IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.; AND THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2006 J-8, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-J8, Appellants, vs. NV EAGLES, LLC, Respondent.	Supreme Court Case No.: 81239 Electronically Filed Feb 26 2021 11:52 p.m. Elizabeth A. Brown Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court, Department XXXII
The Honorable Rob Bare, District Judge
District Court Case No.: A-13-685203-C

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

In accordance with NRAP 26.1, the undersigned counsel of record for Respondent, NV Eagles, LLC ("NVE" or "Respondent"), certifies the following are persons and entities described in NRAP 26.1, and must be disclosed. These representations are made so the Judges of this Court may evaluate possible disqualifications or recusal.

Regarding all parent corporations of NVE and any public-held company which owns 10% or more of the party's stock, there are no such corporations.

In addition, the following is a list of the names of all law firms whose partners or associates have appeared for the party in this case, including proceedings in District Court.

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JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear this appeal pursuant to NRAP 3(A)(b)(1). The notice of entry of the district court's findings of facts, conclusions of law and judgment was entered on April 30, 2020 (4JA 921 – 29), which Appellants, Bank of America, N.A. and The Bank of New York Mellon fka The Bank of New York, as trustee for the Certificateholders of Cwalt, Inc., Alternative Loan Trust 2006 J-8, Mortgage Pass-Through Certificates, Series 2006-J8 (collectively "Bana") timely appealed on May 27, 2020 (4JA 930 – 33).

ROUTING STATEMENT

This appeal is presumptively retained by this Court because it raises a question of statewide public importance under NRAP 17(a)(12); and/or this matter is not one of the enumerated case categories presumptively assigned to the Court of Appeals under NRAP 17(b).

ISSUES PRESENTED

1. Did the district court correctly find that Bana did not satisfy the superpriority portion in the amount of $540.00 of the HOA lien when Bana tendered a check for $486.00 to the HOA trustee?

2. Did the district court correctly find that the HOA foreclosure sale extinguished the underlying deed of trust when Bana did not satisfy the superpriority lien?

3. Did the district court correctly find that the HOA foreclosure sale was commercially reasonable under controlling Nevada law?

STATEMENT OF THE CASE

This case involves an HOA superpriority lien pursuant to NRS Chapter 116 and the HOA's foreclosure upon same, extinguishing Bana's deed of trust that was encumbering the real property located at 2184 Pont National Drive, Henderson, Nevada 89044 ("Subject Property"). The underlying litigation in this case commenced on July 16, 2013 (1JA 001 - 07), and came on for bench trial on January 14, 2020.

At the conclusion of the bench trial on January 14, 2020, the district court found that the HOA foreclosure sale extinguished Bana's deed of trust; that Bana's tender check in the amount of $486.00 did not satisfy the superpriority portion of the HOA lien since the superpriority portion was $540.00; that Bana's tender obligation was not excused; and that the HOA sale was not commercially unreasonable (4JA 898 - 913). The notice of entry of the district court's findings of facts, conclusions of law and judgment was entered on April 30, 2020 (4JA 921 – 29), which Bana timely appealed on May 27, 2020 (4JA 930 – 33).

STATEMENT OF RELEVANT FACTS

The Subject Property was purchased by Melissa Lieberman (the "Borrower") on November 20, 2006, who executed a deed of trust securing the

promissory note in favor of Mortgage Electronic Registration Systems, Inc. ("MERS") (2JA 346). The Subject Property is located within a common interest community which is subject to monthly assessments that are collected by Madeira Canyon Homeowners Association (the "HOA").

The Borrower became delinquent on payment of the HOA monthly assessments, and on or about October 27, 2010, the HOA, through its agent, Nevada Association Services ("NAS"), recorded a notice of delinquent assessment lien against the Subject Property (2JA 367). Per the lien, the total amount due was $1,292.00. The assessments remained unpaid and on December 21, 2010, the HOA, through its agent, NAS, recorded a notice of default and election to sell under homeowners association lien (2JA 368).

On or about February 22, 2011, Miles Bauer, as agent for Bana, sent its standard form letter to NAS offering to pay the priority amount upon adequate proof of the amount (2JA 455 - 56). NAS sent a response letter on March 12, 2011, which included a ledger broken into categories identifying assessments, fines and other charges related to the Subject Property (2JA 458 - 59). On April 1, 2011, Miles Bauer sent a response letter with a check indicating that the check represented "9 months-worth of delinquent assessments," in an amount of $486.00. (2JA 461 - 63). Pursuant to the ledger previously provided to Miles Bauer, the full superpriority portion was actually $540.00 (3JA 529 - 31). Thus, the Miles Bauer

check for $486.00 did not satisfy the superpriority portion of the HOA lien, and was subsequently rejected on April 1, 2011 (2JA 465).

The Borrower remained delinquent on the payment of monthly assessments and on April 1, 2013, the HOA, through NAS, recorded a notice of foreclosure sale (2JA 370). On June 7, 2013, NAS foreclosed on the Subject Property and Underwood Partners, LLC ("Underwood") took title to the Subject Property as the successful bidder at the auction for $30,000.00 (2JA 372). Underwood subsequently conveyed its interest to NVE on September 18, 2013 (2JA 375).

STANDARD OF REVIEW

Under Nevada law, a "district court's findings of fact will not be disturbed on appeal if they are supported by substantial evidence." *Cnty. of Clark v. Sun State Props., Ltd.*, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008). The district court's conclusions of law are reviewed de novo. *Sun State Props.*, 119 Nev. at 334, 72 P.3d at 957.

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SUMMARY OF THE ARGUMENT

The district court correctly found in favor of NVE at trial that Bana's deed of trust was extinguished by the NRS Chapter 116 HOA foreclosure sale because Bana did not tender a check sufficient to discharge the full superpriority portion of the HOA lien. Furthermore, the district court correctly found that the HOA foreclosure sale was commercially reasonable because the sale was not affected by any fraud, oppression or unfairness that caused or brought about the sale price of the Subject Property at the HOA foreclosure sale. For these reasons, the Court should affirm the judgment of the district court.

Bana contends that the district court erred in finding that the HOA foreclosure sale extinguished its deed of trust because: (1) Bana allegedly tendered the superpriority portion of the HOA lien preserving the deed of trust; (2) notwithstanding, Bana's tender obligation was allegedly excused due to futility under *7510 Perla Del Mar Ave. Tr. v. Bank of America*, N.A., 136 Nev. Adv. Op. 6, 458 P.3d 348 (2020) ("*Perla*"); and (3) the sale should be set aside, in any event, because the sale was allegedly commercially unreasonable. As will be further discussed hereinbelow, each of Bana's arguments are unsupported by the facts and evidence of this case and collectively fail as a matter of law.

First and foremost, in order to preserve the deed of trust, Bana was required by law to tender a delinquency curing check in the amount of the superpriority

portion of the HOA lien. The superpriority portion of the HOA lien in this case totaled $540.00. Bana tendered a check for $486.00 wherein the tender check did not satisfy the superpriority portion of the HOA lien.

Next, in order for tender to be excused under *Perla,* there must be evidence that an HOA trustee had a known policy of rejecting superpriority tenders. In this case, if such a policy existed and Bana and Miles Bauer knew of same, there would be no reason to tender a check in the first place. Further, the district court made an explicit finding pursuant to the evidence of this case that the Miles Bauer tender check was rejected because it was insufficient to satisfy the delinquency of the superpriority amount. Notwithstanding the reason for the rejection, the tender check was simply for less than the amount of the superpriority portion. Thus, even if NAS accepted the inadequate check, the lien would maintain superpriority status. Finally, Bana's contention that the HOA foreclosure sale was commercially unreasonable is wholly unsupported by fact and Nevada law. In order for an HOA foreclosure sale to be set aside due to commercial unreasonableness, there must be a nexus between fraud, unfairness or oppression and the low sale price and of the sale having been affected. There was no evidence of fraud, unfairness or oppression that brought about/resulted in the sale price and/or affected the sale.

Therefore, based on the evidence at trial and the applicable Nevada law, NVE respectfully submits that this Court should affirm the district court's ruling.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY RULED THAT BANA'S DEED OF TRUST WAS EXTINGUISHED

A. Bana Bears the Burden to Overcome the Legal Presumptions in Favor of NVE

As this Court is well aware, Appellants bear the initial burden to overcome the relevant legal presumptions and conclusive recitals in the foreclosure deed. First, "there is a presumption in favor of the record titleholder." *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996).

Second, foreclosure sales and resulting deeds are presumed valid. NRS 47.250(16)-(18) (identifying disputable presumptions "that the law has been obeyed"; "that a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to that person, when such presumption is necessary to perfect the title of such person or a successor in interest"; "that private transactions have been fair and regular"; and "that the ordinary course of business has been followed.")

Third, a foreclosure deed issued pursuant to NRS 116.31164 that "recit[es] compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is conclusive" as to the recitals "against the unit's former owner, his or her heirs and

assigns and all other persons." *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 745-47, 334 P.3d 408, 411-412 (2014) (hereinafter "*SFR I*"). Specifically, the recitals in the foreclosure deed are conclusive as to default, mailing of the notice of delinquent assessment, and recording of the notices of default, the elapsing of the 60 days, and giving notice of sale. NRS 116.31166 (1)(a)-(c). Moreover, these recitals are "conclusive against ... all other persons," which include Appellants. NRS 116.31166(2) (emphasis added).

Here, the record title holder is NVE, whose title is presumed valid, placing the burden on Bana to rebut this presumption. Bana argues and contests these presumptions and the conclusiveness of the recitals as contained in the foreclosure deed without any adequate supporting evidence or law. As Bana cannot satisfy this initial burden, the remainder of its arguments fails for this reason alone.

B. Bana Did Not Tender a Delinquency Curing Check for the Full Amount of the HOA Superpriority Lien

As provided by this Court in *Resources Group, LLC v. Nevada Association Services, Inc.*, 437 P.3d 154 (Nev. 2019), the party contesting the validity of the HOA's foreclosure of its superpriority lien bears the burden of demonstrating that it tendered its "delinquency-curing check," and whether it met the burden by proving that it "paid the delinquency amount in full prior to the sale." *Resources Group*, 437 P.3d 154, 159 (2019). *Resources Group* clearly and unequivocally sets forth that it is the contesting party's burden to show that the delinquency, in

this case, the superpriority portion of the HOA lien, was paid in full. The law is clear again, it is Bana's burden to show that it tendered a "delinquency curing check," which it cannot do because it never tendered a "delinquency-curing check."

Thus, under Nevada law, Bana bears the burden of proving what the superpriority amount was at the time of the sale and that it delivered a full payment of same prior to the sale. *See* 74 Am. Jur. 2d *Tender* § 1 (2012) (recognizing the general rule that an offer to pay without actual payment is not a valid tender; 86 C.J.S. *Tender* § 24 (2017). Additionally, in the *Bank of America v. Rugged Oaks Investments, LLC*, 383 P.3d 749 (Nev. 2016) ("*Rugged Oaks*") (unpublished) decision, the Nevada Supreme Court quoted 59 C.J.S. *Mortgages* § 582 (2016):

> It has been held ... that good and sufficient tender on the day when payment is due will relieve the property from the lien of the mortgage, except where the refusal [of payment] was ... grounded on an honest belief that the tender was insufficient.

Rugged Oaks, 383 P.3d at 750 (Nev. 2016)

As provided above, a valid tender completes a transaction. Bana unequivocally fails to satisfy its burden. Again, it is undisputed that Bana tendered a check for $486.00 (2JA 461 - 63), which was less than the superpriority amount of $540.00 as Miles Bauer erroneously calculated the monthly assessment amount for the wrong year (2JA 458 - 59). That is, Miles Bauer erroneously used the "present rate" as identified in the ledger (2JA 458 - 459) for the year of 2011 when

Miles Bauer should have used the "prior rate" for the year of 2010 since the notice of delinquent assessment lien was recorded on October 27, 2010 (2JA 367).

The district court, therefore, correctly found that a check for $486.00 was insufficient to cure the full superpriority delinquency amount of $540.00 (4JA 898 - 913). Had Miles Bauer tendered the superpriority amount of the HOA lien, its interest in the deed of trust would have been preserved. However, since Miles Bauer failed to do so, Bana's interest was extinguished.

Bana's argument that it was error for the district court to find that Bana had "adequate time and notice to correct this error prior to the foreclosure sale" is unsupported by evidence in the record and simply inaccurate. AOB at 16. On April 1, 2011, Miles Bauer sent a response letter with a check that was rejected by NAS. Exactly two years then elapsed between April 1, 2013, the date Bana knew the check had been rejected, from the day which NAS recorded a notice of foreclosure sale, on April 1, 2013 (2JA 370). Furthermore, NAS did not conduct the foreclosure sale until June 7, 2013 (2JA 372). Not only was Bana on notice for two full years that the tender was deficient, but it had that 2 full years to correct its error. Furthermore, Bana was clearly on notice of its error and deficiency upon NAS' recordation of the notice of foreclosure sale on April 1, 2013. Even if Bana was not on notice of its error and deficiency after the tender was rejected in April 2011, Bana undisputedly and unequivocally had notice of the error and deficiency

on April 1, 2013, when NAS recorded the notice of foreclosure sale. Even at that time, Bana had over two months to cure its error until the Subject Property sold on June 7, 2013.

The reality here is neither Bana nor Miles Bauer undertook any substantive action to protect its interest in the Subject Property after failing to tender the full amount of the superpriority lien. At no time did Bana or Miles Bauer ever attempt to tender a check curing the full superpriority delinquency of $540.00. At no time did Bana or Miles Bauer attempt to attend the HOA foreclosure sale to protect Bana's interest in the Subject Property. At no time did Bana or Miles Bauer file a lawsuit prior to the HOA foreclosure sale to preserve Bana's interest. Thus, Bana's interest, via its deed of trust, in the Subject Property was extinguished when the HOA foreclosed on the superpriority lien pursuant to NRS 116 on June 7, 2013.

C. Bana's Tender Obligation Was Not Excused

Bana simply cannot argue that tender was excused in this case under *Perla,* as the very fact that Miles Bauer tendered an insufficient check directly contradicts excused tender under *Perla*. *Perla* stands for a fact-specific analysis of excused tender, and correctly identifies very specific circumstances when tender is excused due to futility. *Perla,* 458 P.3d at 351 (Nev. 2020); *citing* 74 Am. Jur. 2d *Tender* § 4 (2012) ("A tender of an amount due is waived when the party entitled to

payment, by declaration or by conduct, proclaims that, if tender of the amount due is made, it will not be accepted."); *also Alfrey v. Richardson*, 204 Okla. 473, 231 P.2d 363, 368 (1951) (stating that tender was waived where it was clear that "if a strict legal tender had been made, defendant would not have accepted the money"). Relevant to NRS Chapter 116 HOA foreclosure cases, *Perla* explained excused tender due to futility occurs "when evidence shows that the party entitled to payment had a known policy of rejecting such payments." *Perla,* 458 P.3d at 349 (Nev. 2020). *Perla* is very clear that excused tender is an exception to the tender doctrine where the evidence of the individual case must "show" that the HOA or HOA trustee had a "known policy" of rejecting superpriority payments and that this policy was known by the party who is to make said payment.

Notwithstanding the above, Bana contends that its tender obligation was excused via futility under *Perla*. Excused tender under *Perla* in this case requires that the HOA or NAS had a known policy of rejecting superpriority tenders *and* knowledge of said policy by Bana or Miles Bauer. Bana's argument fails to prove even one of the requirements above.

First and foremost, Miles Bauer actually tendered a check, albeit a check in an amount insufficient to cure the superpriority portion of the HOA lien. If Bana or Miles Bauer "knew" that NAS would reject a superpriority tender pursuant to NAS' policy, as argued by Appellants in their Opening Brief (AOB at 6), then why

would Miles Bauer tender a check in the first place? The fact that Miles Bauer actually tendered a check – albeit for an insufficient amount – supports the conclusion that even if NAS had a supposed "known policy of rejection," it was not known by Bana or Miles Bauer because Miles Bauer actually tendered a check insufficient to satisfy the delinquency amount of the superpriority lien. Thus, based on the fact and evidence specific to this case, Bana's tender obligation was not excused pursuant to *Perla* because even if NAS had a policy of rejection, it was unknown to Bana and Miles Bauer.

Second, the evidence deduced at trial proved that NAS rejected the Miles Bauer check of $486.00 because it was insufficient to cure the superpriority amount of $540.00. There is absolutely nothing by way of evidence in this case to support Bana's theory that NAS had a "known policy" of rejecting superpriority tenders. In fact, as addressed by the district court in its ruling and, the specific facts and evidence of this case prove that the NAS' rejection of the Miles Bauer check was because the check was insufficient to cure the superpriority portion of the HOA lien.

> "There is an exhibit in here that I think tells a bit of a story on this and that is Exhibit 9, page 141, and if you look at that exhibit you can see that there's a notation on this slip that gives us insight as to why the item was rejected. And, what it says there, again on page 141 of Exhibit 9 at the bottom, on this little slip: won't accept, not paid in full, per Carly. So, that's evidence that the reason the 486 is not accepted is because it's not enough. And, that's -- that is evidence of that. That's not determinative of the whole case, but I want to make a finding that that is solid evidence that a primary reason for

> rejecting was that it wasn't a sufficient payment. Although, the Court, of course, does accept and knows it to be true, that there was a general pattern of rejecting these, anyway. But, here we do have affirmative evidence that a primary reason was it wasn't the right amount." (4JA 905).

The notation from NAS' file which the district court is referring to is found on 2JA 465. This is evidence that Bana simply cannot dispute or overcome. When viewed in light of the evidence, Bana's argument is really more of a negative critique of the district court based on its dissatisfaction with the ruling rather than any feasible contention of legal errors. For example, Bana takes issue with the district court finding that Bana had adequate time and notice to correct the payment error, which Bana claims no such evidence exists (AOB at 16). Bana's argument is simply unsupported by the undisputed facts of this case.

The operative law established by *Perla* states "formal tender is excused when evidence shows that the party entitled to payment had a known policy of rejecting such payments." *Perla*, 458 P.3d at 349 (Nev. 2020) (emphasis added). The Court in *Perla* relied on the trial testimony by former in-house counsel for Nevada Association Services ("NAS"), Chris Yergensen, and former custodian of records for NAS, Susan Moses, to establish that NAS had a known policy of rejecting payments that would otherwise satisfy the superpriority portion of the HOA lien at the time relevant to the foreclosure upon the subject property in *Perla*.

Bana's entire argument essentially attempts to appropriate the trial testimony in *Perla* as trial testimony in this case. However, the testimony cited by Bana in its

Opening Brief regarding different properties, different evidence and different facts is, at best, unreliable. Specifically, Chris Yergensen testified to policies and procedures of NAS during a time period which he was not employed, affiliated or associated with NAS. As such, he did not, nor could have had, personal knowledge of the policies and procedures of NAS at any time prior to his employment with NAS in 2013, as such, he would have absolutely no knowledge as to any policy prior, especially in this case.

Neither the facts nor evidence of this case remotely approach the *Perla* standard to support this Court reversing the district court's finding that tender was not excused due to futility. The district court correctly analyzed the evidence and found that NAS rejected Miles Bauer's tender check because it was insufficient to satisfy the superpriority portion of the HOA lien. As discussed above, there is absolutely no evidence to support the conclusion that Bana's tender obligation was excused under *Perla*.

D. The District Court Correctly Found that the HOA Foreclosure Sale Was Not Commercially Unreasonable

Similar to its "excused tender" argument, Bana's argument that the sale should be set aside in equity is fundamentally flawed and plainly contradictory to Nevada law. In *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*, 366 P.3d 1105 (Nev. 2016), this Court unequivocally reaffirmed the conclusiveness of the recitals as to these specific facts wherein this

conclusiveness can only be challenged via post-sale equitable claims supported by a finding of unfairness of the sale. *Shadow Wood*, 366 P.3d at 1111 (Nev. 2016). There is no evidence of any kind in this case as to any fraud, oppression or unfairness on the part of the HOA and/or its trustee that brought about/resulted in the purchase price at the time of the HOA foreclosure sale. This is undisputed.

It is well established Nevada law that the fraud, oppression or unfairness prong of commercial unreasonableness must bring about or cause the low price. This is well established oft-cited in: *Resources Group*, 437 P.3d 154, 160-61 (Nev. 2019) (The Court held the Court could not set aside a sale if there is no demonstration of fraud, unfairness or oppression that effected the sales price); *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (the Court established that the sale itself had to be affected by the alleged fraud); and in *Shadow Wood,* 366 P.3d at 1111 (Nev. 2016). This Court has time and time again held the above rule is the standard of commercial unreasonableness in Nevada. As the Court is aware, its holding in *Shadow Wood* is the standard in these HOA cases, and reconfirms the long-standing rule that "inadequacy of price, however, gross, is not in itself a sufficient ground for setting aside a trustee's sale" absent additional "proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price." *Shadow Wood,* 132 Nev. 49, 366 P.3d at 1111, (quoting *Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995

(1963).

This Court has further held in the context of setting aside a sale where an HOA foreclosed upon its superpriority lien:

> "([I]f the district court closely scrutinizes the circumstances of the sale and finds no evidence that the sale was affected by fraud, unfairness, or oppression, then the sale cannot be set aside, regardless of the inadequacy of price.). That is, if the totality of the circumstances demonstrates that the sale itself was affected by "fraud, unfairness, or oppression," then a court may set the sale aside."

Resources Group, 437 P.3d 154, 160-61 (Nev. 2019) (internal citations omitted).

It is abundantly clear that this Court clearly has set the standard for commercial unreasonableness in the HOA foreclosure context which has subsequently been firmly confirmed time and time again that commercial unreasonableness requires the alleged fraud, unfairness or oppression to account for/bring about the low sale price. Bana presents absolutely no proof or evidence to show that this standard has been satisfied. In addition, the entirety of its argument is contrary to controlling Nevada law and, therefore, fails as a matter of law.

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CONCLUSION

As demonstrated above, NVE respectfully requests this Court affirm the district court's ruling in this case.

DATED this 25th day of February, 2021.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY this 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font size.

I FURTHER CERTIFY this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of this answering brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 4,219 words.

FINALLY, I CERTIFY that I have read this 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 of the transcript or appendix where the matter relied on is to be found.

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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 this 25th day of February, 2021.

/s/ Joseph Y. Hong
JOSEPH Y. HONG, ESQ.
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I electronically filed on the 26th day of February, 2021, the foregoing **RESPONDENT'S ANSWERING BRIEF**, with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[ ] By placing a true copy enclosed in a sealed envelope(s) addressed as follows:

[X] ((By electronic service) Pursuant to the CM/ECF system, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF system sends email notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this Court at whose discretion this service was made.

/s/ Debra L. Batesel
An employee of Joseph Y. Hong, Esq.