IN THE SUPREME COURT OF IOWA

NO. 19-0491

GREATAMERICA FINANCIAL SERVICES CORPORATION,
Plaintiff-Appellee

v.

NATALYA RODIONOVA MEDICAL CARE, P.C.,
Defendant-Appellant

APPEAL FROM THE IOWA DISTRICT COURT FOR LINN COUNTY
THE HONORABLE LARS ANDERSON

APPELLEE'S BRIEF

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ROUTING STATEMENT

This appeal presents the application of existing legal principles. Thus, it is appropriate for the Iowa Supreme Court to transfer the case to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Appellee GreatAmerica Financial Services Corporation ("GreatAmerica") is dissatisfied with Appellant Natalya Rodionova Medical Care, P.C. ("NRMC")'s Statement of the Case, and thus, files its own as follows:

Nature of the Case

GreatAmerica provided financing of office equipment to NRMC, located in New York, pursuant to a finance agreement. NRMC took delivery of the equipment, used the equipment, and made seven (7) monthly payments to GreatAmerica. NRMC then defaulted on the agreement and alleged the signature on behalf of NRMC was not authorized. GreatAmerica brought an action against NRMC for breach of the agreement.

Disposition of the Case in the District Court

On July 26, 2018, GreatAmerica filed a lawsuit against NRMC for breach of contract. (App. 5). On February 28, 2019, the district court entered an Order granting GreatAmerica's motion for summary judgment. On April 24, 2019, the district court entered judgment against NRMC in the amount of $60,879.51. NRMC appeals the district court's grant of summary judgment.

STATEMENT OF THE FACTS

A. The Parties to the Agreement and Lawsuit.

GreatAmerica is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa. (App. 26 ¶ 2). GreatAmerica provides financing to companies that desire to acquire business equipment and/or software for commercial use. (App. 26 ¶ 3).

NRMC is a professional corporation incorporated in the state of New York with its principal place of business in Bronx, New York. (App. 16 ¶ 3).

B. The Finance Agreement.

On October 23, 2017, GreatAmerica was presented with Agreement No. 1296204 ("Agreement"), under which NRMC was seeking financing to obtain office equipment (Kyocera copiers and Grandstream telephone system) from NRMC's equipment vendor, New York Digital Products, Inc. ("NYDP"). (App. 8; App. 16 ¶ 4). The Agreement bore the signature of "Natalya Rodionova," owner of NRMC. (App. 8).

The Agreement provides:

> NET AGREEMENT. THIS AGREEMENT IS NON-CANCELABLE FOR THE ENTIRE AGREEMENT TERM. YOU UNDERSTAND WE ARE PAYING FOR THE EQUIPMENT BASED ON YOUR UNCONDITIONAL ACCEPTANCE OF IT AND YOUR PROMISE TO PAY US

> UNDER THE TERMS OF THIS AGREEMENT, WITHOUT SET-OFFS FOR ANY REASON EVEN IF THE EQUIPMENT DOES NOT WORK OR IS DAMAGED, EVEN IF IS NOT YOUR FAULT.
>
> DEFAULT AND REMEDIES. If you do not pay any sum within 10 days after its due date, or if you breach any other term of this Agreement or any other agreement with us, you will be in default, and we may require that you return the Equipment to us at your expense and pay us: 1) all past due amounts and 2) all remaining payments for the unexpired term, plus our booked residual, both discounted at 4% per annum. We may also use all other legal remedies available to us, including disabling or repossessing the Equipment. You agree to pay all our costs and expenses, including reasonable attorney fees, incurred in enforcing this Agreement. You also agree to pay interest on all past due amounts, from the due date, at 1.5% per month.

(App. 8). Under the terms of the Agreement, NRMC was required to make 63 monthly payments of $999, plus tax. *Id.*

On October 23, 2017, a GreatAmerica employee performed a telephone verification with NRMC employee Melissa Santiago. (App. 24). The "Equipment Inspection/Verification" form for the Agreement indicates that Santiago responded "Yes" to the question: "Is the equipment installed and working?" *Id.* GreatAmerica then provided the financing for the Agreement. (App. 27 ¶ 6).

C. NRMC uses the equipment and makes monthly payments under the Agreement.

NRMC admits: "New York Digital sent equipment to the Defendant … and left it in the office." (App. 64; Defendant's Exhibit C; Answer to Interrogatory No. 14). NRMC acknowledges it used the equipment. (*See* App. 24, 25).

On October 30, 2017, GreatAmerica sent its first invoice (Invoice Number 21562773) to NRMC pursuant to the Agreement. (App. 111). The first invoice, like the next six (6) invoices that followed it, states it is for "Agreement Number: 003-1296204-000." (App. 95-112). NRMC paid the first invoice via check sent to GreatAmerica dated "11/9/17." (App. 113). NRMC wrote on the check for the first payment: "inv #21562773;" "#003-1296204-000;" (referencing the Agreement) and "office internet phone/fax etc." *Id.* The next six (6) invoices were paid by NRMC via telephone by NRMC authorizing debits to NRMC's bank account. (App. 114-5; App. 116-7 ¶ 5). Dr. Rodionova herself authorized a telephone payment on May 21, 2018. (App. 117). NRMC admits "it did make payments to GreatAmerica." (App. 33 ¶ 9; App. 113). NRMC made seven (7) monthly payments under the Agreement before defaulting. (App. 27 ¶ 8). All seven (7) of the invoices paid by NRMC included a GreatAmerica toll-free telephone number for NRMC to call if it had any questions. (App. 95-112).

D. NRMC defaults under the Agreement.

On May 17, 2018, Dr. Rodionova sent GreatAmerica an email seeking to cancel the Agreement. (App. 25). In the email, Dr. Rodionova admits she had been using the equipment, but stated her internet services were interrupted due to a dispute with NYDP. *Id.* According to Dr. Rodionova, NRMC "moved back with Verizon and Cablevision." *Id.* Dr. Rodionova offered to buy the printers/faxes she had been using from GreatAmerica, rather than continue to lease them. *Id.* Dr. Rodionova asserted a belief that NYDP's actions constituted "fraud." *Id.* NRMC concedes: "At that time, NRMC parted ways with New York Digital Products, Inc., because of their actions with regard to the proposal they gave me concerning certain phone and copier equipment and their actions thereon." (App. 85 ¶ 6). Nevertheless, four days later, on May 21, Dr. Rodionova authorized another monthly payment to GreatAmerica pursuant to the Agreement. (App. 114).

NRMC defaulted on the Agreement by making no further payments after May 21, 2018. (App. 27 ¶ 8).

E. Proceedings in the District Court.

On February 28, 2019, the district court granted GreatAmerica's motion for summary judgment. The district court initially noted that the Agreement contains a hell-or-high-water clause, which is valid and enforceable under Iowa law. (App. 118-22). The district court correctly noted that to enforce a hell-or-high-water clause, the lessee is required to accept the goods under the Iowa Uniform Commercial Code. (App. 120; Iowa Code § 554.13407(1)). The district court held:

> The Court finds that the Defendant did accept the delivery of the goods both according to the phone call verification with GreatAmerica and to the extent there is any question of the substance of that phone call, by keeping the goods for seven months and making payments there upon, without any attempt to reject the goods.

(App. 120).

The district court next rejected NRMC's defense that the Agreement was not enforceable because it had been signed by an unknown, unauthorized signer. The district court concluded:

> As with the conduct that constitutes acceptance of the goods, in the same ways, Dr. Rodionova ratified the contract with GreatAmerica, regardless of who signed the initial agreement. By accepting the equipment and keeping it, using it to some degree, and making seven monthly payments, Dr. Rodionova received a benefit from the agreement for which she also was obliged to continue making

> payments. *Life Investors*, 838 N.W.2d at 647 ("A person should not be able to accept the benefits of a contract even if the signer's acts are unauthorized, but deny his or her obligations under the contract because the signer's acts are unauthorized.")

ARGUMENT

I. THE DISTRICT COURT CORRECTLY HELD THAT THE AGREEMENT IS A VALID CONTRACT.

A. Preservation of error.

GreatAmerica agrees that Appellant preserved error with respect to the district court's holding that the parties entered a valid, enforceable contract under Iowa law.

B. Standard of review.

A grant of summary judgment is reviewed for correction of errors at law. *GreatAmerica Fin. Servs. Corp., v. Lloyd S. Meisels, P.A.*, No. 15-0933, 2016 WL 5480718, at *2 (Iowa Ct. App. Sept. 28, 2016). A non-moving party may not rely on unsubstantiated, self-serving, and conclusory affidavits that are contrary to the record evidence. *See Double D Land & Cattle Co., Inc. v. Brown*, 541 N.W.2d 547, 551-52 (Iowa Ct. App. 1995). "If 'opposing parties tell two different stories,' the court must review the record, determine which facts are material and genuinely disputed, and then view those facts in a light most favorable to the non-moving party--as long as those facts are not so 'blatantly contradicted by the record . . . that no

reasonable jury could believe' them." *Reed v. City of St. Charles*, 561 F.3d 788, 790 (8th Cir. 2009) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)).

C. NRMC ratified the Agreement.

Even assuming that the person who signed the Agreement for NRMC was not authorized to do so by NRMC, NRMC is nonetheless bound to the terms of the Agreement because it ratified the Agreement. NRMC admits it used the equipment and paid seven (7) of GreatAmerica's monthly invoices pursuant to the Agreement, but NRMC takes the position that the Court can declare the Agreement unenforceable after the fact because the signature on behalf of NRMC was "forged." The Iowa Supreme Court expressly rejected this exact argument in *Life Investors Ins. Co. of Am. v. Estate of Corrado*, 838 N.W.2d 640, 647 (Iowa 2013).

In *Life Investors*, Life Investors and one of its insurance marketers attempted to resolve a commission dispute through a written settlement agreement, purportedly signed by the marketer. *Id.* at 643. The parties subsequently operated under the agreement, but when the terms of the agreement required the marketer to pay larger sums, the marketer claimed he did not sign the agreement and had not authorized anyone else to sign for him. *Id*. The marketer argued his actions in performing under the agreement could not have ratified the agreement because the signer was

unknown and not authorized by the marketer and the marketer was unaware of the terms of the agreement. *Id.* at 644.

The Supreme Court initially noted that under the Restatement (Second) of Agency, a principal could not ratify a contract signed by an unauthorized signer unless the signer "purported to act as an agent" on behalf of the principal. *Id*. at 647. Thus, a forged signature could not be ratified. *Id*.; Restatement (Second) of Agency § 4.03 cmt. c, at 323. Based on more recent case law, and statutes of various states, the *Restatement (Third) of Agency* § 4.03 changed this requirement to permit ratification even if the signer was not purporting to act as an agent. *Id*.

The Court examined existing Iowa law and stated: "[O]ur legislature has taken the position a principal may ratify an unauthorized signature, including a forgery, when dealing with negotiable instruments." *Id.*, (citing Iowa Code § 554.3403(1)). The Court adopted Restatement (Third) of Agency § 4.03 to apply to all contracts in Iowa:

> We conclude Iowa law should abandon the 'purported to act' rule contained in the Restatement (Second) of Agency and our prior case law in favor of the rule contained in the Restatement (Third) of Agency, that an undisclosed principal may ratify an actor's unauthorized act. We reach this conclusion for the reasons set forth in comment c of section 4.03 of the Restatement (Third) of Agency and for the fact that our legislature has adopted this rule for negotiable instruments. We agree with the

> Restatement (Third) of Agency's position that our law should not treat contracts and negotiable instruments differently. A person should not be able to accept the benefits of a contract even if the signer's acts are unauthorized, but deny his or her obligations under the contract even if the signer's acts are unauthorized.

Id.[1]; *see also W. All. Bank v. Jefferson*, No. 2:14-CV-00761 JWS, 2015 WL 7075171, at *9 (D. Ariz. Nov. 13, 2015), aff'd, 698 F. App'x 914 (9th Cir. 2017) (quoting Restatement (Third) of Agency § 4.03) ("Most contemporary courts recognize that a forgery may be ratified because pretending to be the principal is not so different from pretending to have authority to act on behalf of the principal."); *In re Feagins*, 439 B.R. 165, 175 (Bankr. D. Haw. 2010) (finding that even if debtor-wife had forged her husband's name on credit card application that she used to obtain cards in both his and her names, he subsequently ratified that forgery by agreeing to pay credit card debt in connection with their divorce); *Anderson v. Rizza Chevrolet, Inc.*, 9 F. Supp. 2d 908, 912–13 (N.D. Ill. 1998) (stating guarantor of automobile loan ratified forged retail installment contract by making payments and

[1] Restatement (Third) of Agency § 4.03 cmt. c explains the change based on U.C.C. § 3-403(a) [Iowa Code § 554.3403] with regard to negotiable instruments: "U.C.C. § 3-403(a) resolves the question [of whether a forged signature may be ratified] by providing that for all purposes under Article 3, an unauthorized signature may be ratified, even that of a forger. Official Comment 3 acknowledges that a forger is not an agent. However, the person whose names signed may retroactively adopt the forger's signature as the person's own. The retroactive adoption carries the consequences of ratification. Like ratification, it is a unilateral expression of a person's consent, and like ratification it does not require consideration to be enforceable. It may be in the principal's interest to ratify a forgery to obtain the benefit of a transaction not otherwise available."

taking possession of car); *Ferguson v. Bishop*, 258 S.E.2d 143, 145 (Ga. Ct. App. 1979) (holding ratification of a forged signature relates back to the act ratified and takes effect as if originally authorized).

Indeed, courts in Iowa and other states have specifically held that a party may ratify a defect in an equipment finance contract, such as lack of signer authority, by making payments and using the equipment. *See GreatAmerica Leasing Corp. v. Wahoo Prods. of Fla.*, 2011 WL 1559935, at *8 (N.D. Iowa 2011) (holding lessee's actions in making nine (9) monthly lease payments and using some of the equipment that had been delivered would ratify the lease agreement and legally cure alleged defects of a non-authorized signer, forged signature, lack of delivery of equipment, and alleged fraud of employee and equipment supplier); *GreatAmerica Leasing Corp. v. Davis-Lynch, Inc.*, No. 10-CV-13-LRR, 2011 WL 167248, at **4-5 (N.D. Iowa Jan. 19, 2011) (holding lessee ratified alleged lack of authority of controller to sign lease agreements through office manager's telephone verifications, continued business dealings with vendor, and lessee making ten (10) payments); *Wells Fargo Fin. Leasing, Inc. v. Piggie Park Enters, Inc*., No. 3:09-1752-JFA, 2010 WL 500454, at *3 (D.S.C. Feb. 5, 2010) (rejecting lessee's defense that lease signer lacked authority to sign because lessee's actions in approving signer to procure new lease for equipment,

making payments, using the equipment, and utilizing maintenance portion of lease ratified the lease); *Affiliated Corp. Servs. v. Englewood Cmty. Health Org., Inc.*, No. 98C7420, 1999 WL 652027, at *4 (N.D. Ill August 20, 1999) (holding lessee ratified lease, even though it was unknown who signed the lease, where lessee passed a corporate resolution authorizing the entry of equipment lease and three (3) payments were made on the lease); *Jernigan Auto Parts, Inc. v. Commercial State Bank*, 367 S.E.2d 250, 254 (Ga. Ct. App. 1988) (holding that even if bank notes were entered into due to bank officer's fraud, bank was still entitled to judgment; defendants waived the fraud and ratified the notes by their silence after learning of officer's actions and by making subsequent payment on the note).

NRMC seems to suggest on appeal that it did not ratify the Agreement because it was unaware of the Agreement and had no reason to know of its existence. NRMC's position is unavailing. It is undisputed that on October 23, 2017, NYDP delivered office equipment to NRMC. It goes without saying that if office equipment was mysteriously delivered to a business that had not ordered it, a reasonable business would question the delivery. Further, if a finance company began to send monthly invoices for payment, each of which specified an agreement number, the invoice recipient would look for the agreement before paying the invoices and using the equipment.

Here, the undisputed facts demonstrate that NRMC was provided with an awareness of the existence of a finance agreement that would have led a reasonable person to investigate further.

NRMC's conduct is consistent with an understanding that it was operating under a finance agreement. On October 30, 2017, GreatAmerica sent its first invoice (Invoice Number 21562773) to NRMC pursuant to the Agreement. (App. 111). The first invoice states it is for "Agreement Number: 003-1296204-000." *Id.* On November 9, 2017, NRMC paid the first invoice via check sent to GreatAmerica. (App. 113). NRMC wrote on its check "inv #21562773;" "#003-1296204-000;" (referencing the Agreement) and "office internet phone/fax etc." *Id.* The next six (6) invoices were paid by NRMC via telephone by NRMC authorizing debits to NRMC's bank account. (App. 114-115). All seven (7) of the invoices paid by NRMC included a GreatAmerica toll-free telephone number for NRMC to call if it had any questions. (App. 99-112).

NRMC made seven (7) monthly payments from October 2017 to May 2018 under the Agreement. In addition, Dr. Rodionova admits NRMC used the equipment during this period of time. (App. 44). On May 17, 2018, Dr. Rodionova sent an email to GreatAmerica expressing her displeasure with NYDP and believing its conduct to be "fraud." *Id.* Significantly, four days

later on May 21, 2018, Dr. Rodionova herself authorized a telephone payment pursuant to GreatAmerica's Agreement. (App. 114; App. 116 ¶ 5). Finally, even after NRMC defaulted, Dr. Rodionova offered to buy some of the equipment subject to the Agreement. (App. 44).

In short, on October 30, 2017, when NRMC received GreatAmerica's invoice referencing a finance agreement, NRMC had a choice: refuse payment under the Agreement and investigate the Agreement further; or accept the benefits of this Agreement without further investigation and perform under it. NRMC chose the latter, and in doing so, accepted the risk of lacking knowledge as to the terms of the Agreement. *See White v. Moriarty*, 15 Cal. Rptr. 2d 200, 202 (Cal. App. Ct. 4th 1993) (holding defendant ratified bank note containing his unauthorized signature and despite defendant's lack of knowledge of loan transaction because defendant later signed power of attorney for signer that referenced the purchase and financing of the equipment).

By accepting the benefits and performing under the Agreement, NRMC ratified the Agreement. *See Life Investors*, 838 N.W.2d at 647; *Wahoo Prods. of Florida, Inc.*, No. 09-CV-137-LRR, 2011 WL 1559935, at *9; *Davis-Lynch, Inc.*, 2011 WL 167248, at *9. Because NRMC ratified the Agreement, it is enforceable by GreatAmerica.

D. NRMC accepted the equipment within the meaning of Iowa law, thus rendering the hell-or-high-water clause enforceable.

NRMC argues that the Agreement's hell-or-high-water clause is not enforceable by GreatAmerica because NRMC did not accept the equipment. This argument is without merit as a matter of Iowa law. "An acceptance occurs under the Uniform Commercial Code after the lessee has had a reasonable opportunity to inspect the goods and (a) signifies or acts in a way signifying the goods are conforming, and (b) the lessee fails to make an effective rejection of the goods." *GreatAmerica Leasing Corp. v. Star Photo Lab, Inc*. 672 N.W.2d 502, 505 (Iowa Ct. App. 2003) (quoting Iowa Code § 554.13515). Here, NRMC acted in a manner signifying the equipment was conforming and it failed to timely reject the equipment.

NRMC signified or acted in a way signifying the equipment was conforming by informing GreatAmerica by telephone that the equipment was installed and working on October 23, 2017, and by then making seven (7) payments under the Agreement. (App. 24; App. 114). Courts interpreting Iowa law have repeatedly held that a party's express representation that equipment has been delivered and installed constitutes acceptance, as well as making payments. *See, e.g., Star Photo*, 672 N.W.2d at 504-05 (holding telephone verification constituted acceptance, in addition to no effective rejection); *Davis-Lynch,* No. 10-CV-13-LRR, 2011 WL

167248, at **4-5 (N.D. Iowa Jan. 19, 2011) (representation via telephone verification that equipment was delivered and installed constituted "acceptance"); *Wells Fargo Fin. Leasing , Inc. v. LMT-Fette, Inc*., 250 F. Supp. 2d 1120, 1125-28 (S.D. Iowa 2003) (holding that signing delivery and acceptance certification was enough to induce finance lessor to send the financing), aff'd, 382 F.3d 858 (8th Cir. 2004).

In addition, courts have held that making as little as one payment is sufficient to find acceptance of goods under a lease agreement. *See Flair Fashions, Inc. v. SW CR Eisenhower Drive, Inc*., 427 S.E.2d 56, 57 (Ga. Ct. App. 1993); *EVCO Distrib., Inc. v. Commercial Credit Equip. Corp*., 627 P.2d 374, 380-81 (Kan. Ct. App. 1981). By expressly representing that it accepted the equipment and making seven (7) payments before attempting to terminate the Agreement, NRMC accepted the equipment within the meaning of Section 554.13515. *See Meisels*, 2016 WL 5480718, at *4 (finding lessee signified acceptance of equipment by making fifteen (15) payments); *Davis-Lynch*, 2011 WL 167284 at *5 (holding that ten (10) payments without an attempt to reject equipment is evidence of acceptance).

Furthermore, NRMC agreed to "forgo the rights and remedies provided under Article 2A of the UCC (Iowa Code §§ 554.13000 et seq.)." (App. 8.) This includes, but is not limited to, a waiver of NRMC's right to

reject or revoke its acceptance of the equipment. *Id*. Even without such a waiver, however, NRMC's claim that it made either an effective rejection or revocation of acceptance of the equipment lacks merit. It was not until May 2018, seven (7) months after the equipment was delivered, that NRMC sent an email to GreatAmerica purporting to terminate the Agreement. (App. 44). Assuming this email can be construed as an attempted rejection or revocation of acceptance, such rejection or revocation is untimely. *See Davis-Lynch*, 2011 WL 167248, at *5 (holding that lessee could have learned of alleged nonconformity of goods upon reasonable inspection, and rejecting argument that rejection was timely ten months later); *In re Rafter Seven Ranches, L.P. v. C.H. Brown, Co.*, 546 F.3d 1194, 1201-02 (10th Cir. 2008) (holding lessee failed to effectively reject equipment where lessee did not inform finance lessor until six weeks after delivery); *Pioneer Peat, Inc. v. Quality Grassing Servs., Inc.*, 653 N.W.2d 469, 472 (Minn. Ct. App. 2002) (one month lapse between acceptance and rejection not reasonable).

Having accepted the equipment within the meaning of Iowa law, NRMC must now perform under the Agreement "despite any dissatisfaction with the performance of the [equipment]." *Star Photo*, 672 N.W.2d at 506. The effect of a "hell-or-high-water" clause is to make the obligation to make payments unconditional and separate from any alleged issues with the

equipment or equipment vendor. *See id.* at 504-05. NRMC may bring claims against NYDP in a separate action with regard to its issues with the vendor. *Id.* at 505 (holding a lessee may have a right of recovery against the manufacturer or supplier of the goods). Under Iowa law, NRMC's obligations continue "come hell or high water." *Id.* NRMC breached the Agreement by failing to make the payments, and thus, the district court correctly granted summary judgment to GreatAmerica.

CONCLUSION

GreatAmerica respectfully requests that the Court affirm the district court's grant of summary judgment in GreatAmerica's favor. In addition, GreatAmerica requests a remand to the district court for consideration of an award of attorney fees for this appeal. *See GreatAmerica Fin. Servs. Corp. v. Prestwood Funeral Home, Inc.*, No. 16-0940, 2017 WL 1735689, at *3 (Iowa Ct. App. May 3, 2017).

REQUEST FOR ORAL ARGUMENT

GreatAmerica does not believe oral argument is necessary because the issues on appeal involve the application of existing law to the facts of the case. However, if the Court grants oral argument to Appellant, GreatAmerica requests equal time to be heard.

RESPECTFULLY SUBMITTED,

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Certificate of Compliance with Typeface Requirements and Type-Volume Limitation

[X] This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(*g*)(1) because it contains 3,992 words, excluding the parts of the brief exempted by the rule.

[X] This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(*e*)(1) and the type-style requirements of Iowa R. App. P. 6.903(1)(*f*) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 14-point Times New Roman.

/s/ Randall D. Armentrout

CERTIFICATE OF SERVICE AND FILING

I, Randall D. Armentrout, certify that I did file the attached Proof Brief of GreatAmerica Financial Services Corporation, Plaintiff-Appellee with the Clerk of the Iowa Supreme Court by electronically filing with the Iowa Judicial Branch on November 4, 2019, which will send notice to the following parties:

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