Susan Herron (Complainant)

Complainant's Briefing on Compensatory Make-Whole Relief

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STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

SUSAN HERRON,

Complainant,

v.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT,

Respondent.

Case Number: 2024-015

Complainant's Briefing on Compensatory Make-Whole Relief

COMPLAINANT SUSAN HERRON, by and through her undersigned counsel of record ALEX VELTO, ESQ. of REESE RING VELTO, PLLC, hereby submits this Briefing on Compensatory Make-Whole Relief:

I. Introduction

The question before the Board is not whether Ms. Herron has already proven every dollar of her damages. The question is whether, if she proves that IVGID committed a prohibited practice under NRS Chapter 288, the EMRB has authority to make her whole for the actual harm that prohibited practice caused. The answer is yes.

First, NRS 288.110 gives the Board broad authority to restore to an aggrieved party "any benefit" of which she was deprived by unlawful conduct, and NRS 288.280 applies that same

remedial authority to prohibited-practice proceedings. The Legislature did not handcuff the EMRB to hollow remedies. It did not say the Board may only issue a cease-and-desist order, or only award one narrow category of monetary relief, or only restore wages while ignoring the real-world harm caused by unlawful political discrimination. It gave the Board broad restorative authority so that its remedies would mean something.

Second, that is exactly what Ms. Herron seeks here: a make-whole remedy, not a punitive one. She does not ask this Board to punish IVGID for punishment's sake. She asks the Board to recognize that if an employer unlawfully weaponizes its power against an employee for political or personal reasons, the injury does not disappear simply because the employee continued receiving a paycheck. A politically motivated investigation, a secret process, a prolonged administrative leave without notice of the allegations, and the reputational and personal harm that follow are real injuries. If those injuries were caused by a prohibited practice, a remedy that ignores them is not a remedy at all.

Third, longstanding labor law confirms that labor boards possess broad equitable authority to craft make-whole remedies so long as those remedies are restorative, tied to actual injury, and not punitive or speculative. Ms. Herron's request is not a radical expansion of Board power. It is the ordinary function of a labor tribunal: to remove the effects of unlawful conduct and restore the injured employee, as nearly as possible, to the position she would have occupied had the violation never occurred. That is the principle reflected in the Supreme Court's labor cases, in the modern development of make-whole relief under *Thryv*, and in the Ninth Circuit's approval of that framework in *Macy's* and *Los Robles*.

Fourth, Nevada law expressly permits the EMRB to look to federal labor precedent for guidance where the purposes and structure of the statutory schemes align. Chapter 288 is a remedial labor statute. It prohibits discrimination for political or personal reasons or affiliations. It empowers this Board to hear those claims and to restore what the employee lost because of the violation. Federal labor law does not replace Nevada law; it confirms that the type of relief Ms.

Herron seeks is consistent with the role of a labor board exercising equitable, make-whole authority.

Fifth, IVGID's likely response will confuse labels with substance. Calling the requested relief "compensatory damages" does not transform it into forbidden tort damages. The real question is whether the Board is being asked to impose punishment, or whether it is being asked to remedy actual injury caused by a prohibited practice. Ms. Herron seeks the latter. The relief she requests remains cabined by the same guardrails that govern all make-whole relief: causation, proof, and the prohibition against speculation or punishment.

And **sixth**, recognizing the Board's authority does not require the Board to decide the amount of any award today. The Board need only decide the legal question now: whether such relief is available if liability and injury are proven. The amount, if necessary, can be resolved on a developed evidentiary record. That is the sensible course. It preserves the Board's remedial authority, respects the distinction between restorative and punitive relief, and ensures that the issue is decided based on proof rather than abstraction.

For those reasons, the Board should hold that it has authority under NRS 288.110 and NRS 288.280 to award compensatory make-whole relief for actual injury caused by a prohibited practice under NRS 288.270(1)(f).

II. The EMRB has authority to award compensatory make-whole relief

A. Nevada's statutory scheme gives the Board broad restorative remedial authority

NRS 288.110 authorizes the Board, after hearing, "to restore to the party aggrieved any benefit of which the party has been deprived by that action," and it separately authorizes an award of reasonable costs, which may include attorney's fees, to the prevailing party. NRS 288.110(2), (5). NRS 288.280 further provides that "[a]ny controversy concerning prohibited practices may be submitted to the Board in the same manner and with the same effect as provided in NRS 288.110." NRS 288.280.

The EMRB's statutory scheme is intentionally broad to preserve the EMRB's inherent authority to govern its proceedings. *See City of Henderson v. Kilgore,* 122 Nev. 331, 334 (2006) ("NRS 288.110 gives the EMRB broad jurisdiction to govern its own proceedings."). Nowhere in NRS Chapter 288 did the Legislature decide to confine the Board to cease-and-desist relief, nor does it limit the Board to only one form of monetary relief. Instead, the Legislature empowered the Board to restore to the aggrieved party "any benefit" of which the party was deprived by the unlawful action. NRS 288.110(2). And because prohibited-practice proceedings are submitted to the Board "in the same manner and with the same effect" as proceedings under NRS 288.110, the same broad remedial authority applies here. NRS 288.280.

Ms. Herron's claim falls squarely within that remedial framework. Her complaint alleges that IVGID discriminated against her because of "political or personal reasons or affiliations," invoking NRS 288.270(1)(f) and NRS 288.280. Her pre-hearing statement likewise places compensatory relief directly at issue, expressly identifying compensatory relief for emotional distress, mental anguish, damage to professional reputation, and impact on physical health and well-being.

B. Ms. Herron seeks make-whole relief for actual injury, not punitive award.

The record as framed by the pleadings and pre-hearing statement shows that Ms. Herron is not seeking a penalty untethered to the statute. She alleges that she was abruptly placed on paid administrative leave on November 14, 2023, without explanation, without a written complaint, and without notice of the allegations against her; that the action was politically motivated; that the leave lasted 14 weeks; and that the process caused severe emotional distress and fear of termination. She further alleges that the sham investigation and secret allegations caused emotional and mental harm, took a toll on her physical health and well-being, damaged her reputation, and had a chilling effect on protected political activity.

Her pre-hearing statement tracks those same injuries. It asserts that IVGID's conduct warrants "compensatory relief for emotional distress and damage to Ms. Herron's professional

reputation," and later describes compensatory relief as including emotional distress and mental anguish, damage to professional reputation, and impact on physical health and well-being.

Ms. Herron's requested relief is a classic make-whole remedy. The theory is not that the Board should punish IVGID for bad conduct in the abstract. Instead, the theory is that, if the Board finds a prohibited practice, it should remedy the concrete harms that the prohibited practice caused. That is restorative relief.

C. Longstanding labor-law doctrine recognizes broad Board power to craft make-whole remedies.

The Supreme Court has repeatedly held that labor boards possess broad remedial authority to restore the situation, as nearly as possible, to the one that would have existed absent the unlawful conduct. In *Phelps Dodge Corp. v. NLRB*, the Court explained that the policy underlying labor remedies is "a restoration of the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination." 313 U.S. 177, 194 (1941). The Court further explained that "making the workers whole for losses suffered on account of an unfair labor practice" is part of "vindicat[ing] the public policy" enforced by labor statutes. *Id.* at 197.

Likewise, in *Virginia Electric & Power Co. v. NLRB*, the Court held that the Board has "wide discretion in ordering affirmative action" and that its authority "is not limited to the illustrative example of one type of permissible affirmative order, namely, reinstatement with or without back pay." 319 U.S. 533, 539 (1943). The Court also emphasized that such relief is remedial, not punitive, and may resemble compensation for private injury while still serving a public statutory purpose. *Id.* at 543. The Court further made clear that the type of remedy falls within the Board's inherent equitable authority. *Id.* at 539 (" The particular means by which the effects of unfair labor practices are to be expunged are matters 'for the Board not the courts to determine") (quoting *International Ass'n of Machinists, Tool and Die Makers Lodge No. 35 v. National Lab.*, 311 U.S. 72, 88-89 (1940).

Even dating back to *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48–49 (1937), the Supreme Court made clear that the Seventh Amendment does not bar money relief that is incident to equitable statutory enforcement. *King Scoopers, Inc. v. NLRB* upheld the NLRB's authority to award additional remedies, other than merely lost wages, as make whole relief. 859 F.3d 23, 36 (D.C. Cir., 2017). This case supports the proposition that make-whole labor remedies can include specific monetary losses beyond wages when they are restorative and proven. And the Ninth Circuit has embraced a broad trend in remedies under *NLRB v. Ampersand Publishing, LLC,* 43 F.4th 1233, 1236–38 (9th Cir. 2022) (the Board's remedial discretion is "exceedingly broad," and the remedy will stand unless it is a patent attempt to achieve ends other than those that effectuate the Act's policies.).

That said, jurisprudence about the NLRB's authority and equitable remedies for labor boards does not create limitless remedies. For instance, *Sure-Tan, Inc. v. NLRB*, held that labor remedies must be tailored to "expunge only the actual, and not merely speculative, consequences of the unfair labor practices." 467 U.S. 883, 900 (1984). In other words, the question is not whether relief has a monetary component; the question is whether it is restorative, equitable, and tied to actual injury caused by the violation. *Id.* at 900–01.

Those principles it snugly around Ms. Herron's requested remedies. If IVGID engaged in prohibited political discrimination, and if that discrimination caused actual emotional, reputational, or related personal harm, a remedy directed at restoring Ms. Herron to the position she would have occupied absent the violation is fully consistent with settled labor-remedy doctrine.

D. *Thryv* clarifies that make-whole relief includes proven direct or foreseeable harm and is not punitive.

This Board can embrace modern labor-law articulation of these principles by accepting Ms. Herron's remedies as within its inherent authorty under NRS Chapter 288. The test for recoverable damages appears in *Thryv, Inc.*, 372 N.L.R.B. No. 22 (Dec. 13, 2022). There, the

Board clarified that, in cases where standard make-whole relief is warranted, the respondent must compensate affected employees for "all direct or foreseeable pecuniary harms" suffered as a result of the unfair labor practice. *Thryv, Inc.*, 372 N.L.R.B. No. 22, slip op. at 1, 9, 21 (Dec. 13, 2022) (review granted, vacated in part by *Thrv v. N.L.R.B.*, 102 F.4th 727 (5th Cir. 2024).

Crucially, *Thryv* did not authorize punitive damages. To the contrary, it emphasized that the Board was not creating tort-style consequential damages and that any claimed harm must be proven, quantified, and non-speculative. *Id.* at 12, 18–21. It explained that the General Counsel bears the burden to prove the amount of the harm and to show that the harm was directly caused by, or was a foreseeable consequence of, the unfair labor practice. *Id.* at 18–20.

That framework strongly supports the availability of make-whole compensatory relief here. It confirms that a labor tribunal does not exceed its authority merely because it orders monetary relief beyond backpay. The essential distinction is between restorative relief for actual injury and punishment. *Thryv* places compensatory, proven make-whole relief on the permissible side of that line.

E. The Ninth Circuit has approved the *Thryv* framework, subject to the requirement that belief be equitable and non-speculative.

The Ninth Circuit has now expressly approved the *Thryv* framework. In *International Union of Operating Engineers, Stationary Engineers, Local 39 v. NLRB (Macy's Inc.)*, the Court enforced a Board order requiring Macy's to compensate employees for "direct or foreseeable pecuniary harms" resulting from an unlawful lockout. 155 F.4th 1023, 1045–53 (9th Cir. 2025), amended Oct. 20, 2025. The Ninth Circuit held that the Board did not clearly abuse its discretion in adopting and applying the *Thryv* make-whole framework. *Id.* at 1045–53.

Most importantly, *Macy's* articulated the same limiting principle that should govern here: *Thryv* remedies are permissible only when they are equitable and "only actual losses [are] made good," and any later award must be "sufficiently tailored to expunge only the actual, and not

merely speculative, consequences of the unfair labor practices." *Id.* at 1051–53 (quoting *Phelps Dodge* and *Sure-Tan*).

The Ninth Circuit reiterated that holding in *NLRB v. Los Robles Regional Medical Center*, 2025 WL 3090744, at *3–4 (9th Cir. Nov. 5, 2025), enforcing a Board order requiring the employer to make employees whole for "loss of earnings and other benefits, and *for any other direct or foreseeable pecuniary harms*," while emphasizing that the Board must later establish that the relief sought is equitable and tailored to actual compensable injury. (Emphasis in original).

Thus, under Ninth Circuit law, make-whole pecuniary relief is not ultra vires and not punitive, so long as it is limited to actual consequences of the violation and supported by proof. That is the exact approach Ms. Herron asks the EMRB to follow.

F. Nevada Law expressly permits reliance on Federal Labor Precedent for guidance in interpreting Chapter 288.

Any concern about borrowing federal labor principles into Nevada's public-sector setting is answered by the Nevada Supreme Court. In *Truckee Meadows Fire Protection District v. International Ass'n of Firefighters, Local 2487*, the Court held that Nevada adjudicators may draw "enlightenment" from NLRB and federal labor precedent when interpreting Nevada's collective-bargaining statutes because of the similarity in their purposes and bargaining concepts. 109 Nev. 367, 375–76 (1993) ("[W]e conclude that the EMRB properly looked to NLRB precedent in reaching its determination.").

That is especially appropriate here. Chapter 288 is a remedial labor statute. NRS 288.270(1)(f) prohibits discrimination because of "political or personal reasons or affiliations." NRS 288.270(1)(f). NRS 288.110 and 288.280 then give the Board authority to hear the controversy and restore the aggrieved party to the position she would have occupied absent the unlawful conduct. Federal labor doctrine does not alter Nevada law; it illuminates how a labor board may properly exercise broad remedial authority without crossing into punitive territory.

G. Under that framework, compensatory make-whole relief is legally available here.

Applying those principles here, the Board may award compensatory make-whole relief if Ms. Herron proves three things. First, she must prove a prohibited practice under NRS 288.270(1)(f). Her complaint alleges such a violation, asserting that the investigation and administrative leave were pushed by certain trustees because of her political affiliations and activities.

Second, she must prove causation. The requested relief must be tied to the prohibited practice itself. That requirement is already reflected in her theory of the case: she alleges that the administrative leave, secret allegations, and sham investigation caused the emotional, physical, and reputational injuries for which she seeks relief.

Third, she must prove the extent of the injury with competent evidence. That proof requirement is not a reason to deny authority; it is the mechanism that keeps the remedy restorative. Under *Sure-Tan*, *Thryv*, and *Macy's*, the Board simply may not award speculative or punitive sums. It may award only such relief as the evidence supports.

Nothing in Chapter 288 bars that result. To the contrary, the statutory command to restore to the aggrieved party "any benefit" of which she has been deprived is broad enough to encompass proven make-whole compensatory relief for harms caused by prohibited discrimination. Nev. Rev. Stat. § 288.110(2).

H. IVGID's likely response confuses tort damages with labor make-whole relief.

IVGID is likely to argue that "compensatory damages" sound in tort and therefore exceed the Board's authority. That argument misstates the issue. The relevant question is not the label attached to the relief. The relevant question is whether the Board is ordering punishment or instead restoring the aggrieved employee for actual injury caused by the prohibited practice.

That distinction is the one recognized in *Virginia Electric*, *Thryv*, and *Macy's*. A monetary remedy can "somewhat resemble compensation for private injury" and still be a valid statutory labor remedy when it is designed to effectuate the statute and eliminate the effects of the unlawful

conduct. *Virginia Elec.*, 319 U.S. at 543 (The Act was "designed to aid in achieving the elimination of industrial conflict."). *Thryv* expressly rejected the notion that make-whole pecuniary relief becomes impermissible merely because it goes beyond backpay, while *Macy's* approved that reasoning so long as the relief remains equitable and non-speculative.

So too here. Ms. Herron's request for relief for emotional distress, reputational injury, and related harm does not ask the Board to impose a civil penalty. It asks the Board, if liability is established, to compensate actual injury caused by prohibited political discrimination. That is a make-whole request.

I. The better course is for the Board to recognize the availability of such relief and determine the amount, if necessary, on a developed evidentiary record.

The Board does not need to decide an exact dollar amount at the threshold stage in order to recognize its authority. It need only determine that, if Ms. Herron proves a prohibited practice and proves actual injury caused by that practice, the Board has authority to award compensatory make-whole relief consistent with NRS 288.110 and NRS 288.280. NRS 288.110, NRS 288.280.

That approach mirrors federal labor practice. In *Thryv*, the Board reserved issues of amount, causation, and proof for later proceedings, while establishing the legal availability of the relief. *Thryv*, 372 N.L.R.B. No. 22, slip op. at 21–22. The Ninth Circuit approved that structure in both *Macy's* and *Los Robles*.

The same method works here. The Board can hold now that compensatory make-whole relief is legally available under Chapter 288, while limiting any eventual award to injury that is proven, caused by the violation, and not speculative.

III. Conclusion

For all of these reasons, the EMRB should hold that it has authority under NRS 288.110 and NRS 288.280 to award compensatory make-whole relief for actual injury caused by a prohibited practice under NRS 288.270(1)(f). Nevada's statutory text is broad, Nevada law permits reliance on federal labor precedent for guidance, and federal labor doctrine confirms that

restorative monetary relief is permissible so long as it is limited to actual, proven harm and does not become punitive. Ms. Herron's request for compensatory relief should therefore be recognized as legally permissible.

DATED this 13th day of March 2026.

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CERTIFICATE OF SERVICE

Pursuant to NAC 288.200 (2), I caused a true and correct copy of the **Complainant's Briefing on Compensatory Make-Whole Relief** to be filed with the EMRB and to be served on the following individuals by depositing for mailing with postage prepaid on this 13th day of March 2026:

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IVGID (Respondent)

Respondent's Brief Regarding EMRB's Authority to Award Damages

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STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

SUSAN HERRON,

Complainant,

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

Respondent.

Case No.: 2024-015

RESPONDENT'S BRIEF REGARDING EMRB'S AUTHORITY TO AWARD DAMAGES

Respondent Incline Village General Improvement District ("Respondent" or "District"), by and through its attorney of record, Nick D. Crosby, Esq. of Marquis Aurbach, hereby files its Brief Regarding EMRB's Authority to Award Damages in the above-referenced matter. This Brief is based and based upon the attached Memorandum of Points and Authorities, all papers and pleadings on file herein, and any argument by counsel at the time of the hearing on the Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nevada's Employee-Management Relations Act ("EMRA") does not permit the Employee-Management Relation Board ("EMRB") to award compensatory damages for alleged injuries related to emotional distress, reputational harm or other injuries generally reserved for tort claims. Instead, Nevada Revised Statute 288.110 expressly limits the Board's remedial authority to: (1) a cease and desist order; or (2) restoration of any "benefit" which the aggrieved party was

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deprived of though the prohibited practice. *See* Nev. Rev. Stat. 288.110(2). The statute does not, by its plain language, expand the Board's authority to award damages for emotional distress or reputational harm a complainant asserts occurred as a result of a prohibited labor practice.

Complainant's request for compensatory, tort-like damages conflicts with the statute's text and with settled principles limiting the EMRB to equitable remedies. Federal decisions addressing analogous NLRB remedies likewise confirm that make-whole relief, at most, reaches direct, quantifiable pecuniary losses, not loses related to emotional distress or reputational harm. The Board should therefore reject Complainant's claim for compensatory damages and confine any remedy to the equitable measures authorized by NRS 288.110.

II. THE ISSUE

The issue before the Board in this brief is whether Nevada Revised Statute chapter 288 grants the Board the authority to award compensatory-like damages for non-physical injuries alleged to have resulted from a prohibited labor practice. Simply put, the issue is whether the Board can award tort damages for a prohibited labor practice.

III. LEGAL ARGUMENT

A. THE NEVADA EMPLOYEE MANAGEMENT RELATIONS ACT DOES NOT PERMIT AN AWARD OF COMPENSATORY DAMAGES.

"In interpreting a statute, we begin with the text of the statute to determine its plain meaning and apply 'clear and unambiguous' language 'as written.'" *Locker v. State*, 128 Nev. 653, 655, 516 P.3d 149, 152 (2022) (quoting *Hobbs v. State*, 127 Nev. 234, 251 P.3d 177, 179 (2011)). Nevada Revised Statute 288.110 provides, in relevant part:

> **NRS 288.110 Rules governing various proceedings and procedures; hearing and order; injunction; time for filing complaint or appeal; costs.**
>
> ...
>
> 2. The Board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by the Executive Department, any local government employer, any employee, as defined in NRS 288.425, any local government employee, any employee organization or any labor organization. Except as otherwise provided in this subsection and NRS 288.115, 288.280 and 288.625, the Board shall conduct a hearing within 180 days after it decides to hear a complaint. If a complaint alleges a violation of paragraph (a) of subsection 1 of NRS 288.620 or paragraph (b) of subsection 2 of NRS

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> 288.620, the Board shall conduct a hearing not later than 45 days after it decides to hear the complaint, unless the parties agree to waive this requirement. The Board, after a hearing, if it finds that the complaint is well taken, may order any person or entity to refrain from the action complained of or to restore to the party aggrieved any benefit of which the party has been deprived by that action. Except when an expedited hearing is conducted pursuant to NRS 288.115, the Board shall issue its decision within 120 days after the hearing on the complaint is completed.
>
> ...

Nev. Rev. Stat. 288.110(2).

By its plain language, the Board has the authority to: (1) issue an order directing an offending party to refrain from engaging in the complained-of prohibited conduct; or (2) restore any "benefit" which the complaining party was deprived of as a result of the prohibited conduct. *See id.* It does not, however, state that the Board can award damages for personal injuries that a complainant alleges were caused by a prohibited practice.

As discussed below, the EMRB is limited to equitable relief and cannot award compensatory damages. Federal case law addressing analogous NLRB remedies confirms this and, even when recognizing make-whole relief, confines it to direct, quantifiable pecuniary losses, not nonpecuniary or speculative harms.

B. THE EMRB IS A COURT OF EQUITY AND CANNOT AWARD NON-PECUNIARY, TORT-LIKE DAMAGES.

The Complainant seeks to have the EMRB expand its authority to award compensatory damages, citing *Thryv, Inc.*, as persuasive authority. (Compl. Bf., p. 6). In *Thryv, Inc. v. Int'l Brotherhood of Elec. Workers, Local 1269*, the NLRB concluded that under the NLRA, it could order employers to "compensate affected employees for all direct or foreseeable pecuniary harms suffered as a result of "an unfair labor practice—which the NLRB held extends to such things such as "interest and late fees on credit cards," "penalties if [an employee] must make early withdrawals from [a] retirement account," "increased... childcares costs," and "other costs incurred to make ends meet." 372 N.L.R.B. No. 22, *9, 15 (2022). As numerous federal courts have held regarding

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the NLRB's authority to award expanded make-whole remedies under *Thryv*, the EMRB should conclude that such damages exceed the EMRB's authority under Nevada law.

There is a split amongst the federal courts regarding the NLRB's alleged authority to order *Thryv* remedies. The Third Circuit squarely rejected the NLRB's remedial power grab, holding that it "exceeds [the Board's] authority under" the NRLA. *Nat'l Lab. Rels. Bd. v. Starbucks Corp. (Starbucks I),* 125 F.4th 78, 95 (3d Cir. 2024). Two other circuits have held the same. *See Hiran Mgmt., Inc. v. NLRB*, F.4th, 2025 WL 3041862, at *6 (5th Cir. Oct. 31, 2025) ("agree[ing] with the Third Circuit's analysis… that the *Thryv* remedy goes beyond the text of the NLRA"); *NLRB v. Starbucks Corp.* (Starbucks II), F.4th, 2025 WL 3089798, at *10 (6th Cir. Nov. 5, 2025) (siding with "the Third and Fifth Circuits' assessment of the issue."). The Ninth Court, however, held that the *Thryv* consequential damages remedy is permissible. *Int'l Union of Operating Eng'rs, Stationary Eng'rs, Loc. 39 v. Nat'l Lab. Rels. Bd. ("Macy's"),* 155 F.4th 1023, 1046 (9th Cir. 2025). A petition for a writ of certiorari is pending in *Macy's. See id.*

There is a reason that the Ninth Circuit is alone among the Federal Circuit Courts in upholding *Thryv* remedies: the *Thryv* remedies are inconsistent with the NLRA and the Seventh Amendment. Likewise, allowing the remedies that Complainant seeks here would go against NRS 288.110, the Seventh Amendment to the U.S. Constitution, and Article 1, Section 3 of the Nevada Constitution. As stated above, NRS 288.110 grants the Board the authority to: (1) issue an order directing an offending party to refrain from engaging in the complained-of prohibited conduct; or (2) restore any "benefit" which the complaining party was deprived of as a result of the prohibited conduct. The language of NRS 288.110 is very similar to the NLRA's Section 10(c), which authorizes the NLRB to order employers to "cease and desist from" unfair labor practices and to "take such affirmative action[,] including reinstatement of employees with or without back pay, as will effectuate the policies of [the NLRA]." *Starbucks I.,* 125 F.4th at 78, 95 (quoting 29 U.S.C.

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§ 160(c)). Both NRS 288.110 and Section 10(c) of the NLRA authorize equitable remedies, as they do not implicate jury-trial rights the EMRB and NLRB are incapable of supplying.

In refusing to accept the NLRB's attempt to award *Thryv* remedies, the Third Circuit explained that the NLRB is a court of equity. *Id.* at 95 (quoting *The System of Equitable Remedies*, 63 UCLA L. Rev. 530, 553 (2016), "By empowering the Board to order entities "to cease and desist" and to take "affirmative action," Congress granted it the authority to order equitable remedies."). Using this reasoning, the Third Circuit ruled that the NLRA limits the NLRB's remedial authority to equitable, not legal relief. *See Starbucks I,* 125 F.4th at 95. Under the same reasoning, the EMRB is a court of equity and is therefore limited to equitable, not legal relief.

In *Starbucks I*, the NLRB ordered Starbucks to "compensate [the employees] for any direct or foreseeable pecuniary harms incurred as a result of the unlawful adverse actions against them." *See Id.* at 96. The Third Circuit explained that "compensatory damages 'are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct.'" *Id.* (quoting *State Farm Mut. Auto. Ins. v. Campbell*, 538 U.S. 408, 416, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003); *see also Cooper Indus. v. Leatherman Tool Grp.*, 532 U.S. 424, 432, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001)). The court ultimately rejected the NLRB's authority to issue compensatory damages, finding that it exceeds the board's statutory authority. *See Starbucks I,* 125 F.4th at 97. The EMRB's statutory authority is equally limited and any claim for compensatory damages should be denied.

Complainant argues that the EMRB is authorized to award make-whole relief and thus, she is entitled to an award for all direct or foreseeable pecuniary harms. (Compl. Bf., pp.6-7). However, the Complainant tries to expand the already improper *Thryv* remedies, which are damages by another name and are "quintessentially legal relief with common law roots." *Starbucks II,* 2025 WL 3089798 at *19. The Seventh Amendment guarantees that in "[s]uits at common law ... the

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right of trial by jury shall be preserved." *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 110, 144 S. Ct. 2117, 2120, 219 L. Ed. 2d 650 (2024). Accordingly, the EMRB lacks authority to award *Thryv*-style consequential damages, quintessential legal remedies that, under the Seventh Amendment to the U.S. Constitution and Article 1, Section 3 of the Nevada Constitution, require adjudication by a jury, not an administrative board. As this Board is aware, no jury is seated in administrative hearings before it and it is the Board, not a jury, that weighs issues of fact and fashions the appropriate remedies for violations of the EMRA – which cannot include non-pecuniary, tort damages. To find otherwise would turn the Board and proceedings before it into the functional equivalent of district courts without juries, thereby depriving parties of their Seventh Amendment right to a jury, as well as their right to a jury trial under Article 1, Section 3 of the Nevada Constitution.

The United States Supreme Court has also ruled on the NLRB's "power to order affirmative relief," explaining that "Congress did not establish a general scheme authorizing the Board to award full compensatory damages for injuries caused by wrongful claim conduct." *UAW-CIO v. Russell*, 356 U.S. 634, 642–43, 78 S.Ct. 932, 2 L.Ed.2d 1030 (1958).

Just like Congress, the Nevada legislature did not establish a general scheme authorizing the EMRB to award compensatory damages for injuries caused by wrongful conduct. As a court of equity, the EMRB is limited to equitable relief. Allowing for compensatory damages here would exceed the EMRB's statutory authority. Thus, any claim for compensatory damages should be denied.

C. THE NLRB'S DECISION IN *THRYV, INC.* DOES NOT STAND FOR THE PROPOSITION THAT THE BOARD CAN AWARD SPECULATIVE DAMAGES FOR ALLEGED INJURIES TO REPUTATION OR EMOTIONAL DISTRESS.

The Complainant is seeking compensatory damages for "emotional distress, mental anguish, damage to professional reputation, and impact on physical health and well-being."

(Compl. Bf., p. 4). But these types of damages are not within the Board's authority, even under the recently expanded make-whole remedial powers outlined in *Thryv*. Ignoring the split in Circuit Courts on the expansion of the make-whole remedy announced in *Thryv*, the actual holding of *Thryv* demonstrates that the Board is not authorized to award these tort-like damages. Specifically, the NLRB in *Thryv* did not expand its authority to award *all* types of damages that might put a complainant back to square one, but rather, it limited the expansion of the make-whole remedy to compensation "for all direct or foreseeable *pecuniary* harms suffered as a result of the respondent's unfair labor practice." *Thryv, Inc.,* 372 N.L.R.B. No. 22 at *10 (emphasis in original).

The *Thryv* decision expressly recognized that it was not expanding its make-whole remedy to include consequential damages and reiterated it does not award tort remedies:

> We recognize that our Notice and Invitation to File Briefs sought briefing on whether the Board should include, as part of its make-whole remedy, "relief for consequential damages," *Thryv, Inc.*, 371 NLRB No. 37, slip op. 1 (2021), and that courts have occasionally applied damages-like concepts like "actual losses" and "mitigation of damages" to the Board's remedial authority. *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 198 (1941). After further consideration, however, we recognize that "consequential damages" is a term of art used to refer to a specific type of legal damages awarded in other areas of the law and fails to accurately describe the make-whole remedial policy we espouse here. *See Freeman Decorating Co.*, 288 NLRB 1235, 1235 fn. 2 (1988) (""[We] observed that ***the Board does not award tort remedies***, but rather remedies unlawful conduct. Any recompense awarded a discriminate is not for physical injuries suffered, but rather is a necessary remedy to vindicate the purposes of the Act."). Instead, the Board's remedial authority is rooted in its Section 10(c) mandate to "translat[e] into concreteness the purpose of safeguarding and encouraging the right of self-organization," rather than "the correction of private injuries." *Phelps Dodge Corp.*, 313 U.S. at 192-193.
>
> Accordingly, we ***stress today that the Board is not instituting a policy or practice of awarding consequential damages, a legal term of art more suited for the common law of torts and contracts***.

Thryv, Inc., 372 NLRB No. 22 at *13 (emphasis added).

Similarly, the Ninth Circuit has made clear that, even if compensation for direct or foreseeable pecuniary harms falls within the Board's remedial authority, that remedy must be applied narrowly. In *Macy's*, the Ninth Circuit declined to disturb an NLRB order requiring relief for the "direct or foreseeable pecuniary harms suffered by affected employers." 127 F.4th at 87.

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But it made clear that relief is unavailable for harms that are unquantifiable, speculative, or nonspecific. *See id.* at 86.

In *Macy's*, the employer, Macy's, argued that the NLRB was prohibited from awarding make-whole relief because this kind of relief would be prohibited consequential damages under *United States v. Burke*, 504 U.S. 229, 112 S.Ct. 1867, 119 L.Ed.2d 34 (1992), a tax consequence case relating to an action under Title VII of the Civil Rights Act of 1964. 127 F.4th at 84. Macy's further argued that the limitations in *Burke* are applicable to the NLRB because Title VII's backpay provision was expressly modeled on the NLRA's. *Id.* at 85 (*see also Pollard v. E.I. du Pont de Nemours & Co.*, 532 U.S. 843, 848–49, 121 S.Ct. 1946 (2001) (noting that Title VII's backpay provision, 42 U.S.C. § 2000e-5(g)(1), "closely tracked the language" of the Act's backpay provision, 29 U.S.C. § 160(c), which gives courts "guidance as to the proper meaning of the same language")). The Ninth Circuit in *Macy's* explained that, while not controlling, *Burke* demonstrates how the NLRB's "make-whole" relief is appropriate. 127 F. 4th at 84. In doing so, the Ninth Circuit made clear that the NLRB's authority to award damages under 'make whole relief' was limited to direct, foreseeable, pecuniary damages. *Id.*

The Ninth Circuit explained that in *Burke*, the Supreme Court observed that Title VII "restor[es] victims, through backpay awards and injunctive relief, to the wage and employment positions they would have occupied absent the unlawful discrimination[,]" but not for *nonpecuniary* harms, including "other traditional harms associated with personal injury, such as pain and suffering, emotional distress, harm to reputation, or *other* consequential damages (*e.g.*, a ruined credit rating)." *Macy's,* 127 F. 4th at 85 (quoting *Burke*, 504 U.S. at 239). The court further explained that the NLRB's application of make-whole relief is consistent with the Supreme Court's ruling in *Burke*. *Macy's*, 127 F. 4th at 85. In doing so, the Ninth Circuit essentially clarified that even when a court refuses to overturn an NLRB decision awarding compensatory damages,

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those damages cannot include relief for nonpecuniary harm, such as emotional distress and reputational harm. Thus, even in the ill-founded *Thryv* decision, the expanded make-whole remedy did not include the types of damages sought by the Complainant.

Accordingly, damages for reputational or emotional harm should not be allowed by the Board, even if the Board decides to allow compensatory damages. Damages, if allowed, should be limited to relief for pecuniary harm and not for nonpecuniary harm, such as reputational harm and emotional distress. And such a conclusion makes sense when considering the plain language of NRS 288.110, which only mentions restoration of a "benefit" the aggrieved party was deprived of as a result of the prohibited practice. Emotions distress, reputational harm, and injury to well-being are not a "benefit" as contemplated under NRS 288.110. There is no mandatory subject of bargaining outlined in Chapter 288 regarding reputation or mental well-being. Expanding the remedial authority found in the EMRA to "restore" an employee via compensation for alleged mental anguish or reputational harm not only cuts squarely against the plain language of NRS 288.110, but also does not make pragmatic sense, as consideration of such damages would turn nearly every prohibited practices complaint into a tort action. Indeed, for example, if a local government employer failed to bargain in good faith over an article in a collective bargaining agreement about sick leave, and an allegation is made that a member of the bargaining unit was distraught about the uncertainty of sick leave, would the EMRB now have to take evidence and issue damages based on that person's testimony that they suffered emotional distress over the issue? The answer is certainly not and underscores an absurdity of Complainant's position.

IV. CONCLUSION

The Board lacks statutory authority to award compensatory, tort-like damages for alleged emotional distress, reputational harm, or other nonpecuniary injuries. By its plain text, NRS 288.110 confines the EMRB's remedial power to equitable measures, including cease-and-desist

orders and restoration of benefits wrongfully withheld, not legal damages. Federal decisions addressing analogous NLRB remedies reinforce this limit and, even when acknowledging make-whole relief, restrict it to direct, quantifiable pecuniary losses. Because the remedies Complainant seeks are quintessentially legal and trigger jury-trial concerns the EMRB cannot satisfy, the Board should deny any request for compensatory damages.

Dated this 30th day of March, 2026.

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CERTIFICATE OF MAILING

I hereby certify that on the 30th day of March, 2026, I served a copy of the foregoing **RESPONDENT'S BRIEFING REGARDING EMRB'S AUTHORITY TO AWARD DAMAGES** upon each of the parties by depositing a copy of the same in a sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and addressed to:

Alex Velto, Esq.
200 S. Virginia St., Ste. 655
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Attorney for Complainant

and that there is a regular communication by mail between the place of mailing and the place(s) so addressed.

/s/ M. Monkarsh
an employee of Marquis Aurbach

MAC: 11779-209 (#6295671.2)

Susan Herron (Complainant)

Complainant's Reply in Support of EMRB's Compensatory Make-Whole Relief

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STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

SUSAN HERRON,

Complainant,

v.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT,

Respondent.

Case Number: 2024-015

Complainant's Reply in Support of EMRB's Compensatory Make-Whole Relief

COMPLAINANT SUSAN HERRON, by and through her undersigned counsel of record ALEX VELTO, ESQ. of REESE RING VELTO, PLLC, hereby submits this Briefing on Compensatory Make-Whole Relief:

I. Introduction

Respondent's opposition overstates both the question before the Board and the authorities on which it relies. The question is not whether the EMRB may transform itself into a tort court or impose untethered pain-and-suffering awards. It may not. That is not what Ms. Herron seeks. The question is whether, if Ms. Herron proves that IVGID committed a prohibited practice under NRS Chapter 288 and proves actual injury caused by that prohibited practice, the Board has authority to award restorative make-whole relief rather than a hollow remedy that ignores the real

effects of unlawful conduct. Under the text of NRS 288.110 and NRS 288.280, and under the labor-law authorities already before the Board, the answer remains yes.

First, it reads NRS 288.110 far too narrowly. The statute authorizes the Board to restore to the aggrieved party "any benefit" of which the party was deprived by unlawful conduct, and NRS 288.280 applies that same remedial framework to prohibited-practice claims. The Legislature did not confine the Board to cease-and-desist orders alone. Nor did it limit the Board to wages, salary, or any single category of monetary relief. It used broad restorative language.

Second, Respondent's authorities do not establish the categorical rule it urges. Even Respondent acknowledges that under federal labor law, labor boards may award monetary make-whole relief for at least direct, foreseeable, and quantifiable pecuniary harms. That concession is fatal to Respondent's principal position, because the position advanced in the opposition is that the Board lacks authority to award compensatory make-whole relief at all. At a minimum, the authorities cited by both sides foreclose that sweeping argument.

Third, Respondent attempts to collapse all monetary make-whole relief into forbidden tort damages. That is not the law reflected in *Phelps Dodge*, *Virginia Electric*, *Sure-Tan*, *Thryv*, *Macy's*, and *Los Robles*. Those cases draw a different line: restorative versus punitive; proven versus speculative; equitable statutory relief versus uncabined common-law damages. Ms. Herron's request falls on the permissible side of that line.

For those reasons, the Board should reject Respondent's effort to strip it of meaningful remedial authority and should hold that the EMRB may award compensatory make-whole relief for actual injury caused by a prohibited practice, subject to the ordinary guardrails of causation, proof, and the prohibition against speculative or punitive awards.

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II. NRS 288.110 and NRS 288.280 confer broad restorative authority, not limited authority respondent proposes.

Respondent begins and ends with the assertion that NRS 288.110 authorizes only two narrow remedies: a cease-and-desist order or restoration of a "benefit" in the most constrained sense imaginable. *See, e.g., Respondent's Brief,* p. 4 & 9. That reading cannot be squared with the text. NRS 288.110 authorizes the Board, after hearing, to "restore to the party aggrieved any benefit of which the party has been deprived by that action." NRS 288.280 further provides that prohibited-practice controversies may be submitted to the Board "in the same manner and with the same effect" as under NRS 288.110. Those statutes do not say "wages only," "backpay only," or "economic loss only." They do not say the Board may remedy one form of loss while ignoring the actual effects of unlawful political discrimination. They use broad restorative language.

That broad reading is consistent with *City of Henderson v. Kilgore*, which recognizes that NRS 288.110 gives the EMRB broad jurisdiction to govern its own proceedings. 122 Nev. 331, 334 (2006). Respondent's reading, by contrast, would significantly reduce the Board's remedial power. Under Respondent's approach, if a local government employer engaged in unlawful political discrimination but kept the employee nominally on payroll while inflicting real injury through a sham process, secret accusations, and a targeted suspension, the Board would be powerless to make the employee whole in any meaningful sense. Nothing in the statutory text compels that result.

Respondent also tries to limit the EMRB's authority in a manner not supported by Chapter 288, arguing that "benefit" cannot encompass anything beyond a narrow set of employment entitlements. *Respondent's Brief,* p.9. But the Legislature did not use narrow language. It used the word "any" on purpose. A statute that authorizes restoration of "any benefit" deprived by unlawful conduct is not properly read as if it said: "only wages and only traditional bargaining subjects." That interpretation would contradict the Statute's inclusion of the phrase "any benefit," and limit the Board's power beyond the Statute.

III. Respondent's authorities do not support a categorical ban on compensatory make-whole relief.

Respondent's opposition is framed as though the Board must choose between two extremes: either authorize tort damages wholesale or deny any compensatory relief beyond cease-and-desist relief and restoration of a narrowly conceived employment benefit. The authorities cited by both parties reject that framing.

A. The Labor cases cited by both sides confirm that labor board may award proven monetary make-whole relief.

The Supreme Court in *Phelps Dodge* explained that labor remedies seek "a restoration of the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination." 313 U.S. 177, 194 (1941). The Court also recognized that making workers whole for losses caused by unlawful labor practices is part of effectuating the public policy embodied in labor statutes. *Id.* at 197.

Likewise, *Virginia Electric* held that the Board has "wide discretion in ordering affirmative action" and that its authority is not limited to the illustrative example of reinstatement with or without back pay. 319 U.S. 533, 539 (1943). And the Court expressly recognized that a valid labor remedy may resemble compensation for private injury while still remaining remedial rather than punitive. *Id.* at 543.

Those principles are dispositive against Respondent's categorical argument. If labor-board remedies are not limited to cease-and-desist orders and back pay, and if they may include affirmative restorative monetary relief so long as they remain remedial, then Respondent cannot prevail on its claim that the EMRB is categorically barred from awarding compensatory make-whole relief.

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B. Even Respondent's discussion of *Thryv* and *Macy's* defeats Respondent's absolute position.

Respondent spends much of its brief attacking *Thryv* and emphasizing the federal circuit split. But even under Respondent's own description of the law, *Thryv* and *Macy's* establish that labor boards may award at least some compensatory monetary relief beyond wages—namely direct, foreseeable, proven pecuniary harms.

Respondent is not merely asking the Board to draw lines around proof or to limit relief to actual, non-speculative injury. It is asking the Board to declare that compensatory make-whole relief is unavailable. But the federal authorities cited by both parties do not support that sweeping conclusion. At most, they establish that the remedy must be restorative, proven, and non-punitive. The Board therefore need not resolve today every outer boundary of make-whole relief in order to reject Respondent's motion. It need only reject Respondent's categorical premise and permit the Board to consider the extent of Petitioner's damages after hearing.

C. Out-of-circuit cases do not override Nevada law or Ninth Circuit authorities already cited.

Respondent relies heavily on *Starbucks I*, *Hiran Mgmt.*, and *Starbucks II*. Those authorities are not controlling on this Board. By contrast, *Truckee Meadows Fire Protection District v. International Ass'n of Firefighters, Local 2487* makes clear that Nevada adjudicators may look to federal labor precedent for guidance where the statutory purposes align, and the Nevada Supreme Court approved EMRB reliance on NLRB precedent in that context.

That is especially important here because the Ninth Circuit—the federal circuit whose labor jurisprudence is most naturally persuasive in Nevada—approved the *Thryv* framework in *Macy's* and reiterated the same principle in *Los Robles*: monetary make-whole relief is permissible so long as it is equitable, tailored, and limited to actual rather than speculative consequences of the unlawful labor practice. 372 N.L.R.B. No. 22 (Dec. 13, 2022); 155 F.4th 1023, 1045–53 (9th Cir. 2025); 2025 WL 3090744, at *3–4 (9th Cir. Nov. 5, 2025).

Respondent may prefer the Third, Fifth, or Sixth Circuit's analysis. But preference is not authority. This Board sits in Nevada, and Nevada law expressly permits reliance on federal labor precedent where helpful. Under that framework, *Macy's* and *Los Robles* are far more pertinent guides than out-of-circuit cases rejecting *Thryv*.

IV. Respondent's "court of equity" and jury-trial arguments do not justify stripping the Board of restorative monetary authority.

Respondent argues that because the EMRB is supposedly a "court of equity," any monetary relief beyond a cease-and-desist order or restoration of a narrow employment benefit becomes impermissible "legal" relief that triggers jury-trial rights. *Respondent's Brief,* p. 5. That argument conflicts with the labor authorities already before the Board.

Jones & Laughlin made clear that the Seventh Amendment does not bar monetary relief that is incident to equitable statutory enforcement. 301 U.S. 1, 48–49 (1937). *Virginia Electric* likewise recognized the Board's broad equitable authority to fashion affirmative remedies that effectuate the statute's policies and are not limited to the narrowest forms of relief. 319 U.S. 533, 539 (1943).

Those cases are the closer fit here. This proceeding concerns statutory labor remedies administered by a labor board under a remedial labor statute. It does not concern a freestanding common-law action for damages. Respondent's reliance on *Jarkesy* does not change that. The proposition quoted in *Jarkesy*—that jury rights attach in suits at common law—does not answer the distinct question addressed in the labor cases: whether an administrative labor board may order restorative monetary relief as part of equitable statutory enforcement. The labor cases say yes, so long as the relief remains remedial and not punitive.

Respondent also cites *UAW-CIO v. Russell* for the proposition that Congress did not create a general scheme authorizing the Board to award "full compensatory damages." That does not help Respondent. Ms. Herron is not asking this Board to create a general tort-damages regime or to award "full compensatory damages" in the common-law sense. She is asking the Board to

recognize make-whole relief tied to actual injury caused by a prohibited practice. *Russell* does not foreclose that narrower, restorative remedy. Further, subsequent law established in *Thryv* and *Macy's* should be given higher preference than the older *Russell* decision because labor boards are broadening their scheme to encompass their legislative intent.

V. Respondent overreads *Thryv* and *Macy's* when it argues that non-pecuniary harms are categorically excluded.

Respondent's strongest point is narrower than its motion. It argues that even if some monetary make-whole relief is available, the specific harms identified by Ms. Herron—emotional distress, mental anguish, reputational harm, and impact on physical well-being—go beyond what cases like *Thryv* and *Macy's* clearly approve. That is a fairer debate than the one Respondent actually presents. But even on that narrower issue, Respondent overstates its case.

To begin with, neither *Thryv* nor *Macy's* holds that every nonpecuniary harm is categorically outside a labor board's authority in every context. Those decisions addressed the permissibility of make-whole compensation for direct or foreseeable pecuniary harms and emphasized that the relief must be actual, proven, and non-speculative. They did not hold that a labor board is powerless to remedy any injury that does not fit neatly into a wage-loss box.

More importantly, Respondent's argument ignores the nature of the prohibited practice alleged here. Ms. Herron's claim is not an ordinary bargaining dispute over a contract term. She alleges politically motivated discrimination, a secret process, and a prolonged administrative leave without meaningful notice of the allegations against her. Where the gravamen of the prohibited practice is targeted political discrimination and a sham investigation, the real injury may include precisely the kinds of harms Respondent seeks to write out of the statute. A rigid rule forbidding the Board even to consider those harms would be especially destructive in a case, like this one, where the employer may have kept the employee nominally paid while still inflicting concrete injury.

That is why the better course is the one proposed in the opening brief: the Board should recognize the availability of compensatory make-whole relief in principle and leave the precise scope, proof, and amount of any particular award for a developed record. That approach is consistent with *Thryv*, *Macy's*, and *Los Robles*, all of which emphasize proof, tailoring, and non-speculation. It avoids deciding abstract line-drawing questions unnecessarily. And it prevents Respondent from winning, at the threshold, a sweeping immunity from meaningful restorative relief.

At the very least, even if the Board were inclined to proceed cautiously on nonpecuniary categories, it should still reject Respondent's request for a blanket ruling and hold that the Board may award proven compensatory make-whole relief for actual injury caused by the prohibited practice, including at minimum direct or foreseeable pecuniary harms. Respondent is not entitled to more than that.

VI. Respondent's reliance on *Burke* does not carry the weight it assigns to it.

Respondent's discussion of *United States v. Burke* does not establish a categorical limit on this Board's authority. As Respondent acknowledges, *Burke* arose in a different context. The fact that *Macy's* discussed *Burke* does not convert *Burke* into a controlling statement of EMRB remedial authority under NRS 288.110 and NRS 288.280. More importantly, Respondent's use of *Burke* overlooks the critical point: the Ninth Circuit still approved the *Thryv* framework in *Macy's*. So whatever descriptive value *Burke* may have had in that analysis, it did not lead the Ninth Circuit to adopt Respondent's categorical rule.

Thus, even accepting Respondent's reading of *Burke*, the most it shows is that courts are careful to distinguish restorative labor remedies from classic tort damages. Ms. Herron agrees with that distinction. It does not follow that the Board is powerless to award compensatory make-whole relief for actual injury caused by prohibited discrimination.

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VII. Respondent's floodgates and absurdity arguments are overstated.

Respondent argues that recognizing compensatory make-whole authority would transform every prohibited-practice complaint into a tort action. *Respondent's Brief, p.3.* That prediction ignores the very guardrails both sides acknowledge.

The remedy remains cabined by causation. It remains cabined by proof. It remains cabined by the rule against speculation. It remains cabined by the distinction between restorative and punitive relief. *Sure-Tan* makes clear that labor remedies may expunge only actual, not speculative, consequences of unlawful conduct. *Macy's* and *Los Robles* repeat the same point. 467 U.S. 883, 900 (1984).

Those limitations answer Respondent's concerns. Not every labor dispute will involve actual compensable injury beyond traditional equitable relief. Not every complainant will be able to prove such injury. And not every asserted harm will be sufficiently concrete or non-speculative to support an award. But those are reasons to require proof, not reasons to erase the Board's remedial power in advance.

VIII. The Board should deny Respondent's request for a categorical ruling and preserve its full remedial authority.

What Respondent really seeks is a preemptive ruling that would strip the Board of meaningful remedial authority before liability and injury are even adjudicated. That is neither necessary nor supported by the authorities.

The Board can resolve the legal issue now in a measured way. It can hold that NRS 288.110 and NRS 288.280 authorize compensatory make-whole relief for actual injury caused by a prohibited practice under NRS 288.270(1)(f), provided the relief is restorative, proven, and non-speculative. It can then leave to later proceedings the question of what categories of harm are sufficiently established on the actual evidentiary record and what amount, if any, is appropriate.

That approach is faithful to the statutory text. It is faithful to *Phelps Dodge*, *Virginia Electric*, *Sure-Tan*, *Thryv*, *Macy's*, *Los Robles*, *Truckee Meadows*, and *Kilgore*. And it prevents the Board from issuing the kind of artificially narrow ruling Respondent requests.

IX. Conclusion

For those reasons, the Board should reject Respondent's argument that Chapter 288 categorically bars compensatory make-whole relief. The Board should hold that, under NRS 288.110 and NRS 288.280, it has authority to award restorative compensatory relief for actual injury caused by a prohibited practice under NRS 288.270(1)(f), subject to proof, causation, and the prohibition against punitive or speculative awards.

In the alternative, even if the Board wishes to reserve questions about the outer bounds of specific nonpecuniary categories until a fuller record is developed, it should still reject Respondent's motion and hold that the Board may award at least proven direct or foreseeable pecuniary harms as compensatory make-whole relief. Respondent's request for a categorical bar should be denied.

Dated this 14th day of April 2026.

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CERTIFICATE OF SERVICE

Pursuant to NAC 288.200 (2), I caused a true and correct copy of the **Complainant's Reply in Support of EMRB's Compensatory Make-Whole Relief** to be filed with the EMRB and to be served on the following individuals by depositing for mailing with postage prepaid on this 14th day of April 2026:

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