Case No. 81007

In the Supreme Court of the State of Nevada

RALPH STEPHEN COPPOLA, TRUSTEE OF THE R.S. COPPOLA TRUST DATED OCTOBER 19, 1995 AS MOST RECENTLY AMENDED ON SEPTEMBER 13, 2001,

Appellant,

vs.

WELLS FARGO BANK, N.A.,

Respondent.

APPEAL

From the Second Judicial District Court
The Honorable Kathleen Drakulich
District Court Case No. CV1801272

ANSWERING BRIEF

Andrew M. Jacobs (Nevada Bar No. 12787)
Kelly H. Dove (Nevada Bar No. 10569)
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
(702) 784-5200
ajacobs@swlaw.com
kdove@swlaw.com
Attorneys for Respondent Wells Fargo Bank, N.A.

NRAP 26.1 Disclosure Statement

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 so the Justices of this Court may evaluate possible disqualification or recusal.

The following have an interest in the outcome of this case or are related to entities interested in the case: Wells Fargo & Company owns 100 percent of the stock of Respondent, Wells Fargo Bank, N.A. Wells Fargo & Company is a publicly-held corporation and has no parent corporation. No other publicly-held corporation owns 10% or more of Wells Fargo & Company's stock.

There are no other known interested parties.

Snell & Wilmer L.L.P. has represented Wells Fargo Bank, N.A. in this matter since 2019. The law firm of Tiffany & Bosco represented Wells Fargo in the foreclosure mediation.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

Table of Authorities

Page

Cases

Table of Authorities
(continued)

Page

Statutes

Rules

Table of Authorities
(continued)

Page

Other Authorities

Introduction

Appellant, Ralph Stephen Coppola, a licensed California attorney, has not made a payment on his $612,000 mortgage since 2009, despite his collecting rent from leasing the Property to multiple third parties. Mr. Coppola, represented here by pro bono counsel, now seeks to extend his more than twelve-year period of non-payment for his home by any means necessary, including urging the Court to judicially amend the Foreclosure Mediation Rules ("FMRs") by reading requirements into them that do not exist, and manufacturing technical Rules violations that are wholly unsupported by the record.

In denying Mr. Coppola's Petition for Judicial Review following the parties' participation in the Foreclosure Mediation Program ("FMP"), the district court held that Mr. Coppola "evidenced an in-depth understanding of the governing statutes and foreclosure mediation rules at issue" and admonished that "the purpose of the FMP is for the homeowner and lender to attempt to reach an agreement that avoids foreclosure, not to search for rule violations." 15 ROA 1090 (citing *Cohan v. Wells Fargo Bank, N.A.*, No. 65636, 2015 WL 5773392, n.3 (Nev. Ct. App. Sept. 30, 2015)).

The district court's thorough, soundly reasoned decision, which is entitled to substantial deference, correctly rejected each of the arguments the Opening Brief raises here: that Wells Fargo's appraisal was deficient, that Wells Fargo failed to provide a short sale value, that Wells Fargo failed to produce the required documents required under Foreclosure Mediation Rule ("FMR") 13(7), and that Wells Fargo's representation at the foreclosure mediation by an underwriter and an attorney was not adequate authority. As discussed below, Mr. Coppola has not shown that the district court's findings were not supported by substantial evidence.

This Court should affirm.

Issues Presented

1. Whether the district court's finding that Wells Fargo complied with its obligations under FMR 13(7)(f) to provide an appraisal was supported by substantial evidence.

2. Whether the district court's finding that Wells Fargo complied with its obligations under FMR 13(10) by providing a short sale value at the mediation was supported by substantial evidence.

3. Whether the district court's finding that Wells Fargo satisfied its obligations under FMR 13(7)(a)-(c) by providing the required

documents in advance of the mediation was supported by substantial evidence.

4. Whether the district court's finding that Wells Fargo's representatives at the mediation had the requisite authority to attend the mediation and negotiate a loan modification was supported by substantial evidence.

Statement of Facts

I. Mr. Coppola Borrows $612,000 in 2006 and Defaults in March 2009.

On January 24, 2006, Mr. Coppola executed a deed of trust as security for a loan in the amount of $612,000 made by World Savings Bank, FSB ("WSB").[1] 7 ROA 474-96. The Deed of Trust was recorded against the property located 4785 Rio Pinar Drive, Reno, Nevada 89509 (the "Property"). 7 ROA 474.

The loan went into default on March 23, 2009. 7 ROA 498-503. In addition to not receiving a mortgage payment since February 2009, Wells Fargo has also advanced escrow payments totaling $71,134.60 to protect

[1] World Savings Bank, FSB amended its charter and bylaws to change its name to Wachovia Mortgage, FSB. Thereafter, Wachovia Mortgage, FSB changed its name to Wells Fargo Bank Southwest National Association, merging into and operating as Wells Fargo Bank, N.A.

its security interest in the Property. 7 ROA 505. During this lengthy period of non-payment, Mr. Coppola has been profiting from the Property by renting it to third parties but not using that revenue to make payments or forward that money to Wells Fargo, which directly violates the "Lender's Rights to Rental Payments" provision of the Deed of Trust. 7 ROA 475-76, 482-83 521, 528; 8 ROA 591.

II. Wells Fargo Attempts to Foreclose in 2013 and 2016.

A. Wells Fargo Initiates Foreclosure Proceedings in 2013, which Are Halted by Mr. Coppola's Pair of Bankruptcy Filings.

On January 15, 2013, Wells Fargo recorded a Notice of Breach and Default and of Election to Sell under Deed of Trust ("First Notice of Default") for Mr. Coppola's failure to make the monthly payments required under the Deed of Trust. 7 ROA 498-503. On April 18, 2013, Wells Fargo recorded a Notice of Trustee's Sale, setting the foreclosure sale for May 13, 2013. 8 ROA 541-43. Mr. Coppola filed for bankruptcy protection three days before the foreclosure sale, which halted foreclosure efforts. 8 ROA 545-49. Mr. Coppola filed a second bankruptcy petition on July 22, 2013, and two days later, on July 24, 2014, his first bankruptcy case was dismissed. 8 ROA 551-61. On June 17, 2014, the bankruptcy court entered a stipulated order to terminate the automatic

stay as to the Property. 8 ROA 563-67. Shortly thereafter, the bankruptcy was dismissed. 8 ROA 551-61.

B. Wells Fargo Again Initiates Foreclosure Proceedings in 2016.

After the automatic stay was terminated on June 13, 2016, Wells Fargo recorded a new Notice of Breach and Default and of Election to Sell under Deed of Trust ("Second Notice of Default"). 8 ROA 569-75. After the Second Notice of Default was recorded, Mr. Coppola elected mediation under the Nevada Foreclosure Mediation Program.

Foreclosure mediation was held on December 1, 2016, with a continued foreclosure mediation held on January 18, 2017. 8 ROA 577-88. Both times, Wells Fargo's local counsel appeared in person, with a Wells Fargo Mediation Underwriter with authority to modify the Loan participating by telephone. 8 ROA 577-88, 590-91. Mr. Coppola did not qualify for a loan modification because he failed to provide the necessary documentation. 8 ROA 592. After the mediation concluded, the mediator issued his statement indicating that Mr. Coppola "failed to exchange required documents." 8 ROA 578.

The Mediation Statement makes clear that a Wells Fargo representative was present, that the representative demonstrated the

proper authority to negotiate a loan modification, and that Wells Fargo brought to mediation all documents required by NRS 107.086(5) and the Rules, with one exception. 8 ROA 578. The mediator found that Wells Fargo failed to provide a new BPO between the December 2016 and January 2017 mediations: the date on the "BPO for the 12.01.16 mediation session had become stale by the time of the 01.18.17 mediation" and Wells Fargo did not provide the new BPO it had obtained. 8 ROA 578, 598.

In his Petition for Judicial Review, Mr. Coppola advanced the same arguments he also raises here, all but one of which the district court rejected. 8 ROA 597-603. But, because Wells Fargo used, but did not provide, the intervening BPO, a certificate did not issue. 8 ROA 594.

III. Wells Fargo's Third Attempt to Foreclose and Resulting 2019 Foreclosure Mediation.

On May 21, 2018, after more than nine years without receiving any payments, Wells Fargo again initiated foreclosure efforts. 2 ROA 6-8; 8 ROA 605-11. Mr. Coppola again elected to participate in foreclosure mediation by filing a Petition for Mediation on June 25, 2018. 2 ROA 1.

A. Before the Scheduled Date of the Mediation, Wells Fargo Provided All of the Required Documents to Mr. Coppola and the Mediator.

The mediation was originally scheduled for November 15, 2018, but was continued at Mr. Coppola's request until December 2018. On November 26, 2018, before the first continued date, the Deed of Trust trustee timely e-mailed copies of Wells Fargo's required documents to Mr. Coppola and the mediator in compliance with Rule 13(7), including the appraisal Wells Fargo obtained for the purposes of mediation. 9 ROA 625-648, 10 ROA 649-95. On November 28, 2018, Wells Fargo sent Mr. Coppola a letter indicating that his request for a loan modification had been denied because he had failed to provide the necessary documents. 5 ROA 237-41.

B. The Mediation Is Continued for Several Months at Mr. Coppola's Request, with an Agreement to Waive the Need for a New Appraisal.

Following that disclosure, Mr. Coppola then continued the mediation again. The additional continuance meant that Wells Fargo's appraisal, conducted on November 14, 2018, would no longer comply with the requirement that the appraisal be conducted within 60 days before the mediation. *See* Rule 13(7)(f).

Accordingly, Mr. Coppola waived the need for a new appraisal and consented to Wells Fargo using the November 14, 2018 appraisal at the March 7, 2019 mediation. This fact is undisputed. *See* AOB 22; 2 ROA 73 ("Due to the continuance, the beneficiary/ servicer is not required to produce a new Broker's Price Opinion or Appraisal before the next hearing."). Notably, Mr. Coppola had the November 14, 2018 appraisal in hand when he agreed to this waiver. Even after the fact, he stated:

> WELLS ***prepared a flawed Appraisal*** for the mediation as originally scheduled…. The parties then agreed that due to the continuance of the mediation due to the health issues of Petitioner, ***the requirement of a new appraisal was waived***.

6 ROA 256.

C. Wells Fargo Obtained a Second Appraisal Just Before the Mediation, even though It Was Not Required.

Even though Wells Fargo was not required to obtain a newer appraisal, and an interior appraisal is not required by the FMRs, Wells Fargo attempted to obtain a new, interior appraisal in an attempt to satisfy Mr. Coppola's demands. However, obtaining an appraisal that included the interior necessitated Mr. Coppola's cooperation in making the Property available, which he refused or failed to do. 10 ROA 697-98.

Beginning in January 2019, the trustee's counsel made repeated efforts to gain access to the Property to complete a second appraisal that included an interior inspection. 10 ROA 697. However, Mr. Coppola did not allow access to the Property until February 26, 2019 – only 9 days before the March 7, 2019 mediation. 10 ROA 698. Accordingly, there was no way for Wells Fargo to provide the appraisal to Mr. Coppola and the mediator meaningfully in advance of the mediation, and certainly not 10 days before. *See* Rule 13(7). As such, and as described below, Wells Fargo elected to go forward using the November 14, 2018 appraisal in reliance on Mr. Coppola's waiver.

D. The Mediation Occurred on March 7, 2019 and Did Not Result in an Agreement.

The mediation lasted approximately twenty minutes, during which time the parties discussed: (1) the reason for Wells Fargo's denial of Petitioner's loan modification request; (2) the Property appraisal; (3) the short sale value; and (4) the authority of attorney, Stephen Wassner, to appear on Wells Fargo's behalf. 14 ROA 1029; 3 ROA 87.

1. Wells Fargo Underwriter, Joshua Ring, and Attorney, Stephen Wassner, Represent Wells Fargo at the Mediation.

Attorney Stephen Wassner appeared in person on Wells Fargo's behalf as local appearance counsel for Tiffany & Bosco. 14 ROA 1028-29; 3 ROA 85. Joshua Ring, a Wells Fargo underwriter, appeared by telephone as Wells Fargo's representative with authority to modify the Loan. 14 ROA 1028-29; 3 ROA 85.

The authorization from Wells Fargo to Tiffany & Bosco provided:

> Pursuant to NRS 107.086 the law firm of Tiffany & Bosco, P.A. is hereby authorized as required by statute number NRS 107.086(11) to act on behalf of the beneficiary of the deed of trust.
>
> This authorization extends to all matter wherein Tiffany & Bosco, P.A. is employed by Wells Fargo Bank, N.A. as its counsel of record.

5 ROA 195. At the mediation, Attorney Wassner provided a letter from Tiffany & Bosco authorizing him to appear for mediations for that firm. 12 ROA 942.

2. Wells Fargo Did Not Use the Second Appraisal in the Mediation.

Because Mr. Coppola did not allow Wells Fargo access to the Property for a second appraisal until it was too late to timely disclose it

or use it in the mediation, Wells Fargo had to rely on Mr. Coppola's waiver and use the November 14, 2018 appraisal. Wells Fargo certainly did not want to repeat what happened in 2017, where a certificate did not issue because it had failed to provide the new appraisal obtained in between two mediation dates.

Though the mediator's comments indicate that Wells Fargo relied on the second appraisal, the comments evinced a misreading of the relevant dates and a misunderstanding regarding Wells Fargo's evaluation of Mr. Coppola for a loan modification. The mediator's statement provides:

> Lender did obtain a new appraisal, this appraisal was not made available to the Mediator or to the Homeowner. It was indicated at the mediation that the Lender had used the new appraisal as part of the process to evaluate the Homeowner for a modification. One day prior to mediation Homeowner was notified of the denial of the modification.
>
> At the mediation the short amount given by the Lender, was not based on the new appraisal amount which according to the Lender, was considerably less than the prior appraisal. Short sale amount would be considerably higher than the latest appraisal, which then would not be a short sale.

8 ROA 616.

These comments contain demonstrable misstatements and inaccuracies, such that her account cannot be given weight – nor,

importantly, did the district court credit the mediator's statement. Indeed, the district court found it necessary to "reconcile" the mediator's statement with the other documents and explicitly rejected mediator's statement on these points. 15 ROA 1084.

The problems with the mediator's statement are many. First, Wells Fargo could not have used the new appraisal as part of the process to evaluate Mr. Coppola for a loan modification because Wells Fargo had completed that process by November 28, 2018 – before the December 2018 mediation date and months before the February 26, 2019 appraisal even occurred. 5 ROA 237-40. Second, Mr. Coppola was not notified the day before mediation that his loan modification request had been denied. 11 ROA 738. Rather, he was notified on November 28, 2018 and the March 6, 2019 email informed him of the that his *appeal* from the denial was unsuccessful. 11 ROA 738. Third, the mediator notes that the short sale value is higher than the second appraisal, which means it would "not be a short sale." 3 ROA 86. For the reasons explained below, this is a misunderstanding of the meaning of "short sale."

Finally, the mediator's statement accurately asserts that the short sale amount given at the mediation was not based on the new appraisal

amount. 3 ROA 86. Importantly, though, that assertion is supported by the respective appraisal values. The short sale value – $620,000 – is only $5,000 different from the November 2018 appraisal, while it is $40,000 different from the new appraisal. 3 ROA 86.

3. It Is Undisputed that Wells Fargo Provided a Short Sale Value at the Mediation.

There is no dispute that Wells Fargo provided a short sale value at the mediation, and that the short sale process was a topic of discussion at the mediation.

After explaining the reason for denial of Mr. Coppola's loan modification request, Mr. Ring provided Mr. Coppola with a detailed explanation of the short sale process. 14 ROA 1029. Mr. Ring stated that he was willing to further discuss additional details related to a short sale, to include the timeframe, price, or any other issues of interest involved in a short sale, if Mr. Coppola was interested in exploring short sale options. 14 ROA 1029.

Attorney Wassner then presented Petitioner with an opening short sale value of $620,000. 14 ROA 1029. Mr. Coppola's moving papers confirm Attorney Wassner's testimony that Wells Fargo presented a short sale value to him at the mediation, and that he considered the offer

too high: "At the mediation Wells Fargo proposed a short sale amount of over $640,000.00, which was well in excess of either appraisal." 11 ROA 716. As quoted above, the mediator's statement also confirms that Wells Fargo provided a short sale value at the mediation: "At the mediation the short sale amount given by the Lender …" 3 ROA 86.

Mr. Coppola responded to the short sale value by unequivocally rejecting any short sale option. 14 ROA 1029. He also took issue with the short sale value, complaining that it was too high and asserting that he would never find a buyer willing to pay that amount. 14 ROA 1029.

4. The Mediator's Statement.

The mediator filed her statement on March 17, 2019, noting that the parties were unable to agree to a loan modification. The Statement did not recommend sanctions. 3 ROA 87. However, it indicated that Wells Fargo failed to produce an appraisal or BPO dated not more than 60 days before the mediation and failed to produce a short sale value. 3 ROA 87. For this reason, no certificate was to issue. Further, as no agreement was reached, the mediator recommended dismissal of the petition pursuant to FMR 20(3).

IV. The District Court Denies Mr. Coppola's Petition for Judicial Review and Grants Wells Fargo's Request for Appropriate Relief.

Following the filing of the mediator's statement, Mr. Coppola filed a Verified Petition for Judicial Review (the "Petition") and Wells Fargo filed a Request for Appropriate Relief (the "Request"). Each challenged the mediator's recommendation. After complete briefing in addition to supplemental briefing, the district court issued a thorough written order denying Mr. Coppola's Petition for Judicial Review and granting Wells Fargo's Request for Appropriate Relief and directing that a certificate issue.

First, the district court rejected Mr. Coppola's contention that Mr. Wassner and Mr. Ring lacked authority to attend the mediation and negotiate a loan modification because Mr. Ring is a Wells Fargo underwriter who had the required authority. 15 ROA 1090.

Second, the district court rejected Mr. Coppola's contention that Wells Fargo failed to present a short sale value. 15 ROA 1090. The district court recognized that the mediator's statement provided "conflicting information regarding the short sale estimate," specifically that it states that the short sale estimate was provided and discussed at

the mediation, but also not provided." 15 ROA 1084. The district court concluded that Wells Fargo undisputedly orally provided a short sale value at the mediation. 15 ROA 1090. Further, the district court found that the meaning of short sale was an amount less than what is owed on the mortgage. 15 ROA 1090. As such, Wells Fargo satisfied FMR 13(10). 15 ROA 1090.

Third, the district court found that Wells Fargo had no obligation to provide the second appraisal at the mediation because Mr. Coppola waived his right to contest the November 14, 2018 appraisal. 15 ROA 1090. Moreover, Mr. Coppola could not complain that the appraisal did not include an interior analysis when he had denied Wells Fargo timely access to the Property. 15 ROA 1090. The court found that because Wells Fargo had provided the November 14, 2018 appraisal, the mediator's note that Wells Fargo failed to provide an appraisal in compliance with the Rules was wrong. 15 ROA 1090.

Fourth, the district court rejected Mr. Coppola's argument that Wells Fargo failed to maximize the net present value of the home, a point the Opening Brief does not address. 15 ROA 1090-91.

Finally, the district court held that, "based upon its findings, Petitioner has failed to make a requisite showing … to demonstrate either bad faith or a failure to bring the required documentation." 15 ROA 1091.

This appeal followed.

Standard of Review

The district court's factual determinations must be upheld if not clearly erroneous and if supported by substantial evidence. *Cohan v. Wells Fargo Bank, N.A.*, 131 Nev. 1265 (Nev. App. 2015). Whether a party participated in good faith in a foreclosure mediation is a question of fact. *Id.* (citing *Consol. Generator–Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998)). In appeals from the Foreclosure Mediation Program and generally, this Court reviews a district court's factual determinations deferentially. *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 521–22, 286 P.3d 249, 260 (2012) (citing *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009)).

Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion." *Tighe v. Las Vegas Metro. Police Dep't*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994); *State Emp. Security*

v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986). In a substantial evidence inquiry, the evidence is viewed in a light most favorable to the district court's findings and the prevailing party. *Las Vegas Land Partners, LLC v. Nype*, 133 Nev. 1041, 408 P.3d 543 (2017); *Jeffers v. Bob Kaufman Mach.*, 101 Nev. 684, 685, 707 P.2d 1153, 1154 (1985).

The district court's legal determinations are reviewed *de novo*. *Edelstein*, 128 Nev. at 522, 286 P.3d at 260.

Argument

I. Mr. Coppola's Argument Concerning the Second Appraisal Is Based on the Unfounded Claim that the Original Appraisal Was Insufficient and the False Premise that Wells Fargo Materially Used the Second Appraisal in the Mediation.

The Opening Brief argues that the district court abused its discretion by finding that Mr. Coppola waived his right to challenge the first appraisal and that Wells Fargo did not need to disclose the second appraisal, even though it "used and relied on" it. Mr. Coppola's arguments fail because (1) he waived any obligation Wells Fargo had to obtain a second appraisal; (2) he cannot mount any legitimate challenge to the first appraisal, which satisfied Wells Fargo's obligations under the

Rules; and (3) Wells Fargo did not use or rely on the second appraisal at the mediation.

A. Mr. Coppola Waived any Requirement that Wells Fargo Obtain a New Appraisal.

The parties do not dispute that, as a condition of the continuance of the mediation from November 2018 to March 2019, Mr. Coppola waived any requirement that Wells Fargo would need to obtain a new appraisal. AOB 22. They agreed, "Due to the continuance, the beneficiary/ servicer is not required to produce a new Broker's Price Opinion or Appraisal before the next hearing." 2 ROA 73. On appeal, Mr. Coppola argues that he did not waive any rights to contest the substance or correctness of the November 2018 appraisal.

The mediator checked the box on the form indicating that the beneficiary "failed to bring to the mediation each document required," checking the box for "Appraisal or Broker Price Opinion (BPO) in accordance with NRS 645.2515 dated not more than 60 days prior to the date of the scheduled mediation." 4 ROA 151. However, this disregards the parties' agreement that no new appraisal would be necessary. Further, the district court found explicitly that the waiver was

> not superseded by Petitioner's request that Respondent Wells Fargo obtain a second appraisal that reflects the interior of the home as well, especially since Petitioner did not provide access to the home for this purpose. As such, the Mediator's finding that Respondent Wells Fargo failed to bring the required documentation is in error.

15 ROA 1090.

The Opening Brief constructs a straw man of the district court's ruling in arguing that the district court interpretation of Mr. Coppola's waiver was overbroad. Rather, the district court found that: (1) Mr. Coppola waived any argument that Wells Fargo needed to provide a second appraisal; *and* (2) because he made it impossible for Wells Fargo to timely obtain an interior appraisal, he could not then use that to argue the deficiencies of the first. Moreover, Mr. Coppola raised only one issue about the first appraisal – that it was exterior only. 6 ROA 256. The district court's rejection of this gamesmanship was soundly within its discretion and the Opening Brief entirely fails to confront this point.

B. Notwithstanding His Waiver, Mr. Coppola Did Not Mount a Valid Challenge to Wells Fargo's First Appraisal, which Satisfies FMR 13(7)(f) as a Matter of Law.

Under FMR 13(7)(f), Wells Fargo was required to provide either:

> an [a]ppraisal and/or Brokers Price Opinion (BPO) not more than 60 days old (prior to the date of mediation) that satisfies

> the requirements provided in Rule 13(11). The homeowner, if he or she so chooses, may bring his or her own appraisal and/or BPO obtained at his or her own expense.

Rule 13(11) in turn provides that a BPO must substantially comply with NRS 645.2515. Rule 13(11) also provides that "[t]he homeowner, if he or she so chooses, may bring his or her own appraisal and/or BPO obtained at his or her own expense."[2] These requirements can be satisfied by substantial compliance. *Markowitz v. Saxon Special Servicing*, 129 Nev. 660 at 667, 310 P.3d at 573. In advance of the mediation, Wells Fargo obtained and provided an appraisal. 5 ROA 175-93.

As noted above, Mr. Coppola raised only one issue about first appraisal – that it was exterior only. 6 ROA 256. However, the BPO and appraisal requirements do not mandate an interior appraisal. As such, he has no legal basis to reject that appraisal. Further, Mr. Coppola's complaints about the appraisal – that he believed it to be too high – are neither supported by any competent evidence nor cause for a certificate not to issue. They include a laundry list of repairs he claims are needed to the home, essentially second-guessing the appraiser. 6 ROA 257-58.

[2] Attorney Coppola's complaint that Wells Fargo indicated that he could have obtained his own appraisal is misplaced, as it is explicitly contemplated in the Rules.

The beneficiary is required to obtain an appraisal, which is conducted by an independent appraiser; it is not subject to sanctions in the FMP if a homeowner disagrees with the substance of the appraisal. *See* FMR 13(7)(f); FMR 13(11).

C. Because Wells Fargo Did Not Use the Second Appraisal in Evaluating Mr. Coppola for a Loan Modification or Short Sale, It Is Irrelevant.

As detailed above, the district court correctly recognized through a careful review of the record that the mediator severely misunderstood the fact that Wells Fargo did not use the second appraisal to evaluate Mr. Coppola for a loan modification or a short sale. Wells Fargo evaluated and denied his loan modification request by November 28, 2018, months before the second appraisal was conducted on February 26, 2019. Wells Fargo could not have considered the Property value stated in the second appraisal in denying him a loan modification three months prior. Likewise, the $620,000 short sale value was based on the first appraisal of $615,000, and not the second appraisal's lower value. 15 ROA 1090.

Because Mr. Coppola waived the need for a second appraisal, and Wells Fargo did not use the second appraisal, its non-disclosure cannot

be a basis to find any deficiency in Wells Fargo's foreclosure mediation participation.

II. The District Court's Finding that Wells Fargo Complied with FMR 13(10) by Providing a Short Sale Proposal at the Mediation Was Legally Sound and Supported by Substantial Evidence.

FMR 13(10) provides that the beneficiary of the deed of trust "shall prepare an estimate of the 'short sale' value of the residence that it may be willing to consider as part of the negotiation … and shall submit any conditions that must be met in order for a short sale to be approved." The Opening Brief argues that the district court abused its discretion by finding that Wells Fargo complied with FMR 13(10) where it orally provided a short sale value at the mediation, and the amount was greater than the appraised value of the home. Mr. Coppola's arguments fail, as neither is a violation of the Rule.

A. Mr. Coppola's Recounting of Communications Before the Mediation Sows Confusion.

Mr. Coppola's papers below and the Opening Brief describe a series of exchanges and communications between Tiffany & Bosco counsel, Ivan Mora, concerning a loan modification review and short sale request that preceded the March 7, 2019 foreclosure mediation. AOB 27. By their inclusion in the discussions of the short sale issue, the Brief implies that

these exchanges bear on Wells Fargo's compliance with FMR 13(10) – the provision requiring beneficiaries to provide a short sale value. They do not, and as such are irrelevant to whether Wells Fargo complied with the Rule and have served only to create confusion.

For example, Mr. Coppola begins an exchange with Mr. Mora on October 30-31, 2018 by requesting "the short sale information/ form," or what was in effect a short sale application. 11 ROA 724-25. When Mr. Mora promptly replied, "Yes, here you go," he was providing the application and information – not a short sale value or specific proposal. 11 ROA 724-25. That explains the rest of the exchange, including that Mr. Coppola asks whether Wells Fargo will be putting together a proposal. *See* 11 ROA 724-25. Notably, Mr. Coppola omitted the attachments in his exhibits, which would have made the actual circumstances clear. *See* 11 ROA 724-25.

Then, on November 28, 2018, Wells Fargo informed Mr. Coppola in writing that he was not eligible for a loan modification or a short sale because he "did not provide [Wells Fargo] with valid documents as requested." 10 ROA 692. The letter further provided that "because you are in mediation or court ordered modification review there may be

different deadlines than what is referenced in this document." 10 ROA 692. Relatedly, the subsequent discussion about Mr. Coppola's failure to provide a purchase contract for the home refers to a prerequisite for the approval of an actual, proposed short sale and was not in satisfaction of Wells Fargo's obligation to provide a short sale value at mediation under FMR 13(10).

Finally, when Mr. Mora wrote to Mr. Coppola on March 6, 2019, it was to inform him that his appeal from the November 28, 2018 loan modification denial did not result in a different outcome. 11 ROA 738. Again, Mr. Coppola did not include the intervening communications or various attachments that would have made this context clear, sowing confusion, which continues because of Mr. Coppola's failure below to attach the exhibits.

Regardless of the confusion that this created below and now on appeal, it is irrelevant both because the exchanges do not involve Wells Fargo's obligations under FMR 13(10) and because the district court based its ruling on the undisputed fact that Wells Fargo provided a short sale value at the foreclosure mediation:

> While this Court acknowledges that Respondent Wells Fargo has had varying explanations for how it satisfied the short sale value pursuant to NFMR 13(10), this Court finds that Respondent Wells Fargo did present the $620,000 short sale value figure orally at the mediation which satisfies the requirement.

15 ROA 1090.

B. The District Court Did Not Abuse Its Discretion by Declining to Strictly Enforce Requirements Not Included in the Rule.

Because FMR 13(10) does not provide how or when a short sale value must be disclosed, the district court did not abuse its discretion in finding that Wells Fargo complied by orally disclosing the short sale value at the mediation. Mr. Coppola acknowledges, as he must, that "[t]he rules do not state when disclosure under FMR 13(10) must occur…." AOB 27. Nor does FMR 13(10) require that the short sale value be provided in a particular form.

This is in stark contrast to several of the other requirements *in the same Rule* that impose specific deadlines and form of disclosure. *Compare* FMR 13(7) (listing documents that must be submitted at least 10 days before the mediation) *with* FMR 13(10) (requiring no specific deadline, or that the value be in writing). Accordingly, had the architects

of the FMRs wished to impose such a requirement, they could have and would have done so – but they did not.

In light of the Rule's silence as to the time and manner of the disclosure of a short sale, it is subject to a substantial rather than strict compliance standard. *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 664–65, 310 P.3d 569, 572 (2013) (holding that generally a rule is "is mandatory and requires strict compliance when its language states a specific 'time and manner' for performance," meaning that it provides when performance must take place and the way in which the deadline must be met). As FMR 13(10) does not provide any time and manner direction, and Wells Fargo could not have committed a time and manner violation. Nor has Mr. Coppola identified any part of the Rule Wells Fargo violated, let alone a basis to conclude that the district court abused its discretion in finding that Wells Fargo complied.

C. The District Court's Ruling that $620,000 is a Legitimate Short Sale Value Is Legally Supported and Not Clearly Erroneous.

Mr. Coppola argues that because the short sale value exceeded the Property's appraisal amount, the short sale value was prepared in bad faith and does not comply with FMR 11(10). AOB 28. The FMRs do not

define the term "short sale" or mandate what constitutes an "acceptable" short sale value. Indeed, FMR 11 only requires that a beneficiary prepare "'short sale' value of the residence that it *may be willing to consider*." (emphasis added). Mr. Coppola's arguments fail.

1. FMR 11(10) Does Not Define or Include Requirements for a Short Sale Value, and Wells Fargo's Short Sale Value Is Consistent with the Widely-Understood Legal Definition of that Term.

Mr. Coppola does not explain how the short sale value Wells Fargo provided violates the Rule, when the Rule neither defines the term, nor mandates any specific requirements as to the value. Importantly, the short sale value Wells Fargo provided does not violate FMR 13(10) and comports with the legal definition of that term.

"A short sale is a real estate transaction in which the property serving as collateral for a mortgage is sold for less than the outstanding balance on the secured loan, and the mortgage lender agrees to discount the loan balance because of a consumer's economic distress." *Shaw v. Experian Info. Sols., Inc.*, 891 F.3d 749, 752 (9th Cir. 2018); *see also Rex v. Chase Home Fin. LLC*, 905 F. Supp. 2d 1111, 1119 (C.D. Cal. 2012) (citing The Law of Real Estate Financing § 12:10, Short sales) (holding that a "short sale" is the voluntary sale of mortgaged property by the

borrower where the borrower "secures the agreement of the [lender] to release the mortgage upon a bona fide sale to a third party for an agreed upon price below the mortgage loan balance."). In other words, the "very definition of a short sale" is where the lender is "legally paid in full for less than the full balance." *Shaw*, 891 F.3d at 757.

As such, what is essential to a short sale is that the amount the lender agrees to accept is less than the amount owed – not the amount of the appraised value of the property. *See id.* While a property's appraised value may provide insight as to the amount a prospective purchaser might pay for property, the focus of a short sale estimate is the amount the lender is owed.

Here, it is undisputed that the short sale value Wells Fargo provided to Mr. Coppola at the mediation[3] was less than the loan balance at the time of the mediation. The unpaid principal balance on the loan as of the mediation date was $649,201.93. 7 ROA 505. Moreover, the

[3] Attorney Coppola previously stated in his moving papers that "Wells Fargo proposed a short sale amount of over $640,000." But whether the short sale value was $620,000 or $640,000 is irrelevant to the discussion of whether the amount would constitute a short sale, given the undisputed fact that Wells Fargo was owed well in excess of $700,000 at the time of the mediation.

Mortgage Loan History confirms that Wells Fargo had also advanced $71,134.60 in escrow payments during Mr. Coppola's decade-long period of non-payment. 7 ROA 505. Without even considering the substantial additional amounts owed, to include mounting interest, late charges, and other fees, the unpaid principal balance and the escrow advances total $720,336.53. As such, Wells Fargo's proposal to accept $620,000 constitutes a short sale as a matter of law.

2. The Rules Do Not Require, and Could Not Properly Require, Wells Fargo to Offer a Short Sale Value that Is Less than the Appraised Value.

Mr. Coppola argues that the district court "failed to take into account that the short sale value was more than either of the appraisals," which in his view means that the short sale value "was illusory and made in bad faith even if it meets the definition of short sale." AOB 29. Finally, Mr. Coppola urges this Court to "hold that a beneficiary does not meet its obligation of good faith when it sets a short sale value that is more than the home's appraised value…." AOB 29. The Court should decline this invitation to judicially amend FMR 13(10).

First, the district court did not "fail to take into account that the short sale value was more than … the appraisals," but rather confronted

that point directly and held explicitly that "Petitioner has failed to cite any authority for the proposition that the $620,000 figure was legally invalid because it was more than the appraised value of the home." 15 ROA 1090. The district court applied the plain language of the Rule – that a short sale "must be for less than the amount owed rather than the appraised value of the Property." 15 ROA 1090. The district court's ruling was legally sound and supported by substantial evidence, particularly as nothing in the Rules governs the amounts of short sale values.

The Court should decline to judicial amend FMR 13(10) to add the requirement that a short sale value must be no higher than a home's appraised value. To start, that requirement is not in the Rule, in any form. The Court's "duty is to interpret the statute's language; this duty does not include expanding upon or modifying the statutory language because such acts are the Legislature's function." *Williams v. United Parcel Servs.*, 129 Nev. 386, 391–92, 302 P.3d 1144, 1147 (2013). To add this requirement to the Rule would violate this longstanding directive.

In addition to violating canons of statutory interpretation, expansively interpreting FMR 13(10) to set maximum values on short

sale offers would run afoul of the Contracts Clause and Takings Clause of both the Nevada and United States Constitutions by depriving beneficiaries of their contractual rights to payment. *See, e.g.*, *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935) (striking down as unconstitutional a law that took banks' security interest in their collateral by preventing them from obtaining full repayment); *W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56 (1935) (striking down an Arkansas law diluting the rights and remedies of mortgage bondholders by extending the time required to enforce payment, increasing the time from default to sale, and taking possession of the property during the redemption period because it lacked protections for lenders and impaired their contractual rights).

Finally, Mr. Coppola has declared, in no uncertain terms, that he had no interest in exploring short sale options. 14 ROA 1029. Indeed, he made clear over the past decade that retaining the Property is his sole purpose, and that he has no interest in any non-retention options. 14 ROA 1042. As such, Wells Fargo's short sale value is immaterial to Mr. Coppola's position – he rejects the short sale option entirely. While Wells Fargo satisfied its obligations under FMR 13(10), to withhold a certificate

based on the short sale value would violate the spirit of the program, which is "for the homeowner and lender to attempt to reach an agreement that avoids foreclosure, not to search for rule violations." *Cohan v. Wells Fargo Bank, N.A.*, No. 65636, 2015 WL 5773392, n.3 (Nev. Ct. App. Sept. 30, 2015).

III. The District Court Did Not Fail to Address Mr. Coppola's Document Production Arguments.

Mr. Coppola argues that the district court abused its discretion by declining to specifically address his claim that Wells Fargo failed to provide the documents required under FMR 13(7). The district court did not abuse its discretion by rejecting this claim as unsupported by the record or unpersuasive.

At the conclusion of its Order, the district court ruled:

> This Court notes that based upon its findings, ***Petitioner has failed to make a requisite showing under any of the four avenues available under the holding in Pasillas to demonstrate either bad faith or a failure to bring the required documentation***. As a result, Petitioner's request for sanctions is denied. ***As to the remainder of Petitioner's arguments, this Court finds them to either be unsupported by the record or unpersuasive***.

15 ROA 1091 (emphasis added).

The district court's ruling is supported by substantial evidence regardless of Mr. Coppola's uncorroborated and self-serving assertion that none of the required documents were produced. As Mr. Coppola acknowledges, the mediator did not find that Wells Fargo failed to bring any of the documents required by FMR 13(7)(a) and (b). AOB 30; 3 ROA 87. The mediator did not indicate on her report that Wells Fargo failed to produce any documents, other than the appraisal and short sale value issues discussed above. 3 ROA 87.

Notably, with respect to other issues, Mr. Coppola argues that a mediator's "recitations of what occurred at the proceeding should be afforded deference in the absence of contrary evidence." AOB 23. Yet, where it suits him, he would prefer that the mediator's observations be disregarded. Regardless, the mediator's report reflects that these documents were provided. 3 ROA 87. Further, the earlier document exchange of all of the required documents supports that finding. 9 ROA 625-648, 10 ROA 649-95.

Moreover, as it is well-established under Nevada law that the documents required by FMR 13(7) must be produced, it would be a particularly unlikely oversight for the mediator to omit such a glaring

omission from her report. Indeed, as a repeat player in the foreclosure mediation program, surely Mr. Coppola would have made much of the existence of dispositive non-compliance with the Rules. *Goldstein v. Hanna*, 97 Nev. 559, 562, 635 P.2d 290, 292 (1981) (holding that assent or affirmation may be inferred from silence when the person remaining silent in good faith would have spoken). The district court's finding that Wells Fargo produced all of the required documents is supported by the substantial evidence of the mediator's report and document production and is not subject to reversal.

Finally, Mr. Coppola's unsupported and self-serving claim that the documents were not produced cannot support reversal. On appeal, Mr. Coppola argues that the mediator "overlooked marking those boxes because he says no documents were provided." AOB 30. His claim of "disputed facts" on appeal, however, cannot justify reversal.

Disregarding the highly deferential standard of review that applies to the district court's finding, Mr. Coppola complains that Wells Fargo did not provide additional evidence of its document production, such as a declaration. But the lack of duplicative evidence is not any basis to disturb the district court's finding, when it was already supported by

substantial evidence. Nor should Mr. Coppola's self-serving representations be given weight. While self-serving declarations are not per se inadmissible, the Court should give little to no weight to evidence that is "uncorroborated and self-serving." *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002); *In re Vaughn*, 558 B.R. 897, 900 (Bankr. D. Alaska 2016) (holding that a party's "declarations that are advantageous to the issue are viewed with suspicion and accorded little weight.").

The district court's finding that Wells Fargo produced the documents as required by FMR 13(7) was supported by substantial evidence and as such should not be disturbed on appeal.

IV. The District Court's Ruling that Wells Fargo Participated in Mediation Through Authorized Counsel and a Representative with Authority Was Supported by Substantial Evidence.

The district court correctly found that Joshua Ring is a Wells Fargo underwriter who had authority to modify the loan and participated in the mediation by telephone and Steven Wassner is an attorney who was also authorized to appear. It rejected Mr. Coppola's contention that Attorney Wassner lacked authority to attend the mediation and to negotiate a loan modification in conjunction with Mr. Ring. 15 ROA 1089-90, On appeal,

Mr. Coppola renews his argument that Wells Fargo failed to participate in the mediation through authorized representatives because the written authority is insufficient and raises the novel and therefore waived argument that common law agency principles do not support a finding of authority. Each argument fails in turn.

A. Wells Fargo's Representatives at the Mediation Satisfied the Requirements of FMR 13(7)(d).

A deed of trust beneficiary may participate in FMP mediation directly or through a representative with proper authority to negotiate a loan modification. *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 668, 310 P.3d 569, 574 (2013) (citing NRS 107.086(5)). Specifically, NRS 107.086(5) requires that "[t]he beneficiary of the deed of trust or a representative shall attend the mediation," and "[i]f the beneficiary of the deed of trust is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority." FMR 13(7)(d) requires documentation establishing that authority, providing:

> If the beneficiary of the deed of trust is represented by a third party at the time of mediation, the third party must produce a copy of the agreement, or relevant portion thereof, which

> authorizes the third party to represent the beneficiary at the mediation and authorizes the third party to negotiate a loan modification on behalf of the beneficiary of the deed of trust.

Mr. Coppola argues that Attorney Wassner's in-person attendance and Mr. Ring's telephonic attendance did not satisfy this requirement because the written authorization Attorney Wassner supplied was insufficient and because neither had authority to modify the loan.

First, Mr. Coppola raises the spurious argument that Mr. Ring, a *Wells Fargo underwriter*, lacked authority to modify the loan. Mr. Coppola does not cite one fact in support of that remarkable contention, let alone any basis sufficient to overturn the district court's finding that, as a Wells Fargo underwriter and direct Wells Fargo employee, he had the requisite authority.

Mr. Coppola's complaints about Attorney Wassner's authority as meritless as they are hyper-technical. The gravamen of Mr. Coppola's argument is basically that Attorney Wassner provided an insufficient written authorization. The authorization provided:

> Pursuant to NRS 107.086 the law firm of Tiffany & Bosco, P.A. is hereby authorized as required by statute number NRS 107.086(11) to act on behalf of the beneficiary of the deed of trust.

> This authorization extends to all matter wherein Tiffany & Bosco, P.A. is employed by Wells Fargo Bank, N.A. as its counsel of record.

5 ROA 195. Attorney Wassner was Tiffany & Bosco's local appearance counsel. 14 ROA 1028.

Mr. Coppola argues that this is insufficient because Attorney Wassner did not have a letter directly from Wells Fargo specifically authorizing him to attend this particular mediation. The Opening Brief, however, does not include one piece of legal authority supporting that purported requirement, and the only case it does cite strongly supports Wells Fargo. Specifically, *Savage v. Deutsche Bank Nat'l Tr. Co.*, No. 72672-COA, 2019 WL 625701, at *1 (Nev. App. Feb. 12, 2019) forecloses Mr. Coppola's position on appeal.

Savage involved a multi-step chain of authority, which the Court of Appeals concluded validly conveyed the requisite authority to the attendee at the mediation. In *Savage*, the deed of trust beneficiary, Deutsche Bank, gave a limited power of attorney to Impac, its master servicer to "enforce" and "preserve" Deutsche Bank's interest in the deed of trust through "non-judicial foreclosure" and a non-exhaustive list of actions in furtherance thereof. Impac, in turn, gave authority to sub-

servicer, Bank of America but provided that Bank of America could not "incur or agree to any liability or obligation" for Deutsche Bank. *Id.* at *2. Bank of America, in turn, provided authority to the law firm of Malcolm & Cisneros in terms almost identical to those here: "Pursuant to [NRS] 107.086(5) the law firm of [M & S] is hereby authorized as required by [NRS] 107.086(11)(c) to act on behalf of the beneficiary of the deed of trust." *Id.* Finally, just as here, the law firm authorized an attorney who was not a member of the firm to appear at the mediation on its behalf. *Id.* The Court of Appeals upheld every link of authorization in the *Savage* chain, finding that the district court did not abuse its discretion in concluding that the attorney attendee had the authority and appropriate documentation under NRS 107.086 and the applicable Rules.

Wells Fargo's case is even stronger and less complicated, where it provided authority directly to Tiffany & Bosco, who authorized Attorney Wassner to appear for it at the mediation, and where Attorney Wassner provided documentation of his authority to appear for Tiffany & Bosco and appeared in person alongside a Wells Fargo representative, underscoring his authority. There is no sound basis to disturb the district court's ruling on this record and under this law.

B. Coppola's Arguments Based on the Common Law of Agency Are Inapposite and Waived.

Applying common law principles of agency, the Opening Brief argues that to bind a principal, an agent must have actual or apparent authority, and here, Attorney Wassner had neither. Ans. Br. 35-37. As a preliminary matter, this argument is newly raised on appeal, and therefore has been waived and should be disregarded. *Nevada Power Co. v. Haggerty*, 115 Nev. 353, 365, 989 P.2d 870, 877 (1999) (recognizing that generally an issue not raised below cannot be raised for the first time on appeal). Further, this argument ignores the fact that Attorney Wassner appeared in conjunction with Mr. Ring, a Wells Fargo underwriter with authority to modify the loan. This practice is longstanding and accepted, as endorsed in *Savage*. *Savage* 2019 WL 625701, at *1.

Regardless, this body of common law does not apply to the circumstances here. This common law of agency applies where a party seeks to hold a principal responsible for its agent's actions, even though the principal wishes to avoid such responsibility or liability by disputing the agency relationship. In contrast, here, Wells Fargo in fact authorized Tiffany & Bosco to appear on its behalf at the mediation and Tiffany &

Bosco in turn authorized Attorney Wassner – it argues for and does not dispute the agency relationship.

"To bind a principal," an agent must have actual or apparent authority." *Dixon v. Thatcher*, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987) (citing *Myers v. Jones*, 99 Nev. 91, 93, 657 P.2d 1163, 1164 (1983)). Actual authority is based on the agent's reasonable belief, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." *Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev. 540, 549, 331 P.3d 850, 856 (2014), as modified on denial of reh'g (Nov. 24, 2014) (adopting Restatement (Third) of Agency § 2.01 (2006)). "Apparent authority is 'that authority which a principal holds his agent out as possessing or permits him to exercise or to represent himself as possessing, under such circumstances as to estop the principal from denying its existence.'" *Forrest Tr. v. Fid. Title Agency of Nevada, Inc.*, 281 P.3d 1173 (Nev. 2009) (citing *Dixon v. Thatcher*, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987)).

This analysis only applies, however, when a principal seeks to avoid being bound by the agent's conduct – otherwise, there would be no dispute concerning agency. *See, e.g.*, *Simmons Self-Storage*, 130 Nev. at 549, 331

P.3d at 856 (materialman (principal) seeking to invalidate lien releases because employee who signed the releases lacked actual and apparent authority); *Forrest Tr.*, 281 P.3d 1173 (Nev. 2009) (trust seeking to avoid actions by individual clothed with authority to engage in business transactions on its behalf); *Myers*, 99 Nev. at 92, 657 P.2d at 1164 (owner of parcel of land disputing that agent had authority to sell parcel to plaintiff-buyers).

Here, there is no such dispute as Wells Fargo does not dispute Attorney Wassner's or Mr. Ring's authority. Mr. Coppola has no basis or standing to contest Wells Fargo's grant of authority on this theory. Mr. Coppola's attempt to question these agency relationships where the principal, Wells Fargo, does not seek to avoid them, turns the law of agency on its head and makes no sense.

Conclusion

The Court should afford the district court's findings the substantial deference to which they are entitled and affirm its thorough and reasoned order concluding that Wells Fargo satisfied the foreclosure mediation requirements.

DATED: October 6, 2021

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove

ANDREW M. JACOBS
Nevada Bar No. 12787
KELLY H. DOVE
Nevada Bar No. 10569
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Attorneys for Respondent Wells Fargo Bank

CERTIFICATE OF COMPLIANCE

I hereby certify that the **ANSWERING BRIEF** complies with the typeface and type style requirements of NRAP 32(a)(4)-(6), because this brief has been prepared in a proportionally spaced typeface using a Microsoft Word 2010 processing program in 14-point Century Schoolbook type style. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because it contains approximately 8,724 words.

Finally, I hereby certify that I have read the **ANSWERING 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: October 6, 2021

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove

ANDREW M. JACOBS
Nevada Bar No. 12787
KELLY H. DOVE
Nevada Bar No. 10569
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Attorneys for Respondent Wells Fargo Bank

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On October 6, 2021, I caused to be served a true and correct copy of the foregoing **ANSWERING BRIEF** upon the following by the method indicated:

☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ Kelly H. Dove
An Employee of SNELL & WILMER L.L.P.

4811-6396-1849