

ALBERT ELLIS LINCICOME, JR. and  
VICENTA LINCICOME,

Appellants,

V.

SABLES, LLC, A NEVADA LIMITED LIABILITY COMPANY, AS TRUSTEE OF THE DEED OF TRUST GIVEN BY VICENTA LINCICOME AND DATED 5/23/2007; FAY SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND SUBSIDIARY OF FAY FINANCIAL, LLC; PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A., AS LEGAL TITLE TRUSTEE; BANK OF AMERICA, N.A.; BRECKENRIDGE PROPERTY FUND 2016, A UTAH LIMITED LIABILITY COMPANY; NEWREZ, LLC, D/B/A SHELLPOINT MORTGAGE SERVICING, LLC.; 1900 CAPITAL TRUST II, BY U.S. BANK TRUST NATIONAL ASSOCIATION; AND MCM-2018-NPL2,

Respondents.

NEVADA SUPREME COURT  
Electronic Case File

**CASE NO.:** 83261

Elizabeth A. Brown  
Clerk of Supreme Court  
THIRD JUDICIAL DISTRICT  
COURT CASE NO.: 18-CV-01332

3261  
Electronically Filed  
Dec 29 2021 05:40 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court

**MOTION TO EXTEND TIME FOR FILING APPELLANTS' OPENING  
BRIEF AND APPENDIX**


Pursuant to Nevada Rule of Appellate Procedure 31(b), Appellants Albert Ellis Lincicome, Jr. and Vicenta Lincicome, by and through their attorney, Michael G. Millward, Esq., of Millward Law, Ltd., hereby move this Court for an order to file their Opening Brief and Appendix late following the Clerk's rejection of Appellants' Opening Brief filed on December 23, 2021, and the Appendix to Opening Brief filed on December 23, 2021, and December 24, 2021. This Motion

is based on NRAP 31(b), the Clerk's Notice of Rejection of Deficient Brief, the accompanying Memorandum of Points and Authorities and the Declaration of Counsel attached hereto.

DATED this 29<sup>th</sup> day of December, 2021.

MILLWARD LAW, LTD

By:



Michael G. Millward, Esq.

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Attorney for Appellants

## **POINTS AND AUTHORITIES**

Appellants filed their Opening Brief on December 23, 2021, and simultaneously filed their Appendix to Opening Brief on December 23, 2021, and December 24, 2021

The Court Clerk's December 28, 2021 Notice of Rejection of Deficient Brief provides that Appellants' Opening Brief and Appendix were filed untimely, and that the certificate of compliance was deficient for not containing a statement that the document complies with the formatting requirements of Rule 32(a)(4)-(6), and either the page-or type-volume limitations stated in Rule 32(a)(7).

Appellants' deadline for filing their Opening Brief and Appendix was December 23, 2021. While the Opening Brief was electronically filed on December 23, 2021, at 11:23 p.m., and the Appendix to Opening Brief Volumes 1-6 were electronically filed on December 23, 2021, at 11:59 p.m., Volumes 7-18 of the Appendix to Opening Brief were filed on December 24, 2021. Appellants respectfully move this Court for an extension of time to file their Opening Brief and Appendix.

The Opening Brief was timely filed on December 23, 2021, and the Appendix to Opening Brief was partially filed on time on December 23, 2021, and completely filed by December 24, 2021. The late filing occurred upon unforeseen

technical issues that prevented the complete timely electronic filing of the Appendix to Opening Brief on December 23, 2021.

Appellants' counsel attempted to file all volumes of the Appendix to Opening Brief in the evening on December 23, 2021. However, the document was not accepted by the electronic filing system because of size restraints imposed by the filing system. The error occurred despite the fact that Appellants' counsel's staff had contacted the Clerk of the Supreme Court on December 15, 2021, and was incorrectly advised that the upload file size limit for electronically filed documents was 28 megabytes. Prior to December 23, Appellants' counsel had taken time to compress and resize each of the volumes of the Appendix to be below 28 megabytes. However, on December 23, 2021, at approximately 11:23 p.m. Appellants' counsel learned that many of the prepared volumes of the Appendix would have to be reduced and further compressed to be within the 12 megabyte limitation. The undersigned counsel was unable to resize and compress all 18 volumes before expiration of the filing deadline.

Further, Appellants' Opening Brief contained a Certificate of Compliance stating that "this opening brief follows the formatting requirements of NRAP 32(a)(4), the typeface requirement of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This brief has been prepared and proportionally spaced using Microsoft Word 2010 in Times New Roman, 14 point and with 1

inch margins.” Unfortunately, Appellants’ counsel omitted a statement that the brief was filed in compliance with the requirements of NRAP 32(a)(7) (A)(ii) and contains less than 14,000 words. The language of the Certificate of Compliance has been revised and the Opening Brief updated to reflect that all requirements as to length and form have been met.

Counsel for the Appellants respectfully requests an extension of time to file the Opening Brief and Appendix to Opening Brief to comply with the Clerk’s Notice of Rejection of Deficient Brief, the Orders of this Court, and the requirements of NRAP 32(a).

### **CONCLUSION**

Based on the foregoing and the Court Clerk’s Notice of Rejection of Deficient Brief, Appellants request that this Court find that an extension of time for the filing of the Opening Brief and Appendix to Opening Brief is reasonable and warranted, and that the Court order that Appellants’ Opening Brief be permitted to be filed late.

Respectfully submitted 29th day of December, 2021.

MILLWARD LAW, LTD

By: \_\_\_\_\_  
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**DECLARATION OF MICHAEL G. MILLWARD, ESQ.**

STATE OF NEVADA                    )  
  )ss.  
COUNTY OF DOUGLAS            )

Michael G. Millward, Esq., being first duly sworn upon oath, deposes and states as follows:

1. I am an attorney licensed to practice law in the State of Nevada. I represent Appellants Albert Ellis Lincicome, Jr. and Vicenta Lincicome in connection with this appeal;

2. Appellants' Opening Brief and Appendix to Appellants' Opening Brief became due on December 23, 2021;

3. My office contacted the Clerk of the Supreme Court on December 15, 2021, and was advised that the upload limits for documents to be electronically filed was 28 megabytes;

4. I compressed and resized all volumes to be within the 28 megabyte limitation.

5. On December 23, 2021, after filing the Opening Brief I was unable to file all volumes of the Appendix to Opening Brief prior to the expiration of the filing deadline;

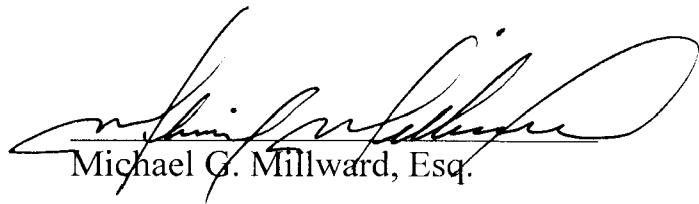
6. The volumes prepared for the Appendix to Opening Brief were not accepted by the electronic filing system because they exceeded 12 megabytes in

size. I proceeded to resize and compress the volumes of the Appendix to fit within the electronic filing system's 12 megabyte limitation;

7. Unfortunately, I was unable to resize and reorganize the 18 separate volumes before expiration of the filing deadline;

8. Appellants' Opening Brief omitted a statement that it was filed in compliance with the requirements of NRAP 32(a)(7) (A)(ii) and contains less than 14,000 words; and

9. The Opening Brief has been updated to comply with NRAP 32 including a statement that the brief contains less than 14,000 words.



Michael G. Millward, Esq.

## **PROOF OF SERVICE**

I hereby certify that the foregoing MOTION TO LATE FILE APPELLANTS' OPENING BRIEF shall be served via electronic service from the Court's eFlex system to:

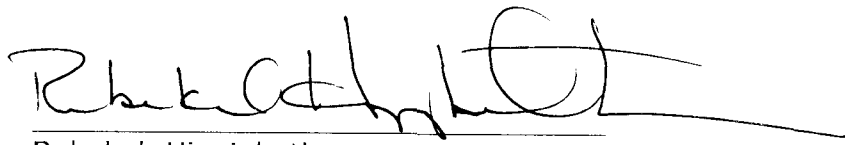
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