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3 IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Feb 18 2022 02:20 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

4  
5 EFREN AGUIRRE JR.,

6 Appellant,

7 vs.

CASE NO. 82445

8 ELKO COUNTY SHERIFF'S

9 OFFICE,

10 Respondent.

11  
12 **MOTION TO STRIKE APPELLANT'S SUPPLEMENTAL APPENDIX-**

13 **VOLUME 1**

14 COMES NOW, Respondent, State of Nevada, by and through its attorneys,  
15 TYLER J. INGRAM, District Attorney for the County of Elko, and RAND J.  
16 GREENBURG, Chief Civil Deputy District Attorney, and submits this MOTION

17 TYLER J. INGRAM  
Elko County District Attorney's Office  
18 RAND J. GREENBURG  
State Bar Number 13881  
540 Court Street, 2<sup>nd</sup> Floor  
19 Elko, NV 89801  
(775) 738-3101  
-- ATTORNEYS FOR RESPONDENT

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## **POINTS AND AUTHORITIES**

### ***FACTS***

On January 28, 2021, Appellant filed Notice of Appeal from the Findings of Fact, Conclusions of Law and Judgment of Forfeiture entered on December 31, 2020.<sup>1</sup> Appellant and Respondent, at the commencement of this appeal to the Supreme Court of Nevada, met and conferred regarding filing a joint appendix as required under NRAP Rule 30(a). Parties agreed to file a joint appendix and all the documents to be included in that appendix. Appellant's Opening Brief was filed on June 22, 2021, with the Joint Appendix.<sup>2</sup> Appellant's Reply Brief was filed on September 3, 2021, and included no Appendix.<sup>3</sup> On November 3, 2021, Appellant filed APPELLANT'S SUPPLEMENTAL APPENDIX -VOLUME 1.<sup>4</sup> The appendix includes Second Amended Declaration of Homestead recorded on November 1, 2021. Appellant did not confer with Respondent regarding Appellant's Supplemental Appendix Volume 1. Also, the Second Amended Declaration of Homestead was not part of the record before the district court.

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<sup>1</sup> Docket entry 21-03538

<sup>2</sup> Docket entry 21-18023

<sup>3</sup> Docket entry 21-25770

<sup>4</sup> Docket entry 21-31640

1 ***ARGUMENT***

2 **A. APPELLANT’S SUPPLEMENTAL APPENDIX IS NOT PART**  
3 **OF THE RECORD**

4 Under NRAP Rule 10(a), “The trial court record consists of the papers and  
5 exhibits filed in the district court, the transcript of the proceedings, if any, the  
6 district court minutes, and the docket entries made by the district clerk.” NRAP  
7 Rule 30(g)(1) indicates, “Filing an appendix constitutes a representation by  
8 counsel that the appendix consists of true and correct copies of the papers in the  
9 district court file. Willful or grossly negligent filing of an appendix containing  
10 nonconforming copiers is an unlawful interference with the proceedings of the  
11 Supreme Court or Court of Appeals . . . .”

12 Appellant’s Supplemental Appendix Volume 1 contains the Second  
13 Amended Declaration of Homestead. The Second Amended Declaration of  
14 Homestead was not in the record of the District Court, or part of those  
15 proceedings, and was not filed until several months after the commencement of  
16 the Appellant proceedings. Because the Second Amended Declaration of  
17 Homestead was not part of the record, the Court should strike the Appendix from  
18 the record.  
19  
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1                   **B. APPELLANT VIOLATED RULES OF APPELLANT**  
2                   **PROCEDURE WHEN FILING THE APPENDIX**

3                   Under Rule 30(a) “Counsel have a duty to confer and attempt to reach an  
4                   agreement concerning a possible joint appendix.”

5                   Appellant failed to confer with Respondent regarding Appellant’s  
6                   Supplemental Appendix Volume 1. Also, Respondent was under the impression  
7                   that the parties were going to file a joint appendix. Appellant provided no notice,  
8                   other than notice that the Appendix had been filed. Because Appellant did not  
9                   confer with Respondent regarding the Appellant’s Supplemental Appendix  
10                  Volume 1, the Court should strike the Appendix from the record.

11                  Also, under Rule 30(b)(3) and (5), appendix is to be filed with the  
12                  Appellant’s Brief or Reply. Appellant’s Opening Brief was filed on June 22,  
13                  2021, with the Joint Appendix. Appellant’s Reply Brief was filed on September  
14                  3, 2021, and included no Appendix. Appellant then filed the Supplemental  
15                  Appendix on November 2, 2021. Because Appellant did not file the Appendix  
16                  with Appellant’s Opening or Reply Brief, Appellant violated the Nevada Rules of  
17                  Appellant Procedure. Because Appellant violated the NRAP Rules, the Court  
18                  should strike the Supplemental Appendix from the record.


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RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of February, 2022.

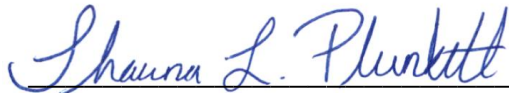
By:

  
RAND J. GREENBURG  
Chief Civil Deputy District Attorney  
State Bar Number: 13881

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4 CERTIFICATE OF SERVICE

5 I certify that this document was filed electronically with the Nevada  
6 Supreme Court on the 18<sup>th</sup> day of February, 2022, Electronic Service of the  
7 MOTION TO STRIKE APPELLANT'S SUPPLEMENTAL APPENDIX-  
8 VOLUME 1 shall be made in accordance with the Master Service List as follows:  
9

10 GERBER LAW OFFICE  
11 Travis Gerber  
12 Zack Gerber

13   
14 Shauna L. Plunkett  
15 CASEWORKER  
16

17 DA#: AP-18-03371  
18  
19  
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