Electronically Filed
06/03/2011 01:03:13 PM

CLERK OF THE COURT

Electronically Filed
Jun 08 2011 10:24 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

NAPP
CAL J. POTTER, III, ESQ.
Nevada Bar No.1988
JOHN C. FUNK, ESQ.
Nevada Bar No. 9255
POTTER LAW OFFICES
1125 Shadow Lane
Las Vegas, NV 89102
Ph: (702) 385-1954
Fax: (702) 385-9081
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

• • • • •

LARRY D. CASAUS,

Plaintiff,

vs.

STATE OF NEVADA; NEVADA DEPARTMENT OF CORRECTIONS (NDOC) formerly known as NEVADA DEPARTMENT OF PRISONS (NDOP); HOWARD SKOLNIK Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; ISIDRO BACA, Associate Warden for Operations of High Desert State Prison; and JOHN DOE CORRECTIONAL OFFICERS I-V,

Defendants.

CASE NO.: A-10-623251-C

DEPT. NO.: XXXI

NOTICE OF APPEAL

TO Defendants, named above; and

TO: DENISE BALBONI, DEPUTY A.G., their attorney.

NOTICE IS HEREBY GIVEN that Plaintiff, LARRY D. CASAUS, hereby appeals to the Supreme Court of Nevada from the Order / Findings of Fact Conclusions of Law Granting Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, rendered in favor of

///

Defendants on May 6, 2011 and received by this law office by way of the Notice of Entry of Order dated May 26, 2011, a copy of which is attached hereto.

DATED this 31 day of June, 2011.

POTTER LAW OFFICES

By _____
CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
JOHN C. FUNK, ESQ.
Nevada Bar No. 9255
1125 Shadow Lane
Las Vegas, Nevada 89102
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to the Amended EDCR 7.26 and to NRCP5(b) on the 31st of June, 2011, I did serve at Las Vegas, Nevada a true and correct copy of **NOTICE OF APPEAL** on all parties to this action by:

☐ Facsimile

☒ U.S. Mail

☐ Hand Delivery

Addressed as follows:

Denise Balboni, Esq.
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Ph: (702) 486-3109
Fax: (702) 486-3773
Attorneys for Defendants

_____
An Employee of Potter Law Offices

CATHERINE CORTEZ MASTO
Attorney General
Nevada State Bar No. 3926
DENISE S. BALBONI
Deputy Attorney General
Nevada State Bar No. 10507
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3267
Facsimile: (702) 486-3773
dbalboni@ag.nv.gov
Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

LARRY D. CASAUS, Plaintiff, vs. STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS; HOWARD SKOLNIK, Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; ISIDRO BACA, Associate Warden for Operations of High Desert State Prison; and JOHN DOE CORRECTIONAL OFFICERS I-V. Defendants.	) CASE NO.: A-10-623251-C) DEPT. NO.: XXXI

NOTICE OF ENTRY OF ORDER

TO: LARRY D. CASAUS, *PLAINTIFF;* AND

TO: JOHN C. FUNK, *ATTORNEY FOR PLAINTIFF.*

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101
MAY 31 2011

YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that the Order, attached hereto as **Exhibit "A,"** was entered by the Court, on the 26th day of May, 2011, in the above-entitled action.

DATED this 26th day of May, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ Denise S. Balboni
DENISE S. BALBONI
Deputy Attorney General
Nevada State Bar No. 10507
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3267
Attorneys for Defendant

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27TH day of May, 2011, the foregoing, **Notice of Entry of Order**, was served by placing a true and correct copy in a sealed envelope, First-Class Mail postage fully prepaid, in the U.S. Mail, at Las Vegas, Nevada, and addressed to the following:

Cal J. Potter III, Esq.
John Funk, Esq.
POTTER LAW OFFICES
1125 Shadow Lane.
Las Vegas, NV 89102
Attorney for Plaintiff

/s/ Kimie S. Beverly
An employee of:
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

EXHIBIT A

EXHIBIT A

ORIGINAL

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CLERK OF THE COURT

CATHERINE CORTEZ MASTO
Attorney General
Nevada State Bar No. 3926
Denise S. Balboni
Deputy Attorney General
Nevada State Bar No. 10507
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3267
Facsimile: (702) 486-3773
dbalboni@ag.nv.gov
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

LARRY D. CASAUS, Plaintiff, vs. STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS; HOWARD SKOLNIK, Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; ISIDRO BACA, Associate Warden for Operations of High Desert State Prison; and JOHN DOE CORRECTIONAL OFFICERS I-V. Defendants.	) CASE NO.: A-10-623251-C) DEPT. NO.: XXXI))))) **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**))) DATE OF HEARING: May 6, 2011) TIME OF HEARING: 9:30 a.m.)))))))

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

FINAL DISPOSITIONS
☐ Time Limit Expired
☐ Dismissed (with or without prejudice)
☐ Judgment Satisfied/Paid in Full
☐ Bum Judgmt
☐ Non-Jury Trial
☐ Jury Trial
☐ Stip Dis
☐ Stip Judgmt
☐ Default Judgmt
☐ Transferred
☐ Voluntary Dis
☐ Involuntary (stat) Dis
☐ Judgmt on Arb Award
☐ Mtn to Dis (by deft)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Defendants The STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS; HOWARD SKOLNIK, Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; ISIDRO BACA, Associate Warden for Operations of High

05-17-11A09:38 RCVD

Desert State Prison, by and through their counsel, CATHERINE CORTEZ MASTO, Attorney General, and DENISE S. BALBONI, Deputy Attorney General, of the STATE OF NEVADA, OFFICE OF THE ATTORNEY GENERAL, and Plaintiff LARRY D. CASAUS, by and through his counsel CAL POTTER, III, of POTTER LAW OFFICES, having appeared; this Court having reviewed the pleadings and papers on file in the above-entitled action; and good cause appearing therefor:

I. **Findings of Fact.**

The following are undisputed material facts:

1. On August 19, 2008, CASAUS was an inmate in the custody of the Nevada Department of Corrections (NDOC) housed at Southern Desert Correctional Center (SDCC).

2. On August 19, 2008, CASAUS was stabbed by an unidentified inmate and placed on a MedEvac flight to University Medical Center in Las Vegas, Nevada.

3. On July 16, 2009, CASAUS filed his first grievance concerning the stabbing. This grievance was assigned Log Number 2006-28-78081.

4. CASAUS did not file an administrative claim form alleging injuries as a result of the August 19, 2008, stabbing.

5. On October 19, 2010, CASAUS was released from SDCC on parole.

6. On August 17, 2010, CASAUS commenced the instant litigation.

II. **Conclusions of Law.**

The following legal determinations have been made by this Court:

1. Pursuant to NRS 41.031(1), the sovereign immunity of the State of Nevada and all state subdivisions is waived if the claimant complies with the limitations of NRS 41.032 to 41.036.

2. Pursuant to NRS 41.0322(1), a person who is or was in the custody of the NDOC may not proceed with any action against the NDOC or any of its agents, former officers, employees, or contractors to recover compensation for personal injuries or any other claim arising out of a tort pursuant to NRS 41.031 unless the person has exhausted the person's administrative remedies provided by NRS 209.243 and the regulations adopted pursuant thereto.

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

3. Pursuant to NRS 209.243, a prisoner or former prisoner who seeks to recover compensation for personal injuries arising out of a tort alleged to have occurred during his or her incarceration as a result of an act or omission of the NDOC or any of its agents, former, employees, or contractors must file an administrative claim with the NDOC within six months after the date of the alleged injury.

4. Pursuant to NRS 41.0322(3), the court shall dismiss any action filed by a person who has failed to file an administrative claim pursuant to NRS 209.243.

5. Pursuant to NDOC Administrative Regulation (AR) 740, adopted pursuant to the authority granted by NRS 209.243(3), inmates in the custody of the NDOC are required to file an informal grievance for issues involving personal injury within six months of the date of the incident.

6. CASAUS failed to file an administrative claim with the NDOC within six months of the August 19, 2008, stabbing incident, in violation of NRS 209.243.

7. CASAUS failed to file an informal grievance concerning the August 19, 2008, stabbing incident within six months of the incident, in violation of AR 740. CASAUS's informal grievance was instead filed July 16, 2009, eleven months after the incident.

8. CASAUS did not exhaust his administrative remedies as required by NRS 209.243.

9. These conclusions of law are in accordance with the unpublished decisions of the Nevada Supreme Court in *Morrow v. Skolnik*, 2011 WL 489742 (Nev. Feb 10, 2011), and *Lopez v. Nevada Dep't of Corrections*, 2011 WL 378902 (Nev. Feb 3, 2011).

10. Based on CASAUS's failure to follow the mandatory procedures outlined in NRS 41.0322, NRS 209.243, and AR 740, this action must be dismissed.

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. . .

. . .

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

III. Order.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss is granted and the above-entitled action is therefore dismissed with prejudice. The above-entitled action has been disposed of in its entirety by this Findings of Fact, Conclusions of Law, and Order.

DATED this 23 day of May, 2011.

DISTRICT COURT JUDGE

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
DENISE S. BALBONI, ESQ.
Nevada Bar No. 10507
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Defendants

Approved as to Form and Content By:

POTTER LAW OFFICES

By: _____
CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
JOHN C. FUNK, ESQ.
Nevada Bar No. 9255
1125 Shadow Lane
Las Vegas, NV 89102
Attorneys for Plaintiff

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

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06/03/2011 01:03:42 PM

CLERK OF THE COURT

CAS
CAL J. POTTER, III, ESQ.
Nevada Bar No.1988
JOHN C. FUNK, ESQ.
Nevada Bar No. 9255
POTTER LAW OFFICES
1125 Shadow Lane
Las Vegas, NV 89102
Ph: (702) 385-1954
Fax: (702) 385-9081
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

• • • • •

LARRY D. CASAUS, Plaintiff, vs. STATE OF NEVADA; NEVADA DEPARTMENT OF CORRECTIONS (NDOC) formerly known as NEVADA DEPARTMENT OF PRISONS (NDOP); HOWARD SKOLNIK Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; ISIDRO BACA, Associate Warden for Operations of High Desert State Prison; and JOHN DOE CORRECTIONAL OFFICERS I-V, Defendants.	CASE NO.: A-10-623251-C DEPT. NO.: XXXI

CASE APPEAL STATEMENT

TO Defendants, named above; and

TO: DENISE BALBONI, DEPUTY A.G., their attorney.

1. Appellant is LARRY D. CASAUS;

2. This is an appeal from the Order / Findings of Fact Conclusions of Law Granting Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, rendered in favor of

///

Defendants on May 6, 2011 and received by this law office by way of the Notice of Entry of Order dated May 26, 2011;

3. The parties involved in the District Court proceedings are: Plaintiff, LARRY D. CASAUS; and Defendants, STATE OF NEVADA; NEVADA DEPARTMENT OF CORRECTIONS (NDOC); HOWARD SKOLNIK Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; and ISIDRO BACA, Associate Warden for Operations of High Desert State Prison.

4. The parties involved in the Appellate proceedings are: Appellant, LARRY D. CASAUS; and Respondents, STATE OF NEVADA; NEVADA DEPARTMENT OF CORRECTIONS (NDOC); HOWARD SKOLNIK Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; and ISIDRO BACA, Associate Warden for Operations of High Desert State Prison.

5. Counsel representing the parties are as follows:

Cal J. Potter, III, Esq.
John C. Funk, Esq.
Potter Law Offices
1125 Shadow Lane
Las Vegas, Nevada 89102
Telephone: (702) 385-1954
Facsimile: (702) 385-9081
Attorneys for Appellant

Denise Balboni, Esq.
Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Ph: (702) 486-3109
Fax: (702) 486-3773
Attorneys for Respondents

///

///

///

///

///

6. Appellant was represented by retained counsel in the District Court.

7. Appellant is represented by retained counsel in the appellate court.

8. Appellant has not been granted leave to proceed in forma pauperis.

DATED this 3 day of June, 2011.

POTTER LAW OFFICES

By _____
CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
JOHN C. FUNK, ESQ.
Nevada Bar No. 9255
1125 Shadow Lane
Las Vegas, Nevada 89102
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to the Amended EDCR 7.26 and to NRCP5(b) on the 3rd of June, 2011, I did serve at Las Vegas, Nevada a true and correct copy of **CASE APPEAL STATEMENT** on all parties to this action by:

☐ Facsimile

☒ U.S. Mail

☐ Hand Delivery

Addressed as follows:

Denise Balboni, Esq.
Timothy F. Andrews, Esq.
Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Ph: (702) 486-3109
Fax: (702) 486-3773
Attorneys for Defendants

_____
An Employee of Potter Law Offices

DEPARTMENT 31

CASE SUMMARY

CASE NO. A-10-623251-C

Larry Casaus, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna**
Howard Skolnick, Defendant(s)	§	Filed on:	**08/17/2010**
	§	Case Number History:	
	§	Conversion Case Number:	**A623251**

CASE INFORMATION

Statistical Closures
05/26/2011 Motion to Dismiss (By Defendant)

Case Type: **Other Civil Filing**
Sub Type: **Other Civil Matters**

Case Flags: **Appealed to Supreme Court**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-10-623251-C
Court	Department 31
Date Assigned	01/01/2011
Judicial Officer	Kishner, Joanna

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Casaus, Larry D**	**Potter, Cal Johnson** *Retained* 7023851954(W)
Defendant	**Baca, Isidro**	**Andrews, Timothy F.** *Retained* 702-486-3420(W)
	Howell, Jerry	**Andrews, Timothy F.** *Retained* 702-486-3420(W)
	Nevada Department of Corrections (NDOC)	**Andrews, Timothy F.** *Retained* 702-486-3420(W)
	Nevada State of Removed: 11/02/2010 Change of Status	
	Skolnick, Howard	**Andrews, Timothy F.** *Retained* 702-486-3420(W)
	Williams, Brian	**Andrews, Timothy F.** *Retained* 702-486-3420(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

08/17/2010	Complaint Filed By: Plaintiff Casaus, Larry D *Complaint*	
08/17/2010	Case Opened	
08/18/2010	Initial Appearance Fee Disclosure Filed By: Plaintiff Casaus, Larry D	

	Initial Appearance Fee Disclosure (NRS Chapter 19)
11/02/2010	First Amended Complaint Filed By: Plaintiff Casaus, Larry D
12/06/2010	Summons Filed by: Plaintiff Casaus, Larry D Party served: Defendant Nevada Department of Corrections (NDOC) *Summons for State of Nevada*
12/06/2010	Summons Filed by: Plaintiff Casaus, Larry D Party served: Defendant Nevada Department of Corrections (NDOC) *Summons for Nevada Department of Corrections (NDOC) formerly known as Nevada Department of Prisons (NDOP)*
12/06/2010	Summons Filed by: Plaintiff Casaus, Larry D Party served: Defendant Skolnick, Howard *Summons for Howard Skolnik, Director of Nevada Department of Corrections*
12/06/2010	Summons Filed by: Plaintiff Casaus, Larry D Party served: Defendant Williams, Brian *Summons for Brian Williams, Senior Warden of Southern Desert Correctional Center*
12/06/2010	Summons Filed by: Plaintiff Casaus, Larry D Party served: Defendant Howell, Jerry *Summons for Jerry Howell, Associate Warden of Operation of Southern Desert Correctional Center*
12/06/2010	Summons Filed by: Plaintiff Casaus, Larry D Party served: Defendant Baca, Isidro *Summons for Isidro Baca, Associate Warden for Operations of High Desert State Prison*
01/01/2011	Case Reassigned to Department 31 *Case reassigned from Judge Walsh, Jessie*
01/12/2011	Motion to Dismiss Filed By: Defendant Nevada State of *Defendants' Motion to Dismiss*
01/24/2011	Certificate of Service Filed by: Defendant Nevada State of; Defendant Skolnick, Howard; Defendant Williams, Brian; Defendant Howell, Jerry; Defendant Nevada Department of Corrections (NDOC); Defendant Baca, Isidro
02/10/2011	Stipulation and Order Filed by: Plaintiff Casaus, Larry D *Stipulation and Order to Extend Time to Respond to Defendants' Motion to Dismiss and to Continue Hearing Date*
02/11/2011	Opposition to Motion to Dismiss Filed By: Plaintiff Casaus, Larry D

Plaintiff's Opposition to Defendants' Motion to Dismiss

02/18/2011 Reply to Motion
Filed By: Defendant Nevada Department of Corrections (NDOC)
Defendants' Reply to Plaintiff's Opposition to Motion to Dismiss

02/22/2011 Notice of Entry of Stipulation and Order
Filed By: Plaintiff Casaus, Larry D
Notice of Entry of Stipulation and Order to Extend Time to Respond to Defendant s Motion to Dismiss and Continue Hearing Date

02/28/2011 Notice of Change of Hearing

03/07/2011 **Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Events: 01/12/2011 Motion to Dismiss
Defendants' Motion to Dismiss

03/16/2011 Amended Complaint
Filed By: Plaintiff Casaus, Larry D
Second Amended Complaint

03/18/2011 Order Granting Motion
Filed By: Defendant Nevada State of
Order Granting Defendants' Motion to Dismiss with Leave for Plaintiff to Amend Complaint

03/18/2011 **Order of Dismissal** (Judicial Officer: Kishner, Joanna)
Debtors: Larry D Casaus (Plaintiff)
Creditors: Howard Skolnick (Defendant), Brian Williams (Defendant), Jerry Howell (Defendant), Nevada Department of Corrections (NDOC) (Defendant), Isidro Baca (Defendant)
Judgment: 03/18/2011, Docketed: 03/25/2011

03/23/2011 Notice of Entry
Filed By: Defendant Nevada State of
Notice of Entry of Order

03/29/2011 Motion to Dismiss
Filed By: Defendant Nevada State of
Defendants' Motion to Dismiss Second Amended Complaint

04/08/2011 Opposition to Motion to Dismiss
Filed By: Plaintiff Casaus, Larry D
Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint

04/15/2011 Reply to Motion
Filed By: Defendant Nevada Department of Corrections (NDOC)
Defendants' Reply to Motion to Dismiss Second Amended Complaint

05/06/2011 **Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna)
Events: 03/29/2011 Motion to Dismiss
Defendants' Motion to Dismiss Second Amended Complaint

05/13/2011 Notice
Filed By: Defendant Nevada Department of Corrections (NDOC)
Defendants' Notice of Change of Lead Counsel of Record

CASE SUMMARY

CASE NO. A-10-623251-C

05/26/2011	Notice of Entry of Order Filed By: Defendant Nevada State of *Notice of Entry of Order*
05/26/2011	Findings of Fact, Conclusions of Law and Order Filed By: Defendant Nevada State of *Findings of Facts and Conclusions of Law and Order*
06/03/2011	Case Appeal Statement Filed By: Plaintiff Casaus, Larry D *Case Appeal Statement*
06/03/2011	Notice of Appeal Filed By: Plaintiff Casaus, Larry D *Notice of Appeal*

DATE	FINANCIAL INFORMATION	
	Plaintiff Casaus, Larry D	
	Total Charges	294.00
	Total Payments and Credits	294.00
	Balance Due as of 6/7/2011	**0.00**

A-10-623251-C

X

CIVIL COVER SHEET

___ County, Nevada

Case No. ___

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
LARRY D. CASAUS,	**STATE OF NEVADA, et al.**
Attorney (name/address/phone):	Attorney (name/address/phone):
Cal J. Potter, III, Esq. of POTTER LAW OFFICES	
1125 Shadow Lane, Las Vegas, NV 89102 (702) 385-1954	

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

☐ **Landlord/Tenant**
- ☐ Unlawful Detainer

☐ **Title to Property**
- ☐ Foreclosure
- ☐ Liens
- ☐ Quiet Title
- ☐ Specific Performance

☐ **Condemnation/Eminent Domain**

☐ **Other Real Property**
- ☐ Partition
- ☐ Planning/Zoning

Torts

Negligence

☐ **Negligence – Auto**

☐ **Negligence – Medical/Dental**

☐ **Negligence – Premises Liability** (Slip/Fall)

☐ **Negligence – Other**

☐ **Product Liability**
- ☐ Product Liability/Motor Vehicle
- ☐ Other Torts/Product Liability

☐ **Intentional Misconduct**
- ☐ Torts/Defamation (Libel/Slander)
- ☐ Interfere with Contract Rights

☐ **Employment Torts** (Wrongful termination)

☐ **Other Torts**
- ☐ Anti-trust
- ☐ Fraud/Misrepresentation
- ☐ Insurance
- ☐ Legal Tort
- ☐ Unfair Competition

Probate

☐ **Summary Administration**

☐ **General Administration**

☐ **Special Administration**

☐ **Set Aside Estates**

☐ **Trust/Conservatorships**
- ☐ Individual Trustee
- ☐ Corporate Trustee

☐ **Other Probate**

Other Civil Filing Types

☐ **Construction Defect**
- ☐ Chapter 40
- ☐ General

☐ **Breach of Contract**
- ☐ Building & Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Other Contracts/Acct/Judgment
- ☐ Collection of Actions
- ☐ Employment Contract
- ☐ Guarantee
- ☐ Sale Contract
- ☐ Uniform Commercial Code

☐ **Civil Petition for Judicial Review**
- ☐ Other Administrative Law
- ☐ Department of Motor Vehicles
- ☐ Worker's Compensation Appeal

☐ **Appeal from Lower Court** *(also check applicable civil case box)*
- ☐ Transfer from Justice Court
- ☐ Justice Court Civil Appeal

☐ **Civil Writ**
- ☐ Other Special Proceeding

☒ **Other Civil Filing**
- ☐ Compromise of Minor's Claim
- ☐ Conversion of Property
- ☐ Damage to Property
- ☐ Employment Security
- ☐ Enforcement of Judgment
- ☐ Foreign Judgment – Civil
- ☐ Other Personal Property
- ☐ Recovery of Property
- ☐ Stockholder Suit
- ☒ Other Civil Matters

III. Business Court Requested (Please check applicable category; *for Clark or Washoe Counties only.*)

☐ NRS Chapters 78-88	☐ Investments (NRS 104 Art. 8)	☐ Enhanced Case Mgmt/Business
☐ Commodities (NRS 90)	☐ Deceptive Trade Practices (NRS 598)	☐ Other Business Court Matters
☐ Securities (NRS 90)	☐ Trademarks (NRS 600A)	

10 May 2010

Date

Signature of initiating party or representative

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05/26/2011 11:17:12 AM

CLERK OF THE COURT

CATHERINE CORTEZ MASTO
Attorney General
Nevada State Bar No. 3926
Denise S. Balboni
Deputy Attorney General
Nevada State Bar No. 10507
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3267
Facsimile: (702) 486-3773
dbalboni@ag.nv.gov
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

LARRY D. CASAUS, Plaintiff, vs. STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS; HOWARD SKOLNIK, Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; ISIDRO BACA, Associate Warden for Operations of High Desert State Prison; and JOHN DOE CORRECTIONAL OFFICERS I-V. Defendants.	CASE NO.: A-10-623251-C DEPT. NO.: XXXI **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** DATE OF HEARING: May 6, 2011 TIME OF HEARING: 9:30 a.m.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Defendants The STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS; HOWARD SKOLNIK, Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; ISIDRO BACA, Associate Warden for Operations of High

05-17-11A09:38 RCVD

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

FINAL DISPOSITIONS
☐ Time Limit Expired
☐ Dismissed (with or without prejudice)
☐ Judgment Satisfied/Paid in full
☐ Sum Jdgmt
☐ Non-Jury Trial
☐ Jury Trial
☐ Stip Dis
☐ Stip Jdgmt
☐ Default Jdgmt
☐ Transferred
☐ Voluntary Dis
☐ Involuntary (stat) Dis
☐ Jdgmt on Arb Award
☐ Min to Dis (by clerk)

Desert State Prison, by and through their counsel, CATHERINE CORTEZ MASTO, Attorney General, and DENISE S. BALBONI, Deputy Attorney General, of the STATE OF NEVADA, OFFICE OF THE ATTORNEY GENERAL, and Plaintiff LARRY D. CASAUS, by and through his counsel CAL POTTER, III, of POTTER LAW OFFICES, having appeared; this Court having reviewed the pleadings and papers on file in the above-entitled action; and good cause appearing therefor:

I. Findings of Fact.

The following are undisputed material facts:

1. On August 19, 2008, CASAUS was an inmate in the custody of the Nevada Department of Corrections (NDOC) housed at Southern Desert Correctional Center (SDCC).

2. On August 19, 2008, CASAUS was stabbed by an unidentified inmate and placed on a MedEvac flight to University Medical Center in Las Vegas, Nevada.

3. On July 16, 2009, CASAUS filed his first grievance concerning the stabbing. This grievance was assigned Log Number 2006-28-78081.

4. CASAUS did not file an administrative claim form alleging injuries as a result of the August 19, 2008, stabbing.

5. On October 19, 2010, CASAUS was released from SDCC on parole.

6. On August 17, 2010, CASAUS commenced the instant litigation.

II. Conclusions of Law.

The following legal determinations have been made by this Court:

1. Pursuant to NRS 41.031(1), the sovereign immunity of the State of Nevada and all state subdivisions is waived if the claimant complies with the limitations of NRS 41.032 to 41.036.

2. Pursuant to NRS 41.0322(1), a person who is or was in the custody of the NDOC may not proceed with any action against the NDOC or any of its agents, former officers, employees, or contractors to recover compensation for personal injuries or any other claim arising out of a tort pursuant to NRS 41.031 unless the person has exhausted the person's administrative remedies provided by NRS 209.243 and the regulations adopted pursuant thereto.

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

3. Pursuant to NRS 209.243, a prisoner or former prisoner who seeks to recover compensation for personal injuries arising out of a tort alleged to have occurred during his or her incarceration as a result of an act or omission of the NDOC or any of its agents, former, employees, or contractors must file an administrative claim with the NDOC within six months after the date of the alleged injury.

4. Pursuant to NRS 41.0322(3), the court shall dismiss any action filed by a person who has failed to file an administrative claim pursuant to NRS 209.243.

5. Pursuant to NDOC Administrative Regulation (AR) 740, adopted pursuant to the authority granted by NRS 209.243(3), inmates in the custody of the NDOC are required to file an informal grievance for issues involving personal injury within six months of the date of the incident.

6. CASAUS failed to file an administrative claim with the NDOC within six months of the August 19, 2008, stabbing incident, in violation of NRS 209.243.

7. CASAUS failed to file an informal grievance concerning the August 19, 2008, stabbing incident within six months of the incident, in violation of AR 740. CASAUS's informal grievance was instead filed July 16, 2009, eleven months after the incident.

8. CASAUS did not exhaust his administrative remedies as required by NRS 209.243.

9. These conclusions of law are in accordance with the unpublished decisions of the Nevada Supreme Court in *Morrow v. Skolnik*, 2011 WL 489742 (Nev. Feb 10, 2011), and *Lopez v. Nevada Dep't of Corrections*, 2011 WL 378902 (Nev. Feb 3, 2011).

10. Based on CASAUS's failure to follow the mandatory procedures outlined in NRS 41.0322, NRS 209.243, and AR 740, this action must be dismissed.

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. . .

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

III. Order.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss is granted and the above-entitled action is therefore dismissed with prejudice. The above-entitled action has been disposed of in its entirety by this Findings of Fact, Conclusions of Law, and Order.

BH

DATED this 23 day of May, 2011.

DISTRICT COURT JUDGE

for Joanna Kishner

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
DENISE S. BALBONI, ESQ.
Nevada Bar No. 10507
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Defendants

Approved as to Form and Content By:

POTTER LAW OFFICES

By: _____
CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
JOHN C. FUNK, ESQ.
Nevada Bar No. 9255
1125 Shadow Lane
Las Vegas, NV 89102
Attorneys for Plaintiff

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

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CLERK OF THE COURT

CATHERINE CORTEZ MASTO
Attorney General
Nevada State Bar No. 3926
DENISE S. BALBONI
Deputy Attorney General
Nevada State Bar No. 10507
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3267
Facsimile: (702) 486-3773
dbalboni@ag.nv.gov
Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

LARRY D. CASAUS, Plaintiff, vs. STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS; HOWARD SKOLNIK, Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; ISIDRO BACA, Associate Warden for Operations of High Desert State Prison; and JOHN DOE CORRECTIONAL OFFICERS I-V. Defendants.	CASE NO.: A-10-623251-C DEPT. NO.: XXXI

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

NOTICE OF ENTRY OF ORDER

TO: LARRY D. CASAUS, *PLAINTIFF;* AND

TO: JOHN C. FUNK, *ATTORNEY FOR PLAINTIFF.*

YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that the Order, attached hereto as **Exhibit "A,"** was entered by the Court, on the 26th day of May, 2011, in the above-entitled action.

DATED this 26th day of May, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ Denise S. Balboni
DENISE S. BALBONI
Deputy Attorney General
Nevada State Bar No. 10507
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3267
Attorneys for Defendant

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27TH day of May, 2011, the foregoing, **Notice of Entry of Order**, was served by placing a true and correct copy in a sealed envelope, First-Class Mail postage fully prepaid, in the U.S. Mail, at Las Vegas, Nevada, and addressed to the following:

Cal J. Potter III, Esq.
John Funk, Esq.
POTTER LAW OFFICES
1125 Shadow Lane.
Las Vegas, NV 89102
Attorney for Plaintiff

/s/ Kimie S. Beverly
An employee of:
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

EXHIBIT A

EXHIBIT A

ORIGINAL

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CLERK OF THE COURT

CATHERINE CORTEZ MASTO
Attorney General
Nevada State Bar No. 3926
Denise S. Balboni
Deputy Attorney General
Nevada State Bar No. 10507
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3267
Facsimile: (702) 486-3773
dbalboni@ag.nv.gov
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

LARRY D. CASAUS, Plaintiff, vs. STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS; HOWARD SKOLNIK, Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; ISIDRO BACA, Associate Warden for Operations of High Desert State Prison; and JOHN DOE CORRECTIONAL OFFICERS I-V. Defendants.	) CASE NO.: A-10-623251-C) DEPT. NO.: XXXI))))) **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**))) DATE OF HEARING: May 6, 2011) TIME OF HEARING: 9:30 a.m.)))))))

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

FINAL DISPOSITIONS
☐ Time Limit Expired
☐ Dismissed (with or without prejudice)
☐ Judgment Satisfied/Paid in Full
☐ Bench Trial
☐ Non-Jury Trial
☐ Jury Trial
☐ Stip Dis
☐ Stip Judgmt
☐ Default Judgmt
☐ Transferred
☐ Voluntary Dis
☐ Involuntary (stat) Dis
☐ Judgmt on Arb Award
☐ Misc (specify)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Defendants The STATE OF NEVADA ex rel NEVADA DEPARTMENT OF CORRECTIONS; HOWARD SKOLNIK, Director of Nevada Department of Corrections; BRIAN WILLIAMS, Senior Warden of Southern Desert Correctional Center; JERRY HOWELL, Associate Warden for Operations of Southern Desert Correctional Center; ISIDRO BACA, Associate Warden for Operations of High

05-17-11A09:38 RCVD

Desert State Prison, by and through their counsel, CATHERINE CORTEZ MASTO, Attorney General, and DENISE S. BALBONI, Deputy Attorney General, of the STATE OF NEVADA, OFFICE OF THE ATTORNEY GENERAL, and Plaintiff LARRY D. CASAUS, by and through his counsel CAL POTTER, III, of POTTER LAW OFFICES, having appeared; this Court having reviewed the pleadings and papers on file in the above-entitled action; and good cause appearing therefor:

I. Findings of Fact.

The following are undisputed material facts:

1. On August 19, 2008, CASAUS was an inmate in the custody of the Nevada Department of Corrections (NDOC) housed at Southern Desert Correctional Center (SDCC).

2. On August 19, 2008, CASAUS was stabbed by an unidentified inmate and placed on a MedEvac flight to University Medical Center in Las Vegas, Nevada.

3. On July 16, 2009, CASAUS filed his first grievance concerning the stabbing. This grievance was assigned Log Number 2006-28-78081.

4. CASAUS did not file an administrative claim form alleging injuries as a result of the August 19, 2008, stabbing.

5. On October 19, 2010, CASAUS was released from SDCC on parole.

6. On August 17, 2010, CASAUS commenced the instant litigation.

II. Conclusions of Law.

The following legal determinations have been made by this Court:

1. Pursuant to NRS 41.031(1), the sovereign immunity of the State of Nevada and all state subdivisions is waived if the claimant complies with the limitations of NRS 41.032 to 41.036.

2. Pursuant to NRS 41.0322(1), a person who is or was in the custody of the NDOC may not proceed with any action against the NDOC or any of its agents, former officers, employees, or contractors to recover compensation for personal injuries or any other claim arising out of a tort pursuant to NRS 41.031 unless the person has exhausted the person's administrative remedies provided by NRS 209.243 and the regulations adopted pursuant thereto.

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555 E. Washington, Suite 3900
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3. Pursuant to NRS 209.243, a prisoner or former prisoner who seeks to recover compensation for personal injuries arising out of a tort alleged to have occurred during his or her incarceration as a result of an act or omission of the NDOC or any of its agents, former, employees, or contractors must file an administrative claim with the NDOC within six months after the date of the alleged injury.

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9. These conclusions of law are in accordance with the unpublished decisions of the Nevada Supreme Court in *Morrow v. Skolnik*, 2011 WL 489742 (Nev. Feb 10, 2011), and *Lopez v. Nevada Dep't of Corrections*, 2011 WL 378902 (Nev. Feb 3, 2011).

10. Based on CASAUS's failure to follow the mandatory procedures outlined in NRS 41.0322, NRS 209.243, and AR 740, this action must be dismissed.

. . .

. . .

. . .

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

III. Order.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss is granted and the above-entitled action is therefore dismissed with prejudice. The above-entitled action has been disposed of in its entirety by this Findings of Fact, Conclusions of Law, and Order.

DATED this 23 day of May, 2011.

DISTRICT COURT JUDGE

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
DENISE S. BALBONI, ESQ.
Nevada Bar No. 10507
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Defendants

Approved as to Form and Content By:

POTTER LAW OFFICES

By: _____
CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
JOHN C. FUNK, ESQ.
Nevada Bar No. 9255
1125 Shadow Lane
Las Vegas, NV 89102
Attorneys for Plaintiff

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	March 07, 2011

A-10-623251-C Larry Casaus, Plaintiff(s)
vs.
Howard Skolnick, Defendant(s)

March 07, 2011 **9:30 AM** **Motion to Dismiss**

HEARD BY: Kishner, Joanna COURTROOM: RJC Courtroom 12D

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER: Cheryl Gardner

PARTIES PRESENT:
Andrews, Timothy F. Attorney
Funk, John C. Attorney

JOURNAL ENTRIES

- Mr. Funk argued the declaration stated Pltf. had exhausted his administrative remedies and failed to file the second grievance. Mr. Funk stated Pltf. was stabbed and taken to another facility. When Pltf. was physically able to, he complied with the grievance process when he was physically able to. process. our client was stabbed when he could complete comply the grievance he was taken to another facility. When Pltf. began the process, while at High Desert, Pltf. was told he couldn't grieve it as it didn't apply to them.

Arguments by Mr. Andrews regarding cause of action and the 10 days Pltf. was in the hospital; Pltf. didn't file the grievance until July and never filed an administrative claim even though Pltf. had the ability to file them timely. COURT FINDS it does not need to look outside the pleadings and ORDERED, motion GRANTED as to State's claim with leave to amend. Colloquy. Court stated counsel has two weeks from date of notice of entry of order to determine if there was a pleading error.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	May 06, 2011

A-10-623251-C Larry Casaus, Plaintiff(s)
vs.
Howard Skolnick, Defendant(s)

May 06, 2011 **9:30 AM** **Motion to Dismiss**

HEARD BY: Kishner, Joanna COURTROOM: RJC Courtroom 12A

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER:

PARTIES
PRESENT: Balboni Esq, Denise S. Attorney
Potter, Cal Johnson Attorney

JOURNAL ENTRIES

- Arguments by Ms. Balboni regarding the substantial compliance. Colloquy regarding Lopez case. Further arguments by Ms. Balboni regarding the statute as it relates to the Nevada Supreme Court and compliance. Ms. Balboni stated no demand was made.

Arguments by Mr. Potter as to notice. Mr. Potter argued Pltf's mother met with the warden and advised him of Pltf's concerns. Following further arguments of counsel, Court stated it did not find indepedent research regarding compliance. COURT ORDERED, motion GRANTED. Mr. Potter requested findings of fact and conclusions of law. Court DIRECTED Ms. Balboni to prepare them and distribute to Mr. Potter for review. If counsel does not agree, each counsel is to submit their own to the Court.

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

CAL J. POTTER, III, ESQ.
1125 SHADOW LN.
LAS VEGAS, NV 89102

DATE: June 7, 2011
CASE: A623251

RE CASE: LARRY D. CASAUS vs. HOWARD SKOLNIK; ET AL.

NOTICE OF APPEAL FILED: June 3, 2011

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☒ $250 – Supreme Court Filing Fee
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

LARRY D. CASAUS,

Plaintiff(s),

vs.

HOWARD SKOLNIK; ET AL.,

Defendant(s),

Case No: A623251
Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 7 day of June 2011.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk