Case No. 83557

In the Supreme Court of Nevada

CLARK COUNTY SCHOOL DISTRICT,
Appellant,

vs.

ETHAN BRYAN; and NOLAN HAIRR,
Respondents.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable NANCY ALLF, District Judge
District Court Case No. A-14-700018-C

APPELLANT'S APPENDIX
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2022, I submitted the foregoing "Appellant's Appendix" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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/s/ Cynthia Kelley
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JS	5/23/17	Telephone conference with Allen Lichtenstein	0.20
JS	5/24/17	Review emails; telephone conference with Allen Lichtenstein	0.50
AL	6/22/17	Telephone conference with John Scott	0.20
JS		Telephone conference with Allen Lichtenstein	0.20
AL	7/10/17	Telephone conference with John Scott	0.20
JS		Telephone conference with Allen Lichtenstein	0.20
AL	7/13/17	Telephone conference with John Scott	0.20
JS		Telephone conference with Allen Lichtenstein	0.20

This single sample alone reflects 72 hours of attorney time—and fees in excess of $45,000—for unexplained calls or emails. From the face of these time records, it is impossible for the court to determine whether the calls and emails were "necessary" and "reasonably expended." *Hensley*, 461 U.S. at 433-34. Indeed, from these records—the only evidence provided—it is impossible to know what the lawyers spoke about. Thus, it is impossible to know whether some or all of the explained calls or emails were reasonably billed or whether some reflect "poor billing judgment." *Id.* Therefore, because these entries do not permit the Court to undertake the required reasonableness analysis, they fail to evidence time "reasonably expended" in this litigation and must be cut.

Importantly, where counsel's calls and emails had a litigation purpose, they specified that purpose in their time entries. (*E.g.*, Mot. Ex. 1, Attachment B, Pg. 5 (specifying the purpose of some calls but not others); Ex. 2, Attachment 1, at Pgs. 7-10 (same)). This suggests that where—as above—counsel did not specify any purpose for their calls and emails, it was because those calls and emails served no purpose in advancing the litigation. Indeed, Attorneys Scott and Lichtenstein could never reasonably expect a client to actually pay for such sparsely detailed time entries at the combined rate of $1,250 per hour. Even less, they cannot compel their opponents to pay for such vague time entries that contain absolutely no information to determine whether the attorney conferences were reasonable and necessary.

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All of this confirms that the hours for vaguely-described or unexplained calls and emails must be cut.

4. Both attorneys cannot bill for a single, attorney-to-attorney phone call

Even where an attorney-to-attorney conference is adequately explained, only one attorney can charge for it. *E.g.*, *Barrella v. Vill. of Freeport*, 56 F. Supp. 3d 169, 175 (E.D.N.Y. 2014) (Courts "grant fees for intra-office conferences, provided they are . . . justified and no more than one attorney bills."); *In re Bennett Funding Group, Inc.*, 213 B.R. 234, 245 (Bankr. N.D.N.Y. 1997); *In re Euromotorsport Racing, Inc.*, 2000 WL 33963797, at *5 (Bankr. S.D. Ind. June 13, 2000) ("For most intraoffice conferences, only one attorney should be compensated for her or his time."); *see also*, *e.g.*, *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 949 (9th Cir. 2007) ("[T]he district court did not err in finding the intra-office conferences to be unnecessary and duplicative."). Therefore, any time Attorneys Lichtenstein and Scott both bill for the same attorney-to-attorney conversation, one attorney's hours should be cut.

5. Attorney Lichtenstein's reconstructed time records are unreliable and require a reduction

Attorney Lichtenstein did not record his time contemporaneously and, instead, recreated many entries long after the facts described. As a result, his time records are inherently unreliable and require a significant reduction. *E.g.*, *Hensley*, 461 U.S. at 40 n.13 (The district court properly reduced an attorney's claimed hours by 30% to account, in part, for his failure to keep contemporaneous time records); *Joe Hand Promotions, Inc. v. White*, 2011 WL 6749061, at *2 (N.D. Cal. Dec. 6, 2011) ("Because the billing records were not created contemporaneously, the Court finds that they are inherently less reliable."); *Heller v. D.C.*, 832 F. Supp. 2d 32, 50 (D.D.C. 2011) (cutting the claimed hours by 10% where the attorneys failed to keep contemporaneous records and reconstructed their time); *Lehr v. City of Sacramento*, 2013 WL 1326546, 9 (E.D. Cal., 2013) (cutting the claimed fees by 10% because "the reliability of such reconstructed billing records is inherently suspect"); *Roy v. Lohr*,

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2014 WL 12564091, at *5 (D. Ariz. Aug. 8, 2014) (cutting 30% for "reconstructed billing"); *see also Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000) (allowing a reduction for counsel's failure to keep contemporaneous records).

Indeed, it is well settled that, "after-the-fact estimates of time expended on a case are insufficient to support an award of attorneys' fees." *Nat'l Ass'n of Concerned Veterans v. Sec'y of Def.*, 675 F.2d 1319, 1327 (D.C. Cir. 1982). Thus, "[a]ttorneys who anticipate making a fee application must maintain contemporaneous, complete and standardized time records which accurately reflect the work done by each attorney." *Id.*

Here, Attorney Lichtenstein used a timekeeping software called TimeSlips to record his time,[6] and his time records consist of a TimeSlips printout. This TimeSlips printout includes sequential slip identification numbers ("Slip ID numbers"), which reveal every entry that was not contemporaneously entered and help estimate the length of the delay.

The Delaware Court of Chancery recently explained how this Slip ID feature works and how it reveals back-dated, non-contemporaneous time entries. *See Dore v. Sweports, Ltd.*, 2017 WL 415469, at *16 (Del. Ch. Jan. 31, 2017). First, TimeSlips assigns a Slip ID number to each time entry. The Slip ID number cannot be changed once it has been assigned. *Id.* When time entries are recorded contemporaneously, they bear increasing Slip ID numbers. *Id.*

However, higher Slip ID numbers sandwiched between lower Slip ID numbers show that time was not entered contemporaneously. *Id.* With this system, the larger the jump in Slip ID numbers, the longer the attorney waited before entering the time. *Id.*

Here, many of Attorney Lichtenstein's entries show large jumps in Slip ID numbers during short spans of time. This confirms that many of them were recorded long after the events they purport to describe. In fact, a review of his records reveals

[6] Lichtenstein Email, Aug. 11, 2017, Ex. 4.

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Slip ID numbers that progress in a completely chaotic, non-sequential order. While contemporaneous entries would show increasing Slip ID numbers, his are all over the map. The following example illustrates just one set of jumps in his Slip ID numbers, but it demonstrates the "sandwich effect" and shows he went back and recorded time long after the fact:

Date	Slip ID
3/2/16	2867
3/7/16	2868
3/8/16	**3004**
3/9/16	**3005**
3/10/16	**3006**
3/14/16	**3007**
3/15/16	**3008**
3/16/16	**3009**
3/18/16	**3010**
3/21/16	2869
3/23/16	2870
3/24/16	2871
3/25/16	2872
3/27/16	2873
3/28/16	2874
3/29/16	2875
3/30/16	2876
3/31/16	2877
4/1/16	2878
4/2/16	**3011**
4/11/16	**3012**
4/13/16	**3013**
4/19/16	2879

Here, the entries in the 2000 range were presumably contemporaneous, but the sandwiched entries in the 3000 range were entered weeks or months later. And this trend occurs repeatedly throughout Attorney Lichtenstein's records. Had he recorded his entries contemporaneously, the Slip ID numbers would increase from day to day. Thus, the large jumps and falls confirm that his time was entered later. Such reconstructed records are not reliable, and they require a significant percentage cut. *See Hensley*, 461 U.S. at 40 n.13.

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6. Block billing prevents the Court from determining whether time was reasonably expended and requires a further reduction

Many of the time entries reflect "block billing," in which the amount of time spent on each discrete task is not identified. Instead, multiple, undifferentiated tasks are lumped into a single entry.

Block billing prohibits meaningful review of the time spent on each discrete task within the "block." *Yeager v. Bowlin*, 2010 WL 1689225, at *1 (E.D. Cal. Apr. 26, 2010) (collecting cases). Indeed, it "hides accountability" and makes it nearly impossible to determine reasonableness. *Id.* Thus, it forces the court to take a "shot in the dark" and "guess whether the hours expended were reasonable, which is precisely the opposite of the methodical calculations the lodestar method requires." *Id.*

While block billing is not barred per se, the California State Bar's Committee on Mandatory Fee Arbitration has concluded that block billing encourages bill padding, as it "may increase time by 10% to 30%."[7] Thus, courts generally approve a significant reduction for block-billed hours.*See, e.g., Monolithic Power Sys., Inc. v. O2 Micro Intern., Ltd.,* 726 F.3d 1359, 1369 (Fed. Cir. 2013) (approving award of only 25% of requested fees from block-billed entries); *McAfee v. Boczar*, 738 F.3d 81, 90 (4th Cir. 2013) (reducing hours claimed by two attorneys by 10% each, because they had used "block billing"); *Torres-Rivera v. O'Neill–Cancel*, 524 F.3d 331, 340 (1st Cir.2008) (approving 15% global reduction in fee request due to block billing).

By way of example, Attorneys Lichtenstein and Scott block-billed the following entries:

Att'y	Date	Block-Billed Tasks	Hours	Fee Request
JS	10/29/15	Telephone conference with Allen Lichtenstein; email from Allen prep for Winn deposition	3.5	$2,275
JS	11/1/15	Prep for depositions; telephone conference with clients; meet with Allen	6.5	$4,225

[7] *See* The State Bar of California Committee on Mandatory Fee Arbitration, Arbitration Advisory 03–01 (2003).

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JS	1/24/16	Travel to Las Vegas; meet with Allen L and clients; prep for depositions	9.0	$5,850
AL	2/3/16	Preparation for Mary Bryan deposition; teleconference with John Scott	3.9	$2,340
JS	3/28/16	Revise and expand statement of facts in opposition to MSJ; prep declaration and review exhibits	6.0	$3,900
AL	3/28/16	Research failure to comply with statutory duties and draft brief; telephone conference with John Scott	6.5	$3,900
JS	3/29/16	Telephone conference with Allen Lichtenstein; opposition to MSJ	5.5	$3,575
JS	3/30/16	Multiple emails; telephone conference with Allen Lichtenstein; review and revise opposition to MSJ	4.2	$2,730
AL	3/30/16	Draft brief; emails and telephone conference with John Scott	8.4	$5,040
AL	3/31/16	Draft, edit brief	9.2	$5,520
AL	4/1/2016	Finalized and filed Plaintiffs' Opposition to Defendants' Summary Judgment Motion; emails and telephone conferences with John Scott	9.3	$5,580
JS	10/28/16	Conference calls; multiple emails; trial preparation	4.5	$2,925
AL	3/20/17	Finalized and filed Plaintiffs' closing Argument brief; telephone conference with John Scott	10.3	$6,180

Again, these are only examples, but they reflect counsel's block-billing practice. They illustrate how counsel lumped several tasks together without disclosing the amount of time spent on any particular activity. This "hides accountability" and makes the *Hensley*-required reasonableness analysis impossible. *E.g.*, *Yeager*, 2010 WL 1689225, at *1. Because of this practice, an additional reduction to the number of hours claimed is warranted.

7. The hours claimed should be reduced by at least 20%

In sum, under step 2 of the lodestar calculation, the requested hours should be reduced by at least 20%. This reflects a reasonable reduction for duplicative work, other non-compensable work, entries lacking the detail necessary for a reasonableness determination, a failure to keep contemporaneous records, and block billing. As demonstrated above, courts regularly impose significantly larger reductions under similar circumstances. Indeed, the numerous defects in counsel's records are not mere technicalities. Rather, they (1) reflect non-billable time and (2) make it impossible for the Court to determine whether many of the hours were

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"reasonably expended" or reflect "poor billing judgment." *Hensley*, 461 U.S. at 433-34. Thus, an hours reduction of at least 20% is imminently reasonable.

II. *HENSLEY'S* PARTIAL-SUCCESS STANDARD DEMANDS A 20% DOWNWARD ADJUSTMENT

After calculating the lodestar, the Court next "adjust[s] for other considerations, such as extent of success." *Gregory v. Cty. of Sacramento*, 168 F. App'x 189, 191 (9th Cir. 2006) (citing *Hensley*, 461 U.S. at 440). In fact, "the extent of a plaintiff's success is a *crucial* factor in determining the proper amount of an award of attorney fees under 42 U.S.C. § 1988." *Hensley*, 461 U.S. at 440 (emphasis added). A "fully compensatory fee" is appropriate only where "a plaintiff obtained excellent results." *Id.* at 435. Thus, where—as here—the plaintiffs achieved only "partial or limited success," the calculated lodestar figure must be adjusted downward. *Id.*; *see also, e.g.*, *Dannenberg v. Valadez*, 338 F.3d 1070, 1075 (9th Cir. 2003) (reversing an attorney fee award where the district court did not make a downward adjustment based on plaintiff's "degree of success").

A. Plaintiffs Achieved "Partial or Limited Success," Not an "Excellent" Result

Here, plaintiffs' success was "partial or limited" at best. They ultimately prevailed on just 2 of their 6 original claims and against only 1 of the 20 original defendants (i.e., they did not prevail in any manner against 19 of the original defendants). Additionally, they did not win any of the declaratory judgments, injunctions, or punitive relief they sought. (*See* Original Compl., Apr. 29, 2014, at 33-34; Errata to First Am. Compl., Nov. 17, 2014, at 35). Then, following trial, this Court cut their request for $1.2 million in compensatory damages by 66% to $400,000 ($200,000 per boy). This reflects "limited success."

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1. Plaintiffs originally asserted 6 claims against 20 defendants, and sought prospective and punitive relief

When these two plaintiffs brought this case, they each asserted 6 causes of action against 20 different defendants. (*See* Original Compl., Apr. 29, 2014, at 33-34). They also sought the following declaratory and injunctive relief:

> Wherefore Plaintiffs respectfully requests this Court:
>
> **a.** Enter an order declaring CCSD Defendants' conduct in violation of Chapter 392 of N.R.S. Pupils, and CCSD Policies;
>
> **b.** Enter an order declaring CCSD Defendants' conduct in violation of the Equal Protection Clause of the Nevada Constitution, Art, 4, § 21.
>
> **c.** Enter and order declaring CCSD Defendants' conduct in violation of the substantive due process under the Fourteenth Amendment of the U. S. Constitution;
>
> **d.** Enter an order declaring CCSD Defendants' conduct in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution;
>
> **e.** Enter a permanent injunction, on proper motion, requiring Defendant CCSD to develop and administer a new policy around discrimination, harassment, and assault, and to ensure proper and equal implementation
>
> * * *
>
> **h.** Enter an order declaring NERC Defendants' conduct in violation of the Nevada APA, as an unreasonable delay amounting to arbitrary or capricious agency action or an abuse of discretion;
>
> **i.** Enter an injunction requiring NERC to expeditiously process this investigation of public accommodation discrimination in the public school setting;

(Original Compl., Apr. 29, 2014, at 33-34). In a later complaint, they consolidated their requests for declaratory and injunctive relief and included a new request for punitive damages. (Errata to First Am. Compl., Nov. 17, 2014, at 35).

2. Plaintiffs lost 4 of their claims, 19 defendants, and their request for punitive damages

Before trial, 4 of the 6 claims and 19 of the 20 defendants were dismissed. Likewise, plaintiffs lost their request for punitive damages. (Order, July 22, 2016, at

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4). Indeed, by the time plaintiffs brought this case to trial, it consisted of 2 claims against CCSD only. Thus, before plaintiffs even called a witness, their success had already been severely limited.

3. At trial, plaintiffs failed to win any of the prospective relief they requested, and the Court awarded just 33% of the damages they sought

Then, during trial, plaintiffs failed to win any of the declaratory judgments or injunctions they sought throughout this case. Instead, out of all the remedies they sought, they were awarded only compensatory damages.[8] And even then, they sought $1.2 million and the Court awarded a mere 33% of that figure.[9]

4. Plaintiffs achieved "partial or limited success"

Plaintiffs did not prevail against 19 of the original 20 defendants. Further, since they sought $1.2 million to be made whole, an award of just $400,000 is not an "excellent result"; rather, it is a "partial or limited success," at the very most. And plaintiffs' failure to win any of the prospective relief they sought only confirms this conclusion. Therefore, under *Hensley*, a downward adjustment is necessary.

B. Under *Hensley's* Two-Step Test, a Downward Adjustment is Necessary

In *Hensley*, the Supreme Court established a two-step framework for calculating a downward adjustment where, as here, the prevailing party obtained "partial or limited success." *Hensley*, 461 U.S. at 435.

1. A modest, 5% reduction is necessary under step 1 of the Hensley *"partial success" analysis*

During the first step, the Court identifies all claims that were both unsuccessful and unrelated to the successful claims. *Id.* Then it is excludes all claimed hours associated with those unsuccessful, unrelated claims. *Id.*; *Schwarz v. Sec'y of Health & Human Servs.*, 73 F.3d 895, 901 (9th Cir. 1995) (collecting numerous cases).

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8 Findings of Fact, Conclusions of Law, and Judgment, Jul. 20, 2017, at 21:21-28.
9 *Id.*

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Under this standard, an unsuccessful claim is "unrelated" to the successful claims, if it does not share a "common core of facts," *Schwarz*, 73 F.3d 895, 901, such that it could have been asserted in a separate lawsuit. *E.g.*, *Hensley*, 461 U.S. at 435; *Hernandez v. City of Vancouver*, 2014 WL 5471996, at *3 (W.D. Wash. Oct. 29, 2014) (reducing the lodestar by 15% for unrelated, unsuccessful claims); *Vialpando v. Johanns*, 619 F. Supp. 2d 1107, 1127 (D. Colo. 2008) (reducing the lodestar by 70% for unrelated, unsuccessful claims). As the *Hensley* Court taught, "[t]he congressional intent to limit awards to prevailing parties requires that these unrelated claims be treated as if they had been raised in separate lawsuits, and therefore no fee may be awarded for services on the unsuccessful claim." *Id.*

Here, plaintiffs' claim against the Nevada Equal Rights Commission (the "NERC Claim") could have been maintained in a separate lawsuit, and it is therefore an "unrelated" and "unsuccessful" claim, for which a downward adjustment is necessary. With the NERC claim, plaintiffs alleged that NERC arbitrarily and capriciously failed to take appropriate action in response to the public accommodations complaint they filed with NERC. (Original Compl., Apr. 29, 2014, at ¶ 169-176). Thus, it was not a compulsory claim and does not share a "common core of facts" with the successful claims. Therefore, it requires a step-1 reduction.

However, plaintiffs time records are not separated by individual claims, meaning that the Court cannot easily identify and cut the fees associated with the NERC litigation. Fortunately, the *Hensley* Court anticipated such circumstances and provides a straightforward solution. Specifically, under *Hensley*, "the court 'may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success.'" *Schwarz*, 73 F.3d at 901 (quoting *Hensley*, 461 U.S. at 436). So, where—as here—it is difficult to identify and exclude the hours specifically associated with the unrelated claim, courts routinely apply an appropriate, across-the-board percentage reduction. *See, e.g.*, *Hernandez*, 2014 WL 5471996, at *3 (W.D. Wash. Oct. 29, 2014) (15% across-the-board reduction);

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Vialpando, 619 F. Supp. 2d at 1127 (D. Colo. 2008) (70% across-the-board reduction); *Schwarz*, F.3d at 901 (9th Cir. 1995) (affirming a 25% across-the-board reduction and collecting cases affirming reductions as high as 50%).

Here, the Court should do the same. Specifically, the Court should impose a modest downward adjustment of at least 5%. In light of the much larger reductions often imposed under these circumstances, a 5% reduction is more than reasonable. *See, e.g.*, *Schwarz*, F.3d at 901; *Hernandez*, 2014 WL 5471996, at *3; *Vialpando*, 619 F. Supp. 2d at 1127.

2. A 15% reduction is necessary under step 2 of the Hensley *"partial success" analysis*

During the second step, the court "reduce[s] the award if 'the relief, however significant, is limited in comparison to the scope of the litigation as a whole.'" *McAfee v. Boczar*, 738 F.3d 81, 92 (4th Cir. 2013) (quoting *Hensley*, 461 U.S. at 439-40) (reducing a fee award by 2/3 where the district court failed to make a downward adjustment for the plaintiff's limited success); *Sundaram v. Villanti*, 174 F. App'x 368, 370 (9th Cir. 2006) (affirming a 50% downward adjustment based on the plaintiff's limited success); *Gregory*, 168 F. App'x at 189 (9th Cir. 2006) (adjusting the a lodestar amount of $145,512.50 down to $50,000 as a result of plaintiffs' limited success). Under this step, a "fully compensatory fee" is appropriate only if the client obtained "excellent results." *E.g.*, *Hensley*, 461 U.S. at 435. In contrast, when a party achieves "only partial or limited success," a downward adjustment is appropriate. *Id.* at 40.

In fact, "the Supreme Court has recognized that the extent of a plaintiff's success is 'the most critical factor' in determining a reasonable attorney's fee under 42 U.S.C. § 1988." *McAfee*, 738 F.3d at 92 (quoting *Hensley*, 461 U.S. at 439-40) (emphasis added). "Though Congress intended § 1988 fee awards to be 'adequate to attract competent counsel,' it also wanted to avoid 'producing windfalls to attorneys.'"

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Id. (quoting *City of Riverside v. Rivera*, 477 U.S. 561, 580 (1986) (alternations incorporated) (emphasis added).

Accordingly, when considering the extent of the relief obtained, the Court must compare the relief sought to the relief actually awarded. *Id.* Indeed, this is the "primary consideration." *Farrar v. Hobby,* 506 U.S. 103, 114 (1992) (The Court "is obligated to give primary consideration to the amount of damages awarded as compared to the amount sought."); *accord Gregory*, 168 F. App'x at 189. For example, where a plaintiff seeks punitive damages, but fails to obtain them, that failure evidences "limited success" and weighs toward a reduction. *McAfee*, 738 F.3d at 93-94.

Likewise, it does not matter whether the failed claim or theory was dismissed before trial. *Schwarz*, 73 F.3d at 902-03. Quite simply, a claim is unsuccessful "where the plaintiff has failed to prevail on it," regardless of when or why that failure occurred. *Id.* (quoting *Hensley*, 461 U.S. at 440).

Here, plaintiffs failed to prevail on 100% of their claims against 95% (19/20) of the original defendants. Moreover, 2/3 of their claims against CCSD did not survive summary judgment. These "unsuccessful" claims alone establish "limited success." *See id.*

And more importantly, the "primary consideration," which requires comparing the relief sought with the relief obtained, reveals that plaintiffs failed to obtain the vast bulk of what they sought. They did not obtain the declaratory and injunctive relief they sought, and they did not obtain the punitive damages they sought. This confirms that their success was limited, and it weighs toward a downward reduction, *id.* at 902-03. Finally, the Court is required to compare the $1,200,000 request for compensatory damages to the $400,000 actually awarded. Without question, this demonstrates a "partial or limited success," rather than an "excellent result." Thus, under *Hensley*, a "partial success" reduction is warranted. And compared to the much larger reductions frequently imposed, a modest adjustment of just 15% is more than

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reasonable. *E.g.*, *McAfee*, 738 F.3d at 92 (imposing a 2/3 reduction); *Sundaram*, 174 F. App'x at 370 (affirming a 50% reduction); *Gregory*, 168 F. App'x at 189 (nearly 2/3 reduction).

III. THIS CASE WAS NOT COMPLEX

Plaintiffs seem to suggest that the Court should grant the full requested award—and thereby overlook the astronomical claimed rates, deficient records, non-compensable time entries, and their limited success—because this case was "complex." (Mot. at 20-21). But the case wasn't "complex" at all. Rather, it consisted of applying well-settled civil rights law to a set of disputed facts. It did not require any consulting experts or any testifying experts. Likewise, it did not implicate any medical damages or other "complex" damages. In fact, neither party ever sought to deem it "complex" under Rule 16.1(f), which applies to cases "that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems." Instead, plaintiffs repeatedly described their damages as "garden variety" and emphasized that they were not complex. (*E.g.*, Response to Mot. to Compel Rule 35 Exam, Jan. 19, 2016, at 3-5). Thus, plaintiffs' after-the-fact complexity argument fails.

IV. PLAINTIFFS' MOTION FOR COSTS IS ADDRESSED IN THE MOTION TO RETAX

Plaintiffs also move for costs. However, these issues are already addressed in CCSD's motion to retax cost, which is scheduled to be heard on September 6, 2017. Thus, CCSD will not burden the Court by rearguing costs here.

CONCLUSION

For the forgoing reasons, the requested hourly rates should be reduced to the local Las Vegas rate of $250.00, and the number of hours claimed should be reduced by 20%. This yields a lodestar of $214,854.

Then, under *Hensley*, the Court should make a 5% downward adjustment for plaintiffs' unrelated NERC claim, and a 15% downward adjustment for their "partial success." Therefore, plaintiffs total fee award should not exceed: $171,883.20.

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Dated this 28th day of August, 2017

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Brian D. Blakley*

DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
BRIAN D. BLAKLEY (SBN 13074)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Attorneys for Defendants

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CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ. Rule 5(b), I certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on this day, I caused a true and correct copy of "CCSD's Opposition to Motion for Attorneys' Fees and Costs" to be filed, via the Court's E-Filing System, and served on all interested parties via U.S. Mail, postage pre-paid and courtesy email.

Allen Lichtenstein, Esq.
Staci Pratt, Esq.
ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.
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1388 Sutter Street, Suite 715
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john@scottlawfirm.net
Attorneys for Plaintiffs
(Admitted Pro Hac Vice)

Dated this 28th day of August, 2017

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

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EXHIBIT 1

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EXHIBIT 1

DECLARATION OF DAN R. WAITE IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS FEES AND COSTS

I, Dan R. Waite, declare, under the penalty of perjury and the laws of the State of Nevada and the United States of America, as follows:

1. I am over the age of 18, competent and willing to testify in Court. I have personal knowledge of the facts and circumstances set forth in this declaration. As to those matters stated on information and belief, I believe them to be true.

2. I am an attorney at the law firm of Lewis Roca Rothgerber Christie LLP, and I represent the Clark County School District ("CCSD") in this case.

3. I graduated *magna cum laude* from Brigham Young University's J. Reuben Clark Law School in the spring of 1990.

4. I obtained my Nevada law license in 1990, and I have practiced exclusively in Nevada since that time.

5. My practice has always focused primarily on litigation.

6. I have litigated hundreds of cases in Nevada's Eighth Judicial District Court and more than one hundred cases in the U.S. District Court for the District of Nevada.

7. I am the former managing partner (2011-2017) of Lewis Roca Rothgerber Christie's Las Vegas Office.

8. I hold an "AV/Preeminent Attorney" rating by Martindale-Hubbell, and I have been listed in several editions of *The Best Lawyers in America*.

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9. Throughout this case, I served as CCSD's co-lead counsel and, from commencement to present, have charged and collected an hourly rate of $250.00.

10. I also serve as CCSD's co-lead counsel in the only other civil rights case arising out of allegations of student-on-student bullying asserted against CCSD.

11. Throughout that case, I have also charged and collected an hourly rate of $250.00.

Dated this August 28th, 2017

DAN R. WAITE

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EXHIBIT 2

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EXHIBIT 2

DISTRICT COURT

CLARK COUNTY, NEVADA

MARY BRYAN, mother of ETHAN BRYAN; AIMEE HAIR, mother of NOLAN HAIRR,	)	
Plaintiffs,	)	
vs.	)	CASE NO. A-14-700018-C
CLARK COUNTY SCHOOL DISTRICT (CCSD); Pat Skorkowsky, in his official capacity as CCSD superintendent; CCSD BOARD OF SCHOOL TRUSTEES; Erin A. Cranor, Linda E. Young, Patrice Tew, Stavan Corbett, Carolyn Edwards, Chris Garvey, Deanna Wright, in their official capacities as CCSD BOARD OF SCHOOL TRUSTEES, GREENSPUN JUNIOR HIGH SCHOOL (GJHS); Principal Warren P. McKay, in his individual capacity as principal of GJHS;	)	)....

VIDEO DEPOSITION OF CHERYL WINN
Taken at the Law Offices of Lewis Roca Rothgerber
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

Tuesday, November 3, 2015
10:12 A.M.

Reported by: Angela Campagna, CCR #495

Leonard DePiazza, in his individual and official capacity as assistant principal at GJHS; Cheryl Winn, in her individual and official capacity as Dean at GJHS; John Halpin, in his individual and official capacity as counselor at GJHS; Robert Beasley, in his individual and official capacity as instructor at GJHS;

Defendants.

DEPOSITION OF CHERYL WINN
Taken at the Law Offices of Lewis Roca Rothgerber
3993 Howard Hughes Parkway
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Las Vegas, Nevada 89169

Tuesday, November 3, 2015
10:12 a.m.

Reported by: Angela Campagna, CCR #495

APPEARANCES:

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Also present: Lora Henrickson
Videographer

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EXHIBIT 3

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EXHIBIT 3

DISTRICT COURT

CLARK COUNTY, NEVADA

MARY BRYAN, mother of ETHAN BRYAN; AIMEE HAIR, mother of NOLAN HAIRR,

Plaintiffs,

vs. CASE NO. A-14-700018-C

CLARK COUNTY SCHOOL DISTRICT (CCSD); Pat Skorkowsky, in his official capacity as CCSD superintendent; CCSD BOARD OF SCHOOL TRUSTEES; Erin A. Cranor, Linda E. Young, Patrice Tew, Stavan Corbett, Carolyn Edwards, Chris Garvey, Deanna Wright, in their official capacities as CCSD BOARD OF SCHOOL TRUSTEES, GREENSPUN JUNIOR HIGH SCHOOL (GJHS); Principal Warren P. McKay, in his individual capacity as principal of GJHS;

....

VIDEO DEPOSITION OF WARREN MCKAY
Taken at the Law Offices of Lewis Roca Rothgerber
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

Monday, November 2, 2015
10:14 A.M.

Reported by: Angela Campagna, CCR #495

Leonard DePiazza, in his individual and official capacity as assistant principal at GJHS; Cheryl Winn, in her individual and official capacity as Dean at GJHS; John Halpin, in his individual and official capacity as counselor at GJHS; Robert Beasley, in his individual and official capacity as instructor at GJHS;

Defendants.

DEPOSITION OF WARREN MCKAY
Taken at the Law Offices of Lewis Roca Rothgerber
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Suite 600
Las Vegas, Nevada 89169

Monday, November 2, 2015
10:14 a.m.

Reported by: Angela Campagna, CCR #495

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mpark@lrrlaw.com

Also present: Irina Van De Pol
Videographer

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EXHIBIT 4

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EXHIBIT 4

Blakley, Brian

From: Waite, Dan R.
Sent: Friday, August 11, 2017 4:15 PM
To: Blakley, Brian
Subject: FW: Bryan v CCSD Notice of Mortion

-----Original Message-----
From: Allen Lichtenstein [mailto:allaw@lvcoxmail.com]
Sent: Friday, August 11, 2017 4:14 PM
To: Waite, Dan R.
Subject: RE: Bryan v CCSD Notice of Mortion

I use Timeslips.

Allen

Allen Lichtenstein
Attorney at Law, Ltd.
3315 Russell Road, No. 222
Las Vegas, NV 89120
(702) 433-2666 phone
(702) 433-9591 fax

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On Fri, Aug 11, 2017 at 1:54 PM, Waite, Dan R. wrote:

> Thanks Allen; we'll calendar our response from yesterday. On a
> related note, what is the time entry system/software you used for the
> Ex. 1 to your declaration?
>
> Dan
>
> Dan R. Waite
> Partner
> 702.474.2638 office
>
> 702.216.6177 fax
> dwaite@lrrc.com
> _____

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>
> Lewis Roca Rothgerber Christie LLP
> 3993 Howard Hughes Parkway, Suite 600
> Las Vegas, Nevada 89169
> lrrc.com
>
>
>
>
>
>
> -----Original Message-----
> From: Allen Lichtenstein [mailto:allaw@lvcoxmail.com]
> Sent: Thursday, August 10, 2017 1:36 PM
> To: Polsenberg, Daniel F.; Waite, Dan R.
> Subject: Bryan v CCSD Notice of Mortion
>
>
>
> Allen Lichtenstein
> Attorney at Law, Ltd.
> 3315 Russell Road, No. 222
> Las Vegas, NV 89120
> (702) 433-2666 phone
> (702) 433-9591 fax
>
> IMPORTANT NOTICE: Privileged and/or confidential information,
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> destroy any hard copies of it and notify the sender by return e-mail.
>
> _____
>
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> attachments may be privileged, is intended only for the personal and
> confidential use of the intended recipients, and is covered by the
> Electronic Communications Privacy Act, 18 U.S.C. §2510-2521.

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EXHIBIT 5

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EXHIBIT 5

Legal Q&A With Clyde DeWitt

Clyde DeWitt has been defending the adult industry for nearly three decades, *doing his job with aplomb and a great deal of personal relish, whether in court, at trade shows or other speaking events, in print, or while dealing with clients. DeWitt's been* AVN*'s legal columnist for more than 15 years, and* AVN Online*'s since its birth. His monthly columns not only educate; they entertain —and that's no small feat, considering the subject matter could be exceptionally arid in less-capable hands.*

Albeit the consummate professional, DeWitt still is passionate, especially about legal ethics and the right of adults to consume adult entertainment.

Tall, adroit, and urbane, DeWitt has been described as "the Will Rogers of porn." Those who've had the pleasure of knowing him outside the courtroom, though, say it's his homespun drollness, candor, and charm that make him most memorable.

You've often been mistaken for a Californian because you've been in California for so long. What's the real story?
Actually, I was raised in Chicago, and I'm still a die-hard Cubs and Bears fan. One of my pastimes is reading about 20th century Chicago. Anything you want to know about Sam Giancana or Richard J. Daley, just ask.

You spent some time early in your career in Texas, didn't you?
My law degree is from the University of Houston, and I also have a master's from the school of business there. After that, I was a prosecutor for seven years in the Harris County district attorney's office [in Houston].

What made you "switch sides"?
I was general counsel to the district attorney for my last couple of years there—the guy who defends the DA when he gets sued. Texas had a new obscenity statute in 1979, and an armada of attorneys filed lawsuits challenging it. I won and [adult industry attorney] John Weston lost, so he hired me.

You've been representing adult entertainment ever since?
I've been representing the adult entertainment industry since 1980, when I left the DA's office. Here's how long I've been doing this: I hired Greg Piccionelli in the early 1990s, when he was still in law school. That's how *he* got into this business.

What made you choose a career in law?
My grandfather was a lawyer in Chicago, but I never thought about being an attorney. I was always goofing around with electronics, and I assumed I would go into electrical engineering, which was my undergraduate major. Then I started working with engineers, and I was socially incompatible with them. They listened to Muzak, and I listened to Led Zeppelin; they spent their spare time at church socials, and I was out in Grant Park yelling, "The whole world's watching!" at the 1968 Democratic Convention. So, I went to law school to get away from engineers—but it turned out that my electrical engineering degree became useful when the computer age set in. I knew what a kilobyte was long before anyone had a personal computer.

How much of your practice is adult?
One hundred percent of my clients are in adult entertainment. I've defended obscenity cases, sued copyright infringers, drafted and negotiated contracts, corporate issues, leases, employment law—you name it.

As a former prosecutor, what surprised you the most about "the other side"?
I represented a guy who had a bunch of adult bookstores in Houston. He totally cured me of any misconceptions I might have had about the adult industry; he came from a good family—I even represented his mother. I since have met many genuinely good people in the industry—although, as the late Paul Wisner once said to me, "The industry is not without its scoundrels," and he was right. I've tried to avoid them.

What is most challenging about representing the adult industry?
Politicians, and local governments in particular, possess all the bad characteristics they ascribe to the adult industry. Although I have many more adjectives for them, "arrogant, self-righteous assholes" is a good start. I enjoy suing them.

What do you find most enjoyable about representing the adult industry?
The people—let's face it: They're having fun doing what they're doing, and it rubs off.

How will the Democratic takeover in Congress affect the adult industry?
George W. Bush now has Chief Justice John Roberts and Associate Justices Antonin Scalia, Clarence Thomas, and Samuel Alito. If Justice John P. Stevens retires or dies, and the Senate remains in the hands of the Democrats, it likely will prevent another Scalia on the bench, which is what Bush wants. However, I don't see too much impact on legislation. The addition of "obscenity" to the Racketeer Influenced and Corrupt Organizations Act, 2257, and the Child Protection and Obscenity Enforcement Act of 1988 all occurred under a Democratic Congress.

What current and future challenges face adult webmasters?
The biggest challenge is preventing underage users from consuming adult material. If the industry can't figure out a way to do it, the government is going to respond in its typically oversimplified way: throwing people in jail.

What advice would you give to the adult industry?
"Keep your ear to the ground, especially legally. The world is changing so fast that things can easily sneak up on you."

—KATHEE BREWER

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DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR, Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT (CCSD) Defendant .	Case No. A-14-700018-C Dept. No. XXVII **PLAINTIFFS' REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR ATTORNEYS FEES AND COSTS** Department: XXVII

Come now Plaintiffs, by and through the undersigned attorneys, and file this Plaintiffs' Response to Defendant's Motion for Attorneys Fees and Costs based on all pleadings and papers on file herein, and the Memorandum of Law attached hereto, and any further argument and evidence as may be presented at hearing. Plaintiffs incorporate by reference their prior filings in this case concerning the attorney fee and costs issue, including but not limited to the August 9, 2017 Motion for Fees and Costs and the August 29, 2027 Reply.

Dated this 13th day of August 2021,

Case Number: A-14-700018-C

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Respectfully submitted by:

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

On page 3 of the Response brief, CCSD aka ("The District") lists three grounds for its argument against Plaintiffs' July 18, 2021 Motion for Fees and Costs.

> The Motion fails for at least three reasons: (1) the motion is premature, i.e., until a judgment enters, there is no "prevailing party" and no way to measure the extent of the "prevailing party's" success; (2) on remand, plaintiffs' "success" is—at most—half of what it was following trial, meaning an additional downward adjustment for "partial success" is necessary; and (3) plaintiffs are not entitled to any fees they incurred as a result of losing the appeal.

Opposition at 3. As shown below, none of these arguments are valid.

II. Argument

A. The Motion for fees and costs is not premature.

As for the first Opposition argument, there is nothing premature about the motion. As the attached (Exhibit A) June 27, 2021 Notice of Entry of Order attests, the Court formally adopted Plaintiffs' Findings of Fact and Conclusions of Law on June 16, 2021. CCSD was served with this Notice of Entry of Order, as well as the June 16, 2021 Order itself. Both are available on Odyssey. Thus, if the Court feels it necessary, it certainly has the discretion to issue further rulings. However, it is inaccurate to assert that the Court has not made any final ruling in this matter. Plaintiffs' Motion was timely filed.

CCSD's second argument in its Opposition, that the Lodestar amount should be drastically reduced due to the "limited success" that Plaintiffs received is simply a reiteration of the unsuccessful argument made in 2017. On pages 4-5 of its Opposition, the District essentially admits that it is re-arguing the exact same points that were rejected by this Court previously.

> CCSD continues to oppose the original $470,418.75 fee award—and maintains that a significant reduction is necessary—for all of the reasons demonstrated in its Original Opposition. (Opp'n, Aug. 28, 2017). So, instead of burdening the docket by copying-and-pasting all of those arguments into this brief,

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> CCSD incorporates them by this reference as though they were expressly restated here. For the Court's convenience, CCSD has also attached its Original Opposition as Exhibit 1.

Opposition, at 4-5.

B. Plaintiffs were prevailing parties.

1. The "law of the case" doctrine prohibits CCSD from re-litigating issues concerning fees and costs that were already decided by this Court.

The problem with the District's argument about partial or limited success is that the issue was already decided by this Court in its November 16, 2017 Order.[1] Thus, under the law of the case doctrine, CCSD should be precluded from attempting to take a second bite of the apple concerning this matter. *See, Moore v. Jas. H. Matthews & Co.*, 682 F.2d 830 (9th Cir. 1982).

> The "law of the case" rule ordinarily precludes a court from re-examining an issue previously decided by the **same court**, or a higher appellate court, in the **same case**. *See* IB *Moore's Federal Practice*, 0.404[1], at 404-09 (2d ed. 1980). *See also In re Staff Mortgage & Investment Corp.*, 625 F.2d 281, 282-83 (9th Cir. 1980); *Adamian v. Lombardi*, 608 F.2d 1224, 1228 (9th Cir. 1979), *cert. denied*, 446 U.S. 938, 64 L. Ed. 2d 791, 100 S. Ct. 2158 (1980). The law of the case principle is analogous to, but less absolute a bar than, *res judicata. Moore's Federal Practice, supra*, at 404-09. Although the law of the case rule does not bind a court as absolutely as *res judicata*, and should not be applied "woodenly" when doing so would be inconsistent with "considerations of substantial justice," the discretion of a court to review earlier decisions should be exercised sparingly so as not to undermine the salutory policy of finality that underlies the rule. *See Lathan v. Brinegar*, 506 F.2d 677, 691 (9th Cir. 1974) (en banc); *United States v. Fullard-Leo*, 156 F.2d 756, 757 (9th Cir. 1946).

682 F.2d at 833-3 (emphasis added). *See also, United States v. Maybusher*, 735 F.2d 366, 370 (9th Cir. 1984); *Thomas v. Bible*, 983 F.2d 152, 154 (9th Cir.) (*cert. denied* 508 U.S. 951 (1993); *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997); *United States v. Phillips*, 356 F.3d 1086 (9th Cir. 2004):

[1] The issue of the fee award was, not addressed by the Nevada Supreme Court on appeal. ("We do not reach the substantive arguments regarding the damages and attorney fees awards here.") 478 P.3d at 361 n.11.

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> Issues that a district court determines during pretrial motions become law of the case. In certain circumstances, the court retains discretion to depart from the law of the case. However, none of those circumstances exist here. Thus, the District Court would have abused its discretion if it had refused to abide by its previous ruling.

356 F.3d at 1095.

The Court in *Alexander*, *supra* at 876, stated the five criteria used to analyze whether a failure by a court to adhere to the law of the case constitutes an abuse of discretion.

> Under the "law of the case" doctrine, "a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." *Thomas v. Bible,* 983 F.2d 152, 154 (9th Cir.) (*cert. denied* 508 U.S. 951, 124 L. Ed. 2d 661, 113 S. Ct. 2443 (1993). The doctrine is not a limitation on a tribunal's power, but rather a guide to discretion. *Arizona v. California,* 460 U.S. 605, 618, 75 L. Ed. 2d 318, 103 S. Ct. 1382 (1983). A court may have discretion to depart from the law of the case where: 1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3) the evidence on remand is substantially different; 4) other changed circumstances exist; or 5) a manifest injustice would otherwise result. Failure to apply the doctrine of the law of the case absent one of the requisite conditions constitutes an abuse of discretion. *Thomas v. Bible,* 983 F.2d at 155.

106 F.3d at 876.

None of the *Alexander* criteria is present in the instant case. First, Judge Allf's 2017 decision was not clearly erroneous. CCSD 's Opposition brief does not even make that claim. Second, there has been no intervening change in the law. Third, no evidence on remand is substantially different. In fact, no additional evidence was presented at all. Fourth, no other changed circumstances exist. Fifth, no manifest injustice would result from the court following its earlier decision.

2. Under *Hensley v. Eckerhart,* Plaintiffs success was total not partial.

Defendant's position is incorrect as a matter of law. CCSD once again urges this Court to reduce Plaintiffs' fee award because they only prevailed against one Defendant, the District itself, and on one legal theory, Title IX. In making this assertion, the District blatantly ignores well-settled law. In *Hensley v. Eckerhart,* 461 U.S. 424 (1983), the Supreme Court differentiated

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between situations where the claims made involve the same core of facts and where, in contrast, the claims are distinct. The Supreme Court in *Hensley*, rejected the approach urged by the District in favor of one that looks at the success of the attorneys as a whole.

> It may well be that cases involving such unrelated claims are unlikely to arise with great frequency. Many civil rights cases will present only a single claim. In other cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.

461 U.S. at 435.

At trial, each Plaintiff was granted damages in the amount of $200,000. This was based on two legal theories*: 1)* Title IX of the Education Amendments of 1972; and 2) substantive due process. The District Court did not assign any amount specifically to either legal theory. On appeal, the Nevada Supreme Court overturned the District Court's ruling concerning substantive due process. 478 P.3d at 361. The Supreme Court also remanded the Title IX claim for further findings concerning the deliberate indifference element of the Title IX claim. Id. The Nevada Supreme Court did not reach the issue of CCSD's appeal of the District Court's award of attorney fees. *CCSD v. Bryan*, 478 P.3d 344, 361 n.11 (Nev. 2020).

On remand, the District Court, following the Nevada Supreme Court's direction, elucidated the basis upon which it, as trier of fact, found CCSD acted with deliberate indifference. It did not alter the $200,000 per Plaintiff award. Even though Title IX and substantive due process were separate theories, both of these, as well as other previously abandoned or dismissed theories of the case, relied on the exact same body of facts. Under the *Hensley* standard, therefore, the District Court made the exact same damage award. [2]

[2] It should be noted that in 2017, the District Court made a downward adjustment to the attorney fee request made by Plaintiffs. CCSD's instant Opposition brief fails to mention that.

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> We hold that the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees under 42 U. S. C. § 1988. Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained. On remand the District Court should determine the proper amount of the attorney's fee award in light of these standards.

461 U.S. at 440.

Similarly, the Nevada Supreme Court, in *Herbst v. Humana Health Ins.*, 105 Nev. 586 781, 781 P.2d 762 (1989), stated that if the claims in question revolved around a common core of facts, none of the hours expended are exempt.

> [W]here the plaintiff's claims involve a common core of facts he is entitled to attorney's fees even for the work performed on his unsuccessful claims. It is only where a plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims that he should not be entitled to attorney's fees for work done on the unsuccessful claims.

105 Nev. at 591, 781 P.2d at 765, *citing Hensley*, 461 U.S. at 435. *See also, Webb v. Sloan*, 330 F.3d 1158, 1168-69 (9th Cir. 2003).

> In *Schwarz v. Secretary of Health & Human Services*, 73 F.3d 895, 902-03 (9th Cir. 1995), we examined our cases concerning "relatedness" in fee awards. We acknowledged that the test for relatedness of claims is not precise. *Id.* at 903. However, we offered some guidance, explaining that "the focus is to be on whether the unsuccessful and successful claims arose out of the same 'course of conduct.' If they didn't, they are unrelated under *Hensley*." *Id.* We explained that claims are *unrelated* if the successful and unsuccessful claims are "distinctly different" *both* legally *and* factually. *Id.* at 901, 902. Again echoing *Hensley*, we reasoned that such hours are excludable because work on such distinctly different claims "cannot be deemed to have been 'expended in pursuit of the ultimate result achieved.'" *Id.* at 901 (quoting *Hensley*, 461 U.S. at 435 (internal quotation marks omitted)). We cited cases in which we asked "whether it is likely that some of the work performed in connection with the unsuccessful claim also aided the work done on the merits of the successful claim." *Id.* at 903 (brackets and internal quotation marks omitted). Ultimately, however, we reaffirmed that the focus is on whether the claims arose out of a common course of conduct. *Id.* In short, claims

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may be related if **either the facts *or* the legal theories are the same.**

330 F.3d at 1168-69 (emphasis added).

3. All of Plaintiffs' claims were based on the same set of facts.

CCSD argues that all but one of the Defendants, except the District itself, ended up being dismissed from the case, therefore showing only partial success. This argument, however, shows nothing of the sort. All of the Defendants listed in Plaintiffs' October 10, 2014 Amended Complaint were either agents of CCSD or the District itself. All of the claims for relief are based on the exact same facts. Although Plaintiffs proffered several different legal theories, that alone is not a proper basis for reducing the lodestar in light of the claims being made on the same facts. Unrelated claims are only those that are both factually *and* legally distinct. *Ibrahim v. United States Dep't of Homeland Sec.*, 835 F.3d 1048, 1062 (9th Cir. 2016), *citing Webb*, 330 F.3d at 1168.

In *Cabrales v. Cty. of L.A.*, 935 F.2d 1050 (9th Cir. 1991), the Court noted that the measure of success is the end result of the litigation.

> Rare, indeed, is the litigant who doesn't lose some skirmishes on the way to winning the war. Lawsuits usually involve many reasonably disputed issues and a lawyer who takes on only those battles he is certain of winning is probably not serving his client vigorously enough; losing is part of winning.

935 F.2d at 1053. Here, despite the winnowing of claims and Defendants during the course of proceedings, Plaintiffs obtained the relief they were seeking, thus providing excellent results. In their Opposition brief, CCSD did not even argue that any of the claims made against the CCSD Defendants are factually distinct. Indeed, they are not. Therefore, Plaintiffs' ultimate success against the District on the Title IX claims, due to the Court's ruling that school personnel exhibited deliberate indifference to known dangers that Nolan and Ethan were continuing to face, did not result in partial success, but instead, complete success, or in other words, excellent results.

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C. Plaintiffs' success on remand allows for this Court to award compensation pursuant to Section 1988.

CCSD's third argument is that because Plaintiffs did not prevail on the District's appeal to the Nevada Supreme Court, which remanded the case back to the District Court for further analysis, no post remand fees are available to Plaintiffs under 42 USC §1988. The District cites *Dep't of Educ., State of Hawaii v. Rodarte ex rel. Chavez,* 127 F. Supp. 2d 1103, 1115 (D. Haw. 2000). That case, however, is easily distinguishable from the instant one. *Rodarte* involved "an appeal and a request for attorneys' fees and costs from an administrative hearing decision rendered in a due process hearing brought under the Individuals with Disabilities in Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*" *Rodarte,* at 1105." At an Administrative Hearing, the Plaintiff in that case was awarded several months of compensatory education. *Id*. at 1111. The Federal District of Hawaii deemed the DOE's appeal to be moot. *Id*. at 1112. ("There is no effective relief that this Court can grant to the DOE. It is undisputed that Ramona has already received the hearing officer's award of three months of compensatory education and that she has already graduated from high school.") . The Plaintiff "moved for attorneys, fees and costs pursuant to 20 U.S.C. § 1415(i)(3)(B) as a parent who was the prevailing party." *Id.* at 1114.

> The questions of "prevailing parties" and attorneys' fees in general are analyzed similarly under both the IDEA and 42 U.S.C. § 1988. *Nathan R.*, 2000 WL 23859, at *4 & n.9. "[A] prevailing party is one that succeeds on any significant issue in litigation *Kletzelman v. Capristano Unified Sch. Dist.*, 91 F.3d 68, 70 (9th Cir. 1995) (quotation marks and alterations omitted). To be considered "prevailing" a plaintiff "must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant." *Id.* In other words, "a civil rights plaintiff must obtain at least some relief on the merits of his claim." *Farrar v. Hobby*, 506 U.S. 103, 111, 121 L. Ed. 2d 494, 113 S. Ct. 566 (1992). A plaintiff prevails when "actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Id.* at 111-12.
>
> . . .
>
> Rodarte is certainly a prevailing party from the administrative hearing officer's order. Rodarte sought compensatory education. Rodarte obtained relief on the

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> merits of her claim when the order granted three months of compensatory education. This grant changed the legal relationship between Rodarte and the DOE because the DOE was obliged to provide Ramona with three months of compensatory education that, prior to the order, it was not obliged to give. In other words, the DOE's behavior was modified by the order. It is inconsequential that Rodarte did not obtain all the relief that she sought, such as more compensatory education or additional findings of wrongdoing by the DOE. **So long as she obtained "some" or succeeded on a "significant issue," that is sufficient.** It is also inconsequential that the hearing officer labeled the DOE as the "substantially prevailing" party on the compensatory education issue. The facts speak for themselves: Rodarte received three months of compensatory education. Accordingly, the Court finds that Rodarte prevailed in the administrative hearing.

127 F. Supp. 2d at1116-17 (emphasis added).

Thus, the District's reliance on *Rodarte* is puzzling at best. If anything, the case stands for the proposition that a court must look at the ultimate outcome of the case to determine who the prevailing party is. It is undisputed that in the instant case, the Nevada Supreme Court, on appeal from the prior District Court ruling, dismissed the 42 USC § 1983 claim of substantive due process, and we remand for additional findings as to whether the events following the October report demonstrate deliberate indifference. 478 P.3d at 361. It is also undisputed that, on remand made those additional findings and concluded that CCSD had violated Plaintiffs' rights under Title IX, and awarded each plaintiff the sum of $200,000, which was the exact award that was previously made. Obviously, Plaintiffs prevailed on a significant issue. They therefore were the prevailing parties. Since they succeeded post remand, fees accrued for work done during that portion of the case are also available.[3]

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III. Conclusion

For all these reasons, Plaintiffs request that this Honorable Court grant attorney fees and costs in the amounts requested.

Dated this 13th day August 2021

Respectfully submitted by:

[3] Plaintiffs have not requested any fees for work done on the appeal to the Nevada Supreme Court.

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CERTIFICATE OF SERVICE

I hereby certify that I served the following Plaintiffs' Reply to Defendant's Response to Plaintiffs' Motion for Fees and Costs via Court's electronic filing and service system and/or United States Mail and/or e-mail on the 13th day of August 2021, to:

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARY BRYAN, Plaintiff, vs. CLARK COUNTY SCHOOL DISTRICT, Defendant.	)	CASE NO: A-14-700018-C DEPT. XXVII

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BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

WEDNESDAY, AUGUST 18, 2021

TRANSCRIPT OF PROCEEDINGS

RE: MOTIONS

FOR PLAINTIFF:
ALLEN LICHTENSTEIN, ESQ. (Blue Jeans)

FOR DEFENDANT:
BRIAN D. BLAKLEY, ESQ. (Blue Jeans)

RECORDED BY: ANGELICA MICHAUX, COURT RECORDER
TRANSCRIBED BY: KATHERINE MCNALLY, TRANSCRIBER

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LAS VEGAS, CLARK COUNTY, NEVADA

WEDNESDAY, AUGUST 18, 2021 10:48 a.m.

*** * * * ***

MR. BLAKLEY: -- not yet entered a judgment. I don't think it should even take that long. The Court ruling [indiscernible] had entered a judgment, and I suspect it will go longer.

THE COURT: I very often -- whoa, somebody needs -- somebody has two devices open and needs to mute one. Thank you.

All right. So on Bryan versus Clark County School District, I can tell you that I very often reduce fees and costs before the judgment is entered, so the judgment doesn't have to be amended.

Can you still argue the matter in 10 minutes or less?

MR. LICHTENSTEIN: Allen Lichtenstein, for plaintiffs. Yes, Your Honor.

THE COURT: And for the defendant?

MR. BLAKLEY: We can do it, Your Honor.

THE COURT: Okay. All right. It's 10:49.

Please proceed.

MR. LICHTENSTEIN: Again, Allen Lichtenstein for plaintiffs.

At this particular -- I will do it as quickly as

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possible, because the arguments have already been argued.

In 2017, there was an award made after extensive briefing. The case went up to the Nevada Supreme Court. It remanded the case -- well, it dismissed one theory, one claim; but remanded the case for the District Court to create further findings on the question of whether there was deliberate indifference based on the Title 9 claim that's still alive.

The Court did find that there was deliberate indifference. It filed an order on -- well, we don't have to deal with the timing issue right now -- filed an order on the 16th of June, accepting plaintiff's conclusions of law -- the findings of fact had already been stipulated to -- and awarded both plaintiffs the exact same amount that had been ordered back in 2017. Nothing had changed.

The argument made by defendant -- there's well-settled case law from *Hensley*; Ninth Circuit cases, such as *Web* (phonetic) and [indiscernible] and the *Herbst* case in the Nevada Supreme Court, that says if -- even if there are different theories and perhaps different defendants -- and here the defendants were all under the umbrella of the Clark County School District; and the Court, early on in the case, said it's all the school district because it encompasses everybody -- the same facts; and each of these cases, each of these jurisdictions, had well-settled case law that if an award is based on the same set of facts, that then it doesn't

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get reduced as partial success because it is the outcome.

And the outcome was exactly the same. The case came down. The District Court made its decision, and we revived the same attorney fee motion as was accepted before, with the only change is the addition of 4,000-some-odd dollars for briefing in the -- on remand.

So the idea that it's partial success because of different plaintiffs, or that somehow or other the Supreme Court, in knocking out one theory of the case, reduced that success by half is just totally contrary to all case law, specifically, *Hensley*, *Herbst*, and the cases I mentioned.

In the interest of time, I'll let it go at that.

THE COURT: Thank you.

The opposition, please.

MR. BLAKLEY: Yes, Your Honor. Can you hear me all right?

THE COURT: I can.

MR. BLAKLEY: All right. I'm having trouble hearing the Court. I can hear Mr. Lichtenstein.

THE COURT: I can hear you.

MR. BLAKLEY: Okay. Perfect. Now I can hear you. Thank you, Your Honor.

So we've got three issues here -- and it sounds like the Court has made a decision on whether a judgment is entered or -- and that may not be relevant.

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But the first point I want to make is, while they've proposed a $200,000 judgment here, that's not been signed by the Court. They filed it with a notice of entry and said, Hey, look, there's a judgment.

But that judgment hasn't been signed. I'm not sure why they filed a notice of entry. That's still in front of the Court. So I don't even know that we can apply *Hensley* yet to this judgment and determine what their success is, because we don't know what their success is.

The Court may very well sign their $200,000 proposed judgment or it might sign a reduced amount. I don't know. So it's impossible to apply *Hensley*.

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But even looking beyond that, there's two remaining issues: First, consider a request for an upward adjustment from their prior fee award. They went up -- we went up to the Nevada Supreme Court. They lost on both claims. The Supreme Court allowed them to come back here and try to cure one of those lost claims, and it appears the Court intends to rule in their favor.

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Now, they say, Look, we're entitled to fees for that for that curative work we did after losing on appeal.

Well, in their motion, they didn't cite any authority for the proposition they're entitled to those curative fees, those fees for working back down here on remand.

In the opposition, we pointed out -- we said, We can't

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find any authority that would allow it.

If they think there's a legal basis for those fees, they need to cite it in their reply, so the Court has a legal basis to grant such fees. They didn't do it. They didn't cite any case, any authority that says they get fees after losing on an appeal and having to come back and do curative work on remand. So I think that issue, the upward adjustment, is off the table.

And along with that, it's not even clear what upward adjustment they're seeking on -- in certain parts of their brief, it's 4,000; in other parts, it's 6,000. But I don't think any of that really matters, because they're not entitled to any upward adjustment, and they haven't cited any legal authority for the contrary proposition.

So that brings us to the [indiscernible] adjustment fees, this *Hensley* partial success test issue.

Now, the Supreme Court's been absolutely clear that when a plaintiff seeks fees under 1988, as plaintiffs have here, the Court applies *Hensley*, looks at the judgment, and determines whether plaintiffs received an excellent result, or partial or limited success.

Back in 2017, when they won on their two claims against one defendant, and won $200,000 when they initially had sought 1.2 million, the Court found that that judgment supported an award for 470-some-odd thousand dollars.

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Well, that judgment was completely reversed. And now there's going to be a new judgment, it sounds like, and that judgment would supersede the old one. But when the judgment was reversed, it was, at best, cut in half. They lost one claim; they were left with one claim. [Indiscernible] argue on remand. And it sound like they're going to prevail on that one claim at this Court.

So that means they've won one claim against one defendant. That is the absolute bare minimum success someone would win to achieve fees under 1988. You would always have to win at least one claim against one defendant to get fees.

So the question then is whether they have achieved an excellent result, or partial or limited success, and whether their success is more limited and more partial than it was the last time the Court looked at -- when the Court looked at the prior judgment. The Court's going to rule on a new judgment.

The question is whether the success is even more limited or more partial than it was before. And we, of course, submit that it is . In fact, we argue that because their limited -- their prior limited success was, at best, cut in half, making a downward reduction warranted here.

Now, plaintiff's argument seems to be that under the law, the case doctrine, the Court just simply lacks authority to apply *Hensley* to whatever new judgment it issues. And that's wrong for at least two reasons, as a matter of law.

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First, under 1988, the Court always has to apply *Hensley* to its judgment in order to grant a fee award and determine what the fee award would be. And here, this new judgment would supersede the old judgment. So, of course, *Hensley* would have to apply to that. But of course, law of the case doesn't apply here.

Plaintiff's own authority, for example, the *Alexander* case says the law in the case doesn't apply where there's been a change to circumstances. And here the most fundamental circumstance at issue has changed. The prior award was based on one judgment; that judgment was reversed and wiped out. The entire previous award was predicated on that.

Now, we're going to have a new judgment and a new award will be predicated on that, so that's a change of circumstance -- change of a key circumstance. There's no law of the case here.

In short, Your Honor, our position is just real simple. Given that they've already shown limited success on the prior judgment, and that success was cut in half, reduced to the bare minimum success they could achieve here, and additionally downward reduction is warranted under *Hensley*, and we think that's well supported in the briefing. And we think that's exactly how it should come down here.

Thank you so much, Your Honor.

THE COURT: Thank you.

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And the reply, please.

MR. LICHTENSTEIN: Yes. They keep talking about partial success based on claims.

I'm going to read you a sentence [indiscernible] if I could, from *Herbst*, which is: Where plaintiff's claim involve a common core of facts, he is entitled to attorney's fees, even for the work performed on his unsuccessful claims.

The question isn't about claims. If it is -- if all the claims involve a core of facts that are the same, then it doesn't matter the number of claims or the number of parties. Since this was a bench trial, the common core facts were everything that took place during that bench trial, which hopefully the Court will remember, even though it was a while ago.

So the idea that partial success is, well -- and first of all, also, I shouldn't say first of all -- but the Supreme Court didn't [indiscernible] for the Title 9 claim remanded it back for further findings. It did not dismiss it. So the question really comes down to was there a common core of facts? And if so, then it was complete success.

As the Court may or may not recall, in terms of the award, that was left to the discretion of the Court. We never -- in our complaint never asked for any specific amount, so the idea that somehow we only had partial success is just not factual.

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And under *Hensley*, under *Herbst*, under *Floors*, under *Web* -- all of these cases -- if it is a common core of facts, then it doesn't matter whether different theories were accepted or rejected. And that is clear well-established law.

THE COURT: Thank you both.

MR. LICHTENSTEIN: Thank you, Your Honor.

THE COURT: This is the plaintiff's motion for fees and costs. I've reviewed all of the briefs, including the memorandum of costs.

The motion will be granted. I will not make any adjustment to the prior fee award, but I do find that the plaintiff prevailed as the prevailing party and is entitled to both fees and costs, because by prevailing on one cause of action in this case, it required the same amount of discovery and evidence to prove the case as if -- even though they pursued more than one cause of action.

The memorandum of costs was properly supported. I looked at the hourly rates. They were reasonable, based upon the skill of the attorneys, the time spent, and then, of course, the result of the case.

So for that reason, it will be granted.

Mr. Lichtenstein, you are directed to prepare on order from today's hearing. You'll make sure that your opposing counsel has the ability to review and approve of that. And upon entry of that, I expect a judgment to be presented.

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MR. LICHTENSTEIN: Just for clarification, Your Honor, the proposed order would be for the entire decision, both on the merits and on the attorney fee claim?

THE COURT: That is correct.

Any other questions?

MR. BLAKLEY: Your Honor, I didn't hear what the Court just said. The microphone cut out.

THE COURT: I said that is correct.

MR. BLAKLEY: Okay.

MR. LICHTENSTEIN: All right. Thank you, Your Honor.

THE COURT: Thank you. Thank you, both. Stay safe and healthy, guys.

MR. BLAKLEY: Thank you, Your Honor.

[Proceeding adjourned at 11:01 a.m.]

* * * * *

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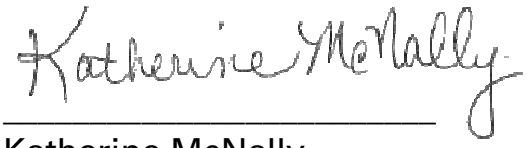
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Katherine McNally
Independent Transcriber CERT**D-323
AZ-Accurate Transcription Service, LLC

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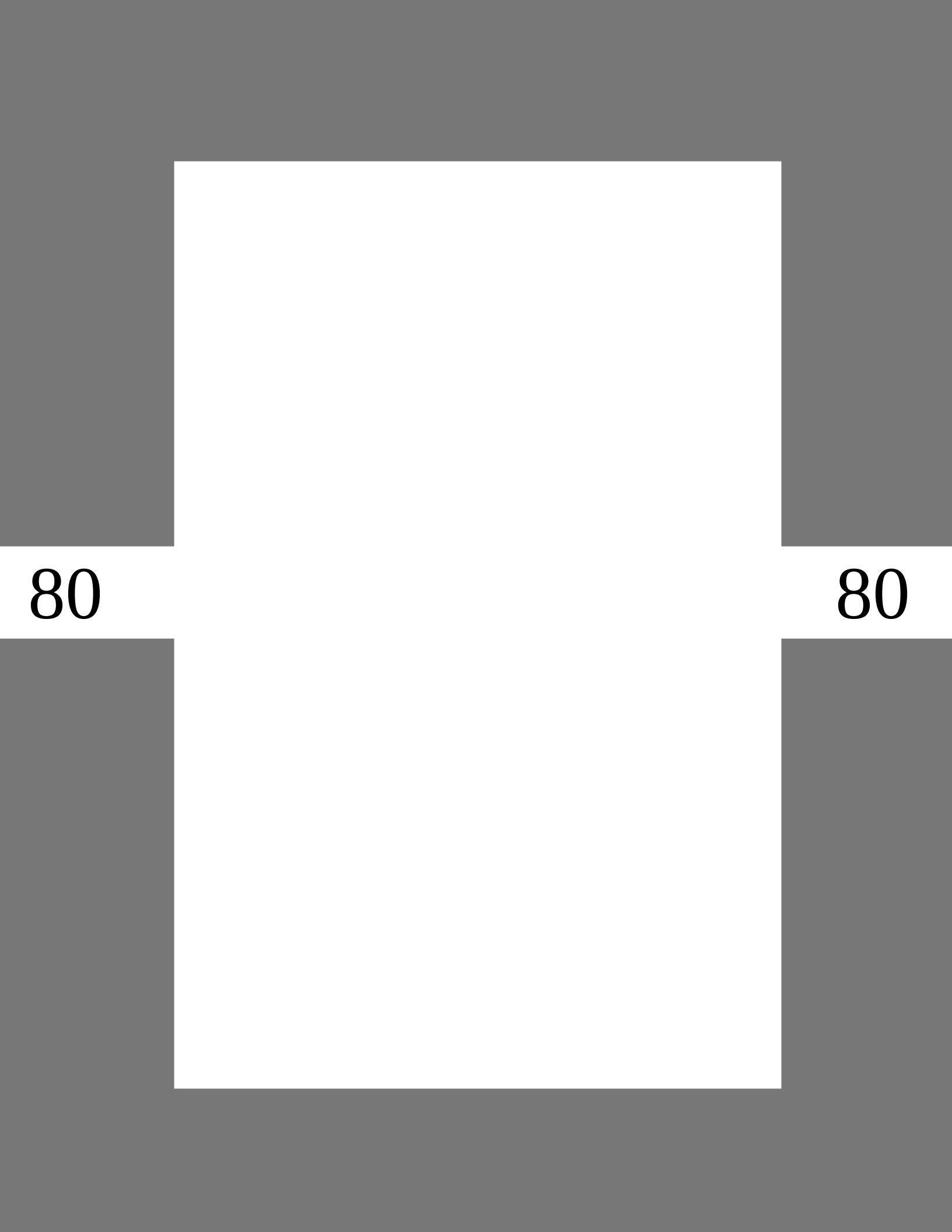
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CLERK OF THE COURT

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Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan, Aimee Hairr and Nolan Hairr

DISTRICT COURT

CLARK COUNTY, NEVADA

MARY BRYAN, mother of ETHAN BRYAN; AIMEE HAIRR, mother of NOLAN HAIRR,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT (CCSD),

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

ORDER AND JUDGMENT

It is hereby ordered that Plaintiffs, Ethan Bryan and Nolan Hairr, having prevailed on their claim that Defendant violated their civil rights pursuant to 20 USC § 1681-1688 (Title IX, of the Education Amendments of 1972). Each Plaintiff is awarded damages in the amount of $200,000 In addition the Court also awards Plaintiffs attorney fees and costs in the amount of $470,418.75.

Dated this 13 day of September 2021

IT IS SO ORDERED
Dated this 13th day of September, 2021

Nancy L Allf
District Court Judge TW

EAB 501 96E2 2189
Nancy Allf
District Court Judge

Case Number: A-14-700018-C

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Respectfully submitted by:

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Approved as to form by:

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Attorney for CCSD

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Mary Bryan, Plaintiff(s) vs. Clark County School District, et al, Defendant(s)	CASE NO: A-14-700018-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR, Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT (CCSD Defendant .	Case No. A-14-700018-C Dept. No. XXVII **NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY GIVEN that an Order was entered on September 13, 2021 stating that Plaintiffs, Ethan Bryan and Nolan Hairr, having prevailed on their claim that Defendant violated their civil rights pursuant to 20 USC § 1681-1688 (Title IX of the Education Amendments of 1972), are each awarded damages in the amount of $200,000 and attorney fees and costs in the amount of $470,418.75.

Dated this 14th day of September 2021

Respectfully submitted by:

/s/Allen Lichtenstein

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2021, I served the foregoing Notice of Entry of Order on all parties via the Court's electronic filing and service system.

Allen Lichtenstein

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Steven D. Grierson
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DISTRICT COURT
CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR, Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT, Defendant.	Case No. A-14-700018-C Dept. No. XXVII **NOTICE OF APPEAL**

002815

Please take notice that defendant Clark County School District hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;

2. "Order and Judgment," filed on September 13, 2021, notice of entry of which was served electronically on September 14, 2021 (Exhibit A); and

3. All rulings and interlocutory orders made appealable by any of the foregoing.

Dated this 17th day of September, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Abraham G. Smith*
DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
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Attorneys for Defendant

002815

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on this day, I caused a true and correct copy of the foregoing "***Notice of Appeal***" to be filed and served via the Court's E-Filing System, which will cause an electronic copy to be served on all interested parties.

Dated this 17th day of September, 2021.

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

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EXHIBIT A

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EXHIBIT A

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Attorneys for Plaintiffs, Ethan Bryan, and Nolan Hairr

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR, Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT (CCSD Defendant .	Case No. A-14-700018-C Dept. No. XXVII **NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY GIVEN that an Order was entered on September 13, 2021 stating that Plaintiffs, Ethan Bryan and Nolan Hairr, having prevailed on their claim that Defendant violated their civil rights pursuant to 20 USC § 1681-1688 (Title IX of the Education Amendments of 1972), are each awarded damages in the amount of $200,000 and attorney fees and costs in the amount of $470,418.75.

Dated this 14th day of September 2021

Respectfully submitted by:

/s/Allen Lichtenstein

002818

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2021, I served the foregoing Notice of Entry of Order on all parties via the Court's electronic filing and service system.

Allen Lichtenstein

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Attorneys for Plaintiffs, Mary Bryan, Ethan Bryan, Aimee Hairr and Nolan Hairr

DISTRICT COURT

CLARK COUNTY, NEVADA

MARY BRYAN, mother of ETHAN BRYAN; AIMEE HAIRR, mother of NOLAN HAIRR,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT (CCSD),

Defendant .

Case No. A-14-700018-C

Dept. No. XXVII

ORDER AND JUDGMENT

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It is hereby ordered that Plaintiffs, Ethan Bryan and Nolan Hairr, having prevailed on their claim that Defendant violated their civil rights pursuant to 20 USC § 1681-1688 (Title IX, of the Education Amendments of 1972). Each Plaintiff is awarded damages in the amount of $200,000 In addition the Court also awards Plaintiffs attorney fees and costs in the amount of $470,418.75.

IT IS SO ORDERED

Dated this 13 day of September 2021

Dated this 13th day of September, 2021

Nancy L Allf
District Court Judge

TW

EAB 501 96E2 2189
Nancy Allf
District Court Judge

Respectfully submitted by:

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Approved as to form by:

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Attorney for CCSD

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DISTRICT COURT
CLARK COUNTY, NEVADA

Mary Bryan, Plaintiff(s)	CASE NO: A-14-700018-C
vs.	DEPT. NO. Department 27
Clark County School District, et al, Defendant(s)	

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Attorneys for Defendant Clark County School District (CCSD)

DISTRICT COURT
CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR, Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT, Defendant.	Case No. A-14-700018-C Dept. No. XXVII **CASE APPEAL STATEMENT**

1. Name of appellants filing this case appeal statement:

Defendant Clark County School District

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Nancy L. Allf

3. Identify each appellant and the name and address of counsel for each appellant:

Attorneys for Appellant Clark County School District

Daniel F. Polsenberg
Dan R. Waite
Brian D. Blakley
Abraham G. Smith
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Attorneys for Respondents Ethan Bryan and Nolan Hairr

Allen Lichtenstein
ALLEN LICHTENSTEIN, LTD.
3315 Russell Road, No. 222
Las Vegas, Nevada 89120
(702) 433-2666

John Houston Scott
SCOTT LAW FIRM
1388 Sutter Street, Suite 715
San Francisco, California 94109
(415) 561-9601

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

John Houston Scott is not licensed to practice in Nevada. A copy of the minute order granting him permission to appear is attached hereto as Exhibit A.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court, *e.g.*, date complaint, indictment, information, or petition was filed:

"Complaint," filed April 29, 2014

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This action arises under Title IX and 42 U.S.C. § 1983, based on allegations that two junior high school students bullied plaintiffs on the basis of sex. After a bench trial, the district court entered a decision in favor of plaintiffs, ruling that CCSD violated Title IX and that plaintiffs' substantive due process rights guaranteed by the Fourteenth Amendment were violated. Defendant appealed from the decision and judgment and the subsequent attorneys' fees award. *See* Docket Nos. 73856 and 74566.

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The Supreme Court entered its published opinion reversing the district court's decision on both claims and remanding for additional findings on the Title IX claim. Following remand, the district court again awarded each plaintiff damages in the amount of $200,000 and attorney fees and costs in the amount of $470,418.75. Defendant appeals.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

Clark Cty. School Dist. v. Bryan,
Consolidated Case Nos. 73856 and 74566

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Undersigned counsel is not aware of any circumstances that make settlement impossible, but given the long history of the case, recognizes it may be unlikely.

Dated this 17th day of September, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Abraham G. Smith*
DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
BRIAN D. BLAKLEY (SBN 13074)
ABRAHAM G. SMITH (SBN 13250)
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Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Defendant

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002826

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on this day, I caused a true and correct copy of the foregoing "***Case Appeal Statement***" to be filed and served via the Court's E-Filing System, which will cause an electronic copy to be served on all interested parties.

Dated this 17th day of September, 2021.

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

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EXHIBIT A

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EXHIBIT A

A-14-700018-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	July 07, 2015

A-14-700018-C Mary Bryan, Plaintiff(s)
vs.
Clark County School District, et al, Defendant(s)

July 07, 2015 **3:00 AM** **Motion to Associate Counsel**

HEARD BY: Allf, Nancy **COURTROOM:**

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

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PARTIES PRESENT:

002829

JOURNAL ENTRIES

- COURT FINDS after review that Plaintiffs Mary Bryan and Aimee Hairr filed a Motion to Associate Counsel, John H. Scott, Esq. on June 4, 2015, with a hearing set for Chambers Calendar on July 7, 2015. COURT FURTHER FINDS after review the Motion is in compliance with SCR 42 and no opposition has been filed.

COURT ORDERS for good cause appearing and pursuant to EDCR 2.20 (e), failure to file an opposition may be construed as an admission that the motion is meritorious and a consent to granting the same, Plaintiffs Motion to Associate Counsel GRANTED; Hearing on CHAMBERS CALENDAR on July 7, 2015 is VACATED; Movant to prepare the appropriate Order.

CLERK'S NOTE: A copy of this minute order was faxed to: Allen Lichtenstein (702-433-9591) and Dan R. Waite, Esq. (702-949-8398)

002829

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Attorneys for Defendant Clark County School District (CCSD)

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR, Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT (CCSD) Defendant.	Case No. A-14-700018-C Dept. No. 27 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO STAY EXECUTION PENDING APPEAL**

NOTICE IS HEREBY GIVEN that an Order was entered on October 18, 2021, the parties having stipulated to a stay of execution of the judgment and the collateral awards of costs and attorney fees—without a supersedeas bond—pending the final resolution of the second appeal. A copy of said Order is attached hereto.

DATED this 20th day of October, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Brian D. Blakley*
DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
BRIAN D. BLAKLEY (SBN 13074)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, Nevada 89169
Attorneys for Defendant CCSD

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on this day, I caused a true and correct copy of "***Notice of Entry of Stipulation and Order to Stay Execution Pending Appeal"*** to be filed and served via the Court's E-Filing System, which will cause an electronic copy to be served on all interested parties.

Dated this 20th day of October, 2021.

/s/ Annette Jaramillo
An Employee of Lewis Roca
Rothgerber Christie LLP

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CLERK OF THE COURT

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Attorneys for Defendant Clark County School District (CCSD)

DISTRICT COURT

CLARK COUNTY, NEVADA

ETHAN BRYAN; and NOLAN HAIRR, Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT (CCSD) Defendant.	Case No. A-14-700018-C Dept. No. 27 **STIPULATION AND ORDER TO STAY EXECUTION PENDING APPEAL**

Plaintiffs Ethan Bryan and Nolan Hairr and Defendant Clark County School District (CCSD) hereby stipulate as follows:

CCSD has now filed its second notice of appeal in this action. During the first appeal, this Court entered a stay of execution, without requiring a supersedeas bond. (Order, Nov. 7, 2017). Now, the parties stipulate to the entry of the same stay for the second appeal. Specifically, and to avoid the expense of briefing the stay issue again, the parties stipulate to a stay of execution of the judgment and the collateral awards of costs and attorney fees—without a supersedeas bond—pending the final resolution of the second appeal.

SO STIPULATED:

Dated this 14th day of October, 2021.

ALLEN LICHTENSTEIN ATTORNEY AT LAW, LTD.

By: /s/ *Allen Lichtenstein*
ALLEN LICHTENSTEIN (SBN 3992)
3315 Russell Road, No. 222
Las Vegas, Nevada 89120
Attorney for Plaintiffs

JOHN HOUSTON SCOTT
SCOTT LAW FIRM
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San Francisco, CA 94109
john@scottlawfirm.net
(Admitted Pro Hac Vice)
Attorney for Plaintiffs

Dated this 14th day of October, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ *Brian D. Blakley*
DANIEL F. POLSENBERG (SBN 2376)
DAN R. WAITE (SBN 4078)
BRIAN D. BLAKLEY (SBN 13074)
3993 Howard Hughes Pkwy,
Suite 600
Las Vegas, Nevada 89169

Attorneys for Defendant CCSD

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ORDER

Based upon the foregoing stipulation, and for good cause, the Court hereby stays execution of the judgment and the collateral awards of costs and attorney fees—without a supersedeas bond—pending the final resolution of the second appeal.

October 18, 2021

Dated this 18th day of October, 2021

Nancy L Allf

TW

C29 233 E82D 4371
Nancy Allf
District Court Judge

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ *Brian D. Blakley*
DANIEL F. POLSENBERG (SBN 2376)
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Las Vegas, Nevada 89169

Attorneys for Defendant CCSD

Jaramillo, Annette

From: Blakley, Brian
Sent: Thursday, October 14, 2021 8:24 PM
To: Jaramillo, Annette
Cc: Polsenberg, Daniel F.; Waite, Dan R.
Subject: FW: CCSD – stipulation to stay pending appeal
Attachments: SAO to stay appeal.NRL

Follow Up Flag: Follow up
Flag Status: Flagged

Annette,
Allen has authorized us to affix his signature to the attached SAO (see below).

Thanks for all you do.

Best,
Brian

Brian D. Blakley
LEWIS ROCA
bblakley@lewisroca.com
Direct: 702.474.2687

3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996

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From: Blakley, Brian <BBlakley@lewisroca.com>
Sent: Thursday, October 14, 2021 2:20 PM
To: allaw@lvcoxmail.com; Waite, Dan R. <DWaite@lewisroca.com>; Polsenberg, Daniel F. <DPolsenberg@lewisroca.com>; Jaramillo, Annette <AJaramillo@lewisroca.com>
Subject: Re: CCSD – stipulation to stay pending appeal

Thanks, Allen. Will do.

Best,
Brian

Brian D. Blakley, Esq.
bblakley@lewisroca.com
Direct: 702.474.2687

On Oct 14, 2021, at 1:03 PM, allaw@lvcoxmail.com wrote:

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[EXTERNAL]

You can sign for me.

On 10/13/2021 12:42 PM Blakley, Brian <bblakley@lewisroca.com> wrote:

Allen,

As promised, I've attached a draft of the stipulation (re: the stay pending appeal) that we discussed when we last spoke. Please let me know if I have your permission to affix your electronic signature and file.

Thanks,

Brian

Brian D. Blakley
<image001.png>
bblakley@lewisroca.com
Direct: 702.474.2687

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Las Vegas, Nevada 89169-5996

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DISTRICT COURT
CLARK COUNTY, NEVADA

Mary Bryan, Plaintiff(s) vs. Clark County School District, et al, Defendant(s)	CASE NO: A-14-700018-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Stipulation and Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/18/2021

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