

IN THE SUPREME COURT OF THE STATE OF NEVADA

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.

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**ANSWER TO PETITION FOR
WRIT OF MANDAMUS**

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NRAP 26.1 DISCLOSURE and OBJECTION TO ERRONEOUS CAPTION

Petitioners' caption is in error, as it is not the caption of the district case below. It is an error to indicate "A Cab Series LLC Formerly Known As A Cab, LLC," as that is not the caption in the district court.

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(1), and must be disclosed:

A Cab, LLC, has no parent company and is not publicly traded.

A Cab Series, LLC has no parent company and is not publicly traded. There is no publicly traded company that holds any ownership interest in either A Cab, LLC nor A Cab Series, LLC. The attorneys who have appeared on behalf of Real Parties in Interest in this Court and in district court are:

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These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED this 29th day of June, 2022.

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ATTORNEY'S CERTIFICATE OF COMPLIANCE WITH NRAP 28.2

1. I 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 it has been prepared in a proportionally spaced typeface using WordPerfect X4 in 14 point Times New Roman font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 21(d), because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 6959 words.

3. Finally, I certify that I have read this answer, 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), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page 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 the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 29th day of June, 2022.

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ANSWER TO PETITION FOR WRIT OF MANDAMUS

Real parties in interest A Cab LLC, A Cab Series LLC, and Creighton J. Nady (collectively “A Cab”), on behalf of Respondents, respectfully submit this answer to the Petition for a Writ of Mandamus (“Petition”).

I. ROUTING STATEMENT

No section of NRAP 17 applies directly to this case. A Cab disagrees with Petitioners’ assessment that NRAP 17(a)10 or (a)(11) may apply.

NRAP 17(a)(10) pertains to cases involving the termination of parental rights or NRS Chapter 432B (Protection of Children from Abuse and Neglect). NRAP 17(a)(11) pertains to matters raising as a principal issue of question of first impression involving the United States or Nevada Constitutions or common law.

These provisions are not applicable to this writ.

II. SUMMARY AND RESPONSE TO STATEMENT OF REQUESTED RELIEF

A. Summary

The petition should be denied as the district court did not abuse its discretion in issuing a stay, while awaiting this Court’s decision in Petitioners’ related appeal.¹ In that appeal, Petitioners have requested an order from this Court to instruct the district court that settled claims are not to be considered by it when entering a new judgment. Clearly, if this Court were to make such a determination, it would be relevant to the entry of a new judgment.

Moreover, the court found that the factors, as outlined in *Dollar Rent a Car of Washington v. The Travelers Indemnity Company*, 774 F.2d 1371 (1985), supporting a stay were met. The remainder of Petitioners’ requested relief is

¹ Petitioners appealed the final order entered in the *Dubric v. A Cab* case; *Murray v. Dubric*, Nevada Supreme Court No. 83492 (“Dubric”)

improper, as there are motions from both sides directly on these issues pending for the district court's determinations.

The opportunity to appeal a final judgment generally constitutes a plain, speedy, and adequate remedy that precludes writ relief. *See Williams v. Eighth Judicial Dist. Court*, 127 Nev. 518, 524, 262 P.3d 360, 364 (2011). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

B. The Requested Relief is Improper

Petitioners indicate they are requesting this Court issue a writ directing the district court to perform four items. The first is to terminate a stay in place while the district court awaits this Court's decision in Petitioners' other appeal. Petitioners appealed the final order entered in *Dubric v. A Cab*²; and requested this Court to issue an order to the *Murray* Court that when considering the entry of a new judgment, that it could not consider the claimants who had already settled their cases. The *Dubric* appeal has been fully briefed and submitted to this Court; and the district court has concluded this Court's determination in that appeal is relevant and necessary for its consideration in entering its future determinations; and that the elements outlined in *Dollar Rent a Car* have been met. 774 F.2d 1371. Petition, p. 2.

Petitioners' second request is for the district court to modify a final judgment. Petition, p.2. (Both Defendants' and Plaintiffs' motions are pending on this issue. PA0368-PA0367; PA0579-PA0578.) The third is to consider the appointment of a post-judgment receiver. (There is no judgment in place so this issue is not ripe.) *Id.* And the fourth is to enforce the district court's final judgment. *Id.* (Again, there is no final judgment in place so asking for enforcement presently is not ripe.)

² *Jasminka Dubric v. A Cab, LLC et.al.*, District Court Case No. A721063; and its appeal, *Murray v. Dubric*, Nevada Supreme Court No. 83492 ("Dubric")

This Court is aware that no appeal may be taken from an order granting or denying a stay of proceedings, except in an arbitration context. *See Brunzell Constr. Co. v. Harrah's Club*, 81 Nev. 414, 419-420, 404 P.2d 902, 905 (1965), superseded on other grounds by *Casino Operations, Inc. v. Graham*, 86 Nev. 764, 765, 476 P.2d 953, 954 (1970). And it is the court's stay which is truly at the core of Petitioners' objections to the district court's actions. The petition pertaining to this stay alone is very weak grounds for an appeal. An appellate court's consideration of a writ petition is seldom warranted when, even if granted, it would resolve only part of the underlying action. *See Moore v. Eighth Jud. Dist. Ct.*, 96 Nev. 415, 417, 610 P.2d 188, 189 (1980).

An appellate court is most likely to intervene in a case that presents a substantial issue of general importance. *See Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). *See State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 361-62, 662 P.2d 1338, 1340 (1983) (noting that writs have not always had desirable effects and have actually been disruptive to the orderly processing of civil cases in the district courts).

As there is little support for this Court to interfere with the district court's decision to stay, Petitioners have combined this issue with three other issues (pending before the trial court) to make an argument of abuse of discretion and to allege that the district court is deliberately disobeying this Court's orders. This is certainly not the case; and once again is lodged only to disparage another female member of the judiciary and to seek her removal from the case, in the same manner as Petitioners have repeatedly sought the removal of Judge Kathleen Delaney from the Dubric matter. Petition, pp. 21-22.

Petitioners present a horrid picture that Judge Carli Kierny is haphazardly disregarding this Court's orders when the only issue that was remanded by this Court was "for the trial court to consider appellants' request on the merits" for a receiver. PA0805 This Court certainly never said that a receiver *must* be appointed,

but only that Petitioners had a right to be heard again on the receiver issue. In fact, this Court specifically declined to make this determination indicating, “An appellate court is not particularly well-suited to make factual determinations in the first instance.” PA0805; footnote 5 *citing Ryan’s Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012).

Petitioners’ writ now pushes for an order to appoint a receiver and charges that the district court has refused to do so. The issue of a post judgment receiver does not even make sense at this juncture as there is no final judgment with numbers in place to enforce. This is putting the cart before the horse.

Given this Court’s remand of the judgment on several critical issues, the appointment of a post judgment receiver is no longer appropriate given that other findings must come first. In this Court’s review of the prior judgment in this case, this Court determined that the judgment must be reversed and remanded on a number of issues for further determination and findings by the district court. PA0332-PA0365. These include a new determination of what any judgment will be after subtracting more than 3 years of claimed damages (July 1, 2007 to October 8, 2010), as well as excluding all claimants who were employed during this time period, outside of the statute of limitations. PA0363.

Secondly, this Court also remanded for a determination of what entity would even be liable for any judgment. In the reversal and remand, this Court specifically stated that the district court must determine which entity existed at the time and which bears liability for any damages that are determined. This Court stated that the district court erred “without taking evidence on what corporate entities existed and were actually liable for the judgment.” PA0363.

Accordingly, mandamus is premature. Petitioners’ request for a receiver in aid of judgment collection cannot proceed when: 1) the amount of the judgment has not been determined; and 2) the named entities have not been determined to be the appropriate debtors.

This is the one issue (that of denying a post-judgment receiver as a motion for reconsideration) where this Court reversed Judge Kierny. Petitioners' assertion that Judge Kierny has a long abusive history of disregarding this Court's orders is unfounded and uncalled for.³

It is not that the district court has refused to address Petitioners' requests, it is that *in addressing* the remanded issues, the district court determined that the outcome of Petitioners' appeal is relevant to its future determinations - particularly given that this is Petitioners' argument and request in their *Dubric* appeal. Petitioners' request in the *Dubric* appeal is for an order from this Court that will yield a result wherein the claimants who settled their cases in the *Dubric* class action can still receive a second judgment for the same claim in the *Murray* case; or that the claimants will be precluded from settling their claims and therefore must return their payments.

The district court needs to know that it is free to move forward with consideration of all of the evidence with which it is presented to make its own determinations; or whether this Court is going to limit the items the district court may consider, as requested by Petitioners.

In attacking Judge Kathleen Delaney's integrity and alleging her involvement in a "collusive settlement", Petitioners appeal that the *Dubric* judgment must be

³ "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." Petition, p. 5-6.

"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." Petition, pp. 21-22.

stricken: “The parties’ intent, with Judge Delaney’s agreement, to enter into a collusive settlement extinguishing the Murray judgment and class claims is overwhelmingly clear. This Court, in any remand to the district court, should also direct that the district court expressly exclude the Murray judgment and class members from any class action settlement or disposition it enters as part of a final judgment in this case.” RA0055.

Accordingly, the Murray court determined that if such an instruction were to be issued by this Court, it would certainly be relevant to any future judgment to be entered; and thus temporarily stayed the case for this outcome. The district court could ascertain that if this Court were to dismiss the Dubric appeal, the parties would be free to present the evidence and their arguments to the trial court as to the appropriate new judgment. However, a reverse finding may signal that the district court would be limited as to what evidence it could consider.

Petitioners are dissatisfied with this approach, but their dissatisfaction does not render the court’s analysis an abuse of discretion. Petitioners are seeking to use a writ as a means of forcing the “answers” upon the district court – contrary to this Court’s instruction that such determinations are remanded for the district court’s consideration. Petitioners’ attempts to force the determinations and to intimidate the trial judge by alleging to this superior court that the district court is defying it, is not the purpose of a writ of mandamus.

An appellate court generally will address only legal issues presented in a writ petition. *See Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). There is no legal issue presented here; only unsupported allegations against the presiding district court judge, where in fact, determinations and pending motions are in process and awaiting this Court’s important ruling. Petitioners are seeking the removal of Judge Kierny, just as they seek the removal of Judge Delaney who they accuse of collusion and “improper motive.” RA0069. It is Petitioners who are engaging in improper motive in seeking the removal of these

two judges.

The district court has determined that the information from this Court's decision in the *Dubric* appeal is necessary for its future considerations. This analysis and determination is clearly within the district court's discretion to decide as such.

This writ must be dismissed because Petitioners' three other issues have not yet been finalized by the district court, but will be. There will be a final order on the 3 remaining issues complained of in due course: the modification of a judgment; the determination of whether an appointment of a post-judgment receiver is necessary once a judgment is entered; and enforcement once judgment is entered.

Only in the most unusual or significant cases may an appellate court be willing to entertain a writ petition without prior district court action. *See, e.g. Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 535-36, 26 P.3d 753, 756 (2001).

C. Petitioners Improperly Seek to Have this Court Assume the Trial Court's Role.

Petitioners also seek this Court's determination of entry of specific damages (*See* Petition, p. 24 requesting entry of \$685,866.60 as a judgment and fees of \$568,071). These requests highlight that this writ is improper and should be dismissed outright. Damages should not be sought in original proceeding in the appellate courts. *See* NRS 34.270, and *Gulbranson v. City of Sparks*, 89 Nev. 93, 95, 506 P.2d 1264, 1265 (1973); *Bowler v. Vannoy*, 67 Nev. 80, 109, 215 P.2d 248, 263 (1950). Petitioners are misusing the writ to request this Court to engage in original findings, and to force determinations upon the trial court. The Petition seeks specific instructions as to what the findings by the trial court should be; and what the trial court should be allowed to consider. Presently the district court is processing these findings; and Petitioners will have a right to appeal once the district court enters its final orders.

“[I]t has not been our practice in this court to provide for the hearing of controversial matters of fact in the supreme court, necessitating the hearing and trial of witnesses, production and determination of evidence, etc., which would convert our procedure into that of a trial court, instead of the appellate court of last resort, and so confuse the functions of the two courts that, in our view, a clear line of demarcation would by such confusion, overreaching and overlapping, largely undermine the traditional characteristics and the complexion of those tribunals. At least, we have in the past carefully observed such demarcation. It is our view, therefore, that instead of an attempt to resort to recovery of damages in this mandamus proceeding in this court that such action, suit or proceeding may be instituted and proceeded with in some other court or tribunal as may be appropriate.” *Bowler v. Vannoy*, 67 Nev. 80, 109, 215 P.2d 248, 263 (1950).

III. DISCUSSION

A. **This Court’s Standard for Issuance of a Writ of Mandamus Is Not Met Here.**

Writ petitions are “extraordinary” because they are issued outside of the ordinary course of a case and only in limited circumstances. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 223, 88 P.3d 840, 841 (2004).

“We recently noted in *Poulos v. District Court, supra*, that in the years since *Dzack* we have received an increasing number of petitions arising out of the summary judgment context. In *Poulos* we indicated that we have exercised our discretion sparingly and have limited the scope of *Dzack*. Nevertheless, mandamus petitions have continued to inundate this court, challenging denials of motions for summary judgment and motions to dismiss. We must now decide whether it is in the best interests of this court, and of the Nevada judicial system as a whole,

for us to continue to entertain such petitions. We conclude that it is not.” *State ex Rel. Dep’t Transp. v. Thompson*, 99 Nev. 358, 361 (Nev. 1983)

“[T]he vast majority of these petitions have not had the desirable effects mentioned above. Instead, such petitions have generally been quite disruptive to the orderly processing of civil cases in the district courts, and have been a constant source of unnecessary expense for litigants. In addition, an enormous amount of time and effort has been expended by this court and its staff in the processing of these petitions.” *Id.*, 99 Nev. 358, 361-62

“Therefore, although we reaffirm the principle that we have the power to entertain such petitions under *Dzack and Dep’t Hwys.*, in the exercise of our discretion we will no longer utilize that power.” *Id.*, 99 Nev. 358, 362.

Here, Petitioners’ intended use for their petition is even further misguided. Petitioners seek to use the writ to have this Court substitute its judgment and fact finding in place of the trial court. It has not been the usual practice of this Court to interfere in district court matters before judgment, based on baseless accusations that the district court might do something illegal in the future.

Petitioners will have an adequate remedy upon entry of final judgment. Writ relief is premature at best.

Generally, the appellate court will not entertain a petition for an extraordinary writ when the matter may be reviewed on appeal from final judgment. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 223, 88 P.3d 840, 841 (2004) (recognizing that “an appeal is generally an adequate legal remedy that precludes writ relief.”).

B. Background to this Writ and the Stay.

The requested relief in this writ arises from two district court class action cases and their respective appeals. Therefore, the background and documents in Real Parties in Interest's Appendix are necessary for this Court's consideration.

1. The Murray Case:

Murray and Reno v. A Cab, District Court Case No. A-12-669926-C; and its appeal, *A Cab, LLC v. Murray*, 137 Nev. Adv. Op. 84 (December 30, 2021). ("Murray")

2. The Dubric Case:

Jasminka Dubric v. A Cab, LLC et.al., District Court Case No. A721063; and its appeal, *Murray v. Dubric*, Nevada Supreme Court No. 83492 ("Dubric")

The Murray Case

This is a minimum wage action filed by two former taxicab drivers, Michael Murray and Michael Reno, against A Cab Taxi Service LLC and A Cab, LLC. This matter previously proceeded with motion practice, never going to trial, under Judge Kenneth Cory, followed by Judge Rob Bare, followed by Judge Carli Kierny, and now assigned to the vacant Department 9 of the Eighth Judicial District Court.

Judge Cory entered summary judgment against the Defendants, which was partially affirmed, but reversed and remanded by this court on a number of issues and reversible errors. *A Cab, LLC v. Murray*, 137 Nev. Adv. Op. 84 (December 30, 2021). PA0332-PA0367. With this Court's remand on several important issues to be addressed by the district court, there is no final judgment yet entered in *Murray*. In the Murray case and per the Nevada Supreme Court's remand:

- 1) Plaintiffs' claimed damages have not been presented, ascertained, nor determined in compliance with the reversal and remand; PA0351
- 2) a proper defendant for any liability has not been determined; PA0363
- 3) decertification of portions of the class has not been addressed in compliance with the remand which limited the class and the claims to a two year

statute of limitation. PA0363

In other words, all of the rights and liabilities of the parties have not been adjudicated. Not to mention that the claims against Defendant Creighton J. Nady remain in limbo in the Murray case, and have never been addressed by the district court.

This Court has repeatedly held that a "final judgment" adjudicates all rights of the parties. *See Novick v. Summerlin N. Cmty. Ass'n*, 484 P.3d 949(Table) (Nev. 2021): The district court has not entered a final written judgment adjudicating all the rights and liabilities of all the parties. *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991); *Rae v. All American Life & Cas. Co.*, 95 Nev. 920, 605 P.2d 196 (1979).

Presently, in the district court, Defendants (Real Parties in Interest) have a motion pending to address decertification of the excluded time period, as specifically ordered by this Court in its remand. *Defendants' Motion for Declaratory Order*, PA0368-PA0578. Plaintiffs (Petitioners) have a motion to present their new claimed damages in light of the remand. PA0579-PA0765. These are issues as to the rights and liabilities of the parties which are presently pending before the district court. Additional motion practice from both sides, triggered by the reversal and remand, is anticipated before the district court can enter its final judgment.

The Dubric Case

At the same time as *Murray* was proceeding, another class action matter was filed by Jasminka Dubric against A Cab, LLC. *Jasminka Dubric v. A Cab, LLC et.al.*, District Court Case No. A721063, pending before the Eighth Judicial District Court, Department 25. RA0001-RA0012. The Dubric matter is a class action minimum wage action filed by The Bourassa Law Group, and involving Defendants A Cab, LLC; A Cab Series LLC Employee Leasing Company, and Creighton J. Nady, who overlap as defendants in the present case. After engaging in discovery,

the parties resolved the matter through the Eighth Judicial District Court settlement conference program with Hon. Jerry Wiese on October 5, 2016 (**two years prior to the entry of summary judgment in Murray on August 22, 2018**). RA0013-RA0027. Following this settlement in October 2016 of the class claims, the present Murray Petitioners have continuously sought to interfere with that settlement in every imaginable way. Petitioners have sought to obstruct, stay, delay, enjoin, and interfere with the separate case with repeated motion practice, failed writs and appeals to this Court, a federal involuntary bankruptcy (dismissed). RA0101-RA0128. Therefore, there was considerable delay before the district court could enter its final approval.⁴

An order with preliminary approval was signed by Hon. Kathleen Delaney on October 11, 2020. Notices were mailed to potential Class Members with the proposed Settlement; provided Class Members with the opportunity to opt out of the Class or to object to the proposed Settlement; and scheduled a final fairness hearing. One (1) driver ultimately opted out of the settlement. The Court conducted a fairness hearing on March 11, 2021, and final approval of the settlement was entered on August 31, 2021. RA0013-RA0027.

The Murray Plaintiffs, who Judge Delaney allowed to appear as Intervenors, have now filed an appeal as Intervenors and Objectors to the final judgment entered in that case. (*Murray v. Dubric*, Nevada Supreme Court No. 83492). In that appeal, the Murray Plaintiffs disparage Judge Delaney and request her removal from the Dubric case, and for an order from this court to declare that the Dubric class members who: settled their cases; who chose not to opt out of the Dubric

⁴ There are 4 pages of the multiple motions, writs, appeals, filed by Petitioners to obstruct the finality entered in the Dubric matter; these are listed in Respondents' Answering Brief, pages 4-8 with citation to the appendix on file with this Court in Supreme Court Case No. 83492. RA0109- RA0113. These documents are not duplicated again in this appendix for brevity, but can be supplied if this Court deems them necessary.

settlement and into the Murray class; and who have already paid by Defendants will not affect any future judgment entered in the Murray case. RA0055, RA0081.

Rather than allowing the case to proceed before Judge Kierny (the Murray court) to make this determination as to whether there has been a satisfaction of some of the claims, Petitioners filed the appeal to once again ask for this initial determination to be made at the court of last resort. Ironically, in their Dubric appeal, Petitioners' position is that the Murray court would be the court that Defendants could seek approval and release of the claims. *See* Petitioners' brief arguing lack of jurisdiction of Judge Delaney and asserting that only the Murray court is vested with authority to release Murray claims. RA0055-RA0058.

At the same time as their appeal seeking an order that Dubric will not affect Murray, Petitioners filed a motion in the district court to request entry of a new judgment with new calculations that incorporate some of these drivers who they know did not opt out of the Dubric settlement and have already been paid for their claims. In other words, Petitioners were asking the district court to turn a blind eye to and altogether ignore the issue that many claimants had already settled and accepted funds.

Petitioners' strategy with the filing of the Dubric appeal is that the Nevada Supreme Court will make the decision as to release and satisfaction, and remove that decision from the district court. These facts should demonstrate to this Court not only why the Dubric appeal is improperly before it; but also why the district court found it necessary to halt proceedings to ascertain whether this Court was going to issue such an order that would have far reaching effects.

Accordingly, Defendants sought a stay of proceedings arguing to Judge Kierny that Plaintiffs cannot argue to the district court that it must rush to enter a new judgment ignoring the circumstances that have transpired; while arguing to the Supreme Court that Judge Delaney's final order must be vacated so that it cannot affect a new judgment to be entered in Murray. The present petition argues

repeatedly that the district court abused its discretion by indicating that the Dubric appeal was relevant to the Murray judgments. But Petitioners' appeal makes it apparent that they know Dubric settlements are relevant but seek to exclude them from consideration, much like a motion *in limine*.

Accordingly, after a review of the briefing and argument, Judge Kierny determined that the Murray case must be stayed to see if this Court was going to order that the Dubric settlements and payments already made would have no effect on the new judgment to be entered.

Judge Kierny determined under *Dollar Rent a Car of Washington v. The Travelers Indemnity Company*, 774 F.2d 1371 (1985), the factors for a stay had been met. Order, May 3, 2022. PSA0001-PSA0005.

In response, Plaintiffs proceeded to file the present petition now disparaging Judge Kierny, mis-characterizing the events in stating that she is refusing to follow this Court's orders, and seeking a reversal of the stay.

Petitioners complain about the stay, but it is their appeal which improperly sought this Court's determinations on issues which are suited to the trial court including: which claimants have settled their claims; which claimants are outside of the two year statute of limitations; which claims are outside of the two year statute of limitations; and which claimants cannot be found. With the Dubric appeal, Petitioners were merely seeking to cutoff anticipated motions for offset or satisfaction based upon payments already made in full to these claimants. Instead of waiting for these issues to be properly addressed by the Murray court, Petitioners instead appealed the Dubric matter, hedging their bet that they could vacate that final judgment altogether. But there is no reason to vacate that final approval. The fact that all but one of the Murray claimants chose to accept funds through the Dubric settlement, rather than proceed under the Murray case, lends support to the legitimacy of the Dubric resolution (in addition to all of the factors the Court considered before entering final approval).

Further, in the Murray court, it was Defendants' issues which were pending prior to the stay. Defendants were attempting to put into motion the items which were remanded by this Court to clarify and define the class, the damages, and the appropriate defendant. Prior to the stay, Defendants had filed and circulated:

Defendants' Motion for Declaratory Order filed February 11, 2022, seeking an Order in compliance with this Court's remand to limit claims from October 8, 2010 forward (the statute of limitations); and to order that no damages exist after June 26, 2014. PA0368-PA0578

In addition, following this Court's instruction in the remand and for judicial economy, a Proposed Stipulation to Decertify Portions of the Class had been circulated on February 25, 2022, to address the need to exclude the additional years of claimed damages for ALL class members which were erroneously included by the district court, this being the time period of July 1, 2007 through October 8, 2010; and to exclude all class members who were employed by Defendants solely within the time period of July 1, 2007 and October 8, 2010. Said class members must be notified of said exclusion, as they were previously notified that they were indeed members of the class and had rights as class members. PA0818-PA0821.

None of these issues have been addressed due to the stay. The District Court in fairness to both sides stayed the entire case. Defendants would certainly like their issues and motions that were filed first (prior to Petitioners' requested relief for modified judgment and for post judgment receiver) addressed, but are complying with the court's determination to stay.

C. The District Court Did Not Abuse its Discretion in Staying its Determinations, Pending this Court's Decision in Petitioners' Appeal.

The core of this writ is the stay of proceedings. All of Petitioners' other requests for mandamus stem from the fact that the district court's motion calendar is on hold pending a decision from this Court on Petitioners' appeal of the Dubric final judgment. First in line to be heard, as it was filed first, is Defendants' motion

for declaratory relief filed February 11, 2022, which seeks to streamline the class and the claims in compliance with the remand from this Court. PA0368-PA0578 The motion also requests to decertify those portions of the class which cannot be supported after June 26, 2014. This issue must be heard by the district court as decertification is appropriate when it cannot be supported. *See Mazzei v. Money Store*, 829 F.3d 260 (2d Cir. 2016), wherein the Court held that district courts have the power to decertify a class after a jury verdict and before the entry of final judgment. The Second Circuit upheld the decertification, holding that district courts have the power, consistent with the Seventh Amendment, to decertify a class after a jury verdict and before the entry of final judgment. The Court further held that, in considering such decertification, district courts must defer to any factual findings made by a jury unless the findings were “seriously erroneous,” a “miscarriage of justice,” or “egregious.” In setting forth its reasoning, the Court first pointed to Federal Rule of Civil Procedure 23(c)(1), which states that “[a]n order that grants or denies class certification may be altered or amended before final judgment,”

Petitioners filed a motion for entry of a modified judgment on February 14, 2022. PA0579-PA0765. In this motion, Petitioners had requested that the district court rely upon its newly created spreadsheets in support of its request for entry of a newly calculated number. The problem is that the spreadsheets contain errors; do not account for a number of issues; and falsely inflate the damages. Unlike Petitioners’ arguments, this Court did not make the findings in its remand of their claimed damages, but rather remanded this issue to the district court for that determination. A Cab must be presented the opportunity to dispute these claimed damages; they are not “a given” as this court has already found them in error and that they were approximations.

The newly created spreadsheets also include claimants who have resolved their claims and been paid through the Dubric matter. Petitioners sought to

circumvent this elephant in the room by filing an appeal of the Dubric matter and arguing to this Court that the Dubric final judgment should just be vacated. At the same time, Petitioners' motion to the district court asked the district court to turn a blind eye to this issue. Accordingly, Defendants filed the motion to stay and argued that if Petitioners were going to request an order from the Nevada Supreme Court to indicate that claims which have settled do not affect entry of future judgments, then the prudent thing to do would be to wait upon this decision. PA1080-PA1207.

Defendants briefed and the court determined that absent a stay, irreparable harm would be done. The court relied upon the factors delineated in *Dollar Rent a Car of Washington v. The Travelers Indemnity Company*, 774 F.2d 1371 (1985).

When considering an application for a stay order pending appeal, there are four factors to address:

1. Whether the party requesting the stay order has made a strong showing that is likely to prevail on the merits of appeal;
2. Whether or not the party requesting the stay has shown it would sustain irreparable injury absent the stay order;
3. Whether or not the issuance of a stay order would substantially harm the other interested parties; and
4. Where the public interest lies.

The district court determined that the decision issued by this Court in the Dubric matter will directly affect the new judgment in this case. Petitioners even conceded in oral arguments that at least one of the major Defendants will be affected by the decision to be issued by this Court.

MR. GREENBERG: "I believe Dubric did not have subject matter jurisdiction over those claims either, Your Honor. But that's less clear --

THE COURT: But if the Supreme decides that it did, then we're in a situation where the defendants here, one of your major defendants here, is affected. Is that accurate?

MR. GREENBERG: That would be so, Your Honor, but I'm not concerned with that at this point." PA1272-1273.

Secondly, the court was briefed that adequate security was already in place. In direct contradiction to Petitioners' arguments that there is not adequate security in place and that writ relief is necessary, the district court already considered that Plaintiffs' counsel presently holds approximately **\$300,000.00** in his trust account; that Defendants have already paid more than **\$139,000.00** to the Department of Labor as minimum wage payments; and more than **\$224,500.00** as payments to drivers in the Dubric settlement. Accordingly, more than **\$663,500.00** has been paid already towards minimum wage payments or is being held by Plaintiffs' counsel. PA1254. Defendants presented Plaintiffs' own newly created spreadsheets as evidence that there is no indication that the final judgment in this matter will exceed that security and funds already in place. Plaintiffs did not dispute that their exhibit to the court (Exhibit G to Plaintiffs' Motion for Entry of a Modified Judgment) requesting entry of a new judgment in the amount of **\$598,542.81**, is an amount less than the total of the funds detailed above. PA1254.

Defendants argued and the Court agreed that Defendants had demonstrated they are likely to prevail on the merits of appeal; and further, the Nevada Supreme Court's decision either way will directly affect the manner in which the district court may proceed. PA1276. There is no indication that the Nevada Supreme Court will find an abuse of discretion by the other district court. Defendants submitted evidence that the Dubric settlement was an arms-length fair settlement to all involved. It was facilitated by an independent well-respected jurist, Hon. Jerry Wiese. It was evaluated by an independent CPA. Judge Delaney entered evidence into the record which supported the final approval including testimony and documents; an evaluation of the other settlements reached in the industry; and the objections of the intervenors. It is highly unlikely that the appellate Court will overrule the findings by Chief Judge Bell who declined to remove Judge Delaney

from the case and found no bias. PA1083-PA1088; PA1164-PA1175.

Defendants argued and the district court found that the party requesting the stay will sustain irreparable injury without it in the form of double recovery for some claimants, duplicative judgments, and the settlement pot being wrongfully distributed. PA1276-PA1277. A rush to entry of a new judgment would result in funds being paid out from Defendants to individual drivers in Murray, where a chance of recovering any overpayments from these individual cab drivers would be impossible. This is an irreparable harm that will be caused to Defendants by not staying entry of this matter and causing duplicative payments to claimants who have settled their claims.

The Court further found that Plaintiffs' argument of the irreparable harm to them is not supported. Plaintiffs asserted payment of their judgment should not be delayed; and that no sufficient supersedeas bond has been posted. Defendants demonstrated that the Court (including Judge Bare and Judge Cory) had repeatedly determined that the bond was not required and that sufficient funds were already in the Plaintiffs' trust account. The most recent determination was issued by Hon. Rob Bare who determined that any doubt as to these issues would be determined by a Special Master with both parties to share in his cost. Plaintiffs have never complied with that Order and thus the Special Master did not prepare his report. Plaintiffs cannot now complain that there is no bond in place, as there was a mechanism this Court set in motion to determine the necessity of any such bond or further security. Plaintiffs are in open contempt of this Court order. PA1254; PA1258-PA1262.

Defendants argued and the Court concurred that for all of the above, the public interest lies in the granting of a stay:

“I do find that based on the arguments today the Dubric decision will affect the new judgment in this case. I also find the under the Dollar Rental Car case defendant has met the four stay factors. There’s a strong showing that the party requesting the stay is likely to prevail.

Party requesting the stay will sustain irreparable injury without it in the form of double recovery, duplicative judgments, the settlement pot being wrongfully distributed. That would also affect the -- that's -- the stay would also substantially harm other interested parties -- not issuing the stay, and then ultimately in the public interest. I think all those have been met by defendant, and so I will grant the stay at this time. The bond issue I do find has been previously determined that sufficient security exists to not require bond from Judges Bare and Cory and I will not impose that at this time." PA1276-1277

Interestingly, none of the "Objectors" in the Dubric appeal chose to opt out of receiving money from the Dubric settlement. This should speak volumes as to the fairness of the settlement; and that the Dubric resolution is the desire of the claimants themselves. RA0013-RA0027.

D. Petitioners' Remaining Requests for Mandamus are Pending Before the District Court and for its Determinations.

Petitioners want this Court to order entry of a modified judgment. Petitioners filed their motion on this on February 14, 2022, but the district court has determined a major issue for its consideration is whether the court is prohibited from considering claimants who have already settled their claims and received funds.

Petitioners complain they want the district court to consider both appointment of a post judgment receiver and enforcement of the final judgment, which is nonsensical. Neither of these issues can be addressed until there is entry of a final judgment. And there is no entry of a final judgment as of yet, as Petitioners have sought the extraordinary request of asking this Court to issue an order to indicate that settlements cannot be considered by the district court in its review of a claimants' request for entry of a new judgment.

E. Present Status of the District Court Case Supports Denial of the Petition.

Most recently, the status check of May 11, 2022 was conducted by retired Justice Mark Gibbons who reviewed the status of the case; and inquired as to the status of the Dubric appeal. At that time, Justice Gibbons did not vacate the stay; but re-set the matter for another status check on August 10, 2022, to ascertain the status of this Court's order. RA0129-RA0130.

After acknowledging and discussing the stay with Justice Gibbons, and despite this present petition objecting to the stay, Petitioners then proceeded to be in open contempt of the stay Order. Petitioners are now disregarding the stay of which complain herein by now filing motions in the district court including:

- Plaintiffs Motion for Turnover of Property Pursuant to NRS 21.320 or Alternative Relief, filed May 25, 2022. RA0159
- Plaintiffs Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs, filed May 31, 2022. RA0159
- Plaintiffs' Motion to Reconsider Award of Costs, filed June 16, 2022. RA0159

CONCLUSION

The petition should be denied as the district court did not abuse its discretion in issuing a stay, while awaiting this Court's decision in Petitioners' related appeal. In that appeal, Petitioners have requested an order that will result in the district court being limited in the factors it can consider in ascertaining entry of a new judgment. First and foremost, Petitioners seek an order that the district court will not be able to consider claimants who have resolved and already received payments for their claims. Clearly, if this Court were to issue such an order to limit, it would be relevant to the district court's analysis.

The district court is not disobeying this Court's orders, but rather has determined this Court's decision is relevant to its future determination of a final judgment. The district court needs to know if it will be limited as to what evidence

it can consider in its future determination. The remaining requests for a receiver and for enforcement logically cannot be addressed until final numbers and liabilities, and appropriate entities are determined.

DATED this 29th day of June, 2022.

RODRIGUEZ LAW OFFICES, P.C.

/s/ Esther C. Rodriguez, Esq.

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Las Vegas, Nevada 89145

CERTIFICATE OF SERVICE

I certify that I am an employee of RODRIGUEZ LAW OFFICES, P.C. and that on this date the foregoing ANSWER TO PETITION FOR WRIT OF MANDAMUS was electronically filed the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Leon Greenberg, Esq.
Leon Greenberg Professional Corp.
2965 S. Jones Boulevard, Suite E4
Las Vegas, Nevada 89146
Counsel for Petitioners

Dated this 29th day of June, 2022.

/s/ Susan Dillow
An Employee of Rodriguez Law Offices, P.C.

CERTIFICATE OF SERVICE

I certify that I am an employee of RODRIGUEZ LAW OFFICES, P.C. and that on this date a true and correct copy of the foregoing ANSWER TO PETITION FOR WRIT OF MANDAMUS was served via electronic transmission as follows:

District Court Judge, Dept. 9
200 Lewis Avenue, Courtroom 11B
Las Vegas, Nevada 89155
Dept09LC@clarkcountycourts.us

Dated this 29th day of June, 2022.

/s/ Susan Dillow
An Employee of Rodriguez Law Offices, P.C.