

IN THE SUPREME COURT OF THE STATE OF NEVADA

TON VINH LEE, AN INDIVIDUAL,  
Appellant/Cross-Respondent,

vs.

INGRID PATIN, AN INDIVIDUAL,  
Respondent/Cross-Appellant,

and

PATIN LAW GROUP, PLLC, A  
NEVADA PROFESSIONAL, PLLC,  
Respondent.

No. 83213

Electronically Filed  
Apr 19 2022 04:48 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

*INDEX TO APPENDIX OF RESPONDENTS/CROSS-APPELLANTS  
VOLUME 1 (No. 1-23)*

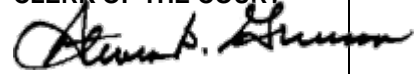
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***INDEX TO APPENDIX OF RESPONDENTS/CROSS-APPELLANTS***

<b>DOCUMENT DESCRIPTION</b>		<b>LOCATION</b>
[Defendant Patin] Notice of Appeal (filed 07/22/2021)		Vol. 1, 1-2
<b>EXHIBIT TO NOTICE OF APPEAL</b>		
<b>EXHIBIT</b>	<b>DOCUMENT DESCRIPTION</b>	
A	Notice of Entry of Decision and Order (filed 04/23/2021)	Vol. 1, 3-23



NOAS  
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

TON VINH LEE, an individual,  
  
Plaintiff,

v.

INGRID PATIN, an individual, and PATIN  
LAW GROUP, PLLC, a Nevada  
Professional LLC,  
  
Defendants.

CASE NO.: A-15-723134-C  
DEPT NO.: XXVI

**NOTICE OF APPEAL**

Defendant, Ingrid Patin, an individual, by and through her counsels of record, Christian M. Morris, Esq. and Victoria R. Allen, Esq. of the law firm Nettles | Morris, hereby appeal to the Supreme Court of Nevada from the Decision and Order granting Defendant Ingrid Patin's Motion for Attorneys' Fees, Costs, and Interest, related to Micah Echols attorney's fees, filed on April 23, 2021 and the Notice of Entry of Order was entered on April 23, 2021, and attached hereto as **Exhibit A**. Supreme Court case number is 83213.

Dated this 22<sup>nd</sup> day of July, 2021.

NETTLES | MORRIS

/s/ Christian M. Morris

CHRISTIAN M. MORRIS, ESQ.

Nevada Bar No. 011218

*Attorneys for Defendant, Ingrid Patin*

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**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that on this 22<sup>nd</sup> day of July, 2021, a true and correct copy of the foregoing **NOTICE OF APPEAL** was served to the following parties by electronic transmission through the Odyssey E-File NV System:

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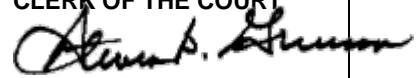
/s/ Jenn Alexy

An Employee of NETTLES | MORRIS

## **EXHIBIT A**

## **EXHIBIT A**

## **EXHIBIT A**



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

TON VINH LEE, an individual,  
  
Plaintiff,

v.

INGRID PATIN, an individual, and PATIN  
LAW GROUP, PLLC, a Nevada  
Professional LLC,  
  
Defendants.

CASE NO.: A-15-723134-C  
DEPT NO.: 26

**NOTICE OF ENTRY OF DECISION  
AND ORDER**

TO: ALL PARTIES; and  
TO: THEIR RESPECTIVE ATTORNEYS:

**PLEASE TAKE NOTICE** that a Decision and Order was duly entered in the above-entitled matter on the 23<sup>rd</sup> day of April, 2021, a true and correct copy of said Decision and Order is attached hereto.

DATED this 23<sup>rd</sup> day of April, 2021.

NETTLES | MORRIS



CHRISTIAN M. MORRIS, ESQ.  
Nevada Bar No. 011218  
*Attorney for Defendant, Ingrid Patin*

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**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCF 5(b) and EDCR 7.26, I hereby certify that on this 23<sup>rd</sup> day of April, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF DECISION AND ORDER** was served to the following parties by electronic transmission through the Odyssey eFileNV system and/or by depositing in the US Mail, postage prepaid, addressed as follows:

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An Employee of NETTLES | MORRIS

DAO

DISTRICT COURT  
CLARK COUNTY, NEVADA

TON LEE,

Plaintiff(s)

vs

INGRID PATIN,

Defendant(s)

CASE NO.: A-15-723134-C

Department 26

**DECISION AND ORDER**

Plaintiff Ton Vinh Lee, DDS (Lee) filed the instant defamation action against attorney Ingrid Patin (Patin) and Patin Law Group PLLC (PLG) on August 17, 2015. The alleged defamatory statement was an online posting by Patin reporting the verdict in a wrongful death lawsuit filed against Plaintiff, the dental practice he owned at the time and individual dentists who treated the decedent. A verdict was initially entered in favor of the decedent's wife and child against the practice and individual dentist; Plaintiff in his individual capacity received a defense verdict, and the jury assessed 25% comparative negligence to the decedent.

The procedural history of both cases is discussed below, but the instant Motion is before the Court following Summary Judgment in favor of Patin and Patin Law Group. As prevailing party, Defendants Patin and PLG filed the motions currently before the Court each seeking fees and costs, pursuant to Offers of Judgment.



## FACTS

On Feb. 7, 2012, a lawsuit was filed against Plaintiff, his dental practice, and two assisting dentists, alleging dental malpractice (underlying case). The jury awarded \$3.4million against the individual dentist and the dental practice. Lee received a verdict in his favor and was awarded his costs against Plaintiff Singletary. Patin Law Group, as counsel for the decedent Singletary's widow and minor child in the underlying lawsuit, posted a statement on its website about the winning verdict. Following the statement being posted, the district court granted a renewed motion for judgment as a matter of law, overturning the jury award. The defense verdict in favor of Lee was not affected. The web post was removed. After the jury award in favor of the Singletarys was overturned, an appeal was filed and the verdict in favor of the Singletarys was eventually reinstated by the Supreme Court.

Plaintiff Lee filed the instant defamation action against attorney Patin and Patin Law Group on August 17, 2015. The Defendants' motion to dismiss was denied, and that denial was appealed. Defendants then filed an Anti-SLAPP motion, which was also denied, and another appeal was filed as to that issue. This case was stayed in part pending the outcome of the appeals. The Appeal of the order denying the first Motion to Dismiss was eventually dismissed. The Supreme Court affirmed denial of the Anti-SLAPP motion in a published decision. See,

*Patin v Lee*, 134 Nev. Adv. Op. 87, 429 P. 3d 1248 (2018). On January 19, 2017, during the pendency of the appeals, Defendant Patin served an Offer of Judgement in the amount of \$1,000 “inclusive of all accrued interest, costs, and attorneys fees and *any other sums that could be claimed by Defendant...*” Thereafter, on January 26, 2017 codefendant PLG served its offer of judgement for \$1,000 with the same language: “inclusive of all accrued interest, costs, and attorneys fees and *any other sums that could be claimed by Defendant...*” These offers were not accepted and the litigation continued.

After the remittitur, Defendant Patin filed a Motion for Summary Judgment which this Court denied on the ground that genuine issues of material fact existed. Following a period of discovery, Defendant Ingrid Patin filed a Motion for Summary Judgment, which Patin Law joined. The Court granted the Motion for Summary Judgment finding that the statement on the website was a fair and impartial reporting of the facts of the underlying case, and that statements regarding judicial proceedings are protected against defamation by the fair reporting privilege. The Court found that there is no distinction under the fair reporting privilege between an individual and a corporation, and the privilege would apply to both Defendant Ingrid Patin individually and Patin Law Group. During Plaintiff’s sworn deposition testimony, Plaintiff admitted every sentence of the statement was true, but did not admit it was true in its entirety.

## LEGAL ISSUES

### 1. Offer of Judgment

Patin and PLG each seek an award of attorney's fees pursuant to NRCP 68. The Nevada Supreme Court addressed the rules for considering a request for attorney's fees pursuant to an offer of judgment in *Wynn, v. Smith*, 117 Nev. 6, 16 P3d 424 (2001).

In exercising its discretion under [NRCP 68](#), the district court must carefully evaluate the following factors: (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendant's offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offer or are reasonable and justified in amount. *Beattie v. Thomas*, [99 Nev. 579, 588-89, 668 P.2d 268, 274 \(1983\)](#).<sup>1</sup>

The court's goal in considering offers of judgment is predictability and fairness. Shifting fees and costs between parties is in derogation of common law, so application of the rule should be strictly construed. This includes meeting time deadlines and other formal requirements. *See, Quinlan, v. Camden USA, Inc.*, 126 Nev. Adv. Op. 30, 236 P.3d 613, 615 (2010, *citations omitted*) There is no question that the offers of judgment were timely served.

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<sup>1</sup> *Beattie v Thomas* was decided under Nevada's former statutory offer of judgment provision NRS 17.115, but the analysis has been extended to offers pursuant to NRCP 68.

Defendants argue Plaintiff Lee's case was not brought in good faith. The Court does not agree, this matter was vigorously contested on a number of complex legal theories, with two appeals during the pendency of the litigation. Plaintiff argues that much of the motion practice regarding these legal issues was initiated by the Defendants, and when they lost, they pursued interim appeals, which they also lost. The initial Motions for Summary Judgment, brought before any discovery was conducted, were denied on the grounds that questions of fact existed. Next Defendants pursued an Anti-SLAPP defense, also denied, which was appealed as a matter of right, but again Defendants lost, but which resulted in a published decision as the case raised a question of first impression in Nevada. Only after discovery was concluded and Defendants filed another Motion for Summary Judgment did the Court find in favor of Defendants. For this reason, the Court finds Plaintiff Lee brought the case in good faith.

The next element addressed in *Wynn v Smith*, which is relevant to the issue herein, is whether the offers were reasonable in timing and amount. The Defendants' offers were made during the pendency of their appeal of the initial denial of their motions to dismiss. This appeal was not successful, thus Plaintiff Lee argues the timing was not reasonable as the offers were so early in the litigation, and at a point where Defendants had not been successful in

their efforts to dismiss the case. Further, Plaintiff argues he beat Defendants' Offers of Judgement, which were inclusive of attorney fees. The respective offers of the Defendants each in the amount of \$1,000 inclusive of interest, costs and attorney fees did not present a more favorable outcome for Plaintiff based on the amount he has spent in attorney fees alone. However, this analysis does not include the entirety of the language of the offers, which were not inclusive of *Plaintiff's* attorneys fees, but of the Defendants attorney's fees and "any other sums that could be claimed by Defendant... against Plaintiff." Considering the entirety of the language of the offer, the Court finds that the Offers of Judgement were reasonable in timing and amount, as Defendants had signaled they intended to vigorously litigate the legal issues presented in the defamation case.

The third factor is whether Plaintiff's decision to reject the offers was grossly unreasonable or in bad faith. Plaintiff argues that it was reasonable for him to reject the offers at the time they were made, when Defendants had unsuccessfully sought dismissal of the case before the trial court, and were facing dismissal of their appeal of that decision. The Court agrees that the offers were made early in the litigation, at a time when Plaintiff Lee was in a favorable position with respect to the then pending appeal. However, Plaintiff incorrectly analyzed the offer based on the amount of the offer being

insufficient amount to pay his fees and costs at the time, when the offers should have been analyzed in light of the risk to him of paying Defendants' fees and costs. This factor is a close call between the parties as Defendants' offers were very early in the case when they were not in a favorable position, but Plaintiff did not properly consider the risk to him if Defendants ultimately prevailed. While the Court does not find Plaintiff's incorrect analysis of the offers to be "in bad faith," his choice to reject the offers was "unreasonable," although not "grossly unreasonable." The purpose of the fee shifting provision of NRCP 68 is to encourage settlement, and Defendants offered Plaintiff an early opportunity to take judgment against them, when he rejected their offers he accepted the risk that he would be responsible for attorneys fees and "any other sums that could be claimed by Defendant... against Plaintiff." See, *In re Rose Miller*, Id., at 553.

The final element, reasonableness of the fees sought is analyzed under the "*Brunzell*" test established by the Nevada Supreme Court for analysis of attorney's fees awards.

## **2. Reasonableness of Attorney's Fees**

In the event attorney's fees are awarded, the amount must be reasonable. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345 (Nev. 1969). The Court is

generally familiar with hourly billing rates in the local community for the type of litigation and finds that the rate charged by counsel is reasonable. The total amount of fees requested appears reasonable when evaluated under the four general categories defined in *Brunzell*: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed by the lawyer; and (4) the result.

The Supreme Court has held that the determination of “a reasonable fee” is subject to the discretion of the court “tempered only by reason and fairness.” See, *Schuette, v. Beazer Homes*, 121 Nev. 837, 123 P.3d 530 (2005). By weighing the *Brunzell* factors “...the result will prove reasonable as long as the court provides sufficient reasoning and findings in support of its ultimate determination.” *Schuette*, Id. at 864-865.

Here, counsel for both Defendants provided invoices based on hourly billing. While Plaintiff contends that the attorney fees sought are unreasonable, the qualities of the advocates were not challenged; instead the opposition focused on the reasonableness of the time billed, as well as was the work actually done pursuing motion practice or unsuccessful appeals. Plaintiff objects to the fees sought by PLG for attorney Micah Echols who handled the appeal of the denial of the Anti-SLAPP motion; the Motion and the Appeal were unsuccessful and Plaintiff argues added needlessly to the litigation. Plaintiff extends this argument

to fees sought by counsel for Defendant Patin. The Defendants argue that fees and costs incurred on *appeal can be awarded by the trial court. See, In re Estate and Living Trust of Rose Miller*, 125 Nev 550, 216 P.3d 239 (2009):

In other contexts, we have held that an attorney fees award includes fees incurred on appeal. *See Musso v. Binick*, 104 Nev. 613, 614, 764 P.2d 477, 477–78 (1988) (holding that “a contract provision for attorney’s fees includes an award of fees for *successfully bringing or defending an appeal*”). Additionally, nothing in the language of NRCP 68...suggests that their fee-shifting provisions cease operation when the case leaves trial court. We therefore hold that the fee-shifting provisions in NRCP 68...extend to fees incurred on and after appeal. *Id.*, at 555 (*emphasis added*)

Here, the issue raised by Plaintiff is not so much whether fees incurred by the successful party may include fees for an appeal, but whether it is *reasonable* to award fees where the party was unsuccessful on an interim appeal, although ultimately *successful* in the case. Anti-SLAPP motions are a creature of statute, and attorneys fees may be awarded against the party who brings an unsuccessful anti-SLAPP motion if it is found “frivolous or vexatious.” NRS 41.670 (2). No such finding was made in this case, and the Court notes that the anti-SLAPP appeal presented unique issues of law resulting in a published decision. This statutory provision factors into the analysis of the reasonableness of the fee request.

In *Rose Miller*, the Supreme Court noted that it had held, in the context of an award of fees based on fee provision in a contract, that fees for “successful” defense of an appeal could be recovered, but that the question was better left to the



trial court to determine. See, *Musso v. Binick*, 104 Nev. 613, 614. *Rose Miller* was an offer of judgment case wherein a jury verdict in favor of Respondents was overturned on appeal, and as a result they ultimately failed to recover a verdict more favorable than that offered by the Appellant, the Supreme Court determined that upon remand to the District Court should have awarded fees for the *successful* appeal. Id, 125 Nev. at 552.

The Court will consider the reasonableness of the fee request in light of the *Brunzell* factors: the character of the work, the work actually performed, and the result. These same rules apply to those fees incurred for the *unsuccessful* appeals.

**Patin Law Group PLLC:** PLG requested attorney's fees for attorney Kerry Doyle for the defense of the case in the District Court from September 5, 2019 through the successful Summary Judgment Motion. Attorney Doyle's fees are all related to the post-appeal phase of the litigation, and appear reasonable for the tasks described. The rate of \$400 is reasonable in the community for an attorney of Mr. Doyle's expertise.

The Defendants had separate counsel because the interests of the corporate entity PLG and the individual, attorney Patin, were separate, therefore, the court does not find unnecessary duplication of effort as both counsel attended depositions and appeared at hearings. The attorney's fees billed by Mr. Doyle of \$10, 200 are reasonable in light of the *Brunzell* factors.

PLG retained separate counsel to handle the unsuccessful appeal of the denial of anti-SLAPP motion, attorney Micah Echols an appellate specialist. As mentioned, the anti-SLAPP issue presented a question of first impression with respect to the Nevada statute and resulted in a published decision; however, the same reasonableness factors must be applied to both the district court fees and the appellate fees. Anti-SLAPP motions involve a sophisticated and complex area of litigation; however, Plaintiff argues pursuing the issue was unreasonable and the Defendants were unsuccessful. The anti-SLAPP statute provides that attorney's fees are recoverable against a party who pursues a frivolous or vexatious motion. Further, the party whose anti-SLAPP motion is denied is entitled to an appeal as a matter of right. NRS 41.670 (4). The unique nature of the anti-SLAPP statutes factor into the consideration of whether the "result" of an unsuccessful anti-SLAPP motion and appeal should be considered to be unreasonable in a *Brunzell* analysis.

Mr. Echols billing records consist of block billed entries. In considering an award of attorney's fees where counsel block billed time, the Nevada Supreme Court has held that practice is not necessarily inappropriate so long as each entry is sufficiently detailed that the nature of the tasks billed can be determined. See, *In re Margaret Mary Adams 2006 Trust*, Case No. 61710, March 2015 (unpublished). Here, billing entries are sufficiently detailed such that, when read in context with other entries, the court can determine what tasks were performed. As a specialist

in appellate practice the hourly fee of \$500 is not unreasonable. Given the nature of the issue, it was not unreasonable to retain separate counsel for the appeal, but the Court cannot overcome the fact that the “result” of the appeal was not in Defendants’ favor. For this reason the Court finds the fees billed for the unsuccessful appeal do not satisfy the Brunzell factors, and will not be awarded. The requested costs are addressed below.

**Ingrid Patin:** Attorney Patin had separate counsel, Christian Morris, who represented the Defendant throughout the litigation including both appeals. Ms. Morris submitted detailed time sheets which separated pre offer of judgment hours from the post offer time. Reviewing the time sheets the Court finds no clearly identifiable post offer billing entries related to the first unsuccessful appeal, additionally most of the billing at the District Court level on the special motion to dismiss pursuant to NRS 41.635-70 (anti-SLAPP motion) pre dates the offer. Ms. Morris’ post offer billing entries detail approximately 16 hours clearly related to the anti-SLAPP appeal. Ms. Morris’ billing rate is \$500 per hour, more than reasonable given her expertise. The Court does not find the time billed for the other motion practice at the District Court level to have been unreasonable, even though the first Summary Judgment motion was denied given questions of fact at the early stage of the litigation. Generally time billed during the discovery phase seems does not appear to have been overly duplicative as both attorney Patin and

PLG had separate counsel and separate interests to defend. The post offer time billed by Ms. Morris totals 217 hours, the Court will round this down to 200 hours after deducting hours related to the unsuccessful anti-SLAPP appeal. The Court will award Ms. Morris \$100,000 attorneys fees, plus costs as discussed below.

### **3. Costs**

The Nevada Supreme Court has held that pursuant to NRCP 68(f)(2) a party who fails to improve upon a rejected offer of judgment “...*shall pay the offeror’s post-offer costs ...and reasonable attorney’s fees, if any be allowed, actually incurred by the offeror from the time of the offer....*” See, *Logan v Abe*, 131 Nev. 260, 264-265, 350 P.3d 1139 (2015) (*Emphasis original*) Based on this language the award of costs is mandatory, while the award of attorneys fees must go through the reasonableness analysis.

Allowable costs are defined by NRS 18.005. The determination of allowable costs is within the discretion of the district court. *Gibellini v Klindt*, 110 Nev. 1201, 1205 885 P2d 540, 542-543 (Nev. 1994) However, statutes permitting costs are in derogation of the common law and therefore should be strictly construed. *Id.* The district court has courts wide, but not unlimited, discretion to award costs to prevailing parties. Cost must be documented such that the court can determine the costs were reasonable necessary and actually incurred. See, *Cadle Co., v. Woods Erickson LLP*, 131 Nev. 114, 120, 345 P.3d 1049 (2015)

Here, attorney Morris provided detailed documentation for the costs incurred, in the form of a Memorandum of Costs, affidavit of counsel stating the costs were true and correct, and necessarily incurred, and attached supporting documentation for each item except in house copy costs. However, only post-offer costs may be awarded so costs related to the initial filings and first appeal must be deducted. The deductions are: \$353.69 for filing fees, \$230 for Supreme Court filing fees, and \$500 Supreme Court Appeal Bond. Costs for the second appeal, even though unsuccessful, are recoverable under NRS 18.005 and NRS 68. It is not possible to differentiate how much of the copy costs line items were incurred prior to the offer of judgment; however, the total number of pages (812) over five years of litigation at twenty five cents per page is de minimis.

The billing statement provided by Mr. Echols from his former law firm does not include any supporting documentation provided for the costs on appeal, most of which are related to travel for the appellate argument, and Westlaw charges. The Court assumes the amounts recorded are correct; however, *Cadle* requires that the Court base an award of costs on evidence. Here, Mr. Echols has provided an affidavit that the costs incurred are accurate, but the information provided does not meet the requirements of *Cadle*.

## CONCLUSION

With this guidance in mind, the court has reviewed the fees to determine whether the fees requested satisfy the reasonableness requirements of Brunzell. The Court finds that sufficient information is present upon which to evaluate the reasonableness of the claim for attorneys' fees under *Brunzell*. The Court finds that fees paid to Mr. Doyle by Patin Law Group are recoverable, but the fees and costs requested for the unsuccessful appeal billed by Mr. Echols are not reasonable, and cannot be recovered; further, absent appropriate documentation for costs, the costs must also be denied. The fee requests for Ms. Morris as adjusted for the unsuccessful appeal are recoverable, and the post offer costs are sufficiently documented to be recoverable.

**WHEREFORE**, the Patin Law Group, PLLC Motion for an Award of Fees and Costs is **GRANTED** in part pursuant to NRCP 68 as to the \$10,200 for fees paid to Mr. Doyle, and **DENIED** as to the fees and costs paid to Mr. Echols former law firm.

**FURTHER**, Defendant Ingrid Patin's Motion for an Award of Fees and Costs is **GRANTED** pursuant to NRCP 68 as to attorney's fees paid to Ms. Morris

in the amount of \$100,000, and **GRANTED** as to post offer costs in the amount of \$10,600 pursuant to NRCP 68 and NRS 18.005.

**IT IS SO ORDERED**

DATED: April 20, 2021

Dated this 21st day of April, 2021



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**D7A 7E7 92BB 91AE  
Gloria Sturman  
District Court Judge**

Counsel for defendant to prepare a Notice of Entry.

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Ton Lee, Plaintiff(s)

CASE NO: A-15-723134-C

7 vs.

DEPT. NO. Department 26

8 Ingrid Patin, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Decision and Order was served via the court's electronic eFile system  
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/21/2021

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