IN THE SUPREME COURT OF THE STATE OF NEVADA

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AIRMOTIVE INVESTMENTS, LLC, A NEVADA LIMITED LIABILITY COMPANY, Appellant, vs. BANK OF AMERICA, N.A., Respondent.	Electronically Filed Dec 21 2020 05:58 p.m. Elizabeth A. Brown Clerk of Supreme Court Supreme Court No. 80373

APPEAL

From the Eighth Judicial District Court,
The Honorable Stefany A. Miley, District Judge
District Court Case No. A-12-654840-C

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

Airmotive Investments, LLC (*"Airmotive"*) is a Nevada limited liability company. Its sole member is Jon Jentz and no publicly held corporation owns 10% or more of its ownership interest. Appellant is represented by Roger P. Croteau and Timothy E. Rhoda of Roger P. Croteau & Associates, Ltd.

JURISDICTIONAL STATEMENT

This is primarily an appeal from a Decision & Order (*"D&O"*) filed on October 17, 2019. JA0636. Notice of entry of the D&O was filed on October 25, 2019. JA 0633. Also at issue is an Order Awarding Costs to Bank of America, N.A. (*"Costs Order"*) that was filed on November 25, 2019. JA 0646. Notice of Entry of the Costs Order was filed on November 27, 2019. JA 0648. Thereafter, a Stipulation and Order to Dismiss and for Final Judgment (*"Final Judgment"*) was filed on November 12, 2019, which dismissed all outstanding claims that were not previously resolved by the D&O. JA 0654. Notice of Entry of the Final Judgment was filed on December 18, 2019. JA 0657. The Final Judgment constituted a final judgment as to all parties below and was therefore appealable under NRAP 3A(b)(1). Appellant timely filed its Notice of Appeal on January 2, 2020. JA 0664.

ROUTING STATEMENT

The instant matter does not clearly fall within any category of cases identified in NRAP 17. As a result, Appellant avers that this matter may be properly assigned to the Court of Appeals if the Supreme Court so desires.

STATEMENT OF ISSUES FOR REVIEW

1. Whether the district court erred by entering judgment in favor of Respondent, Bank of America, N.A. (*"BANA" or the "Bank"*), based upon the so-called "Federal Foreclosure Bar" of §4617(j)(3) of the Housing and Economic Recovery Act of 2008 (*"HERA"*) where BANA failed to timely disclose evidence related to its claims and defenses and such evidence therefore should have been excluded from consideration.

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

The instant action is primarily a quiet title/declaratory relief action related to real property commonly known as 6279 Downpour Court, Las Vegas, Nevada 89110, Assessor Parcel No. 140-34-413-075 (*the "Property"*). JA 0178. The Property was the subject of a homeowners association lien foreclosure sale that occurred on April 12, 2011 (*"HOA Foreclosure Sale"*) conducted by Absolute Collection Services, LLC (*"ACS" or "HOA Trustee"*) on behalf of Palo Verde Ranch Homeowners Association (*"HOA"*). JA 0180. At the time of the HOA Foreclosure Sale, BANA was the holder of a deed of trust recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 20060630-0002110 (*"First Deed of Trust"*). JA 0179. See also JA 0447.

The original plaintiff herein, Las Vegas Development Group, LLC (*"LVDG"*), purchased the Property at the HOA Foreclosure Sale. JA 0180. Thereafter, LVDG caused the initial Complaint related to this matter to be filed on January 17, 2012. JA 0003. Pursuant to its Complaint, LVDG generally alleged that the HOA Foreclosure Sale served to extinguish the First Deed of Trust and all other subordinate liens pursuant to Nevada law as ultimately interpreted by the Nevada Supreme Court in the seminal matter of *SFR Invs. Pool 1, Ltd. Liab. Co. v. U.S. Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014). JA 0003, generally.

BANA filed its Answer to the Complaint on April 12, 2012. JA 0006. The Answer did not plead the Federal Foreclosure Bar or HERA as a defense. *Id.*, generally. Nor did it otherwise advise in any manner that the First Deed of Trust and associated loan were alleged to be owned by any party other than BANA. *Id*. LVDG thereafter filed a Motion to Amend Complaint on September 14, 2012. Although said Motion was granted on or about October 16, 2012, a First Amended Complaint was seemingly not filed for reasons that are unclear at this time. The parties thereafter stipulated to the amendment of the Complaint before a Second Amended Complaint was filed on August 1, 2013. JA 0010. The Second Amended Complaint added the former owner of the Property, Genevieve Uniza-Enriquez, as a defendant. *Id*.

BANA filed its Answer to the Second Amended Complaint on March 26, 2015. JA 0014. In addition, BANA filed a Counterclaim against LVDG. *Id*. Pursuant to its Answer, BANA first asserted the Federal Foreclosure Bar as an affirmative defense. JA 0018. However, this appears to have been "form" pleading, as the remainder of the Answer and Counterclaim did not allege that Federal National Mortgage Association (*"Fannie Mae"*) or any party other than BANA owned the First Deed of Trust and associated loan. *Id*., generally. On the contrary, BANA admitted that "it claims an interest in the Property" (JA 0015) and

pleaded that depriving "BANA of its Deed of Trust under the circumstances of this case would deprive BANA of its due process rights." (JA 0020). Nowhere in its Counterclaim did BANA mention Fannie Mae, HERA or the Federal Foreclosure Bar. JA 0018, generally. Nonetheless, BANA seemingly was aware that the Federal Foreclosure Bar was potentially an issue in this case as early as March 26, 2015.

On August 7, 2015, approximately one year after this Court had issued its decision in the matter of *SFR Investments*, and after Appeal No. 65083 arising from an erroneous dismissal was resolved, BANA filed a Motion for Leave to Amend its Answer to Add an Affirmative Defense and Counterclaim and to Join Parties and to Add Claims. JA 0063. Pursuant to this Motion, BANA sought to amend its Answer to add an affirmative defense averring NRS Chapter 116 to be facially unconstitutional. *Id*. In addition, BANA sought to bring claims against HOA and ACS. *Id*. The subject motion did not allege Fannie Mae or any other party to own the First Deed of Trust and associated loan. *Id*., generally. On the contrary, the motion averred that "[t]his case involves the potential loss, pursuant to statute, of a significant **property interest held by Bank of America**." JA 0066 (Emphasis added).

BANA's Motion was granted, with LVDG also being granted leave to file a Third Amended Complaint. BANA filed its Amended Answer, Counterclaims and Crossclaims to Second Amended Complaint on February 29, 2016. JA 0126. BANA again asserted HERA and the Federal Foreclosure Bar as an affirmative defense although the Counterclaim did not otherwise make mention of Fannie Mae or HERA. *Id.*, generally. Upon information and belief, BANA's Counterclaims and Crossclaims were not served upon HOA or ACS.

On February 29, 2016, LVDG filed its Third Amended Complaint. JA 0177. BANA filed its Answer to the Third Amended Complaint on May 12, 2016. JA 0191. In response to paragraph 40 of the Third Amended Complaint, BANA responded "Denied. Bank of America states that Fannie Mae owned the subject loan at the time of the HOA foreclosure sale." JA0196. This was the first time that BANA affirmatively stated that it claimed that Fannie Mae owned the First Deed of Trust. However, BANA thereafter disclosed little or no evidence that this was the case.

On September 24, 2018, after discovery had closed without BANA disclosing evidence supporting any claim that Fannie Mae owned the First Deed of Trust, the parties filed a Stipulation and Order to Reopen and Extend Discovery Deadlines. JA 0214. Pursuant to this Stipulation, discovery was re-opened and

rescheduled to close on March 6, 2019. JA 0216. BANA thereafter disclosed its First Supplemental Disclosures on March 6, 2019 at 4:29 p.m. JA 0494. **Thus, the disclosures were effectively served 31 minutes before the close of discovery.** Included in this disclosure were over 350 pages of previously undisclosed documents. JA 0499. BANA filed its Motion for Summary Judgment on April 5, 2019, relying upon the documents that it had disclosed on March 6, 2019. JA 0226 - JA 404. Thereafter, the Appellant, Airmotive Investments, LLC (*"Airmotive"*), was substituted as the real-party-in-interest herein pursuant to a stipulation filed on April 9, 2019. JA 0405. Pursuant to said stipulation, all claims and defenses raised by and against LVDG were deemed to apply equally to Airmotive. JA 0406.

Airmotive filed its Opposition to BANA's Motion for Summary Judgment on July 17, 2019, making various arguments. JA 0415. At the outset, the primary argument was that BANA's evidence was not timely disclosed and that it must therefore be excluded pursuant to NRCP 16.1, NRCP 26(e) and NRCP 37(c) . JA 0422-0423. The remaining arguments raised regarding the force and effect of the Federal Foreclosure Bar, including the statute of limitations, have been more or less foreclosed by subsequent case law. As a result, the primary issue in this

appeal is whether the district court erred by considering BANA's late-disclosed evidence.

SUMMARY OF THE ARGUMENTS

The primary issue in this appeal is whether the district court properly entered judgment in favor of BANA based upon the Federal Foreclosure Bar. However, the question is not the force and effect of the Federal Foreclosure Bar, which has been effectively resolved by both this Court and the Ninth Circuit Court of Appeals. Rather, the issue in this case is the propriety of granting judgment based upon evidence that was disclosed 31 minutes before the close of business on the final day of discovery when that evidence was within the sole and exclusive possession of the party who disclosed it for the entirety of the litigation.

BANA first arguably asserted HERA as a defense to the Plaintiff's Complaint in its Answer to the Second Amended Complaint filed on March 26, 2015. JA 0014. However, it goes without saying that BANA knew or should have known even at the outset of the litigation that Fannie Mae claimed to be the owner of the First Deed of Trust. Inexplicably, BANA thereafter failed to disclose the evidence it relied upon to support its Motion for Summary Judgment for a period of at least nearly 4 years. Even after discovery was re-opened for the ostensible purpose of allowing it to disclose evidence, BANA failed to do so until the final

day of the discovery period. It is readily apparent that BANA possessed the subject evidence at all points in time. As a result, its decision to ambush the Appellant with it 31 minutes prior to the close of discovery after nearly 7 years of litigation is indefensible.

ARGUMENT

1. THE DISTRICT COURT ERRED BY CONSIDERING DOCUMENTS THAT WERE NEVER DISCLOSED AS REQUIRED BY THE RULES OF CIVIL PROCEDURE

The district court erred by considering evidence that was never timely disclosed as required by the Nevada Rules of Civil Procedure. Because the evidence relied upon by the Bank was never properly disclosed, BANA's Motion for Summary Judgment should have been denied. At the very least, questions of material fact existed due to the dearth of any evidence supporting BANA's claim that Fannie Mae was the owner of the First Deed of Trust.

The parties hereto stipulated to re-open discovery pursuant to a stipulation and order filed herein on September 24, 2018. Pursuant to said stipulation, the parties agreed that discovery would be re-opened and extended until March 6, 2019. The Bank thereafter disclosed its First Supplemental Disclosures containing the documents purporting to evidence Fannie Mae's ownership of the

First Deed of Trust on March 6, 2019 at 4:29 p.m. The over 300 pages of newly disclosed documents had never been previously disclosed. Nor had the identity of the witnesses providing declarations authenticating these documents ever been disclosed.

NRCP 16.1(a)(1) specifically requires that "a party must, without awaiting a discovery request, provide to other parties" information, including the identity of witnesses and copies of documents. NRCP 16.1. The rule further provides that "[t]hese disclosures must be made at or within 14 days after the Rule 16.1(b) conference unless a different time is set by stipulation or court order" and that "[a] party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures." *Id*. NRCP 16.1(e)(3)(b) goes on to provide as follows:

> If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered pursuant to subsection (d) of this rule, the court, upon motion or upon its own initiative, shall impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:
> . . .

> An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.1(a).

NRCP 16.1(3).

> NRCP 26(e) provides in pertinent part as follows:
>
> **(e) Supplementing Disclosures and Responses.**
> (1) **In General.** A party who has made a disclosure under Rule 16.1, 16.2, or 16.205 — or responded to a request for discovery with a disclosure or response — is under a duty to timely supplement or correct the disclosure or response to include information thereafter acquired if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

Moreover, NRCP 37(c) provides as follows:

> (c) **Failure to Disclose, to Supplement an Earlier Response, or to Admit.**
> (1) **Failure to Disclose or Supplement.** **If a party fails to provide information or identify a witness as required by Rule 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless**. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:
> (A) may order payment of the reasonable expenses, including attorney fees, caused by the failure;
> (B) may inform the jury of the party's failure; and
> (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(1).

As stated above, the Bank effectively served the documents it relied upon in conjunction with its Motion for Summary Judgment **31 minutes** prior to the close of business on the day that discovery closed. This was the case although the parties agreed to extend discovery approximately 6 months before, on or about September 24, 2018. Moreover, it is readily apparent that the Bank possessed the evidence long before it was disclosed.

While the Bank's failure to disclose the subject information until minutes before the close of discovery might be excusable under certain circumstances, a cursory review of the documents indicates that it had possessed them for months. Indeed, the Declaration of Graham Babin is dated January 10, 2019 – approximately 2 months before the date on which discovery closed. JA 0273. Moreover, the screenshots attached to Mr. Babin's declaration were generated on January 7, 2019. JA 0275-0292. Under such circumstances, the failure to timely disclose the documents is not excusable.

It is abundantly clear that the Bank possessed the information upon which it intended to rely for months prior to the date on which it was disclosed. In all truth, the Bank actually possessed the evidence for the entirety of the time period that this case was pending. While the information was undoubtedly in the possession of the Bank and its attorneys, the Bank chose to sit on the information

for nearly 7 years before disclosing it at 4:29 p.m. on the close of the extended discovery period. This could hardly be anything less than a calculated effort to prejudice the Plaintiff.

Although the Bank possessed all evidence related to Fannie Mae's purported ownership of the First Deed of Trust from the outset of this litigation, it failed to disclose such evidence when it first intimated that the First Deed of Trust might be owned by Fannie Mae. Pursuant to NRCP 26(e), the Bank was under an obligation to "**timely** supplement" its disclosures. It failed to do so although it is patently obvious based upon the dates on which the evidence was printed that it possessed the documents relied upon in its Motion for Summary Judgment for *at least* approximately 2 months before they were disclosed in the last minutes of the discovery period. Pursuant to NRCP 37(c)(1), the Bank was "not allowed to use that information or witness to supply evidence on a motion, at a hearing." The Declaration of Graham Babin and the documents attached thereto should have been disallowed and stricken because they were not timely disclosed in compliance with the rules of civil procedure. Because the Bank submitted no admissible evidence in association with its Motion, the Motion should have been denied. The district court erred by granting summary judgment based upon evidence that was not timely disclosed.

A district court's decision to admit or exclude evidence for abuse of discretion. *Frei v. Goodsell*, 129 Nev. 403, 408, 305 P.3d 70, 73 (2013). If, in fact, Fannie Mae owned the First Deed of Trust at the time of the HOA Foreclosure Sale as BANA claims, there is no question that BANA knew or should have known this to be the case at all points in time, including at the time that initial disclosures were made and thereafter. As a result, it was required to disclose that evidence it possessed pursuant to NRCP 16.1. It failed to do so and instead chose to ambushing the Appellant with it literally in the final minutes of the discovery period. The district court erred by considering this late disclosed evidence.

2. THE DISTRICT COURT ERRED BY CONSIDERING TESTIMONY FROM A WITNESS THAT WAS NEVER DISCLOSED AS REQUIRED BY THE RULES OF CIVIL PROCEDURE

The Bank's Motion for Summary Judgment was based in large part upon the Declaration of Graham Babin. JA 0270. Attached to the declaration of Mr. Babin were approximately 100 pages of purported business records from Fannie Mae and Freddie Mac. JA 499. However, neither the identity of Mr. Babin nor any of the various documents attached to his declarations were timely disclosed in this case as required by the rules of civil procedure. The Bank's failure to disclose the

identity of Mr. Babin constituted a *per se* harm to the Appellant. *Luke v. Family Care & Urgent Med. Clinics*, 323 F. App'x 496, 498-99 (9th Cir. 2009); *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1105-1107 (9th Cir. 2001); see also *Medina v. Multaler, Inc.*, 547 F. Supp. 2d 1099, 1105 n.8 (C.D. Cal. 2007) ("[F]ailure to disclose . . . a likely witness before defendants' summary judgment motion was filed prejudiced defendants by depriving them of an opportunity to depose him.").

Chapter 52 of the Nevada Revised Statutes governs documentary and other physical evidence. Pursuant to NRS 52.015(1), "[t]he requirement of authentication . . . is satisfied by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims." *Archanian v. State*, 122 Nev. 1019, 1030 (2006). Further, testimony of a witness with knowledge is sufficient for authentication or identification if the witness has personal knowledge that a matter is what it is claimed to be. NRS 52.025.

In this case, Mr. Babin's declaration purported to authenticate the documents that were late-disclosed by the Bank. However, his identity – like the documents – had never been previously disclosed in this case. As a result, the Appellant could not have known that the Bank intended to call him as a witness and the Appellant could not have deposed him. The Bank's failure to properly and

timely identify Mr. Babin as a witness should have precluded the district court from relying upon his testimony.

3. THE DISTRICT COURT ABUSED ITS DISCRETION BY CONSIDERING THE SUBJECT EVIDENCE

A trial court is vested with broad discretion in determining the admissibility of evidence. *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 492, 117 P.3d 219, 226 (2005). While this may be the case, the district court clearly abused its discretion by considering the evidence at issue herein. To be clear, affirming the district court's judgment would serve to condone trial be ambush. Indeed, if the Bank herein is allowed to disclose substantially all of its evidence in the final minutes of the discovery period, why would any other litigant be treated differently?

As discussed above, this is not a circumstance where the Bank became aware of new evidence late in the discovery period and was forced to disclose it late. On the contrary, it is undisputed that the Bank and Fannie Mae possessed sole and exclusive possession of the purported business records that are claimed to evidence Fannie Mae's ownership of the First Deed of Trust at all points in time. The documents should have been disclosed at the outset of the case. At the very least they should have been timely supplemented. Instead, the Bank chose to hide

them until 4:29 p.m. on the very last day of the discovery period. By acting as it did, the Bank effectively prevented the Appellant from even reviewing the documents until after discovery had closed.

4. THE BURDEN OF DISCLOSING OR OBTAINING EVIDENCE SHOULD NOT BE SHIFTED TO THE APPELLANT

The Bank may argue that the Appellant should have moved to re-open discovery or for a continuance under NRCP 56(f) if it believed additional discovery would lead to evidence supporting its opposition. However, ruling in this manner would serve to shift a burden to the Appellant where none existed.

N.R.C.P. 16.1(a)(1) specifically requires that "a party must, without awaiting a discovery request, provide to other parties" information, including the identity of witnesses and copies of documents. N.R.C.P. 16.1. The rule further provides that "[t]hese disclosures must be made at or within 14 days after the Rule 16.1(b) conference unless a different time is set by stipulation or court order" and that "[a] party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures." *Id*. In this case, there is no question that BANA possessed actual

knowledge of the fact that it claimed Fannie Mae owned the loan and deed of trust at issue at all times, including the time that initial disclosures were made. As a result, it was required to disclose that evidence it possessed pursuant to N.R.C.P. 16.1.

Assuming for the sake of argument that BANA's failure to timely present evidence in support of its claim that Fannie Mae owned the First Deed of Trust was unintentional and not a concerted effort to prejudice the Appellant, this would almost necessarily indicate that BANA became aware of the claim that Fannie Mae owned the loan and deed of trust not until after this matter had been litigated for years. As discussed above, this is hardly believable. Indeed, BANA had pleaded the Federal Foreclosure Bar as an affirmative defense as early as March 26, 2015. However, this should not indicate in any manner that Appellant should have affirmatively sought the evidence that BANA chose to withhold during discovery.

BANA knew or should have known of its affirmative defense at all points in time since the litigation was commenced on January 17, 2012. Despite this fact, the Bank failed to properly disclose evidence related to Fannie Mae's purported ownership of the First Deed of Trust for a period of over 7 years, when it finally disclosed its evidence on March 6, 2019. Even if Appellant had been provided

with notice that BANA asserted that Fannie Mae was the owner of the First Deed of Trust, Appellant was not obligated to build BANA's case for it.

The burden of disclosing its evidence was upon BANA's shoulders at all points in time. Somehow shifting the burden of locating this evidence to the Appellant would (1) encourage litigants to ignore the rules and withhold information until it is prejudicial to the opposing party, who must then expend resources through no fault of their own to obtain evidence that should have been disclosed at the beginning of discovery; and (2) send a message to the district courts that they should not exercise their discretion to enforce the rules.

5. IF THE DISTRICT COURT'S JUDGMENT IS REVERSED, NO BASIS EXISTS FOR AN AWARD OF COSTS

Appellant respectfully suggests that the district court erred by awarding summary judgment in favor of BANA under the circumstances at hand. Assuming that the D&O is set aside, BANA is not the prevailing party and any award of costs is thus inappropriate. The Costs Order should likewise be set aside.

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CONCLUSION

For the reasons set forth herein the district court erred. The Bank wholly failed to timely disclose evidence supporting its claims and defenses. Under such circumstances, the late-disclosed evidence should have been excluded by the district court. Appellant respectfully requests that the district court's Orders be reversed and that this matter be remanded with instructions consistent with this Court's opinion.

DATED this 21st day of December, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda

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CERTIFICATE OF COMPLIANCE

1. I 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 style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect X9 with 14 point, double spaced Times New Roman font.

2. 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 3912 words. Counsel has relied upon the word count application of the word processing program in this regard.

3. 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 complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a 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 sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure

DATED this 21st day of December, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 21st day of December, 2020, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

__X__ VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's eflex e-file and serve system.

____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda
An employee or agent of ROGER P. CROTEAU & ASSOCIATES, LTD.