IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND BROOKS; AND BRADY LINEN SERVICES, LLC, Appellants, v. JERRELL TURNER; AND KESHA FRYER, Respondents.	**Supreme Court No. 82881** District Court Case No. A-18-780839

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable Kathleen Delaney, District Court Judge
District Court Case No. A-18-780839-C

APPELLANTS' RAYMOND BROOKS AND BRADY LINEN SERVICES, LLC's OPENING BRIEF

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DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the Appellant Raymond Brooks is an individual. As to Appellant Brady Linen Services, LLC ("Brady Linen"), there are no parent corporations or publicly held companies that own 10% or more of its stock. Alvarez & Marsel Capital own a majority interest in Brady Linen.

Michael Hall, Esq. appeared for Appellants Brooks and Brady Linen in the proceedings in the District Court.

DATED this 8th day of December, 2021.

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I. JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to NRAP 3A(b)(1) because the district court's Default Judgment of April 1, 2021 is a final order resolving all claims between all parties. The April 1, 2021 order was served on April 5, 2021 by electronic filing and US mail. The notice of appeal was timely filed on May 5, 2021 pursuant to NRAP 4(a).

II. ROUTING STATEMENT

This case involves an appeal from a judgment of $250,000 or less in a tort case and is therefore presumptively retained by the Nevada Court of Appeals pursuant to NRAP 17(b)(5).

III. ISSUES ON APPEAL

1. Whether pre suit conversations between an insurer and the plaintiffs, including a denial of plaintiff's claims, constitutes an "appearance" in the case for the purposes of Rule 55(b)(2).

2. Whether a default which has been entered against a party, without providing a three-day notice of intent to default to an insurer which has appeared in the case, is void under Nevada law.

IV. STATEMENT OF THE CASE

This case is an appeal of a default judgment obtained by the Appellees against the Appellants in the combined amount of $192,552.42. The action giving

rise to the lawsuit was an accident which occurred on September 10, 2016. The Appellees claimed that the defendants were at fault for causing the accident and claimed that they suffered injuries as a result of the accident.

Appellees filed their complaint on September 10, 2018. On April 8, 2019, Plaintiffs sent a three-day notice of default to the Appellants. A default was entered against the Appellants on March 5, 2019.

On May 20, 2020 Appellants filed their Motion to Set Aside Default Judgment on order shortening time. The District Court Judge, Judge Kathy Delaney, set the hearing on the motion for June 2, 2020. Judge Delaney also indicated that the opposition to the motion was to be due on May 29, 2020. Finally, Judge Delaney ordered no reply to the motion would be permitted.

The hearing on the Motion to Set Aside went forward on June 2, 2020. After hearing oral argument, the judge denied Appellant's motion. The court then sent an evidentiary hearing on Plaintiff's motion for default judgment on August 6, 2020. After hearing evidence at the hearing, Judge Delaney entered judgment against appellants in the amount of $149,711.08 in the case of Appellee Jerrell Turner, and in the amount of $52,841.34 in the case of Appellee Kesha Fryer.

A Notice of Entry of Order of the default judgment was served on April 5, 2021. The notice of appeal was timely filed on May 5, 2021.

V. STATEMENT OF RELEVANT FACTS

This lawsuit arises out of an accident which occurred on September 10, 2016. (V. I, AA03.) On that date, Appellee Kesha Fryer was driving a 2000 Nissan Maxima and was entering the I-15 freeway from the on-ramp at Charleston Blvd. Id. As she did so, the front of the car driven by Miss Fryer made impact with the rear section of a tractor trailer owned by Brady Linen. Id.

The driver of the Brady Tractor trailer was Appellant Raymond Brooks. Both drivers claimed that the other driver was at fault for causing the accident. Mr. Brooks claimed that Miss Fryer had failed to safely merge onto the freeway. (V. I, AA048.) Miss Fryer, on the other hand, claimed that Mr. Brooks had made an unsafe lane change to the right. (V. I, AA048.)

Appellants reported the accident to its insurance carrier, Travelers Insurance. (V. I, AA040.) By September 19, 2016, or just nine days after the accident, Travelers had communications with a lawyer by the name of Mr. Robert Curtis, Esq. Id. Mr. Curtis indicated that he represented both of the Appellees. (V. I, AA040.) The claim was eventually assigned by Travelers to a technical specialist by the name of Julie Belletire. Id. Miss Belletire then began to investigate the facts and circumstances of the September 10th accident. (V. I, AA040-41.)

On September 20, 2016 Miss Belletire contacted Mr. Curtis. (V. I,

AA040.) Mr. Curtis said that he was representing three persons who had allegedly been injured in the September 10 accident. Id. He claimed to represent Appellees Turner and Fryer, along with one other individual who he could not name. Mr. Curtis declined to allow his clients to give a recorded statement to Travelers. Id.

Miss Belletire followed up with an email communication on the date of her September 20 conversation with Mr. Curtis. Id. In that email, Miss Belletire stated as follows:

> Hello, Mr. Curtis,
>
> Thank you for your time on the phone today. As we discussed, I have hired an appraiser to inspect your client's vehicle for damages. Once my investigation into liability is complete, I will reach out to you and let you know.
>
> You can forward your letter of representation to 877-801-9764.
>
> Thank you.

(V. I, AA040.)

Three days later, Miss Belletire again followed up with Mr. Curtis. Id. She indicated that she had not yet received a letter of representation from Mr. Curtis. Id. In response, Mr. Curtis said that he would send over a letter of representation and that he would also identify the third person who allegedly had been injured in the accident. Id.

Over the next week, Miss Belletire arranged to have the Nissan Maxima which was involved in the accident inspected. Id. In addition, Miss Belletire scheduled the inspection of the trailer of the truck Appellant Brooks was driving at the time of the accident. Id.

On September 27, 2016, Miss Belletire sent another email to Mr. Curtis. In that email, Ms. Belletire again asked for a letter of representation along with information about the third allegedly injured party:

> Hello Mr. Curtis,
>
> I wanted to touch base with you to see if you have information for the third person claiming injuries from this accident yet. I also need a letter of representation and more detailed information for the injuries and treatment for Jerrell and Kesha.
>
> Thank you.

(V. I, AA041.)

Three days later, on September 30, 2016, Miss Belletire spoke with Mr. Curtis. Id. On that date, Mr. Curtis told Miss Belletire that the name of the third allegedly injured person was "Raven." Id. He also again indicated that he would be getting her a letter of representation. In response, Miss Belletire indicated that, although she had not yet completed her investigation, Travelers was likely to deny the claim on the grounds that it was Ms. Fryer and not Mr. Brooks, who was at fault for causing the accident. Id.

Miss Belletire again spoke to Mr. Curtis on October 5, 2016. Mr. Curtis again indicated that he would be getting a letter of representation. Id. Miss Belletire then explained that Travelers had made the decision to deny the claim. She also indicated that she was no longer willing to wait for the letter of representation which had been repeatedly requested. Id. Miss Belletire also said that Mr. Curtis' clients, the Appellees, had recently left a direct message for Miss Belletire. Finally, Miss Belletire said that she would be sending a denial letter directly to the Apellees at their listed addresses. Id.

Miss Belletire also spoke with Miss Fryer on October 5, 2016. On that date, Miss Fryer requested information about the property damage to the Nissan Maxima. Id. Miss Belletire responded by stating that Travelers was going to be denying the claim. Miss Belletire followed up with letters dated October 6, 2016, to both Miss Fryer and Mr. Turner. (V. I, AA041.)

Appellees filed their Complaint on September 10, 2018. (V. I, AA01.) The Complaint was served on October 4, 2018 in the case of Brady Linen, and October 21, 2018 in the case of Appellant Brooks. (V. I, AA07-AA08.) No copy of the Complaint was sent to Miss Belletire or to Travelers Insurance. Furthermore, Travelers was not otherwise given notice that the Complaint had been filed.

On April 8, 2019, Counsel for Appellees sent notices of intent to take default to the Appellants. (V. I, AA015-AA018.) No such notice of intent to take default was sent to Miss Belletire or to Travelers Insurance.

Appellees filed their motion for default on April 30, 2020. (V. I, AA019.) The court clerk entered default against the Appellants on March 4, 2019. (V. I, AA09-AA14.) Counsel for Appellees then forwarded a copy of the default which had been entered against the Appellants to Appellant Brady Linen. Thereafter, a representative of Brady Linen contacted Travelers Insurance and forwarded copies of pleadings, including the Default, to Miss Belletire. (V. I, AA042.)

On May 20, 2020, Appellants filed their motion to set aside default. (V. I, AA029.) In that Motion, Appellants argued that an "appearance," had been made on their behalf by Travelers Insurance. Specifically, Appellants argued that the pre-lawsuit communications between Miss Belletire and Appellees and Appellees' counsel was an appearance based upon the Nevada Supreme Court's rulings in Christy v. Carlisle, 94 NV 651, 584 P.2d 687 (1978) and its progeny. (V. I, AA035-AA36.) The court in Christy had ruled that a party's insurer makes an appearance for the purpose of Rule 55(b)(2) where it indicates an intent to defend a lawsuit.

The court set a hearing on the motion for June 2, 2020. The court also indicated that the response to the motion would be due on May 29, 2020. Finally, the Court ordered that no reply would be allowed.

The hearing on the Motion went forward on June 2, 2020. (V. I, AA053.) At the hearing, Judge Delaney initially expressed doubt as to whether communications between an insurance company and a claimant could constitute an appearance even though the communications occurred before litigation had even begun:

> THE COURT: I am glad you brought up, Christy, because I was going to ask you about that directly of you if you did not, but there is a pretty good, shall we say, explanation from the Plaintiffs' perspective of what they believe Christy does and doesn't do in relationship to this case, and distinguishes it.
>
> And it does seem to be distinguishable in terms of -- I guess a better way I would put it is, it seems to me that you are extrapolating Christy to fit the facts of this case where basic claim involvement of an insurance company well before litigation somehow flows forward into litigation to require the insurance company to be directly contacted, and I am not sure that I can read Christy to stand for that proposition.

(V. I, AA064.)

Counsel then pointed out that this in fact had been the ruling of the court in the case of Lindblom v. Prime Hospitality Corp., 125, NV 372, 375- 6, 90P.3D 1283, 1285 (2004).

Ultimately, the court held that the nature of the pre-suit activities and communication made by Miss Belletire and Travelers was not sufficient to constitute an appearance:

> The only issue here, really, when it all boils down, is were those activities by the insurance company back when these claims first started, sufficient to require some future date that the insurance company be notified, and I don't believe they were.
>
> I think it was basic claims processing, and I think the ultimately tipping point over to the Plaintiffs' side on this argument was that it was clear that it did not appear that Travelers' intended to defend these claims.
>
> And in that sense, I don't think we get into then Christy. And although Lindblom may stand for the proposition that there could be a party who was active pre-litigation, and should have been noticed, that when you take all of this together, I fear that if I were to be on the insurance company's side in this particular case, under these particular facts, I would basically be opening the door to an argument that as long as an insurance company did something in a claim process at all, that they would always have to be a noticed party in any subsequent litigation, and I just can't take it there.

(V. I, AA080-AA081.)

An evidentiary hearing was held on plaintiff's s Motion for a Default Judgment on August 6, 2020. After taking evidence, the court entered judgment in favor of the Appellees and against the appellants in the total amount of $192,552.42. (V. I, AA0104.) The Appellees filed their notice of entry of order of judgment on April 5, 2021. (V. I, AA0110.) The Appellants filed their timely notice of appeal on April 5, 2021. (V. I, AA0118.)

/ / /

VI. SUMMARY OF ARGUMENT

The District Court committed error when it refused to set aside the default that had been entered against the Appellants. The record presented to the court demonstrated that the insurer for the appellant's, Travelers insurance, had engaged in communications with the appellees and their lawyer at the time. The record also showed that Travelers had denied the claim, which evidenced a clear intent to defend the case. Furthermore, well-established law from the Nevada Supreme Court establishes that the type of communications engaged in by Travelers constituted an appearance for the purposes of rule 55(b)(2) of the Nevada Rules of Civil Procedure. As a result, the failure to provide Travelers with a 3 day notice of intent to take default renders the default void. Therefore, this court should reverse the order and judgment of the District Court, and remand this case back to the District Court for litigation and trial of the case on its merits.

VII. STANDARD OF REVIEW

A District Court's determination as to whether or not to set aside a default judgment is reviewed under an abuse of discretion standard. See Gazan v. Hoy, 102 NV 621, 730 P.2d 436 (1986); Union Petrochemical Corp. v. Scott, 96 NV 337, 607 P.2d 323 (1980).

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/ / /

VIII. ARGUMENT

A. The District Court erred by declining to set aside the default in this case

1. The Conduct of Appellant's Insurer Constituted an Appearance Pursuant to Rule 55(b)(2) Such that the Default is Void.

Pursuant to rule 55(b)(2) of the Nevada Rules of Civil Procedure, a party or its representative must be given written notice three days prior to any hearing on an Application for Default:

> In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, guardian ad litem, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the State.

NRCP Rule 55(b)(2). Where a default has been entered without the required three day notice, that default is void. See Lindblom v. Prime Hospitality Corp, 125 Nev. 372, 375-6, 90 P.3d 1283, 1285 (2004).

In the case of Christy v. Carlisle, 94 Nev. 651, 584 P.2d 687 (1978), the Nevada Supreme Court held that negotiations between a defendant's insurance

company and a claimant can constitute an “appearance" for the purposes of rule (55)(b)(2). In Christy, the plaintiff filed a lawsuit against an individual defendant shortly before the expiration of the two-year limitation period. 94 Nev. At 652-53, 584 P.2d at 688. Shortly thereafter, counsel for the plaintiff contacted the insurer for the defendant and indicated that the insurer had an indefinite extension of time to answer. Negotiations took place between counsel for plaintiff and the insurance company, but no settlement was reached. Id. Thereafter, service was made on the defendant. When no responsive pleading was filed by the defendant, plaintiff’s counsel caused a default to be entered in favor of plaintiff and against the defendant. The plaintiff did not provide a three day notice of intent to take default on the insurance company. Later, a default judgment in the amount of $60,000 was obtained. Several months after the judgment was entered, notice was given to defendant’s insurance company. 94 Nev. at 654, 584 P.2d at 688.

The defendant sought to have the default judgment set aside on the grounds that the correspondence between plaintiff's counsel and the defendant’s insurance company should be deemed an appearance under rule (55)(b)(2). 94 Nev. at 653-54, 584 P.2d at 688-689. The District Court judge agreed and set aside the default and the default judgment. Id. The defendant later appealed the judge's order setting aside the default.

The Nevada Supreme Court affirmed the determination of the District Court. The court found that the insurance company had indicated a clear purpose to defend the suit, and therefore was entitled to a three day notice from plaintiff:

> Written notice of application for default judgment must be given if the defendant or representative has appeared in the action. The failure to serve such notice voids the judgment, Reno Raceway, Inc. v. Sierra Paving, 87 Nev. 619, 492 P.2d 127 (1971). An appearance within the contemplation of Rule 55(b)(2) does not necessarily require some presentation or submission to the court. Charlton L. Davis & Co., P. C. v. Fedder Data Center, 556 F.2d 308 (5th Cir. 1977). That rule is designed to insure fairness to a party or his representative who has indicated a clear purpose to defend the suit. H. F. Livermore Corp. v. Aktiengesellschaft Gebruder L.,139 U.S.App.D.C. 256, 432 F.2d 689 (1970); R.F. v. D.G.W., 560 P.2d 837 (Colo.1977); Feeney v. Abdelahad, 372 N.E.2d 1315 (Mass.App.1978).
>
> It is our underlying policy to have each case decided upon its merits. Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 380 P.2d 293 (1963). With this in mind, we approve the observation of the court in H. F. Livermore Corp. v. Aktiengesellschaft Gebruder L., supra, that a default judgment normally must be viewed as available only when the adversary process has been halted because of an essentially unresponsive party.
>
> Defendant Carlisle's insurance carrier had indicated a clear purpose to defend the suit. Indeed, it was duty bound to do so, and plaintiff's counsel must have known this. The insurance company was entitled to rely upon plaintiff's counsel's representation that it had an indefinite extension of time to answer subject to advice that the insured defendant had been served. The company was not notified of the fact of service. To allow the default judgment to stand in these circumstances would manifestly be unfair.

94 Nev. at 653, 584 P.2d at 689.

Notably, the court made it clear that it was the insurance company which was entitled to be notified of service. Although the defendant was an individual, the court indicated that it was the failure to notify "the company" which made the default judgment manifestly unfair. See Christy, 94 Nev. at 653, 584 P.2d at 689, ("The company was not notified of the fact of service. To allow the default judgment to stay under these circumstances would be manifestly unfair").

The court later extended the rule it had created in Christy in the case of Lindblom v. Prime Hospitality Corp., 120 Nev. 372, 980 P.3d 1283 (2004). In Lindblom, the plaintiff was injured at the property of the defendant, which was a local hotel. 120 Nev. at 374, 90 P.3d at 1284-85. In the year following the accident, the plaintiff and the defendant's insurance company engaged in settlement discussions. Id. When the parties were unable to reach a settlement, plaintiff filed suit against the defendant. Id. Although service was affected on the defendant, and the defendant forwarded the complaint to its insurance company, the insurer did not cause an answer to be filed on behalf of the defendant. Id. The plaintiff later entered default against the defendant and obtained a default judgment. Neither the defendant nor the insurance company were provided with a three day notice of intent to take default.

The primary issue presented in Lindblom was whether or not negotiations between an insurance company and a plaintiff occurring before suit

was even filed constituted an appearance for the purposes of rule 55(b)(2). The court found that the rule in Christy should be extended:

> Under NRCP 55(b)(2), a defendant that has appeared in an action is entitled to "written notice of the application for judgment at least 3 days prior to the hearing on such application." Under our decision in ***Christy v. Carlisle***, a judgment entered without notice when required under NRCP 55(b)(2) is void and subject to a motion to set aside. Such motions are made under NRCP 60(b)(3). Default judgments are only available as a matter of public policy when an essentially unresponsive party halts the adversarial process. In *Christy*, we held that settlement negotiations and exchanges of correspondence between plaintiff's counsel and defendant's insurance representative after suit was filed constituted an appearance implicating the three-day notice requirement of NRCP 55(b)(2).
>
> Here, however, no interaction of any kind took place between Lindblom and Prime Hospitality's insurer after commencement of the lawsuit. Lindblom, therefore, argues that the judgment is not void because an appearance cannot be made before an action is filed and Prime Hospitality made no appearance for more than six months after the complaint was filed. We disagree and conclude that the policy considerations underlying NRCP 55(b)(2)'s three-day notice requirement are furthered by equating pre-suit negotiations with an appearance under the rule. Accordingly, we extend our holding in *Christy* to require three days' written notice of hearings on applications for default judgments under NRCP 55(b)(2) when pre-suit interactions evince a clear intent to appear and defend. This conclusion is consistent with case authority from other jurisdictions on this issue.

120 Nev. at 375-761, 90 P.3d at 1285.

Under the analysis used by the Nevada Supreme Court in Christy and Lindblom, the default entered by plaintiff in this case should be deemed void. There were significant communications between Travelers and both plaintiffs and plaintiffs' counsel before this lawsuit was filed. A Travelers' representative, Miss

Belletire, was investigating the circumstances of the accident, and communicated with plaintiffs and counsel about the status of Travelers' investigation. Finally, Miss Belletire and Travelers made it clear to defendants that they were denying plaintiff's claim. All of this provided ample notice to plaintiffs that Travelers and Appellants were intent on defending the claims.

2. The Denial Letter Alone Constituted an Appearance Under Rule 55(b)(2).

Significantly, the Nevada Supreme Court has already held that a simple notice that a defendant believes a case is without merit suffices as the requisite "appearance" under rule 55(b)(2). In Franklin v. Bartsas Realty, Inc., 95 Nev. 559, 598 P.2d 1147 (1979). In Franklin, the defendant was served with the complaint, along with the summons indicating that an answer was due within 20 days. In response, the defendant sent the following simple letter by regular mail:

> Dear Sir:
>
> I failed to recognize any obligation to you or your client, because I had no contractual relationship with your client.
>
> Yours trully (sic) J. T. Franklin.

95 Nev. at 561, 598 P.2d at 1148. There was no further communication between the plaintiff and the defendant. 95 Nev. at 561, 598 P.2d at 1150.

Plaintiff caused a default to be entered against the defendant, and a default judgment was later entered against him. Thereafter, the defendant sought

relief from the default judgment, claiming that he had sufficiently "appeared" in the action, such that a three day notice of intent to take default was required. The court agreed and found that the letter issued by the defendant did constitute an appearance under rule 55(b)(2). 95 Nev. at 563-64, 598 P.2d at 1150.

In this case, Travelers and Miss Belletire did far more than the defendant did in Franklin. Here, there were several distinct communications between Travelers and plaintiffs and plaintiff's counsel. These culminated in the letter, specifically instructing Appellees of their claims being denied by Travelers. Therefore, under Franklin, Christy, and Lindblom, the denial letter was entitled to be served with a three day notice of intent to take default.

3. It is of no Significance that Brady Linen Was a Corporation.

In the present case, the District Court, in its order, indicated that the present case was distinguishable from Christy and Lindblom based upon the fact that one of the defendants in this case, Brady Linen was a corporation. In Franklin, however, the court specifically rejected the notion that a sophisticated client was not entitled to the protections of rule 55(b)(2).

> Bartsas, however, urges that because Franklin was an experienced businessman, and had been involved in prior litigation, his letter should not be held to constitute an appearance for purposes of Rule 55(b)(2). Bartsas relies upon two cases in which the courts did stress that the defendant involved was sophisticated or experienced in business or legal matters. See Wilson v. Moore and Associates, Inc., 564 F.2d 366 (9th Cir. 1977); Hansher v. Kaishian, 79 Wis.2d 374, 255 N.W.2d 564 (1977). Neither case, however, can be considered as standing for the

> proposition that an experienced businessman, even one who has been involved in previous litigation, is not entitled to the protection of Rule 55(b)(2) when he believes that he has responded to a summons and complaint as required.

95 Nev. at 564-565, 598 P.2d at 1150-51.

To the extent the District Court Judge based her decision to deny Appellant's Motion to Set Aside Default on the fact that Brady Linen was a corporation, that finding was in error. Like the defendant in Franklin, Brady Linen is and was entitled to the protections of Rule 55(b)(2).

IX. CONCLUSION.

This Court should reverse the decision of the District Court denying Appellant's Motion to Set Aside Default for the reason the default was void pursuant to Rule 55(b)(2) and established Nevada case authority.

DATED this 8th day of December, 2021.

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ATTORNEY CERTIFICATE

Pursuant to NRAP 28.2, the undersigned counsel certifies that:

1. This Opening Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman in size 14 point font.

2. I further certify that this Opening Brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contained approximately 4,133 words, which is less than the 14,000 word count available for an opening brief.

3. Finally, I certify that I have read the Opening 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 Opening Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion regarding matters in the record to be supported by a reference to the page of the record on appeal where the matter relied upon is to be found.

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/ / /

I understand that I may be subject to sanctions in the event that the accompanying Opening Brief is not in compliance.

DATED this 8th day of December, 2021.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that I am an employee of HALL JAFFE & CLAYTON, LLP, and that on the 8th day of December, 2021, the foregoing OPENING BRIEF was served upon the following parties via the Supreme Court's e-filing and service program, addressed as follows:

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