

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

PIERRE HASCHEFF, AN  
INDIVIDUAL,

Appellant/Cross-Appellant,

vs.

LYNDA HASCHEFF, AN  
INDIVIDUAL,

Respondent/Cross-Appellant.

Case No. 86976

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Elizabeth A. Brown  
Clerk of Supreme Court

**REPLY IN SUPPORT OF MOTION TO TAKE JUDICIAL NOTICE**

Appellant Pierre Hascheff (“Hascheff”) reply in support of his motion asking this Court to take judicial notice of certain items contained in Appellant’s Appendix, as follows:

**A. PIERRE DID NOT ‘WITHHOLD’ PUBLICLY FILED AND AVAILABLE PLEADINGS FROM LYNDA**

Respondent incorrectly classifies the documents Pierre asks this Court to take judicial notice of in his appendix as information Pierre allegedly withheld from Lynda. Pierre requests this Court take judicial notice of the following:

<b>Document Description</b>	<b>Date</b>	<b>Volume</b>	<b>Bates</b>
Counter-Petition to Surcharge Trustee	01/19/2018	1	AA 0001 – 0040
Amended Objection and Counter-Petition regarding Issue Trust	03/23/2018	1	AA 0041 – 0079
Trial Transcript	02/22/2019	1, 2	AA 0080 - 0284
Trial Transcript	02/25/2019	2, 3	AA 0285 - 0638
Verdict	03/04/2019	3	AA 00639 - 0642
L. Jaksick Opposition to Petition for Instructions	11/16/2020	3	AA 0854 - 0857

W. Jaksick Opposition to Petition for Instructions	11/16/2020	3	AA 0858 - 0924
A. Jaksick Objection to Petition for Instructions	11/17/2020	3	AA 0925 – 0932
Order Granting Petition for Instructions & Motion to Partially Enforce Settlement Agreement	01/08/2021	4	AA 1219 – 1221
Order Finding Violation of NRS 163.115	02/10/2021	4	AA 1237 - 1239
Order Appointing Temporary Trustee	02/25/2021	4	AA 1240 – 1242
Motion to Approve Resolution of T. Jaksick Creditor Claims	05/18/2023	7	AA 1669 – 1698
Order Granting Motion to Approve Resolution of T. Jaksick Creditor Claims	08/02/2023	7	AA 1712 – 1715

All of these documents are publicly available and always have been through the Second Judicial District Court website.

What Pierre properly refused to withhold, and what Lynda’s record excerpts refer to, were *Pierre’s privileged communications with his own counsel* that were never publicly filed or disclosed in any litigation. 3 AA 679 (Lynda demands Pierre provide “all correspondence between you and your counsel in the malpractice action”); 4 AA 768 (Lynda argues that Pierre should have “share[d] with her . . . the legal advice he received”); 7 AA 1725 (Lynda arguing that she has “repeatedly requested information about . . . Judge Hascheff’s communications his lawyer and . . . was repeatedly told that it was confidential or protected by the attorney-client privilege”). Lynda also demanded that Pierre disclose conversations between his counsel and Todd Jaksick’s counsel that were protected by the common interest

privilege. *See id.* This is the information referred to in Lynda’s opposition, **not** the publicly filed pleadings of which Pierre asks this Court to take judicial notice.

**Lynda** used and relied upon pleadings from the Collateral Action as evidence in the hearing before the district Court in 2020. *See* 4 AA 934 – 936 (identifying “[v]arious pleadings from Jaksick Case No. PR17-0446 & PR17-00445” as hearing evidence); 5 AA 1001-1041 (subpoena issued on Pierre in Collateral Action, disclosed as Lynda’s hearing exhibit); 5 AA 1065-1079 (Wendy’s petition); 5 AA 1080-1088 (Wendy’s opposition to proposed jury instructions at trial).

Lynda’s counsel also billed her for reviewing the same public documents she now argues were withheld from her. On August 8, 2022, Shawn Meador, Esq. billed Lynda “re status of Wendy’s lawsuit against Todd” and “order denying appeal from Wendy’s appeal from ruling against her in lawsuit Todd.” 7 AA 1544. Mr. Meador then sent Lynda an email. *Id.*

On June 4, 2021, Debbie Leonard, Esq. billed Lynda for after she “obtain[ed] docket sheet re Jaksick litigation” and “review[ed] court’s docket re Jaksick litigation.” *Id.* at 1566. Lynda cannot plausibly argue to this Court that Pierre withheld publicly filed documents from her, for which her own lawyers previously billed her to review. This information was not withheld, and Lynda’s argument is baseless.

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**B. THIS COURT CAN TAKE JUDICIAL NOTICE OF MATTERS THAT DO NOT APPEAR IN THE RECORD BELOW.**

Pierre is asking this Court to take judicial notice of items not in the record below, something this Court has previously held it will do for extraneous record information. *Mack v. Estate of Mack*, 125 Nev. 80, 92, 206 P.3d 98, 106 (2009). When a “valid reason presents itself,” this Court will take judicial notice of records in another and different case, provided the cases are closely related. *Id.*

Lynda first argues that Pierre intentionally chose not to disclose this information below. But, Pierre did, in fact, repeatedly argue the overlap to the district court. Pierre specifically disclosed the issues on which he had been sued in the Malpractice Action that overlapped with the Collateral Action. *See* 6 AA 1453-1457 (highlighted version of complaint showing overlapping issues). Pierre also specifically argued to the district court that preparation of “Hascheff for testimony [in the Collateral Action] necessarily involves consideration of whether his statements as a witness would expose him to liability in the malpractice action,” and that “the matters are to interrelated to consider individually.” 6 AA 1461. And, the similarity between Wendy Jaksick’s claims and allegations against Todd Jaksick, and what Todd Jaksick subsequently sued Pierre over were mentioned in Pierre’s initial communications with Lynda, as well as his initial briefing. *See* 3 AA 733-4 AA 762.

Lynda now asks this Court to draw a distinction without a difference because Pierre argued and disclosed the substance, but not the physical documents themselves. She does not, however, offer this Court any explanation as to how this adversely affects her or prejudices her. Nor can she, given that her own counsel has previously both used and reviewed this information.

The cases that Lynda cites do not apply to the facts of this litigation. The unpublished opinion relied upon by Lynda cites to a Ninth Circuit Court of Appeals opinion that refused to take judicial notice because the documents were not “authenticated.” *Madeja v. Olypmic Packers, LLC*, 310 F.3d 628, 239 (9th Cir. 2002). That is not an issue here.

Similarly, in *Guzman-Ruiz v. Hernandez-Colon*, 406 F.3d 31, the First Circuit Court of Appeals declined to take judicial notice because the case requested was not related the case before it, and was never offered to the court below. *Id.* at 36 (2005). Here, these cases are unquestionably related, and as noted above, Pierre argued the substance of these documents to the district court multiple times.

Finally, in *Shewchun v. Holder*, 658 F.3d 557, the Sixth Circuit Court of Appeals declined to take judicial notice of *legal arguments*. *Id.* at 568 (2011). Pierre is not making a request that this Court consider legal arguments. Lynda does not provide a basis for this Court to decline to take judicial notice, other than that she simply does not want it to.

### C. SANCTIONS ARE NOT WARRANTED

There is no rule in this Court that addresses the form extraneous information of which a litigant requests judicial notice must take. As Lynda notes, the transcripts are voluminous.<sup>1</sup> Pierre did not believe that filing 741 pages of information as either an addendum or as exhibits to a motion was the most efficient manner in which to provide these documents to this Court. There is similarly no case law stating that this information cannot be included as a part of an appendix. Lynda cites to *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), but that case holds that an appellant is not supposed to include irrelevant information from the record below in the appendix (such as irrelevant trial transcripts). *Id.* at 589, 668 P.2d at 275. It does not address the issue before this Court. Other courts hold that judicially noticed items are properly included in an appendix on appeal. *See, e.g., Peek v. Suntrust Bank, Inc.*, 848 Fed. App'x 6, 7 (D.C. Cir. May 11, 2021) (granting leave to file a supplemental appendix containing “official court records of which the court could take judicial notice”).

Lynda's reliance on NRAP 30 is misplaced, as that rule was intended to preclude litigants from including within a record unfiled drafts of pleadings, or

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<sup>1</sup> Pierre provides pinpoint cites to the relevant transcript portions in his brief. But, accurately anticipating Lynda's accusation that he would withhold information (given her past accusations), Pierre included the entire transcript.

altered versions of filed documents. *See* NRAP 30(g). It was not intended to address judicial notice requests, and does not apply to this issue.

Nor did Pierre try to hide this information. Pierre informed this Court in his opening brief that he was seeking judicial notice of these documents, and he filed his motion for judicial notice identifying the specific portions of the appendix on the same date he filed his appendix.

Moreover, Pierre disclosed that he was seeking judicial notice of these documents to Lynda *before* he filed the appendix or motion. *See Exhibit 1* (Emails between Therese Shanks, Esq. and Debbie Leonard, Esq.'s office). This was not a surprise to Lynda. The fact that Lynda does not believe Pierre should make this request is not a basis for sanctions.

Accordingly, Pierre requests that this Court deny Lynda's request for sanctions and take judicial notice of the following items in the Appellant's Appendix:

<b>Document Description</b>	<b>Date</b>	<b>Volume</b>	<b>Bates</b>
Counter-Petition to Surcharge Trustee	01/19/2018	1	AA 0001 – 0040
Amended Objection and Counter-Petition regarding Issue Trust	03/23/2018	1	AA 0041 – 0079
Trial Transcript	02/22/2019	1, 2	AA 0080 - 0284
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A. Jaksick Objection to Petition for Instructions	11/17/2020	3	AA 0925 – 0932

Order Granting Petition for Instructions & Motion to Partially Enforce Settlement Agreement	01/08/2021	4	AA 1219 – 1221
Order Finding Violation of NRS 163.115	02/10/2021	4	AA 1237 - 1239
Order Appointing Temporary Trustee	02/25/2021	4	AA 1240 – 1242
Motion to Approve Resolution of T. Jaksick Creditor Claims	05/18/2023	7	AA 1669 – 1698
Order Granting Motion to Approve Resolution of T. Jaksick Creditor Claims	08/02/2023	7	AA 1712 – 1715

DATED this 8<sup>th</sup> day of January, 2024.

FENNEMORE CRAIG, P.C.

/s/Therese M. Shanks

Therese M. Shanks  
Nevada Bar No. 12890  
7800 Rancharrah Parkway  
Reno, NV 89511  
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*Attorney for Appellant/Cross-Appellant*



**CERTIFICATE OF SERVICE**

Pursuant to Rule 25(b) of the Nevada Rules of Appellate Procedure, I hereby certify that I am an employee of Fennemore Craig, P.C. and that on this date, I served a true and correct copy of the attached document through the Court's electronic filing system to the following registered users:

Debbie A. Leonard, Esq.  
Nevada State Bar No. 8260  
Leonard Law, PC  
955 S. Virginia Street, Suite 220  
Reno, Nevada 89502

*Attorneys for Respondent/  
Cross-Appellant*

DATED this 8th day of January, 2024.

*/s/ Diana L. Wheelen*  
\_\_\_\_\_  
An Employee of Fennemore Craig, P.C.

# **EXHIBIT 1**

# **EXHIBIT 1**

**From:** Shanks, Therese  
**Sent:** Wednesday, November 15, 2023 9:37 AM  
**To:** Tricia Trevino <[tricia@leonardlawpc.com](mailto:tricia@leonardlawpc.com)>  
**Cc:** Debbie Leonard <[debbie@leonardlawpc.com](mailto:debbie@leonardlawpc.com)>; Wheelen, Diana <[DWheelen@fennemorelaw.com](mailto:DWheelen@fennemorelaw.com)>  
**Subject:** RE: Hascheff Appendix and Sealing

There are two transcripts from February 2019 you did not highlight for which we will also be seeking judicial notice. Those are the only ones I am seeing.

We will provide an updated appendix index shortly.

**From:** Tricia Trevino <[tricia@leonardlawpc.com](mailto:tricia@leonardlawpc.com)>  
**Sent:** Wednesday, November 15, 2023 9:35 AM  
**To:** Shanks, Therese <[tshanks@fennemorelaw.com](mailto:tshanks@fennemorelaw.com)>  
**Cc:** Debbie Leonard <[debbie@leonardlawpc.com](mailto:debbie@leonardlawpc.com)>; Wheelen, Diana <[DWheelen@fennemorelaw.com](mailto:DWheelen@fennemorelaw.com)>  
**Subject:** RE: Hascheff Appendix and Sealing

Thank you. Will you please provide an updated index and call out any other documents that were not filed in the district court case? Thanks!

## Tricia Trevino

Paralegal and Office Administrator

## Leonard Law, PC

phone 775.964.4656

direct 775.557.4902

955 S. Virginia Street | Suite 220 | Reno, Nevada 89502

[tricia@leonardlawpc.com](mailto:tricia@leonardlawpc.com)

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**From:** Shanks, Therese <[tshanks@fennemorelaw.com](mailto:tshanks@fennemorelaw.com)>  
**Sent:** Wednesday, November 15, 2023 9:28 AM  
**To:** Tricia Trevino <[tricia@leonardlawpc.com](mailto:tricia@leonardlawpc.com)>  
**Cc:** Debbie Leonard <[debbie@leonardlawpc.com](mailto:debbie@leonardlawpc.com)>; Wheelen, Diana <[DWheelen@fennemorelaw.com](mailto:DWheelen@fennemorelaw.com)>  
**Subject:** RE: Hascheff Appendix and Sealing

Hi Tricia,

We intend to file a motion for judicial notice on those. I just noticed we are missing two transcripts from this appendix too, for December 2020 and September 2022. The minutes are in the appendix, but we are adding the transcripts.

Thanks,

Therese M. Shanks, Of Counsel

T: 775.788.2257 | F: 775.788.2267

[tshanks@fennemorelaw.com](mailto:tshanks@fennemorelaw.com)

**From:** Tricia Trevino <[tricia@leonardlawpc.com](mailto:tricia@leonardlawpc.com)>

**Sent:** Wednesday, November 15, 2023 8:08 AM

**To:** Shanks, Therese <[tshanks@fennemorelaw.com](mailto:tshanks@fennemorelaw.com)>

**Cc:** Debbie Leonard <[debbie@leonardlawpc.com](mailto:debbie@leonardlawpc.com)>; Wheelen, Diana <[DWheelen@fennemorelaw.com](mailto:DWheelen@fennemorelaw.com)>

**Subject:** Hascheff Appendix and Sealing

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Apologies, I hit send too send. Thank you, and please feel free to call me with any questions. The highlighted index is attached.

**Tricia Trevino**

Paralegal and Office Administrator

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**From:** Tricia Trevino

**Sent:** Wednesday, November 15, 2023 8:03 AM

**To:** Shanks, Therese <[tshanks@fennemorelaw.com](mailto:tshanks@fennemorelaw.com)>

**Cc:** Debbie Leonard <[debbie@leonardlawpc.com](mailto:debbie@leonardlawpc.com)>; [DWheelen@fennemorelaw.com](mailto:DWheelen@fennemorelaw.com)

**Subject:** FW: Hascheff Appendix and Sealing

Good morning,

For the documents highlighted in the attached index, will you please point us to where in the district court record the documents were filed? Thanj

**From:** Shanks, Therese <[tshanks@fennemorelaw.com](mailto:tshanks@fennemorelaw.com)>

**Sent:** Monday, November 13, 2023 3:02 PM

**To:** Debbie Leonard <[debbie@leonardlawpc.com](mailto:debbie@leonardlawpc.com)>; Tricia Trevino <[tricia@leonardlawpc.com](mailto:tricia@leonardlawpc.com)>

**Cc:** Wheelen, Diana <[DWheelen@fennemorelaw.com](mailto:DWheelen@fennemorelaw.com)>

**Subject:** Hascheff Appendix and Sealing

Hello,

Attached is the proposed appendix and the stipulation. The stipulation refers to the unredacted Wilfong affidavit filed by Shawn and the Notice of Filing Invoices (confidential) in October 2022.

Let me know if you are agreeable. Thanks,

Therese M. Shanks  
Of Counsel

## FENNEMORE

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