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Electronically Filed
Jan 20 2017 09:16 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCO SORO, an individual; MYRA
TAIGMAN-FARRELL, an individual;
ISAAC FARRELL, an individual;
KATHY ARRINGTON, an individual;
and AUDIE EMBESTRO, an individual;

Supreme Court Case No: 72086

District Court Case No: A-13-
679511-C

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, in and for the COUNTY OF
CLARK, and the HONORABLE JERRY
A. WIESE, District Court Judge,

MOTION TO EXCEED PAGE
LIMIT OF MOTION TO
STAY

Respondents,

And

AMERICA FIRST FEDERAL CREDIT
UNION, a federally chartered credit
union,

Real Party in Interest.

MOTION TO EXCEED PAGE LIMIT OF MOTION TO STAY

Petitioners, Franco Soro, Myra Taigman-Farrell, Isaac Farrell, Kathy Arrington, and Audie Embestro (hereinafter collectively referred to as “Petitioners”), by and through their attorneys of record, Reid Rubinstein & Bogatz, hereby respectfully move this Court to exceed the page limit for their Motion To Stay District Court Proceedings (the “Motion To Stay”) attached hereto, which is timely filed along with this Motion, pursuant to NRAP 27(d)(2). This Motion is made and based upon the following Memorandum of Points and Authorities, all the papers and pleadings on file herein, and the attached Declaration of Jaimie Stilz, Esq.

Dated this 19th day of January, 2017.

REID RUBINSTEIN & BOGATZ

By: /s/ Jaimie Stilz, Esq.

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MEMORANDUM OF POINTS AND AUTHORITIES

NRAP 27(d)(2) stipulates that all motions before this Court are not to exceed ten pages. However, NRAP 27(d)(2) also allows parties to exceed the page limit upon permission of the Court.

1 In the underlying case, Petitioners' Motion To Stay contains fourteen
2 (14) pages. See Exhibit 1. Good cause exists to allow the Motion To Stay
3 to exceed the page limit. The following reasons are outlined in and
4 supported by the Declaration of Jaimie Stilz, Esq., attached hereto as Exhibit
5 2:

6 1) Petitioners request that this Court allow the Motion To Stay to
7 be filed with this Court due to the numerous legal issues raised in this
8 appeal.

9 2) Petitioners request permission to exceed the page limit of the
10 Motion To Stay due to the complexity of the proceedings below.

11 3) Petitioners are requesting a Motion To Stay the District Court
12 litigation to allow this Court to consider issues related to Real Party in
13 Interest America First Federal Credit Union ("America First")'s violation of
14 the statute of limitations imposed by the governing law in this matter, and an
15 unsupported Order issued by the District Court. Specifically, the District
16 Court's Order in the underlying matter ignored the clear and unambiguous
17 three-month deadline of Utah Code Ann. § 57-1-32 and Supreme Court
18 precedent disallowing deficiency judgment claims filed after the statute of
19 limitations expires. Despite Petitioners' best efforts to adhere to the page
20 limits, documenting these issues with regard to the factors justifying a stay
21 as outlined in NRAP 8 required more than the ten pages allotted by the rule.

The details associated with the underlying order, the current pending Writ Petition, and the NRAP 8 factors are all necessary to properly address and justify the Motion To Stay.

4) Therefore, Petitioners believe good cause exists to allow the Motion To Stay to exceed this Court's page limit.

Accordingly, for the foregoing reasons and good cause shown, and pursuant to NRAP 27(d)(2), this Court should allow Petitioners to file their current Motion To Stay consisting of fourteen (14) pages.

Dated this 19th day of January, 2017.

REID RUBINSTEIN & BOGATZ

By: /s/ Jaimie Stilz, Esq.

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EXHIBIT 1

EXHIBIT 1

REID RUBINSTEIN & BOGATZ

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Attorneys for Petitioners

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCO SORO, an individual; MYRA
TAIGMAN-FARRELL, an individual;
ISAAC FARRELL, an individual;
KATHY ARRINGTON, an individual;
and AUDIE EMBESTRO, an individual;

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, in and for the COUNTY OF
CLARK, and the HONORABLE JERRY
A. WIESE, District Court Judge,

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AMERICA FIRST FEDERAL CREDIT
UNION, a federally chartered credit
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Supreme Court Case No:

District Court Case No: A-13-
679511-C

MOTION TO STAY
DISTRICT COURT
PROCEEDINGS

MOTION TO STAY DISTRICT COURT PROCEEDINGS

Petitioners, Franco Soro, Myra Taigman-Farrell, Isaac Farrell, Kathy Arrington, and Audie Embestro (hereinafter collectively referred to as “Petitioners”), by and through their attorneys of record, Reid Rubinstein & Bogatz, hereby respectfully move this Court for a stay of the District Court’s December 14, 2016 Order pursuant to NRAP 8. This Motion is made and based upon the following Memorandum of Points and Authorities, all the papers and pleadings on file herein and upon such oral argument as the Court may permit at a hearing on this matter.

Dated this 13th day of January, 2017.

REID RUBINSTEIN & BOGATZ

By: /s/ Jaimie Stilz, Esq.
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Las Vegas, Nevada 89101
Attorneys for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

It is crucial that this Court grant a stay of the District Court litigation in this matter. Despite Petitioners’ extensive briefing regarding Real Party in Interest America First Federal Credit Union (“America First”)’s violation

of the statute of limitations imposed by the governing law in this matter, the District Court refused to dismiss deficiency judgment claims filed against Petitioners well after the three-month deadline set forth in Utah Code Ann. § 57-1-32. Accordingly, Petitioners have filed a Petition for Writ of Mandamus and Prohibition, which is pending before this Court. In the interim, America First will not voluntarily agree to a stay, and the District Court has denied Petitioners' request for a stay. Without a stay, Petitioners face extensive and unnecessary time, effort, and expense further defending themselves and, potentially, a multi-million-dollar judgment with an enormous bond requirement to stay execution pending an appeal. As such, Petitioners respectfully seek a stay of these proceedings while this Court considers Petitioners' Writ.

II. RELEVANT PROCEDURAL BACKGROUND

On or about April 11, 2002, America First and Petitioners entered into a Business Loan Agreement ("Loan Agreement"), whereby America First agreed to lend, and Petitioners agreed to borrow, approximately \$2,900,000 for use in developing a parcel of property ("Property"). On or about the same date, America First and Petitioners executed a Commercial Promissory Note ("Note") and a Trust Deed with Assignment of Rents ("Deed of Trust") to secure the Note (the Loan Agreement, Note and Deed of Trust are sometimes collectively referred to herein as the "Loan Documents"). The

1 Loan Agreement contains an “Applicable Law” clause which expressly
2 provides that the loan documents “shall be governed by and construed in
3 accordance with the laws of the State of Utah.” Utah’s anti-deficiency laws
4 are set out in Utah Code Ann. § 57-1-32, which provides that deficiency
5 actions may be commenced “[a]t any time within three months after any sale
6 of property under a trust deed as provided in Sections 57-1-23, 57-1-24, and
7 57-1-27,”

8 On or about October 4, 2012, America First caused the Property
9 securing the Note to be sold via a non-judicial foreclosure (the “Foreclosure
10 Sale”). America First did not seek a deficiency judgment within three
11 months after the Foreclosure Sale in accordance with Utah law; it was not
12 until April 4, 2013 – exactly six months after the non-judicial foreclosure
13 sale of the Property securing the Note – that America First filed the
14 underlying Complaint in Nevada, seeking a deficiency judgment against
15 Petitioners under Nevada law. In response to the Complaint filed by
16 America First, Defendants filed a Motion to Dismiss on July 29, 2013.
17 Though the District Court granted Petitioners’ Motion to Dismiss, on appeal,
18 this Court overturned the ruling.

19 Upon remand, Petitioners filed a second Motion to Dismiss on August
20 24, 2016. In the second Motion to Dismiss, Petitioners argued that because
21 the Loan Documents’ choice-of-law provision specifies that Utah law –

which requires deficiency actions to be filed within three months – applies, and America First did not file for deficiency until six months after the Foreclosure Sale, America First’s failure to file for deficiency within three months necessitates dismissal. Following a hearing on the second Motion to Dismiss, the District Court issued an Order on December 14, 2016, denying the second Motion to Dismiss in its entirety. On January 12, 2017, the District Court orally denied Petitioners’ request for a stay.¹

III. LEGAL ARGUMENT

Nevada courts have recognized stays are necessary in general to preserve the status quo, *and in particular when district courts refuse to enforce statutory anti-deficiency protections*. See Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252 (2005); William Walters, Docket No. 55912; Simon Lavi, Docket No. 58968. In deciding whether to issue a stay, Nevada courts generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant/petitioner is

¹ The Order denying Petitioners’ request for a stay is still forthcoming, but the District Court ruled at the January 12, 2017 hearing that Petitioners’ request was denied.

likely to prevail on the merits in the appeal or writ petition. NRAP 8(c); Hansen v. Eighth Judicial Dist. Ct., 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948). Under NRAP 8(a), parties usually must first move for a stay in the district court.

Here, this Court's prior granting of stays, each of the NRAP 8(c) factors, and the District Court's denial of Petitioners' request for stay all weigh heavily in favor of this Court granting a stay pending the outcome of the underlying Writ proceedings.

A. PETITIONERS ARE ENTITLED TO THE SAME STAY ISSUED IN THE LAVI, WALTERS, AND SANDPOINTE CASES.

Petitioners should receive the same stay issued in the Lavi, Walters, and Sandpointe cases, as this case involves similar issues regarding statutory interpretation and public policy that entitled the aforementioned cases to a stay.

In Lavi, this Court granted a stay of the lower court proceedings while reviewing the application of NRS 40.455 in the matter. See Lavi v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. 38, 325 P.3d 1265, 1266 (2014). There, a lender instituted a guaranty action and, while it was pending, foreclosed on the property. Id. at 1266-67. However, it was not until almost a year later that the lender filed a motion for summary judgment and claimed it was seeking a deficiency judgment. Id. The District Court granted the motion

1 and denied the guarantors' counter-motion for summary judgment. Id. One
2 of the guarantors, Lavi, filed a petition for writ of mandamus and requested a
3 stay, noting the lender failed to claim it was seeking a deficiency judgment
4 until Lavi pointed out the lender's failure to comply with NRS 40.455. Id.;
5 Lavi, Docket No. 58968. This Court granted a stay and, after review, issued
6 a writ directing dismissal of the guaranty action. Lavi, Docket No. 58968.

7 In Walters, this Court also granted a stay while reviewing the
8 application of Nevada's anti-deficiency protections. See Walters v. Eighth
9 Jud. Dist. Ct., 263 P.3d 231, 232 (2011). There, a lender implemented a
10 breach of contract action, then a foreclosure sale was held on the underlying
11 property. Id. Thereafter, the lender moved for summary judgment on the
12 alleged deficiency, which the District Court held was sufficient to meet the
13 six-month deadline contained in NRS 40.455. Id. at 233. Walters thereafter
14 filed a petition for writ of mandamus and requested a stay, which this Court
15 granted. Walters, Docket No. 55912.

16 In Sandpointe, this Court again granted a stay while reviewing the
17 application of Nevada's anti-deficiency protections. See Sandpointe Apts. v.
18 Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 87, 313 P.3d 849, 852 (2013).
19 There, guarantors in a guaranty deficiency action filed a motion for partial
20 summary judgment under NRS 40.459. Id. The District Court denied the
21 motion and the guarantors filed a petition for writ of mandamus. Id. The

guarantors also requested a stay, which this Court granted. Id.; Sandpointe Apartments, LLC, Docket No. 59507.

The statutory issues Petitioners face are entirely similar to those that merited a stay in Lavi, Walters, and Sandpointe. As in those cases, which all involved appeals due to the District Court's interpretation of anti-deficiency actions and relevant protections, the primary issue here is whether Utah Code Ann. § 57-1-32 prevents America First from maintaining the underlying deficiency action filed outside the three-month statute of limitations. In all three of the above cases, this Court found that the issue of statutory interpretation is significant enough to warrant a stay, given the tremendous impact on the District Court proceedings if the guarantors' interpretations were correct. Here too, if Petitioners' position is correct, the District Court proceedings will be greatly impacted, to the extent that no further use of Petitioners', the Court's, or America First's resources will be necessary, as America First's claims against Petitioners will have to be dismissed.

Moreover, analogous public policy concerns also justify a stay. In Lavi, the guarantors noted in their request for stay that the lender had employed substantial gamesmanship and did not attempt to comply with NRS 40.455 until after the guarantors pointed out the defects in the claims against them. Lavi, Docket No. 58968. The guarantors argued this lack of

even minimal effort at compliance strongly favored a stay at the District Court level. Id. Here too, America First did not attempt to abide by the pertinent statutory requirements, refusing to even feign compliance with the contractually agreed-upon governing law until *after* Petitioners put America First on alert regarding Utah law by moving to dismiss the claims due to the forum selection clause in the Loan Documents. America First simply waited until six months after the Foreclosure Sale – twice as many months as permitted under the Utah statute – before filing the underlying deficiency action. Accordingly, Petitioners respectfully request this Court grant an immediate stay of the District Court proceedings.

B. THE NRAP FACTORS ALL FAVOR A STAY OF THE DISTRICT COURT LITIGATION.

Every factor under NRAP 8(c) justifies staying the lower court proceedings. Petitioners are likely to succeed on the merits of their writ petition, as well as lose the object of their appeal if a stay is not granted. Additionally, they will suffer irreparable harm if no stay is issued, while America First will not suffer irreparable injury upon grant of stay. Therefore, a stay is both appropriate and warranted.

1. Petitioners Are Likely To Succeed On The Merits Of Their Writ Petition.

Petitioners are likely to succeed on the merits of the writ petition filed in this Court, as Utah Code Ann. § 57-1-32 and this Court's precedent in Key Bank of Alaska v. Donnels, 106 Nev. 49, 787 P.2d 382 (1990), Mardian v. Michael and Wendy Greenberg Family Trust, 131 Nev. Adv. Op. 72, 359 P.3d 109 (2015), and Branch Banking v. Windhaven & Tollway, LLC, 347 P.3d 1038, 131 Nev. Adv. Op. 20 (2015) illustrate the District Court's clear error in failing to grant Petitioners' Second Motion to Dismiss. This Court grants extraordinary writ relief when there are no factual disputes and the District Court erroneously fails to dismiss an action pursuant to clear authority under a statute or rule. See Scarbo v. Eighth Jud. Dist. Ct., 125 Nev. 118, 121, 206 P.3d 975, 977 (2009); Advanced Countertop Design, Inc. v. Second Jud. Dist. Ct., 115 Nev. 268, 270, 984 P.2d 756, 758 (1999).

Utah Code Ann. § 57-1-32 is clear regarding the timeframe for deficiency judgment:

At any time **within three months** after any sale of property under a trust deed as provided in Sections 57-1-23, 57-1-24, and 57-1-27, an action may be commenced to recover the balance due upon the obligation for which the trust deed was given as security, and in that action the complaint shall set forth the entire amount of the indebtedness that was secured by the trust deed, the amount for which the property was sold, and the fair market value of the property at the date of sale. Before rendering judgment, the court shall find the fair market value of the property at the date of sale. The court may not render judgment for more than the amount by which the amount of the indebtedness with interest, costs, and expenses of sale, including trustee's and attorney's fees, exceeds the fair market

value of the property as of the date of the sale. In any action brought under this section, the prevailing party shall be entitled to collect its costs and reasonable attorney fees incurred.²

America First is subject to the Utah statute of limitations. The Loan Agreement contains an “Applicable Law” clause which expressly provides:

Applicable Law. This Agreement (and all loan documents in connection with this transaction) shall be governed by and construed in accordance with the laws of the State of Utah.

Meanwhile, Utah’s statutory requirement is clear that application for deficiency judgment be made within 3 months after a trustee’s sale. Utah Code Ann. § 57-1-32. This Court has already previously determined that even when a foreclosure and deficiency action take place in Nevada, the out-of-state choice-of-law provision contained in the loan documents still applies when seeking a deficiency judgment, including the outside state’s deficiency action limitation period. See Mardian v. Greenberg Family Trust, 131 Nev. Adv. Op. 72, 359 P.3d 109 (2015); Key Bank of Alaska v. Donnels, 106 Nev. 49, 787 P.2d 382 (1990).

Moreover, America First’s argument that the Utah statute of limitations cannot be enforced is without merit in light of this Court’s recent decision in Branch Banking v. Windhaven & Tollway, LLC, 131 Nev. Adv. Op. 20, 347 P.3d 1038, 1039 (2015), reh'g denied (July 23, 2015). Similar

² Emphasis added.

to the statute in Windhaven, the Utah statute is illustrative and meant to apply to extraterritorial foreclosure sales, including the one at issue here.

Accordingly, the District Court was required to grant Petitioners' Second Motion to Dismiss. America First failed to file its application for deficiency judgment against Petitioners within three months after the Foreclosure Sale occurred on October 4, 2012. Utah Code Ann. § 57-1-32 is quite clear: this failure means America First is barred from pursuing a deficiency judgment against Petitioners. A de novo review of the clear and unambiguous statutory limitation in Utah Code Ann. § 57-1-32 and the precedent set by Mardian, Key Bank, and Windhaven is therefore likely to overturn the District Court's erroneous decision. Accordingly, Petitioners respectfully request this Court grant an immediate stay of the District Court proceedings.

2. Petitioners Will Lose The Object Of Their Appeal If A Stay Is Not Granted.

Petitioners will lose the object of their appeal – specifically, enforcement of the anti-deficiency protections afforded by Utah Code Ann. § 57-1-32 – if a stay is not granted. This Court has established the importance of statutes of limitation in seeking deficiency judgments. Nev. State Bank v. Jamison Family P'ship, 106 Nev. 792, 798, 801 P.2d 1377, 1381 (1990); Lavi, 325 P.3d at 1267; Walters, 263 P.3d at 234. In Jamison,

this Court noted that statutes of limitation provide important protections “against the evidentiary problems associated with defending a stale claim” and “promote repose by giving security and stability to human affairs.” 106 Nev. at 798, 801 P.2d at 1381 (*quoting* Wood v. Carpenter, 101 U.S. 135, 139 (1879)).

Here, if no stay is granted, Petitioners will lose the protections provided by Utah Code Ann. § 57-1-32. The District Court’s December 14, 2016 Order violates the clear meaning and intent of Utah Code Ann. § 57-1-32, and ignores this Court’s precedent protecting guarantors and strictly enforcing statutes of limitation. If a stay is not granted, the underlying matter will proceed prior to this Court’s review of the District Court’s Order. Petitioners would therefore be deprived of the protections afforded by the Utah Legislature as they would be forced to continue defending themselves despite no longer being liable to America First and, if the District Court follows the same reasoning it did in the December 14, 2016 Order, will likely be subject to a possibly several million-dollar judgment in America First’s favor. Petitioners therefore respectfully request this Court stay the District Court proceedings.

3. Petitioners Will Be Irreparably Harmed If A Stay Is Not Granted.

Petitioners will be irreparably harmed if a stay is not granted. Specifically, Petitioners are faced with having to expend enormous amounts of time, effort and legal expenses to defend themselves in the underlying litigation, despite possessing no liability. As such, Petitioners respectfully request this Court grant an immediate stay of the District Court proceedings.

4. America First Will Not Suffer Irreparable Harm If A Stay Is Granted.

America First will not suffer irreparable harm if a stay is granted in this matter. This Court has stated that “a mere delay in pursuing discovery in the litigation normally does not constitute irreparable harm.” Fritz Hanson A/S v. Dist. Ct., 116 Nev. 650, 658, 6 P.3d 982, 987 (2000).

Here, the prospective harm America First might incur, if any, does not rise to the level of irreparable. Should the parties continue moving forward, any hearing or discovery may be rendered moot if this Court grants Petitioners’ Writ Petition. It makes little sense to allow America First to continue pursuing its claims and, as a result, incur fees and costs that may ultimately be unnecessary. Further, in the event this Court does not grant Petitioners’ Writ Petition, the parties can easily begin proceeding again. While America First might have to wait longer to pursue its claims, such limited delay does not rise to the level of irreparable harm. Id. Thus,

Petitioners respectfully request this Court grant a stay of the District Court proceedings.

C. THE DISTRICT COURT DENIED PETITIONERS' REQUEST FOR A STAY.

NRAP 8(a) requires parties to first seek a stay from the District Court before seeking one from this Court.

Here, Petitioners filed a Motion to Stay that the District Court denied during a hearing regarding the Motion on January 12, 2017. As such, Petitioners have complied with the requirement set by NRAP 8(a) and this request for issuance of a stay is appropriately before this Court. Petitioners have no other method of relief from the District Court proceedings, and therefore respectfully request this Court grant an immediate stay of the District Court proceedings.

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1 **IV. CONCLUSION**

2 Based upon the foregoing, good cause exists to grant Petitioners'
3 request for a stay of the lower court proceedings. Accordingly, Petitioners
4 respectfully request this Court grant the immediate Motion To Stay District
5 Court Proceedings.

6 Dated this 13th day of January, 2017.

7 REID RUBINSTEIN & BOGATZ

8
9 By: /s/ Jaimie Stilz, Esq.

10 I. Scott Bogatz, Esq.
Nevada Bar No. 3367
11 Charles M. Vlasic III, Esq.
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12 Jaimie Stilz, Esq.
Nevada Bar No. 13772
13 300 S. 4th Street, Suite 830
Las Vegas, Nevada 89101
14 *Attorneys for Petitioners*

EXHIBIT 2

EXHIBIT 2

DECLARATION OF JAIMIE STILZ, ESQ.

I, JAIMIE STILZ, ESQ., being first duly sworn, declare as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief and, as to those facts, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am an associate partner with the law firm of Reid Rubinstein & Bogatz Law Group, counsel of record for Petitioners in Supreme Court Case No. 72086.¹

3. Petitioners are filing the Motion To Stay due to the numerous legal issues raised in this appeal.

4. Petitioners are requesting permission to exceed the page limit of the Motion To Stay due to the complexity of the proceedings below.

5. Petitioners are requesting a Motion To Stay the District Court litigation to allow this Court to consider issues related to Real Party in Interest America First Federal Credit Union ("America First")'s violation of the statute of limitations imposed by the governing law in this matter, and an unsupported Order issued by the District Court. Specifically, the District

¹ Unless otherwise stated herein, the capitalized terms used herein have the same meaning ascribed to them in the accompanying Motion To Exceed Page Limit Of Motion To Stay.

Court's Order in the underlying matter ignored the clear and unambiguous three-month deadline of Utah Code Ann. § 57-1-32 and Supreme Court precedent disallowing deficiency judgment claims filed after the statute of limitations expires.

6. Despite Petitioners' best efforts to adhere to the page limits, documenting these issues with regard to the factors justifying a stay as outlined in NRAP 8 requires more than the ten pages allotted by the rule. The details associated with the underlying order, the current pending Writ Petition, and the NRAP 8 factors are all necessary to properly address and justify the Motion To Stay.

7. Good cause exists to allow the Motion To Stay to exceed this Court's page limit.

I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045),² that the foregoing is true and correct.

Dated this 19th day of January, 2017.

/s/ Jaimie Stilz, Esq.
JAIMIE STILZ, ESQ., Declarant

² **NRS 53.045** Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the following form.