IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JESSEPH AND CHARLES CHURCHWELL, Appellants, v. DIGITAL ALLY, INC. Respondent.	)	Case No. 78480

APPEAL FROM ORDER GRANTING MOTION TO DISMISS
THE EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE ELIZABETH GONZALEZ

APPELLANTS' REPLY BRIEF

John P. Aldrich, Esq.
Nevada Bar No.: 6877
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
702-853-5490

Steven J. Purcell, Esq.
Douglas E. Julie, Esq. (admitted pro hac vice)
Robert H. Lefkowitz, Esq.
PURCELL JULIE & LEFKOWITZ LLP
708 Third Avenue, 6th Floor
New York, New York 10017
212-725-1000

Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

SUMMARY OF ARGUMENT

Nevada common law provides for awards of attorneys' fees and expenses to incentivize stockholders to prosecute meritorious claims for the benefit of their corporation and fellow stockholders. The rule is necessary because no single economically- rational stockholder of a widely-held corporation can be expected to bear the full costs of identifying and prosecuting meritorious claims when they will only share proportionally in the benefit. The substantial benefit doctrine solves this "collective action problem" by spreading the cost of a generated benefit among all who benefited. When the policy behind the substantial benefit doctrine is correctly understood, it is clear that it should not matter if a stockholder and her counsel generate the benefit by filing a lawsuit or by complying with NRCP 23.1 and obtaining the same benefit through the successful prosecution of a litigation demand. Thus, in this appeal the Stockholders ask the Court to apply Nevada's substantial benefit doctrine to a substantial benefit conferred through a successful stockholder litigation demand, a result consistent with the principled evolution of Nevada's common law, well-reasoned Delaware precedent, and the American Law Institute's Principles of Corporate Governance.[1]

Digital Ally offers no convincing reason for Nevada to adopt an inflexible rule prohibiting attorneys' fees for the successful prosecution of a meritorious

[1] Undefined capitalized terms have the same definitions as in the Stockholders' opening brief ("OB"). Digital Ally's answering brief is cited as "AB."

claim through a stockholder litigation demand. Attorneys' fees and expenses are not awarded under the substantial benefit doctrine to encourage litigation but to incentivize value-enhancing representations. The Company simply ignores that denying attorneys' fees and expenses for successful demands will strongly disincentivize meritorious stockholder demands and lead instead to the filing of unnecessary litigation. Under Digital Ally's proposed rule, the next company facing issues like those identified by the Stockholders here will not receive a demand from a stockholder whose counsel volunteered their time, but will instead be sued on the merits without a demand. Corporations and their stockholders will be worse off as a result. Digital Ally's "policy" rejoinders, conjuring a flood of strike suits (which has not occurred in Delaware) and a dystopian world in which directors faced with meritorious stockholder demands opt not to fix legitimate problems rather than see their corporations pay attorneys' fees and expenses, are wholly without merit.

Digital Ally's legal arguments are equally unpersuasive. The Company principally asserts that Nevada precedent requires filed litigation for an award under the substantial benefit doctrine, before repackaging the same purported rule by claiming that Nevada has already considered and rejected a stand-alone claim for attorneys' fees in this context. But Digital Ally does not cite a single Nevada case that even considers such a rule let alone establishes or applies it. The

Company's 50-state survey also falls flat, as it identifies only a single state that has considered and rejected attorneys' fees for successful litigation demands, the same case Digital Ally relied on below and that the District Court correctly recognized as having been the result of a specific statutory regime that does not exist in Nevada.

The Stockholders made a meritorious litigation demand that alerted the Company's Board of Directors to a critical and destabilizing flaw in Digital Ally's capital structure. Because of the Stockholders' litigation demand, that problem was resolved and a substantial benefit was conferred on the Company and all of its stockholders. Digital Ally presents no compelling legal or policy arguments supporting its position that the Stockholders cannot be awarded their attorneys' fees and expenses under Nevada's substantial benefit doctrine, and the Judgment should therefore be reversed.

ARGUMENT

A. Filed litigation is not a prerequisite to invoking the substantial benefit doctrine.

In their opening brief, the Stockholders demonstrated that filed litigation is not a prerequisite under the substantial benefit doctrine for obtaining an attorneys' fee and expenses in connection with a successful litigation demand. (OB at 15-18). Digital Ally urges affirmance based on its misreading of a handful of precedents, none of which considered the circumstances here or even anything remotely

analogous. The Company effectively argues that because prior cases addressed the substantial benefit doctrine in the context of filed litigation (and thus naturally used litigation terminology), those courts must have intended to limit the doctrine only to filed litigation. But none of the cited decisions even addressed whether or not the doctrine has a broader reach because that question was not presented.

A materially indistinguishable "filed litigation" argument was rejected in *Bird v. Lida*, 681 A.2d 399 (Del. Ch. 1996), where the Court ruled that Delaware's "meritorious when filed" standard for awarding attorneys' fees to stockholders' counsel in mooted actions did not bar attorneys' fees for a successful stockholder litigation demand. In that case, the defendant's interpretation of the "meritorious when filed" phrase as necessarily requiring filed litigation to support an attorneys' fee award was rejected as "stunted literalism" not "grounded in theory or practice[.]" *Id*. at 404-05. As discussed below, Section B, *infra*, Digital Ally's only response is to mischaracterize *Bird*'s rule as a mere suggestion.

Digital Ally misconstrues this Court's prior decisions concerning the substantial benefit doctrine. The key case is *Thomas v. City of North Las Vegas*, 122 Nev. 82, 127 P.3d 1057 (2006), which established a three-part test for application of the doctrine: (1) whether the class of beneficiaries is small in number and easily identifiable, (2) whether the benefit can be traced with some

accuracy, and (3) whether the costs can be shifted with some exactitude to those benefiting. *Id*. at 91. None of these elements requires filed litigation.

Contrary to Digital Ally's assertion, *Thomas* does not state that filed litigation is necessary to invoke the substantial benefit doctrine. As *Thomas* addressed filed litigation, no such rule could have been developed in that case. Digital Ally's error turns on reading *Thomas* out of context, namely the statement that the substantial benefit doctrine permits attorneys' fees awards "where the court's jurisdiction over the subject matter of the suit" makes it possible to spread the cost of attorneys' fees proportionally among the members of a benefitted class. (*See* AB at 11-12). That language does not require the benefit to be generated in a "suit." It refers to *Thomas*'s third element, that there be a mechanism for a court to shift the costs to the correct group of persons who were benefited. The very next passage in *Thomas* makes this clear:

> Typically, the substantial benefit exception is applied in cases involving shareholders or unions. In those actions, the successful plaintiff confers a benefit on all shareholders or union members, and thus, attorney fees assessed against the corporation or union are easily and equitably spread among the shareholders or members who are the beneficiaries of the litigation. *What is important in those instances is that the class of beneficiaries is before the court in fact or in some representative form.*

Thomas, 122 Nev. at 91 (emphasis added; citation and quotations omitted).

The failure to have the correct group of beneficiaries before the Court in a representative form was the key to the denial of attorneys' fees in *Thomas*.

Specifically, appellants' application was denied because they did not seek attorneys' fees from the union or its members who were benefited by appellants' efforts, and sought instead to shift attorneys' fees onto all municipal taxpayers. *Thomas*, 122 Nev. at 93 ("Thus, shifting attorney fees to City of North Las Vegas citizen taxpayers would not shift the costs to those benefiting. We therefore conclude that the substantial benefit exception cannot be extended to the municipality under these circumstances[.]"). By contrast, *Thomas*'s third element is satisfied here because Digital Ally is before the Court, which provides a mechanism to spread costs to the Company and its stockholders.

Digital Ally also distorts the holding of *Guild, Hagen & Clark, Ltd. v. First National Bank*, 95 Nev. 621, 600 P.2d 238 (1979). In *Guild*, attorneys' fees were denied to counsel who obtained an order voiding the assignment of certain funds to another party, but whose own client ("Jessie") was also denied any entitlement to the same funds which she had sought for her own benefit. The disputed funds were instead paid to the estate of Jessie's late husband (a non-party), and then passed to the decedent's children under his will. In other words, Jessie's attorneys were denied a fee for generating a benefit for the estate because the attorneys brought a case solely for Jessie's benefit and lost. Any benefit conferred on others, whom counsel had not sought to benefit, was "purely incidental to appellant's attempts to secure the fund for its client" and therefore could not justify fee shifting. *Guild*, 95

Nev. at 625. Contrary to Digital Ally's brief, the Court did not deny fees because of a lack of filed litigation (there was filed litigation) or because of the purported absence of a stand-alone claim for attorneys' fees. Neither purported rule is mentioned or implied.

Even if Digital Ally were correct that Nevada generally prohibits awards under the substantial benefit doctrine for benefits conferred outside of litigation (the Company is wrong), it has no answer for the Stockholders' argument that making a stockholder litigation demand is an act of litigation and a creature of a court rule, to wit: NRCP 23.1. (OB at 23-24). Digital Ally does not even acknowledge this argument. Accordingly, given the Stockholders' claims here, this Court may reverse the District Court's Order without deciding whether the substantial benefit doctrine permits the award of attorneys' fees and expenses in circumstances completely divorced from the litigation context.

Digital Ally's separate assertion that Nevada prohibits a stand-alone claim for attorneys' fees is just a confused repackaging of its filed litigation argument. In this respect, *City of Las Vegas v. Southwest Gas Corp.*, 90 Nev. 178, 179-180, 521 P.2d 1229, 1230 (1974) and *Consumers League v. Southwest Gas Corp.*, 94 Nev. 153, 576 P.2d 737 (1978) provide no support to the Company. These cases both involved applications for attorneys' fees made in court following concluded

proceedings before the Nevada Public Service Commission (the "PSC").[2] Attorneys' fees were denied on the basis that PSC proceedings qualify as a "legislative hearing" and absent specific constitutional or legislative authority, attorneys' fees are expressly prohibited under the Nevada constitution for appearing at a legislative hearing. *Las Vegas*, 90 Nev. at 179-180; *accord Consumers League*, 94 Nev. at 157-58. Contrary to Digital Ally's assertion, neither case states or suggests that Nevada has rejected an independent cause of action for attorneys' fees. Indeed, both cases could have been decided with much shorter analyses if there were truly a rule prohibiting independent claims for attorneys' fees.

Digital Ally's remaining appeals to Nevada law are unavailing and can be summarily rejected:

First, Digital Ally's assertion that attorneys' fees are a remedy and therefore not a cause of action is circular and nonsensical. The Company does not attempt to explain its invented rule, which ignores the many causes of action that are co-extensive with their remedies. *See, e.g., Rodriguez v. Primadonna Co.*, *LLC*, 125 Nev. 578, 589-90, 216 P.3d 793, 801 (2009) and *Doctors Co. v. Vincent*, 120 Nev. 644, 650-51, 98 P.3d 681, 685-86 (2004) (claims for indemnification and

[2] In *Las Vegas* the appellant's counsel successfully opposed a utility's application to increase its natural gas rates. In *Consumers League* the appellants' counsel initiated proceedings which led to an order from the PSC directing a utility to refund substantial sums of money to its customers.

contribution); *Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp. Inc.*, 366 P.3d 1105, 1110 (Nev. 2016) (claim for quiet title); *Foster v. Bank of Am. Nat'l Tr. & Sav. Ass'n*, 77 Nev. 365, 367, 365 P.2d 313, 314-15 (1961) (action for an accounting).

Second, Digital Ally's assertion that the American rule is "predicated upon litigation" and therefore any exception must be predicated on litigation is unavailing. The American rule is expressly not predicated on litigation. The rule provides that "attorney fees may not be awarded absent a statute, rule, or contract authorizing such award." *Thomas*, 122 Nev. at 90. Plainly evidencing that the American rule does not prohibit shifting attorneys' fees in the absence of filed litigation, courts would surely enforce a loser-pays provision in arbitration or a commercial agreement requiring one party to indemnify another for its costs, including attorneys' fees. *See, e.g., Tompkins v. 23andMe, Inc.*, 834 F.3d 1019, 1029 (9th Cir. 2016) (enforcing fee shifting for successful party in arbitration proceeding).

And third, if Digital Ally was correct that the District Court lacked subject matter jurisdiction due to a failure of the Stockholders to meet the requisite monetary threshold, then the judgment would be void and affirmance would be improper. *See Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011) (citation omitted). In any event, the Stockholders meet the monetary jurisdictional

threshold here because their attorneys' fees claim constitutes the entire claim for relief and is not contingent on the success of an underlying contingent claim. *Royal Insurance v. Carson Ready Mix, Inc.*, 110 Nev. 119, 867 P.2d 1146 (1994) is plainly distinguishable, as the appellants in that case simply pleaded themselves out of court by requesting damages of $4,208.74, which was below the then-applicable $5,000 jurisdictional threshold. Unlike here, the generalized request for attorneys' fees in *Royal Insurance* was incidental to, and contingent on, the underlying claim and there was no basis for adding purported fees onto the actual damages so that jurisdiction could be manufactured.

B. Digital Ally misrepresents other states' law, which do not support its position.

In their opening brief, the Stockholders demonstrated that this Court frequently views Delaware precedent as persuasive authority concerning stockholder litigation, a proposition that Digital Ally does not contest. (*See* OB at 18-19). Instead, Digital Ally misrepresents Delaware law in a futile attempt to suggest that Delaware does not permit attorneys' fees for successfully prosecuting stockholder litigation demands. Conflating the absence of a rule with a claimant's inability to establish a claim under an existing rule, the Company asserts that two Delaware Court of Chancery decisions "only suggested that an autonomous cause of action for attorney's fees for letter writing *might* be possible under the corporate benefit doctrine." (*See* AB at 16 (emphasis in Digital Ally's brief)). But those

cases do not merely "suggest" that such fees "might" be recoverable – they expressly say so. The Court in *Bird*, stated:

> I therefore am required to recognize a shareholders' right to recover reasonable investigation fees, including attorney's fees, in connection with the making of a demand pursuant to Rule 23.1….

681 A.2d at 405. The Court explained that Delaware law recognizes an "equitable right" to require attorneys' fees for a "corporate benefit that has been occasioned by the work of one or more shareholders, even if that benefit is produced prior to the time at which a derivative suit is required to be filed." *Id*. at 401. The Court in *Raul v. Astoria Financial Corp.*, 2014 Del. Ch. LEXIS 103, *15 (June 20, 2014), adopted *Bird* and reiterated that "a plaintiff need not have filed an underlying action in the Court of Chancery to recover fees."[3]

Digital Ally points to other Delaware decisions as purportedly prohibiting the award the Stockholders seek here. The Company first asserts that *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164 (Del. 1989), "requires litigation as a prerequisite to apply the substantial benefit doctrine[.]" (AB at 15). *Tandycrafts* says no such thing. Indeed, the defendant in *Bird* quoted *Tandycrafts* to make the same argument, which the Court rejected. *Bird*, 681 A.2d at 404. Digital Ally also cites *Waterside Partners v. C. Brewer & Co.*, 739 A.2d 768, 770 (Del. 1999) as

[3] *See also id*. at *18-19 ("The costs of litigation may equitably be distributed by the Court, consistent with its jurisdiction; and equitable distribution of legal costs where a meritorious action is mooted before litigation commences is but a corollary of the equitable distribution of litigation expenses.").

purportedly contradicting the *Bird* rule. (AB at 22). *Waterside Partners* did not involve a litigation demand, but rather a claim for attorneys' fees by a stockholder with filed litigation who was able to moot its case and prevent corporate harm by prevailing in a corporate election occurring simultaneously to the litigation. The Court denied the attorneys' fees application because the stockholder's success at the ballot box was not an act of litigation entitling the party to attorneys' fees. Far from rejecting *Bird*, *Waterside Partners* approvingly quotes *Bird* and accepts its dichotomy: attorneys' fees are awardable within the "litigation context" but not outside it. 739 A.2d at 770. Under these authorities, a meritorious and successful stockholder litigation demand is within the "litigation context."

Digital Ally's 50-state survey is of little use, as it is inaccurate and relies on the same faulty assumption plaguing its analysis of Nevada law: misreading authorities which did not consider the specific issue of awarding attorneys' fees for successful stockholder litigation demands. Despite its long addendum, Digital Ally identifies only one decision, *Willner v. Syntel, Inc.*, 256 F. Supp. 3d 684 (E.D. Mich. 2017), considering and holding that attorneys' fees are categorically unavailable for a successful pre-suit stockholder litigation demand. Finding the result it wants and going no further, Digital Ally completely ignores *Syntel*'s reasoning and fails to explain why Michigan's rule would be appropriate for Nevada. The District Court correctly declined to rely on *Syntel* (JA 0246) because

it is predicated on Michigan statutes which represent a legislative decision to limit the availability of attorneys' fees in derivative actions to cases involving actually litigated claims. *See* 256 F. Supp. at 694 ("[T]o the extent the Michigan Legislature has recognized the common or substantial benefit exception, it has limited that exception to benefits conferred through litigation."). Of course, there is no analogous statute in Nevada, where the substantial benefit doctrine remains purely common law, which renders *Syntel* wholly irrelevant.[4]

Lastly, the Court in *Syntel* acknowledged that plaintiff had "advanced many reasonable arguments as to why it may be both sensible and fair to permit a fee award" following a successful litigation demand. 256 F. Supp. 3d at 696. But the sensible and fair result could not obtain in that case without overruling Michigan's express statutory and common law limitations, which the federal court could not do. *See id*. As the Court concluded: "While there may be sound policy reasons that may at some point convince the Michigan Supreme Court and/or the Michigan Legislature to permit a fee award for a benefit conferred without litigation … the current state of Michigan law does not permit such an award." *Id*.

[4] The substantial benefit doctrine in Michigan and Nevada are also fundamentally dissimilar. While *Thomas* relies on the federal articulation of the substantial benefit doctrine in *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970), Michigan's version of the doctrine is "not consistent with the federal rule." *Thomas*, 122 Nev. at 91; *Syntel*, 256 F. Supp. 3d at 695.

C. Digital Ally's public policy arguments are without merit.

Digital Ally's position is that its Board should be allowed to gravely endanger the Company's capital structure and depend on free legal services to remedy the problem. This serves neither corporations nor their stockholders in the long run. The Company asserts that permitting attorneys' fees for successful stockholder litigation demands would encourage wasteful litigation. In reality, it is the Company's rule that would undermine judicial economy and encourage unnecessary litigation: if stockholders and their counsel are economically disincentivized from making demands, more stockholder actions would be filed without pre-suit demands. This case is a prime example. Demand was not required, but the Stockholders sent a demand nonetheless on the belief that responsible directors would address the situation and fix the problem brought to their attention. If the District Court's Order is affirmed, the next company facing a similar problem will be sued rather than presented with a demand. Additionally, under Digital Ally's proposed rule, many other corporate harms will simply go undetected, as counsel will not be incentivized to invest time and resources to discover and remedy wrongdoing at Nevada corporations if they have little hope of being compensated for their efforts.

In an attempt to muster some policy argument in its favor, Digital Ally invents a countervailing concern regarding strike suits, *i.e.*, that "nominal

shareholders and their enterprising attorneys" will bring actions "not to redress real wrongs," but instead will "allege purported benefits in hope that defendant-corporations will quickly settle to avoid the expense of attorney's fees litigation." (AB at 17 (citations and internal quotations omitted)). As *Bird* explained, "[i]t is hard [to] imagine frivolous demands as being a practical difficulty" in "a class of cases in which a board of directors will, in its business judgment, have complied with a Rule 23.1 demand[.]" 681 A.2d at 405. Delaware permits attorneys' fees for successful demand letters and Digital Ally identifies no flood of claims for reimbursement let alone marginal or strike suits. There is also little reason to believe that a litigant could leverage litigation costs to obtain unwarranted attorneys' fees because any such application would be summarily determined without expensive discovery.

In any event, Digital Ally's strike suit concern has nothing to do with this case, where the Stockholders caused the Company to cure critical faults in its capital structure by obtaining ratification for the approval of new shares of common stock and the complete withdrawal of a class of preferred stock that was disapproved by stockholders. These were real and potentially catastrophic flaws that threatened to undermine Digital Ally at its foundation. The Court in *In re Galena Biopharma, Inc.*, C.A. No. 2017-0423-JTL (Del. Ch. June 14, 2018) (transcript) (0104-0107), found that a remedy similar to the ratification of common

stock here "easily supports a fee of $250,000" and "theoretically could support a much larger award" under precedent if the settlement agreement had not capped fees at that amount. (JA 0046, at JA 0104-0107.) The Stockholders are not attempting to leverage an attorneys' fee award from worthless claims and illusory benefits, and Digital Ally does not assert as much. The Company offers no reason that attorneys' fees should be denied for causing important benefits through a stockholder litigation demand merely because some other hypothetical stockholder might file an abusive action. Courts have other tools to deal with strike suits.[5]

Finally, Digital Ally's assertion that permitting attorneys' fees for successful demands will "chill the incentive for boards to correct mistakes" takes far too dim a view of corporate boards. Directors of Nevada corporations owe fiduciary duties. It is simply not credible to suggest that directors would or could decide to knowingly manage a corporation in violation of the law (as with the statutory violations here) simply because they want the corporation to avoid paying an attorneys' fee to stockholders' counsel. Such a "conscious disregard for one's responsibilities" would be an act of bad faith and breach a director's fiduciary duty

[5] Digital Ally's assertion that permitting fees for successful demands "would have no limit" is also wrong. If existing rules proved insufficient, Nevada could adopt Delaware's standard which requires the presentation of a meritorious legal claim and the causation of a benefit for a corporation or its stockholders. *Raul,* 2014 Del. Ch. LEXIS 103, at *15. The same rule applies in cases mooted before settlement or judgment. This is a rigorous requirement, as the denial of attorneys' fees in *Bird* and *Raul* demonstrates.

of loyalty. *See City of Birmingham Ret. & Relief Sys. v. Good*, 177 A.3d 47, 55 (Del. 2017) (internal citations and quotations omitted). Few if any directors will choose to act in bad faith merely to deprive counsel of a fee, particularly where the directors themselves would not be responsible for the payment.

CONCLUSION

For the reasons stated above and in their opening brief, the Stockholders respectfully request that this Court reverse the District Court's Order and remand this case for further proceedings with an instruction that benefits conferred by a stockholder litigation demand are eligible for an award of attorneys' fees and expenses under the substantial benefit doctrine.

Dated: January 21, 2020

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich
John P. Aldrich, Esq.
Nevada Bar No. 6877
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Tel: 702-853-5490
Fax: 702-227-1975

Steven J. Purcell
Douglas E. Julie (admitted pro hac vice)
Robert H. Lefkowitz
PURCELL JULIE & LEFKOWITZ LLP
708 Third Avenue, 6th Floor
New York, New York 10017
Tel: 212-725-1000
Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type of style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionately spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is: Proportionately spaced, has a typeface of 14 points or more and contains 4,001 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief regarding matters in the record to be supported by reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be

/ / /

/ / /

/ / /

/ / /

/ / /

subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: January 21, 2020.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich
John P. Aldrich, Esq.
Nevada Bar No. 6877
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Tel: 702-853-5490
Fax: 702-227-1975

Steven J. Purcell
Douglas E. Julie (admitted pro hac vice)
Robert H. Lefkowitz
PURCELL JULIE & LEFKOWITZ LLP
708 Third Avenue, 6th Floor
New York, New York 10017
Tel: 212-725-1000
Attorneys for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of January, 2020, I served a copy of **APPELLANT'S REPLY BRIEF** by electronic case filing and service through the Nevada Supreme Court's e-filing service to the following persons:

Jeffrey F. Barr, Esq.
Lee I. Iglody, Esq.
ASHCRAFT & BARR | LLP
2300 West Sahara Ave
Las Vegas, Nevada 89102
barrj@ashcraftbarr.com
iglodyi@ashcraftbarr.com

/s/ T. Bixenmann_____
An employee of Aldrich Law Firm, Ltd.