

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. 84456

Dist. Ct No.: A-12-669928-C

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**PETITIONERS' REPLY TO REAL
PARTY IN INTEREST A CAB
SERIES LLC'S ANSWER TO
PETITION**

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TABLE OF CONTENTS

	Page
SUMMARY OF REPLY	1
ARGUMENT	2
I. Writ relief is appropriate as the district court has manifestly abused its discretion by refusing to follow this Court’s Orders and a future appeal will not afford an adequate remedy.....	2
II. There is no “new judgment” to be entered based on new findings to be made by the district court; it must enter an amended judgment based on the record and findings affirmed by this court.	5
A. The record contains the exact amount of the modification to the judgment directed by this Court; the district court’s task in entering an amended judgment is purely ministerial and arithmetic, it cannot make any new findings..	5
B. The <i>Dubric</i> case is irrelevant to the amended judgment.....	7
C. A Cab’s claim the district court must make other findings before entering an amended judgment ignores this Court’s rulings and lacks any basis in law or fact..	8
1. There is no class “decertification” notice issue..	8
2. A Cab Series LLC’s liability has been affirmed and it remains the only judgment debtor; no determination of “what entity would be liable for the judgment” needs to be made to enter the amended judgment.....	9
3. The district court cannot issue any “declaration” as to A Cab Series LLC’s “non-liability” for any damages owed after June 26, 2014, and included in the August 21, 2018, judgment...	10

4.	There are no issues to be resolved regarding payments made in the <i>Dubric</i> case or class members who “cannot be found” or who have “settled their claims” prior to entering the amended judgment.	11
III.	The Taxi Drivers are not seeking to have this Court “assume the trial court’s role” or make “original findings.”.	12
IV.	Directing reassignment of this case from Judge Kierney may be unnecessary as the district court has reassigned this case.	13
	CONCLUSION.	13
	CERTIFICATE OF COMPLIANCE WITH N.R.A.P RULE 28.2	14
	PROOF OF SERVICE	16

TABLE OF AUTHORITIES

Page(s)

Nevada Supreme Court Cases

A Cab v. Murray,
501 P.3d 961 (Nev. Sup. Ct. 2021) 1, 3, 12

Budget Financial Corp. v. System Investment Corp.,
511 P.2d 1047 (Nev. Sup. Ct. 1973) 6, 10

Schiff v. Winchell,
237 P.3d 99 (Nev. Sup. Ct. 2010) 8

Other Cases

Mazzel v. Money Store,
829 F.3d 260 (2nd Cir. 2016) 9

SUMMARY OF REPLY

Real Parties in Interest A Cab Series LLC, formerly known as A Cab LLC, and Creighton J. Nady (“A Cab”), fallaciously argue there is no final judgment in this case and a “new judgment” (that term appears 13 times in their response along with the repeated assertion “there is no final judgment”) needs to be determined by the district court. A Cab is manifestly ignoring this Court’s affirmance, as modified, of the 2018 final judgment in this case, *A Cab LLC v. Murray*, 501 P.3d 961, 137 Nev. Adv. Op. 84 (Dec. 30, 2021) (En Banc) (PA 332-365), as further confirmed in its subsequent Order of February 3, 2022 (PA 1236-37).

There is no “new judgment” to be entered by the district court. This Court, for the period after October 8, 2010, has affirmed all aspects of the final judgment’s award of damages and all other findings made in the final judgment. This Court’s modification of the final judgment, to remove its award of damages pre-dating October 8, 2010, involves determinations already made by the district court. There are no new findings to be made by the district court, only an arithmetical modification (reduction) of the judgment’s damages amount from the calculations (determinations) that were previously made and are in the record and that have been affirmed by this Court as accurate.

This Court, in resolving A Cab’s appeal of the final judgment, and affirming that judgment as modified, left nothing for the district court to determine

afresh about the amount of that judgment. Or the entity currently known as A Cab Series LLC's liability for that judgment. It is impossible for the district court to find that final judgment impacted by the *Dubric* proceedings; by a need to "decertify" the claims of class members that have proceeded to a final judgment without any individual recovery; or by any of the other baseless and nonsensical assertions made by A Cab.

A Cab, dissatisfied with this Court's resolution of its final judgment appeal, is seeking to endlessly evade, and frivolously re-litigate, its fully resolved and affirmed liability for over \$832,000 in unpaid minimum wages and interest owed to 631 of its Taxi Drivers. The district court has manifestly abused its discretion, and is enabling such conduct by A Cab, by staying enforcement of that final judgment and by failing to proceed as directed by this Court. This Court's intervention is warranted.

ARGUMENT

I. Writ relief is appropriate as the district court has manifestly abused its discretion by refusing to follow this Court's Orders and a future appeal will not afford an adequate remedy. _____

The final judgment in this case was entered on August 21, 2018, and affirmed, as modified, by this Court on December 30, 2021, to award damages for the period after October 8, 2010 against A Cab Series LLC. Those damages, with accrued post-judgment interest, now total over \$832,000 for 631 class members

and are not subject to further reduction. PA 688-92, 1245, 1281-97.

A Cab did not post a *supercedes* bond and secured a stay of the judgment pending appeal by posting only \$100,000 in security. PA 70, 72. While the Taxi Driver's counsel hold an additional \$203,694 from a judgment execution, this Court ruled A Cab may still seek to quash that levy, meaning those funds are not held as security against the judgment. 501 P.3d at 978.

A Cab's assertion "\$663,500 has been paid" towards the judgment or is held by the Taxi Driver's counsel as security for the judgment is false — it supports that claim by citing its same unsupported assertions to the district court! AP 18 *citing* PA 1254. Those assertions are also contrary to the record. A Cab insists it has "already paid more than \$139,000 to the Department of Labor as minimum wage payments" that have not been credited as an offset against the judgment. *Id.* That is untrue. The judgment has already credited A Cab for those payments. PA 22-24. Nor does A Cab present any evidence supporting its claim it has made "more than \$224,500 as payments to drivers in the Dubric settlement" or that those payments were made to the Taxi Driver judgment creditors in this case. AP 18.

The Taxi Drivers hold security of only \$100,000, an amount that is less than 12% of the judgment now owed with accrued interest. A Cab also convincing the district court to manifestly abuse its discretion (as found by this Court) by refusing to consider the appointment of a receiver. PA 803. The district court has now

also stayed this case, ignored this Court's Order it consider appointing a receiver, and declined to make A Cab post additional security. PSA¹ 4.

This Court might find its intervention was unnecessary if A Cab had fully secured its liability or was under the control of a receiver. But A Cab has not posted such security and no receiver has been appointed. And as demonstrated by its fallacious assertions to the district court and in its response, A Cab will continue proceedings *ad infinitum* in the district court to delay the district court's entry of the amended (and appealable as of right) final judgment directed by this Court (or an appealable judgment disregarding those directions). Nor is there any reason to believe that appeal, given A Cab's failure to post full security for the judgment, or operate under a receiver that is safeguarding its assets, would result in any meaningful recovery, years in the future, on the Taxi Drivers' affirmed claims.

The district court's refusal to enter the amended judgment directed by this Court, and appropriately enforce the judgement (including appointing a receiver), and its stay of these proceedings, involve manifest, and inexplicable, abuses of discretion. Absent writ relief the Taxi Drivers have no other adequate remedy. Nor does A Cab offer any actual explanation as to why the circumstances presented do not warrant writ relief. Instead it presents a litany of alternative facts

¹ Page references to petitioners' supplemental appendix are "PSA."

and legal theories contradicting this Court’s prior rulings in this case, none of which are accompanied by colorably proper citations to precedent or the record.

II. There is no “new judgment” to be entered based on new findings to be made by the district court; it must enter an amended judgment based on the record and findings affirmed by this Court.

A. The record contains the exact amount of the modification to the judgment directed by this Court; the district court’s task in entering an amended judgment is purely ministerial and arithmetic, it cannot make any new findings.

This Court, when it affirmed the final judgment of August 21, 2018, reduced by the award of damages for prior to October 8, 2010, recognized the amount of that reduction had already been determined by the district court. *See*, PA 343-45 (Discussing damages awarded more than two years prior to commencement of this case on October 8, 2012 — the period for which this Court disallowed damages); PA 345-46 (Discussing damages for the 2013-2015 period); PA 347-351 (Discussing damages for prior to 2013 and after October 8, 2010). The August 21, 2018, judgment also recites where, in the record of the district court proceedings, the damages awarded prior to October 8, 2010, and incorporated into the final judgment, were tallied. PA 19-25, ¶¶ 25-26.

This Court rejected A Cab’s claim the district court’s damages calculations for the period after October 8, 2010, were erroneous or should be disallowed or re-examined. PA 346-351. A Cab is now bound by the district court’s original

findings as to the damages determined for the period after October 8, 2010. All of the findings needed to enter the amended judgment directed by this Court (to remove the previously awarded, and disallowed, damages pre-dating October 8, 2010) have been made by the district court and affirmed by this Court. They are *res judicata* and not subject to modification by the district court upon remand. *See, Budget Financial Corp. v. System Investment Corp*, 511 P.2d 1047-48 (Nev. Sup. Ct. 1973) (Proceedings after remittitur cannot re-examine matters encompassed by first appeal of judgment).

The August 21, 2018, judgment's damages award, reduced by the damages previously calculated and in the record for prior to October 8, 2010, and that judgment's other findings, have been affirmed. The district court under this Court's remittitur has the purely ministerial task of resolving any disputes over the accuracy of the arithmetic applied to the existing record to arrive at the amended (reduced) judgment. That arithmetic has been performed and presented to the district court, A Cab has identified no errors in that arithmetic, and the district court has abused its discretion by refusing to discharge its duty to comply with this Court's remittitur and enter the amended judgment. *See*, Petition, p. 11, fn 5, PA 579-765, 1280-1297 (Taxi Drivers' motion to enter amended judgment and corrective reply declaration) and PA 806-1079 (A Cab's opposition). While A Cab insists the Taxi Driver's arithmetic presented to the district court relies on

spreadsheets that “contain errors,” and “do not account for a number of issues” (that A Cab does not identify), and “falsely inflate damages,” it cites to nothing in the record.² AP³ 15. A Cab also asserts this Court has found such damages to be “in error” because they were “approximations” that must be subject to a new “determination” by the district court — it cites nothing in support of this claim, which is completely contrary to this Court’s rulings. *Id.*, PA 346-351.

B. The *Dubric* case is irrelevant to the amended judgment.

The August 21, 2018, final judgment, as modified by this Court, was against the entity currently known as A Cab Series LLC. While the *Dubric* final judgment of August 31, 2021, purports to release a class of claims against persons besides A Cab Series LLC, it cannot impact the earlier judgment in this case against that entity. The district court in this case cannot find, as A Cab insists, that the *Dubric* case has resulted in a “release and satisfaction” of the judgment in this case. AP 13. A Cab offers no explanation as to how that is possible, beyond its false assertion that there is “no judgment” in this case only a “new judgment” to be entered.⁴ As this Court confirmed in its Order of February 3, 2022, citing

² This unsupported assertion is the same one made in A Cab’s appeal of the final judgment and found by this Court to have “no justification.” PA 346.

³ Page references to A Cab’s answer to the petition are “AP.”

⁴ A Cab misrepresents the Taxi Driver’s counsel’s colloquy with the district court. AP 17-18. Such counsel had not “conceded” that “one of the major Defendants” would be impacted by the *Dubric* appeal which supported staying

Schiff v. Winchell, 237 P.3d 99, 101 (Nev. Sup. Ct. 2010), the August 21, 2018, judgment, to the extent it was affirmed, has maintained a continuous existence since its date of original entry. PA 1236-37. The district court manifestly abused its discretion by agreeing with A Cab (without reason because none exists) that the *Dubric* judgment may impact the earlier entered judgment in this case against A Cab Series LLC.

C. A Cab’s claim the district court must make other findings before entering an amended judgment ignores this Court’s rulings and lacks any basis in law or fact.

A Cab asserts the district court must resolve other issues, unrelated to the *Dubric* case, before an amended judgment can be entered and enforced. Those assertions are baseless and ignore this Court’s prior rulings.

1. There is no class “decertification” notice issue.

A Cab insists “this Court’s instruction in the remand” resulted in a need to send a notice of “exclusion” from the class to all “class members which were erroneously included by the district court.” AP 15. A Cab cites to nothing by this Court finding, or implying, such a need and this Court gave no such instruction.

A Cab is arguing that because class member claims prior to October 8, 2010, were found to be non-recoverable by this Court (beyond the statute of

judgment enforcement. In that colloquy he explained *Dubric*’s potential impact on the other defendant’s (Nady’s) liability was irrelevant to the affirmed judgment against A Cab Series LLC. PA 1273. *See, also*, PA 1211-12.

limitations) the “class” must be reconstituted (“decertified”) and noticed accordingly. That is absurd — the class was properly certified, this Court did not modify the class certification (no appeal was taken from that issue), and all of the class members proceeded to a final judgment on their claims. That some class members failed partially, or entirely, on their damages claims as a result of this Court’s ruling on A Cab’s appeal does not modify that judgment’s finality for any class member. There is no damages “class” to “decertify” or class member claims to adjudicate. The class judgment has finally and fully resolved each class member’s damages claim, either with, or without, a recovery. *Mazzel v. Money Store*, 829 F.3d 260 (2nd Cir. 2016) (no pin cite), cited by A Cab, does not support a contrary conclusion. AP 16. It says nothing about how or why a “class decertification” is needed or possible when the amount of a class judgment is modified, but otherwise affirmed, on appeal.

2. A Cab Series LLC’s liability has been affirmed and it remains the only judgment debtor; no determination of “what entity would be liable for the judgment” needs to be made to enter the amended the judgment.

A Cab falsely asserts this Court remanded this case for a “determination of what entity would even be liable for any judgment” and “the appropriate defendant.” AP 4, 10, 15. In doing so A Cab misrepresents this Court’s ruling on A Cab’s appeal of a post-judgment order denying its motion to quash a judgment execution. AP 4, 10, citing PA 363.

This Court granted A Cab a right to a further hearing in the district court on whether that judgment execution (alleged by A Cab to have seized property *not* belonging to judgment debtor A Cab Series LLC) should be quashed. PA 362-63.

This Court did not direct any findings on remand as to A Cab Series LLC's liability for the modified judgment — it fully affirmed that liability. PA 361.

3. The district court cannot issue any “declaration” as to A Cab Series LLC’s “non-liability” for any damages owed after June 26, 2014, and included in the August 21, 2018, judgment.

A Cab frivolously asserts that it is entitled to have the district court, prior to entry of an amended judgment, consider issuing a “Declaratory Order” that “no damages exist” and can be awarded for the period after June 26, 2014. AP 15, 16, citing PA 368-578. Those damages total \$211.72 and were incorporated into the August 21, 2018, judgment. PA 368-72.

This Court has fully affirmed the August 21, 2018, judgment's award of damages for the entire period after October 8, 2010. PA 346-351. That award is *res judicata* and the district court may not now entertain A Cab's request that award for the period after June 26, 2014, be set aside.⁵ *See, Budget Financial Corp.*, 511 P.2d at 1047-48.

⁵ A Cab could have, but did not, raise that issue in its final judgment appeal.

4. There are no issues to be resolved regarding payments made in the *Dubric* case or class members who “cannot be found” or who have “settled their claims” prior to entering the amended judgment.

A Cab insists prior to the entry and enforcement of an amended judgment determinations must be made regarding “which claimants have settled their claims” by virtue of receiving payments in the *Dubric* case and “which claimants cannot be found.” AP 14, 19. These assertions by A Cab are frivolous.

The August 21, 2018, judgment forbids A Cab from settling or releasing any class member claims without prior approval of the *Murray* district court. PA 35-36. It did not appeal that provision of the judgment and this Court has affirmed it. Nor has A Cab secured approval from the *Murray* district court to settle any claims set forth in the judgment. As a result, it cannot argue against an immediate entry of the amended judgment setting forth, in full, the judgment amounts it owes unreduced by any payments it may have made in *Dubric* or otherwise to class members.⁶

Nor does an inability to currently “find” certain class member judgment creditors have any bearing on the entry (or enforcement) of an amended judgment. The judgment amounts in favor of those presently unlocated class members were

⁶ A Cab, once the amended judgment is entered, can request the district court reduce it in an amount equal to the payments it has made. But its right to make such a request cannot be used to delay entry and enforcement of the amended judgment for all of the class members.

affirmed and must be in the amended judgment. The disposition of funds that may be paid by A Cab to satisfy those judgments (perhaps to a *cy pres* beneficiary or Nevada's abandoned property fund) is an issue to be dealt with in the future.

**III. The Taxi Drivers are not seeking to have this Court
"assume the trial court's role" or make "original findings."**

A Cab misrepresents the Taxi Drivers' requests to this Court, and the record, when it asserts the Taxi Drivers are seeking to have this Court improperly award damages or "assume the trial court's role" or make "original findings." AP 7. The Taxi Drivers ask this Court to Order the district court to discharge its obligation to enter the amended judgment directed by this Court's remittitur — that judgment is incontestably established by the record to be for \$685,866.60 for 661 class members, as discussed, *supra*, and set forth at PA 1284-97. Petition p. 24-25. Nor do the Taxi Drivers seek, as A Cab claims, an instruction that the district court award fees of \$568,071. They ask for an instruction that the district court award fees consistent with this Court's Opinion, which found the original fee award of \$568,071 was proper but subject to reduction only to the extent it included fees awarded in connection with the disallowed damages award pre-dating October 8, 2010. Petition p. 24, citing 501 P.3d 961 (PA 355). These requested instructions involve no "fact finding" or "damages" determinations or other usurpation by this Court of the district court's functions. They will properly direct the district court to comply with its obligation to implement this Court's

Opinion affirming, as modified, the August 21, 2018, final judgment and post-judgment order awarding attorney's fees.

IV. Directing reassignment of this case from Judge Kierny may be unnecessary as the district court has reassigned this case.

The district court has reassigned this case to a different judge since Judge Kierny's issuance of the order (orally on March 9, 2022, and confirmed in the written order entered on May 3, 2022) triggering this Petition. Judge Kierny's order remains the law of the case and the Taxi Drivers still seek to have this Court correct its manifest errors. But this Court may now find it unnecessary, as requested in the Taxi Drivers' Petition, to direct a reassignment of this case from Judge Kierny as it has already been so reassigned.

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: July 15, 2022

Respectfully submitted,

/s/ Leon Greenberg

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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 3,272 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 15th day of July, 2022.

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PROOF OF SERVICE

The undersigned certifies that on July 15, 2022, she served the attached

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