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**NEVADA OCCUPATIONAL SAFETY AND HEALTH
REVIEW BOARD**

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**CHIEF ADMINISTRATIVE OFFICER
OF THE OCCUPATIONAL SAFETY
AND HEALTH ADMINISTRATION OF
THE DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY, STATE
OF NEVADA,**

**Docket No. LV 23-2216
Inspection No. 1613982**

Complainant,

vs.

COMPLETE DEMO SERVICES

Respondent.

**FILED
October 18, 2024
OSH Review Board
By: Karen Kennedy**

**DECISION OF THE BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER**

This case arose from a referral from the Clark County Department of Environment and Sustainability (DES). *See*, State’s Exhibit 1, p. C5. “Complete Demo Services plans to cut up a trailer that contains regulated asbestos material according to Clark County Air Quality, but this contractor hasn’t taken steps to control or to monitor the release of asbestos containing materials while workers demolish the trailer.” *See, Id.* The State’s inspection occurred at the mobile home park where the burned-out hulk of the mobile home remained. *See, Id.* After the inspection, Nevada OSHA issued two citations for violations of Federal and State regulations. *See*, State’s Exhibit 1, pp. C18 - C29. The matter came before the Nevada Occupational Safety and Health Review Board (the Board) for hearing on November 8, 2023. It was then continued to December 13, 2023.

The hearing was conducted in furtherance of a duly provided notice. *See*, Notice of Hearing dated September 25, 2023. In attendance to hear the matter on November 8, 2023, were Board Chairman Rodd Weber, Board Member Jorge Macias, Board Member Frank Milligan and

1 Board Member Scott Fullerton. *See*, 1Tr., p. 1.¹ The same Board Members were in attendance
2 on December 13, 2023, to hear the continuation of the matter and to conduct deliberations
3 thereon. *See*, 2Tr., p. 1. As there were four members of the Board present to decide the case,
4 with at least one member representing management and one member representing labor in
5 attendance, a quorum was present to conduct the business of the Board.

6 Salli Ortiz, Esq., counsel for the Chief Administrative Officer of the Occupational Safety
7 and Health Administration of the Division of Industrial Relations of the Department of Business
8 and Industry (hereinafter, the State or Nevada OSHA), appeared at both hearings on behalf of the
9 Complainant (the State). *See*, 1Tr., p. 4, 2Tr., p. 15. The Respondent (hereinafter, Complete
10 Demo or the Respondent) was represented by Jack Paripovich, a lay person representative. *See*,
11 1Tr., pp. 5;7-14, 10;3-12. Also present was the Board's legal counsel, Charles R. Zeh, Esq., The
12 Law Offices of Charles R. Zeh, Esq.

13 Jurisdiction in this matter is conferred by Chapter 618 of the Nevada Revised Statutes,
14 NRS 618.315. Jurisdiction was not disputed. Nevada has adopted all Federal Occupational
15 Safety and Health Standards which the Secretary of Labor has promulgated, modified or revoked
16 and any amendments thereto. They are then deemed the Nevada Occupational Safety and Health
17 Standards. *See*, NRS 618.295(8). A complaint may be prosecuted for circumstances which arise
18 before or during an inspection of the employer's workplace. *See*, NRS 618.435(1).

19 The State issued its Citation and Notification of Penalty (Citation) on January 26, 2023,
20 for alleged violations of 29 CFR 1926.1101(g)(6)(I), 29 CFR 1926.1101(g)(6)(ii), 29 CFR
21 1926.1101(k)(7)(I), and the Nevada Administrative Code (NAC) 618.954(1). *See*, State's Exhibit
22 1, pp. 18-29. The citations alleged that the Respondent, while demolishing a burned-out mobile
23 home, 1) failed to utilize any of the standard asbestos control methods for Class I work or utilize
24 any alternative control methods, 2) failed to have a certified industrial hygienist or licensed
25 professional engineer certify that the specified control methods used to isolate airborne asbestos

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27 ¹“1Tr.” stands for the transcript of the hearing conducted on November 8, 2023, followed by the
28 page and line number where the matter cited can be found. “2Tr.” stands for the transcript of continuation
of the hearing conducted on December 13, 2023, followed by the page and line number where the matter
cited can be found.

1 dust were adequate at the job site, 3) failed to display warning signs to demarcate the regulated
2 area, and (4) failed to submit notification to Nevada OSHA of the project while removing a
3 quantity of Asbestos Containing Material greater than 10 square feet. *See*, State's Exhibit 1, pp.
4 C18 - C29.

5 On January 26, 2023, a Citation and Notice of Penalty were issued to the Respondent.
6 *See*, State's Exhibit 1, pp. C30 - C42. On February 27, 2023, the Respondent notified the State of
7 its intent to contest the citation. *See*, State's Exhibit 1, p. C43.

8 On March 16, 2023, the State filed its formal Complaint for resolution by the Review
9 Board. *See*, State's Exhibit 1, pp. C44 - C50. Notice of the proceedings was given to Complete
10 Demo by first class, certified mail, return receipt requested. *See*, Notice of Hearing dated
11 September 25, 2023. The hearing on the matter was subsequently rescheduled and ultimately
12 held on November 8, 2023, and continued to December 13, 2023.

13 The Complaint also set forth allegations of the violation of Federal regulations. *See*,
14 State's Exhibit 1, p. C18. Citation 1, Item 1a, charged a serious violation of 29 CFR
15 1926.1101(g)(6)(I), as stated below:

16 29 CFR 1926.1101(g)(6)(I): Alternative control methods for Class I work. Class I
17 work may be performed using a control method which is not referenced in
18 paragraph (g)(5) of this section, or which modifies a control method referenced in
19 paragraph (g)(5) of this section, if the following provisions are complied with: The
control method shall enclose, contain or isolate the processes or source of
airborne asbestos dust, or otherwise capture or redirect such dust before it enters
the breathing zone of employees.

20 The employer failed to utilize any of the standard control methods for Class I
21 work such as Negative Pressure Enclosure nor did they utilize any alternative
22 control methods to ensure that any airborne asbestos dust was contained or
isolated during the removal of asbestos containing materials from the burned-out
trailer at Space 57 of the Royal Mobile Park.

23 The Complaint also set forth allegations, *see, Exhibit 1, p. C21*, of the violation of
24 1926.1101(g)(6)(ii), Citation 1, Item 16, and charged a serious violation stated below:

25 29 CFR 1926.1101(g)(6)(ii): Alternative control methods for Class I work. Class I
26 work may be performed using a control method which is not referenced in
paragraph (g)(5) of this section, or which modifies a control method referenced in
paragraph (g)(5) of this section, if the following provisions are complied with:

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1 A certified industrial hygienist or licensed professional engineer who is also
2 qualified as a project designer as defined in paragraph (b) of this section, shall
3 evaluate the work area, the projected work practices and the engineering controls
4 and shall certify in writing that the planned control method is adequate to reduce
5 direct and indirect employee exposure to below the PELs under worst case
6 conditions of use, and that the planned control method will prevent asbestos
7 contamination outside the regulated area, as measured by clearance sampling
8 which meets the requirements of EPA's Asbestos In Schools rule issued under
9 AHERA, or perimeter monitoring which meets the criteria in paragraph
10 (g)(4)(ii)(B) of this section.

11 The employer failed to have a certified industrial hygienist or licensed
12 professional engineer who is also qualified as a project designer certify in writing
13 that the specified control methods used to isolate airborne asbestos dust that may
14 have been generated from the burned-out trailer were adequate at Space 57 of the
15 Royal Mobile Park.

16 The Complaint also set forth allegations of the violation of Federal regulations. *See,*
17 State's Exhibit 1, p. C24. Citation 1, Item 2, charged a serious violation of 29 CFR
18 1926.1101(k)(7)(I), as stated below:

19 29 CFR 1926.1101(k)(7)(I): Warning signs that demarcate the regulated area shall
20 be provided and displayed at each location where a regulated area is required to
21 be established by paragraph (e) of this section. Signs shall be posted at such a
22 distance from such a location that an employee may read the signs and take
23 necessary protective steps before entering the area marked by the signs.

24 The employer failed to display warning signs to demarcate the regulated area. An
25 asbestos warning tape was wrapped around one of the two dumpsters used to
26 collect asbestos containing debris but there were no signs present to identify the
27 regulated area to warn employees where it was necessary to take necessary
28 protective steps before entering trailer Space 57 where asbestos contaminated
debris was present.

The Complaint also set forth allegations of the violation of State regulations. *See,* State's
Exhibit 1, p. C27. Citation 2, Item 1, charged a regulatory notice violation of NAC 618.954(1),
as stated below:

Nevada Administrative Code 618.954(1): A contractor intending to engage in a
project for the abatement of asbestos shall notify the Enforcement Section of the
project on a form provided by the Enforcement Section.

The employer took on the task of removing debris from a burned out trailer that
was found to contain asbestos. The employer is not a licensed asbestos abatement
contractor, however he served as the project manager, hiring a competent person
to operate the excavator, an asbestos consultant to conduct air monitoring, and a
second asbestos abatement contractor to line the dumpsters with plastic. A
quantity of Asbestos Containing Material greater than 10 square feet was
removed from Space 57 at this site, however at no point was a notification
submitted to Nevada OSHA.

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1 On July 28, 2023, Mr. Paripovich answered the State’s Complaint for the Respondent.
2 *See*, State’s Exhibit 1, pp. C51-C52. Therein, Mr. Paripovich made the following arguments. In
3 regards to Citation 1, Item 1a and 1b. Mr. Paripovich alleged that the material was classified as
4 Class 2. Further, Complete Demo used water in an attempt to contain the dust while the
5 contaminated material was being removed. *See*, State’s Exhibit 1, p. C51. And, when the
6 asbestos abatement was complete, an independent asbestos monitoring company provided final
7 clearances. *See, Id.* In regards to Citation 1, Item 2, Mr. Paripovich alleged that notification of
8 OSHA is not required and that qualified employees conducted the asbestos abatement. *See, Id.*
9 In regards to Citation 2, Item 1, Mr. Paripovich alleged that notification to OSHA is not required
10 and that Complete Demo was not a project manager. *See*, State’s Exhibit 1, p. C52.

11 At the November 8th hearing, the State offered for admission its Exhibits 1 and 2,
12 consisting of 126 pages.² *See*, 2Tr., p. 14;15-17. The Respondent did not object to the
13 admission of the State’s Exhibits 1 and 2. *See*, 1Tr., p. 10;9-13. The State’s Exhibits 1 and 2,
14 consisting of 126 pages were admitted into evidence. *See*, 1Tr., p. 14;6-10.

15 The Respondent offered one exhibit for admission consisting of 34 pages. *See*, 2Tr., p.
16 14;20-21. The State did not object to the admission of the Respondent’s Exhibit. *See*, 2Tr., p.
17 20;1-3. The Respondent also offered three additional photographs, R1 through R3. *See*, 2Tr., p.
18 20;3-7. The Board determined that it would admit Respondent’s Exhibits R1 through R3,
19 subject to the State’s objection and noted that none of the photographs were time stamped. *See*,
20 2Tr., p. 21;22-24.

21 At the duly noticed hearing conducted on November 8, 2023, and continued to December
22 13, 2023, the State presented the testimony of Ken Owens. *See*, 2Tr., pp. 24 - 90. Complete
23 Demo presented the testimony of Mr. Paripovich. *See*, 2Tr., pp. 90-140.

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26 ²There is a discrepancy between the State’s Exhibit package and the transcripts. The State’s
27 exhibits consist of numbers 1 and 2 while the transcript states that the State submitted 3 exhibits.
28 However, both the transcripts and the exhibit package define the number of pages as C1 through C126
and the actual exhibit documents contain 126 pages. Therefore, this Decision states that the State supplied
2 exhibits, regardless of the contrary statements in the transcripts.

1 **FINDINGS OF FACTS**

2 On June 18, 2022, a fire occurred in a mobile home located in space 57 of the Royal
3 Mobile Home Park located at 4470 East Vegas Valley Drive, Las Vegas, Nevada. *See, State’s*
4 *Exhibit 1, pp. C5, C12, see also, 2Tr., pp. 121;10-24, 122;1-20.* The occupant of the mobile
5 home died in the fire. *State’s Exhibit 1, p. C12.* The burned-out double wide trailer home left
6 behind metal parts and ashes, some of which were contaminated with asbestos. *See, Id.*

7 On June 24, 2022, Mr. Paripovich, the owner of Complete Demo, inspected the site and
8 planned for the removal of the burned-out trailer. *See, State’s Ex 1, p. C12, see also, 2Tr., p.*
9 *102;8-14.* June 24, 2022, Mr. Paripovich contacted the DES regarding the removal of the
10 burned-out hulk of the mobile home. *See, 2Tr., p. 92;5-10.* On July 6, 2022, the DES indicated
11 that an asbestos survey should be conducted. *See, State’s Exhibit 1, p. C12, see also, 2Tr., p.*
12 *92;5-10.* Therefore, Complete Demo hired MSE Environmental to conduct an asbestos survey of
13 the burned-out mobile home site. *See, State’s Exhibit 1, p. C12.*

14 On July 7, 2022, MSE inspected the work site. *See, State’s Exhibit 1, p. C64.* The
15 inspection generated six representative samples of the homogenous building materials located
16 inside the dilapidated mobile home. *See, State’s Exhibit 2, pp. C74, C84, C85.* The laboratory’s
17 analysis of two of the samples indicated the material had an asbestos content of more than 1%.³
18 *See, State’s Exhibit 2, pp. C74, C79.*

19 The laboratory determined that both samples had compound materials which were not
20 Class I materials. *See, Respondent’s Exhibit p. 2.*⁴ As MSE explained, “There were no visible
21 or detected TSI or surface materials found.”

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23 _____
24 ³A content of asbestos material in excess of 1% causes the material to be classified as ACM
(asbestos containing material). 29 CFR 1910.1001(b).

25 ⁴ Class I asbestos work means activities involving the removal of TSI and surfacing ACM and
26 PACM. Thermal system insulation (TSI) means ACM applied to pipes, fittings, boilers, breeching, tanks,
27 ducts or other structural components to prevent heat loss or gain. *See, 29 CFR 1926.1101(b).* Structural
28 components means material that is sprayed, troweled-on or otherwise applied to surfaces (such as
acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on
surfaces for acoustical, fireproofing, and other purposes). *See, Id.*

1 Despite the lack of evidence that the sample material was from TSI or surface materials, MSE
2 took the conservative approach, rating the materials as Class I. This is because all that the
3 contractor had to go on were piles of debris located in the derelict mobile home. *See*, State's Ex.
4 2, p. C74, 2Tr., pp. 95;20-24, 96;1-8.

5 On July 12, 2022, Complete Demo entered into a contract with A & B Environmental,
6 LLC (A & B) to furnish labor and materials to remove the ACM and dispose of it. *See*,
7 Respondent's Exhibit p. 6, *see also*, 2Tr., p. 93;4-7. As part of their contract, A & B promised to
8 provide the statutorily required notices. *See, Id.* However, A & B's contract excluded the
9 scheduling of the placement and removal of the dumpsters, presumably because this required a
10 heavy equipment operator with a backhoe loader. *See*, State's Ex 1, pp. C13 - C15. Therefore,
11 Complete Demo hired Ace Demolition do the work excluded from its contract with A & B. *See*,
12 2Tr., p. 93;13-18, *see also*, Respondent's Exhibit p. 6. A third company, Adaptive
13 Environmental Consulting, was hired to conduct the air monitoring. *See*, 2Tr., p. 93;20-21.

14 Between mid-July (sic) and August 1, neither Complete Demo nor any of its
15 subcontractors conducted any activity at the job site. *See*, 2Tr., 105;2-10. On August 1, 2022,
16 three 40 cubic foot dumpsters were delivered to the site. A & B began to line the dumpsters with
17 plastic as required in preparation for removal of the asbestos contaminated debris. *See*, State's
18 Ex 1, pp. C13, C15. Also on August 1, 2022, one of the companies was on the work site from
19 7:30 a.m. to 11:30 a.m. and they brought a water truck. *See*, State's Ex 1, p. C17, *see also*, 2Tr.,
20 p. 32;2-9. At some time between August 1st and 4th Mr. Paripovich made four cuts in the mobile
21 home in order to relieve pressure on the outside. State's Exhibit 1, p. C15, *see also*, 2Tr., p.
22 104;10-17.

23 On August 4, 2022, the DES made its referral to OSHA which precipitated the
24 inspection. *See*, 2Tr., p. 26;4-6. Mr. Owens arrived on the job site that same day. At that time,
25 none of Complete Demo's employees or subcontractors were present. *See*, 2Tr., p. 26;18-24.
26 Therefore, he spoke with the park manager. *See, Id.*

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1 While on site, Mr. Owens took photographs of the burned-out mobile home and
2 surrounding area. *See*, State’s Exhibit 1, pp. C53, C54, C56, C57, C58, C60. These photographs
3 show the lack of warning signs. *See*, State’s Exhibit 1, pp. C53, C54, C57, C60, *see also*, 2Tr.,
4 p. 33;3-13. Photographs C55 and C59, taken by park manager, show yellow caution tape
5 partially encircling the work site. *See, Id.* The photographs also show the lack of plastic lining in
6 the second dumpster. *See*, State’s Exhibit 1, pp. C55, C56. In contrast, the Respondent’s
7 photographs show white caution tape placed around the work site in what appears to be a more
8 deliberate manner. *See*, Respondent’s Exhibits 8, 9.

9 On August 5, 2022, one of the contractors, either MSE or A & B, marked the area with
10 white tape giving notice that the area was dangerous and contained asbestos. *See*, Respondent’s
11 Exhibit p. 9, *see also*, 2Tr., p. 94;14-17. Also, on August 5, 2022, Adaptive Environmental
12 Consulting (Adaptive Environmental) conducted perimeter air monitoring while A & B and Ace
13 Demolition removed the asbestos containing material. *See*, State’s Exhibit 1, p. C13.

14 Complete Demo’s participation in the efforts of August 5th was quite limited. “The only
15 person I had there was Spiro, which was outside of my R3, this white tape. He was outside on
16 the asphalt, [spraying water] over the tape. He was not in the regulated area, [he was outside of]
17 that tape. So I had no operators or nobody on-site. They were offsite spraying [water] over the
18 tape.” *See*, 2 Tr., p. 97;13-18.

19 On August 5, 2022, MSE told Mr. Paripovich that the asbestos material was or could
20 have been Class 2. *See*, 2Tr., p. 63;13-18. Mr. Paripovich testified, “when they came on-site to
21 do it, that’s when they decided this is not a class one. It’s a class two. So when they called MSE
22 and they discussed it, they said this is not a class one. It’s a class two.” *See*, 2Tr., p. 95;20-23.
23 This conversation caused Mr. Paripovich to request the February 7th letter from MSE. *See*, 2Tr.,
24 pp. 96;22-24, 97;1-2.

25 The asbestos removal work was completed on Friday, August 5, 2022. *See*, State’s
26 Exhibit 1, pp. C13-C15.

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1 Thereafter, Adaptive Environmental provided notice to Complete Demo that the environmental
2 portion of the job was complete, *i.e.*, all contaminated material was removed and Complete
3 Demo could then complete the removal of the burned-out mobile home. *See*, 2Tr., p. 95;10-15.

4 On August 10, 2022, Mr. Owens interviewed Mr. Paripovich. *See*, State's Exhibit 1, p.
5 C15, *see also*, 2Tr., 27;4-9. On November 3, 2022, the closing conference was conducted with
6 Mr. Paripovich. *See*, State's Exhibit 1, p. C13, *see also*, 2Tr., pp. 35;18-24, 36;1.

7 On or about February 7, 2023, Mr. Paripovich received the letter from MSE which
8 opined that the material may have been Class 2. *See*, Respondent's Exhibit p. 2. In this letter
9 MSE explained that there was some ambiguity regarding the source of the materials which it
10 tested. *See, Id.* As the result of this ambiguity, MSE utilized the strictest categorization.

11 MSE Classified the Fire Deris (sic) as Friable - RACM. MSE classified the debris
12 material as a Class I making a reasonable assumption, but not knowing clear direction of
13 whether fire burned materials are classified as Class I with Clark County or Nevada
14 regulatory bodies. There we (sic) no visible or detected TSI or surfacing materials [were]
found. Technically the material could have been classified as Class II material without
visible or detected levels of TSI or surfacing materials. *See, Id.*

15 Despite the letter's effort to down play the seriousness of its original conclusions, it fell
16 short of providing a definitive statement regarding the classification of the materials. *See*, 2Tr.,
17 p. 183;13-18. Accordingly, the letter alone left in tact MSE's earlier opinion that the two
18 samples contained Class I asbestos materials.

19 At the hearing on December 13, 2023, Mr. Owens explained how the State determined
20 the amount of the fine for Citation 1, Item 1a. *See*, State's Exhibit 1, pp. C18-C20, *see also*,
21 2Tr., pp. 47-50. The fine was a gravity based penalty, a combination of the severity and the
22 probability of the alleged violation causing injury, calculated prior to any penalty adjustments.
23 *See, Id.*

24 Mr. Owens testified to the severity of the alleged violation of 29 CFR 1910.1101(g)(6)(I).
25 *See*, 2Tr., pp. 47;17-14, 48;1-10. Complete Demo's violation was considered serious because
26 exposure to asbestos can cause asbestosis, lung cancer, and mesothelioma. *See*, State's Exhibit
27 1, p. C18. Mr. Owens explained that the hazard was serious because the illnesses associated
28 with asbestos exposure could lead to death. *See*, 2Tr. p. 48;7-10.

1 Mr. Owens then addressed the likelihood of injuries from the hazardous condition. *See,*
2 2Tr., p. 48;11-23. In this instance, a lesser probability was determined because very few
3 employees were exposed. *See, Id.* Mr. Owens then testified to the determination of the
4 probability calculation. *See, State's Exhibit 1, pp. C18-C19, see also, 2Tr., p. 48;17-23.* Mr.
5 Owens explained that the gravity was a combination of the severity and probability of the
6 alleged violation. *See, State's Exhibit 1, pp. C18-C19, see also, 2Tr., pp. 48;24, 49;1-17.*

7 The base amount of the penalty was \$10,360. *See, State's Exhibit 1, pp. C18-C19, see*
8 *also, 2Tr., p. 49;18-21.* The penalty was then discounted by 30% as the result of the small
9 number of employees and another 10% because Complete Demo had no history of violations
10 with Nevada OSHA. *See, State's Exhibit 1, p. C19, see also, 2Tr., pp. 49;22-24, 50;1-4.* As a
11 result of those discounts, this proposed penalty was reduced to \$6,527. *See, Id.*

12 Mr. Owens testified to the determination of the proposed penalty for Citation 1, Item 1b.
13 *See, State's Exhibit 1, p. C22, see also, 2Tr. p. 50;13-22.* In this instance, the proposed penalty
14 was nothing, *i.e.*, no penalty was proposed. *See, Id.* This was because the two violations were
15 closely related and could be abated with one abatement action. *See, Id.*

16 Mr. Owens also testified to the calculation of the proposed penalty for Citation 1, Item 2.
17 *See, State's Exhibit 1, pp. C24, C25, see also, 2Tr. pp. 51;23-24, 52;1-21.* This was considered a
18 serious violation because there was the potential for employees, both an employee of the
19 employer or an employee of the mobile home park, to enter the unmarked hazardous site. *See,*
20 2Tr. p. 52;1-4. Complete Demo's violation was considered serious because exposure to asbestos
21 can cause asbestosis, lung cancer, and mesothelioma. *See, State's Exhibit 1, p. C24.* The
22 probability of injury was listed as lesser because the same number of workers were exposed with
23 the same frequency as in Citation 1. *See, 2Tr., p. 52;10-12.* The gravity was a function of the
24 severity and probability of the alleged violation. *See, State's Exhibit 1, p. C24, see also, 2Tr., p.*
25 *52;16-18.* The amount of the fine proposed for the Citation 1, Item 2, was then \$10,360. *See, Id.*
26 The proposed fine was discounted to \$6,527, due to the same factors discussed under Citation 1
27 Item 1a. *See, 2Tr., p. 52;19-20.*

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1 Mr. Owens testified to the calculation of the proposed penalty for Citation 2, Item 1. *See*,
2 State's Exhibit 1, pp. C27-C29, *see also*, 2Tr. p. 52;4-21. This was considered minimal because
3 it was an administrative violation which did not pose a direct hazard to an employee. *See*,
4 State's Exhibit 1, p. C27, *see also*, 2Tr., p. 52;4-21. Mr. Owens found the severity to be lesser
5 because the alleged violation did not pose a direct threat to employee health. *See*, State's Exhibit
6 1, p. C27, *see also*, 2Tr., p. 52;22-24. The probability of injury was listed as lesser because the
7 same number of workers were exposed with the same frequency. *See*, 2Tr., p. 52;22-24. The
8 gravity was viewed as low as a function of the severity and probability of the alleged violation.
9 *See*, State's Exhibit 1, p. C27, *see also*, 2Tr., p. 53;1-3. The proposed fine for the incident was
10 \$14,502. *See*, 2Tr., p. 53;4-6. The proposed fine was then discounted to \$7,000, due to the same
11 factors discussed above. *See*, 2Tr., p. 53;7-9.

12 To the extent that any of the Conclusions of Law constitute Findings of Fact, they are
13 incorporated herein.

14 CONCLUSIONS OF LAW

15 The State is obligated to demonstrate alleged violations by a preponderance of the
16 reliable evidence in the record. Findings must be based upon the kind of the evidence upon
17 which responsible persons are accustomed to rely in serious affairs. *William B. Hopke Co., Inc.*
18 1982 OSHARC LEXIS 302 * 15, 10 BNA OSHC 1479 (No. 81-206, 19820 (ALJ)). The Board's
19 decision must be based on consideration of the whole record and shall state all facts officially
20 noticed and relied upon. 29 CFR 1905.27(b). *Armor Elevator Co.*, 1 OSHA 1409, 1973-1974
21 OHSD ¶ 16, 958 (1973). *Olin Construction Inc. v. OSHARC and Peter J Brennan, Secretary of*
22 *Labor*, 525 F. 2d 464 (1975). The State is obligated to demonstrate the alleged violation by a
23 preponderance of reliable evidence in the record. *Angelica Health Care Servs. Grp., Inc.*
24 *Respondent*, 14 O.S.H. Cas. (BNA) ¶ 1917 (O.S.H.R.C.A.L.J. Oct. 26, 1990).

25 In this case, the burden is on the State to prove by a preponderance of the evidence, a
26 *prima facie* case exists against the Respondent for each cause of action or charge. *See*, NAC
27 618.788(1), *see also*, *ComTran Group, Inc. v. U.S. Dept. Of Labor*, 722 F.3d 1304, 1308 (11th
28 Cir., 2013); *Secretary of Labor v. JPC Group, Inc.*, 2009 WL 2567337, Final Order Dated 2009,

1 (O.S.H.R.B.) WL p. 2. Thus, for each claim before the Board of Review, the State must
2 establish: (1) the applicability of a standard being charged; (2) the presence of a non-complying
3 condition; (3) employee exposure or access to the non-complying condition; and, (4) the actual
4 or constructive knowledge of the employer’s violative conduct. *See, Id., see also, Original*
5 *Roofing Company LLC v Chief Administrative Officer of the Nevada OSHA*, 135 Nev. 140, 143,
6 442 P.3d 146, 149 (2019). Actual or constructive knowledge can be proven by showing “that the
7 employer either knew, or, with the exercise of reasonable diligence, could have known of the
8 presence of the violative condition.” *See, Pelican, LLC v. Chief Admin. Officer of Occupational*
9 *Safety & Health Admin., Div. of Indus. Rels. of Dep’t of Bus. & Indus.*, 136 Nev. 858 (Nev. App.
10 2020) (quoting *Pride Oil Well Serv.*, 15 BNA OSHC 1809, 1814 (No. 86-692, 1992)).

11 Items 1a and 1b are analyzed together because they are inter-rated. The State’s *prima*
12 *facie* cases are supported by the same facts. *See, 2Tr.*, p. 50; 13-20. As an initial matter, 29 CFR
13 1926.1101(g)(6)(I) and (ii) are alternative methods of providing the protections set forth in
14 subsection (g)(5) of 29 CFR 1926.1101. The standards cited by the State apply. Their purpose is
15 to protect against exposure to asbestos and the record is clear that ACM was present.

16 In this instance, the Respondent did not provide a Negative Pressure Enclosure for the
17 work and no alternative methods were utilized to control the release of asbestos fibers. *See, 29*
18 *CFR 1926.1101(g)(5).*⁵ *See, State’s Exhibit 1*, pp. C7, C12. In addition to controlling the release
19 of fibers from the work area, the contractor should establish a decontamination plan. *See, 2Tr.*,
20 pp. 68;24, 69;1-2. A decontamination plan is a method or methods for the individuals on the
21 site and the equipment and the materials on the site to be decontaminated. *See, 2Tr.*, pp. 87;7-9.
22 Complete Demo did not have any plans for the decontamination of the individuals, equipment
23 and/or the materials. *See, State’s Exhibit 1*, pp. C12, C13, C18.

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27 ⁵Under subsection (g)(5) of 29 CFR 1926.1101, the employer should establish a fully controlled
28 area to enclose, contain or isolate the airborne dust or capture or redirect it. *See, 2Tr.*, pp. 68;24, 69;1-2,
70;2-10. The goal of a Negative Pressure Enclosure is to control the potential for asbestos fibers to be
released. *See, 2Tr.*, p. 87;2-4.

1 Failing to meet subsection (g)(5) of 29 CFR 1926.1101, the Respondent is required to use
2 a certified industrial hygienist or qualified licensed professional engineer to evaluate: 1) the
3 work area, 2) the projected work practices, and 3) enact engineering controls to certify that the
4 planned control method was adequate. In this case, the Respondent was engaged in a project to
5 remove ACM from the burned-out mobile home. In this project, the Respondent did not take
6 any of the actions set forth in (g)(5) of 29 CFR 1926.1101. *See*, State's Exhibit 1, pp. C7, C12,
7 C13, C18. Further, the Respondent did not undertake either of the alternative methods of
8 establishing a control area or employing an industrial hygienist or professional engineer. *See*,
9 State's Exhibit 1, pp. C18, C21, *see also*, 2Tr., pp. 67;20-24, 68;1-2, 72;17-24, 73;1-3.
10 Accordingly, the State established that the standards of 29 CFR 1926.1101(g)(6)(I) and (ii)
11 apply.

12 The Standard was violated because the Respondent did not engage either an industrial
13 hygienist or professional engineer for any purpose. *See*, 2Tr., pp. 72;17-24, 73;1-3. The
14 Respondent's effort to control the release of asbestos fibers was limited to spraying water on the
15 debris piles. The Respondent's belief that this was a method of abatement was flawed because
16 water, alone, is not sufficiently protective of exposure to asbestos as set forth by Federal
17 regulations. *See*, 2Tr., pp. 67;15-24, 68;1-11, 71;18-24, 72;1-4, 87;10-19. The State met its
18 burden to show that the standard was violated.

19 Employees were exposed to the non-complying condition. First, Mr. Paripovich, an
20 employee of Complete Demo, was exposed when he cut the four holes in the side(s) of what
21 remained of the burned-out mobile home. *See*, 2Tr., pp. 83;20-24, 84;1-6, 101;5-20, 124;10-15.
22 Mr. Paripovich stated this was done for safety reasons and the Board has no reason to doubt this.
23 However, the regulations at issue are to protect employees from asbestos exposure. *See*, 2Tr.,
24 pp. 37;24, 38;1-4.

25 Spiro Martin Luna, also a Complete Demo employee, was exposed while spraying water
26 on the burned trailer debris on the 5th of August. *See*, State's Exhibit 1, p. C16. The fact that he
27 was wearing some kind of mask does not negate his exposure. *See, Id.*

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1 There is no evidence that the mask would have been effective, since the employee had no
2 medical evaluation and was not fit tested for the mask. *See, Id.* Moreover, the Respondent did
3 not provide any evidence showing that an appropriate respirator had been chosen for this job.

4 Here, the Respondent argues that Mr. Luna was not exposed because he was outside of
5 the regulated area. *See, 2Tr.*, pp. 56;11-19, 97;13-18. This argument is undercut because
6 Complete Demo never established a controlled area. *See, 2Tr.*, p. 56;20-23. When friable
7 asbestos is present, the fibers can become airborne. *See, Id.* The potential for airborne asbestos
8 fibers is the reason that an established and approved controlled area must be established. *See, Id.*
9 The Respondent's argument misses the mark because there was no controlled area beyond which
10 Mr. Luna would have been safe. Therefore, he was exposed to the hazard. *See, State's Exhibit*
11 *1, p. C16, see also, 2Tr.*, p. 55;4-23.

12 The Respondent's knowledge of the violative conduct is shown in its failure to use
13 reasonable diligence to protect workers in an asbestos contaminated work site. At issue here is
14 whether the Respondent had constructive knowledge of the violative condition, *i.e.*, the State is
15 not required to show that Complete Demo actually knew that the condition violated the Act or
16 posed a hazard to its employees. *See, Original Roofing at 143.* The State need only to show that
17 Complete Demo failed to use reasonable diligence to determine whether there were violative
18 conduct or conditions. *See, Id.* Reasonable diligence includes conduct such as foreseeing
19 potential hazardous conditions, implementing measures to prevent those conditions and routinely
20 examining work site conditions. *See, Pelican, supra*, at 858.

21 The Respondent's inability to foresee potential hazards is shown most vividly by
22 Complete Demo's failure to utilize any of the recommendations of the MSE Environmental
23 Limited Asbestos Survey Investigation Report dated July 7, 2022 ("Report"). *See, State's*
24 *Exhibit 2, pp.C64-C83.* The Report expressly concludes that OSHA Class I materials in an
25 amount in excess of 1% were found at Space 57 of the Royal Mobile Park. *See, State's Exhibit*
26 *2, p. C79.* The Report's Conclusions section expressly informed the Respondent that 29 CFR
27 1926.1101 was applicable to the demolition of the burned-out mobile home located at the Royal
28 Mobile Park. *See, Id.*

1 Further, the Report provided the specific recommendations for the contractor:

- 2 - Asbestos Exposure Assessment by a competent person
- 3 - All applicable work practices in the OSHA Standard must be implemented
- 4 - All applicable prohibitions in the OSHA Standard must be adhered to.
- 5 - If either PEL(Permissible Exposure Limits) is exceeded (or a negative exposure assessment is not available), all applicable requirements of the Standard must be adhered to.
- 6 - All other applicable laws, rules and regulations must be followed. *See, Id.*

7 Finally, the Report's Conclusions provided a website with additional information for compliance
8 with OSHA's asbestos abatement rules. *See, Id.* These recommendations, had Complete Demo
9 followed them, would have informed the entity of the need to determine which OSHA standards
10 were applicable and obtain the necessary guidance and support to follow them.

11 The Respondent's failure to use reasonable diligence is also shown in its conduct.
12 Subsequent to the issuance of MSE's Report, Complete Demo voided its initial bid and increased
13 the price to \$21,500. *See, Respondent's Exhibit, p. 1. "Prior Bid Proposal is Void due to*
14 *Asbestos Survey Results."* *See, Id.* Further, Complete Demo passed on to its client the \$450
15 charge for MSE's Report. *See, Id.* Mr. Paripovich expressly communicated to his client that the
16 presence of asbestos was the reason for the price increase. *See, 2Tr., pp. 124;24, 125;1-11,*
17 *104;2-5, 126;18-24, 127;1-2.* Again, Complete Demo failed to use reasonable diligence by using
18 MSE's Report to increase the price of the job without considering what actions were required in
19 the face of the asbestos contamination.

20 In response, Complete Demo argued that the Report's conclusions were in error or, at
21 least, overstated. *See, Respondent's Exhibit p. 2, see also, 2Tr., pp. 63;13-18, 92;5-13.* This
22 argument was based upon the February 7, 2023, letter from MSE. *See, Respondent's Exhibit p.*
23 *2.* Therein, the testing facility expressed uncertainty as to whether the sample from the two
24 debris piles contained TSI. Based upon uncertainty of the source of the debris, the letter
25 concluded that "the material could have been classified as Class II material." *See, Respondent*
26 *Exhibit, p. 2.*

27 There were two problems here for the Respondent. First, MSE's letter, issued months
28 after the completion of the work, was inapplicable. *See, 2Tr., p. 65;5-12.* The original report
must be the source for all of the notifications and work completed. *See, Id.*

1 Second, the letter was not definitive. It did not recant or overturn MSE's original test
2 results. As Chairman Weber explained,

3 [a]ll they did was provide a letter, a very flimsy argument to potentially help
4 Complete Demo Service to say here's a letter that says it could have been
5 classified type two. But there's no -- it's not a recant or there's no overturn of
6 their original test results, right? It doesn't say that. *See*, 2Tr., p. 183;13-18.

6 The Board accordingly finds and concludes that the preponderance of the evidence
7 reveals that Complete Demo did not provide adequate protection for its employees during the
8 asbestos abatement project. Therefore, the State met its *prima facie* burden under subsections
9 (g)(6)(I) and (ii) of 29 CFR 1926.1101.

10 The standard of 29 CFR 1926.1101(k)(7)(I) states: "Warning signs that demarcate the
11 regulated area shall be provided and displayed at each location where a regulated area is required
12 to be established by paragraph (e) of this section." The standard applies here because MSE's
13 report from its July 7, 2022, inspection expressly informed Complete Demo that the burned-out
14 mobile home required Class I abatement. *See*, State's Exhibit 2, pp. C74, C79. In light of the
15 presence of material requiring a Class I abatement, warning signs demarcating the regulated area
16 were mandatory. The standard was violated because there was insufficient signage to identify the
17 regulated area and warn Complete Demo's and/or its subcontractors' employees of the presence
18 of asbestos contaminated debris. *See*, State's Exhibit 1, pp. C13, C57, C58, C60, *see also*, 2Tr.,
19 pp. 75;20-24, 76;1-19.

20 Here, the Respondent argues that the State's photographs were taken the day before the
21 contaminated material was removed. Photographs on the day that the two contractors removed
22 the contaminated materials showed white tape which appeared to wrap around the entire area.
23 *See*, Respondent's Exhibit pp. 19, 20. There were two problems, here, for the Respondent. First,
24 the photographs were not time stamped or authenticated by any independent witness. *See*, 2Tr.,
25 pp. 161;16-20, 163;19-24, 164;20-24. Second, both the park manager and Mr. Paripovich
26 provided evidence which indicated that work started on the project before the inspection on the
27 4th of August. *See*, State's Exhibit 1, pp. C15, C17, *see also*, 2Tr., pp. 32;2-9, 84;15-17, 102;20-
28 22.

1 Employees were exposed because Mr. Paripovich and Mr. Luna were on the job site
2 which did not provide adequate notice of the presence of asbestos which would have alerted
3 them to the need to use proper protective equipment. The employer knew of the lack of adequate
4 signage because Mr. Paripovich was depending upon A & B and Ace to provide it, without
5 realizing that Complete Demo was functioning as the general contractor.

6 Complete Demo was an employer with multiple roles. It was both an exposing and
7 controlling contractor. *See*, OSHA Compliance Directive (CPL) 2-00.124, pp. 3, 4. Regardless
8 of its status as controlling or exposing contractor, it had constructive knowledge of the violative
9 conduct based upon multiple events, most prominently, the MSE Report which stated that
10 abatement of the asbestos contained in the burned-out mobile home was Class I work. *See*,
11 State's Exhibit 2, pp. C74, C79. The Board accordingly finds and concludes that the
12 preponderance of the evidence reveals the State met its *prima facie* burden under 29 CFR
13 1926.1101(k)(7)(I) to show that Complete Demo failed to display warning signs to demarcate the
14 regulated area. *See*, 2Tr., p. 88;9-14.

15 The standard of NAC 618.954(1) applies because Complete Demo is a contractor, albeit
16 unlicensed, for the removal of asbestos. *See*, NAC 618.864, NRS 624.020. It was responsible for
17 giving notice because it intended to engage in a project to abate asbestos. Towards that end,
18 Complete Demo hired multiple different asbestos providing service contractors and coordinated
19 all of them. *See*, 2Tr., pp. 39;22-24, 40;1, 73;12-22. Complete Demo violated the standard
20 because it engaged in asbestos abatement without providing notice to the Enforcement Section of
21 Nevada OSHA, as required by NAC 618.954(1). *See*, State's Exhibit 1, p. C27, *see also*, 2Tr.,
22 pp. 79;20-24, 80;1-24.

23 The Respondent argues, in part, the standard was not violated because the asbestos
24 abatement was Class II work. *See*, State's Exhibit 1, p. C52. However, the risk posed by
25 asbestos is not a constant.

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1 It can change depending upon the physical condition of the asbestos containing material(s).

2 Mr. Owens: [W]hen you have a building that has say floor tile or mastic that
3 contains asbestos, that material has to be removed before that building is
4 demolished. That's a requirement. If you use mechanical means to remove that
5 material that causes it to be abraded or pulverized or crumbled, then now
6 you're looking at class one work.

7 Chairman Weber: Because that material becomes friable?

8 Mr. Owens: Because it becomes friable because the whole idea, we're trying to
9 minimize or eliminate exposure to airborne fibers that come from materials that
10 are disturbed and releasing asbestos into the air. *See*, 2Tr., p. 82;2-13.

11 Based upon Mr. Owens' testimony, the source of the ACM sample material was not
12 relevant in determining whether it was necessary for the contractor to provide notice because
13 friable material was present. *See*, 2Tr., p. 88;14-21.

14 Here, Mr. Paripovich also argued that Complete Demo had no control of the project after
15 the abatement companies commenced their work. *See*, 2Tr., p. 95;5-9. "As soon as that tape goes
16 up and it's marked as regulated area, those guys are doing their thing. I can't tell them what to
17 do. They know what their job is. They have their own paperwork. They have their own testing.
18 They remove it." *See, Id.*

19 In this instance, Complete Demo was both the exposing employer and the controlling
20 employer. *See*, CPL 2-00.124, pp. 3, 4. It was the exposing employer because its employees,
21 Mr. Paripovich and Mr. Luna, were exposed to the hazard. *See*, State's Exhibit 1, pp. C15, C16,
22 *see also*, 2Tr., pp. 84;2-17, 153;15-24, 154;1. As the exposing employer, Complete Demo is
23 citable for any exposure to its employees and any of its subcontractors' employees. *See*, CPL 2-
24 00.124, pp. 3, 4.

25 Complete Demo was also a Controlling Employer because it engaged three different
26 contractors to abate the asbestos at the burned-out mobile home. *See*, 2Tr., p. 165;21-23. As
27 Chairman Weber explained, "The role of a controlling contractor is less than what's required for
28 an exposing contractor or creating contractor or correcting contractor." *See*, 2Tr., pp. 165;23-24,
166;1.

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1 An employer who has general supervisory authority over the worksite, including the
2 power to correct safety and health violations itself or require others to correct them is a
3 controlling contractor. Control can be established by contract or, in the absence of explicit
4 contractual provisions, by the exercise of control in practice. *See*, CPL 2-00.124, pp. 6, 7.

5 Mr. Owens explained, "Complete Demo served as the abatement contractor because they
6 were the ones that ordered and received the sample -- the sample results. They were the one that
7 brought in Ace Demolition and A&B. So they served as abatement contractor and they weren't
8 qualified to do that." *See*, 2Tr., p. 73;17-22. As Complete Demo was considered the controlling
9 contractor, it had a duty to exercise reasonable care to prevent violations on the jobsite. *See*,
10 CPL 2-00.124, p. 7. This was a lesser duty than what would be required of an employer
11 protecting its own employees. *See, Id., see also*, 2Tr., p. 167;12-16. However, it was the
12 controlling employer's responsibility to notify all individuals of the hazard and to protect them.
13 *See*, 2Tr., p. 58;18-20.

14 In this instance, Complete Demo relied upon its subcontractors to provide the notices.
15 *See*, Respondent's Exhibit, p. 6, *see also*, 2Tr., p. 93;4-7. Neither the subcontractors nor the
16 Respondent provided notice to the Enforcement Section. *See*, 2Tr., p. 79;16-24, 80;1-10.
17 Accordingly, the facts and evidence supported the State's *prima facie* case that Complete Demo
18 was a contractor engaged in a project to abate asbestos. As a result, Complete Demo had the
19 duty to notice the Enforcement Section of Nevada OSHA, which it failed to do. *See, Id.*

20 Employees were exposed because a quantity of asbestos containing material greater than
21 10 square feet was removed from space 57 of the Royal Mobile Park. *See*, State's Exhibit 1, pp.
22 C12, C13. The Respondent argued that he did not have the requisite knowledge because he had
23 no intention of being a general contractor. *See*, 2Tr., pp. 94;14-24, 95;1-5.

24 Chairman Weber: Well, you anticipated that they were going to handle it
25 correctly and based on the letter you just showed us from or the contract with
26 A&B that they were going to -- like you said here, they were going to furnish
27 labor and materials, abatement, abatement of the asbestos notification, all of
28 those permits, all those things, that was the assumption you were under was
they were going to handle that for you, correct?

Mr. Paripovich: Correct.

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1 The fact that Complete Demo took on the function by default, did not relieve it of the
2 associated responsibilities. As Chairman Weber explained,

3 [Mr. Paripovich” has] been doing demo for 30 years. He’s got plenty of
4 experience doing demo. He understands the role of an asbestos abatement
5 contractor versus his role as the, let’s call it the general contractor or the project
6 managing contractor. *See, Tr., p. 169;1-5.*

6 Accordingly, the State provided substantial evidence supporting its *prima facie* case of a
7 violation of NAC 618.954(1). The Respondent did, in fact, serve as a contractor intending to
8 engage in asbestos abatement and did not give notice of that intent to the enforcement section.

9 **ORDER**

10 It was moved by Board Member Macias to uphold each Citation and respective fines
11 totaling violations with the recommended \$20,054 in the aggregate. *See, 2Tr., p. 184;11-14.*
12 The motion was seconded by Board Member Milligan. *See, 2Tr., p. 184;15-16.* The motion was
13 approved unanimously upon a vote of four in favor and none in opposition. *See, Tr., p. 218;17-*
14 *12.* Accordingly, the State OSH Board of Review hereby upholds the citation and fine assessed
15 against Complete Demo in the amount of \$20,054. *See, Id.*

16 This is the Final Order of the Board.

17 IT IS SO ORDERED.

18 On October 9, 2024 the Board convened to consider adoption of this decision, as written
19 or as modified by the Board, as the decision of the Board.

20 Those present and eligible to vote on this question consisted of the Chairman Jorge
21 Macias, Board Secretary William Spielberg and Tyson Hollis. Upon a motion by Tyson Hollis,
22 seconded by Chairman Jorge Macias, the Board voted Vote: 3-0-1 (Bautista abstaining) to
23 approve this Decision of the Board as the action of the Board and to authorize Chairman Jorge
24 Macias, after any grammatical or typographical errors are corrected, to execute, without further
25 Board review this Decision on behalf of the Nevada Occupational Safety and Health Review
26 Board.

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1 Those voting in favor of the motion either attended the hearing on the merits or had in their
2 possession the entire record before the Board upon which the decision was based.

3 On October 9, 2024, this Decision is, therefore, hereby adopted and approved as the Final
4 Decision of the Board of Review.

5 Dated this 18th day of October, 2024.

NEVADA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

6

7

By: /s/Jorge Macias
Jorge Macias, Chairman

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of Charles R.
3 Zeh, Esq., and that on this date I served the attached document, *Decision and Order of the*
4 *Board, Findings of Fact and Conclusion of Law, and Final Order*, on those parties identified
5 below by placing an original or true copy thereof in a sealed envelope, certified mail/return
6 receipt requested, postage prepaid, placed for collection and mailing in the United States Mail, at
7 Reno, Nevada:

8 Salli Ortiz, Esq.
9 DIR Legal
10 1886 College Pkwy., Suite 110
11 Carson City, NV 89706

12 Mr. Jack Paripovich
13 3008 Meade Ave.
14 Las Vegas, NV 89119

15 Dated this 18th day of October, 2024.

16 /s/Karen Kennedy
17 Employee of
18 The Law Offices of Charles R. Zeh, Esq.

19 S:\Clients\OSHA\LV 23-2216, Complete Demo Services\Decision\LV 23-2216 ADA Decision.wpd