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CAAP-24-0000123

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAI‘I

HAWAI‘I UNITES, a 501(c)(3) nonprofit corporation; and TINA LIA, an individual,

Plaintiffs-Appellants,

v.

BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAI‘I, and DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAI‘I,

Defendants-Appellees,

and

AMERICAN BIRD CONSERVANCY,

Defendant-Intervenor-Appellee.

CIVIL NO. 1CCV-23-0000594 (JMT)

APPEAL FROM THE

(1) Final Judgment filed on February 6, 2024

(2) Order Granting State of Hawai‘i’s Motion for Summary Judgment filed on February 6, 2024

(3) Circuit Court’s Minute Order re: Defendant State of Hawai‘i’s Motion for Summary Judgment and Defendant-Intervenor American Bird Conservancy’s Joinder to Defendants Board of Land and Natural Resources, State of Hawai‘i, and Department of Land and Natural Resources, State of Hawai‘i’s Motion for Summary Judgment filed January 29, 2024

PLAINTIFFS-APPELLANTS’ REPLY BRIEF

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In support of their Answering Briefs (AB), both Defendant-Intervenor-Appellee American Bird Conservancy (Defendant ABC) and Defendant-Appellees Board of Land and Natural Resources, State of Hawai‘i and Department of Land and Natural Resources, State of Hawai‘i (State Defendants) present a misleading and irrelevant narrative that mischaracterizes Plaintiffs Appellants' (Plaintiffs) claims and ignores significant parts of their Opening Brief (OB), claiming that Plaintiffs seek to "study the issue to death" in a "baseless attempt to stop the only presently viable option for saving Hawai‘i's cherished native birds." *See* ABC AB at pg. 1; State AB pg. 2. This is not true. Plaintiffs instead ask that Defendants follow the letter of the law and properly study an experiment that, by Defendant's own estimates, could result in the release of over 800 billion mosquitoes on the island of Maui, in some of the most unique and fragile ecosystems in the world. Plaintiffs also seek redress from the Court as to the State Defendants' violation of the letter and purpose of HEPA and its implementing regulations.

I. PLAINTIFFS' FIRST POINT OF ERROR – The Circuit Court erred by applying the wrong standard for reviewing the sufficiency of an environmental assessment ("EA")

A. Standard of Review - Rule of Reason v. Clearly Erroneous

Defendant ABC incorrectly states that Plaintiffs did not contend for any standard in their brief, and therefore "may be deemed to have waived this issue." ABC AB at 8. Plaintiffs not only contend for the (correct) clearly erroneous standard in their brief (*see* OB at 11, 18-19, 24), they also detail how the Circuit Court's "rule of reason" standard of review as articulated in its Minute Order is inapplicable based on where this matter stands within the environmental review process. *Id.* at 10-11.

ABC further states there is "no reason" why the same standard that applies to the review of the sufficiency of an environmental impact statement ("EIS") should not apply to that of an EA (citing to the standard used in *Kaupiko v. Bd. of Land & Nat. Res.,* No. SCAP-22-0000557, 2024 Haw. LEXIS 141(Aug. 28, 2024) – a case involving review of the sufficiency of an EIS) AB at pg. 9. In fact, there are several reasons why the same standard should not apply, not least of which is that Hawai‘i courts have held that in cases reviewing the sufficiency of an environmental assessment and whether an EIS is required, the "clearly erroneous" standard is the correct standard to use. *See Pele Def. Fund v. Dep't of Land & Natural Res.*, 141 Haw. 381, 384–86 (Haw. Ct. App. 2018); *see also Kilakila 'O Haleakala v. Univ. of Hawai'i & David Lassner,* 138 Haw. 364, 368 P.3d 176, 187 (2016). OB at pgs. 9-10.

Second, Defendant ABC argues that the rule of reason is less deferential than the arbitrary and capricious standard (citing to *Ka Makani 'O Kohala Ohana Inc. v. Dep't of Water Supply,* 295 F.3d 955, 959 (9th Cir. 2002) – AB pg. 9) and therefore "actually" advantages Plaintiffs, thus making it the correct standard of review for whether an EIS is required. However, the holding in *Ka Makani* is inapposite, as that decision was about the standard of review where an agency had decided that a particular project did not require the preparation of an EIS, without having conducted an environmental assessment ("EA"), and was dealing with primarily legal issues based upon undisputed facts. *Ka Makani 'O Kohala Ohana Inc. v. Water Supply,* 295 F.3d 955, 959 (9th Cir. 2002)(emphasis added)(also noting that the reasonableness standard has been described as *more rigorous* than the arbitrary and capricious standard). *See Id.* at 959. In the instant case, there are numerous facts in dispute, including the efficacy and safety of the experimental "Incompatible Insect Technique" (IIT) planned for use in the project and the ability of *Wolbachia* bacteria in mosquitoes to cause increased pathogen infection and to cause mosquitoes to become more capable of spreading diseases such as avian malaria and West Nile virus. OB at pgs. 14-16. The Circuit Court seemed to agree with Plaintiffs assertion that there are at least *some* facts in dispute, noting in its Minute Order that:

> "[a] reading of the FEA reveals that many of the alleged issues raised by Plaintiff, were, in fact, addressed in the FEA and that some of the potential impacts of the project were raised as mere possibilities by Plaintiff." (emphasis added.)

Moreover, as *Ka Makani* goes on to state, "the agency's interpretation [of its own regulations] must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation." 295 F.3d 955, 959 (9th Cir. 2002)(internal citations and quotations omitted)(emphasis added). This is important because, as Defendants are aware, one of Plaintiffs' claims is that Defendants did not comply with HAR § 11-200.1-20, and therefore that by accepting the EA and FONSI despite the failure of the applicant to comply with the HAR, the agency's plainly erroneous interpretation of its own regulation should have led the Circuit Court to deny Defendants' motion for summary judgment.

Besides violating one of the main two purposes of HRS Chapter 343 (encouraging public participation during the review process), the deferential arbitrary and capricious/clearly erroneous standard also presupposes that the agency record reflects clear and complete findings. *See* HRS 343-1*; Surface Water Use Permit Applications, Integration of Appurtenant Rights and*

Amendments to Interim Instream Flow Standards, 154 Hawai‘i 309, 337, 550 P.3d 1167, 1195 (2024) (“A court reviewing the decision of an agency should ensure that the ‘agency ... make its findings reasonably clear. The parties and the court should not be left to guess ... the precise finding of the agency.’ An agency’s findings should be ‘sufficient to allow the reviewing court to track the steps by which the agency reached its decision.’”). Absent such record, the presumption of validity that deferential judicial review embodies is unwarranted. *See In re Wai‘ola O Moloka‘i, Inc.*, 103 Hawai‘i 401, 432, 83 P.3d 664, 695 (2004). The failure of State Defendants to follow HAR § 200.1-20 by itself demonstrates that the Circuit Court applied the wrong standard.

Finally, both ABC and State Defendants hedge their bets by ultimately arguing that the Court “actually” applied the clearly erroneous standard (ABC AB at pg. 9; State AB at pg. 8), when it clearly did not. The Circuit Court makes clear in its ruling that it applied the “rule of reason” standard, finding that:

> “the FEA in the instant case was compiled in good faith and set forth sufficient information to enable the BLNR to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action, as well as to make a reasoned choice between alternatives.”

Plaintiffs’ OB Appendix A at pg. 2.

B. Accepting the Deficient FEA was Clearly Erroneous

Defendant BLNR simply took Defendant DLNR’s word that the “Birds Not Mosquitos” (BNM) project would not have any significant impact and approved the FEA/FONSI instead of taking a “hard look” at the information presented and giving serious consideration to the impacts as required by chapter 343. In their pleadings and evidence in the record, Plaintiffs cite numerous specific examples where information is inaccurate and/or misleading, such that decisionmakers and the public are unable to properly determine whether the proposed action will have a significant impact on the environment and why the project requires more rigorous analysis through an EIS.

Contrary to State Defendants’ assertion that the IIT technique is not new, and not the first time it has been used for control of mosquitoes as disease vectors (AB at pg. 8), this project is an experiment, and this specific *Wolbachia* IIT technique has never been documented as used for control of mosquitoes as disease vectors. *See* ROA Dkt. 96-98; 133 (HDOA EPA Application for

Section 18 FIFRA Emergency Exemption (10/28/22) (pages 18-20) - Injunction Hearing Exhibit P-15). The *Culex quinquefasciatus* (*Culex q.*) species of mosquito has never been documented as used for *Wolbachia* IIT stand-alone field release. *Id.* The East Maui project area is the largest *Wolbachia* mosquito release of any kind globally to date. The U.S. Department of the Interior states that *Wolbachia* IIT is a "novel tool for conservation purposes and its degree of efficacy in remote forest landscapes is unknown."[1]

Plaintiffs do not "flyspeck" the BLNR's analysis, as ABC claims. ABC AB pg. 2. Instead, Plaintiffs raise serious questions regarding facts in dispute and concerns that were not addressed at all in the FEA, including Environmental Protection Agency ("EPA") guidelines allowing for the release of one female mosquito for every 250,000 males; the fact that *Wolbachia* bacteria is parasitic, and parasitic organisms can alter the behavior of the hosts they live inside; and the possibilities of biopesticide drift or wind drift, or the movement of the lab-bred mosquitoes through wind to unintended areas - a very real threat of wild mosquitoes drifting into the Project area and diluting the efficacy of the IIT (requiring a need to maintain higher proportions of the experiment), along with the threat of IIT mosquitoes drifting out of the Project area (increasing the threat of horizontal transmission). *See* ROA Dkts. 96-98; 133 Injunction Hearing P-15 at pg. 17; ROA Dkt. 41 - Declaration of Dr. Lorrin W. Pang (6/20/23) (pages 2, 13-19); ROA Dkt. 43 Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (6/20/23) (Exhibit 10).

Further, though Defendant ABC touts that the "nearly 300-page, single spaced FEA relied for its conclusions on more than *two hundred* academic studies and management documents" (ABC AB at pg. 10), the fact remains that Birds, Not Mosquitoes agency partners have not conducted any studies on the risks or potential significant impacts of the specific species of mosquito infected with the specific strain of *Wolbachia* being released in Hawai'i's fragile ecosystems. ROA Dkt.41; ROA Dkt. 43. This is important because similar to the BNM partners' fallacy repeated in the FEA, both ABC and the State continue to mislead the public by stating that "this project would only release male mosquitoes" (ABC AB at Pg. 11, State AB at pg. 3), when EPA guidelines allow for the unintentional *weekly release* in East Maui of up to 3,103 lab-strain-infected females that bite, breed, and spread disease. *See* ROA Dkts. 96-98; 133

[1] *See* U.S. Department of the Interior Strategy for Preventing the Extinction of Hawaiian Forest Birds (12/15/22) (pg. 8).

Injunction Hearing Exhibit P-15 at pg. 17. The State attempts to refute this by noting that the "EA discloses that the number of anticipated release rates are far smaller than the EPA guideline" and "[e]ven if the release rate was the same as the EPA guideline, the EA would still be sufficient as it would correspond to an applicable federal guideline for this type of Project." AB at pg. 22. Plaintiffs contend that this is not enough, as the final EA's assertion that released mosquitoes pose no risk to human health is based on unsound science, and the unintended consequences of a project of this scale resulting in the unintended spread of the imported *Wolbachia* strain(s) to female *Culex* or *Aedes* mosquitoes or other insect vectors of diseases could be catastrophic and likely irreversible. *See* ROA Dkt. 43; 71-77; ROA Dkt. 37; *See* ROA Dkts. 96-98; 133 Injunction Hearing Exhibit P-15 at pg. 17; Injunction Hearing Exhibit P-18-April 24-26, 2018, Meeting of the Human Studies Review Board; April 24-26, 2018, EPA Human Studies Review Board Meeting Report.

The Hawai'i Department of Agriculture ("HDOA") EPA Application for Section 18 Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") Emergency Exemption use of the "DQB Males" *Wolbachia* mosquitoes for the Project, the DLNR HDOA request to import mosquitoes for the Project, and EPA guidelines for *Wolbachia* IIT biopesticide mosquitoes all document the allowable accidental female release rate of one female for every 250,000 males. It is undisputed that female mosquitoes bite, breed, and spread disease. *See* ROA Dkts. 96-98; 133 Injunction Hearing Exhibit P-15 at pg. 17; DLNR HDOA Request to Import Southern House Mosquitoes for Immediate Field Release (6/9/22) (pages 11-12, 37-38); Injunction Hearing Exhibit P-16.

State Defendants argue that "[a]ppellants' claim that the EA "fails to disclose" the (EPA guidelines for the allowable release of female mosquitoes) is incorrect and does not negate the sufficiency of the EA." AB at pg. 27. However, nowhere in the FEA is the EPA's documented allowable release rate of one female for every 250,000 males stated or disclosed. *See* ROA Dkt. 42. The FEA states that the risk of females being accidentally released is estimated to be 1 out of 900 million. *Id.* This figure is conjecture with no documentation or data directly related to this project.

ABC Defendants go so far as to ask "[w]hat difference would it make if mosquitos could mate twice in their life rather than once…?" AB at pg. 18. Perhaps the agency should have concerned itself with that same question in the EA. Though ABC claims that mosquitoes cannot

mate twice in their life, Plaintiffs point to studies (in evidence) that show that female *Culex quinquefasciatus* mosquitoes can mate more than once and can oviposit via fertilization of retained sperm from a prior mating. (Manyi et al 2014). And per the declaration of tropical disease and vector expert Dr. Lorrin Pang, a second mating could result in viable offspring with the lab-strain bacteria:

> "X-infected male mosquitoes may transmit the introduced strain to wild females through blood, mucous, and semen during mating. Granted, if this occurs via venereal route in the wild female mosquito, the first half of their life their matings will be sterile. However, after this their matings will produce offspring of both sexes and soon will "sweep" the population with the introduced *Wolbachia* strain."(Frydman et al. 2006)

ROA Dkt. ROA Dkt. 43.

Another fact in dispute is Defendants' assertion that *Wolbachia* bacteria "cannot transfer between animal species or to humans" and "cannot transfer between male mosquitoes and female mosquitoes; mosquitoes can only inherit *Wolbachia* from their mother." ABC AB at pg. 11; State AB at pg. 3. However, per the declaration of Dr. Pang, *Wolbachia* bacteria can transfer between male mosquitoes and female mosquitoes through horizontal transmission:

> "The evidence of horizontal spread of *Wolbachia* bacteria (documented in peer-reviewed studies) shows that the bacteria go not only to sexual cells, but also to somatic cells (nonsexual cells of the body). *Wolbachia* can also live outside of intra-cellular systems for several months. Horizontal transmission of the *Wolbachia* bacteria can occur through mating, shared feeding sites, and serial predation of larva in standing water breeding sites. Studies that downplay the possibility of horizontal transmission based on *Aedes aegypti* mosquitoes are flawed references because *Aedes aegypti* are resistant to *Wolbachia*."

ABC portrays Plaintiffs arguments concerning "horizontal drift" – of released mosquitoes drifting beyond the intended scope of the release or wild mosquitoes drifting into it – as a "speculative possibility" that is just another flyspeck claim, and that "even if it were to occur, Plaintiffs have presented no evidence that it would have an adverse impact on the environment." AB at pg. 18. This argument is similarly misleading and dangerous, however, as no studies have been done on the potential for biopesticide drift or wind drift of the introduced mosquitoes and the bacteria they're infected with. ROA Dkt. 41; ROA Dkt. 43 (Exhibit 10). Per the statement of Dr. Lorrin Pang:

> "Mosquitoes carried on the wind into and out of the release sites of the project area have not been factored into the math model or the overall plan. Lowland

> male (and female) wild mosquitoes can travel by wind drift up from lowlands to the project area and dilute the intervention mating pool, affecting the efficacy goal of 90% lab-reared male matings."

Diluting the efficacy of the IIT with mosquitoes drifting into the Project area would require a need to maintain higher proportions of the experiment. The threat of IIT mosquitoes drifting out of the Project area increases the threat of horizontal transmission of the bacteria, the potential for population replacement of mosquitoes, and the potential for those mosquitoes to have increased pathogen infection and increased disease-transmitting capability.

C. The Failure to Provide Alternatives to the Proposed Action

In its Answering Brief, State Defendants also portray Plaintiffs challenge to the sufficiency of the FEA as "a baseless attempt to stop the only presently viable option for saving Hawai'i's cherished native birds." AB at pg. 2. To be clear, *Wolbachia* IIT is not the only viable option, and several alternatives have not been considered, including Dr. Lorrin Pang's alternative approach of treatment of avian malaria in the mosquito phase through antimalarial drug feeding. ROA Dkt. 41; ROA Dkt. 43 (Exhibit 10). The alternative approach of biological larvicide controls, an alternative considered and dismissed in the FEA, is currently being used in the project area in combination with the release of *Wolbachia* IIT mosquitoes. Aerial spraying of BTI bacterial larvicide is now considered by Birds, Not Mosquitoes agencies to be a viable option, though not part of the approved plan. This reaffirms that alternatives were not sufficiently considered in the FEA.

II. PLAINTIFFS' SECOND POINT OF ERROR – The Circuit Court erred in granting summary judgment based on a failure to address additional material facts

As detailed above, numerous facts in dispute in the FEA and serious issues completely omitted from consideration were revealed during the preliminary injunction hearing, and likewise additional material facts have come to light since the continuance of that hearing that Plaintiffs detailed in the Memorandum in Opposition to Defendants MSJ. Those disputed facts and omissions suggest a project being carried out in a manner contrary to what was proposed, explained, and/or studied in the FEA. *See* ROA Dkt. 201. This would suggest "new" information or circumstances that were "not originally disclosed," not previously considered, and could have a substantial effect on the environment – something (in the environmental context) that Hawai'i Courts have held requires additional review. *See Unite Here! Local 5 v. City & Cnty. of*

Honolulu, 123 Hawai‘i 150, 179, 231 P.3d 423, 452 (2010). The appropriate relief, therefore, is not dismissal at summary judgment but instead to allow Plaintiffs to conduct discovery and (if necessary) amend their Complaint. OB at pg. 22.

Additional material facts discovered since the filing of the Complaint, including release by helicopters rather than drones, use of a short tube instead of the stated longline release, and additional fire risks from 12V batteries that were not studied or discussed in the FEA, suggest a project being carried out in a manner contrary to what was proposed, explained, and/or studied in the FEA should have given the Circuit Court pause and further demonstrate that the granting of summary judgment was premature, coming before discovery had been completed and thus was inappropriate at that juncture. Defendants allege that these are "extra-record allegations, stating that "[e]ven if Appellants had somehow managed to admit (additional material facts) into evidence, it simply showed that a flight had occurred. It gave the Environmental Court no information about the purpose of the flight, or even if the State or one of its partners were involved with the flight." State AB at pgs. 26-27. State Defendants go on to state that "[a]ppellants ask this Court to find that the actual project is using a short tube attached to a helicopter rather than a longline." (*Id.* at pg. 26) and that [t]he article does not give any indication that longline is not being used. (*Id*. at pg. 27) Appellants' claim that "hazardous materials" are being transported was not alleged in the Complaint.

Plaintiffs, however, assert that the flight information, use of a short tube attached to the helicopter rather than a longline, and accidents resulting from transporting of hazardous materials will be confirmed through discovery or further revealed in the continued hearing on Plaintiffs' Motion for Preliminary Injunction.

III. PLAINTIFFS' THIRD POINT OF ERROR – Acceptance of the FEA was a Violation of HRS Chapter 343 and HAR § 11-200.1-20

Though their subheading is entitled "Plaintiffs' Third Point of Error is Not a Ground for Reversal," Defendant ABC doesn't make any arguments in support of this assertion. Instead, ABC misleadingly portrays Plaintiffs' Third Point of Error as a "request" to the Court to "instruct DLNR to amend the FEA to include the names of commenters as well as their comment letters". ABC AB at 18. Though convenient for the sake of ABC's arguments, Plaintiffs in fact do not ask the ICA for this relief, but instead ask this Court to remand the case back to the lower court for further proceedings, which proceedings should include instructing the DLNR Defendants to comply with

the law before moving any further with the project. OB at 24. This is because Defendant BLNR's acceptance of the final EA and FONSI for the proposed biopesticide mosquito project was a clearly erroneous failure to comply with the provision of the HAR and violated the letter and purpose of HEPA. *Id*.

Plaintiffs have repeatedly asserted that not only did Defendant DLNR fail to follow administrative rules and Defendant BLNR violate the letter and purpose of HEPA by issuing a FONSI based on a flawed document, but that Plaintiffs' serious concerns about the risks and potential significant impacts of the mosquito release experiment have not been adequately addressed, and that several concerns have not been addressed at all. Additionally, there is no way to know if specific concerns are being addressed when the concerns of multiple commenters are combined together, altered, not identified with the names of commenters, and not appended in full to the FEA.

The State Defendants use a different smokescreen in an attempt to explain why their admitted failure to follow the law should not render the circuit court's decision inappropriate, arguing that "Appellants' challenge boils down to a disagreement about the seriousness of the concerns they raised in comments—not a failure to address those comments" and that the final EA contained the agency's responses to Plaintiff Tina Lia's comments to the DLNR after the draft EA was published. State AB at pgs. 8, 17-18. However, as Plaintiff Lia pointed out in her testimony received in the hearing for Plaintiffs' Motion for Preliminary Injunction, she did not believe that Defendant addressed her comments, instead only regurgitating an "evaluation of impacts" as topics in Appendix H to the FEA. OB at 24. Defendant DLNR failed to comply with HAR in compiling their FEA, and there are no issues addressed in the FEA that clearly identify Tina Lia or Hawai‘i Unites as the commenter. Plaintiff Lia, on behalf of Hawai‘i Unites, submitted an 8-page document with an extensive list of concerns. *See* ROA Dkt. 43 (Exhibit 4). Other members of Hawai‘i Unites submitted their own comments and concerns. None of these concerns were directly addressed in the FEA, and there were no topics in the FEA that adequately addressed any of these concerns. ROA Dkt. 42 (Exhibit 1).

Contrary to Defendants' assertion that Appellant Lia "admitted" that the EA did evaluate the impacts Appellants are concerned about in her cross-examination during the hearing on Appellants' Motion for Preliminary Injunction (ABC AB at pg. 17; State AB at pg. 16), <u>at no time</u> during cross examination did Appellant Lia state that the FEA evaluated the impacts that

she is concerned about. *See* Appendix D to Plaintiffs' OB (testimony of Plaintiff Lia) at pgs. 171-181. On cross-examination, Plaintiff Lia confirmed that the concerns she raised as comments to the Draft EA were not clearly addressed in the Final EA and that Defendant's "evaluation of impacts" instead were simply listed as identified topics in FEA Appendix H.

> Q: "You agreed that the comments that she took you through were topics that were identified. Did you mean to agree that you also felt that the concerns that were raised were clearly addressed?"
> A: "No. I was just confirming that those appeared to be the topics that were discussed in the Appendix H under those numbers."

Id. at pg. 182:3-24.

Likewise, the State's argument that the word "shall" in the HAR may be held to be merely directory when no advantage is lost, when no right is destroyed, or when no benefit is sacrificed, either by the public or to the individual by giving it that construction (citing to *Narmore v. Kawafuchi*, 112 Hawai'i 69, 83-84, 143 P.3d 1271, 1285-86 (2006) is unavailing, as Plaintiffs and the public lose the right to meaningful participation in the environmental process when they lose the ability to decipher what comments and concerns are being addressed when the concerns of multiple commenters are combined together, altered, not identified with the names of commenters, and not appended in full to the FEA. ROA Dkt. 42 (Exhibit 1).

Besides misrepresenting Plaintiff Lia's testimony, both ABC and State Defendants fail to acknowledge that Lia is only one of the Plaintiffs in the case. Defendants make no arguments regarding other members of Hawai'i Unites' comments to the FEA. *See* ABC AB and State AB.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the ICA reverse the Circuit Court's decision and remand the case for further proceedings.

DATED: Honolulu, Hawai'i September 19, 2024.

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CAAP-24-0000123
Appeal from Civ. No. 1CCV-23-0000594

CERTIFICATE OF SERVICE *for*

PLAINTIFFS-APPELLANTS' REPLY BRIEF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below, a copy of the above-named document along with this Certificate of Service were duly served upon the following parties via efiling/JEFS:

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