

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

A CAB, LLC; AND CREIGHTON J.  
NADY,

Appellants,

v.

MICHAEL MURRAY; AND  
MICHAEL RENO, INDIVIDUALLY  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

Respondents.

) Supreme Court No. 77050

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**MOTION TO REINSTATE  
APPEAL**

Electronically Filed  
Nov 13 2019 04:14 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Notices of appeal were filed in this matter on September 21, 2018, January 15, 2019, and March 6, 2019, Exhibits 1, 2 & 3, from a final judgment and from a number of post-judgment orders in this matter in district court, Case No. A-12-669926-C. On May 7, 2019, this Court dismissed this appeal as to A Cab because A Cab had been placed into involuntary bankruptcy. This Court specifically stated: “Accordingly, we dismiss this appeal as to A Cab only.”<sup>1</sup> The dismissal is without prejudice to A Cab’s right to move lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if A Cab deems such a motion appropriate at that time.”

The bankruptcy petition was dismissed by the Bankruptcy Court on

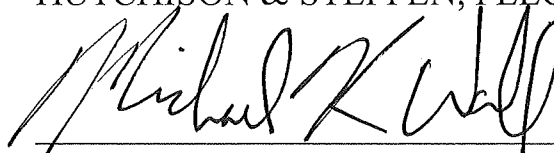
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<sup>1</sup>On July 12, 2019, this appeal was dismissed as to appellant Jay Nady. Exhibit 5.

September 26, 2019. Exhibit 4. The Bankruptcy Court elected under the abstention doctrine to dismiss the bankruptcy petition without ruling on the merits of any claim. Specifically, the Bankruptcy Court stated: “For these reasons, the court concludes that abstention in the form of dismissal is appropriate under Section 305(a). This conclusion is not a determination of any of the parties’ disputes . . . .” Thus, the issues in this appeal have not been altered by the bankruptcy, nor has any issue been rendered moot. Therefore, A Cab moves to reinstate this appeal (including appeal from all of the judgments and orders listed in the three notices of appeal), and to set a briefing schedule.

DATED this 13 day of November, 2019.

HUTCHISON & STEFFEN, PLLC

A handwritten signature in black ink, appearing to read "Michael K. Wall", written over a horizontal line.

Michael K. Wall (2098)  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Telephone: 702/385-2500  
mwall@hutchlegal.com  
*Attorney for Appellants*

## CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **MOTION TO REINSTATE APPEAL** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Leon Greenberg, Esq.  
Dana Sniegocki, Esq.  
Leon Greenberg Professional Corporation  
2965 S. Jones Blvd., Ste. E3  
Las Vegas, NV 89146  
Telephone: (702) 383-6085  
Facsimile: (702) 385-1827  
[leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
[Dana@overtimelaw.com](mailto:Dana@overtimelaw.com)

*Attorneys for Respondents*

DATED this 13<sup>th</sup> day of November, 2019.



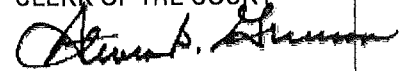
An employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

## EXHIBIT 1

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HUTCHISON & STEFFEN  
A PROFESSIONAL LLC



1 NOAS  
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9 *Attorney for defendants*  
10 *A Cab, LLC and Creighton J. Nady*

11 **DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

12 MICHAEL MURRAY and MICHAEL RENO, )  
13 Individually and on behalf of others similarly )  
situated, )

14 Plaintiffs, )

15 v. )

16 A CAB TAXI SERVICE, LLC, A CAB, LLC, )  
17 and CREIGHTON J. NADY, )

18 Defendants. )

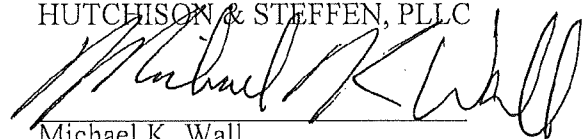
Case No.: A-12-669926-C  
Dept. No.: I

**NOTICE OF APPEAL**

19 Notice is given that A Cab, LLC, and Creighton J. Nady, defendants in the above-  
20 captioned matter, appeal to the Supreme Court of Nevada from the Order Granting Summary  
21 Judgment, Severing Claims, and Directing Entry of Final Judgment entered by the district court  
22 on August 21, 2018.

23 DATED this 21 day of September, 2018.

24 HUTCHISON & STEFFEN, PLLC



25 Michael K. Wall  
26 10080 West Alta Drive, Suite 200  
27 Las Vegas, NV 89145  
Tel: (702) 385-2500  
28 *Attorney for defendants*  
*A Cab, LLC, and Creighton J. Nady*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,  
and that on this 21<sup>st</sup> day of September, 2018, I caused the above and foregoing NOTICE


OF APPEAL to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

Leon Greenberg, Esq.  
Dana Sniegocki, Esq.  
Leon Greenberg Professional Corporation  
2965 S. Jones Blvd., Ste. E3  
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[leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
[Dana@overtimelaw.com](mailto:Dana@overtimelaw.com)

*Attorneys for plaintiffs*

  
An employee of HUTCHISON & STEFFEN, PLLC

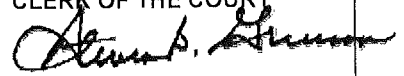
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## EXHIBIT 2

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC



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7 Las Vegas, NV 89145  
(702) 320-8400  
8 info@rodriguezlaw.com

9 *Attorney for defendants*  
A Cab, LLC and Creighton J. Nady

11 DISTRICT COURT  
CLARK COUNTY, NEVADA

13 MICHAEL MURRAY and MICHAEL RENO,  
Individually and on behalf of others similarly  
14 situated,

15 Plaintiffs,

16 v.

17 A CAB TAXI SERVICE, LLC, A CAB, LLC,  
and CREIGHTON J. NADY,

18 Defendants.

Case No.: A-12-669926-C  
Dept. No.: I

AMENDED NOTICE OF APPEAL

20 Notice is given that A Cab, LLC, Creighton J. Nady, and A Cab Series, LLC, defendants  
21 in the above-captioned matter,<sup>1</sup> appeal to the Supreme Court of Nevada from the district court's  
22 order granting summary judgment, severing claims, and directing entry of final judgment  
23 entered on August 21, 2018.

25 <sup>1</sup>Under the fiction that A Cab, LLC, and A Cab Series, LLC, are one and the same entity,  
26 the district court, subsequent to its entry of its final judgment dated August 21, 2018, purported to  
27 add A Cab Series, LLC, as a party defendant. The district court's order is far from clear, but it  
28 purports both to substitute A Cab Series, LLC, in the place and stead of A Cab, LLC, and to retain  
both entities as separate defendants in the action below. Therefore, we have included A Cab Series,  
LLC, as an appellant from the district court's final judgment and various other post-judgment  
orders.



1 Notice is also given that A Cab, LLC, Creighton J. Nady, and A Cab Series, LLC,  
2 appeal to the Supreme Court of Nevada from the following listed orders of the district court:

3 (1) The district court's order entered on October 22, 2018, amending its August 21,  
4 2018 judgment to add A Cab Series, LLC, as a party defendant.

5 (2) The district court's order entered on December 18, 2018, granting plaintiffs'  
6 counter-motion for judgment enforcement relief (receiver and injunction).

7 (3) The district court's order entered on December 18, 2018, granting in part and  
8 denying in part plaintiffs' objections to defendants' claims of exemption from execution.

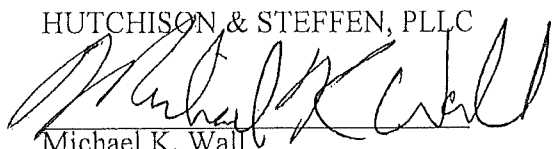
9 (4) The district court's order entered on December 18, 2018, denying defendants'  
10 motion to quash writ of execution.

11 (5) The district court's order entered on December 20, 2018, denying defendants'  
12 post-judgment motion to dismiss for lack of subject matter jurisdiction.

13 (6) All other judgments and orders of the district court rendered appealable by any  
14 of the foregoing orders and judgments.

15 DATED this 15 day of January, 2019.

16 HUTCHISON & STEFFEN, PLLC

17   
18 Michael K. Wall  
19 10080 West Alta Drive, Suite 200  
20 Las Vegas, NV 89145  
21 Tel: (702) 385-2500  
22 Attorney for defendants  
23 A Cab, LLC, and Creighton J. Nady  
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,  
and that on this 15<sup>th</sup> day of January, 2019, I caused the above and foregoing **AMENDED**  
**NOTICE OF APPEAL** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a  
sealed envelope upon which first class postage was prepaid in Las Vegas,  
Nevada; and/or

☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or

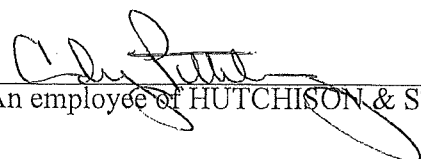
☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the  
Eighth Judicial District Court's electronic filing system, with the date and time  
of the electronic service substituted for the date and place of deposit in the mail;  
and/or

☐ to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

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[leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
[Dana@overtimelaw.com](mailto:Dana@overtimelaw.com)

*Attorneys for plaintiffs*

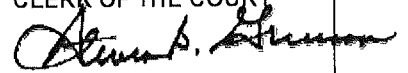
  
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## EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



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Las Vegas, NV 89145  
(702) 320-8400  
info@rodriguezlaw.com

*Attorney for defendants  
A Cab, LLC and Creighton J. Nady*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

MICHAEL MURRAY and MICHAEL RENO,  
Individually and on behalf of others similarly  
situated,

Plaintiffs,

v.

A CAB TAXI SERVICE, LLC, A CAB, LLC,  
and CREIGHTON J. NADY,

Defendants.

Case No.: A-12-669926-C  
Dept. No.: I

**SECOND AMENDED  
NOTICE OF APPEAL**

Notice is given that A Cab, LLC, Creighton J. Nady, and A Cab Series, LLC, defendants in the above-captioned matter,<sup>1</sup> appeal to the Supreme Court of Nevada from the district court's order granting summary judgment, severing claims, and directing entry of final judgment entered on August 21, 2018.

<sup>1</sup>Under the fiction that A Cab, LLC, and A Cab Series, LLC, are one and the same entity, the district court, subsequent to its entry of its final judgment dated August 21, 2018, purported to add A Cab Series, LLC, as a party defendant. The district court's order is far from clear, but it purports both to substitute A Cab Series, LLC, in the place and stead of A Cab, LLC, and to retain both entities as separate defendants in the action below. Therefore, we have included A Cab Series, LLC, as an appellant from the district court's final judgment and various other post-judgment orders.

1 Notice is also given that A Cab, LLC, Creighton J. Nady, and A Cab Series, LLC,  
2 appeal to the Supreme Court of Nevada from the following listed orders of the district court:

3 (1) The district court's order entered on October 22, 2018, amending its August 21,  
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5 (2) The district court's order entered on December 18, 2018, granting plaintiffs'  
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7 (3) The district court's order entered on December 18, 2018, granting in part and  
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9 (4) The district court's order entered on December 18, 2018, denying defendants'  
10 motion to quash writ of execution.

11 (5) The district court's order entered on December 20, 2018, denying defendants'  
12 post-judgment motion to dismiss for lack of subject matter jurisdiction.

13 (6) The district court's order entered on February 4, 2019, entitled "Judgment and  
14 Order Granting Resolution Economics' Application for Order of Payment of Special Master's  
15 Fees and Order of Contempt."

16 (7) The district court's order entered on February 6, 2019, granting plaintiffs'  
17 motion for an award of attorney's fees and costs.

18 (8) The district court's order entered on March 4, 2019, ruling on matters submitted  
19 by Special Master George C. Swarts.<sup>2</sup>

20 (9) The district court's ordered entered on March 5, 2019, memorializing matters  
21 that had been resolved long before the final judgment was entered.<sup>3</sup>

22 (10) The district court's order entered on March 5, 2019, entitled "order on motion  
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24 <sup>2</sup>Because of the unorthodox manner in which the case has proceeded since the entry of  
25 judgment in August of 2018, this order appears to qualify as a special order entered after final  
26 judgment.

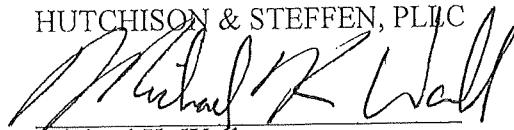
27 <sup>3</sup>Why the district court issued this order almost a year late is a mystery, but due to the timing  
28 of the issuance of the order, appellants include this order in their list of specifically appealed from  
orders in order to preserve all potential appellate rights.

1 for reconsideration.”<sup>4</sup>

2 (6) All other judgments and orders of the district court rendered appealable by any  
3 of the foregoing orders and judgments.

4 DATED this 6 day of March, 2019.

5 HUTCHISON & STEFFEN, PLLC

6 

7 Michael K. Wall

8 10080 West Alta Drive, Suite 200

9 Las Vegas, NV 89145

10 Tel: (702) 385-2500

11 Attorney for defendants

12 A Cab, LLC, and Creighton J. Nady

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<sup>4</sup>Among other things, this order denies appellants’ timely post-trial motion for a new trial. Also, this order finally resolves all post-judgment tolling motions, rendering appellants first notice of appeal from the final judgment effective. NRAP 4(a)(6).

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,  
and that on this 6<sup>th</sup> day of March, 2019, I caused the above and foregoing **SECOND**

**AMENDED NOTICE OF APPEAL** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or


☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

☐ to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

Leon Greenberg, Esq.  
Dana Sniegocki, Esq.  
Leon Greenberg Professional Corporation  
2965 S. Jones Blvd., Ste. E3  
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[leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
[Dana@overtimelaw.com](mailto:Dana@overtimelaw.com)

*Attorneys for plaintiffs*

  
An employee of HUTCHISON & STEFFEN, PLLC

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EXHIBIT PAGE ONLY

## EXHIBIT 4


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HUTCHISON & STEFFEN

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A PROFESSIONAL LLC



  
Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
September 26, 2019

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 19-12252-MKN
	)	Chapter 7
LEON GREENBERG PROFESSIONAL	)	
CORP.,	)	
Petitioning Creditor,	)	Date: August 14, 2019
	)	Time: 9:30 a.m.
MICHAEL MURRAY,	)	
	)	
Petitioning Creditor,	)	
	)	
MICHAEL RENO,	)	
	)	
Petitioning Creditor,	)	
	)	
RESOLUTION ECONOMICS, LLC,	)	
	)	
Petitioning Creditor,	)	
	)	
MICHAEL SARGEANT,	)	
	)	
Petitioning Creditor,	)	
	)	
CLASS ACTION PLAINTIFFS,	)	
	)	
Petitioning Creditor,	)	
	)	
A CAB SERIES, L.L.C.,	)	
	)	
Alleged Debtor.	)	

**ORDER ON AMENDED MOTION TO DISMISS INVOLUNTARY PETITION<sup>1</sup>**

On August 14, 2019, the court heard the Amended Motion to Dismiss Involuntary Petition (“Second Amended Dismissal Motion”), brought by the alleged debtor, A Cab Series, L.L.C. (“ACS”).<sup>2</sup> A response in opposition to the Second Amended Dismissal Motion (“Opposition”) was filed on behalf of the petitioning creditors.<sup>3</sup> A reply in support of the Second Amended Dismissal Motion (“Reply”) was filed on behalf of ACS. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND<sup>4</sup>**

<sup>1</sup> In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRCP” are to the Federal Rules of Civil Procedure. All references to “FRE” are to the Federal Rules of Evidence.

<sup>2</sup> The Second Amended Dismissal Motion brought by ACS was filed on July 17, 2019. (ECF No. 48). It was preceded by an initial dismissal motion filed on May 8, 2019, that was accompanied by an initial declaration of James Kohl. (ECF Nos. 8 and 9). Shortly thereafter, ACS filed an amended dismissal motion on May 9, 2019 (ECF No. 12), that was accompanied by an amended declaration of James Kohl (“Amended Kohl Declaration”). (ECF No. 13). Attached to the Amended Kohl Declaration are copies of nine documents marked as Exhibits “1” through “9.” In this Order, those documents will be cited as “Amended Kohl Declaration, Ex. \_\_\_” with paragraph, page, and/or line references as necessary, or by a name given to the document.

<sup>3</sup> The Opposition to the Second Amended Dismissal Motion was filed on July 30, 2019. (ECF No. 56). Appended to the Opposition is a declaration of Leon Greenberg, Esq., counsel for the petitioning creditors (“Greenberg Declaration”). Attached to that declaration are copies of thirty-three documents marked as Exhibits “A” through “GG.” In this Order, those documents will be cited as “Opposition, Ex. \_\_\_” with paragraph, page, and/or line references as necessary, or by a name given to the document.

<sup>4</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket in the above-captioned involuntary Chapter 7 proceeding. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). See also Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of court filings in a state court case where the same plaintiff asserted similar claims); Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015)

1 On October 8, 2012, plaintiffs Michael Murray<sup>5</sup> and Michael Reno, individually and on  
 2 behalf of others similarly situated (collectively, the “Murray Plaintiffs”) filed a complaint  
 3 (“Murray Complaint”), denominated Case No. A-12-669926, against A Cab Taxi Service LLC  
 4 and A Cab, LLC (“Murray Lawsuit”) in the Eighth Judicial District Court for Clark County,  
 5 Nevada (“State Court”). See Opposition, Ex. “E.” Creighton J. Nady was subsequently added as  
 6 a defendant. See, e.g., Opposition, Ex. “A.” Pursuant to the Murray Complaint, the Murray  
 7 Plaintiffs sought to certify a class of plaintiffs seeking to recover alleged unpaid wages from the  
 8 named defendants.

9 On July 7, 2015, Jasminka Dubric, individually and on behalf of those similarly situated  
 10 (collectively, the “Dubric Plaintiffs”), filed a Class Action Complaint and Demand for Jury Trial  
 11 with the State Court (“Dubric Complaint”), denominated Case No. A-15-721063-C, against A  
 12 Cab, LLC (“Dubric Lawsuit”). In their complaint, the Dubric Plaintiffs also sought, in pertinent  
 13 part, to certify a class of plaintiffs seeking to recover alleged unpaid wages from the named  
 14 defendant. See Opposition, Ex. “L.” Two additional parties were subsequently added as  
 15 defendants in the Dubric Lawsuit. See Opposition, Ex. “O” (caption reflects the inclusion of A  
 16 Cab Series LLC, Employee Leasing Company and Creighton J. Nady as defendants in the Dubric  
 17 Lawsuit).

18 On June 7, 2016, the State Court entered an order in the Murray Lawsuit certifying the  
 19 Murray Plaintiffs as a class. See Opposition, Ex. “A.”

20 On January 24, 2017, the parties in the Dubric Lawsuit filed a joint motion asking the  
 21 State Court to enter an order conditionally certifying a class, appointing class counsel, and  
 22 establishing procedures to schedule a final hearing to consider a proposed settlement. See  
 23 Opposition, Ex. “O.” The joint motion stated, in pertinent part:

24 Said motion is based on the grounds that the Parties have

25 \_\_\_\_\_  
 26 (“The Court may consider the records in this case, the underlying bankruptcy case and public  
 records.”).

27 <sup>5</sup> The Murray Complaint identifies “Michael Murphy” as plaintiff, though subsequent  
 28 pleadings, including the involuntary petition filed with this court, consistently identify this  
 individual as “Michael Murray.”

1 stipulated to the treatment of this matter as a class action for  
2 settlement purposes only and have reached an agreement in  
3 principle to settle this matter which is fair, adequate, reasonable and  
in the best interests of the class.

4 Id. at 2:3-5.

5 On February 16, 2017, the State Court in the Murray Lawsuit entered an Order granting  
6 the Murray Plaintiffs' motion enjoining the defendants therein from settling any class action,  
7 including the Dubric Lawsuit:

8 IT IS ORDERED that the defendants are, upon entry of this  
9 Order, prohibited and enjoined from entering into any settlement on  
10 a class action basis through the use of NRCP Rule 23 with any of  
11 their current or former taxi driver employees for claims under  
12 Article 15, Section 16, of the Nevada Constitution, the Nevada  
13 Minimum Wage Amendment, whether styled as a claim for breach  
14 of contract, conversion, or under any other theory of recovery. The  
15 foregoing settlement prohibition can only be amended or removed  
16 by a further order issued in this case. The foregoing settlement  
17 prohibition bars the defendants from seeking approval for a  
18 settlement under NRCP Rule 23 of any such persons' claims on a  
19 class action basis in any other proceeding now pending before or in  
20 the future filed in the Courts of the State of Nevada, including, but  
21 not limited to, their joint motion filed on January 24, 2017  
22 requesting preliminary class settlement approval and class  
certification in the case of *Dubric v. A Cab LLC et al.* A-15-721063-  
C currently pending in Department 25 of this Court. Defendants are  
commanded to within one judicial day of the service of this Order  
with Notice of Entry to file with this Court in the *Dubric* case a  
request for withdrawal of that joint motion and make all available  
efforts to have that motion withdrawn and proceed no further with  
the same. This order does not limit the defendants' ability to settle  
the claims of the named plaintiff Jasminka Dubric, only, in *Dubric*  
*v. A Cab LLC et al.* A-15-7210630-C.

23 Opposition, Ex "P" ("Settlement Injunction Order") at 2:1-20. See also Opposition, Ex. "W" at  
24 3:24-4:3 (Supplement to Order for Injunction Filed on February 16, 2017, entered by the State  
25 Court in the Murray Lawsuit for the purpose of explaining the court's rationale for enjoining  
26 competing class action lawsuits in two separate courts and stating, in pertinent part: "These are  
27 problems which no state district Court judge can resolve with any finality. These are problems  
28 which only our Supreme Court can resolve. It is hoped that the granting of an injunction

1 effectively stopping a conclusion by settlement in a separate district court may prompt such  
2 resolution in our Supreme Court.”).

3 On April 6, 2018, the Nevada Supreme Court entered an order reversing the Settlement  
4 Injunction Order. See Opposition, Ex. “X.”

5 On May 9, 2018, the State Court entered a minute order in the Dubric Lawsuit, which  
6 stated as follows:

7 The Supreme Court, by Order of Reversal dated April 6, 2018,  
8 having REVERSED the District Court’s Order GRANTING  
9 preliminary injunction in Case No. A-12-669926-C, which  
10 injunction purported to preclude Defendant, A Cab LLC, from  
11 entering into a settlement agreement in the instant case; there being  
12 no present impediment to the parties proceeding substantively in the  
13 instant case; the parties jointly requesting via chambers conference  
14 call to withdraw two matters previously taken under advisement and  
15 to RESET the matter on the Court’s calendar for Further  
16 Proceedings; and good cause appearing; COURT ORDERS matter  
17 placed on calendar on Tuesday, May 15, 2018 at 11:00 a.m. for  
18 FURTHER PROCEEDINGS; the matters previously under  
19 advisement WITHDRAWN as MOOT.

20 Opposition, Ex. “S.”

21 On May 16, 2018, the State Court in the Dubric Lawsuit entered an order denying a  
22 motion filed by the Murray Plaintiffs seeking to intervene in the Dubric Lawsuit (“Intervention  
23 Order”). See Opposition, Ex. “U.” The Intervention Order stated, in pertinent part, as follows:

24 **THE COURT FINDS AS FOLLOWS:**

25 Plaintiffs Michael Murray and Michael Reno are the named  
26 Plaintiffs in Case A-12-669926-C pending in Department I of this  
27 Court, purporting to represent a class of persons, namely other  
28 taxicab drivers requesting payment of minimum wages. Murray  
Counsel sought intervention in the instant case by first filing a  
Motion for Intervention on January 18, 2017, seeking to intervene  
to oppose the parties’ Motion for an Order Conditionally Certifying  
Settlement Class and other relief filed on January 24, 2017 (the  
“Settlement Motion”). Murray’s Counsel asserted, among other  
things, that there was no subject matter jurisdiction in this case to  
grant such motion because of the prior class certification order  
entered in the Department I case.

The Court found it did have subject matter jurisdiction to  
consider the Settlement Motion. The Court found that Murray and

Reno are not properly heard in this case unless they are granted intervention pursuant to NRCP 24. The Court found that Murray and Reno have not met the standard required under NRCP 24 to demonstrate that intervention is proper by them in this case and the Motion for Intervention was DENIED.

The Court's stated basis for its denial of intervention included a determination that Murray and Reno did not timely move for intervention, as the instant action had been pending for over a year before filing. The Court also based its finding on a determination that the proposed class members' interests are adequately protected by counsel currently representing Plaintiff, Jasminka Dubric, in this case and who are now proposed to act as class counsel for the class of proposed plaintiffs in the Settlement Motion. The Court also based that finding upon its determination that if the Court decides to grant the preliminary class action settlement approval sought in the Settlement Motion, the interests of Murry and Reno will be adequately protected by their opportunity to exclude themselves from the proposed settlement prior to final settlement approval and final judgment.

Regarding Murray Counsel's Motion to Intervene and Have Hearing of May 15, 2018 Continued on an Order Shortening time, filed May 10, 2018, the Court determined it was the law of the case that intervention was not warranted. ... Here, Murray Counsel has made no showing to justify the Court's reversal of its prior intervention determination.

Finally, regarding Murray Counsel's oral request to stay proceedings, including issuance of this Order, pending filing and determination of a Writ of Prohibition with the Nevada Supreme Court, the Court finds such a stay is not warranted and denies said request.

Id. at 1:23-3:17. See also Opposition, Ex. "V" (Murray Plaintiffs' Motion for Intervention, filed on January 18, 2017, in the Dubric Lawsuit).

On May 17, 2018, the State Court in the Murray Lawsuit "received a copy of a 'Supplemental Declaration of Class Counsel, Leon Greenberg, Esq.,' wherein [Murray] Plaintiffs' Counsel declared that at a hearing on May 9, 2018 Department 25 had vacated the prior grant of partial summary judgment as to the only named Plaintiff in that lawsuit (Dubric) and set a hearing for the preliminary approval of a proffered [sic] class settlement proposal." Opposition, Ex. "Y" at 2.

1 On August 21, 2018, the State Court in the Murray Lawsuit entered an Order Granting  
2 Summary Judgment, Severing Claims, and Directing Entry of Final Judgment ("Judgment")  
3 pursuant to which it stated, in pertinent part:

4 C. The Clerk of Court shall enter judgment for each individual  
5 class member in the amount specified in Column "F" in Ex.  
6 "A" as annexed hereto against defendants A CAB TAXI  
7 SERVICE LLC and A CAB, LLC. Such judgment shall  
8 conclude the class claims for damages certified for  
9 disposition pursuant to NRCP Rule 23(b)(3) and constitute a  
10 final judgment on such claims;

11 D. The Court retains continuing jurisdiction over the class  
12 claims it has certified for disposition pursuant to NRCP  
13 23(b)(2), and for enforcement of the monetary judgments it  
14 has rendered in favor of the class members, and appoints  
15 class counsel, Leon Greenberg, Dana Sniegocki, Christian  
16 Gabroy and Kaine Messer, as counsel for the class member  
17 judgment creditors listed on Exhibit "A" and for whom the  
18 Court is directing entry of judgment. Defendants, their  
19 agents, and their attorneys, are prohibited from  
20 communicating with the class member judgment creditors  
21 about their judgments granted by this Order or securing any  
22 releasing or satisfaction of those judgments without first  
23 securing a further Order of this Court in this case. Class  
24 counsel is authorized to proceed with whatever remedies it  
25 deems advisable to enforce the money judgments rendered  
26 for the class members but shall hold in their IOLTA account  
27 any amounts collected on such judgments and only release  
28 such monies as specified by a further Order of this Court in  
this case. Class counsel is also authorized to use all of the  
judgment enforcement remedies provided for by NRS  
Chapter 21 in the name of "Michael Murray as Judgment  
Creditor" for the total amount of the unsatisfied judgments  
rendered in favor of all class members, they need not seek or  
issue writs of judgment execution or levy individually for  
each judgment creditor class member. Class counsel is also  
prohibited, in light of the potential for A Cab to receive  
satisfaction of certain judgment amounts as provided for  
under G, *infra*, until further Order is issued by the Court,  
from taking action to collect more than \$960,000 of the  
combined judgment value of \$1,033,027.81 that is entered  
under this Order;

E. The time for class counsel to apply for an award of fees and  
costs pursuant to NRCP Rule 54 is extended to 60 days after

the service of this Order with Notice of Entry ...

Amended Kohl Declaration, Ex. "1" at 33:11-34:21.

On September 11, 2018, a Writ of Execution on Bank Account was electronically issued by the State Court in the Murray Lawsuit and directed to Wells Fargo Bank regarding the amounts awarded under the Judgment. See Opposition, Ex. "G" at 55-57 of 492.

On September 21, 2018, A Cab, LLC and Creighton J. Nady filed a Notice of Appeal regarding the Judgment entered in the Murray Lawsuit. See Opposition, Ex. "G" at 103-104 of 492.

On October 12, 2018, the Murray Plaintiffs filed a motion in the Murray Lawsuit seeking attorney's fees and costs in favor of their counsel, Leon Greenberg Professional Corporation ("Murray Counsel"). See Amended Kohl Declaration, Ex. "3."

On October 22, 2018, the State Court entered an order ("Amended Order") in the Murray Lawsuit amending the Judgment to clarify "that the judgment originally entered by the Court on August 21, 2018 in this case is also entered against A Cab Series LLC [i.e. ACS], the current name of the originally summoned defendant and judgment debtor A Cab LLC ..." Amended Kohl Declaration, Ex. "2" at 2:3-6.

On November 7, 2018, four Writs of Execution were electronically issued by the State Court in the Murray Lawsuit and directed to U.S. Bank, Chase Bank, Bank of Nevada, and Bank of America regarding the amounts awarded under the Judgment. See Opposition, Ex. "G" at 58-69 of 492.

On December 18, 2018, the State Court in the Murray Lawsuit entered an order ("Injunction/Special Master Order") that, in pertinent part, appointed George C. Swarts as the Special Master and imposed an injunction "prohibiting the transfer of any monies or other property owned by judgment debtor A Cab LLC (also known as A Cab Series LLC [i.e. ACS]) to defendant Nady, to any of his family members, or to any trust of which Nady or any of his family members is a trustor, trustee or beneficiary." Amended Kohl Declaration, Ex. "7" at 3:13-14 and 5:23-28.

On December 21, 2018, the Nevada Supreme Court entered an order in Case No. 77050



denying without prejudice A Cab, LLC's emergency motion to stay execution on the Judgment pending appeal. Opposition, Ex. "C." See also Opposition, Ex "G" (Emergency Motion Under NRAP 27(e) For Stay).

On January 15, 2019, the Murray Plaintiffs filed a motion requesting authority from the State Court to distribute the funds held in Murray Counsel's IOLTA account ("Distribution Motion"). See Exhibit "F" to Motion of Creditors Murray, Reno, Sargeant and Class Action Judgment Creditors for Relief from Automatic Stay ("Petitioners' MRAS"), at ¶ 7. (ECF No. 29).

On February 1, 2019, a Report of Special Master George C. Swarts, CPA was filed with the State Court in the Murray Lawsuit. Opposition, Ex. "H." In pertinent part, the report stated as follows:

Although cash flows are very tight, there are times when A CAB [defined on 3:13-14 therein to include ACS] had cash balances sufficient to pay certain obligations. The QuickBooks-data for 2018 shows a pattern of low and overdrawn cash balances. Accordingly, it is very difficult to say when in the past A CAB has had the funds to pay any specific obligation or when in the future they could do so. However, I believe that Management, properly motivated, could find a way to pay Special Master #2.

...

It is my opinion because of the financial condition of A CAB, the appointment of a receiver is not feasible.

Id. at 4:9-13 and 4:16-17.

On February 4, 2019, the State Court in the Murray Lawsuit entered a Judgment and Order ("SM Order") in favor of Resolution Economics LLC ("Resolution Economics"),<sup>6</sup> i.e. the Special Master, in the amount of \$85,280.56 plus \$9,500 in attorney's fees. See Amended Kohl Declaration, Ex. "5."

On February 6, 2019, the State Court in the Murray Lawsuit entered an order ("Greenberg Order") granting the Murray Plaintiffs' motion for Murray Counsel's attorney's

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<sup>6</sup> The interplay between Special Master George C. Swarts and Resolution Economics in the Murray Lawsuit is not clear to this court from a review of the record. Such details, however, are not relevant for purposes of this Order.

1 fees and costs “pursuant to NRCP 54 and the Nevada Constitution ... in the total amount of  
2 \$614,599.07.”<sup>7</sup> Amended Kohl Declaration, Ex. “4” at 9:16-19.

3 On March 6, 2019, the defendants in the Murray Lawsuit filed a Second Amended Notice  
4 of Appeal (“State Court Appeal”), pursuant to which they appealed, among other things, the  
5 Judgment, Amended Order, Injunction/Special Master Order, SM Order, and the Greenberg  
6 Order. See Amended Kohl Declaration, Ex. “6.”

7 On March 11, 2019, the Murray Plaintiffs, proceeding by and through Michael Murray as  
8 judgment creditor on behalf of a certified class of judgment creditors, filed a complaint,  
9 denominated Case No. A-19-790884-C, against ACS, Creighton J. Nady, Laurie Nady, Gretchen  
10 Jacobs, Creighton Nady Jr., Laurie Nady Family Trust, and Four Fours LLC (“Fraudulent  
11 Transfer Action”). See Amended Kohl Declaration, Ex. “8.” Pursuant to the Fraudulent  
12 Transfer Action, the Murray Plaintiffs alleged causes of action seeking to avoid fraudulent  
13 transfers.

14 On March 11, 2019, A Cab Series, LLC, Administration Company (“Administration  
15 Company”) filed a complaint, denominated Case No. A-19-790911-C, in State Court against  
16 Michael Murray, Michael Reno, Murray Counsel, and Leon Greenberg (“First AC Lawsuit”).  
17 Opposition, Ex. “FF.” Pursuant to the First AC Lawsuit, Administration Company seeks a return  
18 of funds allegedly obtained from its bank accounts pursuant to writs of execution entered in the  
19 Murray Lawsuit. In pertinent part, the Administration Company alleged the following in its  
20 complaint:

21 16. In September of 2018, Defendants LEON GREENBERG  
22 and GREENBERG PC. [i.e. Murray Counsel] caused a writ of  
23 execution to be issued to Wells Fargo Bank in prosecution of the  
judgment entered in the [Murray] Lawsuit.

24 17. The writ was issued to obtain assets of [the Murray] Lawsuit  
25 Judgment Debtors A Cab LLC, and A Cab Series LLC [i.e. ACS].

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26 <sup>7</sup> The State Court’s order explained, in pertinent part, that “Plaintiffs’ motion sought an  
27 award of attorneys’ fees and costs pursuant to Article 15, Section 16(B) of the Nevada  
28 Constitution which states ‘[a]n employee who prevails in any action to enforce this section shall  
be awarded his or her reasonable attorney’s fees and costs.’” Amended Kohl Declaration, Ex.  
“4” at 1:26-2:3.

1 18. A Cab LLC is not an extant entity, and A Cab Series LLC is  
2 a different legal entity than Plaintiff; and Plaintiff is a separate  
corporate entity which was never named in the [Murray] Lawsuit.

3 19. Despite being advised of the difference between A Cab  
4 Series LLC and Plaintiff ADMINISTRATION COMPANY, Wells  
5 Fargo returned a large sum of money to the Sheriff in response to  
the writ, pulling from several different accounts owned by several  
6 separate series accounts, including the account of Plaintiff.

7 ...

8 21. Plaintiff's funds have now been distributed to the trust  
account of GREENBERG PC, where upon information they remain.

9 22. Despite being advised of the difference between A Cab  
10 Series LLC and Plaintiff ADMINISTRATION COMPANY, upon  
information and belief, Defendants GREENBERG PC and LEON  
11 GREENBERG have sought to have these funds distributed to  
himself and/or his law firm.

12 ...

13 24. The funds in the account of Plaintiff were its own and  
14 separate property, except where they were held in trust for ... third  
parties such as the IRS, Nevada Taxicab Authority, Nevada  
15 Department of Taxation, and other entities for which Plaintiff is  
liable to pay the obligations of this third party.

16 25. Plaintiff ADMINISTRATION COMPANY is entitled to a  
17 return of its property.

18 Id. at ¶¶ 16, 17, 18, 19, 21, 22, 24, and 25.

19 On April 12, 2019, an involuntary chapter 7 petition ("Involuntary Petition") was filed  
20 against ACS by Greenberg, Michael Murray, Michael Reno, Resolution Economics, Michael  
21 Sargeant, and a group referred to as the Class Action Plaintiffs (collectively, the "Petitioning  
22 Creditors"). (ECF No. 1).

23 On April 15, 2019, Administration Company filed a complaint against Michael Murray,  
24 Michael Reno, and Wells Fargo Bank NA, denominated Case No. A-19-792961-C, in State  
25 Court ("Second AC Lawsuit"). See Opposition, Ex. "GG." Pursuant to the Second AC Lawsuit,  
26 Administration Company seeks a return of funds allegedly obtained from its bank accounts  
27 pursuant to writs of execution entered in the Murray Lawsuit based on similar facts as alleged in  
28 the First AC Lawsuit. Id. at ¶¶ 15, 16, 17, 18, 19, 21, 22, 24, and 25.

1 On May 7, 2019, the Clerk's Office for the Nevada Supreme Court filed a Notice of  
2 Electronic Filing in the State Court Appeal, which stated, in pertinent part, as follows:

3 Filed Order. Respondents have filed a suggestion of bankruptcy.  
4 This appeal is stayed as to A Cab pursuant to the automatic stay  
5 provisions of federal bankruptcy law. Given the applicability of the  
6 automatic stay, A Cab's appeal may linger indefinitely on this  
7 court's docket pending final resolution of the bankruptcy  
8 proceedings. Accordingly, we conclude that judicial efficiency will  
9 be best served if the appeal is dismissed as to A Cab without  
10 prejudice. Accordingly, we dismiss this appeal as to A Cab only.  
11 The dismissal is without prejudice to A Cab's right to move for  
12 reinstatement of its appeal within 60 days of either the lifting of the  
13 bankruptcy stay or final resolution of the bankruptcy proceedings, if  
14 A Cab deems such a motion appropriate at that time.

15 Amended Kohl Declaration, Ex. "9."

16 On May 8, 2019, ACS filed its initial motion to dismiss accompanied by the initial  
17 Declaration of James A. Kohl. (ECF Nos. 8 and 9).

18 On May 9, 2019, ACS filed its first amended motion to dismiss and the Amended Kohl  
19 Declaration. (ECF Nos. 12 and 13).

20 On June 6, 2019, Murray Counsel filed a withdrawal of the Distribution Motion with the  
21 State Court in the Murray Lawsuit. See Exhibit "H" to Petitioners' MRAS, at ¶ 9.

22 On June 18, 2019, ACS filed a motion seeking to lift the stay to allow it to continue to  
23 prosecute, in pertinent part, the State Court Appeal ("Appeal MRAS"). (ECF No. 20). The court  
24 granted the Appeal MRAS as unopposed at a hearing held on August 14, 2019.<sup>8</sup>

25 On June 28, 2019, the Petitioning Creditors filed a motion seeking to lift the stay to allow  
26 the State Court in the Murray Lawsuit to order the distribution of funds held in trust in Murray  
27 Counsel's IOLTA account ("Trust Funds MRAS"). (ECF No. 29). The court addresses the  
28 Trust Funds MRAS in a separate order entered contemporaneously with the instant order.

On July 17, 2019, ACS filed the instant Second Amended Dismissal Motion. The motion  
is accompanied by various supporting exhibits and a Declaration of Creighton J. Nady ("Nady

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<sup>8</sup> As of the date of this Order, ACS has not uploaded an order approving the motion for  
this court's signature.

1 Declaration").<sup>9</sup> (ECF No. 49).

2 On July 30, 2019, the Petitioning Creditors filed their Opposition to the Dismissal Motion  
3 their exhibits and Greenberg Declaration.

4 On August 7, 2019, ACS filed its Reply.

### 5 DISCUSSION

6 By the Second Amended Dismissal Motion, ACS asks the court to either dismiss the case  
7 or abstain from hearing the Involuntary Petition pursuant to Section 305(a)(1). ACS also seeks  
8 to reserve any rights it may have to seek entry of a judgment against the Petitioning Creditors for  
9 recovery of costs, or reasonable attorney's fees, under Section 303(i).<sup>10</sup>

#### 10 I. The Requirements for Involuntary Relief.

11 Under Section 303(a), an involuntary Chapter 11 case may be commenced against a  
12 corporation only if the corporation may be a debtor under Chapter 11. Under Section 303(b), an  
13 involuntary petition may be filed "by three or more entities, each of which is ... a holder of a  
14 claim against such person that is not contingent as to liability or the subject of a bona fide dispute  
15 as to liability or amount, ... if such noncontingent, undisputed claims aggregate at least \$16,750  
16 more than the value of any lien on property of the debtor securing such claims held by the  
17 holders of such claims ..." 11 U.S.C. § 303(b)(1).

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18  
19 <sup>9</sup> Creighton J. Nady is the managing member of ACS. See Nady Declaration, ¶ 1.

20 <sup>10</sup> The Second Amended Dismissal Motion states that ACS "also seeks recovery of its  
21 fees and costs pursuant to 11 U.S.C. § 303(i)." Second Amended Dismissal Motion at 2:5-6.  
22 Under that statute, if an involuntary case is dismissed without the consent of all parties, the  
23 alleged debtor can seek entry of relief against either all of the petitioners under Section 303(i)(1),  
24 or, against any petitioner who filed the petition in bad faith under Section 303(i)(2). As to the  
25 former, the relief may consist of either an award of costs, or an award of reasonable attorney's  
26 fees under Section 303(i)(1)(A). As to the latter, the relief may consist of any damages  
27 proximately caused by the commencement of the involuntary proceeding, or, punitive damages  
28 under Section 303(i)(2)(B). Only the alleged debtor may obtain a judgment for relief under  
Section 303(i). See Vibe Micro, Inc. v. SIG Capital, Inc. (In re 8Speed8, Inc.), 921 F.3d 1193  
(9th Cir. 2019) (shareholder of involuntary debtor did not have standing to seek relief under  
either part of Section 303(i)). In this instance, ACS is seeking dismissal or abstention under  
Section 305(a). The language of Section 303(i), however, refers to dismissals of an involuntary  
petition "under this section..." It makes no reference to dismissal of an involuntary petition  
under Section 305.

1 Alternatively, “if there are fewer than 12 such holders,” then an involuntary petition may  
 2 be filed “by one or more of such holders” that hold aggregate debts of at least \$16,750. 11  
 3 U.S.C. § 303(b)(2). “Since section 303(b)(1) requires that claims not be contingent as to liability  
 4 or the subject of bona fide dispute as to liability or amount, those requirements also apply to the  
 5 holders referred to in section 303(b)(2).” See 2 COLLIER ON BANKRUPTCY ¶ 303.14[3] (Richard  
 6 Levin and Henry J. Sommer, eds., 16th ed.).

7 Of course, an alleged debtor may choose not to controvert the allegations of an  
 8 involuntary petition, thereby permitting an order for relief to be entered. See 11 U.S.C. § 303(h).  
 9 If the alleged debtor does contest the allegations of an involuntary petition, however, an order for  
 10 relief is entered under the applicable chapter only if the alleged debtor is “generally not paying  
 11 such debtor’s debts as such debts become due unless such debts are the subject of a bona fide  
 12 dispute as to liability or amount ...” 11 U.S.C. § 303(h)(1).<sup>11</sup> As one might guess, involuntary  
 13 petitions are typically contested, if at all, over whether the alleged debtor is “generally not  
 14 paying” its debts, see, e.g., Hayes v. Rewald (In re Bishop, Baldwin, Rewald, Dillingham &  
 15 Wong, Inc.), 779 F.2d 471, 475 (9th Cir. 1985), or, whether the unpaid debts “are the subject of a  
 16 bona fide dispute.” See, e.g., Liberty Tool & Mfg. v. Vortex Fishing Sys., Inc. (In re Vortex  
 17 Fishing Sys., Inc.), 277 F.3d 1057, 1066-70 (9th Cir. 2002).<sup>12</sup> There may be an admixture of  
 18 both contests because a bona fide dispute as to the liability or amount of a debt arguably means  
 19

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20  
 21 <sup>11</sup> Alternatively, an order for relief may be entered against a debtor in a contested  
 22 proceeding if a custodian was appointed or took possession of substantially all of the alleged  
 23 debtor’s property within 120 days before the involuntary petition was filed. See 11 U.S.C. §  
 24 303(h)(2).

25 <sup>12</sup> Section 303(h)(1) refers to “such debtor’s debts.” Section 303(h)(1) then imposes  
 26 conditions on “such debts.” “Such debts” are required to be ones that the alleged debtor  
 27 generally is not paying as they become due. The alleged debtor’s failure to pay “such debts”  
 28 apparently is then excused if those debts are subject to a bona fide dispute as to liability or  
 amount. Because the phrase “such debtor’s debts” refers to all of the alleged debtor’s  
 obligations, the inquiry required by Section 303(h)(1) apparently extends beyond the claims of  
 the petitioning creditors. Thus, an alleged debtor’s undisputed failure to pay a petitioning  
 creditor’s debt is not determinative of whether the debtor generally is not paying all of its debts  
 as they become due.

1 that the alleged debt is not currently due at all.<sup>13</sup> See generally 2 COLLIER ON BANKRUPTCY,  
2 supra, ¶ 303.11.<sup>14</sup>

3 Like many circuits, the Ninth Circuit applies a “totality of the circumstances” approach to  
4 whether an alleged debtor is generally not paying its debts when due. See In re Vortex Fishing  
5 Sys., Inc., 277 F.3d at 1072. Under this approach, the court should consider a variety of factors,  
6 including the number of unpaid claims, the amount of the unpaid claims, the materiality of the  
7 nonpayments, and the debtor’s overall conduct of its financial affairs. See In re Datacom Sys.,  
8 Inc., Case No. 14-11096-ABL, Memorandum and Order Regarding Involuntary Petition and  
9 Motion to Dismiss, Docket No. 228, at 29 (Bankr. D. Nev. June 25, 2015), citing Laxmi Jewel,  
10 Inc. v. C & C Jewelry Mfg., Inc. (In re C & C Jewelry Mfg., Inc.), 2001<sup>15</sup> WL 36340326, at \*12  
11 (B.A.P. 9th Cir. Apr. 14, 2009). See, e.g., In re St. Marie Development Corp. of Montana, Inc.,  
12 334 B.R. 663, 671 (Bankr. D. Mont. 2005) (number of creditors and amount due); In re Int’l  
13 Teldata Corp., 12 B.R. 879, 883 (Bankr. D. Nev. 1981) (payment of significant long-term debts  
14 versus periodic payment of small debts).

15 For a majority of the federal circuits, including the Ninth Circuit, a “bona fide dispute”  
16 exists if “there is an objective basis for either a factual or a legal dispute as to the validity of a  
17

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18 <sup>13</sup> A more unusual situation may occur where a debtor pays all of its debts as they are  
19 incurred subject to a reservation of rights. In such circumstances, a contested involuntary  
20 petition apparently would not satisfy the threshold requirement of Section 303(h)(1).

21 <sup>14</sup> Section 303(b)(1) refers to claims that are not the subject of a bona fide dispute while  
22 303(h)(1) refers to debts that are not the subject of a bona fide dispute. Under Section 101(12),  
23 the term “debt” means liability on a “claim.” Under Section 101(5)(A), the term “claim” means,  
24 *inter alia*, a right to payment, whether or not such right is disputed or undisputed. So under the  
25 Bankruptcy Code, a “claim” or a “debt” can be a right to payment regardless of whether it is  
26 subject to dispute. This broad definition of “debt” is important to a debtor who voluntarily seeks  
27 bankruptcy relief because it maximizes the scope of the bankruptcy discharge. When a debtor is  
28 subjected to an involuntary petition, this broad definition is also important because it identifies  
the type of debt that will prevent a debtor from having its property taken under a bankruptcy  
court’s jurisdiction without the debtor’s consent. Thus, when it comes to involuntary bankruptcy  
cases, the existence of a dispute over the claims of the petitioning creditors raises a due process  
concern over the nonconsensual taking of a debtor’s property.

<sup>15</sup> Although the opinion was entered in 2009, Westlaw curiously contains a citation  
referencing calendar year 2001.

debt.” See In re Vortex Fishing Sys., Inc., 277 F.3d at 1064 (quotations and citation omitted). A bona fide dispute as to liability exists “if there is either a genuine issue of material fact that bears upon the debtor’s liability, or a meritorious contention as to the application of law to undisputed facts ...” Id. (citation and footnote omitted). The same objective test applies for determining a bona fide dispute as to the amount of a debt. See Marciano v. Chapnick (In re Marciano), 708 F.3d 1123, 1126 (9th Cir. 2013).<sup>16</sup>

## II. ACS’s Request for Dismissal, or, Abstention.

### A. Dismissal Under FED. R. CIV. P. 12(b)(6).

ACS contends that dismissal is warranted under FRCP 12(b)(6) because the Petitioning Creditors have failed to state a claim for relief. See Second Amended Dismissal Motion at 6:12 to 7:2. ACS’s primary argument is that the Involuntary Petition is subject to dismissal because it is not brought by the required number of creditors. Specifically, A Cab states that it has more than twelve creditors, see Nady Declaration at ¶ 5, thereby requiring a minimum of three creditors to sign the Petition under Section 303(b)(1). ACS argues that Michael Murray, Michael Reno, and Michael Sargeant, should not be counted as separate petitioning creditors because they are part of the greater Class Action Plaintiffs who also purport to be Petitioning Creditors. ACS

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<sup>16</sup> A bona fide dispute as to any amount of a petitioning creditor’s claim also disqualifies the claim under Section 303(b). See In re Timothy L. Blixseth, Case No. 11-15010-BAM, Order Granting Motion to Dismiss Involuntary Case, Docket No. 528, at 13:11 to 14:2 (Bankr. D. Nev. July 10, 2013). The order in the Blixseth proceeding was appealed to the United States District Court for the District of Nevada (“USDC”) and denominated Case No. 2:13-cv-01324-JAD. On December 15, 2017, the USDC entered an order affirming the bankruptcy court. See Montana Department of Revenue v. Blixseth, 581 B.R. 882 (D.Nev. 2017). On January 11, 2018, a further appeal was taken to the Ninth Circuit Court of Appeals, which heard oral arguments on August 26, 2019. A Ninth Circuit decision on the dismissal order has not been entered, but the underlying Blixseth bankruptcy proceeding has been reassigned to the above-signed bankruptcy judge. While the bankruptcy court’s prior decision dismissing the involuntary petition in Blixseth remains on appeal, its conclusion that even a dispute as to part of the claim disqualifies the petitioning creditor is supported by many other court decisions. See 2 COLLIER ON BANKRUPTCY, supra, ¶ 303.11[2] & nn.32, 33. The absence of a Ninth Circuit determination on this issue was observed by the Bankruptcy Appellate Panel for this circuit in 2009, see In re C & C Jewelry Mfg., Inc., 2001 WL 36340326, at \*7, and a list of diverging lower court decisions was provided by the USDC. See Montana Dept. of Revenue v. Blixseth, 2013 WL 5408668, at \*2-3 (D.Nev. Sept. 25, 2013).



1 further argues that Murray Counsel is counsel to the Class Action Plaintiffs and does not have  
2 any relationship with ACS from which a liability could arise. Finally, ACS argues that  
3 Resolution Economics' claim is against a different party and should not be counted, or, even if  
4 counted, only comprises a second petitioning creditor in this case along with the Class Action  
5 Plaintiffs.

6 ACS further contends that it is generally paying its debts as they become due under  
7 Section 303(h)(1). In support of this argument, ACS's managing member, Creighton J. Nady,  
8 attests to a conclusory statement to that same effect. See Nady Declaration at ¶ 6 (ACS "is  
9 generally paying its debts as they become due.").

10 ACS finally contends that the Involuntary Petition was filed in bad faith, thereby  
11 warranting dismissal of the same and an award of sanctions to ACS under Section 303(i).

12 Unsurprisingly, the Petitioning Creditors dispute all of ACS's contentions.  
13 Unfortunately, the parties' disputes regarding the above issues are ill-suited to resolution by a  
14 pleading motion. Neither side can establish the merits of their respective positions without  
15 resorting to materials outside of the Petition. This is hardly surprising when parties have created  
16 a record of litigation in one court (or several courts, as noted above) before commencing  
17 proceedings in another court.

18 In their respective pleadings, both parties recognize the potential need for an evidentiary  
19 hearing prior to this court's resolution of these disputes. See Second Amended Dismissal  
20 Motion at 18:17-20 ("As such, in the event that an evidentiary hearing is order[ed] with respect  
21 to the issues set forth herein, a bond must be posted by the Petitioning Creditors to ensure that  
22 [ACS] is sufficiently protected against the substantial losses it will certainly incur from the  
23 lengthy discovery that is about to commence."); Opposition at 2:15-19 ("Even if this Court were  
24 to disregard *Marciano*, and follow *In re Forever Green*, the motion must be denied as no bad  
25 faith dismissal can be granted without a fully developed record and evidentiary hearing." ).  
26 Additionally, on August 12, 2019, the Petitioning Creditors filed a motion for summary  
27 judgment, which they scheduled to be heard on October 3, 2019. (ECF Nos. 63, 65, and 67). As  
28 a separate summary judgment motion has already been filed, and in light of the parties'

1 concessions regarding the potential necessity of an evidentiary hearing, it comes as no surprise  
 2 that a determination regarding any of the above-referenced disputes should be made, if at all, in  
 3 connection with either the summary judgment motion or a future evidentiary hearing, and not the  
 4 instant Second Amended Dismissal Motion. ACS's request for dismissal of the Involuntary  
 5 Petition under FRCP 12(b)(6), therefore, will be denied without prejudice.

6 **B. Dismissal by Abstention.**

7 ACS's request for abstention under Section 305 is a different matter.<sup>17</sup> Under that  
 8 provision, the bankruptcy court may dismiss a case or suspend all proceedings in a case, at any  
 9 time, if "the interests of creditors and the debtor would be better served by such dismissal or  
 10 suspension ..." 11 U.S.C. § 305(a)(1). Unlike the dismissal or conversion of a voluntary  
 11 Chapter 11 proceeding, or the appointment of a Chapter 11 trustee or examiner, the statutory  
 12 focus is not on the "best interests of creditors and the estate," but on the interests of both the  
 13 creditors and the debtor. Compare 11 U.S.C. § 1112(b)(1) ("[O]n request of a party in interest,  
 14 and after notice and a hearing, the court shall convert a case under this chapter or dismiss a case  
 15 under this chapter, whichever is in the best interests of creditors and the estate, for cause unless  
 16 the court determines that the appointment under section 1104(a) of a trustee or an examiner is in  
 17 the best interests of creditors and the estate."); 11 U.S.C. § 1104(a)(2) ("if such appointment [of  
 18 a trustee or an examiner] is in the interests of creditors, any equity security holders, and other  
 19 interests of the estate ..."). See Eastman v. Eastman (In re Eastman), 188 B.R. 621, 625 (B.A.P.

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21 <sup>17</sup> The ubiquitous "totality of the circumstances" approach, see, e.g., discussion at 15,  
 22 supra, is commonly applied in determining whether a court should exercise its discretion to  
 23 abstain under Section 305(a)(1). For discretionary abstention, the factors typically considered  
 24 are: (1) economy and efficiency of case administration, (2) the availability of another forum to  
 25 protect the interests of the parties or the pendency of another proceeding in state court, (3) the  
 26 necessity for a federal proceeding to achieve a just and equitable solution, (4) the availability of  
 27 alternative means to equitably distribute assets, (5) whether the debtor and creditors are able to  
 28 achieve a less expensive arrangement out of court, (6) whether continuation of existing non-  
 federal insolvency proceedings would be less costly and time-consuming, and (7) the purpose for  
 seeking bankruptcy jurisdiction. See Marciano v. Fahs (In re Marciano), 459 B.R. 27, 46 (B.A.P.  
 9th Cir. 2011). These factors are non-exclusive, and no one factor is more important than  
 another. Id. at 48 ("We disagree that any of the § 305(a) Factors can be 'primary' where the  
 determination of relief under § 305(a) is based on the totality of the circumstances.").

9th Cir. 1995) (“[T]he test is whether both the debtor and the creditors would be ‘better served’ by a dismissal.”). See also In re R & S St. Rose, LLC, Case No. 10-18827-MKN, Memorandum Decision on Motion to Dismiss, Docket No. 36, at 10 (Bankr. D. Nev. October 29, 2010). Moreover, because abstention under Section 305 may be sought in both voluntary and involuntary proceedings, the court is required to take into account the interests of all creditors, not just the creditors that filed or joined in the involuntary petition.

ACS argues that dismissal by abstention is appropriate because, in pertinent part, its future hinges upon pending state court litigation that has been going on for years, including the Murray Lawsuit and the Dubric Lawsuit. ACS correctly argues that the Murray Plaintiffs’ collection action on its Judgment was succeeding, as Murray Counsel is currently holding in its trust account funds it obtained pursuant to writs of execution issued to enforce the Judgment. Instead of pursuing the Distribution Motion in the State Court, the Murray Plaintiffs curiously withdrew it, filed the Involuntary Petition, and then filed the Trust Funds MRAS with this court requesting relief from the automatic stay in order to seek the same relief previously requested in the Distribution Motion. At the same time, however, entitlement to these trust funds is also subject to further litigation in the First AC Lawsuit and the Second AC Lawsuit, pursuant to which Administration Company argues that some of its funds are included in Murray Counsel’s IOLTA account to satisfy the Judgment to which it is not bound.

In addition to this seemingly inefficient and confusing course of events, ACS observes that there are several State Court judges who presumably are more intimately familiar with these matters than this court. The Petitioning Creditors recognize this point by having conceded to the relief requested in the unopposed Appeal MRAS.<sup>18</sup> See Opposition at 16:26-28 (“[ACS] has

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<sup>18</sup> Petitioning Creditors have further emphasized the paramount necessity for state court action prior to this court’s involvement by making “law of the case” arguments in their reply in support of the Trust Funds MRAS. See Reply of Creditors Murray, Reno, Sargeant and the Class Action Judgment Creditors to A Cab’s Opposition (Doc. 57) to Motion (Doc. 29) for Relief from Automatic Stay (ECF No. 58) at 5:14-17 (“It is the law of this case that [ACS] has no interest in the funds held in the class action judgment creditors’ counsel’s IOLTA account.”). Clearly, such “law of the case” arguments are directed towards the State Court, and not this court, which has yet to issue any ruling regarding ownership of the monies held in trust by Murray Counsel. See Buck v. Berryhill, 869 F.3d 1040, 1050 (9th Cir. 2017) (quoting Thomas

1 moved to lift the bankruptcy stay [pursuant to the Appeal MRAS] to prosecute the appeal and the  
 2 petitioners, having reviewed that request, advised [ACS] they would consent to that relief.”).

3 Yet, despite recognizing that stay relief is required to continue with the State Court Appeal and  
 4 to ask the State Court for authority to distribute seized funds, the Petitioning Creditors claim that  
 5 the best interests of ACS and all creditors lies in a bankruptcy proceeding:

6 Confirmation of the petition will not prohibit [ACS] from  
 7 pursuing the appeal, as it can propose a plan as debtor-in-possession  
 8 to resolve the petitioners’ claims and have the appeal proceed. ...  
 9 Confirmation of the petition will ensure that the petitioners, and  
 10 [ACS’s] other creditors, are fairly protected in the event that  
 [ACS’s] appeal is unsuccessful. Given such circumstances, it is  
 clearly *not* in the interests of *both* [ACS] and its creditors to dismiss  
 or stay the petition.

11 Opposition at 16:26-17-4 (citations omitted) (emphasis in original). The court is not persuaded  
 12 by Petitioning Creditors’ argument, since they even implicitly concede that neither this court nor  
 13 ACS will be able to do much in a bankruptcy proceeding absent a final determination in the State  
 14 Court Appeal. More important, Petitioning Creditors ignore that their own Involuntary Petition  
 15 seeks liquidation under Chapter 7.<sup>19</sup> There is no debtor in possession in a Chapter 7 proceeding  
 16 and upon entry of an order for relief a Chapter 7 trustee would be appointed. A Chapter 7  
 17 trustee, not ACS, would exercise control over assets of the bankruptcy estate, including any  
 18 rights of ACS in connection with the State Court Appeal and other pending litigation. See, e.g.,  
 19 South Edge LLC v. JPMorgan Chase Bank, N.A. (In re South Edge, LLC), 2011 WL 1626567, at  
 20

21 \_\_\_\_\_  
 22 v. Bible, 983 F.2d 152, 154 (9th Cir. 1993)) (“Under the law of the case doctrine, ‘a court is  
 23 generally precluded from reconsidering an issue that has already been decided by the *same*  
*court, or a higher court in the identical case.*’”) (emphasis added).

24 <sup>19</sup> Petitioning Creditors’ misunderstanding of what they have initiated is illustrated by  
 25 their repeated reference to “confirmation of the petition.” Involuntary petitions are not  
 26 confirmed, but instead are adjudicated. As previously discussed at 14-16, supra, ACS could  
 27 contest the Involuntary Petition and if the Involuntary Petition is adjudicated in its favor, Section  
 28 303(h) precludes entry of an order for relief, and the case would be dismissed. Thereafter,  
 Section 303(i) would permit the alleged debtor to seek a judgment against the petitioners for  
 costs, attorney’s fees, and certain damages. If the Petitioning Creditors are using the term  
 “confirmation” as a reference to a Chapter 11 plan of reorganization, such an event simply does  
 not occur in a Chapter 7 proceeding.

1 \*5 (D.Nev. Apr. 28, 2011) (trustee appointed in involuntary Chapter 11 proceeding against  
2 Nevada limited liability company “displaces former management just as a chapter 7 trustee  
3 does...”)

4 While a Chapter 7 trustee could seek to convert the case to Chapter 11 for purposes of  
5 proposing a plan of reorganization, the trustee would have to propose treatment of the many  
6 claims that already have been asserted against ACS. Even if ACS voluntarily sought Chapter 11  
7 relief by conversion of the instant proceeding, it too would be required to satisfactorily address  
8 the many claims it is actively litigating, in addition to the matters for which it is awaiting  
9 determinations in the Murray Lawsuit, Dubric Lawsuit, State Court Appeal, Fraudulent Transfer  
10 Action, First AC Lawsuit, Second AC Lawsuit, and other personal injury actions for which stay  
11 relief has also been requested in this involuntary proceeding. See ECF Nos. 42, 43, 50, 51, 71,  
12 85, and 87. Perhaps this explains why ACS has not filed a voluntary Chapter 11 petition at this  
13 juncture, even though Chapter 11 reorganization is commonly pursued on a voluntary basis to  
14 address mass litigation.

15 The court is further persuaded by ACS’s argument that judicial efficiency requires relief  
16 under Section 305(a). Further proceedings in this misconceived case would unnecessarily tie up  
17 the resources of this court, and most likely the limited judicial resources of the United States  
18 District Court for the District of Nevada,<sup>20</sup> and establish two additional layers of judicial  
19 oversight over state law matters that appear to be proceeding appropriately in State Court.<sup>21</sup>

20 For these reasons, the court concludes that abstention in the form of dismissal is  
21 appropriate under Section 305(a). This conclusion is not a determination of any of the parties’  
22 disputes regarding the appropriate number of creditors, whether ACS is paying its debts as they  
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24 <sup>20</sup> Potential non-core claims have been asserted against third parties in some of the above-  
25 referenced litigation, thereby possibly requiring the use of District Court resources to preside  
26 over matters on which the bankruptcy court lacks constitutional authority to enter a final  
judgment. See Stern v. Marshall, 564 U.S. 462 (2011).

27 <sup>21</sup> Indeed, the Murray Plaintiffs were able to garnish \$223,494.54 in funds pursuant to the  
28 Judgment prior to filing the Involuntary Petition. See Second Amended Dismissal Motion at  
5:18-21; Petitioners’ MRAS, at ¶¶ 4, 6 and Exs. C, E.

1 become due, and/or whether the Involuntary Petition was filed in bad faith. Those  
2 determinations are reserved to the extent ACS seeks to pursue relief under Section 303(i).

3 **IT IS THEREFORE ORDERED** that the Amended Motion to Dismiss Involuntary  
4 Petition, brought by A Cab Series, L.L.C., Docket No. 48, be, and the same hereby is, **DENIED**  
5 **IN PART AND GRANTED IN PART** as follows:

- 6 1. Dismissal of the above-captioned proceeding under FED. R. CIV. P. 12(b)(6) is  
7 **DENIED**; and
- 8 2. Dismissal of the above-captioned proceeding under 11 U.S.C. § 305(a) is  
9 **GRANTED**.

10 **IT IS FURTHER ORDERED** that all pending hearings, conferences and other matters  
11 scheduled in or in connection with the above-captioned proceeding are **VACATED** from the  
12 calendar.

13 **IT IS SO ORDERED.**

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15 Copies sent via CM/ECF to all parties.

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