

NOAS

John P. Aldrich, Esq.
Nevada Bar No.: 6877

ALDRICH LAW FIRM, LTD.

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Electronically Filed
Apr 03 2019 02:57 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Steven J. Purcell, Esq.
Douglas E. Julie, Esq.
Robert H. Lefkowitz, Esq.
PURCELL JULIE & LEFKOWITZ LLP
708 Third Avenue, 6th Floor
New York, New York 10017
(212) 725-1000

Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

CHARLES JESSEPH AND CHARLES)	Case No.: A-18-781874-B
CHURCHWELL,)	
)	Dept. No.: XI
Plaintiffs,)	
)	
v.)	
)	
DIGITAL ALLY, INC.,)	<u>NOTICE OF APPEAL</u>
)	
Defendants.)	
)	
)	

TO: Defendant DIGITAL ALLY, INC.:

NOTICE is hereby given that Plaintiffs Charles Jesseph and Charles Churchwell appeal to the Supreme Court of Nevada from the Order Granting Defendant Digital Ally's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5) entered in the above-referenced action (the "Action") on February 27, 2019.

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DATED this 27th day of March, 2019.

/s/ John P. Aldrich
John P. Aldrich, Esq.
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Las Vegas, Nevada 89117
Tel: (702) 853-5490

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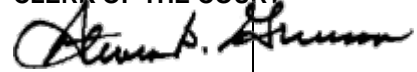
X: By electronic case filing and service through the Court's e-filing service (Odyssey)

___: By U.S. mail, first class postage prepaid to the address below

___: By electronic mail to the email address(es) listed below

David H. Kistenbroker, Esq.
Joni S. Jacobsen, Esq.
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Steven J. Purcell, Esq.
Douglas E. Julie, Esq. (*admitted pro hac vice*)

Robert H. Lefkowitz, Esq.

PURCELL JULIE & LEFKOWITZ LLP

708 Third Avenue, 6th Floor
New York, New York 10017
(212) 725-1000

Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

CHARLES JESSEPH AND CHARLES) Case No.: A-18-781874-B
CHURCHWELL,)

Plaintiffs,)

v.)

DIGITAL ALLY, INC.,)

Defendants.)

CASE APPEAL STATEMENT

1. Name of Appellants filing this Case Appeal Statement: Charles Jesseph and Charles Churchwell (“Appellants”).

2. Judge Issuing Order Appealed From: The Honorable Elizabeth Gonzalez, District Judge, Eighth Judicial District Court, Department XI.

3. Each Appellant and Name and Address of Counsel: Appellants are represented by:

1 John P. Aldrich, Esq.
2 ALDRICH LAW FIRM, LTD.
3 7866 West Sahara Avenue
4 Las Vegas, Nevada 89117
5 Telephone: (702) 853-5490
6 Facsimile: (702) 227-1975
7 Email: jaldrich@johnaldrichlawfirm.com

8 In addition, the following counsel also represent Appellants:

9 Steven J. Purcell, Esq.
10 Douglas E. Julie, Esq.
11 Robert H. Lefkowitz, Esq.
12 PURCELL JULIE & LEFKOWITZ LLP
13 708 Third Avenue, 6th Floor
14 New York, New York 10017
15 Telephone: (212) 725-1000

16 **4. Respondent and Respondent's Counsel:** Respondent Digital Ally, Inc.

17 ("Respondent") is represented by:

18 Jeffrey F. Barr, Esq.
19 Lee I. Iglody, Esq.
20 **ASHCRAFT & BARR | LLP**
21 2300 West Sahara Ave
22 Las Vegas, Nevada 89102
23 Telephone: (702) 631-7555

24 In addition, the following counsel also represent Respondent:

25 David H. Kistenbroker, Esq.
26 Joni S. Jacobsen, Esq.
27 **DECHERT LLP**
28 35 West Wacker Drive Suite 3400
Chicago, Illinois 60601
Telephone: (312) 646-5800

5. The attorneys with offices located in Nevada, identified in paragraphs 3 and 4 above, are licensed to practice law in Nevada. Douglas E. Julie, co-counsel for Plaintiff, has been

1 admitted to practice pro hac vice (*see Minute Order attached hereto as Exhibit 1¹*), David H.
2 Kistenbroker, co-counsel for Defendants, has been admitted to practice pro hac vice (see
3 **Exhibit 2** attached hereto), and Joni S. Jacobsen, co-counsel for Defendants, has been admitted
4 to practice pro hac vice (*see Exhibit 3* attached hereto).
5

6 6. Appellants were represented by retained counsel in the District Court.

7 7. Appellants are represented by retained counsel on appeal.

8 8. Appellants were not granted leave to proceed *in forma pauperis*.

9 9. The Action was commenced on September 28, 2018 by the filing of a Complaint for
10 Attorneys' Fees and Expenses asserting a claim for attorneys' fees.
11

12 10. Appellants are stockholders of Respondent, a Nevada corporation. Appellants brought
13 this Action to obtain payment of attorneys' fees and expenses for successfully prosecuting a
14 stockholder litigation demand (the "Demand") which caused Respondent to correct material
15 flaws in its capital structure. Specifically, the Demand alleged that Respondent's Articles of
16 Incorporation (the "Articles of Incorporation") had been illegally amended to create a new class
17 of preferred stock that had not been approved by the requisite number of legally voting shares,
18 and that another proposal to increase the amount of authorized common stock was approved on
19 the basis of a proxy statement which falsely instructed stockholders that their failure to vote
20 would effectively constitute voting against the proposal. In response to the Demand, the
21 preferred stock amendment was withdrawn and the common stock amendment was put to a
22 stockholder ratification vote. Respondent later unsuccessfully sought to have stockholders
23 reapprove the class of blank check preferred stock.
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28 ¹ The District Court granted Plaintiffs' Motion to Associate Counsel on January 14, 2019, however it appears that an Order was not submitted to the Court. Plaintiffs' counsel will submit an Order to the Court and will supplement this Case Appeal Statement to include the Order once it is filed with the District Court.

1 Appellants seek an award of attorneys' fees and expenses for the substantial benefit
2 conferred upon Respondent and its stockholders through the prosecution of the Demand, which
3 caused Respondent to correct these defects and issue corresponding disclosures.
4

5 On November 13, 2018, Respondent filed a Motion to Dismiss the Complaint, arguing
6 that the substantial benefit doctrine does not permit awards of attorneys' fees and expenses
7 under these circumstances, specifically where a benefit is obtained through a stockholder
8 litigation demand and not filed litigation. This is a question of first impression under Nevada
9 law. Appellants filed their Opposition to Defendant's Motion to Dismiss on December 21, 2018
10 and Respondent filed its reply on January 7, 2019. The District Court heard oral argument on
11 January 14, 2019. On February 25, 2019, the Court issued the Order Granting Defendant
12 Digital Ally's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5) on a form of
13 Order submitted by Respondent. In granting the motion, the Court Ordered that "predicate
14 litigation is an essential element for maintaining a claim for attorney's fees under the
15 substantial benefit doctrine found in Nevada common law."
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18 11. This Action has not previously been the subject of an appeal to or original writ
19 proceeding in the Nevada Supreme Court.
20

21 12. This appeal does not involve child custody or visitation.

22 13. The parties to the Action have not engaged in any settlement discussions during the
23 pendency of this litigation, but to the extent that Appellee wishes to participate in the appellate
24 settlement program, Appellants are willing to participate.
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___: By U.S. mail, first class postage prepaid to the address below

___: By electronic mail to the email address(es) listed below

David H. Kistenbroker, Esq.
Joni S. Jacobsen, Esq.
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joni.jacobsen@dechert.com

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EXHIBIT 1

EXHIBIT 1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NRS Chapters 78-89

COURT MINUTES

January 14, 2019

A-18-781874-B	Charles Jesseph, Plaintiff(s)
	vs.
	Digital Ally, Inc., Defendant(s)

January 14, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

PRESENT:	Aldrich, John P.	Attorney for Plaintiffs
	Barr, Jeffrey F.	Attorney for Defendant
	Kistenbroker, David H	Attorney for Defendant

JOURNAL ENTRIES

- MOTION TO ASSOCIATE COUNSEL...DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP 12(B)(5)

APPEARANCES CONTINUED: Attorney Douglas Elliot Julie for Plaintiffs, Pro Hac Vice pending.

MOTION TO ASSOCIATE COUNSEL: There being no objection, COURT ORDERED, motion to associate Mr. Julie GRANTED. By accepting this admission, Counsel agrees to submit to jurisdiction and appear without subpoena for any proceedings required by the Court which relate to Counsel's conduct in this matter including motions, depositions, and evidentiary hearings. SCR 42(13)(a).

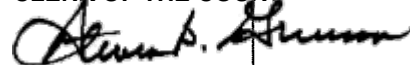
DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP 12(B)(5): Following arguments by Mr. Kistenbroker and Mr. Julie, COURT ORDERED, in Nevada the substantial benefit doctrine is limited to litigation matters, at least in the currently decided cases. For that reason, the Court GRANTS the motion to dismiss.

EXHIBIT 2

EXHIBIT 2

ORIGINAL

Electronically Filed
12/31/2018 1:56 PM
Steven D. Grierson
CLERK OF THE COURT



ORAP
Jeffrey F. Barr, Esq.
Nevada Bar No. 7269
Lee I. Iglody, Esq.
Nevada Bar No. 7757
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Joni Jacobsen*
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joni.jacobsen@dechert.com

Attorneys for Defendant
** Pro hac vice pending*

DISTRICT COURT
CLARK COUNTY, NEVADA

CHARLES JESSEPH AND CHARLES
CHURCHWELL,

Plaintiffs,

vs.

DIGITAL ALLY, INC.,

Defendants.

CASE NO: A-18-781874-C

DEPT NO. XI

ORDER ADMITTING TO PRACTICE

DAVID H. KISTENBROKER, ESQ., having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificates of Good Standing from the Supreme Court of Illinois and the Supreme Court of New York, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

1 **ORDERED** that said application is hereby granted, **DAVID H. KISTENBROKER,**
2 **ESQ.** is hereby admitted to practice in the above-entitled Court for the purposes of the above
3 entitled matter only.
4

5 **IT IS FURTHER ORDERED** by accepting this admission, Counsel agrees to submit
6 to jurisdiction and appear without subpoena for any proceedings required by the Court which
7 relate to Counsel's conduct in this matter including motions, depositions, and evidentiary
8 hearings. SCR 42(13)(a).
9

10 DATED this 24 day of December, 2018.

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13 DISTRICT COURT JUDGE
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Submitted by:

Ashcraft & Barr | LLP



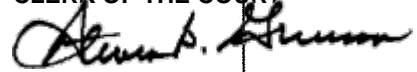
Jeffrey F. Barr, Esq., NV Bar No. 7269
Lee I. Iglody, Esq., NV Bar No. 7757
2300 West Sahara Ave, Ste. 900
Las Vegas, NV 89102
(702) 631-7555
Attorneys for Defendant

EXHIBIT 3

EXHIBIT 3

ORIGINAL

Electronically Filed
12/31/2018 1:54 PM
Steven D. Grierson
CLERK OF THE COURT



ORAP
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joni.jacobsen@dechert.com

Attorneys for Defendant
** Pro hac vice pending*

DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES JESSEPH AND CHARLES
CHURCHWELL,

Plaintiffs,

vs.

DIGITAL ALLY, INC.,

Defendants.

CASE NO: A-18-781874-C

DEPT NO. XI

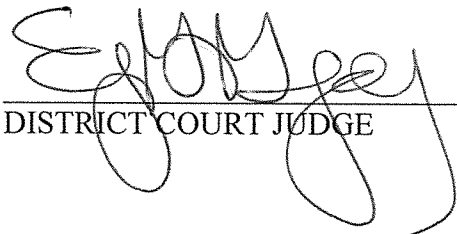
ORDER ADMITTING TO PRACTICE

JONI S. JACOBSEN, ESQ., having filed her Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificate of Good Standing from the Supreme Court of Illinois, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

1 **ORDERED** that said application is hereby granted, **JONI S. JACOBSEN, ESQ.** is
2 hereby admitted to practice in the above-entitled Court for the purposes of the above entitled
3 matter only.
4

5 **IT IS FURTHER ORDERED** by accepting this admission, Counsel agrees to submit
6 to jurisdiction and appear without subpoena for any proceedings required by the Court which
7 relate to Counsel's conduct in this matter including motions, depositions, and evidentiary
8 hearings. SCR 42(13)(a).

9 DATED this 24 day of December, 2018.

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13 DISTRICT COURT JUDGE
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19 Submitted by:

20 Ashcraft & Barr | LLP

21
22 

23 Jeffrey F. Barr, Esq., NV Bar No. 7269
24 Lee I. Iglody, Esq., NV Bar No. 7757
25 2300 West Sahara Ave, Ste. 900
26 Las Vegas, NV 89102
27 (702) 631-7555
 Attorneys for Defendant

CASE SUMMARY**CASE NO. A-18-781874-B**

Charles Jesseph, Plaintiff(s)
vs.
Digital Ally, Inc., Defendant(s)

§
§
§
§
§

Location: **Department 11**
 Judicial Officer: **Gonzalez, Elizabeth**
 Filed on: **09/28/2018**
 Case Number History:
 Cross-Reference Case Number: **A781874**

CASE INFORMATION**Statistical Closures**

02/27/2019 Motion to Dismiss by the Defendant(s)

Case Type: **NRS Chapters 78-89**

Case Status: **02/27/2019 Dismissed**






DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-18-781874-B
 Court Department 11
 Date Assigned 11/15/2018
 Judicial Officer Gonzalez, Elizabeth

PARTY INFORMATION














		<i>Lead Attorneys</i>
Plaintiff	Churchwell, Charles	Aldrich, John P. <i>Retained</i> 702-863-5490(W)
	Jesseph, Charles	Aldrich, John P. <i>Retained</i> 702-863-5490(W)
Defendant	Digital Ally, Inc.	Barr, Jeffrey F. <i>Retained</i> 702-631-7555(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

09/28/2018	 Complaint Filed By: Plaintiff Jesseph, Charles; Plaintiff Churchwell, Charles <i>Complaint for Attorneys' Fees and Expenses</i>
09/28/2018	 Initial Appearance Fee Disclosure Filed By: Plaintiff Churchwell, Charles <i>Initial Appearance Fee Disclosure</i>
10/04/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Jesseph, Charles; Plaintiff Churchwell, Charles <i>Summons</i>
10/18/2018	 Affidavit of Service Filed By: Plaintiff Jesseph, Charles; Plaintiff Churchwell, Charles <i>Affidavit of Service</i>
11/13/2018	 Motion to Dismiss

CASE SUMMARY

CASE NO. A-18-781874-B

	Filed By: Defendant Digital Ally, Inc. <i>Defendant Digital Ally's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(5)</i>
11/13/2018	 Initial Appearance Fee Disclosure Filed By: Defendant Digital Ally, Inc. <i>Initial Appearance Fee Disclosure</i>
11/13/2018	 Disclosure Statement Party: Defendant Digital Ally, Inc. <i>Defendant's NRCP 7.1 Disclosure Statement</i>
11/30/2018	 Motion to Associate Counsel Filed By: Defendant Digital Ally, Inc. <i>Motion to Associate Counsel (Joni Jacobsen Esq.)</i>
11/30/2018	 Motion to Associate Counsel Filed By: Defendant Digital Ally, Inc. <i>Motion to Associate Counsel (David H. Kistenbroker Esq.)</i>
12/04/2018	 Stipulation and Order Filed by: Defendant Digital Ally, Inc. <i>Stipulation and Order to Continue Hearing</i>
12/05/2018	 Notice of Entry of Stipulation and Order Filed By: Defendant Digital Ally, Inc. <i>Notice of Entry of Stipulation and Order</i>
12/21/2018	 Notice of Change of Address Filed By: Plaintiff Jesseph, Charles; Plaintiff Churchwell, Charles <i>Notice of Change of Address</i>
12/21/2018	 Opposition to Motion Filed By: Plaintiff Jesseph, Charles; Plaintiff Churchwell, Charles <i>Plaintiffs' Opposition to Defendant's Motion to Dismiss Complaint Under NRCP (b)(5)</i>
12/31/2018	 Order Admitting to Practice Filed By: Defendant Digital Ally, Inc. <i>Order Admitting to Practice (Joni S. Jacobsen, Esq.)</i>
12/31/2018	 Order Admitting to Practice Filed By: Defendant Digital Ally, Inc. <i>Order Admitting to Practice (David H. Kistenbroker, Esq.)</i>
01/02/2019	 Motion to Associate Counsel Filed By: Plaintiff Jesseph, Charles; Plaintiff Churchwell, Charles <i>Motion to Associate Counsel</i>
01/03/2019	 Notice of Entry of Order Filed By: Defendant Digital Ally, Inc. <i>Notice of Entry of Order Admitting to Practice</i>
01/03/2019	 Notice of Entry of Order Filed By: Defendant Digital Ally, Inc. <i>Notice of Entry of Order Admitting to Practice (Joni S. Jacobsen, Esq.)</i>

CASE SUMMARY


CASE NO. A-18-781874-B

01/07/2019	 Reply in Support Filed By: Defendant Digital Ally, Inc. <i>Reply in Support of Defendant's Motion to Dismiss Complaint Under NRCP 12(b)(5)</i>
01/08/2019	 Ex Parte Motion Filed By: Plaintiff Jesseph, Charles; Plaintiff Churchwell, Charles <i>Ex Parte Motion for Order Shortening Time on Motion to Associate Counsel and Order Shortening Time</i>
01/08/2019	 Notice of Entry Filed By: Plaintiff Jesseph, Charles; Plaintiff Churchwell, Charles <i>Notice of Entry of Order Shortening Time</i>
01/09/2019	 Notice of Non Opposition Filed By: Defendant Digital Ally, Inc. <i>Notice of Non-Opposition to Plaintiffs' Ex Parte Motion to Associate Counsel</i>
02/14/2019	 Transcript of Proceedings <i>Transcript of Proceedings: Hearing on Defendant's Motion to Dismiss Complaint</i>
02/27/2019	 Order Granting Motion Filed By: Defendant Digital Ally, Inc. <i>Order Granting Defendant Digital Ally's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5)</i>
02/27/2019	 Notice of Entry of Order Filed By: Defendant Digital Ally, Inc. <i>Notice of Entry of Order Granting Defendant Digital Ally's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5)</i>
03/27/2019	 Notice of Appeal Filed By: Plaintiff Jesseph, Charles; Plaintiff Churchwell, Charles <i>Notice of Appeal</i>
03/27/2019	 Case Appeal Statement Filed By: Plaintiff Jesseph, Charles; Plaintiff Churchwell, Charles <i>Case Appeal Statement</i>

DISPOSITIONS

02/27/2019	Order of Dismissal With Prejudice (Judicial Officer: Gonzalez, Elizabeth) Debtors: Charles Jesseph (Plaintiff), Charles Churchwell (Plaintiff) Creditors: Digital Ally, Inc. (Defendant) Judgment: 02/27/2019, Docketed: 02/27/2019
------------	---


HEARINGS

12/26/2018	Motion to Associate Counsel (11:10 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Motion to Associate Counsel (Joni Jacobsen)</i> Granted;
12/26/2018	Motion to Associate Counsel (11:10 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Motion to Associate Counsel (David Kistenbroker)</i> Granted;
12/26/2018	 All Pending Motions (11:10 AM) (Judicial Officer: Gonzalez, Elizabeth)

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-781874-B

	<p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>MOTION TO ASSOCIATE COUNSEL (JONI JACOBSEN)...MOTION TO ASSOCIATE COUNSEL (DAVID KISTENBROKER) Pursuant to EDCR 2.23, the Court decides this matter without the necessity of oral argument. Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the Motions to Associate (Jacobsen and Kistenbroker) are deemed unopposed. Therefore, good cause appearing, COURT ORDERED, motions are GRANTED. By accepting this admission, Counsel agrees to submit to jurisdiction and appear without subpoena for any proceedings required by the Court which relate to Counsel's conduct in this matter including motions, depositions, and evidentiary hearings. SCR 42(13)(a). Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter. 1-14-19 9:00 AM DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP 12(B)(5) CLERK'S NOTE: Motions advanced from the December 31, 2018 calendar. Parties notified by distributing a copy of this minute order via the E-Service List. / dr 12-26-18 CLERK'S NOTE: Minute order corrected as to the title of the Motion to Dismiss scheduled for January 14, 2019 to reflect "...pursuant to NRCP 12(b)(5)", not EDCR 1.61(A) and (1). Corrected minute order distributed via the E-Service List. / dr 12-27-18;</i></p>
01/14/2019	<p>Motion to Dismiss (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)</p> <p><i>Defendant Digital Ally's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(B)(5)</i></p> <p>Granted;</p>
01/14/2019	<p>Motion to Associate Counsel (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)</p> <p>Granted;</p>
01/14/2019	<p> All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>MOTION TO ASSOCIATE COUNSEL...DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP 12(B)(5) APPEARANCES CONTINUED: Attorney Douglas Elliot Julie for Plaintiffs, Pro Hac Vice pending. MOTION TO ASSOCIATE COUNSEL: There being no objection, COURT ORDERED, motion to associate Mr. Julie GRANTED. By accepting this admission, Counsel agrees to submit to jurisdiction and appear without subpoena for any proceedings required by the Court which relate to Counsel's conduct in this matter including motions, depositions, and evidentiary hearings. SCR 42(13)(a). DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP 12(B)(5): Following arguments by Mr. Kistenbroker and Mr. Julie, COURT ORDERED, in Nevada the substantial benefit doctrine is limited to litigation matters, at least in the currently decided cases. For that reason, the Court GRANTS the motion to dismiss.;</i></p>
DATE	FINANCIAL INFORMATION

Defendant Digital Ally, Inc.

Total Charges	1,483.00
Total Payments and Credits	1,483.00
Balance Due as of 3/29/2019	0.00

Plaintiff Jesseph, Charles

Total Charges	324.00
Total Payments and Credits	324.00
Balance Due as of 3/29/2019	0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

A-18-781874-C

Case No. _____

Department 14

(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Attorney (name/address/phone):	Attorney (name/address/phone):

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

<p style="text-align: center;">Real Property</p> <p>Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Other Landlord/Tenant</p> <p>Title to Property</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Other Title to Property</p> <p>Other Real Property</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p>	<p style="text-align: center;">Negligence</p> <p><input type="checkbox"/> Auto</p> <p><input type="checkbox"/> Premises Liability</p> <p><input type="checkbox"/> Other Negligence</p> <p>Malpractice</p> <p><input type="checkbox"/> Medical/Dental</p> <p><input type="checkbox"/> Legal</p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Other Malpractice</p>	<p style="text-align: center;">Torts</p> <p>Other Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Employment Tort</p> <p><input type="checkbox"/> Insurance Tort</p> <p><input type="checkbox"/> Other Tort</p>
<p style="text-align: center;">Probate</p> <p>Probate <i>(select case type and estate value)</i></p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside</p> <p><input type="checkbox"/> Trust/Conservatorship</p> <p><input type="checkbox"/> Other Probate</p> <p>Estate Value</p> <p><input type="checkbox"/> Over \$200,000</p> <p><input type="checkbox"/> Between \$100,000 and \$200,000</p> <p><input type="checkbox"/> Under \$100,000 or Unknown</p> <p><input type="checkbox"/> Under \$2,500</p>	<p style="text-align: center;">Construction Defect & Contract</p> <p>Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> Other Construction Defect</p> <p>Contract Case</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Building and Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Collection of Accounts</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Other Contract</p>	<p style="text-align: center;">Judicial Review/Appeal</p> <p>Judicial Review</p> <p><input type="checkbox"/> Foreclosure Mediation Case</p> <p><input type="checkbox"/> Petition to Seal Records</p> <p><input type="checkbox"/> Mental Competency</p> <p>Nevada State Agency Appeal</p> <p><input type="checkbox"/> Department of Motor Vehicle</p> <p><input type="checkbox"/> Worker's Compensation</p> <p><input type="checkbox"/> Other Nevada State Agency</p> <p>Appeal Other</p> <p><input type="checkbox"/> Appeal from Lower Court</p> <p><input type="checkbox"/> Other Judicial Review/Appeal</p>
<p style="text-align: center;">Civil Writ</p> <p>Civil Writ</p> <p><input type="checkbox"/> Writ of Habeas Corpus</p> <p><input type="checkbox"/> Writ of Mandamus</p> <p><input type="checkbox"/> Writ of Quo Warrant</p> <p><input type="checkbox"/> Writ of Prohibition</p> <p><input type="checkbox"/> Other Civil Writ</p>		<p style="text-align: center;">Other Civil Filing</p> <p>Other Civil Filing</p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input type="checkbox"/> Other Civil Matters</p>

Business Court filings should be filed using the Business Court civil coversheet.

Date

Signature of initiating party or representative

See other side for family-related case filings.

Steven D. Grierson

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Attorneys for Defendant
** Admitted pro hac vice*

DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES JESSEPH AND CHARLES
CHURCHWELL,

Plaintiffs,

vs.

DIGITAL ALLY, INC.,

Defendants.

CASE NO: A-18-781874-B

DEPT NO. XI

**ORDER GRANTING DEFENDANT
DIGITAL ALLY'S MOTION TO
DISMISS PLAINTIFFS' COMPLAINT
PURSUANT TO NRCP 12(b)(5)**

Defendant DIGITAL ALLY, INC.'s ("Defendant") filed a Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(5) (the "Motion") on November 13, 2018. The Motion came on for hearing on January 14, 2019. John P. Aldrich and Douglas Elliot Julie appeared on behalf of Plaintiffs, CHARLES JESSEPH and CHARLES CHURCHWELL ("Plaintiffs"). Jeffrey F. Barr and David H. Kistenbroker appeared on behalf of Defendant.

Now, having read and considered the motion papers filed by Plaintiffs and Defendants concerning the Motion and heard the arguments of counsel in support of and in opposition to the Motion, and good cause appearing:

THE COURT HEREBY ORDERS that predicate litigation is an essential element to maintaining a claim for attorney's fees under the substantial benefit doctrine found in Nevada common law, and it is undisputed that the Complaint does not allege any predicate litigation. Accordingly, for these reasons, as more fully stated on the record by the Court, the Court **GRANTS** the Motion;

The Court hereby **DISMISSES** the complaint with prejudice.

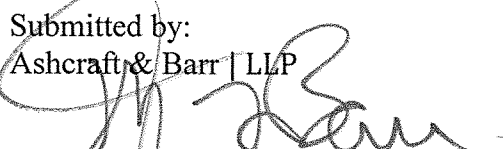
ORDER

IT IS SO ORDERED.

DATED this 25 day of February, 2019.

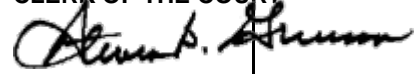

ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

Submitted by:
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Attorneys for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHARLES JESSEPH AND CHARLES
CHURCHWELL,

Plaintiffs,

vs.

DIGITAL ALLY, INC.,

Defendants.

CASE NO: A-18-781874-C

DEPT NO. XI

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT DIGITAL
ALLY'S MOTION TO DISMISS
PLAINTIFFS' COMPLAINT
PURSUANT TO NRCP 12(b)(5)**

PLEASE TAKE NOTICE that an Order Granting Defendant Digital Ally's Motion to Dismiss Plaintiffs' Complaint Pursuant to NRCP 12(b)(5) was hereby entered on the 27th day of February, 2019, a copy of which is attached hereto.

///

///

///

///

Jesseph, et al. vs. Digital Ally
Case No. A-18-781874-C

DATED this 27th day of February, 2019.

ASHCRAFT & BARR | LLP

/s/ Jeffrey F. Barr, Esq.

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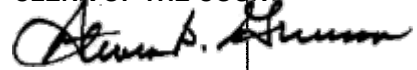
Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 27th day of February, 2019, I caused the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO NRCP 12(b)(5)** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

/s/ Michelle T. Harrell

An Employee of Ashcraft & Barr | LLP



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Attorneys for Defendant
** Admitted pro hac vice*

DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES JESSEPH AND CHARLES
CHURCHWELL,

Plaintiffs,

vs.

DIGITAL ALLY, INC.,

Defendants.

CASE NO: A-18-781874-B

DEPT NO. XI

**ORDER GRANTING DEFENDANT
DIGITAL ALLY'S MOTION TO
DISMISS PLAINTIFFS' COMPLAINT
PURSUANT TO NRCP 12(b)(5)**

Defendant DIGITAL ALLY, INC.'s ("Defendant") filed a Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(5) (the "Motion") on November 13, 2018. The Motion came on for hearing on January 14, 2019. John P. Aldrich and Douglas Elliot Julie appeared on behalf of Plaintiffs, CHARLES JESSEPH and CHARLES CHURCHWELL ("Plaintiffs"). Jeffrey F. Barr and David H. Kistenbroker appeared on behalf of Defendant.

Now, having read and considered the motion papers filed by Plaintiffs and Defendants concerning the Motion and heard the arguments of counsel in support of and in opposition to the Motion, and good cause appearing:

THE COURT HEREBY ORDERS that predicate litigation is an essential element to maintaining a claim for attorney's fees under the substantial benefit doctrine found in Nevada common law, and it is undisputed that the Complaint does not allege any predicate litigation. Accordingly, for these reasons, as more fully stated on the record by the Court, the Court **GRANTS** the Motion;

The Court hereby **DISMISSES** the complaint with prejudice.

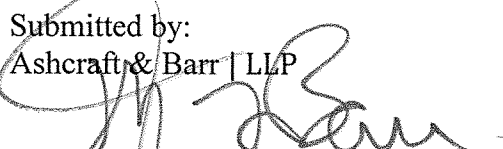
ORDER

IT IS SO ORDERED.

DATED this 25 day of February, 2019.


ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

Submitted by:
Ashcraft & Barr | LLP


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*Admitted *pro hac vice*

Attorneys for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NRS Chapters 78-89

COURT MINUTES

December 26, 2018

A-18-781874-B	Charles Jesseph, Plaintiff(s)
	vs.
	Digital Ally, Inc., Defendant(s)

December 26, 2018 11:10 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Dulce Romea

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- MOTION TO ASSOCIATE COUNSEL (JONI JACOBSEN)...MOTION TO ASSOCIATE COUNSEL (DAVID KISTENBROKER)

Pursuant to EDCR 2.23, the Court decides this matter without the necessity of oral argument. Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the Motions to Associate (Jacobsen and Kistenbroker) are deemed unopposed. Therefore, good cause appearing, **COURT ORDERED**, motions are **GRANTED**. By accepting this admission, Counsel agrees to submit to jurisdiction and appear without subpoena for any proceedings required by the Court which relate to Counsel's conduct in this matter including motions, depositions, and evidentiary hearings. SCR 42(13)(a). Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter.

1-14-19 9:00 AM DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP 12(B)(5)

CLERK'S NOTE: Motions advanced from the December 31, 2018 calendar. Parties notified by distributing a copy of this minute order via the E-Service List. / dr 12-26-18

CLERK'S NOTE: Minute order corrected as to the title of the Motion to Dismiss scheduled for January 14, 2019 to reflect "...pursuant to NRCP 12(b)(5)", not EDCR 1.61(A) and (1).

Corrected minute order distributed via the E-Service List. / dr 12-27-18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NRS Chapters 78-89

COURT MINUTES

January 14, 2019

A-18-781874-B Charles Jesseph, Plaintiff(s)
vs.
Digital Ally, Inc., Defendant(s)

January 14, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: Aldrich, John P. Attorney
 Barr, Jeffrey F. Attorney
 Kistenbroker, David H Attorney

JOURNAL ENTRIES

- MOTION TO ASSOCIATE COUNSEL...DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP 12(B)(5)

APPEARANCES CONTINUED: Attorney Douglas Elliot Julie for Plaintiffs, Pro Hac Vice pending.

MOTION TO ASSOCIATE COUNSEL: There being no objection, COURT ORDERED, motion to associate Mr. Julie GRANTED. By accepting this admission, Counsel agrees to submit to jurisdiction and appear without subpoena for any proceedings required by the Court which relate to Counsel's conduct in this matter including motions, depositions, and evidentiary hearings. SCR 42(13)(a).

DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP 12(B)(5): Following arguments by Mr. Kistenbroker and Mr. Julie, COURT ORDERED, in Nevada the substantial benefit doctrine is limited to litigation matters, at least in the currently decided cases. For that reason, the Court GRANTS the motion to dismiss.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

JOHN P. ALDRICH, ESQ.
7866 W. SAHARA AVE.
LAS VEGAS, NV 89117

DATE: March 29, 2019
CASE: A-18-781874-B

RE CASE: CHARLES JESSEPH; CHARLES CHURCHWELL vs. DIGITAL ALLY, INC.

NOTICE OF APPEAL FILED: March 27, 2019

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO NRCP 12(B)(5); NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT DIGITAL ALLY'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO NRCP 12(B)(5); DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

CHARLES JESSEPH; CHARLES
CHURCHWELL,

Plaintiff(s),

vs.

DIGITAL ALLY, INC.,

Defendant(s),

Case No: A-18-781874-B

Dept No: XI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 29 day of March 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk