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10 *Attorneys for Petitioners*

11 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Supreme Court Case No: 72086

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

16 Petitioners,

MOTION TO RECALL
REMITTITUR

17 v.

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

21 Respondents,

1 And
2 AMERICA FIRST FEDERAL
3 CREDIT UNION, a federally
4 chartered credit union,
Real Party in Interest.

MOTION TO RECALL REMITTITUR

6 Petitioners, Franco Soro, Myra Taigman-Farrell, Isaac Farrell, Kathy
7 Arrington, and Audie Embestro (hereinafter collectively referred to as
8 “Petitioners”), through their attorneys of record, Reid Rubinstein & Bogatz
9 and CV3 Legal, hereby respectfully move this Court to recall the Notice in
10 Lieu of Remittitur issued in this matter. This Motion is made and based
11 upon the following Memorandum of Points and Authorities, all the papers
12 and pleadings on file herein, and the below Declaration of Jaimie Stilz, Esq.

13 Dated this 25th day of January, 2018.

14 REID RUBINSTEIN & BOGATZ

16 By: /s/ Jaimie Stilz, Esq.

17 I. Scott Bogatz, Esq. (3367)
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1 **DECLARATION OF JAIMIE STILZ, ESQ. IN SUPPORT OF**
2 **MOTION TO RECALL REMITTITUR**

3 I, Jaimie Stilz, Esq., declare as follows:

4 1. I am over 18 years of age, and I have personal knowledge of the
5 matters attested to below or state the same based upon information and
6 knowledge that I believe to be true. If called as a witness, I would be
7 competent to testify as to the matters stated in this Declaration.

8 2. I am an attorney with the law firm of Reid Rubinstein &
9 Bogatz, counsel of record for Petitioners in the above-captioned matter.

10 3. On or about December 28, 2017, the Court of Appeals issued a
11 decision in this matter denying Petitioners’ petition for a writ of mandamus
12 and/or prohibition.

13 4. Pursuant to NRAP 40(c), Petitioners had eighteen (18) days to
14 submit a Petition for Rehearing.

15 5. Pursuant to NRAP 26(a)(3), because the eighteenth day fell on
16 a nonjudicial day – January 15, 2018, which was a court holiday –
17 Petitioners’ deadline for submittal of a Petition for Rehearing was extended
18 to the following nonjudicial day, January 16, 2018.

19 6. On January 16, 2018, Petitioners timely submitted a Petition for
20 Rehearing.

21

1 7. Upon information and belief, Petitioners’ Petition for Rehearing
2 was received by the Court of Appeals.

3 8. Upon information and belief, receipt of Petitioners’ Petition for
4 Rehearing was not noted, and a Notice in Lieu of Remittitur was mistakenly
5 issued by this Court.

6 9. Given that Petitioners timely submitted their Petition for
7 Rehearing in this matter, good cause exists for the Court to recall the Notice
8 in Lieu of Remittitur and allow the Petition for Rehearing to be heard.

9 10. This request is made in good faith, and not for the purpose of
10 any delay, or to prejudice this Court or any party to this appeal.

11 I declare under penalty of perjury under the laws of the State of
12 Nevada (NRS 53.045),¹ that the foregoing is true and correct.

13 Dated this 25th day of January, 2018.

14 By: /s/ Jaimie Stilz, Esq.
15 Jaimie Stilz, Esq.

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19 ¹ **NRS 53.045** Use of unsworn declaration in lieu of affidavit or other sworn
20 declaration. Any matter whose existence or truth may be established by an
21 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.

MEMORANDUM OF POINTS AND AUTHORITIES

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2 Good cause exists to recall the Notice in Lieu of Remittitur issued in
3 this matter. The following reasons are outlined in and supported by the
4 above Declaration of Jaimie Stiliz, Esq.:

5 Petitioners initiated the instant matter seeking a writ of mandamus
6 and/or prohibition. On or about December 28, 2017, the Court of Appeals
7 issued a decision in which the Court denied Petitioners’ petition for a writ of
8 mandamus and/or prohibition.

9 Pursuant to NRAP 40(c), Petitioners subsequently had eighteen (18)
10 days to submit a Petition for Rehearing prior to the matter being sent back to
11 the District Court. Due to the eighteenth day falling on a nonjudicial day –
12 January 15, 2018, which was a court holiday – Petitioners’ deadline for
13 submittal of a Petition for Rehearing was extended to the following
14 nonjudicial day, January 16, 2018. See NRAP 26(a)(3).

15 Petitioners timely submitted a Petition for Rehearing on January 16,
16 2018. Petitioners’ Petition for Rehearing was received by the Court of
17 Appeals. However, receipt of Petitioners’ Petition for Rehearing was not
18 noted, and a Notice in Lieu of Remittitur was mistakenly issued by this
19 Court on January 22, 2018.

20 Given that Petitioners timely submitted their Petition for Rehearing in
21 this matter, Petitioners believe good cause exists for the Court to recall the

1 Notice in Lieu of Remittitur and allow Petitioners' Petition for Rehearing to
2 be heard.

3 Accordingly, for the foregoing reasons and good cause shown, this
4 Court should recall the January 22, 2018 Notice in Lieu of Remittitur and
5 allow Petitioners' Petition for Rehearing to be heard by the Court of
6 Appeals.

7 Dated this 25th day of January, 2018.

8 REID RUBINSTEIN & BOGATZ

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By: /s/ Jaimie Stilz, Esq.

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I. Scott Bogatz, Esq.

Nevada Bar No. 3367

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Attorneys for Petitioners

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 25th day of January, 2018, I served a copy
3 of the foregoing **MOTION TO RECALL REMITTITUR** pursuant to the
4 Supreme Court Electronic Filing System to the following:

5 Matthew D. Lamb, Esq.
6 Joseph P. Sakai, Esq.
7 Mark R. Gaylord, Esq.
8 BALLARD SPAHR, LLP
9 100 N City Pkwy, Ste. 1750
10 Las Vegas, Nevada 89106

11 *Attorneys for Real Party in Interest*

12 and by first class United States mail, postage prepaid, Las Vegas, Nevada, to
13 the following:

14 The Honorable Jerry A. Wiese
15 Eighth Judicial District Court
16 Department 30
17 Regional Justice Center
18 200 Lewis Avenue
19 Las Vegas, Nevada 89155

20 /s/ Kristee Kallas
21 An employee of Reid Rubinstein & Bogatz