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10 IN THE SUPREME COURT OF THE STATE OF NEVADA

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12 A CAB SERIES, LLC,
ADMINISTRATION COMPANY,

13 Appellant,

14 vs.

15 MICHAEL MURRAY; MICHAEL
16 RENO; AND WELLS FARGO BANK,
N.A.,

17 Respondents.

Supreme Court No. 84472

District Ct. No. A-19-792961-C

18 **REPLY TO OPPOSITION TO MOTION TO STAY APPEAL**

19 **AND TO HOLD ALL DEADLINES IN ABEYANCE**

20 COMES NOW, Appellant, A CAB SERIES, LLC, ADMINISTRATION
21 COMPANY (“*Administration Company*”), by and through its attorneys, ROGER
22 P. CROTEAU & ASSOCIATES, LTD., and hereby presents its Reply to
23 Respondent’s Opposition to Motion to Stay Appeal and to Hold all Deadlines in
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1 Abeyance. This Reply is made and based upon the attached Memorandum of
2 Points and Authorities and all papers and pleadings on file herein.

3 DATED this 8th day of December, 2022.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

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6 /s/ Timothy E. Rhoda
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MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF THE FACTS

The facts surrounding this matter have been set forth in Appellant's Motion. Although this Court is familiar with the rather convoluted history of this matter, the Respondents' Opposition requires the clarification of a few factual matters. In so doing, Appellant will make clear – contrary to the Respondents' claims – that the pending Certified Question in *Saticoy Bay* is highly relevant to this matter.

In the matter of *A Cab, LLC v. Murray*, 501 P.3d 961 (Nev. 2021) (“*Murray*”), this Court considered a judgment that was entered against A Cab LLC and A Cab Series LLC based upon the Minimum Wage Act. In that case, the district court had entered a judgment against A Cab, LLC before granting a motion to amend the judgment to also include A Cab Series, LLC. *Murray*, 501 P.3d at 976. It is undisputed that Administration Company was never a party to the case from which the judgment issued and that the judgment was never amended to include Administration Company.

LEGAL ARGUMENT

A. THE CERTIFIED QUESTION OF *SATICOY BAY* IS HIGHLY RELEVANT TO THIS MATTER

The Certified Question of *Saticoy Bay*, as framed by the Ninth Circuit Court of Appeals and accepted by this Court, is as follows:

Under Nevada law, must a series LLC created pursuant to Nev. Rev. Stat. § 86.296 be sued in its own name for a court to obtain jurisdiction over it, or may the master LLC under which the series is created be sued instead?

As discussed in the instant Motion, the Certified Question of *Saticoy Bay* arose from a factual scenario quite similar to the instant matter. Specifically, the plaintiffs therein obtained a judgment against a so-called “master LLC” and then sought to apply that same judgment against 36 separate series which were formed under *Saticoy Bay, LLC*. This factual scenario is substantially identical to the instant matter, where the Respondents obtained a judgment against *A Cab Series, LLC* and thereafter sought to enforce it against *Administration Company*, a series formed under *A Cab Series, LLC*.

The Respondents herein seek to minimize this matter, stating that:

This appeal does not concern the merit of appellant’s claim its property was improperly seized by the *Murray* judgment. It concerns whether the district court was correct in finding appellant’s claim was beyond its jurisdiction and in refusing to address the merits of that claim.

Opp., p. 2. However, this ignores both the district court’s Order and the Certified Question itself. Indeed, for purposes of this case, after purportedly enforcing their judgment against *Administration Company*, the Respondents have essentially taken the position that their action in suing *A Cab, LLC* (and then amending the resulting judgment to include *A Cab Series, LLC*) was sufficient to provide them with an enforceable judgment against *Administration Company*. Whether this was or was not the case is *exactly* the question before this Court in *Saticoy Bay*. Indeed, the Certified Question explicitly asks “must a series LLC created pursuant

1 to Nev. Rev. Stat. § 86.296 be sued in its own name for a court to obtain
2 jurisdiction over it, or may the master LLC under which the series is created be
3 sued instead?”

4 Secondarily, the district court herein dismissed Administration Company’s
5 complaint based in part upon its determination that Administration Company was
6 “in privity with defendants from the Murray Action.” The answer to the Certified
7 Question will likely provide significant insight regarding the degree of
8 separateness that exists between a series and its so-called “master LLC.” This is
9 particularly important to the extent that the Respondents seem to argue that
10 Administration Company was or is compelled to seek relief from the *Murray* court
11 in a case to which it is not currently and has never been a party.

12 **B. ADMINISTRATION COMPANY IS NOT A PARTY TO THE**
13 **MURRAY CASE**

14 In their Opposition, the Respondents assert that this Court “directed the
15 district court in *Murray* . . . to afford a further suitable hearing to appellant (if it so
16 wished) as to its claims.” Opp., p. 2. This is quite simply not true depending upon
17 whom Respondents refer to as “appellant.” Administration Company – the
18 Appellant herein – was undisputably never a party to the *Murray* action or appeal.
19 Thus, Administration Company has never been in a position to participate in a
20 hearing in *Murray*.

21 This Court stated as follows in *Murray*:

22 But the district court did err in denying the motion to quash without
23 conducting an evidentiary hearing. The district court acknowledged
24 that while the issues could potentially “be cured by a belated
25 appearance by the alleged series LLCs (if they are, in fact, properly
26 constituted and exist), the interests of justice, and the need to promote
27 judicial efficiency” led the court to make its decision without such
28 appearances. The only way to assess the existence of the individual
series entities for the purpose of judgment collection is through
examining the operating agreements, and A Cab did not have the
opportunity to use those agreements to present the district court with
an argument for the series’ existence. A Cab (and the series entities, if
they actually exist and join the action) is entitled to an opportunity to
present such evidence and argue its motion to quash. Accordingly, we

1 reverse on this point and remand to the district court in order to
2 reconsider the motion to quash the writ of execution.

3 *Murray*, 501 P.3d at 978. The *Murray* plaintiffs never took any action whatsoever
4 to join Administration Company as a defendant in their case either before or after
5 this Court issued its decision in *Murray*. Nor did the *Murray* plaintiffs ever take
6 any action whatsoever to attempt to amend the *Murray* judgment to include
7 Administration Company. Thus, with respect to the matters at hand,
8 Administration Company was never previously subject to the jurisdiction of either
9 the district court or this Court. This Court recognized this fact when it stated “A
10 Cab (and the series entities, **if they actually exist and join the action**) is entitled
11 to an opportunity to present such evidence and argue its motion to quash.”

12 *Murray*, 501 P.3d at 978. Notably, nothing required Administration Company to
13 join the existing action. Instead, Administration Company filed its own Complaint
14 to recover its funds.

15 In *Murray*, the Respondents themselves argued before this Court that
16 Administration Company’s alleged injuries could not be part of the *Murray* appeal
17 because A Cab, LLC and A Cab Series, LLC could not assert the rights of third
18 parties. *Murray*, 501 P.3d at 978. Indeed, when the Respondents illegally seized
19 funds that belonged to Administration Company to satisfy the judgment against A
20 Cab, LLC and A Cab Series, LLC, Administration Company filed its own action to
21 recover these funds, Case No. A-19-792961. In that case, in the Order appealed
22 from herein, the district court held as follows:

23 Here, Plaintiff’s argument that it was a not party [sic] to the *Murray*
24 Action, and thus issue preclusion does not apply, lacks merit.
25 Plaintiff is in privity with defendants from the *Murray* Action

26 In coming to this conclusion, the district court ignored the fact that Wells Fargo
27 Bank, N.A. was also not a party to the original *Murray* action.

28 Based upon its holding, the district court dismissed Administration
Company’s Complaint, leaving it with no legal means to attempt to recover the

1 funds which Wells Fargo erroneously paid over in response to the writ of
2 execution against “A Cab LLC and A Cab Taxi Service.” Wells Fargo, like
3 Administration Company, was never a party to the *Murray* action.

4 **C. GOOD CAUSE EXISTS TO STAY THIS APPEAL**

5 The ultimate resolution of the Certified Question presented in *Saticoy Bay*
6 will bear heavily on the instant appeal. To date, other than its tangential
7 discussion in *Murray*, this Court has not considered Nevada’s series LLC law. For
8 the reasons discussed in the instant Motion and above, the analysis which is
9 forthcoming in *Saticoy Bay* is likely to be highly instructive to this matter.

10 *Saticoy Bay* has been fully briefed for some time and this Court’s decision
11 will likely be forthcoming in the relatively near future. Staying this appeal will be
12 beneficial to not only the parties but also to this Court as the *Saticoy Bay* decision
13 may render briefing of this matter unnecessary, thereby saving judicial resources
14 that can be better used to address other matters.

15 **D. ALTERNATIVELY, AN EXTENSION OF TIME IS WARRANTED**
16 **BECAUSE APPELLANT HAS RECENTLY RETAINED NEW**
17 **COUNSEL**

18 In the event that the Court is not inclined to stay this matter, the Appellant
19 has requested a third extension of time in which to file the Opening Brief.
20 Contrary to the claims of the Respondents, this matter involves significant
21 questions of law which are both complex and difficult. The record is not nearly as
22 concise as the Respondents suggest. Moreover, litigating this appeal will require
23 that counsel further familiarize itself with the *Murray* proceedings before both the
24 district court and this Court.

25 Appellant’s counsel firmly believes that the answer to the Certified
26 Question will significantly assist both the parties and the Court in resolving this
27 appeal and that a stay of this matter is thus appropriate. Indeed, the answer to the
28 Certified Question may allow this appeal to be summarily adjudicated without the

1 need for briefing. In the absence of a stay, counsel has requested an additional
2 extension of time until January 23, 2023. Such an extension is admittedly
3 somewhat longer than is usual. However, aside from the necessity that Appellant's
4 new counsel familiarize itself with all of the proceedings associated with this
5 matter, the Christmas and New Years Day holidays are rapidly approaching. As
6 mentioned in the instant Motion, Appellant's counsel will have family visiting for
7 approximately 2 weeks surrounding these holidays. The attendant family and
8 social obligations will significantly detract from the time available to prepared the
9 Opening Brief and Appendix. Under such circumstances, Appellant's counsel
10 respectfully suggests that the requested extension is both reasonable and
11 necessary.

12 CONCLUSION

13 For the reasons discussed above, Administration Company respectfully
14 requests that this Court stay this appeal and hold all deadlines in abeyance until
15 this Court resolves the *Saticoy Bay* matter discussed above. Alternatively,
16 Appellant respectfully requests an additional extension of time until January 23,
17 2023, in which to file the Opening Brief and Appendix herein.

18 Contrary to the claims of the Respondents, there is nothing frivolous about
19 either the instant appeal or Motion. The Certified Question at issue in *Saticoy*
20 *Bay* is highly relevant to the instant appeal and may render briefing unnecessary.

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1 At the very least, the answer to the Certified Question will assist both the parties
2 and the Court in adjudicating this appeal.

3 DATED this 8th day of December, 2022.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

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