending to operate as a DBA in Nevada. Additional steps were needed in order to properly operate as a licensed mortgage broker in Nevada. Knowing he was not licensed, Lohrey proceeded to open two separate locations in Reno. Both Reno

locations displayed signs stating "Sierra Mountain Mortgage" both on the office door and the building's directory.[17]

8. Lohrey immediately proceeded to outfit both locations with employees, office furniture, computers, stationary, and business cards. Both locations were easily accessible to the public.

9. While working at the West Liberty address, Lucas attempted to process four separate loans. His affidavit dated December 17, 2018 specifically stated, "In the meantime, I lost 4 loans I was working on to submit to them."[18] Additionally," When I started I was told that the company was sending their loans to Renew Lending since Sierra Mountain Mortgage was not set up yet as a lender in the State of Nevada."[19]

10. Two of Lucas's loans came by way of walk-ins at the West Liberty address. Lucas was under the assumption that Sierra Mountain Mortgage was a legally licensed DBA of Renew Lending and Lohrey allowed him to operate that way.

11. During the investigation MLD uncovered a detailed website www.sierramountainmortage.com that was active on the internet. The website specifically stated, "'WELCOME to SIERRA MOUNTAIN MORTGAGE!' The Sierra Mountain Mortgage Team is your premier mortgage team located in Reno, Nevada. We pride ourselves on offering some of the lowest rates nationwide and make the loan process simple, straightforward and fast for borrowers seeking a mortgage in the Reno area." [20]

12. Lohrey testified that he worked very hard to develop the content of the website.

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[17] State's Exhibit 1, pages SMLLC0055-0059
[18] State's Exhibit 1, page SMLLC0435 paragraph 3 line 10.
[19] State's Exhibit 1, page SMLLC0435 paragraph 3 line 2.
[20] State's Exhibit 1, page SMLLC0033.

13. The website had contact information of, "Sierra Mountain Mortgage," 50 West Liberty Street, Reno, Nevada 89501; Phone: (775) 210-0477; Email: Info@sierramountainmortgage.com. The website also displayed Lohrey's biography as managing member of "Sierra Mountain Mortgage."[21]

14. Martinez sent numerous letters to Lohrey advising him that all advertisements and websites needed to be removed. After Lohrey notified her that all content was removed, she discovered Lohrey had another website address of www.sierramountaincapital.biz. The website specifically referenced Sierra Mountain Capital, LLC as a source for commercial loans at the 50 West Liberty address.[22]

15. Lohrey argued that SMM was fully licensed because it was Renew Lending's responsibility to make SMM compliant. To the contrary, Lohrey's email dated August 2, 2018, specifically stated, "In the mortgage business you are not allowed to do any residential loans or being that business unless you are fully licensed as residential agents and to attend a n n [sic] MLS number that is registered."[23]

16. Lohrey represented that he is an experienced and well-versed businessman with a wide variety of worldly experience. A person with such experience should have known that proper licensing was required to operate as a Nevada mortgage broker.

17. It appeared to the general public that SMM was operating as a fully licensed mortgage broker. Nevada mortgage lending laws were created and exist to protect the public. That Lohrey may not have *intended* to commit a violation of Nevada law is not relevant to the statutory duty of a Nevada mortgage broker to secure the necessary licensing as mandated by Nevada law.

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[21] State's Exhibit 1, pages SMLLC0033-0038.
[22] State's Exhibit 1, pages SMLLC0039-0050.
[23] State's Exhibit 1, page SMLLC0122 line 20.

18. Lohrey hired Lucas knowing that licensing was already a problem with Renew Lending. Lucas operated out of the West Liberty address soliciting loans from walk-ins and telephone calls. Lucas attempted to process loans by representing SMM as a fully functional and licensed mortgage broker. Lucas testified that when he found out his loans could not be processed by Renew Lending he then tried to negotiate the loans with other lenders.

19. During the hearing Lohrey repeatedly stated that Renew Lending gave him authorization to open SMM. Once SMM was open, he attempted to process loans. Lohrey presented no credible evidence of an executed agreement with Renew Lending for either Reno location. Nor did he present evidence that Renew Lending was planning to provide licensing for SMM. Additionally, Lohrey solicited large real estate firms such as Dickson Reality in attempts of becoming their exclusive lender.

20. Lohrey testified that he consulted with the law firm of Holland and Hart concerning his involvement with SMM and they advised him that he was fully compliant with Nevada law. Lohrey provided no credible evidence that Holland and Hart ever improperly advised him.

21. The purpose of the hearing in this matter was not to establish or substantiate whether Lohrey has legal recourse against Renew Lending, or any other entity, or to prove that Lohrey was maltreated by Renew Lending or any other entity. Instead, the purpose of this hearing was to determine whether Lohrey violated the law by acting as a mortgage broker without proper Nevada licensing.

22. No evidence was presented to show that Renew Lending or Lohrey ever filed an application with MLD to start the licensing process.

23. Martinez contacted Lohrey numerous times over the course of her investigation and found that he was uncooperative. Lohrey failed to provide any credible evidence to justify his unlawful actions.

24. In conclusion, Lohrey opened two SMM locations in Reno without a license. He procured and hosted an elaborate website indicating SMM was a fully operational mortgage broker. He displayed signage with the name of the business as "Sierra Mountain Mortgage." He also allowed potential customers to walk in the West Liberty address and begin the loan process.

25. Clearly the evidence in this case establishes that Respondents unlawfully offered, provided and engaged in the services of a mortgage broker without proper Nevada licensure. By providing those services without first obtaining the applicable license under the Statute, and not being exempt from the licensure requirements, Respondents are in violation the of Chapter 645B of the Nevada Revised Statutes.

26. Therefore, pursuant to NRS 645B.690, Respondents shall pay an administrative fine of $25,000.00 for its violation of NRS 645B.900. Respondents shall pay this amount in full within 90 days from the date of this order.

ORDER

IT IS THEREFORE ORDERED, based upon the foregoing Findings of Fact and Conclusions of Law:

Pursuant to NRS 645B.900, Respondents shall cease and desist from engaging in any practice or activity that constitutes any violation of NRS Chapter 645B and NAC Chapter 645B.

Pursuant to NRS 645B.690, Respondents shall pay an administrative fine of $25,000.00 for its violation of NRS 645B.900. Respondents shall pay this amount in full within 90 days from the date of this order.

Pursuant to NRS 622.400, Respondents shall pay $4,740.00 within 60 days from the date of this Order for MLD's investigative costs, and attorney fees of the Commissioner. [24]

Pursuant to NRS 622.400, Respondents shall pay $2,000.00 within 30 days from the date of this Order for the costs of this proceeding, and attorney fees of the Commissioner.

Dated this 17th day of April 2019.

Gary J. Mathews, Esq.
Administrative Law Judge
State of Nevada

[24] State's Exhibit 1, pages SMLLC0001-00012.

CERTIFICATE OF MAILING

I, Gary J. Mathews, Esq. do hereby certify that I deposited in the U.S. mail, postage prepaid, via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing **FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER** to the following:

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Dated this 17th day of April 2019.

Gary J. Mathews, Esq.
Administrative Law Judge
State of Nevada