Case No. 73175

In the Supreme Court of Nevada

MICHAEL A. TRICARICHI,

Appellant,

vs.

COÖPERATIEVE RABOBANK U.A.,
UTRECHT-AMERICA FINANCE CO.
AND SEYFARTH SHAW LLP,

Respondents.

APPEAL

from the Eighth Judicial District Court, Department XV
Clark County, Nevada
The Honorable JOE HARDY, District Judge
District Court Case No. A-16-735910-B

RESPONDENTS' ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

1. Respondent Coöperatieve Rabobank U.A. has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

2. Respondent Utrecht-America Finance Co. operates as a subsidiary of Utrecht-America Holdings, Inc. No publicly held corporation owns 10% or more of its stock.

3. Dan R. Waite of Lewis Roca Rothgerber Christie LLP and Chris Paparella of Hughes Hubbard & Reed LLP represented respondents Coöperatieve Rabobank U.A. and Utrecht-America Finance Co. in the district court and have appeared in this Court.

4. No publicly traded company has any interest in this appeal.

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED this 19th day of October, 2017.

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By: */s/ Dan R. Waite*

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2. Whether Rabobank and Utrecht are subject to personal jurisdiction in Nevada under *Davis v. Eighth Judicial Dist. of Nev.*, 629 P.2d 1209 (Nev. 1981) based on Mr. Tricarichi's allegations that they were part of an out-of-state civil conspiracy to conceal from Mr. Tricarichi that his midco transaction violated the tax laws, where (i) the Nevada courts have not adopted conspiracy-based jurisdiction; (ii) *Davis*'s holding regarding effects-based jurisdiction was overruled by *Walden v. Fiore*, 134 S.Ct. 1115 (2014); (iii) the Tax Court found that Mr. Tricarichi knew or should have known that his midco transaction violated the tax laws; and (iv) Mr. Tricarichi did not identify any jurisdictionally significant contacts by any alleged conspirator and offered only threadbare, conclusory allegations of conspiracy.

3. Whether the District Court abused its discretion in denying Mr. Tricarichi jurisdictional discovery, where Mr. Tricarichi failed to make out a prima facie case that supported jurisdiction despite the fact that Mr. Tricarichi had all relevant information regarding Rabobank and Utrecht's contacts with him, and Mr.

Tricarichi had the extensive discovery Rabobank and Utrecht had produced in his Tax Court proceeding.

STATEMENT OF THE CASE

In *Tricarichi v. Commissioner of Internal Revenue*, No. 23630-12, 110 T.C.M. (CCH) 370, 2015 WL 5973214 (Oct. 14, 2015) ("Tax Court Decision"), the Tax Court held that Mr. Tricarichi had committed tax fraud through a "midco" transaction he consummated with non-party Fortrend in 2003. Mr. Tricarichi's midco transaction involved his sale of West Side, an Ohio company he owned, to Fortrend, a California-based tax shelter promoter. Fortrend obtained financing and depository services from Rabobank and Utrecht in New York for the transaction. No aspect of the deal touched Nevada, aside from the fact that Mr. Tricarichi moved there sometime after May 1, 2003 as part of his quest to avoid taxes. Mr. Tricarichi stipulated in the Tax Court that Ohio law applied to the state law aspects of his transaction, because Ohio was where "[*he*] *resided, West Side did business, and the principal transactions occurred.*" (Tax Court Decision at *12, App. Vol. 6 at APP1281 (emphasis added).)

Rabobank and Utrecht had no contact with Nevada in connection with Mr. Tricarichi's transaction or otherwise. Utrecht lent money in New York, and Rabobank accepted funds for deposit in New York. Rabobank and Utrecht never met with Mr. Tricarichi in Nevada, never communicated with Mr. Tricarichi in

Nevada, and never had any contact with anyone in Nevada in connection with Mr. Tricarichi's transaction. The only communications Rabobank and Utrecht had with Mr. Tricarichi were three faxes he sent to them in New York from California. These facts are unremarkable, because Mr. Tricarichi's transaction had nothing to do with Nevada.

The District Court properly rejected Mr. Tricarichi's attempt to hold Rabobank and Utrecht liable in Nevada for the consequences of his tax fraud. The District Court held that Mr. Tricarichi was improperly attempting to premise jurisdiction over Rabobank and Utrecht on the mere fact that they knew Mr. Tricarichi resided in Nevada. Such effects-based jurisdiction had been held unconstitutional by the U.S. Supreme Court in its recent decision in *Walden v. Fiore*, 134 S.Ct. 1115 (2014).

The District Court also rejected Mr. Tricarichi's argument that there was jurisdiction over Rabobank and Utrecht under *Davis v. Eighth Judicial Dist. of Nev.*, 629 P.2d 1209 (Nev. 1981) because they allegedly conspired outside of Nevada to conceal from Mr. Tricarichi the tax consequences of his deal. The District Court held that if *Davis* had created such a basis for jurisdiction, it had been overruled by *Walden*. In fact, neither *Davis* nor any other Nevada decision has ever adopted conspiracy-based jurisdiction.

Mr. Tricarichi's conspiracy theory was groundless in any event. The Tax Court found Mr. Tricarichi had not been deceived by anyone because he knew or should have known his midco transaction was tax fraud. Mr. Tricarichi had also agreed that Rabobank and Utrecht had not made any representations to him regarding the tax consequences of his transaction. And none of the alleged conspirators had any jurisdictionally meaningful contact with Nevada. The only Nevada contact Mr. Tricarichi identified was Fortrend affiliate Nob Hill's mailing to him of an offer letter and an amendment thereto. All other aspects of Mr. Tricarichi's deal took place outside of Nevada.

Mr. Tricarichi's Statement of the Case omits most of the foregoing facts. Mr. Tricarichi omits that the Tax Court found that Mr. Tricarichi knew or should have known that his midco transaction with Fortrend was tax fraud. (Tax Court Decision at *21, App. Vol. 6 at APP1287.) Mr. Tricarichi omits that he agreed Rabobank and Utrecht had not made any representation to him about the potential tax consequences of his transaction. (Kortlandt Aff., Ex. 11, App. Vol. 6 at APP1261-67.) Mr. Tricarichi omits that Rabobank and Utrecht's services were performed entirely in New York under agreements governed by New York law. Mr. Tricarichi omits that he failed to identify a single communication by Rabobank or Utrecht to him or anyone else in Nevada.

STATEMENT OF FACTS

I. RABOBANK AND UTRECHT HAD NO CONTACT WITH NEVADA

While Mr. Tricarichi's Opening Brief is replete with conclusory assertions that Rabobank and Utrecht "reach[ed] into Nevada" and "did business with Appellant in Las Vegas" (*see, e.g.*, Appellant's Opening Brief ("Br.") at 2-3, 8), Mr. Tricarichi does not point to facts that support these assertions. Neither Mr. Tricarichi's complaint nor his opposition affidavit identified a single contact by Rabobank or Utrecht with Nevada in connection with Mr. Tricarichi's transaction. Indeed, Mr. Tricarichi did not identify any Nevada contacts at all by Rabobank or Utrecht. (*See* Compl., App. Vol. 1 at APP0001-42; Tricarichi Aff., App. Vol. 7 at APP1493-96.)[1]

Mr. Tricarichi asserted that unidentified Rabobank personnel asked him to open an account at Rabobank (in New York), but he did not claim he received this communication in Nevada. (Tricarichi Aff. ¶ 15, App. Vol. 7 at APP1495.) Mr. Tricarichi asserted he corresponded with Rabobank, but he did not claim this correspondence was sent to or from Nevada. (*Id.* ¶¶ 14-18, App. Vol. 7 at APP1495-96.) Indeed, the only correspondence Mr. Tricarichi specifically identified consisted of three faxes which he sent *from California* to Rabobank in New York. (*Id.* ¶¶ 16-18, App. Vol. 7 at APP1496; Pl.'s Opp. Exs. M, N, and O,

[1] Mr. Tricarichi's opposition affidavit does not even mention Utrecht. (*See* Tricarichi Aff., App. Vol. 7 at APP1493-96.)

App. Vol. 7 at 1551-65.) Mr. Tricarichi's faxes only concerned administrative matters, including his instruction that Rabobank transfer funds between his New York bank accounts. (Pl.'s Opp. Ex. O, App. Vol. 7 at 1563-65.)

Mr. Tricarichi's failure to identify specific Nevada contacts by Rabobank and Utrecht stands in contrast to his assertion that non-party Nob Hill sent a letter of intent and an amendment thereto to Mr. Tricarichi in Nevada. (Tricarichi Aff. ¶¶ 10, 12, App. Vol. 7 at APP1494-95; Pl.'s Opp. Exs. F, I, App. Vol. 7 at APP1518-24, APP1537-39.) There is no allegation that Rabobank or Utrecht caused that letter to be sent.

The evidence shows Rabobank and Utrecht's activities in connection with Mr. Tricarichi's transaction took place entirely in New York. (*See* Kortlandt Aff. ¶ 5, App. Vol. 6 at APP1173-74.) The accounts for the transaction were set up at Rabobank's New York branch and are governed by New York law. (*Id.*; *see also* Compl. ¶ 11, App. Vol. 1 at APP0005-06.) Utrecht lent Fortrend's affiliate Nob Hill $29.9 million in New York under an agreement governed by New York law. Nob Hill transferred these funds, with the balance of the purchase price, to Mr. Tricarichi's New York Rabobank account. (Kortlandt Aff. ¶ 5, App. Vol. 6 at APP1173-74.) Mr. Tricarichi transferred these funds to another bank account in New York. Nob Hill repaid its loan in New York. (Tax Court Decision at *10, App. Vol. 6 at APP1278-79; *see also* Compl. ¶ 54, App. Vol. 1 at APP0021.)

None of the agreements and loan documents provide for Nevada law or a Nevada forum.

Rabobank and Utrecht (i) are not licensed to conduct business in Nevada, (ii) do not maintain any offices or branches in Nevada, (iii) do not have any employees in Nevada, (iv) are not required to and do not pay taxes in Nevada, and (v) do not have registered agents in Nevada. (*See* Kortlandt Aff. ¶ 3, App. Vol. 6 at APP1173.)

In fact, Mr. Tricarichi's midco transaction had nothing to do with Nevada. Mr. Tricarichi sold his Ohio company to California-based Fortrend. He was advised by Ohio lawyers and accountants. The required financial services were provided in New York. As noted above, Mr. Tricarichi conceded that Ohio law applied in the Tax Court because Ohio was where "[*he*] *resided, West Side did business, and the principal transactions occurred*." (Tax Court Decision at *12, App. Vol. 6 at APP1281 (emphasis added).)

Hence, stripped of verbiage, Mr. Tricarichi's case is that Rabobank and Utrecht are subject to jurisdiction in Nevada because they allegedly knew Mr. Tricarichi had established a Nevada residence at some point after May 1, 2003.[2]

[2] The Tax Court found that Mr. Tricarichi's move was connected to his midco transaction and that he "planned to move from Ohio to a State without an income tax so that there would be no State tax on his gains." (Tax Court Decision at *5, App. Vol. 6 at APP1275.)

II. MR. TRICARICHI DOES NOT ALLEGE CONSPIRACY JURISDICTION

Mr. Tricarichi does not, and cannot, identify any facts that support his conclusory assertion that Rabobank and Utrecht are subject to jurisdiction because they conspired out-of-state to conceal from Mr. Tricarichi that his transaction was reportable under IRS Notice 2001-16 and constituted tax fraud. (*See* Br. at 41-48.)

The Tax Court found Mr. Tricarichi's testimony that he was deceived into entering into his midco transaction was not credible. (*See* Tax Court Decision at *4, *6, *7, *21, App. Vol. 6 at APP1275-76, APP1287 (not credible); *id.* at *8, *21, App. Vol. 6 at APP1277, APP1287 (evasive); *id* at *14, App. Vol. 6 at APP1281 (preposterous contentions).) The Tax Court found Mr. Tricarichi was fully informed about IRS Notice 2001-16, understood the risk that his midco transaction would be a "reportable transaction" under the Notice, and knew or should have known that "Fortrend intended to implement an illegitimate scheme to evade West Side's accrued tax liabilities and leave it without assets to satisfy those liabilities." (Tax Court Decision at *3-4, 19, 21, App. Vol. 6 at APP1274-75, APP1285-87.) And, as noted above, Mr. Tricarichi agreed that Rabobank and Utrecht had not made any representations to him about the tax consequences of his transaction. (Kortlandt Aff., Ex. 11, App. Vol. 6 at APP1261-67.)

The Tax Court's findings contradict Mr. Tricarichi's argument on this appeal that the Tax Court's decision was based on imputing Defendant

PricewaterhouseCoopers' ("PwC") knowledge to him. (Br. at 29 n.5.) The Tax Court found that Mr. Tricarichi had been warned repeatedly by PwC and by Mr. Tricarichi's tax lawyers at Hahn Loesser that his midco transaction might be tax fraud. The Tax Court also found that Mr. Tricarichi was a sophisticated businessman who understood those warnings. (Tax Court Decision at *19-20, App. Vol. 6 at APP1285-86.) PwC advised Mr. Tricarichi that the "high basis/low value" debt strategy that Fortrend proposed for eliminating West Side's tax liabilities appeared to be "a very aggressive tax-motivated strategy" that was "subject to IRS challenge." (*Id.*) PwC also told Mr. Tricarichi only that "a position can be taken" that the proposed stock sale would not be a reportable transaction. (*Id.* at *19, App. Vol. 6 at APP1286.) In tax-speak, "a position can be taken" meant PwC had a low level of confidence that the position would be accepted by the IRS. (*Id.*)[3]

The Tax Court found that Mr. Tricarichi had extensive discussions with Hahn Loeser about IRS Notice 2001-16 and the risk that the Fortrend transaction would be a "reportable transaction." (*Id.* at *3-4, 19, App. Vol. 6 at APP1274-75,

[3] "Under regulations in effect during 2003, '[a] position * * * [was] considered to have a realistic possibility of being sustained on its merits' if a well-informed tax professional would conclude that it had 'approximately a one in three, or greater, likelihood of being sustained on its merits.' Sec. 1.6694-2(b)(1), Income Tax Regs. Stating that 'a position can be taken' suggests a lower level of confidence than this. Virtually any position 'can be taken.'" (*Id.* at *19 n.14 (citing 26 C.F.R. § 1.6694-2(b)(1) (2003)).

APP1285-86.) Hahn Loeser spent days researching Notice 2001-16, "reportable transactions," "sham transactions," and transactions involving "an intermediary corporation." PwC insisted in its engagement letter that Mr. Tricarichi was obligated to advise PwC if he determined any matter covered by PwC's engagement letter was a reportable transaction. (*Id.* at *4, 19, App. Vol. 6 at APP1274-75, APP1285-86.) Mr. Tricarichi attempted to strike this requirement from the engagement letter, which the Tax Court found evidenced his "active avoidance of learning the truth." (*Id.* at *19, App. Vol. 6 at APP1285-86.) When Mr. Tricarichi's lawyers attempted to include in the stock purchase agreement a provision prohibiting West Side from engaging in a "listed transaction" after Fortrend acquired West Side, Fortrend refused to agree to this provision. (*Id.* at *19, App. Vol. 6 at APP1286.)

Mr. Tricarichi's threadbare and conclusory allegations in support of his conspiracy claim are deficient in other ways. Mr. Tricarichi does not allege who at Rabobank, Utrecht, Seyfarth and Fortrend conspired, when they conspired, or what they conspired about. Not a single meeting, conversation or other communication among the alleged conspirators is identified.

Nor did Mr. Tricarichi allege any jurisdictionally significant contacts with Nevada by any of the purported conspirators. The only Nevada contacts he identified were a letter of intent and amendment that Fortrend's affiliate Nob Hill

sent to Mr. Tricarichi in Nevada. But Mr. Tricarichi does not allege that his claims arise from the mailing of these documents to him in Nevada. (*See* Tricarichi Aff. ¶¶ 10, 12, App. Vol. 7 at APP1494-95; Pl.'s Opp. Exs. F, I, App. Vol. 7 at APP1518-24, APP1537-39.)

SUMMARY OF THE ARGUMENT

The District Court correctly determined it could not exercise personal jurisdiction over Rabobank and Utrecht under *Walden v. Fiore*, 134 S. Ct. 1115 (2014) because their only alleged link to Nevada was their knowledge that Mr. Tricarichi had a Nevada address. Under *Walden*, the conduct of Rabobank and Utrecht, not that of Mr. Tricarichi, must form the necessary connection with Nevada that justifies the exercise of jurisdiction. The District Court also correctly rejected Mr. Tricarichi's argument that there was jurisdiction pursuant to *Davis v. Eighth Judicial Dist. of Nev.*, 629 P.2d 1209 (Nev. 1981) because Mr. Tricarichi was injured in Nevada by Rabobank and Utrecht's alleged participation in an out-of-state conspiracy. The District Court properly held that to the extent that *Davis* had created such a basis for jurisdiction, it had been overruled by *Walden*. The Nevada courts and the Ninth Circuit have never, in any event, endorsed finding personal jurisdiction based on a civil conspiracy. Mr. Tricarichi's conspiracy theory is also groundless because he knew or should have known his transaction

was tax fraud, and because he did not plead any jurisdictionally significant contacts with Nevada by any alleged conspirator.

The District Court's denial of jurisdictional discovery was a proper exercise of discretion. Despite having all the facts regarding his contacts with Rabobank and Utrecht, including full discovery from Rabobank and Utrecht in the Tax Court case, Mr. Tricarichi failed to make out a *prima facie* case for personal jurisdiction over Rabobank or Utrecht. He did not contend there was general jurisdiction over Rabobank or Utrecht. His discovery request was merely an application for a fishing license.

ARGUMENT

I. STANDARD OF REVIEW

A dismissal for lack of personal jurisdiction is reviewed *de novo* when the facts are undisputed. *Dogra v. Liles*, 314 P.3d 952, 955 (Nev. 2013) (citing *Baker v. Eighth Judicial Dist. Ct.*, 999 P.2d 1020, 1023 (Nev. 2000)). Factual findings regarding personal jurisdiction issues are reviewed for clear error. *Id.* A district court's decision to deny discovery is reviewed for abuse of discretion. *See Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Ct.*, 276 P.3d 246, 249 (Nev. 2012).

II. THE DISTRICT COURT CORRECTLY HELD IT LACKED PERSONAL JURISDICTION OVER RABOBANK AND UTRECHT

A. Mr. Tricarichi Misstates the Applicable Standards

The standards applicable to this appeal support affirmance of the District Court's decision. Mr. Tricarichi substantially misstates those standards in his brief. (Br. at 31-32.) Mr. Tricarichi fails to note that under Nevada law, he has the burden of establishing that the court has a basis to assert personal jurisdiction over Rabobank and Utrecht. *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 342 P.3d 997, 1001 (Nev. 2015). Mr. Tricarichi was required to "satisfy the requirements of Nevada's long-arm statute and show that jurisdiction does not offend principles of due process." *Id.* Mr. Tricarichi also ignores the principle that the exercise of specific jurisdiction is proper "only where the cause of action arises from the defendant's contacts with the forum." *Id.* at 1002 (citations omitted).

Most importantly, Mr. Tricarichi fails to cite the standards established by the U.S. Supreme Court's recent decision in *Walden v. Fiore*, 134 S. Ct. 1115 (2014), which interpreted Nevada's long-arm statute and is dispositive here.

The Court in *Walden* held that in determining whether there is specific personal jurisdiction over a non-resident defendant, the inquiry "focuses on the relationship among the defendant, the forum, and the litigation." *Walden*, 134 S. Ct. at 1121 (internal quotation marks omitted). For specific jurisdiction to comport with due process, "the defendant's suit-related conduct must create a substantial

connection with the forum State." *Id.* Two aspects of this required relationship among Rabobank and Utrecht, Nevada and Mr. Tricarichi's claims are relevant here.

"First, the relationship must arise out of contacts that the 'defendant *himself*' creates with the forum State." *Id.* at 1122 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). "Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." *Id.* (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 at 291-92 (1980).) "[C]ontacts between the plaintiff (or third parties) and the forum State" do not suffice. *Id.* (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984)). "Put simply, however significant the plaintiff's contacts with the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.'" *Id.* (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)).

Second, the "'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Id.* (citing *Int'l Shoe v. Washington*, 326 U.S. 310 at 319 (1945)). Thus, "the plaintiff cannot be the only link between the defendant and the forum." *Id.* at 1122. "Rather, it is the defendant's conduct that must form the necessary

connection with the forum State that is the basis for its jurisdiction over him." *Id.* at 1122-23 (citing *Burger King*, 471 U.S. at 478). "Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State." *Id.* at 1123 (citing *Burger King*, 471 U.S. at 475).

The same principles apply to intentional torts, as to which "it is likewise insufficient to rely on a defendant's 'random, fortuitous, or attenuated contacts' or on the 'unilateral activity' of a plaintiff." *Id.* (citation omitted). Therefore, "[a] forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum." *Id.*

B. Mr. Tricarichi Improperly Relies on His Own Nevada Contacts to Support Jurisdiction Over Rabobank and Utrecht

1. *Walden* Eliminated Effects-Based Jurisdiction

Mr. Tricarichi's reliance on Rabobank and Utrecht's purported knowledge that he resided in Nevada is fatal to his argument. The U.S. Supreme Court made clear in *Walden* that "the plaintiff cannot be the only link between the defendant and the forum. Rather, it is *the defendant's* conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him…. [I]t is the defendant, not the plaintiff or third parties, who must create contacts with

the forum State." *Walden*, 134 S. Ct. at 1122, 1126 (emphasis added). Thus, Nevada jurisdiction over Rabobank and Utrecht must be based on acts by them that were purposefully directed at Nevada. As the *Walden* Court made clear, the minimum contacts analysis "looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Id.* at 1122. Such contacts are utterly lacking here, as discussed *supra* in the Statement of Facts.

The Court in *Walden* reversed a finding of specific personal jurisdiction because the court below, instead of evaluating the defendant's own contacts with Nevada, mistakenly premised jurisdiction on the defendant's knowledge that the plaintiffs had connections with the forum. *Id.* at 1124. The Supreme Court held that the lower court had improperly "shift[ed] the analytical focus from [the defendant's] contacts with the forum to his contacts with [the plaintiffs]." *Id.* (citations omitted) (holding that "[s]uch reasoning improperly attributes a plaintiff's forum connections to the defendant and makes those connections 'decisive' in the jurisdictional analysis . . . [and] obscures the reality that none of petitioner's challenged conduct had anything to do with Nevada itself"). The Supreme Court found that the plaintiffs' reliance on *Calder v. Jones*, 465 U.S. 783 (1984)—a decision on which Mr. Tricarichi also relies here—for the argument that "they suffered the 'injury' caused by petitioner's allegedly tortious conduct . . . while they were residing in the forum" was "misplaced" because "*Calder* made

clear that mere injury to a forum resident is not a sufficient connection to the forum," and "[r]egardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State" through conduct that "connects him to the forum in a meaningful way." *Walden*, 134 S. Ct. at 1125.

2. *Walden* Fully Supports the District Court's Decision

The U.S. Supreme Court's decision in *Walden* fully supports the District Court's decision below. In *Walden*, as in this case, the defendant allegedly directed his conduct at plaintiffs whom he knew had a "significant connection" to Nevada. 134 S. Ct. at 1120, 1125. But the *Walden* Court held that the defendant's knowledge of this connection did not subject him to the jurisdiction of Nevada courts, because—like Rabobank and Utrecht—he had "never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada. In short, when viewed through the proper lens—whether the *defendant's* actions connect him to the *forum*—petitioner formed no jurisdictionally relevant contacts with Nevada." *Id.* at 1124. *See also Picot v. Weston*, 780 F.3d 1206, 1215 (9th Cir. 2015) (holding that because the plaintiff's injury was "not tethered to California in any meaningful way" but "entirely personal to him and would follow him wherever he might choose to live or travel," "[t]he effects of [the defendant's] actions are therefore not connected to the forum State in a way that

makes those effects a proper basis for jurisdiction.") (citing *Walden*, 134 S. Ct. at 1125) (citation and internal quotation marks omitted).

Mr. Tricarichi's attempt to distinguish *Walden* by asserting that unlike the defendant in that case, Rabobank, "knowing that Mr. Tricarichi resided in Nevada, purposefully reached out to [Mr. Tricarichi] on multiple occasions" is unavailing. (Br. at 36.) Mr. Tricarichi has not identified a single instance of Rabobank reaching out to Mr. Tricarichi in Nevada. (*See supra* at 5-7.)

3. The District Court's Decision is Consistent with Other Post-*Walden* Nevada Decisions

Numerous courts in Nevada have applied *Walden* to find personal jurisdiction lacking on facts also analogous to those alleged here. In *Zabeti v. Arkin*, No. 2:14-cv-00018 (GMN)(PAL), 2014 WL 3395991 (D. Nev. July 8, 2014), although the defendants knew that the plaintiff resided in Nevada and that the effects of their alleged actions would be felt there, the court ruled that it lacked personal jurisdiction over them, because "[s]imilar to the police officer in *Walden*, [the defendants'] only contact with Nevada is their alleged knowledge that their conduct in the Colorado Litigation would affect Plaintiff in Nevada. The U.S. Supreme Court's holding in *Walden* soundly forecloses Plaintiff's argument that this knowledge is sufficient to provide a basis for this Court to exercise jurisdiction over [the defendants]." *Zabeti,* 2014 WL 3395991, at *3. Similarly, in *Ponder v. Wild*, No. 2:16-CV-2305 (JCM)(PAL), 2017 WL 1536165 (D. Nev. Apr. 26, 2017)

the court, citing *Walden*, held that it lacked personal jurisdiction over a defendant who had entered into an agreement with a Nevada resident, because the asserted tort claims "deal[t] directly with the alleged oral contract. The alleged agreement, which took place in Switzerland, was for the sale of . . . a Swiss company, and in no way directly targeted Nevada. That [the plaintiff] is a Nevada resident and was injured is irrelevant to the appropriate personal jurisdiction analysis." *Id.* at *4 (citations omitted). See also *Poor Boy Prods. v. Fogerty*, No. 3:14-cv-00633 (RCJ)(VPC), 2015 WL 5057221 (D. Nev. Aug. 26, 2015); *Bellagio, LLC v. Bellagio Car Wash & Express Lube*, 116 F. Supp. 3d 1166 (D. Nev. 2015), *motion for relief from judgment denied sub nom. Bellagio, LLC v. Bellagio Car Wash & Express Lube*, No. 2:14-cv-1362 (JCM)(PAL), 2015 WL 7783534 (D. Nev. Dec. 3, 2015); *Middleton v. Carrington Mortg. Servs. LLC*, No. 2:15-cv-01977 (APG)(PAL), 2017 WL 834981, at *2 (D. Nev. Mar. 1, 2017).

4. *Exobox* Was Wrongly Decided and Is Inconsistent with Ninth Circuit Decisions

The only post-*Walden* Nevada case Mr. Tricarichi cites is *Exobox Techs. Corp. v. Tsambis*, No. 2:14-cv-00501 (RFB)(VCF), 2015 WL 82886 (D. Nev. Jan. 6, 2015), which held that *Walden* had not overruled a line of Ninth Circuit cases adopting the "express aiming" theory of jurisdiction. *Exobox*, 2015 WL 82886, at *4 (citing *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1077 (9th Cir.2011)).

But the Ninth Circuit has made clear that *Exobox* was wrongly decided, and has twice held that its pre-*Walden* "express aiming" jurisprudence is no longer good law. In *Elghasen v. RBS Computer, Inc.*, 692 Fed. App'x 940 (Mem) (9th Cir. 2017), the only substantial suit-related contact that the plaintiff had alleged between the defendant bank and Nevada was that the defendant had misreported the credit information of the plaintiff, whom the defendant knew was a Nevada resident. The District Court dismissed the case for lack of personal jurisdiction, and the Ninth Circuit affirmed, declaring that even if the plaintiff had shown that the defendant knew he was a Nevada resident, "[*Walden*] establishes that this sort of contact is insufficient to establish personal jurisdiction." *Id.* at 941. In *Bixby v. KBR, Inc.*, 603 F. App'x 605 (9th Cir. 2015), members of the Oregon National Guard asserted claims for fraud and negligence against a military contractor and its subsidiaries in connection with the operation of a water treatment plant in Iraq. The District Court found that the exercise of personal jurisdiction over the defendants was appropriate under the effects test in *Calder*, because the defendants "knew the persons to whom they intentionally directed their misrepresentations and failures to disclose were soldiers of the Oregon National Guard." *Id.* at 606. The Ninth Circuit reversed, holding that *Walden*, decided while the case was pending on appeal, compelled a different result: because the plaintiffs themselves

were "the only link between [the defendants] and Oregon," the defendant was not subject to personal jurisdiction in Oregon. *Id.*

Several other district courts in the Ninth Circuit have also disagreed with the decision in *Exobox*. *See Microsoft Corp. v. Mountain W. Computers, Inc.*, No. C14-1772 (RSM), 2015 WL 4479490, at *6 (W.D. Wash. July 22, 2015) (citing *Erickson v. Neb. Mach.*, No. 15-cv-01147 (JD), 2015 WL 4089849 (N.D. Cal. July 6, 2015) and *Under a Foot Plant, Co. v. Exterior Design, Inc.*, No. 6:14-cv-01371 (AA), 2015 WL 1401697 (D. Or. Mar. 24, 2015).[4]

5. The District Court's Decision is Consistent with Other Post-*Walden* Federal Appellate Decisions

Every other federal appellate court that has considered the issue since *Walden* has held that jurisdiction may not be based on an express aiming theory. *See Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d

[4] The court in *Microsoft Corp.* reviewed several post-*Walden* cases in district courts within the Ninth Circuit, including *Exobox*, and concluded that "the courts adhering to the pre-*Walden* cases have not explained how [the holding of *Washington Shoe Co. v. A–Z Sporting Goods Inc.*, 704 F.3d 668 (9th Cir.2012)] that 'express aiming' is established whenever 'the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state' can be squared with *Walden*'s express holding that to find personal jurisdiction based on the defendant's 'allegedly direct[ing] his conduct at plaintiffs whom he knew' had connections to the forum state is to 'improperly attribute[ ] a plaintiff's forum connections to the defendant.' This Court agrees with other District Courts that have determined these holdings cannot be reconciled, and that *Walden* overrides *Washington Shoe* generally, and certainly with respect to the specific holding plaintiffs argue in this case." *Microsoft Corp.*, 2015 WL 4479490, at *6 (citations omitted).

796, 802 (7th Cir. 2014) (holding that under *Walden*, personal jurisdiction could not be exercised over a defendant in Indiana merely because the defendant "knew that [the plaintiff] was an Indiana company and could foresee that its misleading emails and sales would harm [the plaintiff] in Indiana"); *Rockwood Select Asset Fund XI (6)-1, LLC v. Devine, Millimet & Branch*, 750 F.3d 1178, 1180 (10th Cir. 2014) (holding that under *Walden*, a law firm's knowledge that its client, the plaintiff, was a Utah corporation with a Utah address, and would suffer injury in Utah, was insufficient to exercise personal jurisdiction over the law firm); *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 433-34 (5th Cir. 2014) (holding that even where Cayman Islands insurance manager entered into account contract with Cayman Islands company through Texas resident who was the company's owner and director, and sent the contract to the owner and director in Texas, among other contacts, Texas court could not exercise personal jurisdiction over the insurance manager under *Walden*); *Fastpath, Inc. v. Arbela Techs. Corp.*, 760 F.3d 816, 823 (8th Cir. 2014) (holding that under *Walden*, even if the defendant had solicited an agreement with the plaintiff knowing that the plaintiff was an Iowa corporation, such knowledge could not create minimum contacts with Iowa sufficient to exercise personal jurisdiction); *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 338 (2d Cir. 2016) ("[T]he facts of *Walden* . . . suggest that a defendant's mere knowledge that a plaintiff resides in a specific jurisdiction would be

insufficient to subject a defendant to specific jurisdiction in that jurisdiction if the defendant does nothing in connection with the tort in that jurisdiction.").

III. THE DISTRICT COURT CORRECTLY REJECTED MR. TRICARICHI'S CONSPIRACY JURISDICTION ARGUMENT

Mr. Tricarichi's argument that Rabobank and Utrecht are subject to jurisdiction in Nevada because they conspired outside Nevada to injure Mr. Tricarichi was properly rejected by the District Court. Conspiracy-based jurisdiction has never been endorsed by Nevada courts or the Ninth Circuit and is no longer viable following *Walden*. Mr. Tricarichi has failed, in any event, to allege a conspiracy that supports jurisdiction over Rabobank and Utrecht.

A. *Davis* Does Not Support Conspiracy Jurisdiction

Mr. Tricarichi is incorrect that *Davis v. Eighth Judicial Dist. of Nev.*, 629 P.2d 1209 (Nev. 1981) supports conspiracy jurisdiction. The Court in *Davis* did not analyze the conspiracy theory of jurisdiction, did not state that it was basing its ruling on a conspiracy theory of personal jurisdiction, and did not use the term "conspiracy jurisdiction." The *Davis* Court did not attribute the Nevada contacts of some conspirators to others to find personal jurisdiction was proper, and indeed, did not even analyze the Nevada contacts of *any* of the defendants. Rather, the Court's ruling was based on the notion that it was "reasonable and constitutionally permissible to require the respondent-defendants to appear and defend their

activities in Nevada where the alleged injuries occurred" without a showing of Nevada contacts by the defendants. *Id.* at 1213.

Mr. Tricarichi does not identify any other case in the 36 years since *Davis* was decided that cites *Davis* for the proposition that a conspiracy theory of jurisdiction is viable in Nevada. Indeed, this Court has previously held that personal jurisdiction may not be premised on the unilateral forum-related acts of another party or third parties, such as the purported co-conspirators here. *Sharpstown General Hosp. v. Laborers Health and Welfare Trust Fund*, 874 P.2d 728, 729 (Nev. 1994).

B. The Ninth Circuit Has Declined to Adopt Conspiracy Jurisdiction

The Ninth Circuit has likewise declined to adopt a conspiracy theory of personal jurisdiction, and declined to do so even prior to *Walden*. *See Goldsmith v. Sill*, No. 2:12-cv-0490 (LDG)(CWH), 2013 WL 1249707, at *5 (D. Nev. Mar. 26, 2013) ("[T]he court notes that the Ninth Circuit has not adopted a conspiracy theory of personal jurisdiction. However, due to the Circuit's rejection of an analogous theory for venue purposes, *see Peidmont Label Co. v. Sun Garden Packing,* 598 F.2d 491, 492 (9th Cir.1979), and in light of the Supreme Court's mandate that '[e]ach defendant's contacts with the forum State must be assessed individually,' the court need not venture into that territory.") (some citations omitted) (quoting *Calder v. Jones*, 465 U.S. 783, 790 (1984)).

And as both this Court and the U.S. Supreme Court have repeatedly held, personal jurisdiction may not be established solely on the basis of the unilateral forum-related acts of another party or third parties, such as Rabobank and Utrecht's alleged co-conspirators. *Walden*, 134 S. Ct. at 1123; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *Sharpstown General Hosp. v. Laborers Health and Welfare Trust Fund*, 874 P.2d 728, 729 (Nev. 1994).

C. *Walden* Overruled *Davis*

Even if *Davis* had established a conspiracy theory of jurisdiction, it was overruled by *Walden*. Hence, the District Court was correct to conclude that *Walden* also "appears to overrule *Davis* because, as the U.S. Supreme Court declared, 'mere injury to a forum resident is not a sufficient connection to the forum…. The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way.'" (Order Granting Mot. to Dismiss at 9, App. Vol. 9 at APP1931 (quoting *Walden*, 134 S. Ct. at 1125).) Numerous other courts have rejected the viability of conspiracy jurisdiction subsequent to *Walden*, holding that participation in a conspiracy cannot "provide a standalone basis for jurisdiction." *In re Aluminum Warehousing Antitrust Litig.*, 90 F. Supp. 3d 219, 227 (S.D.N.Y. 2015) (rejecting conspiracy jurisdiction as inconsistent with due process). These courts have held that allegations of conspiracy should not change the jurisdictional

analysis: only if a defendant itself "has in fact engaged in some affirmative act directed at the forum" may that defendant potentially be subject to jurisdiction. *Id.; see also In re Dental Supplies Antitrust Litig.*, No. 16-cv-696 (BMC)(GRB), 2017 WL 4217115, at *7 (E.D.N.Y. Sept. 20, 2017) (rejecting theory of conspiracy jurisdiction because "it is highly unlikely that any concept of conspiracy jurisdiction survived the Supreme Court's ruling in [*Walden*]"); *Kirk v. Macs*, No. LA CV 15-07931 (JAK)(JPRx), 2016 WL 5340527, at *6 (C.D. Cal. Feb. 17, 2016) (stating that California does not recognize the conspiracy theory of jurisdiction); *In re Auto. Parts Antitrust Litig.*, 2015 WL 4508938, at *4 (E.D. Mich. July 24, 2015) (rejecting conspiracy jurisdiction and noting "[t]he Court has no basis for imputing the actions of one defendant to another in analyzing jurisdiction"); *Spivak* v. *Law Firm of Tripp Scott, P.A.*, 2015 WL 1084856, at *5 (N.D. Ohio Mar. 10, 2015) (rejecting theory that "contacts of one alleged member of a civil conspiracy with the forum state may be attributed to other members of that conspiracy who have no such personal contacts"); *Hanna* v. *Blanchette*, 2014 WL 4185816, at *5 (S.D. Tex. Aug. 21, 2014) (same). *Cf. In re N. Sea Brent Crude Oil Futures Litig.*, No. 13-MD-02475, 2017 WL 2535731, at *9 (S.D.N.Y. June 8, 2017) (concluding that the exercise of conspiracy jurisdiction is "questionable" after *Walden* because under that case's rationale, it "stands to

reason that a defendant has not established minimum contacts with a forum on the basis of his co-conspirator's conduct in the forum state alone").[5]

D. Mr. Tricarichi Has Not Alleged a Conspiracy

1. Mr. Tricarichi Knew or Should Have Known His Midco Transaction Was Tax Fraud

Mr. Tricarichi has failed in any event to allege a conspiracy. The Tax Court found Mr. Tricarichi knew or should have known his midco transaction was tax fraud. (*See* Tax Court Decision at *21, App. Vol. 6 at APP1287.) Mr. Tricarichi cannot allege a conspiracy to hide from him something he knew or should have known. *See In re Agribiotech, Inc.*, No. CV S 02 0537 PMP (LRL), 2005 WL 4122738, at *12 (D. Nev. Apr. 1, 2005) (in granting defendant's motion for summary judgment on fraud claims, holding that "because [the debtor] knew of and participated in the fraud, it could not have justifiably relied on [defendant's] audits to uncover a fraud of which it already was aware"); *Allum v. Valley Bank of*

[5] The post-*Walden* cases from other jurisdictions that Appellant cites do not consider the impact of *Walden* on the viability of conspiracy theory jurisdiction, and are therefore unpersuasive. *See Tadayon v. DATTCO, Inc.*, 178 F. Supp. 3d 12 (D. Conn. 2016); *First Cmty. Bank, N.A. v. First Tenn. Bank, N.A.*, 489 S.W.3d 369, 394-400 (Tenn. 2015); *Oklahoma, ex rel. Doak v. Cifelli*, No. CIV-15-0539 (HE), 2017 WL 149990, at *2 (W.D. Okla. Jan. 13, 2017); *Mansfield Heliflight, Inc. v. Freestream Aircraft USA, Ltd.*, No. 2:16-CV-28, 2016 WL 7176586, at *8-*10 (D. Vt. Dec. 7, 2016); *BeoCare Grp. v. Morrissey*, 124 F. Supp. 3d 696, 701-02 (W.D.N.C. 2015); *Best Chair Inc. v. Factory Direct Wholesale, LLC*, 121 F. Supp. 3d 828, 839 (S.D. Ind. 2015); *Khan v. Gramercy Advisors, LLC*, 61 N.E.3d 107, ¶ 187-91, (Ill. App. 4th 2016).

Nevada, 849 P. 2d 297, 301 (Nev. 1993) (dismissing RICO claim because plaintiff participated in the alleged scheme central to the claim "even though perhaps against his will"). Appellant is collaterally estopped from re-litigating the Tax Court's determination. *See Garcia v. Prudential Ins. Co. of Am.*, 293 P.3d 869 (Nev. 2013) (noting that federal common law on collateral estoppel applies to determine the preclusive effect of the judgment of a federal court having federal question jurisdiction) (citing *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507 (2001) and *Taylor v. Sturgell*, 553 U.S. 880, 891-92 (2008)); *see also Blum v. KPMG LLP*, No. SA CV 11-01885 (CJC)(RNBx), 2012 WL 8704117, at *5-6 (C.D. Cal. July 17, 2012) (Tax Court's finding that plaintiff knowingly executed tax shelter precluded re-litigation of issues of plaintiff's knowledge and reliance); *In re Carey*, 326 B.R. 816, 821 (Bankr. E.D. Cal. 2005) (holding that Tax Court decision concerning debtors' use of sham trusts and income tax liability had preclusive effect).

2. Mr. Tricarichi Has Not Pled Facts That Show a Conspiracy

Mr. Tricarichi's conspiracy allegations are deficient in other ways. In jurisdictions that endorsed the theory of conspiracy jurisdiction prior to *Walden* — as Nevada courts never have — those courts have generally required that the existence of the conspiracy be pleaded with particularity. *See Companhia Brasileira Carbureto de Calicio v. Applied Indus. Materials Corp.*, 640 F.3d 369,

372 (D.C. Cir. 2011) ("To establish jurisdiction based on defendants' conspiracy . . . plaintiffs must plead with particularity the conspiracy as well as the overt acts within the forum taken in furtherance of the conspiracy.") (citation and internal quotation marks omitted); *Unspam Techs., Inc. v. Chernuk*, 716 F.3d 322, 329 (4th Cir. 2013) (holding that in order to premise jurisdiction on a conspiracy targeting Virginia, the plaintiff must plead with particularity "(1) that a conspiracy existed; (2) that the . . . defendants participated in the conspiracy; and (3) that a coconspirator's activities in furtherance of the conspiracy had sufficient contacts with Virginia to subject that conspirator to jurisdiction in Virginia").

Here, Mr. Tricarichi has alleged no facts demonstrating Rabobank's or Utrecht's participation in a conspiracy. *See Goodwin v. Exec. Tr. Servs., LLC*, 680 F. Supp. 2d 1244, 1254 (D. Nev. 2010) ("Allegations of conspiracy must be accompanied by 'the who, what, when, where, and how of the misconduct charged.'") (citation omitted); *Hale v. Burkhardt*, 764 P. 2d 866, 869 (Nev. 1988) (same with respect to pleading Nevada RICO claim).

3. Mr. Tricarichi Has Not Identified Any Jurisdictionally Significant Contacts by Any Conspirator with Nevada

Nor does Mr. Tricarichi allege any jurisdictionally significant contacts with Nevada by *any* of the purported co-conspirators. The only Nevada contacts he identifies are that Fortrend's affiliate Nob Hill sent a letter of intent and an amendment thereto to Mr. Tricarichi in Nevada. Mr. Tricarichi does not allege that

these documents had anything to do with his claims. (*See* Tricarichi Aff. ¶¶ 10, 12, App. Vol. 7 at APP1494-95; Pl.'s Opp. Exs. F, I, App. Vol. 7 at APP1518-24, APP1537-39.) Such attenuated and insignificant contacts do not confer personal jurisdiction. *Hupe v. Mani*, No. 2:16-cv-0533 (GMN)(VCF), 2016 WL 3690093 (D. Nev. July 12, 2016) is instructive. In *Hupe*, a Nevada resident brought claims for breach of contract against a Texas resident (along with a Texas corporation of which he was the general partner) in connection with a contract for the sale of a slice of a lunar meteorite located in Nevada. The plaintiff alleged that the defendants reached out to him in Nevada by sending to him there the agreement itself, along with a series of 21 regular payments under the contract. But the court held that there was no personal jurisdiction over the defendants, because they had "contacted and sent [the plaintiff] the Agreement only after [the plaintiff] initiated contact and negotiated with [the defendants]" to sell the slice of meteorite. 2016 WL 3690093, at *4. Unlike the "100 calls and travel efforts" that had been at issue in another case, the defendants had "simply sent the Agreement to [the plaintiff] in Nevada and requested that [the plaintiff] accept the contract." *Id.* (quoting *Roth v. Garcia Marquez*, 942 F.2d 617, 622 (9th Cir. 1991)) (internal quotation marks omitted). According to the court, "[t]hese communications do not indicate that Defendants received any benefit from Nevada's laws, and instead speak only to Defendants' relationship with [the plaintiff]." *Id.*

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY DENYING MR. TRICARICHI JURISDICTIONAL DISCOVERY

It is well-settled that "[d]iscovery matters are within the district court's sound discretion, and [this court] will not disturb a district court's ruling regarding discovery unless the court has clearly abused its discretion." *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Ct.*, 276 P.3d 246, 249 (Nev. 2012).

The District Court did not abuse its discretion in denying jurisdictional discovery to Mr. Tricarichi because Mr. Tricarichi did not make out a *prima facie* case for the court to exercise personal jurisdiction over Rabobank and Utrecht. *See supra* at 13-30; *Viega GmbH v. Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 1160-61 (Nev. 2014) (denial of jurisdictional discovery proper where plaintiff had not made out *prima facie* case for personal jurisdiction). Mr. Tricarichi's failure to make out a prima facie case was not due to lack of information. He had all information regarding his contacts with Rabobank and Utrecht. He had the added benefit of extensive discovery from Rabobank and Utrecht in the Tax Court proceeding prior to filing his Complaint—as evidenced by his filing of numerous documents in his action before the District Court that had been produced by Rabobank in the Tax Court action. (*See* Pl.'s Opp. Exs. G, J and U, App. Vol. 7 at APP1525-27, APP1540-65, 1593-97.) Mr. Tricarichi did not contend that Rabobank and Utrecht were subject to general jurisdiction in Nevada. Hence, Mr. Tricarichi's discovery

request was merely a request to go on a fishing expedition, and the District Court properly exercised its discretion in rejecting it.

CONCLUSION

Rabobank and Utrecht submit that the District Court's decision to dismiss the Complaint as to Rabobank and Utrecht for lack of personal jurisdiction was supported by the facts and the law, and respectfully request affirmance.

DATED this 19th day of October, 2017.

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2010 with a proportionally spaced typeface in 14-point, double-spaced Times New Roman.

2. I certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NRAP 32(a)(7)(C), it contains 7,961 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

DATED this 19th day of October, 2017.

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CERTIFICATE OF SERVICE

I certify that on October 19, 2017, I submitted the foregoing "Respondents' Answering Brief" for filing *via* the Court's eFlex electronic filing system.

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