

IN THE SUPREME COURT OF IOWA

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SUPREME COURT NO. 17-1466

DISTRICT COURT NO. LACV095926

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TODD MORRIS

Plaintiff-Appellant,

v.

STEFFES GROUP, INC.

Defendant-Appellee.

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APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR MARION COUNTY, IOWA  
HONORABLE MARTHA L. MERTZ, DISTRICT COURT JUDGE

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PLAINTIFF/APPELLANT'S FINAL BRIEF

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## TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES .....	3
STATEMENT OF ISSUES PRESENTED FOR REVIEW .....	4
ROUTING STATEMENT.....	5
STATEMENT OF THE CASE.....	5
A. Nature of the Case.....	5
B. Course of Proceedings and Disposition .....	5
C. Statement of the Facts .....	6
ARGUMENT .....	11
A. Scope of Appellate Review .....	11
B. Preservation of Error .....	12
C. Discussion .....	12
ISSUE I: THE DISTRICT COURT ERRED IN FINDING THAT CHAPTER 555A DID NOT APPLY TO THE INSTANT MATTER AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DISMISSING THE CLAIM FOR VIOLATION OF CHAPTER 555A.....	12
ISSUE II: THE DISTRICT COURT ERROR IN DISMISSING THE ENTIRETY OF PLAINTIFF'S PETITION.....	17
CONCLUSION.....	18
STATEMENT REGARDING ORAL ARGUMENT.....	18
CERTIFICATE OF ELECTRONIC FILING.....	19
CERTIFICATE OF SERVICE .....	19
CERTIFICATE OF COMPLIANCE.....	20
CERTIFICATE OF ATTORNEY'S COSTS .....	20

## TABLE OF AUTHORITIES

### **Cases**

<i>Bill Grunder's Sons Constr., Inc. v. Ganzer</i> , 686 N.W.2d 193 (Iowa 2004) .....	12
<i>Fees v. Mut. Fire &amp; Auto. Ins. Co.</i> , 490 N.W.2d 55 (Iowa 1992) .....	13
<i>Rodgers v. Baughman</i> , 342 N.W.2d 801 (Iowa 1983) .....	13
<i>Sierra Club v. Iowa DOT</i> , 832 N.W.2d 636 (Iowa 2013) .....	17
<i>Stewart v. Sisson</i> , 711 N.W.2d 713 (Iowa 2006) .....	11, 12
<i>Westfield Ins. Cos. v. Econ. Fire &amp; Cas. Co.</i> , 623 N.W.2d 871 (Iowa 2001) .....	12

### **Statutes**

Iowa Code § 4.2 (1983) .....	13
Iowa Code § 714H.5 (2016) .....	13, 16
Iowa Code § 714H.5(1) (2016) .....	13-14
Iowa Code § 714H.3(2)(d) (2016) .....	14
Iowa Code Chapter 555A (2016).....	14, 15, 16
Iowa Code § 555A.1(2) (2016) .....	14-15
Iowa Code § 555A.2 (2016) .....	14, 16
Iowa Code 555A.3 (2016) .....	14, 16
Iowa Code 555A.4 (2016) .....	14, 16

### **Rules**

Iowa R. App. P. R. 6.1101(2)(c) (2017) .....	5
Iowa R. App. P. R. 6.1101(f) (2017) .....	5
Iowa R. Civ. P. 1.981(3), (2017) .....	12
Iowa R. App. P. 6.903(1)(e) (2017) .....	20
Iowa R. App. P. 6.903(1)(f) (2017) .....	20
Iowa R. App. P. 6.903(1)(g)(1) (2017).....	20

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

### SCOPE OF APPELLATE REVIEW

*Stewart v. Sisson*, 711 N.W.2d 713 (Iowa 2006)

*Westfield Ins. Cos. v. Econ. Fire & Cas. Co.*, 623 N.W.2d 871 (Iowa 2001)

### ISSUE I: THE DISTRICT COURT ERRED IN FINDING CHAPTER 555A DID NOT APPLY IN THE INSTANT SITUATION AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DISMISSING PLAINTIFF'S CLAIM FOR BREACH OF CHAPTER 555A

*Bill Grunder's Sons Constr., Inc. v. Ganzer*, 686 N.W.2d 193 (Iowa 2004)

*Fees v. Mut. Fire & Auto. Ins. Co.*, 490 N.W.2d 55 (Iowa 1992)

*Rodgers v. Baughman*, 342 N.W.2d 801 (Iowa 1983)

*Stewart v. Sisson*, 711 N.W.2d 713 (Iowa 2006)

Iowa Code § 4.2 (1983)

Iowa Code § 714H.3(2)(d) (2016)

Iowa Code § 714H.5 (2016)

Iowa Code § 714H.5(1) (2016)

Iowa Code Chapter 555A (2016)

Iowa Code § 555A.1(2) (2016)

Iowa Code § 555A.1(3)(a) (2016)

Iowa Code § 555A.2 (2016)

Iowa Code 555A.3 (2016)

Iowa Code 555A.4 (2016)

Iowa R. Civ. P. 1.981(3), (2017)

### ISSUE II: THE DISTRICT COURT ERRED IN DISMISSING PLAINTIFF'S PETITION IN ITS ENTIRETY

*Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 640 (Iowa 2013)

## **ROUTING STATEMENT**

The Supreme Court should retain this case as it presents substantial issues of first impression and/or substantial questions of enunciating or changing legal principles, namely the application of Chapter 555A to an agreement for auction services. *See* Iowa R. of App. Pro. R. 6.1101(2)(c) & (f) (2017).

## **STATEMENT OF THE CASE**

### **A. Nature of the Case**

This appeal arises from the August 18, 2017, District Court Order Regarding Summary Judgment issued by the Honorable Martha L. Mertz wherein Judge Mertz found Chapter 555A did not apply to the instant matter and dismissed the entirety of Plaintiff's Petition.

### **B. Course of Proceedings and Disposition**

Plaintiff/Appellant, Todd Morris filed his Petition in the above captioned matter on or about April 29, 2016, asserting a claim for violation of Iowa Code Chapters 714H/555A and a claim for declaratory judgment. [App. pp. 007-013]. Defendant/Appellee Steffes Group, Inc. filed its Answer on or about May 25, 2016. [App. pp. 014-18]. Plaintiff filed a Motion for Partial Summary Judgment on the Chapter 714H/555A claim on or about July 10, 2017 with Defendant filing a resistance and Cross-Motion for Summary Judgment on the 714H/555A claim on

July 19, 2017. [App. pp. 019-104]. On or about August 14, 2017, Plaintiff filed his Resistance to Defendant's Motion for Summary Judgment. [App. pp. 105-08]. An un-reported Hearing on the Motions for Summary Judgment was held and on August 18, 2017, the Honorable Martha L. Mertz entered her Order granting Defendant's Motion for Summary Judgment and dismissing Plaintiff's other claim and legal causes of action without prejudice. [App. pp. 109-10].

### **C. Statement of the Facts**

In early February 2016, during the Iowa Power Farming Show in Des Moines, Iowa, Duane Norton, sales representative for Defendant, spoke with Plaintiff regarding the potential sale by auction of some of Plaintiff's agricultural equipment. [App. pp. 042-43 (Todd 7:11-11:14), p. 060 (Norton 20:16-20:22)]. During this conversation, Norton represented that there was an upcoming sale that could match what Plaintiff had, but that it was coming up quick. [App. p. 043 (Todd 10:10-10:18)]. Plaintiff left his phone number with Norton so Norton could contact him and arrange a time to come to view the equipment at Plaintiff's property. [App. p. 043 (Todd 11:23-12:6)].

On February 5, 2016, a couple days after the Iowa Power Farming Show, Norton called Plaintiff to view the equipment; however, Plaintiff was out-of-town on a business trip. [App. p. 044 (Todd 14:6-14:14)]. Norton told Plaintiff that he just needed access to the equipment so he could view it, take some photos, and

collect VIN numbers. [App. p. 045 (Todd 17:6-17:12)]. Based on this representation, Plaintiff arranged for his wife, Lacey Morris, to be home so she could open up the buildings for Norton to view the equipment on February 6, 2016. [App. p. 054 (Lacey 17:3-17:19)].

After Norton viewed the equipment, Norton sat down with Lacey Morris in the Morris' kitchen to fill out what Norton represented to be an "advertisement list or an asset list." [App. p. 054 (Lacey 20:14-20:24), p. 063 (Norton 28:14-28:18)].

The assets listed included:

- a. CIH JX75 w/ CIH LX132 Loader S/N HFJ031843
- b. King Kutter II Roto Tiller
- c. Country Line Box Scraper
- d. Land Pride Mower
- e. Vermeer 605 Super J S/N 10RA121R3AH004697
- f. Kelderman V-Rake KRC IIID 3184
- g. NH 492 Mower Conditioner S/N 861241
- h. Tandem disc 13'
- i. Brillon Cultipacker 8'
- j. Landoll Chisel Plow 8'
- k. Cosmo Fertilizer Spreader S-500-uk
- l. JD 475A Planter
- m. Harrow Drag Bar

[App. p. 035].

Defendant gave the Consignment Auction Contract to Lacey Morris and reassured her that it was just "an asset list, that this was more to get it into the advertisement because we were on such a short time frame." [App. p. 056 (Lacey 26:6-26:12)]. Lacey was hesitant about the document, so she called Plaintiff. [App.

pp. 055-56 (Lacey 24:8-24:12, 26:7)]. Plaintiff and Norton further discussed the equipment at this time; Plaintiff told Defendant that the CIH JX75 tractor had to sell for a certain amount due to a note being on it. Plaintiff was unsure what this amount was, so he told Norton that he would find out when he returned home and let him know. [App. p. 046 (Todd 24:4-24:21)]. Norton further represented that the document he was requesting Lacey sign was “strictly an asset list” that was “nothing binding.” [App. p. 045 (Todd 19:1-19:13)]. Based on this representation, Plaintiff told his wife she could sign the asset list in his name. [App. p. 045 (Todd 19:18-19:20)].

Contrary to Defendant’s representations, the asset list was actually a “Consignment Auction Contract.” [App. p. 035]. At the time of entering into the Consignment Auction Contract, Defendant did not furnish to Plaintiff a written “Notice of Cancellation” form. [App. p. 064 (Norton 35:5-35:10)]. Defendant also did not orally inform Plaintiff at the time of entering into the Consignment Auction Contract of his right to cancel. [App. p. 064 (Norton 33:23-35:4)]. The Consignment Auction Contract does not include a written statement stating the buyer’s right to cancel the contract at any time. [App. p. 035]. Rather, the Consignment Auction Contract states, “Item(s) may not be sold or withdrawn prior to the auction except by mutual agreement.” *Id.*



On February 29, 2016 at 12:33 p.m., Plaintiff text messaged Norton asking, “When tractor sells I can approve or deny sale price onsite can’t I?” Norton responded, “We can put a reserve on the tractor ahead of time. We’ll protect it that way.” Norton then asked, “Can I call u i’,m driving.” [App. pp. 039-40]. Plaintiff and Norton subsequently spoke on the phone. During this time, Norton told Plaintiff that he believed the tractor had a value of approximately \$21,000 to \$22,000. The parties then discussed the reserve process, and Norton represented to Plaintiff that the reserve would not be advertised, but that Defendant would watch the bidding, and if the reserve was not going to be met, then Defendant would bid the reserve such that the tractor could be returned to Plaintiff. Accordingly, Plaintiff asked Norton to put a reserve on the tractor for \$20,000.00. [App. p. 047 (Todd 38:19-39:25)].

Plaintiff and his wife transported his equipment to the Boone sales site in the two weeks preceding the sale. [App. p. 048 (Todd 53:7-53:14), pp. 057-58 (Lacey 36:24-37:13)]. On the day before the sale, Plaintiff again reaffirmed to Norton that the reserve on the tractor was \$20,000.00. [App. p. 048 (Todd 58:22), p. 058 (Lacey 38:9-38:21)]. In addition to the specific request for a reserve by Plaintiff, Defendant’s standard operating procedure is to determine the payoff amount prior to an auction if they are informed of any liens on the equipment. [App. p. 067 (Meyer 14:4-15:6)].

Defendant was aware of a lien on Plaintiff's tractor with Union State Bank. [App. p. 035]. Defendant obtained a pay-off statement from Union State Bank showing the outstanding amount due on the tractor to be \$15,023.15. [App. p. 038]. However, Defendant failed to follow its standard operating procedure by inputting this amount as a reserve. Rather, after the auction was over, Defendant entered a reserve amount of \$15,000.00. [App. p. 036-37, 068 (Meyer 18:6-18:14), p. 071 (Burns 19:14-19:20)].

On March 24, 2016, Defendant held its auction sale at the Farm Progress site in Boone, Iowa, whereat Plaintiff's equipment was sold for:

a. CIH JX75 w/ CIH LX132 Loader S/N HFJ031843	\$14,500.00
b. King Kutter II Roto Tiller	\$1,300.00
c. Country Line Box Scraper	\$225.00
d. Land Pride Mower	\$600.00
e. Vermeer 605 Super J S/N 10RA121R3AH004697	\$1,400.00
f. Kelderman V-Rake KRC IIID 3184	\$1,000.00
g. NH 492 Mower Conditioner S/N 861241	\$1,850.00
h. Tandem disc 13'	\$400.00
i. Brillon Cultipacker 8'	\$325.00
j. Landoll Chisel Plow 8'	\$150.00
k. Cosmo Fertilizer Spreader S-500-uk	\$350.00
l. JD 475A Planter	\$60.00
m. Harrow Drag Bar	\$50.00

[App. p. 036-37]. During the auction, Plaintiff received a FaceTime call from his wife informing him that the CIH JX75 tractor sold for under the reserve amount. [App. p. 050 (Todd 61:9-61:10); p. 059 (Lacey 42:25)]. Plaintiff told her not to

worry based on Norton’s prior representations. [App. p. 050 (Todd 62:15-62:20), p. 059 (Lacey 44:8-44:14)].

Later in the evening after the auction, Plaintiff called Norton to discuss the tractor. However, Norton did not answer or call him back. [App. p. 050 (Todd 61:25-62:5)]. The following day, Norton still did not answer or call Plaintiff back; therefore, Plaintiff went to the auction site and discovered the tractor was gone. [App. p. 050 (Todd 62:5-62:11)]. Plaintiff then spoke with one of Defendant’s yard personnel, who allowed Plaintiff to use his cell phone to call Norton. [App. pp. 050-51 (Todd 64:23-66:5)]. When Norton answered, Plaintiff confronted him regarding the reserve. Norton denied that a reserve ever existed, but offered to “make this right.” [App. pp. 050-51 (Todd 64:23-66:5)]. Plaintiff demanded the return of his property, and notified Defendant of the cancellation of the Consignment Auction Contract. [App. p. 008; Petition ¶ 14]. To date, Plaintiff’s property has not been returned. [App. p. 008 Petition ¶ 15].

## **ARGUMENT**

### **A. Scope of Appellate Review**

Grants or denials of Summary Judgment are reviewed for corrections of errors at law. *Stewart v. Sisson*, 711 N.W.2d 713, 715 (Iowa 2006). When the Court reviews for corrections of errors at law, it must determine whether the district court

correctly applied to law to the undisputed facts. *Westfield Ins. Cos. v. Econ. Fire & Cas. Co.*, 623 N.W.2d 871, 876 (Iowa 2001).

## **B. Preservation of Error**

Plaintiff, raised the following issues and errors in his Motion for Summary Judgment and Resistance to Defendant's Motion for Summary Judgment as well as at hearing on the Motion for Summary Judgment. Plaintiff filed a timely Notice of Appeal on or about September 15, 2017, thus preserving the errors as required by Iowa law. [App. pp. 111-12].

## **C. Discussion**

**ISSUE I: THE DISTRICT COURT ERRED IN FINDING CHAPTER 555A DID NOT APPLY IN THE INSTANT SITUATION AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DISMISSING PLAINTIFF'S CLAIM FOR BREACH OF CHAPTER 555A**

“A motion for summary judgment should only be granted if, viewing the evidence in the light most favorable to the nonmoving party, ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Stewart v. Sisson*, 711 N.W.2d 713, 715 (Iowa 2006) (internal citations omitted); *Bill Grunder's Sons Const., Inc., v. Ganzer*, 686 N.W.2d 193, 196 (Iowa 2004); Iowa R. Civ. P. 1.981(3) (2017).

Although courts view the facts in a light most favorable to the non-moving party and give that party the benefit of any reasonable factual inferences, an issue of fact is “material” only if it could affect the outcome of a lawsuit and is “genuine” only if a reasonable jury could resolve the dispute in favor of the nonmoving party. *Fees v. Mutual Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992) (citations omitted).

The District Court found Chapter 555A of the Iowa Code does not apply to a contract for auctions services or more specifically, the contract for auction services at issue in the above captioned matter. [App. p. 109]. In making such ruling, the Court denied Plaintiff’s Motion for Summary Judgment, granted Defendant’s Motion for Summary Judgment as to Count I of the Plaintiff’s Petition, related to violations of Chapter 555A and 714H. *Id.*

“In construing a statute, the Court seeks to ascertain and give effect to the intent of the drafters” and "construe it liberally 'to promote its objects and assist the parties in obtaining justice.'" *Rodgers v. Baughman*, 342 N.W.2d 801, 805 (Iowa 1983) (*quoting* Iowa Code § 4.2 (1983)). Under Iowa Code section 714H.5, a consumer who suffers an ascertainable loss of money or property as the result of a prohibited practice or act may bring an action at law to recover actual damages, and the Court may order such equitable relief as it deems necessary to protect the public from further violation, including temporary and permanent injunctive relief. Iowa

Code § 714H.5(1). Prohibited practices and acts include violations of Iowa Code chapter 555A. *See id.* § 714H.3(2)(d).

Iowa Code Chapter 555A, known as the Door-to-Door Sales Law, requires a seller in a door-to-door sale of consumer goods or services to: (1) furnish two copies of a notice of cancellation to the buyer, (2) have a written statement in the contract or on the receipt stating the buyer's right to cancel the contract at any time, (3) orally inform the buyer, at the time of entering into the contract, of the buyer's right to cancel, and (4) not misrepresent in any manner the buyer's right to cancel. *Id.* § 555A.2-4.

A “door-to-door sale” means:

a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.

*Id.* § 555A.1(3)(a).

“Consumer goods or services” are “goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including course of instruction or training regardless of the purpose for which they are taken.” *Id.* §

555A.1(2). Although the items at issue in this matter can be considered agricultural equipment, Morris used it primarily for personal, family or household purposes. Specifically, Todd Morris used the equipment to “[p]lay around my farm, hunting purposes, food plots, maintaining my house, maintaining – we live on a private lane, maintaining my property.” [App. p. 046 (Todd 24:24-25:40)]

In this case, Defendant’s sales representative personally solicited Defendant’s consignment services and the sale of Plaintiff’s equipment on February 6, 2016. [App. pp. 042-45, 054, 060, 063]. The solicitation occurred in the kitchen of Plaintiff’s residence. [App. pp. 054, 063]. The consignment services and agricultural equipment had a purchase price of \$25 or more; as an example, the CIH JX75 tractor had a purchase price of \$14,500.00 with a commission amount of \$1,160.00. [App. pp. 036-37]. Further, Defendant’s consignment services and the sale of Plaintiff’s equipment was induced by Defendant’s representations that a reserve would be put on the CIH JX75 tractor to ensure that a loan on it could be paid off. *See* [App. pp. 035-40, 046-48, 058, 067-68, 071] Accordingly, Iowa Code Chapter 555A applies to this case.

Furthermore, there was and is no genuine issue of material fact that Iowa Code Chapter 555A has been breached in this case. At the solicitation, Defendant did not provide or furnish to Plaintiff a written “Notice of Cancellation” form. [App. p. 064] Defendant did not orally inform Plaintiff at the time of entering into the

Consignment Auction Contract of his right to cancel. *Id.* The Consignment Auction Contract also did not include a written statement stating the buyer's right to cancel the contract at any time. [App. p. 035]. To the contrary, the Consignment Auction Contract provided, "Item(s) may not be sold or withdrawn prior to the auction except by mutual agreement." *Id.* Accordingly, Plaintiff failed to comply with the requirements of Iowa Code Chapter sections 555A.2, 555A.3, and 555A.4. Iowa Code §§ 555A.2-555A.4. As such, Defendant must be held responsible for its prohibited practices and acts under Iowa Code section 714H.5.

For these reasons, despite the fact that Iowa Code Chapter 555A is entitled "Door-to-Door Sales," the conduct of Defendant clearly falls under the provisions and requirements of Chapter 555A and Defendant violated Chapter 555A and conducted prohibited practices and acts. Accordingly, the District Court erred as a matter of law in finding that Chapter 555A did not apply and in granting Defendant's Summary Judgment Motion and denying Plaintiff's Summary Judgment Motion. Plaintiff requests the Court reverse the August 18, 2017 Order of the Honorable Judge Martha L. Mertz and find Plaintiff is entitled to Partial Summary Judgment on Count I of his Petition.



## ISSUE II: THE DISTRICT COURT ERRED IN DISMISSING PLAINTIFF'S PETITION IN ITS ENTIRETY

Plaintiff filed a two-count Petition alleging violation of Iowa Code Chapters 555A and 714H as Count I and Declaratory Judgement for Count II. The District Court, after denying Plaintiff's Motion for Summary Judgment and granting Defendant's Motion for Summary Judgment as to Count I of Plaintiff's Petition, also ordered dismissal of Plaintiff's Petition, without prejudice, as to all other theories of liability. [App. p. 109]. The Court made such determination and order on its own discretion as Defendant had not requested dismissal of the remaining Petition or count and did not file Summary Judgement on the remaining count of the Petition. [App. pp. 073-104]

Dismissal of a petition is only appropriate if, when viewing the petition in the light most favorable to the plaintiff, the plaintiff's claim could not be sustained under any state of facts provable under the petition." *Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 640 (Iowa 2013). No party has argued, and the Court made no finding, that the Plaintiff's remaining claim for declaratory judgment could not be sustained under any state of facts provable under the Petition. [App. pp. 073-104, 109-10] Accordingly, the District Court's dismissal of the remaining Count was in error and the Court should reverse such decision and remand the declaratory judgment count for trial.

## **CONCLUSION**

For the reasons set forth above, the August 18, 2017 Order Re Summary Judgment of the Honorable Martha L. Mertz should be reversed, with summary judgment being granted in favor of Plaintiff Todd Morris on the claim for violation of Iowa Code Chapters 714H and 555A and reinstating Plaintiff's remaining claim and legal action.

## **STATEMENT REGARDING ORAL ARGUMENT**

Plaintiff-Appellant does not believe oral argument is necessary in this matter, however, should Appellee request oral submission Appellant respectfully requests the right to participate in oral submission.

Respectfully submitted,

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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that I have filed the attached Plaintiff-Appellant’s Final Brief with the Clerk of the Iowa Supreme Court through the electronic document management system on January 11<sup>th</sup>, 2018.

/s/ Billy J. Mallory  
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**CERTIFICATE OF SERVICE**

I hereby certify that on 11<sup>th</sup> day of January, 2018, I served the attached Plaintiff-Appellant’s Final Brief through the electronic document management system upon the following attorneys:

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**CERTIFICATE OF COMPLIANCE**

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1), because this Brief contains 2,999 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f), because the Brief has been prepared in a proportionally spaced typeface using Times New Roman font and utilizing the 2008 edition of Microsoft Word in 14-point font plain style.

/s/ Billy J. Mallory  
Billy J. Mallory  
Attorney for Plaintiff -Appellant

**CERTIFICATE OF ATTORNEY’S COSTS**

I hereby certify that the cost of printing the foregoing Plaintiff-Appellant’s Final Brief was \$0.00 (exclusive of sales tax, postage and delivery).

/s/ Billy J. Mallory  
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