

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CHARLES JESSEPH AND CHARLES
CHURCHWELL, Appellants,

v.

DIGITAL ALLY, INC., Respondent.

No. 78480

Electronically Filed
Apr 24 2019 11:22 a.m.

Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XI
County Clark Judge Elizabeth Gonzalez
District Ct. Case No. A-18-781874-B

2. Attorney filing this docketing statement:

Attorney John P. Aldrich Telephone (702) 853-5490
Firm Aldrich Law Firm, Ltd.
Address 7866 West Sahara Avenue
Las Vegas, Nevada 89117

****SEE ATTACHED ADDENDUM FOR ADDITIONAL NAMES****

Client(s) Charles Jesseph and Charles Churchwell

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jeffrey F. Barr Telephone (702) 631-7555
Firm Ashcraft & Barr LLP
Address 2300 West Sahara Ave, Ste. 900
Las Vegas, NV 89102

Client(s) Digital Ally, Inc.

Attorney David H. Kistenbroker & Joni Jacobsen Telephone (312) 646-5800
Firm Dechert LLP
Address 35 West Wacker Drive
Suite 3400
Chicago, IL 60601

Client(s) Digital Ally, Inc.

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input checked="" type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

Appellants are stockholders of Respondent. They seek an award of attorneys' fees and expenses under the substantial benefit doctrine for successfully prosecuting a pre-suit demand which saved Respondent's capital structure. Without the need for litigation, the demand caused Respondent to withdraw an unauthorized class of blank check preferred stock (which stockholders have subsequently rejected upon re-vote) and to obtain stockholder ratification of an amendment to Respondent's articles of incorporation adding common stock that had been obtained based on materially false disclosures to stockholders.

The District Court dismissed under NRCP 12(b)(5), holding 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[.]"

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether stockholders and their counsel may obtain an award of attorneys' fees and expenses under the substantial benefit doctrine for benefits obtained by means of a stockholder litigation demand which was successfully resolved prior to the filing of litigation.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellants are unaware of other cases raising similar issues.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: As Respondent conceded to the District Court, whether attorneys' fees and expenses may be awarded for successfully prosecuting a demand is a matter of first impression under Nevada common law. However, Delaware law, which is often deemed instructive on matters concerning Nevada stockholder litigation, permits such awards as a matter of sound public policy.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter should be presumptively retained by the Supreme Court under NRAP 17(a)(9) because the case originated in business court (after Defendants moved it there) and NRAP 17(a)(11) as the principal issue is a question of first impression under Nevada common law.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
Appellants do not intend to file a disqualification motion.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from February 27, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served February 27, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed March 27, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
Appellants jointly filed a notice of appeal on March 27, 2019.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The District Court's order dismissed Appellants' complaint with prejudice. The order constitutes a final judgment under NRAP 3A(b)(1).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Charles Jesseph
Charles Churchwell
Digital Ally, Inc.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellants jointly asserted a claim for attorneys' fees and expenses, dismissed on February 27, 2019.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Charles Jesseph & Charles Churchwell
Name of appellant

John P. Aldrich
Name of counsel of record

Apr 24, 2019
Date

/s/ John P. Aldrich
Signature of counsel of record

Nevada, Clark County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 24th day of April, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Jeffrey F. Barr, Esq.
ASHCRAFT & BARR | LLP
2300 West Sahara Ave
Las Vegas, Nevada 89102

David H. Kistenbroker, Esq.
DECHERT LLP
35 West Wacker Drive Suite 3400
Chicago, Illinois 60601

****SEE ATTACHED ADDENDUM FOR ADDITIONAL SERVICE ADDRESSES****

Dated this 24th day of April, 2019

/s/ T. Bixenmann
Signature

Addendum to Docketing Statement

2. Additional counsel for Appellants:

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
Tel (212) 725-1000

Addendum to Certificate of Service

I certify that on the 24th day of April, 2019, I served a copy of this completed docketing statement upon all counsel of record by mailing it by first class mail with sufficient postage prepaid to the following address(es):

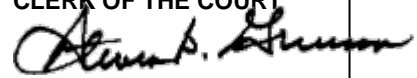
Thomas J. Tanksley
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

Dated this 24th day of April, 2019.

/s/ T. Bixenmann
An Employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1



COMP

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Nevada Bar No. 6877
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Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES JESSEPH AND CHARLES
CHURCHWELL,

Plaintiffs,

v.

DIGITAL ALLY, INC.,

Defendants.

Case No.: A-18-781874-C

Dept. No.: Department 14

COMPLAINT FOR
ATTORNEYS' FEES AND
EXPENSES

Plaintiffs Charles Jesseph ("Jesseph") and Charles Churchwell ("Churchwell," and with Jesseph, "Plaintiffs"), by their undersigned counsel, allege upon information and belief, except for their own acts, which are alleged upon personal knowledge, as follows:

1. Plaintiffs bring this action against Digital Ally, Inc. ("Digital Ally" or the "Company") to obtain payment of attorneys' fees and expenses as compensation for causing the Company's Board of Directors (the "Board") to correct material flaws in Digital Ally's capital structure resulting from the Board's prior misconduct in improperly instructing stockholders and tabulating stockholder votes on Board proposals.

2. The Board had previously amended the Company's Articles of Incorporation (the "Articles of Incorporation") to increase the number of authorized shares of common stock by 15,625,000 and to create a new class of 10,000,000 shares blank check preferred stock. Plaintiffs informed the Board that these actions were not properly approved by the Company's stockholders, as required by Nevada law and the rules of the New York Stock Exchange (the "NYSE"), and demanded that the Board remediate this issue. In response to Plaintiffs' efforts, the Board procured proper stockholder approval of the common stock share increase and rescinded the class of blank check preferred stock.

3. Had Plaintiffs not caused the Board to take remedial actions, Digital Ally’s capital structure would be fundamentally defective and unstable, and the Board would have proceeded to issue up to 25,000,000 shares of common stock and 10,000,000 shares of “blank check” preferred stock, actions that are required to be – but were not – validly approved by stockholders. The issuance of these invalid shares would dwarf the 9,375,000 shares of common stock that were in fact authorized by stockholders.

4. Accordingly, Plaintiffs seek attorneys' fees and expenses in connection with the substantial benefits they have conferred on the Company and its stockholders¹. When Plaintiffs attempted to resolve this matter without commencing litigation, Digital Ally refused to negotiate.

PARTIES

5. Jesseph owned Digital Ally common stock from January 2015 until November 2017.

6. Churchwell is a stockholder of Digital Ally and has owned Digital Ally common stock since July 2015.

7. Digital Ally is a Nevada corporation that maintains its principal offices at 9705 Loiret Boulevard in Lenexa, Kansas. As described in its most recent Annual Report, the Company

¹ Individual stockholders and their counsel are entitled to reasonable attorneys' fees and expenses when they have acted in a representative capacity and produced a material benefit that inures to stockholders as a group. *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 396 (1970); *Thomas v. City of N. Las Vegas*, 127 P.3d 1057, 1059 (Nev. 2006).

1 “produces digital video imaging and storage products for use in law enforcement, security and
2 commercial applications.”

3 **SUBSTANTIVE ALLEGATIONS**

4 **A. The Preferred Stock Amendment and the 2016 Proxy**

5 8. On March 21, 2016, Digital Ally filed a Schedule 14A Definitive Proxy Statement
6 (the “2016 Proxy”) with the U.S. Securities and Exchange Commission (the “SEC”) in connection
7 with its 2016 Annual Meeting of Stockholders on May 12, 2016 (the “2016 Annual Meeting”). In
8 the 2016 Proxy, the Board sought stockholder approval of five proposals, including: (1) re-election
9 of four of its then-current directors and the election of one new director; (2) an amendment to the
10 Company’s 2015 Stock Option and Restricted Stock Plan; (3) ratification of the appointment of
11 RSM US LLP (“RSM”) as the Company’s independent registered public accounting firm; and (4)
12 the compensation package of the Company’s named executive officers².

13 9. In another proposal, which was “Proposal 2” in the 2016 Proxy, the Board sought
14 stockholder approval of an amendment to the Articles of Incorporation increasing the number of
15 authorized shares of capital stock that the Company could issue by 10,000,000 shares (from
16 25,000,000 to 35,000,000 shares), all of which would be classified as blank check preferred stock
17 (the “Preferred Stock Amendment”). As stated in the 2016 Proxy, “Proposal 2 seeks your approval
18 of an amendment to our Articles of Incorporation ... to increase the number of authorized shares of
19 capital stock that we may issue from 25,000,000 to 35,000,000, of which 25,000,000 shares shall be
20 classified as common stock and 10,000,000 shares shall be classified as blank check preferred stock.
21 The Articles Amendment has the effect of creating a new class of stock: blank check preferred.”

22 10. According to the 2016 Proxy, the Board sought to add 10,000,000 shares of blank
23 check preferred stock because it would allow the Board to issue the preferred stock “for, among
24 other things, possible issuances in connection with such activities as public or private offerings of
25

26 _____
27 ² The last of these four proposals was non-binding and sought stockholder approval on advisory
28 basis only.

1 shares for cash, acquisitions of other companies, pursuit of financing opportunities and other
2 corporate purposes.”

3 11. Pursuant to Section 78.390 of the Nevada Revised Statutes (“NRS”), approval of the
4 Preferred Stock Amendment required the affirmative vote of a majority of the Company’s stock. As
5 stated in the 2016 Proxy: “The affirmative vote of a majority of the issued and outstanding common
6 stock will be required to approve the [Preferred Stock] Amendment.”

7 12. According to the 2016 Proxy, there were 5,311,999 outstanding shares of common
8 stock entitled to vote at the 2016 Annual Meeting. Proposal 2 therefore required the affirmative vote
9 of at least 2,656,000 shares to garner approval.

10 13. The 2016 Proxy explained that, with respect to the election of directors, a
11 stockholder could either vote “For” a given director or “Withhold” their vote. With respect to each
12 of the other proposals, a stockholder could vote “For” that proposal, “Against” that proposal, or
13 “Abstain” from voting on that proposal. With respect to shares held in an account at a broker or
14 similar organization, the owner of the shares is considered the beneficial owner, with the shares
15 being held by the brokerage in “street name.” The organization holding the account is considered
16 the stockholder of record for purposes of voting. A beneficial owner is entitled to instruct that
17 organization on how to vote shares in the beneficial owner’s account.

18 14. The 2016 Proxy informed stockholders what would happen if a stockholder failed to
19 provide their broker with specific voting instructions. As stated in the 2016 Proxy, in such a case,
20 brokers would not have authority to cast a vote on Proposals 1 through 3, which included the
21 Preferred Stock Amendment, and would only have authority to cast a vote on Proposals 4 and 5. As
22 stated in the 2016 Proxy: “If you beneficially own your shares in street name and you do not
23 instruct your bank or broker how to vote on Proposals 1 through 3, no votes will be cast on your
24 behalf at the annual meeting as to these proposals. Your bank or broker will, however, have
25 discretion to vote any uninstructed shares on Proposals 4 and 5.” The 2016 Proxy further
26 represented to stockholders as follows:

27 **Abstentions and Broker Non-Votes:** If your shares are held by your broker as
28 your nominee (that is, in “street name”), you will need to obtain a proxy form

1 from the institution that holds your shares and follow the instructions included on
2 that form regarding how to instruct your broker to vote your shares. If you do not
3 give instructions to your broker, your broker can vote your shares with respect to
4 “discretionary” items, but not with respect to “non-discretionary” items.
5 Discretionary items are proposals considered routine under the rules of the New
6 York Stock Exchange (“NYSE”) on which your broker may vote shares held in
7 street name without your voting instructions. **On non-discretionary items for
8 which you do not give your broker instructions, the shares will be treated as
9 broker non-votes.** Under NYSE rules, any election of a member of the Board of
10 Directors, whether contested or uncontested, is considered “non-discretionary”
11 and therefore brokers are not permitted to vote your shares held in street name for
12 the election of directors in the absence of instructions from you. **Each of
13 Proposals 1, 2 and 3 are “non-discretionary.” Therefore, if you hold your
14 shares through a broker, nominee, fiduciary or other custodian, your shares
15 will not be voted on those proposals unless you provide voting instructions to
16 the record holder.**

17 A “broker non-vote” occurs when a broker expressly instructs on a proxy card
18 that it is not voting on a matter, whether routine or non-routine. Broker non-votes
19 are counted for the purpose of determining the presence or absence of a quorum,
20 but are not counted for determining the number of votes cast for or against a
21 proposal. **Your broker will have discretionary authority to vote your shares
22 on Proposals 4 and 5 only.** [(emphasis added).]

23 15. Thus, according to the Company’s representations in the 2016 Proxy, if a
24 stockholder did not provide a broker with voting instructions, that broker would not have the
25 authority to vote the stockholder’s shares in favor of Proposal 2, the Preferred Stock Amendment,
26 resulting in a so-called “broker non-vote” for that proposal. Because Proposal 2 needed the
27 affirmative vote of a majority of the Company’s outstanding shares to be validly approved, not
28 voting effectively constituted a vote **against** Proposal 2. Accordingly, stockholders who wished to
vote against Proposal 2 were told that they could do that by withholding voting instructions from
their broker.

16. On May 13, 2016, the Company filed an 8-K with the SEC disclosing the results of
the 2016 Annual Meeting. According to the 8-K, the results were as follows:

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Proposal One: Election of Five Directors of the Company.

Name	Votes For	Votes Against/ Withheld	Abstain	Broker Non- Votes
Stanton E. Ross	1,313,408	96,017		2,612,390
Leroy C. Richie	1,223,414	186,011		2,612,390
Daniel F. Hutchins	1,225,638	183,787		2,612,390
Elliot M. Kaplan	1,227,814	181,611		2,612,390
Michael J. Caulfield	1,328,859	80,566		2,612,390

All nominees were duly elected.

Proposal Two: Amendment to Articles of Incorporation. To approve an amendment to the Company's Articles of Incorporation to increase the number of authorized shares of its capital stock that the Company may issue from 25,000,000 to 35,000,000, of which 25,000,000 shares shall be classified as common stock and 10,000,000 will be classified as blank check preferred stock.

Votes For	Votes Against/ Withheld	Abstain	Broker Non-Votes
3,100,087	869,712	51,888	—

The proposal was approved.

Proposal Three: Approval of an Amendment to the 2015 Stock Option Plan and Restricted Stock Plan. To approve an amendment to the 2015 Stock Option and Restricted Stock Plan to increase the number of shares reserved for issuance under such Plan by 450,000 shares.

Votes For	Votes Against/ Withheld	Abstain	Broker Non-Votes
1,118,017	270,534	20,824	2,612,440

The proposal was approved.

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Proposal Four: Provide an Advisory (non-binding) vote on the Compensation of the Company's Named Executive Officers. To provide an advisory (non-binding) vote on the compensation of the Company's named executive officers, as disclosed pursuant to Item 402 of Regulation S-K, including the compensation tables and narrative discussion in the definitive proxy statement.

Votes For	Votes Against/ Withheld	Abstain	Broker Non-Votes
1,231,941	148,369	29,190	2,612,315

The compensation of the named executive officers was approved.

Proposal Five: Ratification of RSM US LLP Appointment. Ratification of the appointment of RSM US LLP as the independent registered accounting firm of Digital Ally, Inc. for the year ending December 31, 2016.

Votes For	Votes Against/ Withheld	Abstain
3,644,711	262,364	114,740

The selection of RSM US LLP as the independent registered accounting firm was ratified.

17. According to these results, Proposal 2, the Preferred Stock Amendment, purportedly received 3,100,087 "votes for" approval, and the Board deemed the proposal approved on the basis of its having purportedly surpassed the 2,656,000 affirmative votes needed for approval.

18. However, the Company was able to garner sufficient votes in favor of Proposal 2 only by counting votes cast by brokers for shares owned by beneficial stockholders who declined to submit voting instructions to their brokers. The counting of such votes as "For" votes directly contravened the voting instructions the Board provided to stockholders in the 2016 Proxy.

19. As shown in the voting results above, stockholders holding approximately 1,409,000 shares cast their votes "For," "Against," or in "Abstention" for each of the proposals (or "For" or "Withheld" for each director)³. Additionally, more than 2,612,000 shares were beneficially owned by stockholders who failed to provide their brokers with voting instructions. This is evidenced by

³ Specifically, 1,409,425 votes were cast for/withheld for each director, 1,409,375 votes were cast for/against/in abstention of Proposal 3, and 1,409,500 votes were cast for/against/in abstention of Proposal 4.

1 the “2,612,390,” “2,612,440,” and “2,612,315” figures that appear in the “Broker Non-Votes”
2 columns for Proposals 1, 3, and 4, respectively.

3 20. Consistent with the representations in the 2016 Proxy, these uninstructed shares were
4 voted by brokers on Proposal 5, the vote seeking appointment of RSM as the Company’s
5 independent registered public accounting firm, as evidenced by the lack of broker non-votes for that
6 proposal.⁴

7 21. Contrary to the express representations to stockholders in the 2016 Proxy, more than
8 2,612,000 uninstructed shares were also voted in favor Proposal 2, as evidenced by the lack of
9 broker non-votes recorded for that proposal.

10 22. In other words, stockholders who thought they were effectively voting against
11 Proposal 2 by not submitting voting instructions to their broker instead had their broker “non-votes”
12 treated as affirmative votes for Proposal 2.

13 23. Additionally, regardless of the Board’s failure to adhere to the voting instructions for
14 Proposal 2 described in the 2016 Proxy, NYSE Rule 452 expressly prohibits NYSE member
15 organizations such as brokers from voting uninstructed stock beneficially owned by a client on a
16 matter that “authorizes or creates a preferred stock or increases the authorized amount of an existing
17 preferred stock.” The Preferred Stock Amendment does just that, and broker votes on uninstructed
18 stock concerning Proposal 2 therefore were not authorized and should not have counted.

19 24. Had broker votes on uninstructed shares not been counted in favor of Proposal 2,
20 consistent with the representations in the 2016 Proxy and in accordance with NYSE Rule 452,
21 Proposal 2 would have had fewer than 500,000 affirmative votes – not remotely close to the
22 2,656,000 shares necessary to garner approval – and would have easily failed.

23 **B. The Share Increase Amendment and the 2015 Proxy**

24 25. On April 28, 2015, the Company filed a Schedule 14A Proxy Statement with the
25 SEC (the “2015 Proxy”) in connection with the Company’s 2015 Annual Meeting of Stockholders

26 _____
27 ⁴ With respect to Proposal 4, although the 2016 Proxy stated that brokers would have discretion to
28 vote uninstructed shares, pursuant to NYSE Rule 452 brokers did not actually have such discretion,
and accordingly there were 2,612,315 broker non-votes with respect to that proposal.

1 on June 9, 2015 (the “2015 Annual Meeting”). In the 2015 Proxy, the Board sought stockholder
2 approval of four proposals, including (1) the election of four directors; (2) the Company’s 2015
3 Stock Option and Restricted Stock Plan; and (3) ratification of the appointment of McGladrey LLP
4 as the Company’s independent registered public accounting firm.

5 26. In another proposal, which was “Proposal 2” in the 2015 Proxy, the Board sought
6 stockholder approval of an amendment to the Articles of Incorporation to increase the number of
7 authorized shares of common stock from 9,375,000 to 25,000,000 shares, of which all 25,000,000
8 shares would be classified as common stock (the “Share Increase Amendment”).

9 27. In the 2015 Proxy, the Board explained its purpose in seeking approval of this
10 amendment by stating in the 2015 Proxy:

11 We believe that an increase in the number of our authorized capital stock is
12 prudent in order to assure that a sufficient number of shares of our capital stock is
13 available for issuance in the future if our Board of Directors deems it to be in the
14 best interests of our stockholders and us. Our Board of Directors has determined
15 that a total of 25,000,000 shares of common stock to be a reasonable estimate of
16 what might be required in this regard for the foreseeable future to (i) issue
17 common stock in acquisitions or strategic transactions and other proper corporate
18 purpose that may be identified by our Board in the future; (ii) issue common stock
19 to augment our capital and increase the ownership of our capital stock; and (iii)
20 provide incentives through the grant of stock options and restricted stock to
21 employees, directors, officers, independent contractors, and others important to
22 our business under our stock option plans. Immediately following this increase,
23 the Company will have approximately 20,978,931 shares of common stock
24 authorized but unissued and available for issuance. At present, we have 4,021,069
25 shares of common stock issued and outstanding, 369,898 shares issuable upon
26 exercise of options granted under the Plans, and 56,386 shares issuable upon
27 exercise of outstanding warrants to purchase common stock.

28 28. As with the Preferred Stock Amendment, the Share Increase Amendment required an
affirmative vote of a majority of the Company’s stock in accordance with NRS Section 78.390. This
requirement is reflected in the 2015 Proxy, which states: “The affirmative vote of a majority of the
issued and outstanding common stock will be required to approve the [Share Increase]
Amendment.”

1 29. According to the 2015 Proxy, there were 4,021,069 outstanding shares of common
2 stock entitled to vote at the 2015 Annual Meeting. Proposal 2 therefore required the affirmative vote
3 of at least 2,010,535 shares to garner approval.

4 30. The 2015 Proxy instructed beneficial owners that: “If you do not provide instructions
5 for voting the shares that you beneficially own, the organization holding your shares *cannot* vote
6 them for you for Proposals 1 through 3.” The 2015 Proxy reiterated that brokers could not vote
7 shares without instruction from beneficial owners on Proposals 1 through 3, and provided the
8 following directions:

9 **Beneficial Owner: Shares Registered in the Name of Broker or Bank.** If you
10 are a beneficial owner of shares registered in the name of your broker, bank, or
11 other agent, you should have received instructions for granting proxies with these
12 proxy materials from that organization rather than from us. A number of brokers
13 and banks enable beneficial holders to give voting instructions via telephone or
14 the internet. Please refer to the voting instructions provided by your bank or
15 broker. To vote in person at the annual meeting, you must provide a valid proxy
16 from your broker, bank, or other custodian. Follow the instructions from your
17 broker or bank included with these proxy materials, or contact your broker or
18 bank to request a proxy form.

19 *If you return a signed and dated proxy card without marking any voting*
20 *selections, your shares will only be voted for Proposal 4, and not for Proposals*
21 *1, 2 or 3.* Thus, if you are not a record holder and hold your shares through a bank
22 or broker, you must provide voting instructions to the record holder of the shares
23 in accordance with its requirements in order for your shares to be properly voted
24 for the following proposals: Proposal 1, the election of directors; Proposal 2, to
25 approve an amendment of our Articles of Incorporation to increase the number of
26 authorized shares of our common stock from 9,375,000 to 25,000,000; and
27 Proposal 3, to approve the 2015 Digital Ally, Inc. Stock Option and Restricted
28 Stock Plan and to reserve 300,000 shares for issuance under the Plan. If any other
matter is properly presented at the meeting, your proxy (one of the individuals
named on your proxy card) will vote your shares using his or her best judgment.

If you beneficially own your shares in street name and you do not instruct your
bank or broker how to vote on Proposals 1 through 3, no votes will be cast on
your behalf at the annual meeting as to these proposals. Your bank or broker
will, however, have discretion to vote any uninstructed shares on Proposal 4.
[(emphasis added).]

31. In other words, any stockholder who opposed Proposal 2, *i.e.*, the Share Increase Amendment, was told they could vote against it simply by withholding voting instructions from their broker.

32. On June 12, 2015, the Company filed a Form 8-K with the SEC, disclosing the following results of the 2015 Annual Meeting:

Proposal One: Election of Four Directors of the Company.

Name	Votes For	Votes Against/ Withheld	Abstain	Broker Non-Votes
Stanton E. Ross	721,553	35,625		2,241,259
Leroy C. Richie	712,984	44,194		2,241,259
Daniel F. Hutchins	720,911	36,267		2,241,259
Elliot M. Kaplan	716,594	40,584		2,241,259

All nominees were duly elected.

Proposal Two: Amendment to Articles of Incorporation. To approve an amendment to the Company's Articles of Incorporation to increase the number of authorized shares of its capital stock that the Company may issue from 9,375,000 to 25,000,000, of which all 25,000,000 shares shall be classified as common stock.

Votes For	Votes Against/ Withheld	Abstain	Broker Non-Votes
2,140,495	800,058	57,883	--

The proposal was approved.

Proposal Three: Approval of the 2015 Stock Option Plan and Restricted Stock Plan. To approve the 2015 Stock Option and Restricted Stock Plan and reserve 300,000 shares for issuance under the Plan.

Votes For	Votes Against/ Withheld	Abstain	Broker Non-Votes
625,527	118,581	13,070	2,241,259

The proposal was approved.

Proposal Four: Ratification of McGladrey LLP Appointment. Ratification of the appointment of McGladrey LLP as the independent registered accounting firm of Digital Ally, Inc. for the year ending December 31, 2015.

Votes For	Votes Against/ Withheld	Abstain
2,819,507	103,789	75,141

The selection of McGladrey LLP as the independent registered accounting firm was ratified.

33. As set forth above, there were purportedly 2,140,495 votes “for” Proposal 2, surpassing the threshold requirement of 2,010,535 affirmative votes, and the Board deemed this amendment to have been passed.

34. However, as with the Preferred Stock Amendment in the 2016 Proxy, the Company apparently was able to garner enough votes in favor of the Share Increase Amendment only by counting votes cast by brokers for shares owned by beneficial stockholders who did not submit voting instructions. Counting such votes directly contravened the voting instructions provided to stockholders in the 2015 Proxy.

35. The improper counting of uninstructed broker votes is reflected in the reported voting results on Proposals 1 and 3, which reported 2,241,259 broker non-votes for each of these proposals, while Proposal 2 had zero broker non-votes.

36. Like the Preferred Stock Amendment in 2016, the Share Increase Amendment would have failed if not for uninstructed broker votes being counted in favor of the proposal.

37. Although the applicable NYSE rules did allow brokers to vote on Proposal 2, the 2015 Proxy was materially misleading in that it instructed stockholders that Proposal 2 was “non-discretionary” and thus could not be voted on by brokers.

C. On behalf of the Company and its stockholders, Plaintiffs prompted the Board to take corrective actions

38. After becoming aware of the irregularities described above, on May 18, 2017, Plaintiffs served a written demand on the Board (the “Demand”).

1 39. In the Demand, Plaintiffs explained the issues respecting the purported approval of
2 the Preferred Stock Amendment and the Share Increase Amendment. Plaintiffs demanded that the
3 Board immediately deem both amendments ineffective, and further demanded that the Board
4 disclose the invalidity of the amendments and seek a proper stockholder approval of these changes
5 to Digital Ally's capital structure.

6 40. In response to the Demand, the Company filed a Form 8-K with the SEC on June 30,
7 2017 (the "Form 8-K"), announcing that the Company would rescind the Preferred Stock
8 Amendment. As stated in the Form 8-K:

9 The Company has determined that there is a problem with the vote taken
10 respecting the Blank Check Preferred Amendment. It relates to the authority of
11 brokers to vote in favor of the Blank Check Preferred Amendment without
12 instructions from the beneficial owners of certain of the outstanding shares in
13 accordance with the rules of the NYSE that govern how the brokers may cast such
14 votes and instructions in the Voting Instruction Form transmitted to such
15 beneficial owners. Based on information the Company has recently received, the
16 instructions in the Voting Instruction Form sent to beneficial owners stating that
17 the brokers could vote in their discretion on the Blank Check Preferred
Amendment were erroneous, and the brokers' votes in favor should not have been
counted. Accordingly, the Company will make appropriate filings with the
Nevada Secretary of State to rescind the Blank Check Preferred Amendment. It is
important to note in this connection that the Company has not issued, or
committed to issue, any shares of the Blank Check Preferred.

18 Sometime shortly thereafter, the Company made the appropriate filings with the Nevada Secretary
19 of State rescinding the Preferred Stock Amendment.

20 41. The Company also announced in the Form 8-K that it planned to hold a Special
21 Meeting of its stockholders on August 14, 2017 to conduct a new vote on the Share Increase
22 Amendment. The Form 8-K informed stockholders that the reason for the special meeting was due
23 to concerns regarding the validity of votes taken on the Share Increase Amendment. Specifically,
24 the Form 8-K explained to stockholders that:

25 A question has been raised recently regarding the validity of the votes taken on
26 both proposals at these Annual Meetings. In this connection and to eliminate any
27 uncertainty that may exist related to the effectiveness of the Share Increase
28 Amendment, the Company will hold a Special Meeting on August 14, 2017 to
ratify the filing and effectiveness of the Share Increase Amendment in accordance
with certain provisions of the Nevada Revised Statutes that govern such a matter.

1 It is important to note that the Company has not issued, or reserved for issuance,
2 any shares of its Common Stock in excess of 9,375,000, the pre-Share Increase
3 Amendment number. Further, it will not issue, or reserve for issuance, any shares
4 of its Common Stock in excess of 9,375,000 unless the vote at the Special
5 Meeting is in favor of the ratification of the Share Increase Amendment.

6 42. Also on June 30, 2017, the Company filed a Schedule 14A Definitive Proxy
7 Statement (the "2017 Proxy") with the SEC in connection with the Special Meeting of Stockholders
8 (the "Special Meeting") described in the Form 8-K. The 2017 Proxy contained extensive disclosures
9 concerning the background of the proposed vote to ratify the effectiveness of the Share Increase
10 Amendment. The 2017 Proxy explained:

11 Our Board, in consultation with counsel, has determined that the conflicting
12 descriptions in the Proxy Statement for 2015 Annual Meeting of the Share
13 Increase Amendment proposal as "non-discretionary" and in the Voting
14 Instruction Form sent to the clients/beneficial owners by the brokers/nominees as
15 "discretionary" may create some uncertainty as to the effect of the vote obtained
16 at the 2015 Annual Meeting. Thus, our Board has determined that it is in the best
17 interests of our stockholders and us to ratify the filing and effectiveness of the
18 Share Increase Amendment pursuant to Section 78.0296 of the NVR to eliminate
19 any uncertainty that may exist related to the effectiveness of this corporate act.

20 43. On August 14, 2017, the stockholders voted and ratified the Share Increase
21 Amendment at the Special Meeting.

22 44. After rescinding the Preferred Stock Amendment, the Board attempted for a second
23 time to create blank check preferred stock. At the Company's 2018 Annual Meeting of
24 Stockholders, which was held on July 5, 2018, the Board submitted a new proposal to amend the
25 Articles of Incorporation to increase the number of authorized shares of capital stock by 10,000,000
26 shares and classify those shares as blank check preferred stock. As the Company later reported in an
27 8-K filed with the SEC on July 10, 2018, the proposal was not approved by stockholders at the
28 meeting.

CAUSE OF ACTION
PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES

45. Plaintiffs' Demand raised meritorious legal claims with respect to the effectiveness
of the Share Increase Amendment and the Preferred Stock Amendment.

1 46. In response to the Demand, Digital Ally remediated serious defects in the
2 Company's capital structure. If left unresolved, Digital Ally would have issued up to 15,625,000
3 shares of common stock and 10,000,000 share of preferred stock, all of which would have been
4 unauthorized.

5 47. The correction of these defects and corresponding disclosures directly conferred a
6 fundamental and substantial benefit on the Company's stockholders, which in turn entitles Plaintiffs
7 to receive an award of reasonable attorneys' fees and expenses. Plaintiffs' counsel attempted to
8 obtain a reasonable attorneys' fee from the Company without resort to litigation. The Company
9 refused to negotiate.

10 48. Plaintiffs' counsel has expended time and expense, completely at risk of loss and
11 without remuneration, in connection with its successful remediation of the issues described in the
12 Demand, which permitted stockholders to make an informed decision about whether to ratify the
13 Share Increase Amendment and which resulted in the Company rescinding the unauthorized
14 Preferred Stock Amendment.

15 49. Plaintiffs and their counsel are a direct and proximate cause of this common benefit,
16 and it would be unjust and inequitable not to compensate Plaintiffs' counsel for achieving it.

17 WHEREFORE, for the foregoing reasons, Plaintiffs requests an order:

18 A. Awarding attorneys' fees and expenses commensurate with the benefit that has been
19 conferred as a result of the efforts undertaken by Plaintiffs and their counsel, including attorneys'
20 fees and expenses and incentive awards for the prosecution of the Demand and this action; and

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B. Granting such other relief as the Court may deem just and proper.

Dated this 28th day of September, 2018.

ALDRICH LAW FIRM, LTD.

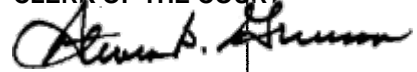
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EXHIBIT 2



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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.

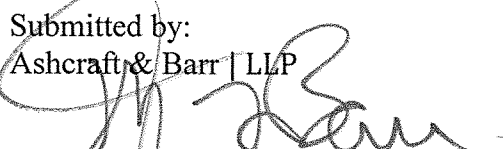
ORDER

IT IS SO ORDERED.

DATED this 25 day of February, 2019.


ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

Submitted by:
Ashcraft & Barr | LLP

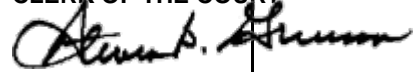

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13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 CHARLES JESSEPH AND CHARLES
16 CHURCHWELL,

17 Plaintiffs,

18 vs.

19 DIGITAL ALLY, INC.,

20 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)**

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

24 ///

25 ///

26 ///

27 ///

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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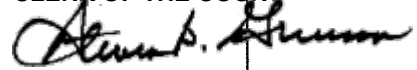
Attorneys for Defendant

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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DEPT NO. XI

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DIGITAL ALLY'S MOTION TO
DISMISS PLAINTIFFS' COMPLAINT
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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.

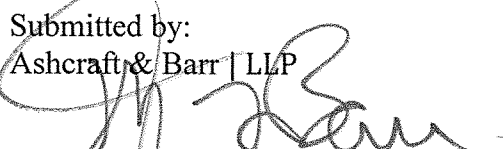
ORDER

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DATED this 25 day of February, 2019.


ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

Submitted by:
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