IN THE SUPREME COURT OF THE STATE OF NEVADA

EFREN AGUIRRE, JR.,

Appellant,

vs.

ELKO COUNTY SHERIFF'S OFFICE,

Respondent,

_____/

Supreme Court No. 82445

APPELLANT'S REPLY BRIEF

Appeal from Fourth Judicial District Court, Department 1
Case No. CV-FR-17-687

APPELLANT'S REPLY BRIEF

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NRAP 26.1
DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. There is no such corporation.

DATED this 3rd day of September, 2021.

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I.

ARGUMENT

A. Efren Aguirre, Jr.'s homestead is exempt from the Elko County Sheriff's attempted forfeiture.

The Elko County Sheriff claims that Mr. Aguirre is stripped of his residency and constitutionally protected homestead right because he is incarcerated. No Nevada law or caselaw strips a Nevada homeowner of his residency or prohibits him from asserting his homestead rights because he is incarcerated. Mr. Aguirre has recorded a valid declaration of homestead, Mr. Aguirre's residency is in his home, and his constitutionally protected homestead right should be liberally construed to exempt his home from the Sheriff's attempted forfeiture.

1. Mr. Aguirre's Declaration of Homestead is valid.

The Sheriff admits that Mr. Aguirre's Declaration of Homestead and Amended Declaration of Homestead comply with the terms and recording requirements set forth in NRS 115.020. (Respondent's Answering Brief 6.) On November 22, 2017, Efren Aguirre, Jr., recorded a Declaration of Homestead on the residence, and acknowledged that he is the resident of the home and that it is his "intention to use and claim the real property and residence as a homestead," and on May 18, 2020, Efren Aguirre, Jr., recorded an Amended Declaration of Homestead on the residence, and acknowledged that he is a "householder." (2 JA 467-468; 3

JA 497.) Therefore, there is no dispute that Mr. Aguirre has complied with the recording requirements of NRS Chapter 115.

2. Mr. Aguirre is a resident of his home.

The Elko County Sheriff's Office contends that Mr. Aguirre is an alleged "constructive" resident of his home because he is incarcerated. (Respondent's Answering Brief 8.) Nevada statutes and case law do not support this determination.

First, Mr. Aguirre is not a "constructive" resident as the Sheriff contends. This Court has found that a homeowner was not a bona fide resident of a home when he did not live in the home, did not intend to live in the home, and only claimed the home as his "constructive residence" because his children lived in the home. *In re Nilsson*, 129 Nev. 946, 951, 315 P.3d 966, 969 (2013). The facts of *In re Nilsson* are not applicable to Mr. Aguirre's case because Mr. Aguirre maintains his home as his residence, he intends to return to his home upon his release from incarceration on October 19, 2021, and he claims his home as his only residence and homestead; therefore, Mr. Aguirre's home is his residence and homestead. (2 JA 298:1-3, 300:1-4, 302:1-7, 308:5-13, 319:4-320:1, 322:9-24, 385:16-17, 467-468; 3 JA 497.)

Second, Nevada law does not strip Mr. Aguirre of his residence when he is incarcerated. The Sheriff's Office contends that a "Homestead Cannot be Filed While a Person is Incarcerated under Nevada Law" and in the same subsection

contradicts itself by claiming that "incarceration has not been directly addressed by the Nevada Courts . . . ." (Respondent's Answering Brief 10:1, 11-12.) Despite the Sheriff's unsupported claim that incarceration strips residency, the Nevada Constitution Article II, §2 supports an incarcerated person's right to maintain his residency and NRS 11.180 protects an incarcerated person's right to defend real property while imprisoned. Furthermore, federal case law has determined that incarceration does not strip a person of residency or change the person's residency. *See Cohen v. United States*, 297 F.2d 760, 773 (9th Cir. 1962); *Stifel v. Hopkins*, 477 F.2d 1116 (1973). Courts throughout the country have consistently held that a homestead right is not stripped when a person is incarcerated, and courts have found that a person can file a homestead while incarcerated. *In re Smith*, 22 B.R. 866 (VA Bnk. 1982); *In re Crabb*, No. BKR. 05-02594-H7, 2007 WL 7209436, at *1 (Bankr. S.D. Cal. June 21, 2007); *Shumway v. Betty Black Living Trust*, 321 P.3d 372 (SC Ala. 2014); *Driver v. Conley*, 320 S.W.3d 516 (TX Ct. App. 2010); *In re Gerholdt*, Bankruptcy No. 11-01321 (Bankr. N.D. Iowa Sep. 16, 2011); *Allen v. Holt County*, 81 Neb. 198 (1908); *Florey v. Estate of McConnell*, 212 S.W.3d 459 (TX Ct. App. 2006); *Schaf v. Corey*, 196 N.W. 502 (ND 1923); *In re Estate of Eckley*, 780 N.W.2d 407 (Minn. 2010); *In re Estate of Mueller*, 215 B.R. 1018, 1025 (8th Cir.BAP 1998).

Third, *In re Ellis*, No. 19-14495-MKN, 2019 WL 11590521 (Bankr. D. Nev. Nov. 25, 2019) is not binding and is not applicable to the case at hand. *In re Ellis* is

an unpublished, interlocutory order from the United States Bankruptcy Court, District Nevada, with no binding precedent on the case at hand. In fact, the bankruptcy judge expressly stated that the residency issue in *In re Ellis* "may be 'much ado about nothing'" and "may have minimal impact on the relief" because the homeowner in that case had already been released from incarceration and was free to simply record a declaration of homestead to protect her home from a forced sale. *Ellis*, No. 2019 WL 11590521, at *3. Mr. Aguirre's case is significantly different because Mr. Aguirre remains incarcerated (with an upcoming release date of October 19, 2021) and the effect of an order denying his constitutionally protected homestead right would impact the relief requested (*i.e.* preserving his homestead).

Consequently, Mr. Aguirre is a resident of his home. He has no other residence, he intends to reside in his home, but for his incarceration he would reside in his home, and no law strips Mr. Aguirre of his residency because he is incarcerated.

3. Mr. Aguirre will physically reside in his homestead on October 19, 2021.

The Elko County Sheriff contends that "final process" is complete in this case. (Respondent's Answering Brief 12:4-6.) However, the Sheriff selectively failed to analyze NRS 115.010(1), which states that a homestead is exempt if recorded prior to "**final process from *any court*** . . ." (Emphasis added.) This statute is extremely

broad and encompasses all courts, including appellate courts, and all process of each of those courts, including this Court. Thus, during the pendency of this appeal and on October 19, 2021, Mr. Aguirre will be released from incarceration and will return, as intended, and will be physically residing in his homestead. The Sheriff's sole argument that Mr. Aguirre is stripped of residency because he is incarcerated will be moot because Mr. Aguirre will no longer be incarcerated and will be physically residing in his homestead prior to "final process from any court" and "under any process of law." NRS 115.010(1); Nevada Constitution Article IV, §30.

4. Mr. Aguirre is currently maintaining his homestead for his return upon release from incarceration.

The Elko County Sheriff contends that Mr. Aguirre has "abandoned" or is not temporarily absent from his homestead because he has a temporary tenant in the home. (Respondent's Answering Brief 14-16.) No case law supports this contention. In fact, the temporary lease Agreement states that Mr. Aguirre's residence is his home. Mr. Aguirre appointed his brother, Noel Aguirre, as his attorney-in-fact and Noel was also appointed by the Court as guardian of the person and estate of Mr. Aguirre's minor son. (2 JA 469-474, 479-480) Noel testified that for one year after Mr. Aguirre was jailed, the home sat vacant, which shows Mr. Aguirre's intent to maintain and return to the home. (2 JA 304:17-19) Noel testified that two months after Mr. Aguirre's sentence was entered, and in order to protect the home until Mr.

Aguirre's release from incarceration from vandalism, break ins, or damage from disuse, he entered into a short term, week-to-week, temporary lease Agreement to maintain and hold the home for Mr. Aguirre's return. (2 JA 305:4-9, 15-19) The Agreement expressly states that the residence is the "primary residence and homestead" of Mr. Aguirre, that it is Mr. Aguirre's intent "to occupy the residence" upon his release, that the Agreement was made "for the purpose" of maintaining the home during Mr. Aguirre's incarceration, and that the tenant would "vacate" the home upon Mr. Aguirre's release. (2 JA 495-496.) Thus, the Agreement sets forth Mr. Aguirre's express intent and purpose to reside in the home, the lease is not an exclusive lease so Mr. Aguirre is able to return to his home immediately upon release, and the lease shows that the purpose of the Agreement is to maintain, hold, and protect Mr. Aguirre's residence until he is released from incarceration. House sitters are routinely used to protect homes during residents' temporary absences. Such arrangements do not strip a resident of his residency or right to a homestead.

Furthermore, Mr. Aguirre's incarceration is a temporary, forced absence from his home. There is no dispute that Mr. Aguirre intends to reside in his home. Mr. Aguirre has set forth his intent in his recorded Declaration of Homestead and Amended Declaration of Homestead. (2 JA 467-468; 3 JA 497.) Mr. Aguirre testified at trial in this case that he intends to reside in his home upon his release from incarceration. (2 JA 319:4-20, 322:9-24.) Mr. Aguirre's brother, Noel, testified

regarding Mr. Aguirre's intent to return and reside in his home following his incarceration. (2 JA 298:1-3, 300:1-4, 302:1-7.) The Sheriff has presented no evidence showing that Mr. Aguirre has a contrary intent, nor has the Sheriff disputed Mr. Aguirre's intent to reside in his home. Consequently, it is an undisputed fact that Mr. Aguirre intends to reside in his home.

Furthermore, it is undisputed that Mr. Aguirre was a resident of his home and physically resided in his home from the time he acquired his home in May 2016 until he was detained by the Sheriff. (2 JA 385:16-17.) The Sheriff also fails to recognize that Mr. Aguirre has no other ownership interest in any other real property or residence other than 743 Devon Drive, Spring Creek, Nevada 89815, and that if Mr. Aguirre's home was forfeited, he would be homeless and have no legal right to live anywhere else. (2 JA 308:5-13, 319:21-320:1.) Mr. Aguirre and Noel also testified, and their testimony was undisputed, that "but for" Mr. Aguirre's incarceration, Mr. Aguirre would now be physically residing in his home. (2 JA 298:1-3, 300:1-4, 302:1-7, 319:4-20, 322:9-24.) Therefore, Mr. Aguirre's only residence since May 2016 is and remains 743 Devon Drive, Spring Creek, Nevada 89815.

5. Public policy supports protecting Mr. Aguirre and his son in his homestead.

The Elko County Sheriff contends that "public policy mandates [Mr. Aguirre's] homestead be set aside." (Respondent's Answering Brief 17:9.) The

Sheriff contends that because Mr. Aguirre was involved in criminal activity, public policy mandates that his homestead be set aside. (*Id.* at 20:12-13.) There is no support for this allegation.

The Sheriff admits that:

> The purpose of the homestead exemption is to preserve the family home despite financial distress, insolvency or calamitous circumstances, and to strengthen family security and stability for the benefit of the family, its individual members, and the community and state in which the family resides. These values are of greater importance to the polity than the just demands of those who may be financially disadvantaged as a result of the homestead exemption.

Jackman v. Nance, 109 Nev. 716, 718 (1993).

Thus, the purpose of the homestead exemption and public policy supports the protection of Mr. Aguirre's home in order to support and strengthen his family. Significant research also supports this purpose because, as cited at length in the Opening Brief, homelessness is linked to recidivism. Mr. Aguirre will have paid his debt to society for his crime by October 19, 2021, when he is released from prison, and his constitutionally protected homestead right will serve the purpose to protect his home to support and strengthen his family when he is released. Overwhelming research shows that stripping Mr. Aguirre of his homestead during incarceration will lead to the opposite result of the homestead exemption's purpose. Thus, Mr. Aguirre's homestead exemption should be "liberally construed" in order to support and strengthen his family and exempt his homestead from the Sheriff's attempted

forfeiture. *McGill v. Lewis*, 61 Nev. 28, 40 (1941)); see also *In re Canino*, 185 B.R. 584, 586 (B.A.P. 9th Cir. 1995) (homestead statutes should be liberally construed and not decided on technicality).

B. The forfeiture of Mr. Aguirre's home valued at $298,000 is an excessive fine and grossly disproportional to the $100 fine imposed upon him.

No law or case law supports such a grossly disproportional fine as the Sheriff is attempting to impose upon Mr. Aguirre. Forfeiting his homestead for a fine that is 2,980 times the value of Mr. Aguirre's home is clearly excessive, grossly disproportional, and a violation of Mr. Aguirre's constitutional rights under the Nevada and United States Constitutions.

1. The Sheriff has presented no authority that supports the excessive fine of forfeiting Mr. Aguirre's homestead and continues to misconstrue the law.

The Elko County Sheriff's Office has provided no authority to support its argument that the attempted forfeiture of Mr. Aguirre's home is not grossly disproportional. In fact, the Sheriff misconstrued case law and thereby misled the District Court in the papers it filed below that led the District Court to enter a judgment that imposed an excessive fine and forfeiture. Now, the Sheriff is unwilling to admit its folly to this Court and correct its inaccurate arguments. Rather than acknowledge the error, the Sheriff has perpetuated the error in its Answering Brief.

As explained in detail in Mr. Aguirre's Opening Brief from page 34 through 36, the Sheriff inaccurately argued below, and the District Court inaccurately ruled that federal courts' analyses in comparing federal ***Sentencing Guidelines*** is the same analysis performed in comparing the ***maximum statutory fine*** to the proposed forfeiture fine. These two analyses are distinct and are not comparable. *See United States v. Riedl*, 164 F. Supp. 2d 1196, 1199 (D. Haw. 2001), aff'd, 82 F. App'x 538 (9th Cir. 2003) ("In considering an offense's gravity, the other ***penalties that the legislature has authorized*** are relevant evidence, as are the maximum penalties that could have been imposed under the ***Sentencing Guidelines***." (Emphasis added.)) This Court should keep the two distinct analyses separate and conduct the proper analysis without confusing the two.

Despite pointing out the stark differences between the maximum statutory penalties and the federal Sentencing Guidelines, the District Court still confused the two analyses and erred by comparing them:

> Aguirre's forfeiture of approximately $298,000 is approximately three times the ***maximum statutory fine***. Forfeiture does not per se violate the Eight Amendment simply because the amount to be forfeited exceeds the maximum fine under the ***federal sentencing guidelines***.

2 JA 445:25 - 446:9 (emphasis added). The federal Sentencing Guidelines do not exist in Mr. Aguirre's case, so comparing the Sentencing Guidelines to the maximum statutory fines in Mr. Aguirre's case will always lead to an erroneous result.

The Sheriff failed to acknowledge this glaring error in its Answering Brief. Instead, the Sheriff attempted to perpetuate the error by misquoting and misconstruing case law. First, the Sheriff added "statutory guidelines" next to "Sentencing Guidelines" in a quote from the federal case *Riedl*, 164 F. Supp. 2d at 1199:

> In considering an offense's gravity, the other penalties that the legislature has authorized are relevant evidence, as are the maximum penalties that could have been imposed under the Sentencing Guidelines ***[statutory guidelines]***.

(Respondent's Answering Brief 24:5-8 (emphasis added).) Sentencing Guidelines do not exist in Mr. Aguirre's case. Trying to equate statutory penalties or "statutory guidelines" to Sentencing Guidelines is an inaccurate and erroneous argument.

Second, the Sheriff contends that federal courts "have held that a fine can be 17 to 20 times greater than the maximum of the ***sentencing guidelines*** without being excessive." (*Id.* at 25:7-8 (emphasis added).) The Sheriff then argues: "the forfeiture is only three times the ***maximum fine***. This is well within the ***guidelines*** and would not be considered an excessive fine." (*Id.* at 25:12-14 (emphasis added).) Thus, the Sheriff is comparing the federal Sentencing Guidelines in federal cases to the maximum statutory fines in Mr. Aguirre's case. The two are distinct.

Third, the Sheriff claims that:

> The District Court used federal case law to determine how many times a forfeiture may exceed the maximum fine before the forfeiture is

> excessive. *2 JA. 445:25-446:18*. The court pointed to several cases that indicated that forfeiture could be 12 to 13 times greater than the maximum fine and concluded that that[sic] forfeiture was not excessive when viewed with other factors. *2 JA. 446:16-18*.

(Respondent's Answering Brief 26:4-9.) However, when citing to the cases, the District Court references the federal sentencing guidelines analysis, not the maximum statutory fine analysis. (2 JA. 446:2-9.) In fact, **none** of the cases that the District Court cited had a forfeited value greater than the maximum statutory fine. It is undisputed that Mr. Aguirre's homestead is valued at **three times** the maximum statutory fine.

Fourth, the Sheriff has cited to *Timbs* and claimed that after the Supreme Court of the United States' ruling, the lower courts in the case found that the forfeiture of Timbs' Land Rover was an instrumentality of the crime and therefore Mr. Aguirre's home should be forfeited. (2 JA 426-427.) However, this is not accurate. The district court in that case expressly found that "the harshness of his Land Rover's forfeiture was grossly disproportionate to the gravity of the underlying dealing offense and his culpability for the vehicle's misuse." *State v. Timbs*, 169 N.E.3d 361, 377 (Ind. 2021). Thus, the Sheriff has again misconstrued case law.

The Sheriff has continually and erroneously compared federal courts' analyses of the federal Sentencing Guidelines to the maximum statutory fine in Mr. Aguirre's case. The District Court made the same error in its analysis, and the Sheriff

continues this error in its Answering Brief. For this reason alone, the District Court's Findings of Fact, Conclusions of Law and Judgment of Forfeiture should be reversed because the District Court's Judgment was based on an erroneous analysis.

2. The Sheriff's attempted forfeiture of Mr. Aguirre's homestead is grossly disproportional to Mr. Aguirre's fine.

As explained above, federal courts analyze the value of the attempted forfeited property as compared to the actual fine imposed, the Sentencing Guidelines, and the maximum statutory fine that could have been imposed. In Mr. Aguirre's case, each of these analyses show that the attempted forfeiture would be grossly disproportional, and therefore an excessive fine.

a. Actual fine imposed - $100.

The Sheriff admits that the actual fine imposed was $100; however, the Sheriff does not undertake an analysis of the fine in its Answering Brief. The value of Mr. Aguirre's home is 2,980 times greater than the actual fine imposed upon Mr. Aguirre, which is grossly disproportional to the actual fine imposed.

b. Parole and Probation's Recommendation - $2,000.

The Sheriff admits that the Nevada Division of Parole and Probation recommended a fine of $2,000. (Respondent's Answering Brief 26:14-15.) This recommended fine was made based upon a specific analysis of factors involved in

Mr. Aguirre's case. Therefore, this recommendation is similar to the federal Sentencing Guidelines because, as federal courts agree, the Sentencing Guidelines "take into account the specific culpability of the offender." *$132,245.00*, 764 F.3d at 1060.

The value of Mr. Aguirre's home is 149 times greater than the fine recommended by the Nevada Division of Parole and Probation, which takes into account the specific culpability of Mr. Aguirre. The attempted forfeiture of Mr. Aguirre's home is far more excessive than the federal cases the District Court and Sheriff cited to that only found a forfeiture of property valued at "12.5," "12 to 13," or "17 to 20" times greater than the maximum Sentencing Guidelines was not disproportional. (2 JA. 446:2-9; Respondent's Answering Brief 25:7-8.)

The Sheriff attempts to undermine this analysis by claiming that the Nevada Division of Parole and Probation does not use the same factors in determining its recommendations as are used in the federal Sentencing Guidelines. (Respondent's Answering Brief 27:4-8.) Although there may be differences, both the recommendations and Sentencing Guidelines "take into account the specific culpability of the offender." *$132,245.00*, 764 F.3d at 1060. The recommendations are the only specific recommendation considered in Mr. Aguirre's case, and are therefore the most effective in comparing his culpability to the value of the attempted forfeited property.

Additionally, the Sheriff—for the first time on appeal—argues that because Mr. Aguirre did not produce his actual Parole and Probation recommendation report as evidence, the courts should not evaluate this analysis. This argument should not be considered because it is the first time it is being made on appeal. Moreover, the Sheriff stipulated that the recommended fine was $2,000 and the Sheriff's counsel is in possession of the report but never produced it.

Thus, the value of Mr. Aguirre's home is 149 times greater than the fine recommended by the Nevada Division of Parole and Probation, which is grossly disproportional and excessive.

c. Maximum Statutory Fine – 2018: $100,000, 2021: $20,000.

The Sheriff admits that the maximum statutory fine in 2018 was $100,000 and that today (2021) the maximum statutory fine would be $20,000. (Respondent's Answering Brief 25:11, 29:1-11.) The value of Mr. Aguirre's home is three times greater than the actual fine imposed upon Mr. Aguirre in 2018 and 15 times greater than the maximum fine that could have been imposed upon him today. Both are grossly disproportional.

As explained above, the Sheriff and District Court have failed to cite to a single case where the value of the forfeited property has been in excess of the maximum statutory fine. Instead, the Sheriff and District Court used the federal

Sentencing Guideline analyses in federal cases to compare the maximum statutory fine analysis in Mr. Aguirre's case. This erroneous analysis shows that the forfeiture of Mr. Aguirre's home is clearly excessive.

Furthermore, the Sheriff's only contention that the $20,000 maximum fine that could have been imposed today should not be analyzed is because it was not in effect in 2018. (Respondent's Answering Brief 29:4-5.) However, there has been significant legislative and policy change by the legislature, and the culpability of Mr. Aguirre's crime is much lower today when the forfeiture analysis, which takes into account culpability, is being undertaken. *See United States v. Bajakajian*, 524 U.S. 321, 336 (1998) ("judgments about the appropriate punishment for an offense belong in the first instance to the legislature. . . . Reviewing courts ... should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes. . . . Whatever views may be entertained regarding severity of punishment, ... these are peculiarly questions of legislative policy." (Internal citations omitted).)

Thus, under any analysis that is taken, the attempted forfeiture of Mr. Aguirre's home is grossly disproportional, excessive, and therefore unconstitutional.

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3. Other factors show that the gravity of the crime is grossly disproportionate to the forfeiture.

The Sheriff failed to analyze that the forfeiture of Mr. Aguirre's home would leave Mr. Aguirre homeless and destitute, which will significantly affect his stability and livelihood and, as overwhelming evidence shows, is likely to lead to recidivism. (2 JA 308:5-13, 319:21-320:1.) Furthermore, it will substantially affect his son. (*Id.*) The Sheriff failed to recognize that the culpability of Mr. Aguirre was low because the sentence that he actually received was "but a fraction of the penalties authorized." *Bajakajian*, 524 U.S. at 339, fn. 14. The Sheriff failed to recognize that Mr. Aguirre will pay his debt to society for the crime by October 19, 2021, and will return to his homestead upon his release having completed his sentence.

Despite the Sheriff's contention that Mr. Aguirre's crime affected the government, it "bears no articulable correlation to any injury suffered by the Government." *Bajakajian*, 524 U.S. at 340. It is undisputed that the house was not purchased with drug money. The house was a gift from his parents. There is no correlation to show that the house is part of the drug trade, and there is no evidence that the home was a "drug house."

The Sheriff admits and reaffirms in its brief that Mr. Aguirre's firearm related conviction "is not directly related to trafficking controlled substances." (2 JA 391:18-19.)

C. The District Court's December 31, 2021 Findings of Fact, Conclusions of Law and Judgment of Forfeiture is a rogue order.

The Supreme Court ordered that Senior Judge Maddox was to hear any and all matters in Department 1 and had the authority to sign orders until December 31, 2021. Judge Maddox did not sign or enter the order. Instead, Judge Porter, who was unavailable, returned for a single day to Department 1 on the last day of the year and last day of her term and signed the order in violation of this Court's Order No. 21-00153 that Judge Maddox was to hear any and all matters in Department 1. (3 JA 521-522.) The Sheriff failed to acknowledge this issue and explain how Judge Porter had authority to enter the Judgment. The Judgment is a rogue order and should be reversed and stricken.

II.

CONCLUSION

For the foregoing reasons, Efren Aguirre, Jr. respectfully requests that this Honorable Court reverse the District Court's Findings of Fact, Conclusions of Law and Judgment of Forfeiture and deny the Sheriff Office's forfeiture, and grant such other relief as the Court deems just and proper.

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DATED this 3rd day of September, 2021.

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CERTIFICATE OF COMPLIANCE

1. 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 brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 360 in 14 point Times New Roman type style.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7), excluding the parts of the brief exempted by NRAP 32(a)(7)(C), because it does not exceed 4,196 words.

3. Finally, I hereby certify that I have read this appellate 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 and volume number, if any, 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 brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 3rd day of September, 2021.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on this date, I caused the foregoing document to be served on all parties to the action by:

- ✓ E-filing pursuant to the Nevada Filing and Conversion Rules
- ✓ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Elko, Nevada.

fully addressed as follows:

Rand J. Greenburg
Deputy District Attorney
Elko County District Attorney's Office
540 Court Street, 2nd Floor
Elko, Nevada 89801

DATED this 3rd day of September, 2021.

EMPLOYEE OF GERBER LAW OFFICES, LLP