

IN THE SUPREME COURT OF NEVADA

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

Petitioners,

vs.

The Eighth Judicial District Court of
the State of Nevada, in and for the
County of Clark, and The Honorable,
District Judge Carli Kierny

Respondents,

and

A CAB TAXI SERVICE LLC, A CAB
SERIES LLC formerly known as A
CAB, LLC, and CREIGHTON J.
NADY,

Real Parties in Interest

Sup. Ct. No.

Dist. Ct No.: A-12-069926-C

Dept.: 2

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PETITION FOR WRIT OF MANDAMUS

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NRAP RULE 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that all Petitioners are individuals and not entities as described in NRAP 26.1(a), and do not need to be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Date: March 29, 2022

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ROUTING STATEMENT PER NRAP RULES 17 AND 21(a)(3)(A)

Unless the Court determines NRAP Rule 17(a)10 or (a)11 applies this Petition is not a matter the Nevada Supreme Court shall hear and decide under NRAP Rule 17(a). It is not one of the NRAP Rule 17(b) matters that the Nevada Court of Appeals is presumptively assigned to hear and determine.

RELIEF REQUESTED BY PETITIONERS

Petitioners Michael Murray and Michael Reno, on behalf of a class of others similarly situated (the “Taxi Drivers”), petition this Court to issue a Writ directing District Court Judge Carli Kierny, or such other District Judge of the Eighth Judicial District Court to whom this case may be assigned, to (1) Terminate the stay of district court proceedings ordered on March, 9, 2022, in *Murray v. A Cab*, Eighth Judicial District Court, A-12- 669926-C (“*Murray*”); (2) Modify the final judgment of the district court entered on August 21, 2018, as directed by this Court’s Order of December 30, 2021; (3) Consider, on the merits, the Taxi Drivers’ request for the appointment of a post-judgment receiver, as directed by this Court’s Order of February 17, 2022; and (4) Promptly act to appropriately enforce the district court’s final judgment.

The Taxi Drivers also request, particularly if District Judge Kierny is to continue to preside over the *Murray* case, that this Court include in its Writ

detailed instructions, proposed *infra*, to effectuate the foregoing purposes.

Dated: March 29, 2022

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INTRODUCTION

Petitioners seek to enforce the final judgment of the district court in *Murray v. A Cab*, Eighth Judicial District Court, A-12- 669926-C (“*Murray*”), entered on August 21, 2018, as affirmed by this Court on December 30, 2021, and remanded on February 4, 2022. That judgment is in excess of \$832,000 with post-judgment interest for unpaid minimum wages dating to 2010 owed to 631 taxicab drivers by judgment-debtor (real party in interest) A Cab Series LLC (“A Cab”). PA 688-92, 1245, 1281-97.¹ District Court Judge Carli Kierny has twice abused her discretion by prohibiting enforcement of that judgment, by ignoring this Court’s remittitur, and by refusing to consider the Taxi Drivers’ request for judgment enforcement. Judge Kierny’s history of abusing her discretion in *Murray* and failing to comply with this Court’s orders requires writ relief from this Court. That relief, if Judge Kierny is to continue to preside over *Murray*, should include detailed instructions.

The abuse of discretion, necessitating the filing of this petition, occurred on

¹ PA refers to the pages of Petitioners’ Appendix.

March 9, 2022, when Judge Kierny granted A Cab's request for a stay of proceedings in the district court. PA 1080-1207, 1276-77. A Cab asserted another appeal to this Court, *Dubric v. A Cab*, Case No. 83492, concerning a 2021 district court final judgment in a different case against A Cab for unpaid minimum wages, could alter the 2018 *Murray* final judgment. PA 1082. *Dubric* indisputably lacks subject matter jurisdiction to alter the earlier entered *Murray* final judgment. PA 1- 66, 1221-1230. The *Murray* final judgment can only be modified by an appeal to this Court, that appeal was heard, and this Court affirmed such final judgment, as modified, remanding *Murray* to the district court on February 4, 2022, for further proceedings. PA 332-365. Judge Kierny, ignoring that it was impossible for *Dubric* to alter the *Murray* final judgment, and in violation of this Court's remand instructions, stayed all proceedings until the *Dubric* appeal is concluded. PA 1276-77. Judge Kierny also refused to require A Cab to post any bond while that stay was in effect. PA 1277.

Judge Kierny had previously abused her discretion by refusing, in her order of February 22, 2021, to rule on the merits of the Taxi Drivers' request for the appointment of a receiver to enforce the *Murray* judgment, finding that request was previously denied. PA 326-331. This Court, in its Order of February 17, 2022, Case No. 82539, found Judge Kierny abused her discretion by not addressing that request on the merits and ordered her to do so. PA 802-805. It also found Judge

Kierny's findings were contrary to its prior ruling:

Notably, the district court's finding that appellants' prior request for a receiver had been denied squarely conflicts with this court's prior order concluding that the district court had *not* denied appellants' request. *See, Murray v. A Cab Taxi Serv., LLC*, No. 81641, 2020 WL 6585946 at *2 (Nev. Nov. 9, 2020)(Order Dismissing Appeal). (emphasis in original). Case No. 82539, Order of February 17, 2022, fn 3. PA 803.

Judge Kierny was advised prior to issuing the February 22, 2021, order, of this Court's November 9, 2020, Order, finding that a request for a receiver had not been previously denied. PA 81-82, 185-189. Ignoring this Court's order, Judge Kierny proceeded to find, as urged by A Cab, that such a receiver request had been denied and on that basis refused to consider the request for a receiver on the merits. PA 201-212, 326-331.

This is the second time this Court must intervene to correct Judge Kierny's failure to comply with its rulings in this case. In each instance Judge Kierny, without explanation, contrary to the facts and law, and in an abuse of discretion, granted A Cab's requests, ignored this Court's orders, and prevented collection of the Taxi Drivers' judgment. Given that history, the Court should do more than just reverse Judge Kierny's March 9, 2022, stay order.

To spare itself from having to correct Judge Kierny's abuse of discretion in the future, this Court, if it does not direct a transfer of this case in the district court, should issue detailed instructions to Judge Kierny on complying with its prior

orders. Otherwise Judge Kierny is likely to adopt further baseless arguments from A Cab (it has already made several) and, again, obstruct collection of the Taxi Drivers' judgment until this Court, again, intervenes.

STATEMENT OF FACTS

Synopsis - Circumstance Causing the Filing of this Petition

On August 21, 2018, the *Murray* final judgment was entered in favor of the Taxi Drivers and against A Cab LLC (later amended to reflect its changed name, A Cab Series LLC) for over \$1,000,000. PA 1-66. On December 30, 2021, this Court resolved A Cab's appeal of the final judgment. PA 332-365. It set aside the judgement's award of unpaid minimum wages for the period prior to October 8, 2010, and otherwise affirmed it. PA 343-45, 363-64. That resulted in A Cab, with post-judgment interest, owing over \$832,000 in unpaid minimum wages to 631 Taxi Drivers. PA 688-92, 1245, 1281-97. This Court also directed reconsideration of a post-judgment award of the Taxi Drivers' attorney's fees in light of that disallowance. PA 355, 363. This Court's remittitur was issued on February 4, 2022, with instructions to conduct further proceedings. PA 366-67.

On March 9, 2022, District Judge Carli L. Kierny ordered a stay of all proceedings at the request of A Cab. PA 1080-1207, 1276-77.² Judge Kierny

² This Order is in the hearing transcript. PA 1265-79. While Judge Kierny directed A Cab to prepare and present an Order for her signature it has yet to do so in violation of EDCR Rule 7.21.

found, as urged by A Cab, that a pending appeal of a later entered final judgment in another lawsuit against A Cab, *Dubric v. A Cab*, Eighth Judicial District Court A-15-721063-C, Final Judgment of August 31, 2021, Supreme Court No. 83492, would impact the final judgment in *Murray*.³ PA 1276-77. Judge Kierny found such a stay was in the public interest and A Cab need not post any bond beyond the \$100,000 it posted during the pendency of its prior appeal of the final judgment. *Id.*

Detailed Statement of Facts - All Proceedings Germane to the Petition

Judge Kierny's Abuse of Discretion in Denying a Receiver

On December 30, 2020, the Taxi Drivers moved to appoint a receiver to aid in judgment collection since A Cab had not posted a *supersedeas* bond under NRCP Rule 62 (d)(1).⁴ PA 74-200. Alternatively, they requested an order transferring A Cab's property to the Sheriff for a judgment execution sale. PA 83-84. A Cab opposed that motion, claiming a district court judge had previously denied the appointment of a receiver and no basis existed to re-hear such denial. PA 201-212.

³ Briefing in the *Dubric* appeal is underway with the answering brief by A Cab due on April 4, 2022, pursuant to an NRAP 31(a)(1) 30 day extension of time.

⁴ Pursuant to the prior district court judge's order of July 17, 2020, A Cab deposited \$100,000 in security. PA 67-73. That order appointed a special master to report on using A Cab's future profits as additional security. PA 72. That special master died in 2020, that report was never furnished, and A Cab has not provided any additional security. PA 76-77, 167-68.

Judge Kierny was advised A Cab’s argument a prior decision had denied a receiver was incorrect. PA 81-82. That prior decision was the subject of a previous appeal and the November 9, 2020, order of this Court finding such decision *did not* deny the appointment of a receiver. PA 185-89. Judge Kierny, ignoring that advisement and this Court’s order, adopted A Cab’s argument, and issued an order on February 22, 2021, denying the receiver request because it had been previously denied and no basis existed to rehear it. PA 326-331. Judge Kierny also denied the Taxi Drivers’ alternative request to enforce the judgment through a seizure and sale of A Cab’s property. *Id.* The Taxi Drivers appealed. This Court, in its Order of February 17, 2022, Case No. 82539, reversed Judge Kierny, found she had abused her discretion, and ordered the receiver request be considered on the merits. PA 802-805. It also found Judge Kierny’s holding that the receiver request had previously been denied “...squarely conflicts with this court’s prior order concluding that the district court had *not* denied appellants’ request [for a receiver].” PA 803.

Judge Kierny’s Abuse of Discretion in Staying Judgment Enforcement and Refusing to Comply with this Court’s Remittitur.

On December 30, 2021, this Court resolved the *Murray* final judgment appeal. PA 332-365. It modified that final judgment by disallowing the award of unpaid minimum wages for the period prior to October 8, 2010, affirmed it in all other respects, and remanded for further consistent proceedings. PA 343-45, 363-64. It

also directed reconsideration of the Taxi Drivers's separate post-judgment award of attorney's fees in light of that disallowance. PA 355, 363. The *Murray* judgment, as so modified, imposed a liability upon A Cab, with post-judgment interest, for over \$832,000 in unpaid minimum wages owed to 631 Taxi Drivers. PA 688-92, 1245, 1281-97.

After this Court's remittitur of February 4, 2022, the Taxi Drivers sought to conduct the further proceedings directed by this Court. They filed motions to conform the final judgment to this Court's modification and to award the Taxi Drivers their pre-judgment attorney's fees and appellate attorney's fees. PA 579-801. A Cab filed a motion seeking a declaration it did not owe any previously awarded unpaid minimum wages for the period after June 26, 2014, a total of \$211.72, that had been incorporated into the *Murray* final judgment of August 21, 2018. PA 368-372. It made that request despite this Court fully affirming the final judgment's award for the entire 2013 through 2015 time period. PA 346.

On February 28, 2022, A Cab filed its opposition to the Taxi Drivers' motion to have the *Murray* final judgment conform to this Court's modification. PA 806-1079. It claimed the district court could not order the final judgment, as directed by this Court, conform to the amounts already calculated to be due prior to its entry on August 21, 2018, minus the amounts included at that time for the period prior to October 8, 2010. *Id.* It insisted many other things had to be done before the

district court could enter a “new judgment.” It asserted (1) A class action “decertification” order was needed, along with a notice distributed to all class members advising them of the “decertification” of all class claims prior to October 8, 2010 and after June 26, 2014, PA 811-13; (2) An appeal of a later final judgment entered in another lawsuit against A Cab, *Dubric v. A Cab*, Eighth Judicial District Court A-15-721063-C, Final Judgment of August 31, 2021, Supreme Court No. 83492, first needed to be resolved since it would impact the *Murray* final judgment, PA 809-11; (3) A United States Department of Labor settlement of unpaid minimum wages needed to be accounted for, as it entitled A Cab to an offset that the Taxi Drivers “do not account for.” PA 813-14. It made that assertion despite the *Murray* final judgment of August 21, 2018, having already fully provided for that offset in its calculations. PA 29-30; (4) The United States Department of Labor had demonstrated there are 243 claimants that it was “unable to locate” who are “ghost claimants” that the Taxi Drivers are improperly claiming are entitled to unpaid minimum wages under the judgment, *Id.*; and (5) This Court’s “remand for a determination as to the appropriate defendant must first be complied with before any entry of a judgment.” PA 814. A Cab insisted, citing to nothing in this Court’s Opinion, that “the reversal and remand” this Court issued “specifically stated that a determination had to be made as to which entity existed at the time and bears liability for any damages that are determined.” *Id.* A Cab

also presented unexplained (except for one class member with a duplicate listing) tables referencing 12 class members it claimed had calculation errors in the judgment as entered on August 21, 2018. PA 1071-73.⁵

On February 28, 2022, Judge Kierny signed an OST to hear on March 9, 2022, A Cab's motion to stay all proceedings. PA 1081. That motion asserted A Cab would suffer "irreparable harm" if the *Murray* judgment was enforced during the pendency of the *Dubric* appeal. PA 1086-87.

The Taxi Drivers, opposing A Cab's stay request, advised Judge Kierny the *Dubric* final judgment, being entered after the *Murray* final judgment, lacked subject matter jurisdiction and could not modify the *Murray* final judgment as affirmed by this Court. PA 1208-1249. They advised Judge Kierny this Court, when resolving writ proceedings in *Dubric* in 2018, found the *Murray* judgment was a final resolution of claims that could not be affected by future proceedings in *Dubric*. PA 1232-33. They also advised Judge Kierny this Court, in its February 3, 2022, Order in the *Murray* final judgment appeal, confirmed, contrary to A

⁵ A Cab did not identify any errors in the Taxi Drivers' calculations of how the *Murray* final judgment was modified by this Court. PA 688-713. There is a single error in those calculations: an award of \$883.88 to Murray Michael P. and Murray MichaelP, the same person, is listed twice owing to a typographical error in A Cab's records. PA 1280-82. The Taxi Drivers were going to correct that error (it was in the judgment as entered on August 21, 2018, and never raised in A Cab's appeal) but the district court stayed proceedings before that could be done. That correction is placed in the record of this Petition at PA 1280-97.

Cab's insistence, that there was no "new judgment" to be entered. PA 1236-37.

There was only a judgment, as modified by this Court, that has continuously existed since its original entry on August 21, 2018. PA 1237. Such circumstances, and rulings by this Court, indisputably established to Judge Kierny (if she needed further proof) that *Dubric* lacked subject matter jurisdiction over the claims adjudicated into the *Murray* final judgment and nothing transpiring in *Dubric* could impact that judgment.

A Cab offered no explanation to Judge Kierny of how the *Dubric* final judgment, and appeal, could impact the *Murray* final judgment. It argued the Taxi Drivers, by intervening in *Dubric* and appealing that final judgment, conceded the *Dubric* final judgment could impact the *Murray* final judgment. PA 1083-84. As the Taxi Drivers explained to Judge Kierny, that was untrue. PA 1211-12. Their intervention and appeal in *Dubric* was necessary because *Dubric* was purporting to release the Taxi Drivers' claims that were *not* against A Cab and thus arguably *not* resolved by the *Murray* final judgment. *Id.*

Judge Kierny, without explaining how the *Dubric* final judgment and appeal could impact the *Murray* final judgment, granted A Cab's motion to stay all proceedings. PA 1080-1207, 1276-77. She also denied the Taxi Drivers' request that A Cab post a bond for the full amount of the *Murray* final judgment during that stay. PA 1277.

STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT

I. The petitioners hold a final judgment against A Cab not subject to further appeal or modification; denying them writ relief would violate their rights and cause irreparable harm.

A. No appeal of Judge Kierny's order staying post-judgment proceedings is authorized by NRAP 3(b) or this Court's jurisprudence.

Petitioners do not believe the March 9, 2022, stay order is an NRAP 3(b) appealable determination. This Court indicated in a prior decision in this case, and in another recent decision, that an order denying, granting, or staying, judgment enforcement does not qualify as an NRAP 3(b)(8) “special order entered after final judgment” from which an appeal lies. *See, Zandian v. Margolin*, No. 82559, Feb. 16, 2022, 2022 WL 483195 (Nev. Sup. Ct. 2022) (Order enforcing judgment does not affect right “growing out of the judgment previously entered” and is not appealable), quoting and citing *Gumm v. Mainor*, 59 P.3d 1220, 1221 (Nev. Sup. Ct. 2002) and citing *Murray v. A Cab Taxi Serv. LLC*, No. 81641, Nov. 9, 2020, 2020 WL 6585946 (Nev. Sup. Ct. 2020).

B. A writ of mandamus is needed to correct Judge Kierny's manifest abuse of discretion as petitioners have no plain, adequate or speedy remedy in the ordinary course.

This Court will issue a writ of mandamus to compel a required duty of a public official or “to control a manifest abuse or an arbitrary or capricious exercise of discretion.” *PetSmart Inc. v. Eighth Jud. Dist. Ct.*, 499 P.3d 1182, 1186 (Nev.

Sup. Ct. 2021), citing and quoting *Cole H. v. Eighth Jud. Dist. Ct.*, 175 P.3d 906, 907-08 (Nev. Sup. Ct. 2008). Mandamus relief is only appropriate when there is “no plain, speedy and adequate remedy in the ordinary course of law.” *Id.*, citing *Cole H.*, 175 P.3d at 908, and NRS 34.170.

1. The Taxi Drivers’ judgment against A Cab is not subject to further modification based on the *Dubric* proceedings or for any other reason; Judge Kierny manifestly abused her discretion by issuing the stay.

Judge Kierny, in granting A Cab’s motion to stay all proceedings in *Murray* pending the resolution of the *Dubric* appeal, stated “I do find that based on the arguments today the *Dubric* decision will affect the new judgment in this case.” PA 1276. Judge Kierny offered no reason for that finding and it is contrary to law.

A final judgment in a case from a court with subject matter jurisdiction over the parties and their dispute fully and forever resolves that dispute. No argument was raised to Judge Kierny that the *Murray* final judgment against A Cab was void for lack of subject matter jurisdiction. That judgment was affirmed on appeal, as modified, by this Court. This Court has twice confirmed that such judgment, as of its original entry on August 21, 2018, was a final resolution of the Taxi Drivers’ minimum wage claims against A Cab. PA 1232-33, 1236-37. This Court, in discharging a prior writ proceeding in *Dubric*, held proceedings in *Dubric* after

August 21, 2018, would not impact the Taxi Drivers' rights against A Cab under the *Murray* final judgment. PA 1232-33. The only things that could modify that judgment was its satisfaction by a payment approved in *Murray*,⁶ its discharge in bankruptcy, its expiration from the passage of time, or an appeal to this Court. That appeal was resolved on December 30, 2021, and the *Murray* final judgment was affirmed, as modified, by this Court.

Subject matter jurisdiction was exercised by *Murray* over the Taxi Drivers' minimum wage claims against A Cab and *Murray* entered a final judgment fully resolving those claims on August 21, 2018. PA 1-66. After that date *Dubric* could not adjudicate those claims or alter that final judgment. *See, Lemkuil v. Lemkuil*, 551 P.2d 427, 429 (Nev. Sup. Ct. 1976) *citing, Metcalfe v. District Court*, 51 Nev. 253, 274 P. 5 (1929); *Greene v. Eighth Jud. Dist. Ct.*, 900 P.2d 184, 186 (Nev. Sup. Ct. 1999); *SFPP L.P. v. Second Jud. Dist. Ct.*, 173 P.3d 715, 717 (Nev. Sup. Ct. 2007) and other Nevada cases. Those cases all confirm it was impossible, as a matter of law, for *Dubric*, after August 21, 2018, to obtain subject matter jurisdiction over the Taxi Drivers' minimum wage claims against A Cab or alter the liability imposed on A Cab by the *Murray* final judgment. The *Dubric*

⁶ The *Murray* final judgment was for hundreds of class member judgment-creditor taxi drivers. To prevent overreaching by A Cab, and any potential unfairness to the class members, it bars A Cab from securing satisfactions of its judgment obligations to those class members without approval from the district court in *Murray*. PA 35-36.

final judgment, entered on August 31, 2021, PA 1221-1330, was *void ab initio*, in respect to the same. *See, State Indus. Ins. System v. Sleeper*, 679 P.2d 1273, 1274 (Nev. Sup. Ct. 1984) (“There can be no dispute that lack of subject matter jurisdiction renders a judgment void.”).

Judge Kierny’s abuse of discretion in determining “the *Dubric* decision will affect the new judgment in this case” did not arise from a lack of information. She was advised *Dubric* lacked subject matter jurisdiction over the Taxi Drivers’ claims against A Cab resolved by the *Murray* final judgment. PA 1208-1249. This Court’s Orders confirming the *Dubric* proceedings could not impact the *Murray* final judgment, and such judgment must be treated as if it was continuously in place since August 21, 2018, as modified by this Court (there being no “new” judgment to enter), were provided to Judge Kierny. PA 1232-33, 1236-37. Those controlling rulings by this Court were pointed out to Judge Kierny at oral argument. PA 1269. A Cab offered no explanation to Judge Kierny of how *Dubric* possessed subject matter jurisdiction to “affect” the *Murray* judgment, as it insisted and Judge Kierny found. Judge Kierny’s abuse of discretion in ordering the stay requested by A Cab did not arise from an explainable misunderstanding or misapprehension of the facts and the law. It was manifest, arbitrary and capricious.

Judge Kierny’s manifest, arbitrary and capricious abuse of discretion is

demonstrated not just by her stay order of March 9, 2022, but also by her prior order of February 22, 2021. PA 326-331. In that earlier order Judge Kierny denied the Taxi Drivers' motion to appoint a receiver on the basis it had previously been denied. *Id.* Judge Kierny's finding that a receiver had previously been denied was found by this Court in its Order of Reversal and Remand of February 17, 2022, to "squarely conflict" with this Court's prior order of November 9, 2020,⁷ finding a receiver request had *not* been previously denied. PA 803. Judge Kierny was also advised, prior to her issuance of that February 22, 2021, Order, of this Court's November 9, 2020, Order, finding a receiver appointment had *not* been previously denied. PA 185-89. Yet Judge Kierny proceeded in the February 22, 2021, Order in the exact same fashion as on March 9, 2022. Both times Judge Kierny ignored this Court's unambiguous rulings and granted A Cab relief that did not comply with those rulings and that was contrary to the facts and the law.

2. The Taxi Drivers have no other speedy or appropriate remedy; unless mandamus is granted they will not collect in any timely fashion their final judgment that is fully resolved upon appeal.

Even though the *Murray* final judgment appeal has been resolved A Cab refuses to satisfy that judgment. The Taxi Drivers will never receive any payment

⁷ *Murray v. A Cab Taxi Serv. LLC*, No. 81641, 2020 WL 6585946 p. 2.

on that judgment without assistance from the district court, assistance Judge Kierny has improperly refused to them.

While A Cab's appeal of the *Murray* final judgment was pending the district court may have properly exercised its discretion in denying judgment enforcement, even without a *supercedes* bond. After remittitur the district court lost that discretion. The Taxi Drivers, as holders of a final judgment not subject to modification on appeal, are entitled to enforce that judgment. And while the district court has discretion to determine what judgment enforcement methods are appropriate, it cannot deny all judgment enforcement remedies to the Taxi Drivers.

Judge Kierny's March 9, 2022, stay order, while not denying the Taxi Drivers in perpetuity their judgement enforcement rights, subordinates those rights to the unlimited future discretion, whim, of Judge Kierny when the *Dubric* appeal is concluded. No reason exists to delay enforcement of the Taxi Drivers' now over three and one half-years old judgment until the *Dubric* appeal is resolved. There is also good reason to believe Judge Kierny will not fulfill her obligation to enforce that judgment when such appeal is concluded.

Judge Kierny has twice manifestly, arbitrarily, and capriciously, and without explanation, abused her discretion, doing so both times based on assertions by A Cab that have no basis in law and in contravention of five of this Court's Orders and the undisputed facts. A Cab has already baselessly asserted, among other

things,⁸ that this Court’s remand of the *Murray* final judgment directed “that a determination had to be made as to which entity existed at the time and bears liability for any damages that are determined.” PA 814. If what is past is prologue, Judge Kierny will adopt this baseless argument of A Cab when the *Dubric* appeal is resolved. Judge Kierny would then vacate the *Murray* final judgment against A Cab Series LLC, the adjudicated judgment debtor, finding it is not the “entity” that “bears liability” under the *Murray* final judgment.

The Taxi Drivers may be unable to seek this Court’s assistance through an appeal if Judge Kierny lifts the stay after the *Dubric* appeal and then vacates, as requested by A Cab, the judgment against A Cab Series LLC. *See, TRP International, Inc. v. Proimtu MMI LLC*, 391 P.3d 763, 765 (Nev. Sup. Ct. 2017)

⁸ A Cab has argued to Judge Kierny the Taxi Drivers cannot enforce their judgment until a class “decertification” order is issued (and notice sent to the class members) regarding the class damages claims pre-dating October 8, 2010, reversed by this Court and the class damages claims after June 24, 2014, affirmed by this Court (the latter being \$211.72). PA 811-13. Those claims were resolved, for some class members without any recovery, as part of the final judgment and there remains nothing of a class nature to “decertify.” It asserts a need to exclude from the final judgment 243 persons the United States Department of Labor was unable to locate, ignoring A Cab’s liability to those class members irrespective an ability to locate them (those amounts may have to be deposited with the Nevada Treasurer as abandoned property). PA 813-14. It asserts a need to account for the set off A Cab may claim for payments made to the United States Department of Labor, even though that was already done in the August 21, 2018, judgment. *Id.* The Taxi Drivers will never properly enforce their judgment if Judge Kierny continues to adopt A Cab’s baseless arguments.

(There is no appeal of an order vacating a final judgment “unless and until a new final judgment is entered.”) In such an event A Cab’s interests would be best served by keeping this dispute in limbo indefinitely and not having a new final judgement entered, as that would grant the Taxi Drivers a right to appeal to this Court. If Judge Kierny were to so proceed, based on whatever specious arguments A Cab will make, the Taxi Drivers, unable to secure a final judgment from the district court, would never secure a right of appeal to this Court. Given the manifest injustice occurring in the district court, and the uncertainty as to when or whether the Taxi Drivers will be able to secure assistance from this Court through a future appeal, writ relief is warranted.

II. The circumstances and history of this case warrant the Court granting writ relief with detailed corrective instructions.

A Cab refuses to pay the *Murray* final judgment as affirmed by this Court, even though it has earned enough profits, post-judgment, to do so. PA 1245-46. Judge Kierny’s baseless stay order of March 9, 2022, deprives the Taxi Drivers of the rights granted to them by this Court in its December 30, 2021, Order and remittitur. Judge Kierny’s manifest abuse of discretion in failing to consider the appointment of a receiver, reversed one year later by this Court, has denied the Taxi Drivers the sequestration of A Cab’s profits that would have substantially satisfied their judgment.

Unless this Court imposes other measures, a writ reversing Judge Kierny's stay order of March 9, 2022, with an instruction to proceed appropriately, will very likely not provide an adequate remedy to the Taxi Drivers. This Court instructed Judge Kierny to appropriately proceed in its December 30, 2021, Order remanding A Cab's final judgment appeal, and its February 17, 2022, Order reversing Judge Kierny's refusal to consider the appointment of a receiver. Judge Kierny has failed to comply with those two orders by staying the district court proceedings and ignoring this Court's finding in a third order (the Order of November 9, 2020) that no motion for a receiver had previously been denied. Judge Kierny, when ordering that stay, also ignored a fourth order of this Court, its 2018 Order finding future *Dubric* proceedings could not impair the *Murray* final judgment. PA 1232-33. That stay order also ignored a fifth order of this Court by holding a "new judgment" would have to be entered in *Murray*, contrary to this Court's February 4, 2022, Order finding the *Murray* final judgment should be deemed affirmed, as modified, from its original entry on August 21, 2022. PA 1236-37. Issuing a writ containing only a general instruction, when Judge Kierny has repeatedly declined to follow this Court's instructions and findings, is not an adequate remedy.

In light of the Judge Kierny's disregard of five different orders of this Court, and her repeated manifest, arbitrary, and capricious, abuses of discretion,

the Court may find it appropriate to direct reassignment of this case. It has done so in similar cases. *See, Zollo v. Terrible Herbst*, 2015 WL 3766856 (Nev. Sup. Ct. 2015) (district judge failed to make required determinations on same issue after two appeals, directing transfer to different district judge on remand of second appeal); *Wolzinger v. Eighth Jud. Dist. Ct.* 773 P.2d 335, 340 (Nev. Sup. Ct. 1969) (considering two writ petitions and three appeals in estate matters, reassignment directed to avoid threat of future delays or appearance of impropriety by district judge who was not found to possess bias and made errors of law); *Leven v. Wheatherstone Condo Corp.*, 791 P.2d 450, 451 (Nev. Sup. Ct. 1990) (directing trial by different district judge as original district judge had erroneously granted summary judgment and “expressed herself in the premises”); *Ross v. State*, 2015 WL 5664891 (Nev. Sup. Ct. 2015) (district judge committed multiple errors and abused discretion in handling of criminal trial; new trial ordered before different judge); *Coulter v. State*, 2015 WL 5554588 (Nev. Sup. Ct. 2015) (same); *Falkenburg v. Falkenburg*, 2018 WL 1135258 (Nev. Sup. Ct. 2018) (reassignment directed when judge erred on the law by not properly applying presumption directed by statute in joint custody dispute and failed to consider changed circumstances, citing *Leven*); and *Matter of Huddle*, 2017 WL 2813955 (Nev. Sup. Ct. 2017) (reassignment directed when judge denied petition for gender marker change and failed to make proper findings, citing *Leven* and *Wolzinger*).

If this Court does not direct reassignment of this case it should issue specific instructions to Judge Kierny on how to proceed (it would also be beneficial for it to do so even if it directs reassignment). Such instructions could include directing that:

- (1) A Cab Series LLC can only be relieved of its liability under the *Murray* final judgment through a payment and satisfaction of the same, the district court may not, as A Cab proposes, conduct further proceedings to determine if it is an entity that is liable under the judgment; it shall not grant A Cab's request for any class action "decertification" order; and it shall not relieve A Cab of any liability to any class member who cannot be located but shall direct any funds recovered for such class member to the Nevada State Treasurer's abandoned property fund; and
- (2) An Order shall be promptly entered modifying the final judgment against A Cab, LLC (now known as A Cab Series LLC) rendered by the district court on August 21, 2018, as affirmed by this Court's Opinion of December 30, 2021, 501 P.3d 961, 137 Nev. Adv. Op. 84., to record that such judgment

totals \$685,866.60 in favor of 661 plaintiffs plus post-judgment interest from August 21, 2018, as specified at PA 1284-97, and is otherwise unchanged; and

(3) The stay of judgment enforcement in this case is terminated and the district court shall promptly consider on the merits the Taxi Drivers' request for the appointment of a receiver, the latter as directed by this Court's Order of February 17, 2022, in Case No. 92539; and

(4) The district court shall promptly rule upon the Taxi Drivers' previously filed motion and enter an order awarding the Taxi Drivers attorney's fees for securing the August 21, 2018, final judgment; and only to the extent it is justified by the portion of this Court's opinion, 501 P.3d 961, 137 Nev. Adv. Op. 84., finding damages were erroneously awarded to the Taxi Drivers for the period prior to October 8, 2010, may such award be reduced from the district court's prior such award of \$568,071; and

- (5) The district court shall promptly enter an order or orders awarding the Taxi Drivers' attorney's fees and costs, upon their already filed or to be filed motions, for:
- (i) Successfully securing an affirmation of the final judgment on appeal to this Court, 501 P.3d 961;
 - (ii) Successfully securing this Court's reversal of the district court's decision refusing to consider, on the merits, the Taxi Drivers' request for the appointment of a receiver, Order of February 17, 2022, Case No. 92539;
 - (iii) Successfully securing relief through this Petition;
 - (iv) Their attorneys' work in all other post-judgment proceedings in this case and the *Dubric* proceedings; and
- (6) The district court shall promptly enter an order on the Taxi Drivers to be filed motion for costs for securing the final judgment in this case, as directed by this Court, 501 P.3d 961.

CONCLUSION

The Court should grant writ relief as requested or in such other form that will advance the interests of justice and provide an effective remedy to the

petitioners.

Dated: March 29, 2022

Respectfully submitted,

/s/ Leon Greenberg

Nevada Bar No.: 8094

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Attorney for Petitioners

Certificate of Compliance With N.R.A.P Rule 28.2

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using 14 point Times New Roman typeface in wordperfect.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 6,038 words.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the

requirements of the Nevada Rules of Appellate Procedure.

Dated this 29th day of March, 2022.

/s/ Leon Greenberg
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AFFIDAVIT OF VERIFICATION

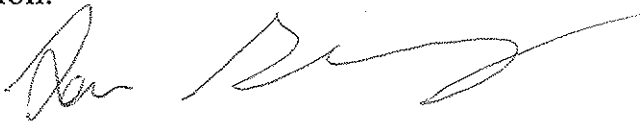
Leon Greenberg, being first duly sworn, deposes and states that:

1. I am a member of the law firm of Leon Greenberg Professional Corporation, counsel of record for petitioners Michael Murray and Michael Reno.

2. This affidavit is made by me pursuant to N.R.A.P. Rule 21 (a)(5) in that I am fully and personally familiar with the fact presented by this petition based upon my handling of this litigation on behalf of my clients, the petitioners.

3. I know the contents of the foregoing petition and the facts stated therein are true of my own knowledge, or I believe them to be true based on the proceedings, documents, and papers filed in this case either in the proceedings taken before the Eighth Judicial District Court of the State of Nevada,

4. True and correct copies of orders, opinions, proceedings and papers served and filed by the parties in this case prior to the date of this petition and that may be essential to an understanding of the matters set forth in this petition are contained in the Appendix to this petition.



Leon Greenberg, Attorney for Petitioner
Nevada Bar No.: 8094

SUBSCRIBED AND SWORN to before me, March 29, 2022

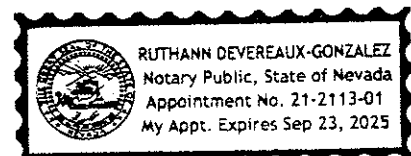
County of Clark

State of Nevada

This instrument was acknowledged before me on this 29th day of March, 2022 by Leon Greenberg.



Ruthann Devereaux-Gonzalez



PROOF OF SERVICE

The undersigned certifies that on May 29, 2022, she served the attached

WRIT OF MANDAMUS AND PETITIONERS' APPENDIX

by court electronic service to

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Regional Justice Center, Courtroom 12B
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Las Vegas, NV 89155

Respondent

/s/ Ruthann Devereaux-Gonzalez

Ruthann Devereaux-Gonzalez