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.

Electronically Filed
Aug 30 2021 03:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 81239

APPEAL

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

APPELLANT'S ANSWER TO RESPONDENT'S PETITION FOR REVIEW

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NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

Akerman LLP

Bank of America, N.A.

BAC North America Holding Company

NB Holdings Corporation

Bank of America Corporation

Berkshire Hathaway Inc.

Bank of New York Mellon Corporation

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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INTRODUCTION

NV Eagles, LLC (**NV Eagles**) seeks rehearing of the panel's decision. This Court may deny the petition for review for two reasons. First, the panel correctly overturned the trial court's finding of facts and conclusions of law and remanded the case for consideration under *7510 Perla Del Mar Ave. Tr. v. Bank of Am., N.A.* (*Perla Trust*), 136 Nev. 62, 67, 458 P.3d 348, 351 (2020). As in *Perla Trust*, there was clear evidence that the association's trustee Nevada Association Services, Inc. (**NAS**) had a known policy of rejecting superpriority tenders. NV Eagles' attempts to distinguish or even rewrite the holding of *Perla Trust* have no merit.

Second, this Court may reverse the trial court's judgment because there was a true tender of the superpriority portion. BANA made a reasonable attempt to calculate the nine months of assessments constituting the superpriority portion. Due to the misleading formatting and language of the payoff statement provided by NAS, however, BANA unknowingly calculated and tendered an amount that was $54.00 short of the true superpriority portion. NAS did not identify a $54.00 shortfall as its reason for rejecting the check. Under the universally accepted rule that objections are waived if not made at the time of the tender, NAS necessarily waived any objection on that basis.

The record shows that NAS rejected the tender not because it was $54.00 short, but for two other non-valid objections. First, NAS regarded all of Miles

Bauer's tendered checks as subject to a "condition," and rejected each one for that reason even when the check was for the correct amount. Second, NAS was unwilling to accept any superpriority payoff before the deed of trust holder had foreclosed and become owner of the property.

NV Eagles seizes on the atypical fact pattern here and asserts that this case boils down to nothing more than whether Miles Bauer's tender was numerically sufficient to cover the superpriority portion. That assertion is wrong for the reasons mentioned above. NV Eagles also asserts because BANA actually attempted a tender, it is impossible for the excuse of tender doctrine to apply. That assertion has no legal support and would, absurdly enough, mean that BANA would have been better off not even attempting to pay the superpriority portion. NV Eagles' request that this Court punish BANA for making a good-faith effort to pay the superpriority lien is perverse.

This Court should reject NV Eagles' challenges and deny the petition for rehearing.

ARGUMENT

I. Standard of Review

A petition for rehearing must "state briefly and with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended." NRAP 40(a)(2). Rehearing is appropriate when there is a fact or question of law that

this Court overlooked or misapprehended, or "a statute, procedural rule, regulation or decision directly controlling a dispositive issue" that this Court "overlooked, misapplied, or failed to consider." NRAP 40(c)(2).

II. This Court Properly Reversed the Trial Court's Judgment under *Perla Trust*.

In the petition for rehearing, NV Eagles asks this Court to reach a patently absurd outcome. According to NV Eagles, because Miles Bauer was given an unclear statement of account and consequently calculated an incorrect superpriority sum, this Court should ignore the clear evidence that NAS would not have accepted any check for anything less than the entire lien amount. Under NV Eagles' logic, BANA ought to have not even attempted to tender the superpriority portion in this case. BANA's good-faith attempt to tender the superpriority portion would cause it to lose this case and forfeit the deed of trust. Not only does NV Eagles seek a truly senseless outcome, it bases its argument on a flagrant misreading of *Perla Trust*. NV Eagles does not identify any reason to alter this panel's decision.

A. *Perla Trust* squarely applies to the facts of this case.

NV Eagles seeks to remove this case from the reach of *Perla Trust* by asserting that the excuse of tender doctrine should apply only when a deed of trust holder does not make *any* tender. According to NV Eagles, if the deed of trust holder

makes an insufficient tender, the excuse of tender doctrine should not apply. Petition at 7-11.

This argument is inconsistent with this Court's holding in *Perla Trust*. There, this Court agreed with the district court's holding that "[b]ecause NAS had a known policy of rejecting any payment for less than the full lien amount … the Bank's obligation to tender the superpriority portion of the lien was excused[.]" *Perla Trust*, 136 Nev. at 66, 458 P.3d at 351. The opinion quoted a number of authorities stating that tender is "waived" or "unnecessary" when the party entitled to payment would not accept a legal tender. *See* 136 Nev. at 66-67, 458 P.3d at 351 (citing cases and treatises). Whether described as "waived" or "unnecessary," the obligation to tender the superpriority portion **no longer exists** if the association has a policy not to accept the tender.

NAS's policy rendered tender "unnecessary" or "waived," and that is where the analysis stops under the holding of *Perla Trust* and the authorities cited therein. Contra NV Eagles, BANA's decision to mail a check did not somehow resuscitate the obligation to tender. It would be senseless to hold that BANA's going above and beyond its legal obligation somehow placed it in a worse position than if it had not sent any check at all.

NV Eagles proposes that this Court issue a ruling in line with the adage that "no good deed goes unpunished." This Court should instead confirm the plain

language of *Perla Trust*: a deed of trust survives if tender is futile, full stop. A good-faith but unknowingly insufficient tender of the superpriority portion should not cause BANA to lose its security interest.

B. Adding a "reliance" requirement undermines the purpose.

NV Eagles then argues that this Court should invent a new requirement for the excuse of tender doctrine: that the trial court must find that the deed of trust holder made a conscious decision not to attempt a tender in "reliance" on the association's policy of rejecting tenders. However, this has no basis in *Perla Trust* or the general law of tender.

First, NV Eagles says that the phrase "known policy" in *Perla Trust* must mean that "the obligor would have to had relied [*sic*] on that knowledge in not tendering[.]" Petition at 11. That description doesn't even fit the facts of *Perla Trust*. In *Perla Trust*, BANA was **unable to make a tender** because NAS refused to respond to the request for information on the superpriority portion. *See* 136 Nev. at 63–64, 458 P.3d at 349. However, the trial court found that "Miles Bauer would have issued a payment of at least the super-priority component of the lien if NAS had responded with this information or if Miles Bauer otherwise had the information reasonably available from another source." *See Perla Trust*, 1JA 206 ¶ 28. Thus, *Perla Trust* was not a case where BANA declined to tender a check based on NAS's policy, but where NAS made it impossible for BANA to calculate the superpriority

portion and would have rejected it anyway. This Court should reject NV Eagles' attempt to rewrite the facts and holding of *Perla Trust*.

The facts here are not very different. They only differ in that NAS provided an ambiguous payoff statement rather than no payoff statement. BANA's policy was the same in both cases, however: to tender the superpriority portion if it could be determined.

NV Eagles does not present a single case turning on its strained interpretation of the phrase "known policy." That is, NV Eagles cannot provide a single instance in Nevada – or anywhere else – where there was a policy of rejecting tenders but the court found the excuse of tender doctrine inapplicable because the policy wasn't relied upon by the obligor.

NV Eagles also asserts that without adding a "reliance" requirement, "'excused tender' would conflict with and contradict existing and controlling Nevada law." Petition at 8-9. NV Eagles cites only the opinion in *Resources Group, LLC v. Nevada Association Services, Inc.*, 135 Nev. 48, 437 P.3d 154 (Nev. 2019). It is unclear why NV Eagles imagines that *Resources Group* has any bearing on the excuse of tender argument. That opinion did not concern a fact pattern anything like the one in this case; indeed, it did not even involve a tender of a superpriority portion. In *Resources Group*, there was a factual dispute as to whether the tender check (for the association's full lien, and not just the superpriority portion) arrived before or

after NAS conducted the foreclosure sale. 135 Nev. at 49, 437 P.3d at 156. The only tender-related issue of law was whether "[the former owner] has the burden of demonstrating that its delinquency-curing check arrived before the foreclosure sale, or whether this would be part of [the foreclosure sale purchaser's] burden to prove that it has superior title to the Property." 135 Nev. at 52, 437 P.3d at 158. NAS did not reject the check, and no party argued that the tender obligation was excused. *Resources Group* did not make any substantive rulings on the law of tender, let alone the excuse of tender doctrine, and the present case does not concern any burden of proof questions.

A "reliance" requirement would be a very convenient invention for purchasers like NV Eagles, which now would get free and clear title as a result of BANA's good-faith attempt to make a tender. But the superpriority lien system, as applied in NRS 116, "is a specially devised mechanism designed to strike an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders." *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. 742, 748, 334 P.3d 408, 412 (2014) (internal punctuation omitted). As this Court wrote, the Nevada Legislature designed the system to protect the interests of associations and deed of trust holders, not to give windfalls to real estate speculators like NV Eagles, whose predecessor and

related entity Underwood Partners, LLC, bought this property for less than 7 percent of its appraised fair market value. (*See* 1JA 191-192 ¶¶ 14, 16).

This Court should reject NV Eagles' self-serving proposal to alter the law of tender in the context of NRS 116 liens for no reason other than to boost its bottom line. Instead, this Court should leave in place *Perla Trust* and the general rule that tender is excused by a known policy of rejecting tenders, regardless of whether the deed of trust holder goes above and beyond its obligations by trying to make a sufficient tender.

C. The panel correctly noted that the trial judge made no findings of fact on the excuse futility argument.

NV Eagles also makes a lengthy but fruitless protest against the panel's observation that the district "made no findings of regarding [BANA's] futility argument." Petition at 5. According to NV Eagles, this statement was incorrect because the trial judge orally discussed the long-abrogated first opinion in *Bank of Am., N.A. v. Thomas Jessup, LLC Series VII*, 135 Nev. 42, 435 P.3d 1217 (2019) (*Jessup I*), *vacated on reconsideration en banc*, 462 P.3d 255 (Nev. 2020). There are multiple problems with this argument.

First, under binding Nevada law, oral statements are not findings if the judge later issues a written opinion. This Court has previously held that "the district court's oral pronouncement from the bench … [is] ineffective for any purpose." *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987); *see also Div.*

of Child & Family Servs. v. Eighth Judicial Dist. Court, 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004) (a district court that makes an oral decision "remains free to reconsider the decision and issue a different written judgment."). The trial judge's only discussion of *Jessup I* and issues related to futility of tender came in non-binding, non-final oral statements.

Second, even if the trial court had discussed *Jessup I* and made findings on that basis, this Court frequently remands excuse-of-tender cases decided when *Jessup I* was in effect for consideration under *Perla Trust*. *Trashed Home Corp. v. Bank of Am., N.A.*, 483 P.3d 544 (Table), 483 P.3d 544 (Table), at *1 (Nev. Apr. 9, 2021); *928 Country Back Tr. v. Bank of Am., N.A.*, 483 P.3d 1119 (Table), 2021 WL 1346076 (Nev. Apr. 9, 2021). The panel's decision fits that pattern. Indeed, there's an even stronger rationale for remand under *Perla Trust* in this case than in the two aforementioned opinions. Here, NAS was the trustee, just as in *Perla Trust*, whereas *Trashed Home* and *928 Country Back* concerned a different trustee. The record in this case must be evaluated under *Perla Trust*.

D. The record contains the same evidence that was sufficient to establish the excuse of tender doctrine in *Perla Trust*.

The record here contains exactly the same evidence that was sufficient to establish NAS's policy of rejecting genders in *Perla Trust*. For that reasoning, it is surprising that NV Eagles asserts, "This is not a case where Miles Bauer's attempts

would have been futile." Petition at 12. In reality, all record evidence shows that NAS would have rejected a tender of the superpriority portion.

First, NAS's witness Susan Moses clearly testified in the case that NAS had a policy of rejecting any check from Miles Bauer with "conditions."

> Q. Okay. And, during that same timeframe, 2010 to 2013, did Miles Bauer ever through runners deliver checks with letters?
>
> A. Yes.
>
> Q. And, how was -- how did NAS typically handle those deliveries?
>
> A. If there were conditions on the checks, then NAS would not accept them.

4AA 0827:19-25. By "conditions," Moses meant the "typical Miles Bauer letter" that was sent to clarify what the check was intended to pay. *See* 4AA 0828:9-15.[1]

Second, at trial BANA introduced several filings by NAS in other disputes with BANA where NAS denied that BANA had the legal right to pay a superpriority lien unless BANA first foreclosed on its deed of trust. In one motion to dismiss, NAS went so far as labeling BANA's efforts to tender the superpriority amount by paying nine months of assessments a "scheme" (4AA 730). In its reply, NAS made clear its intent to reject all of BANA's superpriority tenders, asserting, "nothing in NRS

[1] This Court has consistently rejected arguments that the Miles Bauer letter imposed unacceptable conditions. *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 607, 427 P.3d 113, 118 (2018); *Saticoy Bay LLC Series 133 McLaren v. Green Tree Servicing LLC* (*133 McLaren*), 136 Nev. Adv. Op. 85, 478 P.3d 376, 379 (2020).

116.3116 prohibits [NAS] from rejecting [Miles Bauer]'s tender prior to foreclosure." (4JA 751).

This Court, in an *en banc* opinion, previously found that exactly the same filings from NAS were sufficient to satisfy the *Perla Trust* standard. *U.S. Bank, N.A. v. SFR Investments Pool 1, LLC*, 464 P.3d 125 (Table), 2020 WL 3003017, at *1 (Nev. Jun. 4, 2020) (unpublished). This Court concluded, "this evidence is sufficient to demonstrate that NAS had a 'known policy of reject[ion]' sufficient to excuse formal tender." *Id*.

BANA respectfully contends that this Court has enough evidence to hold that BANA established the excuse of tender defense under *Perla Trust*. At the very least, though, this Court should leave in place its holding that the trial court must consider the record under *Perla Trust* and enter findings of fact on this issue.

III. There Is No Basis to Find that NAS Rejected the Check Because of a $54.00 Shortfall.

NV Eagles denies this Court's observation that "NAS returned the check because it was for an amount less than the full amount of the lien." *See* Petition at 3. NV Eagles hangs its hat on the trial judge's *oral* statement that he "want[ed] to make a finding that a primary reason" that NAS rejected Miles Bauer's check was that it was $54.00 short of the true superpriority amount. *See* Petition at 3-5; 4AA 905:12-

17. The problem with NV Eagles' argument is elementary: this oral statement was not *evidence*. The trial judge's oral statement cannot be a basis for rehearing.

Technically, the trial judge did not purport to make an oral finding of fact, but only stated that he "wanted" to make one. But even if the trial judge had orally purported to make a finding of fact, that would not count. There is a general rule that "the district court's oral pronouncement from the bench … [is] ineffective for any purpose." *Rust*, 103 Nev. at 689, 747 P.2d at 1382; *see also Div. of Child & Family Servs.*, 120 Nev. at 451, 92 P.3d at 1243 (a district court that makes an oral decision "remains free to reconsider the decision and issue a different written judgment."). Accordingly, this Court does not consider an oral "finding" to be effective. *See 9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020) (ruling that a district court's oral finding "did not directly resolve" the issue because "the order includes no such language."). The written judgment in this case does not state NAS rejected the check because it was $54.00 short of the true superpriority amount. *See* 4AA 914-920.

Second, there is not substantial evidence that NAS rejected the check for that reason. NV Eagles conspicuously fails to cite any evidence in the petition for review. *See* Petition at 3-5. It is the petitioner's duty to identify "with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended." NRAP 40(a)(2). Although it is not BANA's duty to complete NV

Eagles' argument, the one document that the trial judge discussed was a delivery slip from Legal Wings. *See* 4JA 905:6-15 (transcript); 2JA 465 (delivery slip). Legal Wings delivered the tender check in this case, along with checks for four other superpriority association liens. 2JA 465; 2JA 452. NAS refused delivery of the five checks; the delivery slip states only "won't accept, not paid in full[.]" 2JA 465.

All the record evidence makes it clear that "paid in full" meant the full amount of the association liens (both superpriority and subpriority). It was NAS's global policy at the time to reject checks for anything less than a full payoff of the lien, according to trial testimony from both Mr. Jung (4JA 841, 843-44) and Ms. Moses (4JA 828). Additionally, at that time NAS did not even believe that a superpriority lien amount existed before the bank foreclosed on its own deed of trust. *See* 4JA 731, 741. Therefore, there is no chance that NAS was rejecting tenders as insufficient to cover the superpriority portion when it did not believe there was **any superpriority portion** yet. One stray notation, interpreted in a fashion contradicting the other evidence and without support from any source, does not constitute substantial evidence to sustain a finding of fact. Whatever the trial judge's original thoughts contained in the transcripts, it was correct that he did not include a finding of fact in the written order stating that NAS rejected the check because of a $54.00 shortfall.

A finding of fact without any supporting evidence is entitled to no deference. *See Saticoy Bay LLC Series 133 McLaren v. Green Tree Servicing LLC*, 136 Nev. Adv. Op. 85, 478 P.3d 376, 378 (2020) (*133 McLaren*) ("Findings of fact are given deference … unless they are clearly erroneous or not supported by substantial evidence."). Even if the trial judge had made a finding of fact that NAS rejected the check because of a disagreement over the superpriority amount, that finding would not be entitled to any deference because of the lack of supporting evidence.

Finally, NV Eagles' argument fails for another reason. It is undisputed that the HOA (through its agent, NAS) failed to object to the amount of the check when it rejected the tender. "A person to whom a tender is made must, at the time, specify the objections to it, or they are waived." *First Sec. Bank of Utah, N.A. v. Maxwell*, 659 P.2d 1078, 1081 (Utah 1983); *accord Lee v. Peters*, 250 S.W.3d 783, 787 (Mo. Ct. App. 2008) ("An objection to a tender, to be available to a creditor, must be timely made, and the grounds of the objection specified, otherwise it is waived."); *Blackford v. Judith Basin Cty.*, 98 P.2d 872, 876 (Mont. 1940) ("objections to a tender are waived unless specified at the time"); *see also Sellwood v. Equitable Life Ins. Co. of Iowa*, 42 N.W.2d 346, 353 (Minn. 1950) ("[T]he grounds of objection to a tender must be specified by the creditor"); *Lichty v. Whitney*, 182 P.2d 582, 585 (Cal. App. 1947) ("As defendants here made no objection to the form of the tender, any objection to it on that ground was waived."). Because NAS did not object to the

tender based on a mistake in the assessment rate used by Miles Bauer, that objection was waived.

The rationale behind the waiver doctrine fits the facts of this case. Even if it were assumed that NAS rejected the tender in this case because of a $54.00 shortfall, the following are still true: (1) NAS had a global policy of rejecting checks that were for less than the full amount; (2) NAS's account statement was ambiguous; and (3) NAS didn't say anything to Miles Bauer about a $54.00 shortfall in the superpriority amount. Basic notions of fairness required NAS to put Miles Bauer on notice that it was rejecting the check over $54.00 and not under its universal policy.

Thus, although the panel reversed the trial judge's order based on the excuse of tender doctrine, this Court may reverse it on the basis that BANA's check was an effective tender. Because BANA sent a check for what it reasonably believed to be the superpriority portion (based on language in NAS's payoff statement), and NAS did not object on the basis of a shortfall, BANA effectively tendered the superpriority portion of the HOA's lien.

IV. NV Eagles' Argument that BANA Had to Undertake Additional Steps Is Frivolous.

NV Eagles makes one final meritless argument. Specifically, NV Eagles asserts that after the tender was rejected, "BANA should have taken additional steps to protect itself." Petition at 15. NV Eagles does not provide any examples of

"additional steps" that BANA should have taken. As discussed above, even if BANA had tendered the exact superpriority portion to NAS, that check would have been rejected. Short of paying the entire lien, no further actions by BANA would have changed NAS's position.

NV Eagles claims that this case is controlled by *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. 49, 366 P.3d 1105 (2016), misleadingly describing that case as involving the holder of a deed of trust and a superpriority lien. Petition at 17. *Shadow Wood* was not a case dealing with a deed of trust holder or the effects of a tender of the superpriority portion of an association's lien. Rather, in that case the bank had foreclosed and become title owner of the property **prior to the association's foreclosure sale**. The case was therefore a former owner's claim that the association's foreclosure sale should be set aside on equitable grounds, namely inadequate price plus "fraud, unfairness or oppression." 132 Nev. at 58-62, 366 P.3d at 1111-13. It was only in the context of an equitable determination that this Court said the owner's "(in)actions" "must be weighed" to determine whether to set aside the sale. 132 Nev. at 63, 366 P.3d at 1114.

In the time since *Shadow Wood* was decided, this Court has explained that a superpriority tender necessarily preserves the deed of trust and is not subject to equitable considerations. *Bank of America*, 134 Nev. at 612, 427 P.3d at 121 (tender cures the superpriority default "by operation of law," meaning the HOA's subsequent

foreclosure was "void . . . as to the superpriority portion" and could not "extinguish the first deed of trust."); *133 McLaren*, 136 Nev. Adv. Op. 85, 478 P.3d at 379 ("a valid tender cures a default '*by operation of law*'—that is, without regard to equitable considerations" (emphasis in original)). The trial court may not deny the effect of a tender based on its weighing of the deed of trust holder's other actions or any equitable considerations.

This Court has never taken up the invitation of purchasers to judicially impose additional requirements after a superpriority tender is rejected. It should once again repudiate this suggestion from NV Eagles.

CONCLUSION

For all the above reasons, this Court should decline to rehear its decision reversing and remanding the case for further proceedings.

DATED this 30th day of August, 2021.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that 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 answer to a petition for rehearing has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font size.

I FURTHER CERTIFY that this answer to a petition for rehearing complies with the page or type-volume limitations of NRAP 40(b)(3) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 4,135 words.

FINALLY, I CERTIFY that I have read this **APPELLANT'S ANSWER TO RESPONDENT'S PETITION FOR REHEARING**, 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 answer 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 transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 30th day of August, 2021.

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/s/ *Lilith V. Xara*

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CERTIFICATE OF SERVICE

I certify that I electronically filed on August 30, 2021, the foregoing **APPELLANT'S ANSWER TO RESPONDENT'S PETITION FOR REVIEW** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List.

I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Patricia Larsen
An employee of AKERMAN LLP