

Case No. 85850

In the Supreme Court of Nevada

A CAB SERIES LLC, f/k/a A CAB, LLC,

Appellant,

vs.

MICHAEL MURRAY; and MICHAEL
RENO, individually and on behalf of
others similarly situated,

Respondents.

Electronically Filed
Jan 26 2024 05:26 PM
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable MARIA GALL, District Judge
District Court Case No. A-12-669926-C

**APPELLANT'S APPENDIX
VOLUME 14
PAGES 3251-3500**

ESTHER C. RODRIGUEZ (SBN 6473)
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(702) 302-8400

DANIEL F. POLSENBERG (SBN 2376)
ABRAHAM G. SMITH (SBN 13,250)
LAUREN D. WIGGINTON (SBN 15,835)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Appellant

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
1.	Complaint	10/08/12	1	1–8
2.	Transcript re Defendant’s Motion to Dismiss Complaint	01/17/13	1	9–31
3.	First Amended Complaint	01/30/13	1	32–38
4.	Notice of Entry of Decision and Order	02/13/13	1	39–47
5.	Defendant A Cab, LLC’s Answer to Complaint	04/22/13	1	48–52
6.	Notice of Entry of Order	05/06/13	1	53–56
7.	Defendant A Cab, LLC’s Answer to First Amended Complaint	05/23/13	1	57–61
8.	Joint Case Conference Report	05/28/13	1	62–69
9.	Notice of Entry of Order Denying Plaintiffs’ Counter-Motion for Default Judgment or Sanctions Pursuant to EDCR 7.602(b)	05/29/13	1	70–73
10.	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Ninety (90) days	01/29/14	1	74–78
11.	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Ninety (90) days (Second Request)	04/23/14	1	79–83
12.	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Sixty (60) days (Third Request)	07/28/14	1	84–87
13.	Recorder’s Transcript of Proceedings Notice of Plaintiffs’ Motion to Compel the Production of Documents	03/18/15	1	88–107

14.	Transcript re Plaintiffs' Motion to Certify This Case as a Class Action Pursuant to NCRP Rule 23 and Appoint a Special Master Pursuant to NRCF Rule 53	08/11/15	1	108–140
15.	Notice of Entry of Order Granting Motion to Serve and File a Second Amended and Supplemental Complaint	08/17/15	1	141–144
16.	Second Amended Complaint and Supplemental Complaint	08/19/15	1	145–162
17.	Defendant A Cab, LLC's Answer to Second Amended Complaint	09/14/15	1	163–169
18.	Defendant Creighton J. Nady's Answer to Second Amended Complaint	10/06/15	1	170–176
19.	Transcript of Proceedings of All Pending Motions	11/03/15	1 2	177–250 251–345
20.	Recorder's Transcript of Proceedings for All Pending Motions	11/18/15	2	346–377
21.	Joint Case Conference Report	11/25/15	2	378–386
22.	Notice of Entry of Order Granting in Part and Denying in Part Defendant's Motion for Declaratory Order Regarding Statute of Limitations	12/22/15	2	387–391
23.	Recorder's Transcript of Proceedings for Discovery Production/Deferred Ruling – Defendant's Rule 37 Sanctions	01/13/16	2	392–412
24.	Notice of Entry of Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCF Rule 23 (b)(2) and NRCF Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NRCF Rule 53	02/10/16	2	413–430
25.	Notice of Entry of Order Denying Defendant's Motion to Dismiss and for	02/18/16	2	431–434

	Summary Judgment Against Michael Murray			
26.	Notice of Entry of Order Denying Defendant's Motion to Dismiss and for Summary Judgment Against Michael Reno	02/18/16	2	435–438
27.	Notice of Entry of Order of Discovery Commissioner's Report and Recommendation	03/04/16	2	439–446
28.	Notice of Entry of Order of Discovery Commissioner's Report and Recommendation	03/04/16	2	447–460
29.	Transcript Re: Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating this Court's Order of February 10, 2016 and Compelling Compliance with that Order on OST; and Defendant's Opposition to Motion to Impose Sanctions on Order Shortening Time and Countermotion for Sanctions Against Plaintiffs	03/16/16	2	461–476
30.	Notice of Entry of Order Denying Plaintiffs' Motion to Impose Sanctions Against Defendants	04/07/16	2	477–480
31.	Notice of Entry of Order Granting Defendants' Motion for Stay Pending Court's Reconsideration of Prior Order	04/07/16	2	481–484
32.	Recorder's Transcript of Proceedings for Further Proceedings on Discovery Production/Deferred Ruling	04/08/16	2 3	485–500 501–520
33.	Notice of Entry of Order on Defendants' Motion for Reconsideration	04/28/16	3	521–524
34.	Notice of Entry of Order Denying Defendants' Motion for Reconsideration	05/27/16	3	525–528

	of Two Orders Entered March 4, 2016, Pertaining to Discovery Commissioner's Reports & Recommendations			
35.	Notice of Entry of Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NRCP Rule 53 and Amended by this Court in Response to Defendant's Motion for Reconsideration Heard in Chambers on March 28,2016	06/07/16	3	529–546
36.	Notice of Entry of Discovery Commissioner's Report and Recommendations	07/13/16	3	547–553
37.	Transcript of Proceedings re Plaintiff's Motion to Compel the Production of Documents and Interrogatory Responses - Status Check on Status of Case	09/07/16	3	554–596
38.	Transcript of Proceedings re Motions Status Check, Compliance Status Check, and Production Status Check	10/12/16	3	597–646
39.	Recorder's Transcript of Proceedings re Status Check Compliance	11/18/16	3	647–671
40.	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion to Continue Trial Date and Extend Discovery Schedule and for Other Relief	11/23/16	3	672–677
41.	Transcript of Proceedings re Motion to Compel Interrogatory Responses on Status Check Compliance - Report and Recommendation	12/09/16	3	678–741

42.	Recorder's Transcript of Proceedings re Plaintiffs' Motion to Compel the Production of Documents	01/25/17	3 4	742–750 751–787
43.	Recorder's Transcript of Proceedings re Plaintiffs' Motion to Compel Compliance with Subpoena	02/08/17	4	788–806
44.	Transcript re Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/16 to Enjoin Defendants from Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief and for Sanctions	02/14/17	4	807–826
45.	Notice of Entry of Order Granting Certain Relief on Motion to Enjoin Defendants from Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief	02/16/17	4	827–830
46.	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion to Have Case Reassigned to Department I per EDCR Rule 1.60 and Designated as Complex Litigation per NRCP 16.1(f)	02/21/17	4	831–834
47.	Notice of Entry of Order of Stipulation and Order	03/09/17	4	835–838
48.	Notice of Entry of Order of Discovery Commissioners Report and Recommendations	03/13/17	4	839–847
49.	Notice of Entry of Order of Discovery Commissioners Report and Recommendations	03/13/17	4	848–855

50.	Notice of Appeal	03/20/17	4	856–857
51.	Defendants’ Case Appeal Statement	03/20/17	4	858–862
52.	Notice of Entry of Order of Discovery Commissioner’s Report and Recommendations	03/31/17	4	863–871
53.	Notice of Entry of Discovery Commissioner’s Report & Recommendations	05/18/17	4	872–880
54.	Transcript re All Pending Motions	05/18/17	4 5	881–1000 1001–1011
55.	Transcript re Plaintiff’s Re-Notice of Motion for Partial Summary Judgment	05/25/17	5	1012–1032
56.	Notice of Entry of Decision and Order	06/07/17	5	1033–1050
57.	Transcript re Plaintiff’s Motion on Order Shortening Time and Extend Damages Class Certification and for Other Relief	06/13/17	5	1051–1072
58.	Stipulation and Order	07/11/17	5	1073–1078
59.	Notice of Entry of Order Denying Plaintiffs’ Motion for Partial Summary Judgment	07/17/17	5	1079–1084
60.	Order	07/17/17	5	1085–1086
61.	Order	07/17/17	5	1087–1088
62.	Notice of Entry of Order Denying Plaintiffs’ Counter-Motion for Sanctions and Attorneys’ Fees and Order Denying Plaintiffs’ Anti-SLAPP Motion	07/31/17	5	1089–1092
63.	Recorder’s Transcript of Proceeding re Discovery Conference	08/08/17	5	1093–1110
64.	Recorder’s Transcript of Proceeding re Discovery Conference – Referred by Judge	10/04/17	5	1111–1123

65.	Notice of Entry of Discovery Commissioner's Report & Recommendations	10/24/17	5	1124–1131
66.	Notice of Entry of Order	12/12/17	5	1132–1135
67.	Notice of Entry of Order	12/12/17	5	1136–1139
68.	Transcript Re: Plaintiff's Motion for Partial Summary Judgment and Motion to Place Evidentiary Burden on Defendants to Establish Lower Tier Minimum Wage and Declare NAC 608.102(2)(b) Invalid	12/14/17	5	1140–1198
69.	Transcript re Defendant's Motion for Summary Judgment	01/02/18	5 6	1199–1250 1251–1261
70.	Notice of Entry of Order of Appointment of Co-Class Counsel Christian Gabroy	01/04/18	6	1262–1265
71.	Notice of Entry of Order Stipulation and Order	01/16/18	6	1266–1269
72.	Notice of Entry of Order	01/22/18	6	1270–1275
73.	Transcript re Plaintiffs' Omnibus Motion in Limine 1-25, Defendants' Motion in Limine to Exclude the Testimony of Plaintiffs' Experts	01/25/18	6	1276–1311
74.	Transcript re Status Check on Appointment of Special Master	02/02/18	6	1312–1332
75.	Notice of Entry of Order Denying Plaintiffs' Motion for Bifurcation and/or to Limit Issues for Trial per NRCP 42(B)	02/02/18	6	1333–1337
76.	Notice of Entry of Order Granting Plaintiffs' Motion to Appoint a Special Master	02/08/18	6	1338–1345
77.	Transcript re Appointment of Special Master	02/15/18	6	1346–1376

78.	Notice of Entry of Order Modifying Court's Previous Order of February 7, 2018 Appointing a Special Master	02/16/18	6	1377–1380
79.	Clerk's Certificate Judgment	05/07/18	6	1381–1386
80.	Transcript re Plaintiffs' Motion for Miscellaneous Relief	05/23/18	6	1387–1463
81.	Transcript re Plaintiffs' Motion to Hold Defendants in Contempt; Strike Their Answer	06/01/18	6 7	1464–1500 1501–1508
82.	Transcript re Plaintiff's Motion for Partial Summary Judgment	06/05/18	7	1509–1580
83.	Notice of Entry of Order Granting Summary Judgment, Severing Claims, and Directing Entry of Final Judgment	08/22/18	7	1581–1646
84.	Motion to Amend Judgment	08/22/18	7	1647–1655
85.	Opposition to Plaintiffs' Motion to Amend Judgment	09/10/18	7	1656–1680
86.	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Amend Judgment	09/20/18	7	1681–1737
87.	Notice of Appeal	09/21/18	7	1738–1739
88.	Defendants' Case Appeal Statement	09/21/18	7	1740–1744
89.	Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening	09/21/18	7 8	1745–1750 1751–1769
90.	Plaintiffs' Response and Counter-motion to Defendants Motion on OST to Quash	09/24/18	8	1770–1845
91.	Transcript re Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening	09/26/18	8	1846–1913

92.	Transcript re Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening, and Plaintiffs' Response to Defendant's Ex-Parte Motion to Quash Writ of Execution on OST and Countermotion for Appropriate Judgment Enforcement Relief	09/28/18	8	1914–1980
93.	Claim of Exemption from Execution – A Cab Series, LLC, Maintenance Company	10/04/18	8	1981–1986
94.	Claim of Exemption from Execution – A Cab Series, LLC, CCards Company	10/04/18	8	1987–1992
95.	Claim of Exemption from Execution – A Cab Series, LLC, Administration Company	10/04/18	8	1993–1998
96.	Claim of Exemption from Execution – A Cab Series, LLC, Taxi Leasing Company	10/04/18	8 9	1999–2000 2001–2004
97.	Claim of Exemption from Execution – A Cab Series, LLC, Employee Leasing Company Two	10/04/18	9	2005–2010
98.	Claim of Exemption from Execution – A Cab Series, LLC, Medallion Company	10/04/18	9	2011–2016
99.	Plaintiffs' Motion for an Award of Attorneys Fees and Costs as per NRCPP Rule 54 and the Nevada Constitution	10/12/18	9	2017–2041
100.	Notice of Entry of Order	10/22/18	9	2042–2045
101.	Transcript Re All Pending Motions	10/22/18	9	2046–2142
102.	Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCPP Rule 54 and the Nevada Constitution	10/29/18	9	2143–2155

103.	Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/01/18	9 10	2156–2250 2251–2294
104.	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs as Per NRCP Rule 54 and the Nevada Constitution	11/08/18	10	2295–2303
105.	Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/16/18	10	2304–2316
106.	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/28/18	10	2317–2323
107.	Recorder's Transcript of Hearing on All Pending Motions	12/04/18	10	2324–2405
108.	Transcript Re Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt	12/11/18	10	2406–2423
109.	Transcript re Plaintiffs Ex Parte Motion for a Temporary Restraining Order and Motion on an Order Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320	12/13/18	10	2424–2475
110.	Notice of Entry of Order Denying Defendants' Motion to Quash Writ of Execution	12/18/18	10	2476–2498

111.	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Objections to Defendants' Claims of Exemption from Execution	12/18/18	10 11	2499–2500 2501–2502
112.	Notice of Entry of Order Granting Plaintiffs' Counter Motion for Judgment Enforcement Relief	01/02/19	11	2503–2510
113.	Amended Notice of Appeal	01/15/19	11	2511–2513
114.	Defendants' Amended Case Appeal Statement	01/15/19	11	2514–2518
115.	Notice of Entry of Order on Judgment and Order Granting Resolution Economics' Application for Order of Payment of Special Master's Fees and Order of Contempt	02/05/19	11	2519–2528
116.	Notice of Entry of Order Granting Plaintiffs' Motion for an Award of Attorneys' Fees and Costs Pursuant to NRCP 54 and the Nevada Constitution	02/07/19	11	2529–2539
117.	Notice of Entry of Order Denying in Part and Continuing in Part Plaintiffs' Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their Answer, Grant Partial Summary Judgment, Direct A Prove Up Hearing, and Coordinate Cases	03/05/19	11	2540–2543
118.	Notice of Entry of Order on Defendants' Motion for Reconsideration	03/05/19	11	2544–2549
119.	Second Amended Notice of Appeal	03/06/19	11	2550–2553
120.	Defendant's Second Amended Case Appeal Statement	03/06/19	11	2554–2558
121.	Notice of Entry of Order on Special Master Resolution Economics' Ex Parte Motion for Order Shortening Time on the Motion to Strike Defendants' Motion for	03/15/19	11	2559–2563

	Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of Special Masters Fees and Oder of Contempt			
122.	Stipulation and Order to Continue Hearings	05/17/19	11	2564–2566
123.	Stipulation and Order to Continue Hearings	05/20/19	11	2567–2569
124.	Recorder’s Transcript of Hearing re All Pending Motions	05/21/19	11	2570–2617
125.	Notice of Entry of Order Denying Defendants’ Motion for Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of Special Master’s Fees and Order of Contempt	08/08/19	11	2618–2623
126.	Recorder’s Transcript of Hearing re All Pending Motions	12/03/19	11	2624–2675
127.	Notice of Entry of Order Denying Plaintiffs’ Motion to Allow Judgment Enforcement; Plaintiffs’ Motion to Distribute Funds Held by Class Counsel; and Plaintiffs’ Motion Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320; and Order Granting Defendants’ Countermotion for Stay of Collection Activities	07/17/20	11	2676–2682
128.	Notice of Appeal	08/12/20	11	2683–2684
129.	Case Appeal Statement	08/12/20	11	2685–2688
130.	Amended Case Appeal Statement	08/20/20	11	2689–2693
131.	Clerk’s Certificate Judgment	12/15/20	11	2694–2702

132.	Notice of Entry of Order on Plaintiff's Motion for Appointment of Receiver to Aid Judgment Enforcement of Alternative Relief	02/22/21	11	2703–2708
133.	Notice of Appeal	02/23/21	11	2709–2710
134.	Case Appeal Statement	02/23/21	11	2711–2716
135.	Defendants' Motion for Costs	01/13/22	11 12	2717–2750 2751–2810
136.	Plaintiffs' Response to Defendants' Motion for Costs & Counter Motion to Offset Costs Against Judgment	02/03/22	12	2811–2825
137.	Reply in Support of Defendants' Motion for Costs and Opposition to Countermotion	02/09/22	12	2826–2846
138.	Supplement to Plaintiffs' Response to Defendants' Motion for Costs	02/10/22	12	2847–2850
139.	Defendants' Supplement to Response and Opposition to Plaintiffs' Rogue Supplement	02/10/22	12	2851–2853
140.	Defendants' Motion for Declaratory Order	02/11/22	12 13	2854–3000 3001–3064
141.	Plaintiffs' Motion for Entry of a Modified Judgment as Provided for by Remittitur	02/14/22	13	3065–3221
142.	Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	02/16/22	13 14	3222–3250 3251–3272
143.	Recorder's Transcript of Hearing re All Pending Motions	02/16/22	14	3273–3301
144.	Plaintiffs' Motion for an Award of Attorney's Fees on Appeal	02/17/22	14	3302–3316
145.	Plaintiffs' Motion for an Award of Attorney's Fees on Appeal of Order Denying Receiver, Opposing Mooted	02/22/22	14	3317–3332

	Motion for Attorney's Fees, and for Costs on Appeal			
146.	Errata to Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	02/23/22	14	3333–3336
147.	Plaintiffs' Response to Defendants' Motion for Declaratory Order & Counter-Motion for Award of Attorney's Fees	02/25/22	14	3337–3384
148.	Defendants' Motion to Stay on Order Shortening Time	02/28/22	14 15	3385–3500 3501–3512
149.	Opposition to Plaintiffs' Motion for Entry of a Modified Judgment as Provided for by Remittitur	02/28/22	15 16	3513–3750 3751–3786
150.	Opposition to Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees and as Provided for by Remittitur	03/02/22	16	3787–3796
151.	Opposition to Plaintiffs' Motion for an Award of Attorney's Fees on Appeal	03/03/22	16	3797–3817
152.	Plaintiffs' Response to Defendants' Motion for Stay on Order Shortening Time and Counter-Motion for Award of Attorney's Fees	03/04/22	16	3818–3859
153.	Opposition to Plaintiffs' Motion for an Award of Attorney's Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney's Fees, and for Costs on Appeal	03/08/22	16	3860–3886
154.	Reply in Support of Defendants' Motion to Stay on Order Shortening Time	03/08/22	16	3887–3901
155.	Recorder's Transcript of Hearing re Defendant's Motion to Stay on OST	03/09/22	16	3902–3916

156.	Notice of Entry of Order Granting Defendants' Motion to Stay	05/03/22	16	3917–3921
157.	Notice of Entry of Order Granting Defendants' Motion for Costs	05/17/22	16	3922–3927
158.	Notice of Entry of Order Granting Defendants' Motion for Release of Cost Bonds	05/20/22	16	3928–3933
159.	Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs	05/31/22	16 17	3934–4000 4001–4089
160.	Notice of Entry of Order Granting Defendants' Motion for Costs	06/03/22	17	4090–4093
161.	Opposition to Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs and Countermotion for Attorney's Fees	06/14/22	17	4094–4193
162.	Notice of Appeal	06/14/22	17	4194–4195
163.	Case Appeal Statement	06/14/22	17	4196–4201
164.	Plaintiffs' Motion to Reconsider Award of Costs	06/16/22	17 18	4202–4250 4251–4356
165.	Transcript of Proceedings re Plaintiffs' Motion for Turnover of Property Pursuant to NRS 21.320 or Alternative Relief	06/29/22	18	4357–4379
166.	Opposition to Plaintiffs' Motion to Reconsider Award of Costs and Countermotion to Strike Duplicative Order	06/30/22	18	4380–4487
167.	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs	07/01/22	18 19	4488–4500 4501–4666

168.	Order Denying Motion Without Prejudice and with Leave to Renew	07/08/22	19	4667–4670
169.	Notice of Entry of Order Denying Plaintiffs’ Motion for Turnover of Property Pursuant to NRS 21.230 or Alternative Relief Without Prejudice	07/08/22	19	4671–4676
170.	Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion to Reconsider Award of Costs and Response to Defendants’ Counter-Motion	07/21/22	19	4677–4716
171.	Transcript of Proceedings re Case Management Conference	07/25/22	19 20	4717–4750 4751–4766
172.	Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for Entry of Modified Judgment as Provided for by Remittitur	08/12/22	20	4767–4835
173.	Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for Entry of Modified Award of Pre-Judgment Attorney’s Fees and Provided for by Remittitur	08/12/22	20	4836–4840
174.	Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal	08/12/22	20	4841–4845
175.	Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for an Award of Attorneys’ Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney’s Fees, and for Costs on Appeal	08/12/22	20	4846–4867
176.	Plaintiffs’ Motion to Lift Stay and Have Pending Motions Decided	08/12/22	20	4868–4882
177.	Response to Plaintiffs’ Motion to Lift Stay and Have Pending Motions Decided	08/26/22	20	4883–4936

178.	Supplement to Defendants' Response to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	08/29/22	20	4937–4961
179.	Second Supplement to Defendants' Response to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	09/09/22	20	4962–4966
180.	Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	09/13/22	20	4967–4983
181.	Order Granting Motion to Lift Stay and Regarding Additional Briefing and Motion Practice	09/19/22	20	4984–4989
182.	Defendants' Omnibus Brief Pursuant to Court Order	09/30/22	20 21	4990–5000 5001–5199
183.	Exhibits 6-14 to Defendants' Omnibus Brief Pursuant to Court Order	09/30/22	21 22	5200–5250 5251–5300
184.	Plaintiffs' Omnibus Brief Pursuant to the Court's Order of September 19, 2022	09/30/22	22	5301–5309
185.	Defendants' Motion for Costs	10/24/22	22	5310–5326
186.	Notice of Non-Opposition to Defendants' Motion for Costs	11/01/22	22	5327–5329
187.	Plaintiffs' Opposition to Defendants' Motion for Costs	11/04/22	22	5330–5333
188.	Reply in Support of Defendants' Motion for Costs	11/07/22	22	5334–5337
189.	Notice of Entry of Order Granting Plaintiff's Motion for Entry of a Modified Judgment as Provided for by Remittitur	11/14/22	22	5338–5344
190.	Notice of Entry of Order Granting Plaintiff's Motion for Entry of a Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	11/14/22	22	5345–5350
191.	Order Amending the Class	11/17/22	22	5351–5355

192.	Notice of Entry of Order Modifying Final Judgment Entered on August 21, 2018	11/17/22	22	5356–5376
193.	Notice of Entry of Order Granting Plaintiffs’ Motion for Award of Attorney’s Fees on Appeal	11/17/22	22	5377–5382
194.	Notice of Entry of Order Continuing Decision on Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney’s Fees, and for Costs of Appeal	11/17/22	22	5383–5386
195.	Notice of Entry of Order Denying Defendants’ Motions for Sanctions	11/17/22	22	5387–5391
196.	Notice of Entry of Order Denying Defendants’ Motion for Costs	11/17/22	22	5392–5395
197.	Notice of Entry of Order on Motion for Costs	11/17/22	22	5396–5398
198.	Order Granting Motion to Stay, Offset, or Apportion Award of Cost	11/17/22	22	5399–5403
199.	Notice of Entry of Order Modifying Order on February 6, 2019 Granting Plaintiffs an Award of Attorney’s Fees and Costs	11/18/22	22	5404–5409
200.	Notice of Entry of Order on Motion to Distribute Funds Held by Class Counsel on and Order Shortening Time	11/21/22	22	5410–5421
201.	Notice of Entry of Order Denying Plaintiffs Motion to Reconsider Award of Costs and Striking June 3, 2022 Order	11/23/22	22	5422–5429
202.	Notice of Appeal	12/14/22	22 23	5430–5500 5501–5511
203.	Appellant’s Case Appeal Statement	12/14/22	23	5512–5516
204.	Notice of Removal	12/14/22	23	5517–5526

205.	Recorder's Transcript of Hearing on Argument re Post Judgment Receiver Motion to Distribute Funds Held by Class Counsel on an Order Shortening Time	12/15/22	23	5527–5530
------	---	----------	----	-----------

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
130	Amended Case Appeal Statement	08/20/20	11	2689–2693
113	Amended Notice of Appeal	01/15/19	11	2511–2513
203	Appellant’s Case Appeal Statement	12/14/22	23	5512–5516
129	Case Appeal Statement	08/12/20	11	2685–2688
134	Case Appeal Statement	02/23/21	11	2711–2716
163	Case Appeal Statement	06/14/22	17	4196–4201
95	Claim of Exemption from Execution – A Cab Series, LLC, Administration Company	10/04/18	8	1993–1998
94	Claim of Exemption from Execution – A Cab Series, LLC, CCards Company	10/04/18	8	1987–1992
97	Claim of Exemption from Execution – A Cab Series, LLC, Employee Leasing Company Two	10/04/18	9	2005–2010
93	Claim of Exemption from Execution – A Cab Series, LLC, Maintenance Company	10/04/18	8	1981–1986
98	Claim of Exemption from Execution – A Cab Series, LLC, Medallion Company	10/04/18	9	2011–2016
96	Claim of Exemption from Execution – A Cab Series, LLC, Taxi Leasing Company	10/04/18	8 9	1999–2000 2001–2004
79	Clerk’s Certificate Judgment	05/07/18	6	1381–1386
131	Clerk’s Certificate Judgment	12/15/20	11	2694–2702
1	Complaint	10/08/12	1	1–8
5	Defendant A Cab, LLC’s Answer to Complaint	04/22/13	1	48–52
7	Defendant A Cab, LLC’s Answer to First Amended Complaint	05/23/13	1	57–61

17	Defendant A Cab, LLC's Answer to Second Amended Complaint	09/14/15	1	163–169
18	Defendant Creighton J. Nady's Answer to Second Amended Complaint	10/06/15	1	170–176
89	Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening	09/21/18	7 8	1745–1750 1751–1769
120	Defendant's Second Amended Case Appeal Statement	03/06/19	11	2554–2558
114	Defendants' Amended Case Appeal Statement	01/15/19	11	2514–2518
51	Defendants' Case Appeal Statement	03/20/17	4	858–862
88	Defendants' Case Appeal Statement	09/21/18	7	1740–1744
135	Defendants' Motion for Costs	01/13/22	11 12	2717–2750 2751–2810
185	Defendants' Motion for Costs	10/24/22	22	5310–5326
140	Defendants' Motion for Declaratory Order	02/11/22	12 13	2854–3000 3001–3064
148	Defendants' Motion to Stay on Order Shortening Time	02/28/22	14 15	3385–3500 3501–3512
182	Defendants' Omnibus Brief Pursuant to Court Order	09/30/22	20 21	4990–5000 5001–5199
139	Defendants' Supplement to Response and Opposition to Plaintiffs' Rogue Supplement	02/10/22	12	2851–2853
146	Errata to Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	02/23/22	14	3333–3336
183	Exhibits 6-14 to Defendants' Omnibus Brief Pursuant to Court Order	09/30/22	21 22	5200–5250 5251–5300

3	First Amended Complaint	01/30/13	1	32–38
8	Joint Case Conference Report	05/28/13	1	62–69
21	Joint Case Conference Report	11/25/15	2	378–386
84	Motion to Amend Judgment	08/22/18	7	1647–1655
50	Notice of Appeal	03/20/17	4	856–857
87	Notice of Appeal	09/21/18	7	1738–1739
128	Notice of Appeal	08/12/20	11	2683–2684
133	Notice of Appeal	02/23/21	11	2709–2710
162	Notice of Appeal	06/14/22	17	4194–4195
202	Notice of Appeal	12/14/22	22 23	5430–5500 5501–5511
4	Notice of Entry of Decision and Order	02/13/13	1	39–47
56	Notice of Entry of Decision and Order	06/07/17	5	1033–1050
53	Notice of Entry of Discovery Commissioner’s Report & Recommendations	05/18/17	4	872–880
65	Notice of Entry of Discovery Commissioner’s Report & Recommendations	10/24/17	5	1124–1131
36	Notice of Entry of Discovery Commissioner’s Report and Recommendations	07/13/16	3	547–553
6	Notice of Entry of Order	05/06/13	1	53–56
66	Notice of Entry of Order	12/12/17	5	1132–1135
67	Notice of Entry of Order	12/12/17	5	1136–1139
72	Notice of Entry of Order	01/22/18	6	1270–1275
100	Notice of Entry of Order	10/22/18	9	2042–2045
194	Notice of Entry of Order Continuing Decision on Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal of	11/17/22	22	5383–5386

	Order Denying Receiver, Opposing Mooted Motion for Attorney's Fees, and for Costs of Appeal			
25	Notice of Entry of Order Denying Defendant's Motion to Dismiss and for Summary Judgment Against Michael Murray	02/18/16	2	431–434
26	Notice of Entry of Order Denying Defendant's Motion to Dismiss and for Summary Judgment Against Michael Reno	02/18/16	2	435–438
196	Notice of Entry of Order Denying Defendants' Motion for Costs	11/17/22	22	5392–5395
34	Notice of Entry of Order Denying Defendants' Motion for Reconsideration of Two Orders Entered March 4, 2016, Pertaining to Discovery Commissioner's Reports & Recommendations	05/27/16	3	525–528
125	Notice of Entry of Order Denying Defendants' Motion for Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of Special Master's Fees and Order of Contempt	08/08/19	11	2618–2623
110	Notice of Entry of Order Denying Defendants' Motion to Quash Writ of Execution	12/18/18	10	2476–2498
195	Notice of Entry of Order Denying Defendants' Motions for Sanctions	11/17/22	22	5387–5391
117	Notice of Entry of Order Denying in Part and Continuing in Part Plaintiffs' Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their Answer, Grant	03/05/19	11	2540–2543

	Partial Summary Judgment, Direct A Prove Up Hearing, and Coordinate Cases			
201	Notice of Entry of Order Denying Plaintiffs Motion to Reconsider Award of Costs and Striking June 3, 2022 Order	11/23/22	22	5422–5429
9	Notice of Entry of Order Denying Plaintiffs’ Counter-Motion for Default Judgment or Sanctions Pursuant to EDCR 7.602(b)	05/29/13	1	70–73
62	Notice of Entry of Order Denying Plaintiffs’ Counter-Motion for Sanctions and Attorneys’ Fees and Order Denying Plaintiffs’ Anti-SLAPP Motion	07/31/17	5	1089–1092
75	Notice of Entry of Order Denying Plaintiffs’ Motion for Bifurcation and/or to Limit Issues for Trial per NRCP 42(B)	02/02/18	6	1333–1337
59	Notice of Entry of Order Denying Plaintiffs’ Motion for Partial Summary Judgment	07/17/17	5	1079–1084
169	Notice of Entry of Order Denying Plaintiffs’ Motion for Turnover of Property Pursuant to NRS 21.230 or Alternative Relief Without Prejudice	07/08/22	19	4671–4676
127	Notice of Entry of Order Denying Plaintiffs’ Motion to Allow Judgment Enforcement; Plaintiffs’ Motion to Distribute Funds Held by Class Counsel; and Plaintiffs’ Motion Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320; and Order Granting Defendants’ Countermotion for Stay of Collection Activities	07/17/20	11	2676–2682

30	Notice of Entry of Order Denying Plaintiffs' Motion to Impose Sanctions Against Defendants	04/07/16	2	477–480
45	Notice of Entry of Order Granting Certain Relief on Motion to Enjoin Defendants from Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief	02/16/17	4	827–830
157	Notice of Entry of Order Granting Defendants' Motion for Costs	05/17/22	16	3922–3927
160	Notice of Entry of Order Granting Defendants' Motion for Costs	06/03/22	17	4090–4093
158	Notice of Entry of Order Granting Defendants' Motion for Release of Cost Bonds	05/20/22	16	3928–3933
31	Notice of Entry of Order Granting Defendants' Motion for Stay Pending Court's Reconsideration of Prior Order	04/07/16	2	481–484
156	Notice of Entry of Order Granting Defendants' Motion to Stay	05/03/22	16	3917–3921
22	Notice of Entry of Order Granting in Part and Denying in Part Defendant's Motion for Declaratory Order Regarding Statute of Limitations	12/22/15	2	387–391
40	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion to Continue Trial Date and Extend Discovery Schedule and for Other Relief	11/23/16	3	672–677
46	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion to Have Case Reassigned to Department I per EDCR Rule 1.60 and	02/21/17	4	831–834

	Designated as Complex Litigation per NRCP 16.1(f)			
111	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Objections to Defendants' Claims of Exemption from Execution	12/18/18	10 11	2499–2500 2501–2502
15	Notice of Entry of Order Granting Motion to Serve and File a Second Amended and Supplemental Complaint	08/17/15	1	141–144
189	Notice of Entry of Order Granting Plaintiff's Motion for Entry of a Modified Judgment as Provided for by Remittitur	11/14/22	22	5338–5344
190	Notice of Entry of Order Granting Plaintiff's Motion for Entry of a Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	11/14/22	22	5345–5350
112	Notice of Entry of Order Granting Plaintiffs' Counter Motion for Judgment Enforcement Relief	01/02/19	11	2503–2510
116	Notice of Entry of Order Granting Plaintiffs' Motion for an Award of Attorneys' Fees and Costs Pursuant to NRCP 54 and the Nevada Constitution	02/07/19	11	2529–2539
193	Notice of Entry of Order Granting Plaintiffs' Motion for Award of Attorney's Fees on Appeal	11/17/22	22	5377–5382
76	Notice of Entry of Order Granting Plaintiffs' Motion to Appoint a Special Master	02/08/18	6	1338–1345
24	Notice of Entry of Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23 (b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to	02/10/16	2	413–430

	Appoint a Special Master Under NRCP Rule 53			
35	Notice of Entry of Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NRCP Rule 53 and Amended by this Court in Response to Defendant's Motion for Reconsideration Heard in Chambers on March 28,2016	06/07/16	3	529–546
83	Notice of Entry of Order Granting Summary Judgment, Severing Claims, and Directing Entry of Final Judgment	08/22/18	7	1581–1646
78	Notice of Entry of Order Modifying Court's Previous Order of February 7, 2018 Appointing a Special Master	02/16/18	6	1377–1380
192	Notice of Entry of Order Modifying Final Judgment Entered on August 21, 2018	11/17/22	22	5356–5376
199	Notice of Entry of Order Modifying Order on February 6, 2019 Granting Plaintiffs an Award of Attorney's Fees and Costs	11/18/22	22	5404–5409
70	Notice of Entry of Order of Appointment of Co-Class Counsel Christian Gabroy	01/04/18	6	1262–1265
27	Notice of Entry of Order of Discovery Commissioner's Report and Recommendation	03/04/16	2	439–446
28	Notice of Entry of Order of Discovery Commissioner's Report and Recommendation	03/04/16	2	447–460
52	Notice of Entry of Order of Discovery Commissioner's Report and Recommendations	03/31/17	4	863–871

48	Notice of Entry of Order of Discovery Commissioners Report and Recommendations	03/13/17	4	839–847
49	Notice of Entry of Order of Discovery Commissioners Report and Recommendations	03/13/17	4	848–855
47	Notice of Entry of Order of Stipulation and Order	03/09/17	4	835–838
33	Notice of Entry of Order on Defendants’ Motion for Reconsideration	04/28/16	3	521–524
118	Notice of Entry of Order on Defendants’ Motion for Reconsideration	03/05/19	11	2544–2549
115	Notice of Entry of Order on Judgment and Order Granting Resolution Economics’ Application for Order of Payment of Special Master’s Fees and Order of Contempt	02/05/19	11	2519–2528
197	Notice of Entry of Order on Motion for Costs	11/17/22	22	5396–5398
200	Notice of Entry of Order on Motion to Distribute Funds Held by Class Counsel on and Order Shortening Time	11/21/22	22	5410–5421
132	Notice of Entry of Order on Plaintiff’s Motion for Appointment of Receiver to Aid Judgment Enforcement of Alternative Relief	02/22/21	11	2703–2708
121	Notice of Entry of Order on Special Master Resolution Economics’ Ex Parte Motion for Order Shortening Time on the Motion to Strike Defendants’ Motion for Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of	03/15/19	11	2559–2563

	Special Masters Fees and Oder of Contempt			
71	Notice of Entry of Order Stipulation and Order	01/16/18	6	1266–1269
10	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Ninety (90) days	01/29/14	1	74–78
11	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Ninety (90) days (Second Request)	04/23/14	1	79–83
12	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Sixty (60) days (Third Request)	07/28/14	1	84–87
186	Notice of Non-Opposition to Defendants’ Motion for Costs	11/01/22	22	5327–5329
204	Notice of Removal	12/14/22	23	5517–5526
151	Opposition to Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal	03/03/22	16	3797–3817
153	Opposition to Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney’s Fees, and for Costs on Appeal	03/08/22	16	3860–3886
103	Opposition to Plaintiffs’ Motion for an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/01/18	9 10	2156–2250 2251–2294
149	Opposition to Plaintiffs’ Motion for Entry of a Modified Judgment as Provided for by Remittitur	02/28/22	15 16	3513–3750 3751–3786
150	Opposition to Plaintiffs’ Motion for Entry of Modified Award of Pre-Judgment	03/02/22	16	3787–3796

	Attorney's Fees and as Provided for by Remittitur			
85	Opposition to Plaintiffs' Motion to Amend Judgment	09/10/18	7	1656–1680
105	Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/16/18	10	2304–2316
166	Opposition to Plaintiffs' Motion to Reconsider Award of Costs and Countermotion to Strike Duplicative Order	06/30/22	18	4380–4487
161	Opposition to Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs and Countermotion for Attorney's Fees	06/14/22	17	4094–4193
60	Order	07/17/17	5	1085–1086
61	Order	07/17/17	5	1087–1088
191	Order Amending the Class	11/17/22	22	5351–5355
168	Order Denying Motion Without Prejudice and with Leave to Renew	07/08/22	19	4667–4670
181	Order Granting Motion to Lift Stay and Regarding Additional Briefing and Motion Practice	09/19/22	20	4984–4989
198	Order Granting Motion to Stay, Offset, or Apportion Award of Cost	11/17/22	22	5399–5403
144	Plaintiffs' Motion for an Award of Attorney's Fees on Appeal	02/17/22	14	3302–3316
145	Plaintiffs' Motion for an Award of Attorney's Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney's Fees, and for Costs on Appeal	02/22/22	14	3317–3332

99	Plaintiffs' Motion for an Award of Attorneys Fees and Costs as per NRCPC Rule 54 and the Nevada Constitution	10/12/18	9	2017–2041
141	Plaintiffs' Motion for Entry of a Modified Judgment as Provided for by Remittitur	02/14/22	13	3065–3221
142	Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	02/16/22	13 14	3222–3250 3251–3272
102	Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCPC Rule 54 and the Nevada Constitution	10/29/18	9	2143–2155
176	Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	08/12/22	20	4868–4882
164	Plaintiffs' Motion to Reconsider Award of Costs	06/16/22	17 18	4202–4250 4251–4356
159	Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs	05/31/22	16 17	3934–4000 4001–4089
184	Plaintiffs' Omnibus Brief Pursuant to the Court's Order of September 19, 2022	09/30/22	22	5301–5309
187	Plaintiffs' Opposition to Defendants' Motion for Costs	11/04/22	22	5330–5333
180	Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	09/13/22	20	4967–4983
86	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Amend Judgment	09/20/18	7	1681–1737
104	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs as	11/08/18	10	2295–2303

	Per NRCP Rule 54 and the Nevada Constitution			
106	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/28/18	10	2317–2323
167	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs	07/01/22	18 19	4488–4500 4501–4666
170	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Reconsider Award of Costs and Response to Defendants' Counter-Motion	07/21/22	19	4677–4716
172	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Entry of Modified Judgment as Provided for by Remittitur	08/12/22	20	4767–4835
173	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees and Provided for by Remittitur	08/12/22	20	4836–4840
174	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorney's Fees on Appeal	08/12/22	20	4841–4845
175	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorneys' Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney's Fees, and for Costs on Appeal	08/12/22	20	4846–4867

90	Plaintiffs' Response and Counter-motion to Defendants Motion on OST to Quash	09/24/18	8	1770–1845
136	Plaintiffs' Response to Defendants' Motion for Costs & Counter Motion to Offset Costs Against Judgment	02/03/22	12	2811–2825
147	Plaintiffs' Response to Defendants' Motion for Declaratory Order & Counter-Motion for Award of Attorney's Fees	02/25/22	14	3337–3384
152	Plaintiffs' Response to Defendants' Motion for Stay on Order Shortening Time and Counter-Motion for Award of Attorney's Fees	03/04/22	16	3818–3859
107	Recorder's Transcript of Hearing on All Pending Motions	12/04/18	10	2324–2405
205	Recorder's Transcript of Hearing on Argument re Post Judgment Receiver Motion to Distribute Funds Held by Class Counsel on an Order Shortening Time	12/15/22	23	5527–5530
124	Recorder's Transcript of Hearing re All Pending Motions	05/21/19	11	2570–2617
126	Recorder's Transcript of Hearing re All Pending Motions	12/03/19	11	2624–2675
143	Recorder's Transcript of Hearing re All Pending Motions	02/16/22	14	3273–3301
155	Recorder's Transcript of Hearing re Defendant's Motion to Stay on OST	03/09/22	16	3902–3916
63	Recorder's Transcript of Proceeding re Discovery Conference	08/08/17	5	1093–1110
64	Recorder's Transcript of Proceeding re Discovery Conference – Referred by Judge	10/04/17	5	1111–1123

20	Recorder's Transcript of Proceedings for All Pending Motions	11/18/15	2	346–377
23	Recorder's Transcript of Proceedings for Discovery Production/Deferred Ruling – Defendant's Rule 37 Sanctions	01/13/16	2	392–412
32	Recorder's Transcript of Proceedings for Further Proceedings on Discovery Production/Deferred Ruling	04/08/16	2 3	485–500 501–520
13	Recorder's Transcript of Proceedings Notice of Plaintiffs' Motion to Compel the Production of Documents	03/18/15	1	88–107
42	Recorder's Transcript of Proceedings re Plaintiffs' Motion to Compel the Production of Documents	01/25/17	3 4	742–750 751–787
43	Recorder's Transcript of Proceedings re Plaintiffs' Motion to Compel Compliance with Subpoena	02/08/17	4	788–806
39	Recorder's Transcript of Proceedings re Status Check Compliance	11/18/16	3	647–671
188	Reply in Support of Defendants' Motion for Costs	11/07/22	22	5334–5337
137	Reply in Support of Defendants' Motion for Costs and Opposition to Countermotion	02/09/22	12	2826–2846
154	Reply in Support of Defendants' Motion to Stay on Order Shortening Time	03/08/22	16	3887–3901
177	Response to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	08/26/22	20	4883–4936
16	Second Amended Complaint and Supplemental Complaint	08/19/15	1	145–162
119	Second Amended Notice of Appeal	03/06/19	11	2550–2553

179	Second Supplement to Defendants' Response to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	09/09/22	20	4962–4966
58	Stipulation and Order	07/11/17	5	1073–1078
122	Stipulation and Order to Continue Hearings	05/17/19	11	2564–2566
123	Stipulation and Order to Continue Hearings	05/20/19	11	2567–2569
178	Supplement to Defendants' Response to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	08/29/22	20	4937–4961
138	Supplement to Plaintiffs' Response to Defendants' Motion for Costs	02/10/22	12	2847–2850
19	Transcript of Proceedings of All Pending Motions	11/03/15	1 2	177–250 251–345
171	Transcript of Proceedings re Case Management Conference	07/25/22	19 20	4717–4750 4751–4766
41	Transcript of Proceedings re Motion to Compel Interrogatory Responses on Status Check Compliance - Report and Recommendation	12/09/16	3	678–741
38	Transcript of Proceedings re Motions Status Check, Compliance Status Check, and Production Status Check	10/12/16	3	597–646
37	Transcript of Proceedings re Plaintiff's Motion to Compel the Production of Documents and Interrogatory Responses - Status Check on Status of Case	09/07/16	3	554–596
165	Transcript of Proceedings re Plaintiffs' Motion for Turnover of Property Pursuant to NRS 21.320 or Alternative Relief	06/29/22	18	4357–4379

54	Transcript re All Pending Motions	05/18/17	4 5	881–1000 1001–1011
101	Transcript Re All Pending Motions	10/22/18	9	2046–2142
77	Transcript re Appointment of Special Master	02/15/18	6	1346–1376
91	Transcript re Defendant’s Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening	09/26/18	8	1846–1913
92	Transcript re Defendant’s Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening, and Plaintiffs’ Response to Defendant’s Ex-Parte Motion to Quash Writ of Execution on OST and Countermotion for Appropriate Judgment Enforcement Relief	09/28/18	8	1914–1980
69	Transcript re Defendant’s Motion for Summary Judgment	01/02/18	5 6	1199–1250 1251–1261
2	Transcript re Defendant’s Motion to Dismiss Complaint	01/17/13	1	9–31
82	Transcript re Plaintiff’s Motion for Partial Summary Judgment	06/05/18	7	1509–1580
57	Transcript re Plaintiff’s Motion on Order Shortening Time and Extend Damages Class Certification and for Other Relief	06/13/17	5	1051–1072
55	Transcript re Plaintiff’s Re-Notice of Motion for Partial Summary Judgment	05/25/17	5	1012–1032
109	Transcript re Plaintiffs Ex Parte Motion for a Temporary Restraining Order and Motion on an Order Requiring the Turnover of Certain Property of the	12/13/18	10	2424–2475

	Judgment Debtor Pursuant to NRS 21.320			
80	Transcript re Plaintiffs' Motion for Miscellaneous Relief	05/23/18	6	1387–1463
44	Transcript re Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/16 to Enjoin Defendants from Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief and for Sanctions	02/14/17	4	807–826
14	Transcript re Plaintiffs' Motion to Certify This Case as a Class Action Pursuant to NCRP Rule 23 and Appoint a Special Master Pursuant to NRCP Rule 53	08/11/15	1	108–140
81	Transcript re Plaintiffs' Motion to Hold Defendants in Contempt; Strike Their Answer	06/01/18	6 7	1464–1500 1501–1508
73	Transcript re Plaintiffs' Omnibus Motion in Limine 1-25, Defendants' Motion in Limine to Exclude the Testimony of Plaintiffs' Experts	01/25/18	6	1276–1311
108	Transcript Re Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt	12/11/18	10	2406–2423
74	Transcript re Status Check on Appointment of Special Master	02/02/18	6	1312–1332
68	Transcript Re: Plaintiff's Motion for Partial Summary Judgment and Motion to Place Evidentiary Burden on Defendants to Establish Lower Tier	12/14/17	5	1140–1198

	Minimum Wage and Declare NAC 608.102(2)(b) Invalid			
29	Transcript Re: Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating this Court's Order of February 10, 2016 and Compelling Compliance with that Order on OST; and Defendant's Opposition to Motion to Impose Sanctions on Order Shortening Time and Countermotion for Sanctions Against Plaintiffs	03/16/16	2	461–476

CERTIFICATE OF SERVICE

I certify that on the 26th day of January, 2024, I submitted the foregoing “Appellant’s Appendix” for e- filing and service via the Court’s eFlex electronic filing system. Electronic service of the forgoing documents shall be made upon all parties listed on the Master Service List.

LEON GREENBERG
RUTHANN DEVEREAUX-GONZALEZ
LEON GREENBERG
PROFESSIONAL CORPORATION
2965 South Jones Blvd., Suite E3
Las Vegas, Nevada 89146

CHRISTIAN GABROY
GABROY LAW OFFICES
170 S. Green Valley Parkway, Suite 280
Henderson, Nevada 89012

Attorneys for Respondents

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

1 such work was performed at a highly skilled level, and certainly at a level equal to or
2 exceeding that of defendants' counsel, who have been fully compensated already by
3 defendants at their not insignificant hourly rates.

4 8. The time expended by my office on the prosecution of this case was
5 massive. My office has maintained contemporaneous time records of all work
6 performed in this case by all attorneys and paralegals. A review of those records
7 indicates that I, prior to entry of judgment on August 21, 2018, personally, have spent
8 no less than 1,190 hours of attorney time on the prosecution of this case and no less
9 than 35 hours of travel time. Those hours are after deducting the 6.5 hours of my time
10 that were previously awarded fees by the Court's March 2016 sanction order and the
11 approximately 22 hours I spent purely devoted to the prosecution of the alter ego
12 claims against defendant Nady. My associate, Dana Sniegocki, has spent no less than
13 600 hours of attorney time working on the prosecution of this case and no less than 53
14 hours of travel time; and my paralegal, Sydney Saucier, has spent at least 122 hours of
15 time on tasks of a non-clerical nature that are properly considered, in whole or
16 significant part, to require a skilled paralegal to perform.

17 **Brunzell Factor Four: The Results Achieved and Benefits Conferred**

18 9. Plaintiffs' counsel's success in this case is a matter of record. They
19 secured a judgment by the Court for over \$1,000,000 on behalf of the class members.
20 The benefit of that judgment should also be viewed under the lens of its very nature: a
21 judgment vindicating legal rights to minimum wages of the highest importance under
22 Nevada's legal system, as such legal rights are afforded directly by Nevada's
23 Constitution. Such benefit is also properly viewed, in respect to its importance, by
24 examining the beneficiaries of that judgment: the most vulnerable, and economically
25 weakest, citizens of the State of Nevada who, for lack of more remuneratively
26 attractive employment, have labored for less than the very modest hourly minimum
27 wage.
28

Proposed Application of the Brunzell Factors in Calculating a Fee Award

10. The time I have expended in this case, or that was expended by my office's employees, pursuing claims against the individual defendant Nady, is not time that I am requesting be considered for this fee award. Those claims (the "alter ego and unjust enrichment claims") are based upon his personal, and wholly derivative and contingent, liability for the unpaid minimum wages owed by the corporate defendant, A Cab. While I believe compensation for such work is justified from the class members' recovery in this case, and may be sought at some future date, such expenditures of time are not claimed to be properly charged against A Cab under the current judgment as an element of the attorney's fees properly awarded under the Nevada Constitution. In addition, I was compensated for certain hours of attorney work via the Court's sanction award order of March 4, 2016 and I am not seeking any fee award for those hours of work.

11. In respect to gauging the appropriate fee award, for the time reasonably expended by plaintiffs' counsel, I was awarded attorney's fees in this case at a rate of \$400 an hour in the Court's Order of March 4, 2016. While I have been awarded attorneys fees in other litigation matters at a greater hourly rate, including as much as \$720 an hour by District Judge Mahan in 2017 in a federal court proceeding, I am only asking the Court to consistently apply the \$400 per hour rate it has already found appropriate for my time. Ms. Sniegocki's work was recognized by Judge Pro in June of 2014 to merit an award of \$240 an hour in *Tallman v. CPS Security*, United States District Court of Nevada, 09-CV-944, Order of June 3, 2014, involving unpaid minimum wage and overtime pay claims. While that award is now over four years old, and Ms. Sniegocki is deserving of a higher hourly fee award, I would ask the Court to adopt that rate for her time expenditures. I would ask the Court to adopt a rate of \$85 an hour for the paralegal time expenditures of Ms. Saucier, a rate that I believe is on the lower end for such time expenditures.

12. After excluding the time expenditures on the alter ego and unjust

1 enrichment claims, and the hours for which I was already awarded fees for by the
2 Court's March 4, 2016 Order, the remaining total time expenditures in my office's
3 records are, at a minimum, the following:

4 Leon Greenberg: 1190 hours plus 35 hours travel time;

5 Dana Sniegocki: 600 hours plus 40 hours travel time;

6 Sydney Saucier: 122 hours paralegal time.

7 In respect to reaching an appropriate fee determination, I am proposing that the Court
8 adopt either an "Aggregate Hours Minus 10% Approach;" a "Partial Exclusion of
9 Hours Approach minus 10%" or a "Presumptive Exclusion of Hours Approach minus
10 10%." I provide below a rationalization for each of these proposed approaches and the
11 calculation that would be made under each one. The Court may choose any one of the
12 approaches or formulate its own determination of the proper fee award consistent with
13 *Brunzell* and as it believes is appropriate.

14 13. **The Aggregate Hours Minus 10% Approach:** Under this approach the
15 Court would take the hours stated in paragraph 12 and multiply them by the rates
16 proposed in paragraph 11 (travel time hours would only be multiplied at a rate of 50%
17 of the rates in paragraph 11). It would then reduce the entire amount by 10% to arrive
18 at the fee award. I believe this approach is justified and proper. The 10% reduction in
19 fees ensures that any likely measure of unproductive or less than fully efficient work is
20 being excluded for fee calculation purposes. Given the great importance of enforcing
21 the rights granted by Nevada's Constitution it is also proper to err in favor of ensuring
22 a fully adequate fee award is granted to plaintiffs' counsel. This would result in a fee
23 award (using above hourly rates, with half that rate for travel time), after applying that
24 10% reduction, of \$577,953.

25 That award is based upon the below pre-discounted hours and fees:

26 Leon Greenberg \$483,000 (1190 hours x \$400 + 35 hours x \$200)

27 Dana Sniegocki: \$148,800 (600 hours x \$240 + 40 hours x \$120)

28 Sydney Saucier: \$10,370 (122 hours x \$85)

1 14. **The Partial Exclusion of Hours Minus 10% Approach:** Under this
2 approach the Court would first reduce the hours for my office's work that are stated in
3 paragraph 12, multiply those hours by the rates in paragraph 11, and then apply a 10%
4 reduction to calculate a fee. This approach would exclude, for fee consideration
5 purposes, hours of work that were spent exclusively on activities that defendants would
6 argue were unnecessary, or not of great utility or efficiency, or that concerned issues
7 never fully resolved in the litigation. By way of example, for depositions, or court
8 appearances prior to the final pre-trial stage (meaning prior to October 1, 2017),
9 attorney hours would only be allowed for one attorney. Attorney hours spent on the
10 existence or non-existence of medical insurance (Nevada provides for an additional
11 \$1.00 an hour in minimum wages when medical insurance is not provided) would be
12 excluded. Attorney hours spent seeking affirmative relief by motion against defendant
13 would be excluded if those motions were denied. Attorney hours spent arguing the
14 second partial summary judgment motion would be excluded, as that motion was
15 initially denied and later re-heard upon a fuller record that included an additional
16 expert report.

17 15. I do not agree that such a partial exclusion of hours of work is appropriate
18 for fee calculation purposes. Defendant has paid to have multiple counsel appear on
19 its behalf at a deposition and at court appearances. That plaintiffs' counsel ultimately
20 did not proceed to press claims for the extra \$1.00 an hour in minimum wages under
21 Nevada's "medical insurance not provided" standard did not render the time spent on
22 that issue improper or unwise. Nor should plaintiffs' counsel be denied fees for the
23 "repeat" of the partial summary judgment motion, such motion ultimately being
24 granted, essentially on the same basis (albeit with the support of an additional expert)
25 as proposed on its "initial" submission. Defendant has vigorously litigated this case
26 with the goal of making it economically unattractive for prosecution. They should not
27 be allowed to achieve that goal by having the award of attorney's fees to plaintiffs'
28 counsel reduced in such a fashion.

1 16. Based upon a review of my office's time records, and reasonable estimates
2 that my office has made when applying the foregoing "partial exclusion" of hours
3 approach, the remaining total time expenditures in my office's records are, after
4 applying such an approach, at a minimum, the following:

5 Leon Greenberg: 1084 hours plus 35 hours travel time

6 Dana Sniegocki: 521 hours plus 28 hours travel time

7 Sydney Saucier: 122 hours

8 Based upon such hours the fee that would be awarded under this approach would, after
9 also applying a 10% across the board discount, be: \$521,433

10 That award would be based the below pre-discounted hours and fees:

11 Leon Greenberg \$440,600 (1084 hours x \$400 + 35 hours x \$200)

12 Dana Sniegocki: \$128,400 (521 hours x \$240 + 28 hours x \$120)

13 Sydney Saucier: \$10,370 (122 hours x \$85)

14 17. **The Presumptive Exclusion of Hours Minus 10% Approach:** This
15 approach deviates from the "Partial Exclusion" of hours approach discussed in ¶¶ 14-
16 15 by excluding all time expenditures that, in any significant measure, concerned the
17 sort of topics or subject matter that defendant would presumptively argue should not be
18 included in a fee award. This approach does not require, as under the "Partial
19 Exclusion" approach that such time expenditures be solely devoted to such activities to
20 be excluded for fee consideration purposes. Rather, it excludes, entirely, all time
21 expenditures that in significant measure involved such activities. It also excludes time
22 expended on settlement and mediation efforts (on the theory no settlement was
23 achieved) or dealing with defendant's writ (which was granted and released the
24 injunction issued on the proposed *Dubric* settlement). It adopts the presumption that
25 no fee is warranted for any such activities. If this presumption is applied, based upon
26 a review of my office's time records, and reasonable estimates that my office has made
27 when applying such a presumptive exclusion of hours approach, the remaining total
28 time expenditures in my office's records are, at a minimum, the following:

1 Leon Greenberg: 996 hours plus 25 hours travel time

2 Dana Sniegocki: 489 hours plus 27 hours travel time

3 Sydney Saucier: 122 hours

4 Based upon such hours the fee that would be awarded under this approach would, after
5 also applying a 10% across the board discount, be: \$480,933

6 That award would be based upon the below pre-discounted hours and fees:

7 Leon Greenberg \$403,400 (996 hours x \$400 + 25 hours x \$200)

8 Dana Sniegocki: \$120,600 (489 hours x \$240 + 27 hours x \$120)

9 Sydney Saucier: \$10,370 (122 hours x \$85)

10 18. The foregoing discussion of the records of hours of work expended by my
11 office's staff, and the classifications of those hours of work into "partial" or
12 "presumptive" exclusion status for fee award purposes, is the result of a generalized
13 review of those records. Those records are incredibly lengthy (I have over 1220
14 individual time entries for the work I performed in this case prior to date of judgment).
15 It would be very burdensome and time consuming to review, line by line, every single
16 time entry in those records and precisely quantify the activity, the time expended, and
17 so forth. As a result, in reviewing the time records that are the basis of my discussion
18 of the time expenditures of myself and my office's staff I have made some
19 approximations and generalized determinations about the nature of the work activities
20 recorded in those records. I believe that is appropriate. In addition, every fee
21 calculation request being made also includes an across the board 10% reduction in fees
22 (effectively in hours) requested that will correct any oversight in my approximations or
23 generalized determinations in respect to the activities recorded in my office's time
24 records.

LITIGATION COSTS

19. I have reviewed the records maintained by my office in respect to the litigation expenses incurred by my office in this case. Those records are maintained in Quickbooks software or in another contemporaneous manual ledger and indicate the following necessary litigation expenses were incurred by my office:

Expense	Amount
Process Server, Runner, Overnight Delivery	\$358.06
Court Filing Fees Including WIZNET fees for filing documents	\$2,158.97
Transcripts of Court Hearings, Court Reporter Fees for Depositions, and \$990 Fee paid for Deposition Appearance of Defendants' Expert	\$10,680.68
Fees paid to Experts and Computer Data Consultants to Assist in Prosecution of Case and Extracting Information from Defendants' Computer Data Files	\$29,022
Class Notice Costs of Postage and Mailing Materials	\$1,491.59
Online Investigation Costs	\$168.19
Charges Paid to Defendant for Duplication of Defendants' Records (Trip Sheets) as Per Defendants' Insistence	\$918.34
Postage (partial, itemized amount)	\$9.74
Parking for Court Appearances	\$58.00

Copies (Numerous, but not itemized, not charged)	
TOTAL EXPENSES	\$44,865.57

19. Of the foregoing expert and computer data consultant fees, \$9,330 was paid to retain the services of Dr. Terrance Clauretie, \$17,962 was paid to Charles Bass to process the computer data files produced by defendants and provide relevant arithmetical summaries from that data (working both on his own and with Dr. Clauretie), and \$1,730 was paid to three other consultants (\$567.50 to Glen Pannenberg, CPA; \$600 to the firm of Office Works; and \$562.50 to the firm of Nevada Quickbooks Pro) to overcome defendants' untrue assertions that they could not produce information in their Quickbooks and other computer data files. Those costs were incurred attempting an "inspection" of A Cab's computer system which, while being attempted, A Cab refused to allow be completed (the cost for Mr. Pannenberg's services). They were also needed to document in filings with the Court the falsity of defendants' assertions they could not produce the relevant Quickbooks information in a suitable computer file format. This course of obstructive conduct by defendants ultimately resulted in both the production of those computer data files and the Court's Order of March 4, 2016 imposing over \$3,000 in sanctions upon defendants, but those sanctions did *not* include any award for these \$1,730 in expert and consultant expenses.

20. As per the above, my office requests reimbursement of \$44,865.57 of necessary litigation costs.

I have read the foregoing and affirm the same is true and correct.

Affirmed this 11th day of October, 2018

/s/ Leon Greenberg
Leon Greenberg

003259

003259

EXHIBIT "B"

GABROY LAW OFFICES
 Christian Gabroy, Esq. (#8805)
 The District at Green Valley Ranch
 170 South Green Valley Parkway, Suite 280
 Henderson, Nevada 89012
 Tel (702) 259-7777
 Fax (702) 259-7704
 christian@gabroy.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY

MICHAEL MURRAY, AN INDIVIDUAL,
 ET. AL.

Plaintiffs,

vs.

A CAB TAXI SERVICE, LLC, A CAB,
 LLC, AND CREIGHTON J. NADY,

Defendants.

CASE NO.: A-12-669926-C
 Dept. I

**DECLARATION OF PLAINTIFF'S
 COUNSEL,
 CHRISTIAN GABROY, ESQ.,**

**DECLARATION OF CHRISTIAN GABROY, ESQ. AND GABROY LAW
 OFFICES, P.C. IN SUPPORT
 OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS**

Christian Gabroy, an attorney duly admitted to practice law in the State of Nevada and a member of the bar of this Court, hereby affirms, per NRS §53.045 that:

1. I am one of the attorneys representing the plaintiffs in this matter. I am offering this declaration in support of plaintiffs' request for an award of attorney's fees and costs for securing the final judgment for damages rendered in this case to the NRCP Rule 23(b)(3) class and entered by the Court on August 21, 2018. This declaration is intended to comport with the requirements of demonstrating the appropriate award of attorney's fees, under the principles enunciated in *Brunzell v.*

1 *Golden Gate National Bank*, 85 Nev. 345 (1969), for the work performed by my law
 2 office, by my associate Kaine Messer, Esq., and our employees. Under *Brunzell* the
 3 guiding factors for an award of attorney's fees are (summarized): (1) The quality of the
 4 advocate performing the work (their skill, training, experience, and so forth); (2) The
 5 character of the work, in respect to its difficulty, intricacy and importance to the litigation;
 6 (3) The skill, time and attention given to the work; and (4) The result, in respect to
 7 whether the work was successful and the benefit derived from such success.
 8

9 2. This declaration incorporates the discussion in the declaration of my co-
 10 counsel, Leon Greenberg, of the various *Brunzell* factors and how they should be
 11 applied to the award of a fee in this case. I do not repeat those discussions and limit
 12 this declaration to providing the Court with information on the amount of work (hours of
 13 work) performed by my office in this case and the appropriate basis (hourly fee rate) for
 14 an attorney's fee award for those hours. I also detail my office's litigation expenses for
 15 which reimbursement is sought
 16

17 **AMOUNT OF FEE REQUESTED**
 18 **AND BASIS FOR THE SAME**

19 **Amount Requested**

20 3. I am requesting an award of \$48,528 or alternatively \$46,638 in attorney's
 21 fees for the work of the employees of my office and myself in this case. As discussed,
 22 *infra*, these varying numbers are based upon different underlying approaches the Court
 23 may take to the necessity and utility of the all of the work performed by my office. I am
 24 also requesting an award of \$180.64 for my office's expenses.

25 **The experience and typical hourly rate of my office's employees.**

26 4. I am 2003 graduate of DePaul Law School and a member of the Illinois
 27 and Nevada bars. I have practiced law full time and continuously since 2003. My law
 28

1 practice has almost exclusively been in the area of civil litigation, including jury trials. I
 2 also have significant experience in prosecuting both individual and class action wage
 3 and hour litigations, such as this case involving unpaid minimum wages. I have been
 4 appointed class counsel (or co-class counsel) pursuant to FRCP or NRCP Rule 23, or
 5 under the similar provisions of the Fair Labor Standards Act in respect to the
 6 prosecution of "collective" actions under that statute, in over 10 cases.

7
 8 5. Most typically, I work on a contingency fee basis and it is common that I
 9 earn well in excess of \$500.00 per hour on my cases that I take on a contingency fee
 10 basis. Other attorneys in Las Vegas with experience and training comparable to mine
 11 who are retained by private, paying, clients for employment law litigation typically
 12 charge hourly rates of \$400 an hour or more. I do and have charged hourly fee paying
 13 clients, which are a small part of my practice, fees of \$450 an hour.

14
 15 6. My associate, Kaine Messer, Esq. graduated from Western State School
 16 of Law in Orange County, California *cum laude* in 2014. He has been licensed in
 17 California since 2014 and in Nevada since 2016. His regular hourly rate is \$250.00.

18 **The work performed by my office and time expended.**

19
 20 7. My office joined this litigation in 2017 to act as co-class counsel in respect
 21 to the final portion of this litigation, including a contemplated trial of this case. While that
 22 trial did not take place, the work performed by my office was necessary to the
 23 prosecution of this case. Unlike my co-class counsel, I only became involved in this
 24 case when it was approaching trial and the arguably collateral, or not pursued, issues
 25 had been largely identified and not worked on further. For example, my office
 26 performed no appreciable amount of time on work related to the "no health insurance
 27 provided" issue and the Nevada Minimum Wage (the \$1.00 an hour "higher tier" -

currently \$8.25 an hour - issue), an issue ultimately not pursued in this case. As a result, in reviewing my office's time records on the work performed in this case, I cannot identify any significant amount of unproductive or arguably unnecessary time. My associate, Kaine Messer, did attend certain court appearances with me, and I suspect defendants would argue his presence at those court appearances, though very desirable and constructive, was not a time expenditure that was warranted. I disagree with that contention, but provide an alternative analysis as to a fee award for his time that does not award fees for his time spent on those court appearances.

8. I, personally, based upon my office's review of contemporaneously maintained time records, have expended 120.5 hours of attorney time and 2.5 hours of travel time on this case and my associate, Kaine Messer, has expended no less than 20.5 hours of attorney time and 2.5 hours of travel time on this case. Additional work was performed in this matter by a former associate of my office, and, my office's paralegal staff, but I am not itemizing that work (which was significant) in the submission of this fee request. Based upon the attorney's hours expended by just myself and Kaine Messer I would propose to the Court a fee award for my office of \$48,528 after discounting by 10% the fee properly calculated on such hours. That fee award is calculated as follows:

Christian Gabroy: \$48,700 (120.5 hours x \$400 + 2.5 hours travel x \$200)

Kaine Messer: \$5,220 (20.5 hours x \$240 + 2.5 hours travel x \$120)

9. As an alternative formulation, I would propose reducing Kaine Messer's billable hours to 13, if all time spent by him at Court appearances with me were to be excluded for fee award purposes. That would result in a fee award for my office of \$46,638 after discounting the fee properly calculated on such hours of attorney time by 10%. That fee award is calculated as follows:

Christian Gabroy: \$48,700 (120.5 hours x \$400 + 2.5 hours travel x \$200)

Kaine Messer: \$3,120 (13 hours x \$240)

10. Further, my office has incurred costs in this matter of no less than \$180.64. This includes 1,758 black and white copies at \$0.10 per copy, postage in the amount of \$1.34, and a \$3.50 Wiznet filing fee for my notice of appearance in this matter.

I have read and reviewed the true and correct aforementioned statements.

Affirmed this 12th Day of October 2018

/s/ Christian Gabroy

Christian Gabroy, Esq.

EXHIBIT "C"

1 **DECL**

2 LEON GREENBERG, ESQ., SBN 8094
 3 RUTHANN DEVEREAUX-GONZALEZ, ESQ., SBN 15904
 4 Leon Greenberg Professional Corporation
 5 2965 South Jones Blvd- Suite E3
 6 Las Vegas, Nevada 89146
 7 (702) 383-6085
 8 (702) 385-1827(fax)
 9 leongreenberg@overtimelaw.com

10 CHRISTIAN GABROY, ESQ., SBN 8805
 11 Gabroy Law Offices
 12 170 S. Green Valley Parkway - Suite 280
 13 Henderson Nevada 89012
 14 Tel (702) 259-7777
 15 Fax (702) 259-7704
 16 christian@gabroy.com

17 Attorneys for Plaintiffs

18 **DISTRICT COURT**
 19 **CLARK COUNTY, NEVADA**

20 MICHAEL MURRAY, and MICHAEL)
 21 RENO, Individually and on behalf of)
 22 others similarly situated,)

23 Plaintiffs,)

24 vs.)

25 A CAB TAXI SERVICE LLC, A CAB)
 26 SERIES LLC formerly known as A)
 27 CAB, LLC, and CREIGHTON J.)
 28 NADY,)

Defendants.

Case No.: A-12-669926-C

Dept.: 2

ATTORNEY'S DECLARATION

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under the penalty of perjury, that:

1. I am one of the attorneys for the plaintiffs. The statements made in this declaration are based upon my personal knowledge and personal observations.

2. I am presenting this declaration in connection with plaintiffs' motion for the entry of a modified award of pre-judgment attorney's fees, as originally awarded

1 by the Court's Order of February 6, 2019, and modified as directed by the Nevada
2 Supreme Court's Opinion in this case .

3 3. I have reviewed the contemporaneous time records I personally
4 maintained of the work I performed in the district court prosecution of this case prior
5 to final judgment. Those same time records were used as the basis for the award of
6 attorney's fees granted by the district court and indicated I had expended at least 1,190
7 hours of time during the period for which attorney's fees were awarded. I further
8 reviewed those records to determine what amount of that time was expended securing
9 from the district court an award of damages that pre-dated October 8, 2010, as that
10 award of those damages was reversed by the Supreme Court. No other attorneys
11 worked on that issue or expended time on that issue. That review indicates the
12 following:

- 13 (A) I commenced work on that issue on December 7, 2016, by drafting
14 a counter-motion and after this case had been pending for over four
15 years and after already expending over 456 of those 1,190 attorney
16 fee hours on this case;
- 17 (B) I spent less than 20 of those 1,190 hours engaged in activities
18 exclusively related to that issue;
- 19 (C) I spent less than 47 of those 1,190 hours engaged in activities that
20 partially, or may have partially, concerned that issue. Not even
21 50% of those 47 hours, which concerned work on the damages
22 calculations in this case, are properly attributable to that issue.

23
24 3. It is apparent from my review of my attorney time records that less than
25 50 (4.2%) of the 1,190 hours that I spent working on this case in the district court and
26 prior to judgment, and that formed the basis for the fee award made by the district
27 court, were expended litigating this issue. As a result, over 95% of those 1,190 hours
28 forming the basis of the district court's fee award were *not* expended dealing with that

1 issue for which fees are not awardable under the Supreme Court's decision.

2
3 4. I have read the foregoing and it is true and correct.

4 Affirmed this 16th day of February, 2022, under the penalty of perjury.

5
6 /s/ Leon Greenberg
7 Leon Greenberg

003268

003268

EXHIBIT "D"

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC; AND A CAB SERIES, LLC,
Appellants,

vs.

MICHAEL MURRAY; AND MICHAEL
RENO, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Respondents.

No. 77050

FILE

FEB 03 2022

ELIZABETH A. SPORN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING MOTION

Respondents filed a motion requesting that this court award attorney fees or direct the district court to award attorney fees pursuant to Article 15, Section 16 of Nevada's Constitution, and to include in its mandate upon remand instructions about the allowance of interest, pursuant to NRAP 37(b). Appellants have filed an opposition to the order and respondents have filed a reply.

As an initial matter, this court's opinion already concludes that the district court must reconsider the award of attorney fees in light of this court's decision. Article 15, Section 16, Subsection B of Nevada's Constitution, the Minimum Wage Amendment, states that "[a]n employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs." However, the determination of a "reasonable" attorney fee involves questions of fact and "should be addressed, in the first instance, by the district court with its greater fact-finding capabilities." *Musso v. Binick*, 104 Nev. 613, 615, 764 P.2d 477, 478 (1988). Accordingly, respondents' motion for an award of attorney's fees on


appeal is denied without prejudice to respondents' right to raise this motion in the district court.

NRAP 37(a) provides that "if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered." NRAP 37(b) provides that if this court "modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest."

This court has previously held that an affirmation in part and reversal in part of a money judgment is treated as an affirmation of that judgment for the purposes of NRAP 37 and the calculation of interest. *Schiff v. Winchell*, 126 Nev. 327, 330-31, 237 P.3d 99, 101 (2010). As noted by respondents, this court's opinion issued December 30, 2021, affirmed in part and reversed in part the district court's money judgment but did not include instructions as to any allowance of interest. *Schiff* applies here, and the modification on appeal was, in effect, an affirmation of the original judgment. Therefore, NRAP 37(a) governs the interest on judgments and whatever interest is allowed by law is payable from the date when the district court's judgment was entered. Accordingly, respondent's request for a modification of the mandate to include instructions based on NRAP 37(b) is denied.

The clerk shall issue the remittitur.

It is so ORDERED.

 C.J.

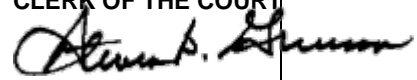
cc: Hon. Kenneth C. Cory, District Judge
Rodriguez Law Offices, P.C.
Cory Reade Dows & Shafer
Hutchison & Steffen, LLC/Las Vegas
Leon Greenberg Professional Corporation
Eighth District Court Clerk

003272

003272

143

143



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 MICHAEL MURRAY,

9 Plaintiff(s),

10 vs.

11 A CAB TAXI SERVICE, LLC,

12 Defendant(s).
13
14

CASE NO: A-12-669926-C

DEPT. XXVI

15 BEFORE THE HONORABLE GLORIA STURMAN

16 DISTRICT COURT JUDGE

17 WEDNESDAY, FEBRUARY 16, 2022

18 **RECORDER'S TRANSCRIPT OF HEARING:**
19 **ALL PENDING MOTIONS**

20 APPEARANCES:

21 For Plaintiff(s):

LEON GREENBERG, ESQ.
RUTHANN DEVEREAUX-
GONZALEZ, ESQ.

22
23 For Defendant(s):

ESTHER C. RODRIGUEZ, ESQ.
JAY A. SHAFER, ESQ.

24
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada; Wednesday, February 16, 2022

2 [Hearing commenced at 9:43 a.m.]

3 THE COURT: They've got –

4 THE RECORDER: Judge, apparently there was a notice on
5 the door for them to come to 10D.

6 THE COURT: Oh, okay, but nobody sent them the –

7 THE RECORDER: Yeah, so – right.

8 THE COURT: -- nobody sent them the link?

9 UNIDENTIFIED PERSON: Oh, actually no note on the door.
10 We have their cell. We, we were waiting out there.

11 THE RECORDER: Oh gosh.

12 THE COURT: Okay. So there is not a note on the door.
13 Well, lovely. Okay. So we'll see if we can track down the rest of the
14 people and see them out a – I'm surprised that they didn't do a notice.

15 MR. GREENBERG: If, if I may Your Honor, in respect to this
16 issue this, this matter. We do have another hearing before Department
17 2 on the 23rd of March.

18 THE COURT: Uh-huh.

19 MR. GREENBERG: I think it would be more sensible for
20 whatever was to be reviewed by the Court today simply to be
21 consolidated with that hearing already set for the 23rd of March. But of
22 course we are here at the Court's –

23 THE COURT: Uh-huh.

24 MR. GREENBERG: -- disposal. We wait if the Court thinks
25 we should wait or the Court wishes to hear –

1 THE COURT: Okay.

2 MR. GREENBERG: -- more about this wrong, so.

3 THE COURT: All right. So, let's see. Counsel is that --
4 would that be Mr. Leon Greenberg and Christian Gabroy?

5 MR. GREENBERG: Correct. We are Plaintiff's Counsel.
6 There's a motion today by Defendant --

7 THE COURT: Uh-huh.

8 MR. GREENBERG: -- relating to costs of post appeal on the
9 --

10 THE COURT: So then we'd be looking for --

11 MR. GREENBERG: On the status conference directed by
12 Department 2 as to posted --

13 THE COURT: Yeah. So we'd be looking for Ms. Rodriguez or
14 -- oh, huh. I wonder who would have taken it over at, at Hutchison
15 Steffen, because Mr. Wall passed away.

16 MR. GREENBERG: No one has appeared on their behalf.
17 My understanding is Ms. Rodriguez and Mr. Shafer, arguing with
18 counsel at this point representing Defendants. Ms. Rodriguez did file the
19 motion related to the post appeal costs.

20 THE COURT: Okay.

21 MR. GREENBERG: We have a motion related to the
22 Modification of the Judgment Post Appeal for the 23rd of March. There
23 are a number of issues that the department needs to sort out post
24 appeal on this matter, which was the reason why I was suggesting that
25 this all be sort of dealt with on the 23rd of March.

1 It would seem perhaps efficient Your Honor but, of course,
2 whatever is best --

3 THE COURT: Well, we need to see if --

4 MR. GREENBERG: -- do our best to get to --

5 THE COURT: -- Ms. Rodriguez is probably wandering around
6 in the internet looking for where, where she's supposed to be since
7 apparently they didn't send out notices telling them to come here.

8 MR. GREENBERG: Would it be helpful for us to try to call her
9 office and then just step out for a bit and then return, Your Honor?

10 THE COURT: Because we can -- it -- I don't know what's --
11 let's go off the record here. [Off the record].

12 [Hearing trailed at 9:45 a.m.]

13 [Hearing resumed at 9:56 a.m.]

14 THE COURT: Which is 669926, pages 2 and 3. [Call coming
15 in]. So we need everybody muted on, on your end if you could please. I
16 think except -- I think I saw Mr. Shafer, and I believe Mr. Shafer's
17 appearing on this matter, so everybody else should be muted. Thanks
18 very much, okay. All right. So we've got counsel present in court.

19 MR. GREENBERG: Yes, Your Honor, Leon Greenberg and
20 Ruthann Gonzalez on behalf of the Plaintiffs.

21 THE COURT: Mr. Greenberg, hi.

22 MS. RODRIGUEZ: And good morning, Your Honor, hoping
23 you can hear me. This is Esther Rodriguez for the Defendants.

24 THE COURT: Hi Mrs. Rodriguez.

25 MS. RODRIGUEZ: I apologize. I was hanging out on the, the

1 wrong BlueJeans link, apparently.

2 THE COURT: Oh, I'm sorry. You know, we didn't know that
3 they didn't send out our, our different information so, so sorry about that.

4 THE COURT: Yeah. They're supposed to be in a murder trial
5 this week, so I took this. I didn't want to touch their murder trial. All
6 right.

7 MR. RODRIGUEZ: Understandably yes. And Mr. Shafer is
8 my Co-counsel; he is present as well.

9 THE COURT: Okay. So Mr. Greenberg had a suggestion
10 because you have another matter – I think Mr. Greenberg, you indicated
11 it's –

12 MR. GREENBERG: The 23rd of March.

13 THE COURT: -- March 23rd. And it's the Defendant's Motion
14 for Declaratory Order and a Plaintiff's Motion for Entry of Modified
15 Judgment as Provided for by the Remittitur. And it kind of folds into this
16 question of costs.

17 MR. GREENBERG: Well, it does Your Honor. We have a, a
18 question as to post appeal proceedings, what the Court's going to do.
19 And in fact, Department 2 --

20 THE COURT: Now for the record, the remittitur did come
21 through, because I know that was a big issue that was addressed.

22 MR. GREENBERG: Yes, I – it came through I believe on the
23 4th.

24 THE COURT: Yeah.

25 MR. GREENBERG: There was some confusion with the

1 notice or lack of notice to my office at least. What I was going to say
2 Your Honor is that Department 2, within about a week of the appeal
3 decision being published, scheduled the status conference --

4 THE COURT: Uh-huh.

5 MR. GREENBERG: -- obviously wanting to get a grip on the
6 issues --

7 THE COURT: Right.

8 MR. GREENBERG: -- the Department's going to have to deal
9 with post appeal. And that's why it would seem appropriate to me to
10 simply have all of these matters dealt with by Department 2, because,
11 you know --

12 THE COURT: They're all close to appeal?

13 MR. GREENBERG: Right. Well because my expectation is
14 that the Department's going to have to give us a schedule or instructions
15 for some further applications of proceedings to be taken. I don't think
16 we're going to wrap up everything up on this -- on the 23rd of March
17 much less --

18 THE COURT: Okay.

19 MR. GREENBERG: -- today.

20 THE COURT: Thanks.

21 MR. GREENBERG: So that would seem more efficient, Your
22 Honor; that's my point.

23 THE COURT: So Mr. Shafer and Ms. Rodriguez, does that
24 make sense to you? Do you want to proceed today? I mean, I read it
25 but if, if it makes more sense to make sure you have consistency in all of

1 these post appellate issues and have Judge Kierney deal with all of
2 them since she's already working on getting her schedule, hands around
3 this.

4 Like I said, she's supposed to be in a murder trial, so that's
5 why she couldn't do, do the hearing today.

6 MS. RODRIGUEZ: Your Honor, this is Esther Rodriguez. I
7 respectfully disagree entirely. What's – what's in front of Judge Kierney
8 in about 30 days or so is, is separate. Those are really to define
9 everything that's been remanded. This is a very straightforward motion.
10 This is my motion that I filed.

11 THE COURT: Uh-huh.

12 MS. RODRIGUEZ: It has nothing to do with what's in front of
13 Judge Kierney on the 23rd. That's another one of my motions, so I can
14 represent that it's a completely separate issue. And I think Your Honor
15 is familiar enough with the rules of appellate procedure and what's
16 happened upon remand. So this is very straightforward in terms of we
17 as Defendants prevailed in front of the Supreme Court in being
18 remanded, reversed and remanded on a number of issues.

19 And so, I pled directly out of NRAP 39 as well as NRS 18.

20 THE COURT: Okay. So if the moving party wishes to go
21 forward after, you know, Mr. Greenberg made his pitch that everything
22 should be heard at the same time. As I said, "I had reviewed it." The
23 moving party wishes to go forward so we will. Everybody have a seat
24 and we'll just get – we'll just get underway here then.

25 So Ms. Rodriguez, I did review your motion. As I said, "One of

1 the main issues that was – while this dime was spent on was that the
2 remittitur had not come through. It did finally come through. So putting
3 that issue to the side, Mr. Greenberg raised certain issues with respect
4 to certain specific costs or categories of costs as to whether they were
5 reasonable. And a lot of it had to do with, you know, understanding the
6 issue of costs on appeal.

7 That a lot of these transcripts – didn't really have anything to
8 do with the appeal or they were, you know, some of them were post
9 appeal, some of them were from before, but not really the issue that was
10 appealed, so he raised that as an issue. So is, is that a concern or do
11 you get all of the costs as he points out?

12 Some of these transcripts didn't even make it into the record.
13 So the – for my purposes, to me it seemed like we could pretty much
14 figure out the filing fees, because we can see those. He did challenge
15 the bond, indicating he didn't believe that the bond had actually ever
16 been posted and paid for, so those would be the issues he identified.

17 MS. RODRIGUEZ: Oh, I don't -- I don't think that's -- I don't
18 believe that's the issue, excuse me Your Honor. I think that he's not
19 disagreeing that we didn't post the bond. There's no question that we
20 posted the bond and we've attached the receipts --

21 THE COURT: Okay.

22 MS. RODRIGUEZ: -- for that. I think he was under the
23 impression that I was asking for the Plaintiffs to pay for the bond, which I
24 clarified in a conversation and in my letter to him. We're only asking the
25 Court to release the cost bonds in this.

1 THE COURT: Okay.

2 MS. RODRIGUEZ: We don't expect the Plaintiffs to pay for
3 the cost bonds. And I indicated --

4 THE COURT: Thank you for clarifying that.

5 MS. RODRIGUEZ: -- in writing to him that we would include
6 that in the order from the Court just to ask for a release of the cost
7 bonds.

8 THE COURT: I appreciate. Thank you very much for
9 clarifying that.

10 MS. RODRIGUEZ: As --

11 THE COURT: So that issue we've got resolved. Okay.

12 MS. RODRIGUEZ: And under the rules as Your Honor
13 knows, we're allowed to ask for a number of things. And I would like to
14 clarify --

15 THE COURT: Yeah.

16 MS. RODRIGUEZ: -- that we're only asking for two items as
17 Your Honor mentioned: The filing fees and approximately about 15
18 transcripts. Your Honor this, this matter has gone on since 2012. We're
19 in the 10th year of this. We have had easily over a hundred hearings on
20 this matter, so this is not anywhere near a fraction of the transcripts that
21 are prepared and were paid for in this case.

22 And if we had prevailed at 100 percent in front of the Supreme
23 Court, we'd be here before the Court asking for over a \$100,000 in costs
24 and fees. So the totality of what we're asking for is, this is approximately
25 \$7,500 between the fees and -- excuse me, between the filing fees and

1 the transcripts.

2 THE COURT: Uh-huh.

3 MS. RODRIGUEZ: I've attached all the receipts. I signed a
4 verified Memorandum of Costs that these were transcripts that were for
5 purposes of the appeal only. The majority of them are all included in the
6 appendix and were cited to the Supreme Court. The appendix was 52
7 volumes and 10 – more than 10,000 pages.

8 And these transcripts were all there with the exception of
9 about two of them, which were ordered for purposes of the appeal. But
10 we were already over our page limit, so some of that had to be stricken
11 in terms of trying to narrow down and narrow down the opening brief.
12 We had to get special permission from the Supreme Court to exceed the
13 page limits, but I was able to sign the verification of, of costs. Mr.
14 Michael Wall of Hutchison & Steffen who unfortunately is deceased --

15 THE COURT: Yes. Yes.

16 MS. RODRIGUEZ: -- died following the oral arguments in this
17 case. But he did – I obtained all of these receipts from Hutchison &
18 Steffen to show where Mr. Wall ordered and paid for these transcripts,
19 which he believed were necessary for the appeal of this matter.

20 Your Honor, the fact that some of these were ordered a little
21 bit earlier. The -- one of the major issues that we prevailed in front of the
22 Supreme Court on was to have a two-year statute of limitations ruled
23 upon. And we – in the remand and the reversal, more than three years
24 of claimants and damages have now been stricken from the judgment.

25 So, we originally took that up on a Petition for Writ of

003282

003282

1 Mandamus, and those were all the transcripts on that issue. And the
2 Supreme Court denied the writ at that time saying we could bring this
3 back up again in the final appeal, which is what we did, and we did
4 prevail. So, Your Honor, all of this is well-documented. Again, we're
5 only asking for 67, 64.

6 THE COURT: So you know you may have requested those
7 for the writ. They were still of use in the ultimate appeal --

8 MS. RODRIGUEZ: Yes, Your Honor.

9 THE COURT: -- because the Supreme Court has said,

10 "Then I thought prejudice, bring it up in the ultimate
11 appeal," and so you did. Okay. Got it.

12 MS. RODRIGUEZ: Exactly, exactly.

13 THE COURT: Thanks for clarifying that. As I said,

14 "With respect to the, the filing fees -- those seemed
15 pretty straightforward. We've got Nevada Supreme Court
16 fee, and then the -- it's just the like the -- obviously fees are
17 whatever they call it at the Supreme Court, but actually filing --
18 the 350 for transactions for filing a case. Those all went to --

19 MS. RODRIGUEZ: Correct.

20 THE COURT: -- pretty straightforward. Those are pretty easy
21 to track. Okay. Thank you very much.

22 MS. RODRIGUEZ: Yes, and exact --

23 THE COURT: And thank you for -- thank you for clarifying that
24 to get a cost bond. I --

25 MS. RODRIGUEZ: And we're even -- we're even short on one

1 of those filing fees, because Hutchison & Steffen I think could only come
2 up with the, the filing fee for the actual writ which was \$24, but that was
3 \$250. But since we could not come up with the receipt to attach; we're
4 only requesting \$24 on that.

5 THE COURT: Right. Yes, because we do have to have
6 reasonable, necessary and actually incurred. Okay. Thank you so
7 much. Mr. Greenberg.

8 MR. GREENBERG: Your Honor. The main problem with the
9 cost request here is an overwhelming failure of documentation relating to
10 most of the costs.

11 THE COURT: Uh-huh.

12 MR. GREENBERG: And, in fact, the affirmance of the final
13 judgment here was very substantial Your Honor.

14 But one of the three issues that did direct a further proceeding
15 of the District Court on was the cost they're awarded to the Plaintiffs
16 finding that the Plaintiffs costs, in fact, were not sufficiently documented.
17 And this is actually in the decision at page 24 with respect to cost. Trial
18 courts are urged to exercise restraint and strictly construe statutes
19 permitting recovery of costs.

20 It's in the appeal of this very case Your Honor.

21 THE COURT: Uh-huh.

22 MR. GREENBERG: And they, they told the District Court:

23 "We're sending this back and yeah, you're going to have
24 to look at these costs again, because they weren't – you didn't
25 – you didn't, you know, account for every single individual item

1 with the substantiation of the amount, the purpose, and so f
2 orth.

3 So I – what’s good for the goose is good for the gander Your
4 Honor.

5 THE COURT: I got tired of doing this as an attorney. I never
6 thought I’d have to do this as a judge. But yes, we do – we have to audit
7 files.

8 MR. GREENBERG: Your Honor, so there’s a great infirmity in
9 the award with the request that was presented, okay. I have – and I
10 tried to concede and in communications with Defense Counsel and with
11 the Court that there are certain costs they are entitled to. But from what
12 is presented in the record. As I try – as I explained in, in the response
13 and in the declaration to the response is at most a \$1,342 –

14 THE COURT: Uh-huh.

15 MR. GREENBERG: -- in terms of what they’ve been able to
16 substantiate within the parameters.

17 THE COURT: And you define the parameters, I believe
18 differently than than Ms. Rodriguez did, so how – how do you argue
19 defining the parameters?

20 MR. GREENBERG: Well, Your Honor, first of all, they may
21 well have sought writ relief on the same issue they prevailed on appeal,
22 but that was optional on their part. They’re not entitled to, to seek the
23 fees and costs related to that prior writ, because it was denied, so that is
24 not applicable.

25 So the filing fees are, you know, this \$280 or so -- \$291. We

1 don't contest that. In respect to the reporter's costs, there are no
2 premiums paid for supersedeas bonds. It's the premium cost of the
3 bond. There's none. They concede that. We agree.

4 THE COURT: Yeah. Yeah, and it's --

5 MR. GREENBERG: It's --

6 THE COURT: -- conceded. All that she wants in her order is
7 to release the supersedeas bond.

8 MR. GREENBERG: Well, Your Honor, honestly that shouldn't
9 have even been in the cost request, because it's the premium for the
10 bond, not the bond itself.

11 THE COURT: Right.

12 MR. GREENBERG: But in any event, the issue is the court
13 reporter's transcripts Your Honor.

14 THE COURT: Right. Uh-huh.

15 MR. GREENBERG: You don't secure a transcript for appeal
16 before final judgment, and you're securing it for purposes of the litigation
17 in the district court. The award of the costs under the NRAP is for the
18 transcripts that are necessary for the appeal. So if you -- if you lose in
19 the district court, you're not going to get the transcript costs you paid out
20 for in the district court proceedings, because you're not the prevailing
21 party.

22 If you prevail on appeal, you don't suddenly become entitled to
23 those costs. At least not in a situation like this Your Honor where they're
24 not getting the judgment in their favor. I mean, the only aspect of this
25 judgment that was reversed was a portion of the damages prior to 2010.

1 So there will be a modified judgment for about 70 percent of the original
2 amount entered upon remand. And I'm not disputing that the, the claim
3 costs related to that issue.

4 There's a \$500 or a \$490 transcript which is actually properly
5 detailed, which was at the hearing before Judge Cory where he issued
6 that order which is ultimately reversed on appeal. And I have included
7 that in my accounting here as an allowable quest – no, that was actually
8 prior to judgment.

9 As I said that transcript wasn't even gotten in connection with
10 the judgment. But even if –

11 THE COURT: Well, since not so much when they were
12 ordered, it was when it took place. And so is, is it a transcript of a
13 hearing that raises an issue for the appeal, not when it's ordered or –

14 MR. GREENBERG: Well –

15 THE COURT: -- because you may not need it earlier but –

16 MR. GREENBERG: -- Your Honor. That's – that's part of it
17 perhaps, and that would ultimately lead to the same result. The reason
18 why it would lead to the same result –

19 THE COURT: Yeah.

20 MR. GREENBERG: -- is they did not prevail on any of the
21 other issues that they raised in respect to the judgment –

22 THE COURT: Okay.

23 MR. GREENBERG: -- except for this one point.

24 THE COURT: Okay. And so, which dates would you believe
25 correspond to the date where they actually were the prevailing party on

1 appeal?

2 MR. GREENBERG: Well, Your Honor they, they paid. And
3 this is discussed in, in my declaration which is that they paid – they paid
4 for costs of \$490 which was held post judgment --

5 THE COURT: Uh-huh.

6 MR. GREENBERG: -- on a Motion to Dismiss claims for a
7 new trial in opposition to Plaintiff's Motion to Amend the Judgment. This
8 is at page 5 of my response. The problem with that claim for costs, that
9 was certainly post judgment, so I understand. However, they didn't get
10 relief on appeal on any of those issues, so they should not be entitled to
11 claim that cost. They did raise them on appeal, but they didn't secure --

12 THE COURT: Uh-huh

13 MR. GREENBERG: -- relief on appeal as to that.

14 So that \$490 of costs -- even though that was clearly being
15 secured in connection with the appeal, because the appeal was actually
16 pending at that point. They didn't get any relief on that, Your Honor. In
17 terms of the other claimed costs. They don't identify -- part of the
18 problem is that they had a cost for getting this transcript related to the
19 hearing with Judge Cory that I was telling you about --

20 THE COURT: Uh-huh.

21 MR. GREENBERG: -- where this ruling was made that was
22 ultimately overturned on appeal; however, they grouped that transcript
23 cost with six other transcripts, five of which were not used on the appeal
24 at all, for a total cost of \$1,700. So we get this -- 1730. We get the
25 same problem with a lack of itemization. I, I understand they're arguing

1 that cost is recoverable, because it was the issue that was reversed on
2 appeal. I understand the argument if the Court is to agree to that. We
3 don't know what it is, so it can't be awarded Your Honor.

4 So if, if this motion is going to be resolved today and
5 Defendants have proceeded with – pursued it, you know, I would ask
6 that the cost be awarded as I, as I discuss in my response for \$852.32.
7 That that does not include that \$490 on that post judgment transcript we
8 were discussing where they didn't get any relief on appeal.

9 If the Court differs with that and feels that that's includable
10 somehow. They did itemize it Your Honor. I have to concede that, so
11 we know what the cost was, and it would be the 1342.32. This is
12 discussed at page two of my response. We don't have itemization as to
13 anything else.

14 THE COURT: Okay.

15 MR. GREENBERG: Thank Your Honor.

16 THE COURT: Thank you very much. So, so in looking at
17 your – as you mentioned your declaration, you indicate that there – in
18 reviewing the cost invoices, Defendant paid \$2,780.82 after entry of final
19 judgment in August of 2018. And so that's, again, was kind of my
20 question was – it's not so much the date, but isn't the – the key thing is
21 that it's a hearing.

22 Whenever it was held, it's a hearing that is an issue in the
23 appeal. And so, I understand your viewpoint being that fine, it may be
24 an issue in the appeal, but it's not an issue in the appeal that they
25 recovered on.

1 MR. GREENBERG: Well, it's not an issue that they prevailed
2 on Your Honor. And also it wasn't a –

3 THE COURT: Prevail.

4 MR. GREENBERG: -- transcript that was – if it was – if it was
5 obtained after judgment, then arguably it was obtained for purposes of
6 the appeal; I understand that. I concede that point, because the district
7 court proceedings are over. But to the extent that they were getting
8 transcripts in 2016 or 2017 to assist them in the district court
9 proceedings – those transcript costs are not recoverable on appeal,
10 because they weren't secured for the purposes of the appeal.

11 And as I discuss –

12 THE COURT: And so, that's the \$1,250 for proceedings in
13 2013, '15, '16, '18 that predate or – because some of those actually
14 seem to overlap with this – the order itself. So I was kind of trying to
15 figure out – since there's some of them are kind of lumped together if
16 there's a – if it's possible to do it by date or is it, again, a matter of going
17 through each and every transcript?

18 MR. GREENBERG: Well, it would be a matter of going
19 through each and every transcript potentially. A large part of the
20 problem is that if you look at page 3 of their listing of transcript costs.
21 The major entries of transcript costs here are lumped together, fees for
22 multiple dates: \$1,250 again for six different proceedings. We don't
23 know how much was paid for each one.

24 So we don't know if they were even – we don't even know if
25 they were used as I pointed out in my declaration. Some of these

1 transcripts may have been obtained, but they were never used for the
2 appeal. I don't see how we -- how costs can be awarded --

3 THE COURT: Okay.

4 MR. GREENBERG: -- when it's never actually referred to in
5 the party's appendix. When I reviewed this --

6 THE COURT: All right. Thanks.

7 MR. GREENBERG: When I, I reviewed the chronology here
8 Your Honor. This is -- the numbers appear at page 4 of my response,
9 \$3,984 of these court reporter costs were prior to judgment Your Honor.

10 THE COURT: Right.

11 MR. GREENBERG: It's our position that all of those are not
12 properly viewed as necessary for the appeal, because they were
13 secured during the course of the district court proceedings.

14 THE COURT: Okay.

15 MR. GREENBERG: They're not secured for the purposes of
16 this appeal.

17 THE COURT: All right. Thanks very much.

18 MR. GREENBERG: Thank you Your Honor.

19 THE COURT: Ms. Rodriguez.

20 MS. RODRIGUEZ: Well, Your Honor, he's completely
21 changing the standard which is required under the rule NRAP 39.

22 THE COURT: Uh-huh. Now that's it.

23 MS. RODRIGUEZ: He specifically says,

24 "The reporter's transcript is needed to determine the
25 appeal."

1 It's not a matter of when that transcript was ordered, when that
2 transcript was paid, when the proceeding occurred. All of those things
3 are not contained within the rule.

4 All of these transcripts were needed for the determination of
5 the matters on appeal. And what Mr. Greenberg just stated to the Court
6 about us not receiving relief on those particular issues, first of all is not a
7 consideration under the rule, but secondly is not true. We did receive
8 relief on – for all of those transcripts there was a – the judgment has
9 been remanded. It's been remanded and reversed. So we did receive
10 relief on that particular transcript that he's referencing.

11 And Your Honor, first and foremost. I forgot to mention a very
12 big issue in this is that, there was no timely objection. Under NRAP
13 39(e), he had 7 days to object to our bill of costs, and there was no
14 timely objection. So it's our position he has waived his objections to nit
15 pick through these transcripts and I --

16 THE COURT: Well, you know that's where we got into the
17 whole – that's where we got into the whole issue of the remittitur had not
18 yet been received. And the remittitur – the motion was filed before the
19 remittitur was technically on file.

20 And I appreciate the fact that Judge Kierney had already
21 noticed the status check, but the remittitur did not come through until,
22 until February 4th.

23 MS. RODRIGUEZ: That's correct Your Honor, and
24 unfortunately our rules are rather vague on that, because the NRAP 39
25 doesn't say anything about waiting for the remittitur. It says that a party

1 must file for costs within 14 days, and any objection needs to be filed
2 within 7 days. Yes, maybe the district court can't hear it until a remittitur
3 has been issued, but under NRAP 39; we had a duty to file within 14
4 days, which we did.

5 We timely filed, and Mr. Greenberg needed to file his objection
6 within 7 days. There is no ambiguity about that rule. And he failed to
7 object. Your Honor, these are very reasonable requests that we're
8 asking in light – as I mentioned, this has cost the Defendants hundreds
9 of thousands of dollars to be reversed and remanded on these issues.
10 These are directly on point. And we're asking the Court to award the
11 nominal costs of the transcripts and the final fees.

12 THE COURT: Okay. Thanks very much. All right. So in – as
13 was mentioned, the Supreme Court standard for an award of costs is
14 reasonable and necessary and actually incurred. So looking through,
15 we do have attached to the, the pleading, the invoices.

16 And I appreciate the fact that one of these invoices – the one
17 for the biggest amount – the \$1,500 is kind of lumped together, and it's
18 just a series of hearing dates that were from 2013 through 2018.

19 So even though those hearings --

20 MS. RODRIGUEZ: And Your Honor, I'm sorry, excuse me, I
21 forgot to speak to that. You know, the problem is, is that the same issue
22 continued to be raised and so a lot of these things are labeled by the
23 court reporters as a continuation, because they are brought up over and
24 over and over. And that's why we had to continue to order all of these
25 hearings. And there's little pieces in each one of those transcripts that

1 were all cited to in the record.

2 I'm sorry, Your Honor, to interrupt you.

3 THE COURT: Okay. Thanks very much. So that's why, as I
4 said I, you know the, the question of when the hearing occurred to me is,
5 is not significant, but a transcript was ordered before or after. Because
6 we do have the documentation as Mr. Greenberg pointed out. This
7 report's very big on documentation, and that is the documentation we
8 have that the court reporter – even though she may not have made –
9 done those transcripts until a certain date. They may have been at a
10 hearing that was reported many, you know, some months or in some of
11 these cases, years earlier.

12 So she – we do have the documentation that the Supreme
13 Court requires of us to have. And so, absent some – and here it is. It's
14 the one that is – it was an invoice that's April 15, 2019. And this
15 particular invoice during the period of time when the appeal was pending
16 it's – it's transcripts of multiple dates between 2013 and 2018, although
17 one of them says, "2028." It's a typo. Even, even transcriptionists can
18 make typos.

19 That's the big lump, the 1,250. So that one appears to have
20 been requested and for the purposes of using it in the appeal. Whether
21 it actually made it into the – into the appeal if any particular issue was or
22 wasn't raised in the appeal if -- and it wasn't attached, it was in the
23 appendix.

24 If it was still used for them in figuring out if that was something
25 they could raise and, and they have documented it with an invoice

1 showing that it was actually incurred; nobody's really challenging
2 whether it was reasonable. The issue is whether it was necessary. And
3 so, we have the actually incurred point and we have the reasonableness
4 issue. So we only have the question of what's -- I mean actually incurred
5 and reasonableness of the fee.

6 It's the necessity that's that's being challenged. And as Ms.
7 Rodriguez pointed out, I know that Rule 39 sets out this time frame. For
8 our purposes, the remit -- when somebody comes back from the
9 Supreme Court, the remittitur, that triggers for the courts. That's when
10 we're supposed to -- because technically we don't have it back yet. So I
11 think it is the remittitur date.

12 We don't have you -- I don't -- Ms. Rodriguez is correct; we
13 don't have any law on that. So I don't think that this is an untimely
14 objection. I think that it was -- it was timely. We had this issue of -- for
15 some reason, you know, the remittitur came a little later.

16 But I understand, Ms. Rodriguez, in an excess of caution felt
17 she had to file, because we don't have a clear ruling from the court as to
18 what that means. I think it means the Court gets jurisdiction back when
19 they get the remittitur back, so we can't do anything. It's, it's kind of an
20 unanswered question in our appellate rules.

21 So I think it's timely filed and, and opposed because of this
22 question on the remittitur. And so, I don't have any issues with --
23 procedurally that way. The issue again solely is reasonableness,
24 reasonable, necessary and actually incurred. Nobody's challenging how
25 much the transcripts were charged, how much the transcriptionist

1 charged to do their work. And I – they're all documented as having been
2 actually paid. It's just this question of reasonableness. And for my
3 purposes if they – if they reviewed it whether it made it into the appeal or
4 not. If it was something they ordered for their purposes in preparing for
5 the appeal, then I think it can be recovered.

6 So I'm going to deny the objection to the, the request for the
7 transcripts. I believe that they all were reasonable, necessary and
8 actually incurred. As mentioned, the cost bond should be released. The
9 Plaintiff doesn't have to pay for the cost bonds. They are released to the
10 Defendant, so that's all that means. The Defendant should receive their
11 cost bonds back from the clerk's office.

12 That's – oftentimes they're going to want a specific order on
13 that with really specific details. Like on March 23rd, 2017, we posted a
14 cost bond of \$500 that should be released. I – they need that kind of
15 specificity in your order or they can't follow it for accounting purposes.
16 And so, and the actual filing fees all appear to have been documented in
17 the clerk – in the Court's record.

18 So I'm going to grant the fees as – the costs as requested,
19 denying the objection, and just clarifying that – clarifying that it's
20 releasing cost bonds to the Defendant. Plaintiff does not pay for them.

21 MR. GREENBERG: Your Honor.

22 THE COURT: Are not required to pay for them. Yes.

23 MR. GREENBERG: If we might clarify regarding the court
24 filing fees that were paid, we discuss that separate from the court
25 reporter issue?

1 THE COURT: Yes. Uh-huh.

2 MR. GREENBERG: There – and again, they’re seeking fees
3 relating to three different appellate court proceedings, filing fees and
4 only the one they prevailed on is justified Your Honor. So the correct
5 amount awarded for court filing fees is not – is \$291.50 which was for
6 this appeal, not \$822.50. This is a completely separate issue we did
7 discuss Your Honor.

8 THE COURT: So that’s the – because there were –

9 MR. GREENBERG: This is at page 3 of –

10 THE COURT: Two – there’s a March 31st 2017 Supreme
11 Court appeal fee. This was, I believe, the original writ, 6/23/2017 court
12 appeal fee for an injunction. And so, it’s your position that because
13 those are not the appeal that were ultimately recovered, the decision
14 that came down from the Supreme Court on, those earlier appeals did
15 not –

16 MR. GREENBERG: They did not prevail on the writ on the
17 injunction. They never sought costs if they were entitled to them. It’s
18 obviously far too late to do that now.

19 THE COURT: Okay.

20 MR. GREENBERG: So we’re only dealing with costs on the
21 appeal for final judgment which was \$291.50 in fees that were expended
22 in respect to that. So that part of this Your Honor is completely –

23 THE COURT: So the first \$500 – first \$500 your position is –
24 are not recoverable? Okay, so --

25 MR. GREENBERG: Yeah.

1 THE COURT: So Ms. Rodriguez, on the -- those two appeal
2 fees and like some related, you know, just \$3.50 for filing of -- with
3 Odyssey. Mr. Greenberg's position is, you didn't recover on those two
4 appeals.

5 MS. RODRIGUEZ: Well, that isn't true. We did appeal -- we
6 did recover on both of those appeals. This was Judge Cory attempting
7 to injunct -- excuse me, issue an injunction against Judge Delaney and
8 we did prevail on that. It became part of the record in the ultimate final
9 judgment as to why there was a race to judgment to enter on behalf of
10 Mr. Greenberg's clients.

11 And as we spoke about earlier, the filing fee is on the writ that
12 was on the two-year statute of limitations, which we prevailed on that as
13 well. So all of these -- I'm not sure why he's indicating we didn't prevail
14 other than the Supreme Court issued a denial saying,

15 "Bring it up again on the final judgment."

16 And we did, and we won. We prevailed. So it has been
17 reversed and remanded on that particular issue, so --

18 THE COURT: So the --

19 MS. RODRIGUEZ: -- these are all appropriate fees except as
20 I mentioned, we just didn't have the receipt for the 250, so we're asking
21 for \$24 on that one. So, I'm not really sure why he's complaining about
22 that. He's getting a discount right there.

23 THE COURT: Okay. So the other appeals of these interim
24 writs -- it's kind of -- it's not really clear in this -- when it comes back to
25 the costs of -- that the -- what the district court is supposed to do,

1 “Costs, subparagraph e, costs on appeal taxable in
2 district courts. The following costs on appeal are taxable in
3 district court for the benefit of the party entitled to costs
4 under this rule.”

5 So who is a party who is entitled to costs? And it doesn't
6 really – it gives us specific categories:

7 Preparation transmission of the record on appeal,
8 reporter's transcript, preparation of the appendix, premiums
9 paid for the supersedeas bond, the fee for filing the notice of
10 appeal.

11 So this is Mr. Greenberg's point and kind of begs the question
12 of the filing fee for the notice of appeal. So Mr. Greenberg's position is,
13 when it says the filing fee for the notice of appeal. That's a very specific
14 thing as opposed to these other issues of – a transcript can come
15 anywhere in the 10-year history of this case.

16 And that is a very specific point that it – that subparagraph 5
17 says,

18 “The filing fee for the notice of appeal.”

19 It seems to beg the question that that would be the appeal
20 upon which you get your order that grants you relief. As pointed out,
21 even though these issues may have ultimately been recovered, those,
22 those two appeals were both told were premature writs and should be
23 reserved for the ultimate appeal in the case.

24 So I think Mr. Greenberg's got a point because of the way
25 subparagraph 5 of Nevada Rules of Appeal 39 is written and paragraph

1 5, E5 is very specific. The filing for – fee for the notice of appeal. So I
2 think he's got a point that it's specifically that the appeal accomplished
3 the recovery as received. So the \$500 for the appeals on 6/23/17,
4 3/13/17 and the related costs above should also be backed out of the
5 award, but other – all the rest of the fees are awarded.

6 So it's – there's – as you point out \$24. Then there's three
7 \$3.50 charges and then two \$500 charges. So I, I accept his point. He's
8 got a good point that the way the Rule 3 is very specific. The filing fee or
9 the notes of appeal seems to imply that it's specifically the notice related
10 to where, where [indiscernible].

11 MR. GREENBERG: Your Honor.

12 THE COURT: So I'll grant – I'll grant that --

13 MS. RODRIGUEZ: Again, the –

14 THE COURT: -- that objection. So Ms. Rodriguez --

15 MS. RODRIGUEZ: And I would –

16 THE COURT: -- if you'll prepare that order. Thank you very
17 much. Show it to Mr. Greenberg, appreciate it.

18 MR. GREENBERG: Could, could I be heard further Your
19 Honor, just on the court reporter issue?

20 THE COURT: No. No. No.

21 MR. GREENBERG: Okay. Thank you for your patience.

22 THE COURT: Appreciate it. Thank you very much. All right.

23 MS. RODRIGUEZ: Thank you Your Honor.

24 ///

25 ///


1 THE COURT: Thank you.

2 [Hearing concluded at 10:30 a.m.]

3 * * * * *

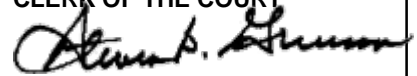
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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


Kerry Esparza
Court Recorder/Transcriber

144

144



MOT

LEON GREENBERG, ESQ., SBN 8094
RUTHANN DEVEREAUX-GONZALEZ, ESQ., SBN 15904
Leon Greenberg Professional Corporation
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
(702) 383-6085
(702) 385-1827(fax)
leongreenberg@overtimelaw.com

CHRISTIAN GABROY, ESQ., SBN 8805
Gabroy Law Offices
170 S. Green Valley Parkway - Suite 280
Henderson Nevada 89012
Tel (702) 259-7777
Fax (702) 259-7704
christian@gabroy.com

Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: 2

**PLAINTIFFS' MOTION FOR
AN AWARD OF ATTORNEY'S
FEES ON APPEAL**

HEARING REQUESTED

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,
hereby submit this motion for an award of attorneys fees in connection with the
defendants' appeal of this Court's final judgment that resulted in the Nevada Supreme
Court's Opinion in this case issued on December 30, 2021, 501 P.3d 961, 137 Nev.
Adv. Op. 84.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I. Plaintiffs must be awarded attorneys fees for the work they performed on the appeal of the final judgment, to the extent such work concerned the affirmed portions of that judgment.

Plaintiffs secured a final judgment in their favor under the Nevada Constitution, Article 15, Section 16, the Nevada Minimum Wage Amendment (the “MWA”), that also provides “....an employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney’s fees and costs.” Plaintiffs prevailed in this Court and secured a judgment in their favor, that judgment being modified on appeal only to the extent of disallowing damages awarded for the period prior to October 8, 2010, such judgment otherwise being fully affirmed.¹

The language of the MWA is mandatory, it requires a “reasonable fee award” to a prevailing employee’s attorney. To the extent an attorney expends time vindicating an economic recovery for their client (here sustaining the majority of this Court’s damages award) they must be awarded a “reasonable fee” for such time expenditures. The award of a fee to plaintiffs’ counsel in connection with the final judgment appeal was raised by motion to the Nevada Supreme Court, as it was unclear whether that court, or this Court, had jurisdiction to award appellate attorney fees under the MWA. The Supreme Court resolved that motion by declining, without prejudice, to reach the issue of a fee award on the appeal and granting plaintiffs leave to make that fee award request to this Court. Accordingly, that fee award request is properly within the jurisdiction of this Court. Ex. “A” Nevada Supreme Court Order of February 3, 2022.

It is self evident that the MWA requires an award of attorney’s fees for successfully defending an employee’s judgment on appeal as well as for work prior to

¹ As discussed in plaintiffs’ other pending motion, that judgment was affirmed for \$686,770 (66.48%) of its original amount of \$1,033,027.

1 judgment. There is nothing in the MWA's language suggesting otherwise and to hold
2 otherwise would defeat the whole purpose of its mandatory fee award provision, which
3 is to render the collection of unpaid minimum wages for employees feasible, as such
4 employees (owed small amounts of unpaid minimum wages) can rarely afford to pay
5 their counsel any fees (whether at the trial or appellate levels). Nor should they have
6 to do so. The Court can also take note that all of the analogous cases under the federal
7 minimum wage law, the Fair Labor Standards Act, 29 U.S.C. § 216(b), addressing its
8 mandatory attorney's fee payment provision, have held attorney's fees are
9 appropriately awarded to prevailing employees in appellate and post-judgment
10 proceedings. *See, Newhouse v. Robert's Ilima Tours, Inc.*, 706 F.2d 436, 441 (9th Cir.
11 1983) and cases discussed therein and other cases.

12 **II. Plaintiffs' counsel should be awarded fees of \$63,760 for the appeal.**

13 Plaintiffs' counsel should be awarded a fee of \$63,760 for their work on the
14 final judgment appeal in this case. That fee award is based upon applying a lodestar
15 rate of \$400 per hour for 159.4 hours of attorney time. As discussed in the annexed
16 Ex. "B" declaration of Leon Greenberg (the sole counsel working on the appeal for
17 plaintiffs), such counsel actually spent 179.9 hours of time on the appeal. But because
18 20.5 hours of that time was spent on the single issue the plaintiffs did not prevail upon
19 in the appeal (the statute of limitations toll), or on other unproductive activities, such
20 fee request is based upon 159.4 hours of attorney time expenditures. *Id.* The hourly
21 rate requested (\$400) was approved as reasonable for Leon Greenberg's time in this
22 Court's prior Orders of February 6, 2019, granting attorney's fees and the Discovery
23 Commissioner's Report and Recommendation of December 11, 2015, filed on March
24 4, 2016. A far higher hourly rate would also be appropriate, as such counsel in 2016
25 was awarded fees of \$720 an hour by the Ninth Circuit Court of Appeals and the
26 federal district court. *Id.*, ¶ 8.

1 The controlling law guiding this Court on determining an appropriate award of
2 attorney's fees, *Brunzell v. Golden Gate National Bank*, 85 Nev. 345 (1969), and its
3 progeny, does not mandate a "line by line" analysis of attorney time records. Or even
4 necessarily require a fee award based upon a "lodestar" rate/hours formulation. But it
5 certainly approves of, and perhaps favors, relying upon a time/lodestar rate approach
6 to awarding attorney's fees. It also directs the consideration of four factors (the four
7 *Brunzell* factors) by this Court when it considers the appropriate attorney fee award.
8 Counsel's Ex. "B" declaration also explains how each of the four *Brunzell* factors
9 justify the proposed award of \$63,760 as calculated based upon a lodestar rate/hours
10 analysis. It also appears defendants have spent a much larger sum in connection with
11 their prosecution of the final judgment appeal and should be required to disclose that
12 information (the attorney hours they consumed on the appeal and the hourly rates
13 involved) if they assert that the requested attorney's fee of \$63,760 is excessive or
14 unwarranted.

15 CONCLUSION

16 For all the foregoing reasons, plaintiffs' motion should be granted.

17
18 Dated: February 17, 2022

19 LEON GREENBERG PROFESSIONAL CORP.

20
21 /s/ Leon Greenberg
22 Leon Greenberg, Esq.
23 Nevada Bar No. 8094
24 2965 S. Jones Boulevard - Ste. E-3
25 Las Vegas, NV 89146
26 Tel (702) 383-6085
27 Attorney for the Class
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

The undersigned certifies that on February 17, 2022, she served the within:

**PLAINTIFFS' MOTION FOR
AN AWARD OF ATTORNEY'S FEES ON APPEAL**

by court electronic service to:

TO:

Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

Jay A. Shafer, Esq.
PREMIER LEGAL GROUP
1333 North Buffalo Drive, Suite 210
Las Vegas, NV 89128

/s/ Ruthann Devereaux-Gonzalez

Ruthann Devereaux-Gonzalez

EXHIBIT "A"

003307

003307

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC; AND A CAB SERIES, LLC,
Appellants,

vs.

MICHAEL MURRAY; AND MICHAEL
RENO, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Respondents.

No. 77050

FILE

FEB 03 2022

ELIZABETH A. SPORN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING MOTION

Respondents filed a motion requesting that this court award attorney fees or direct the district court to award attorney fees pursuant to Article 15, Section 16 of Nevada's Constitution, and to include in its mandate upon remand instructions about the allowance of interest, pursuant to NRAP 37(b). Appellants have filed an opposition to the order and respondents have filed a reply.

As an initial matter, this court's opinion already concludes that the district court must reconsider the award of attorney fees in light of this court's decision. Article 15, Section 16, Subsection B of Nevada's Constitution, the Minimum Wage Amendment, states that "[a]n employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs." However, the determination of a "reasonable" attorney fee involves questions of fact and "should be addressed, in the first instance, by the district court with its greater fact-finding capabilities." *Musso v. Binick*, 104 Nev. 613, 615, 764 P.2d 477, 478 (1988). Accordingly, respondents' motion for an award of attorney's fees on


appeal is denied without prejudice to respondents' right to raise this motion in the district court.

NRAP 37(a) provides that "if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered." NRAP 37(b) provides that if this court "modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest."

This court has previously held that an affirmation in part and reversal in part of a money judgment is treated as an affirmation of that judgment for the purposes of NRAP 37 and the calculation of interest. *Schiff v. Winchell*, 126 Nev. 327, 330-31, 237 P.3d 99, 101 (2010). As noted by respondents, this court's opinion issued December 30, 2021, affirmed in part and reversed in part the district court's money judgment but did not include instructions as to any allowance of interest. *Schiff* applies here, and the modification on appeal was, in effect, an affirmation of the original judgment. Therefore, NRAP 37(a) governs the interest on judgments and whatever interest is allowed by law is payable from the date when the district court's judgment was entered. Accordingly, respondent's request for a modification of the mandate to include instructions based on NRAP 37(b) is denied.

The clerk shall issue the remittitur.

It is so ORDERED.

 C.J.

cc: Hon. Kenneth C. Cory, District Judge
Rodriguez Law Offices, P.C.
Cory Reade Dows & Shafer
Hutchison & Steffen, LLC/Las Vegas
Leon Greenberg Professional Corporation
Eighth District Court Clerk

003310

003310

EXHIBIT "B"

1 LEON GREENBERG, ESQ., SBN 8094
 2 RUTHANN DEVEREAUX-GONZALEZ, ESQ., SBN 15904
 3 Leon Greenberg Professional Corporation
 4 2965 South Jones Blvd- Suite E3
 5 Las Vegas, Nevada 89146
 6 (702) 383-6085
 7 (702) 385-1827(fax)
 8 leongreenberg@overtimelaw.com

9 CHRISTIAN GABROY, ESQ., SBN 8805
 10 Gabroy Law Offices
 11 170 S. Green Valley Parkway - Suite 280
 12 Henderson Nevada 89012
 13 Tel (702) 259-7777
 14 Fax (702) 259-7704
 15 christian@gabroy.com

16 Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

17 MICHAEL MURRAY, and MICHAEL
 18 RENO, Individually and on behalf of
 19 others similarly situated,

20 Plaintiffs,

21 vs.

22 A CAB TAXI SERVICE LLC, A CAB
 23 SERIES LLC formerly known as A
 24 CAB, LLC, and CREIGHTON J.
 25 NADY,

26 Defendants.

Case No.: A-12-669926-C

Dept.: 2

ATTORNEY'S DECLARATION

DECLARATION

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under penalty of perjury, that:

1. I am one of the attorneys for the plaintiffs and was the sole attorney for the plaintiffs in the appeal taken by defendants from the Court's final judgment. The statements made in this declaration are based upon my personal knowledge and personal observations.

2. I am presenting this declaration in connection with plaintiffs' motion for an award of attorney's fees in connection with the final judgment appeal. Prior to drafting this declaration I have reviewed the contemporaneous time records I

1 personally maintained of the work I performed in connection with that appeal. All
2 such time entries are recorded in increments of a tenth of an hour, with each such entry
3 including the date such work was performed and a description of the work so
4 performed. There are 52 such time entries through June 1, 2021, the date of oral
5 argument of the appeal. Those 52 time entries corroborate that I expended a total of
6 179.9 hours of my time in connection with the final judgment appeal of this matter
7 through June 1, 2021. Based on my review of those time entries, and the outcome of
8 the final judgment appeal, I am requesting an award of attorney's fees on behalf of
9 plaintiffs of \$63,760 in connection with that appeal. I base that request on a net and
10 properly charged expenditure of 159.4 hours of my time, at \$400 an hour, to achieve
11 the successful results secured for my clients.

12 4. This fee request includes no requested fee based on the time expenditures
13 of my law clerk on this appeal; based on the time expended on preparing this motion
14 (which was in excess of three hours); or based on the time I expended after the appeal
15 was orally argued or based on any travel time.

16 5. My time record entries indicate I spent 17.3 hours, or less, of my appellate
17 time expenditures addressing the correctness of the portion of the district court's
18 judgment that awarded damages predating the two year MWA statute of limitations
19 (the statute of limitations tolling issue). Plaintiffs were not successful on that issue on
20 appeal (though they prevailed on every other issue on the judgment) and I am not
21 including in my request for attorney's fees 17.3 hours of my time expenditures on the
22 final judgment appeal that in whole or in part were devoted to that issue.

23 6. My time records indicate I spent 3.2 hours, or less, of my time
24 expenditures dealing with certain confusion I had as to the completeness of the
25 defendants' appeal appendix and responding to motions to extend the appeal briefing
26 time. I am not including in my request for attorney's fees the 3.2 hours of my time
27
28

1 expenditures on the final judgment appeal that in whole or in part were spent on those
2 activities.

3 7. Of the remaining 159.4 hours of my time expenditures 18.7 of those hours
4 were spent in connection with unsuccessful mediation/settlement efforts that were
5 required by the Supreme Court. That included two mediation sessions lasting a total
6 of 11 hours. The balance of those time expenditures were for activities directly
7 necessary for the post-judgment appeal, with most of those expenditures involving
8 preparation of the respondents' answering brief; reviewing the 52 volume appellant's
9 appendix and collecting the necessary materials for the respondents' six volume
10 appendix; and preparation for oral argument.

11 8. The hourly rate (\$400 an hour) upon which I am basing this fee request
12 (\$400 x 159.4 = \$63,760) is the same rate found by this Court in its order of February
13 6, 2019 to be reasonable for a fee award based on my time expenditures prior to final
14 judgment (at p. 5, l. 5). The Supreme Court also found in its decision that this Court's
15 award of attorney's fees based on that hourly rate was not excessive or performed in an
16 inappropriate manner. 501 P.3d at 975. That hourly rate is also appropriate given my
17 experience and qualifications. I am a 1992 *magna cum laude* graduate of New York
18 Law School where I received the Trustee's Prize for having the highest GPA of all
19 graduating evening division students, graduating first in my division and third out of
20 358 day and evening division students. I am a member of the bars of the States of
21 Nevada, California, New York, New Jersey and Pennsylvania and have continuously
22 practiced law full time since 1993. I have appeared as appellate counsel in at least 15
23 cases and orally argued in the Nevada Supreme Court at least 10 times since 2008.
24 That hourly fee amount is also reasonable as I have been awarded fees at the
25 considerably higher rate of \$720 an hour in 2016 by both the Ninth Circuit Court of
26 Appeals for appellate work and by the United States District Court for the District of
27 Nevada. *See, Tallman v. CPS Security*, United States Court of Appeals for the Ninth
28

1 Circuit, appeal No. 14-16508, Docket 42, Order filed September 8, 2016, and motion
2 granted by such Order and later district court proceedings in that case, 09-cv-944,
3 Order of November 29, 2016. I believe the foregoing adequately demonstrates the
4 proposed fee award is appropriate under the first *Brunzell* factor, dealing with the
5 quality of the advocate performing the work.

6 9. In respect to the second *Brunzell* factor, the intricacy, importance and
7 difficulty of the work I performed in connection with the final judgment appeal, I
8 would suggest the Court examine the lengthy published opinion issued by the Supreme
9 Court. Numerous issues were raised on the appeal from the final judgment, regarding
10 subject matter jurisdiction, the propriety of granting summary judgment, the adequacy
11 of the plaintiffs' proof of their damages, and the proper standard of proof for MWA
12 claims, all as discussed in that opinion. This appeal involved complex issues that had
13 not been previously addressed, or not addressed in a thorough manner, by the Nevada
14 Supreme Court and was intricate and difficult. Defendants compounded that
15 difficulty by filing a 52 volume appendix and a substantially oversized opening brief.

16 10. In respect to the third *Brunzell* factor, the skill, time and attention I gave
17 to this appeal, I expended substantial time on this appeal, as discussed. I also did so in
18 a skillful manner, as confirmed by the quite successful outcome of the appeal for the
19 plaintiffs.

20 11. In respect to the fourth *Brunzell* factor, the results achieved and benefit
21 conferred, I submit the overwhelmingly favorable results achieved for plaintiffs on the
22 appeal establish that factor is also satisfied. The lone issue plaintiffs failed to prevail
23 upon, the statute of limitations toll, involved interpretation of the text of the MWA in
24 respect to what constituted "notice" to an employee of a change in the MWA's
25 minimum wage rate. It was impossible to predict if the Supreme Court would deviate
26 from this Court's interpretation of that requirement, but it did. As a result, the
27 minority portion of the judgment, dependent upon a statute of limitations toll tied to
28

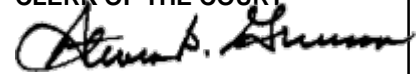
1 that textual interpretation, was reversed. The results achieved for the plaintiffs, an
2 award of over \$686,000 in unpaid minimum wages for 662 taxi cab drivers, was
3 outstanding and justifies the requested fee award under such *Brunzell* factor.
4

5 I affirm this 17th day of February that the foregoing is true and correct under the
6 penalty of perjury.
7

8 /s/ Leon Greenberg
9 Leon Greenberg
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

145

145



MOT

LEON GREENBERG, ESQ., SBN 8094
RUTHANN DEVEREAUX-GONZALEZ, ESQ., SBN 15904
Leon Greenberg Professional Corporation
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
(702) 383-6085
(702) 385-1827(fax)
leongreenberg@overtimelaw.com

CHRISTIAN GABROY, ESQ., SBN 8805
Gabroy Law Offices
170 S. Green Valley Parkway - Suite 280
Henderson Nevada 89012
Tel (702) 259-7777
Fax (702) 259-7704
christian@gabroy.com

Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: 2

**PLAINTIFFS' MOTION FOR
AN AWARD OF ATTORNEY'S
FEES ON APPEAL OF ORDER
DENYING RECEIVER,
OPPOSING MOOTED
MOTION FOR ATTORNEY'S
FEES, AND FOR COSTS ON
APPEAL**

HEARING REQUESTED

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby submit this motion for an award of attorney's fees in connection with their successful appeal of this Court's Order of February 22, 2021; for opposing defendants' now mooted motion filed March 15, 2021, seeking attorney's fees in response to the plaintiffs' properly presented motion seeking the appointment of a receiver, and for costs on such appeal. This motion seeks relief pursuant to the Nevada Constitution, Article 15, Section 16, the Nevada Minimum Wage Amendment (the "MWA") and NRAP 39.

003317

003317

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I. Plaintiffs are prevailing parties in this litigation by a final judgment and under Nevada's Constitution must receive attorney's fees for work performed in post-judgment proceedings.

Plaintiffs secured a final judgment in their favor under the Nevada Constitution, Article 15, Section 16, the Nevada Minimum Wage Amendment (the "MWA"), providing that "...an employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs." Plaintiffs prevailed in this Court and secured a final judgment in their favor on August 21, 2018, that judgment being modified on appeal only to the extent of disallowing damages awarded for the period prior to October 8, 2010, such judgment otherwise being fully affirmed.¹ They are "prevailing employees" in this litigation who must receive appropriate awards of attorneys fees (motions concerning their award of pre-judgment attorney's fees and attorney's fees on their successful response to defendants' final judgment appeal are currently pending with the Court).

In these post-judgment proceedings the plaintiffs have already secured "prevailing party" status through a final judgment awarding them unpaid minimum wages and their attorney's post-judgment actions taken to enforce or defend that judgment must also receive an award of attorney's fees. *See, Velez v. Vassallo*, 203 F. Supp. 2d 312, 315 (S.D.N.Y. 2002) (Additional attorney's fees awarded in case under New York and Federal minimum wage laws for post-judgment attorney work); *Weyant v. Okst*, 198 F.3d 311, 316 (2nd Cir. 1999) (Section 1983 plaintiffs must receive attorney's fees for "...opposing defendant's unsuccessful postjudgment motions."); *Torres-Rivera v. O'Neill-Cancel*, 524 F.3d 331, 335, 341 (2nd Cir. 2008) (Recognizing "presumption" that Section 1983 plaintiffs are to be awarded attorney's

¹ As discussed in plaintiffs other pending motion, that judgment was affirmed for \$686,770 (66.48%) of its original amount of \$1,033,027.

1 fees for compelling collection of judgment); *Lindsay v. Pacific Topsoils*, 120 P.3d
2 102, 109 (Wash. Ct. App. 2005) (If statute allows award of attorney's fees it should
3 also apply to post-judgment litigation, citing *Weyant* and other authorities)
4 (Washington Law); and other cases.

5 **II. Plaintiffs should be awarded attorney's fees for securing reversal**
6 **of the Court's Order, adopted at the defendants' urging, denying**
7 **plaintiffs a hearing on the merits of their request for a receiver and**
8 **in opposing defendants' retaliatory motion for attorney's fees.**

9 As established by the Supreme Court's Order of February 17, 2022, (Ex. "A")
10 the plaintiffs must have their request for a receiver heard on the merits. That request
11 was an attempt to collect their judgment and never considered on the merits because
12 the Court was misled by the defendants' erroneous argument the plaintiffs had no right
13 to such consideration. If defendants had, properly, confined themselves to opposing
14 that request on the merits, and not leading this Court to commit error, plaintiffs would
15 not have had to prosecute such appeal. Accordingly, the plaintiffs must now be
16 awarded their attorney's fees for successfully prosecuting that appeal and overcoming
17 defendants' unsuccessful post-judgment obstruction of the plaintiffs' right to enforce
18 their judgment.

19 Any claim by defendants that such fees are unwarranted because plaintiffs have
20 yet to secure, on the merits, the appointment of a receiver, is irrelevant to the this fee
21 application. Plaintiffs had an absolute right to a hearing on the merits of their request
22 for a receiver and defendant improperly obstructed the plaintiffs' exercise of that right.
23 Plaintiffs must be awarded fees for securing that right through their successful appeal
24 and opposition to defendants' related motion for attorney's fees. That award is
25 required to ensure defendant, a "deep pocket losing party," does not, through its
26 "recalcitrance," evade the purpose of attorney's fee awards in cases such as this by
27 causing an "...erosion of fees awarded to the plaintiff for time spent obtaining the
28 favorable judgment by requiring additional time be spent thereafter without
compensation." *See, Hines v. City of Albany*, 862 F.3d 215, 222-23 (2nd Cir. 2017),

1 citing and quoting *Weyant*, 198 F.3d at 316, and *Gagne v. Maher*, 594 F.2d 336, 344
2 (2nd Cir. 1979), *affirmed* 448 U.S. 122 (1980). Defendants could have entirely
3 avoided their liability for such fees by allowing plaintiffs' motion for a receiver to
4 properly proceed on its merits in the first instance.

5 Defendants further improperly obstructed plaintiffs' rights by filing defendants'
6 retaliatory, baseless and now mooted, March 15, 2021, motion for attorney's fees.
7 They must now also pay plaintiffs' attorney's fees for the time they forced plaintiffs'
8 counsel to expend opposing the same.

9 **III. Plaintiffs' counsel should be awarded fees of \$46,400.**

10 Plaintiffs' counsel should be awarded fees of \$46,400. That fee is based upon
11 applying a lodestar rate of \$400 per hour for 116 hours of attorney time, as discussed
12 in the annexed Ex. "B" declaration of Leon Greenberg. The hourly rate requested
13 (\$400) was approved as reasonable for Leon Greenberg's time in this Court's prior
14 Orders of February 6, 2019, granting attorney's fees and the Discovery
15 Commissioner's Report and Recommendation of December 11, 2015, filed on March
16 4, 2016. A far higher hourly rate would also be appropriate, as such counsel in 2016
17 was awarded fees of \$720 an hour by the Ninth Circuit Court of Appeals and the
18 federal district court. *Id.*, ¶ 4.

19 The controlling law guiding this Court on determining an appropriate award of
20 attorney's fees, *Brunzell v. Golden Gate National Bank*, 85 Nev. 345 (1969), and its
21 progeny, does not mandate a "line by line" analysis of attorney time records. Or even
22 necessarily require a fee award based upon a "lodestar" rate/hours formulation. But it
23 certainly approves of, and perhaps favors, relying upon a time/lodestar rate approach
24 to awarding attorney's fees. It also directs the consideration of four factors (the four
25 *Brunzell* factors) by this Court when it considers the appropriate attorney fee award.
26 Those four factors are discussed in Ex. "B" and more that justify the proposed award
27 of \$46,400 as calculated based upon a lodestar rate/hours
28

1 **IV. Plaintiffs' counsel should be awarded costs of \$291.50.**

2 As discussed in Ex. "B" ¶ 8 plaintiffs incurred court filing fees of \$291.50 in
3 connection with this matter and should be awarded that \$291.50 in costs against
4 defendants.

5 **CONCLUSION**

6 For all the foregoing reasons, plaintiffs' motion should be granted.

7
8 Dated: February 22, 2022

9 LEON GREENBERG PROFESSIONAL CORP.

10
11 /s/ Leon Greenberg
12 Leon Greenberg, Esq.
13 Nevada Bar No. 8094
14 2965 S. Jones Boulevard - Ste. E-3
15 Las Vegas, NV 89146
16 Tel (702) 383-6085
17 Attorney for the Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

The undersigned certifies that on February 22, 2022, she served the within:

**PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEY'S FEES ON
APPEAL OF ORDER DENYING RECEIVER, OPPOSING MOOTED MOTION
FOR ATTORNEY'S FEES, AND FOR COSTS ON APPEAL**

by court electronic service to:

TO:

Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

Jay A. Shafer, Esq.
PREMIER LEGAL GROUP
1333 North Buffalo Drive, Suite 210
Las Vegas, NV 89128

/s/ Ruthann Devereaux-Gonzalez

Ruthann Devereaux-Gonzalez

EXHIBIT "A"

003323

003323

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL MURRAY; AND MICHAEL
RENO, INDIVIDUALLY AND ON
BEHALF OF OTHERS SIMILARLY
SITUATED,

Appellants,

vs.

A CAB TAXI SERVICE LLC; A CAB,
LLC; AND CREIGHTON J. NADY,
Respondents.

No. 82539

FILED

FEB 17 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Sybilina
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court post-judgment order denying a motion to appoint a receiver in a class action. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.¹

Appellants are taxi drivers who secured a judgment against their former employer, respondent A Cab, LLC, for failing to pay them minimum wage. *See A Cab, LLC v. Murray*, 137 Nev., Adv. Op. 84, __ P.3d __ (2021). When appellants encountered difficulties satisfying the judgment, they moved the district court to appoint a post-judgment receiver. The district court denied appellants' first motion without prejudice and instead appointed a special master to submit a report as to whether appointing a receiver was feasible. The district court later ordered the special master to prepare a second report based on respondents' updated financials, but the special master passed away before completing this task or otherwise advising the district court. Appellants then renewed their

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

request for a receiver,² while also seeking alternative relief to help secure their rights as judgment creditors. The district court denied the motion, finding that it was untimely and improper under various local rules because appellants' request for a receiver had already been denied several times.

As a preliminary matter, we first address respondents' contention that this court lacks jurisdiction over this appeal. Although the district court construed appellants' motion as one for reconsideration, its order also explicitly denied appellants' request to appoint a receiver. Accordingly, this court has jurisdiction pursuant to NRAP 3A(b)(4), which provides for an appeal from an order "refusing to appoint a receiver."

Appellants argue that the district court abused its discretion in denying their motion by misconstruing it as a motion for reconsideration. *See Bowler v. Leonard*, 70 Nev. 370, 383, 269 P.2d 833, 839 (1954) (providing that the decision to appoint a receiver is within the discretion of the district court). We agree. The district court's finding that appellants' motion had already been brought and denied several times was clearly erroneous.³ *See Weddell v. H2O, Inc.*, 128 Nev. 94, 101, 271 P.3d 743, 748 (2012) (explaining that this court will uphold the district court's factual findings unless clearly erroneous or not supported by substantial evidence). Our review of the record reveals that appellants moved for the appointment of a receiver twice before their present request. The first time, the district court denied the

²At this time, a different judge had been assigned to preside over the case.

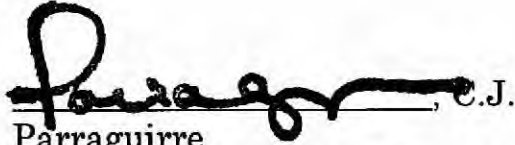
³Notably, the district court's finding that appellants' prior request for a receiver had been denied squarely conflicts with this court's prior order concluding that the district court had *not* denied appellants' request. *See Murray v. A Cab Taxi Serv. LLC*, No. 81641, 2020 WL 6585946, at *2 (Nev.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

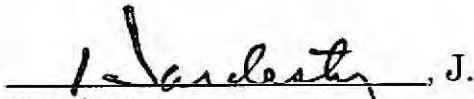
request without prejudice and sent the issue to a special master. Thus, the motion was not resolved at that time and appellants could renew their request at a later date. *See Sicor, Inc. v. Sacks*, 127 Nev. 896, 903, 266 P.3d 618, 623 (2011) (holding that a district court order denying a motion without prejudice “[did] not fully resolve the issues presented and contemplate[d] further action”). And the second time, in addition to the district court asking a special master to consider the issue, we concluded that the district court “neither granted nor denied [appellants’] request to appoint a receiver” when dismissing appellants’ appeal from that second order. *Murray v. A Cab Taxi Service LLC*, No. 81641, 2020 WL 6585946, at *2 (Nev. Nov. 9, 2020) (Order Dismissing Appeal). Indeed, in both instances, the district court indicated that it would consider appointing a receiver but wanted guidance from a special master before making a final decision. And in both instances the district court did not receive the guidance it sought or enter a final order denying appellants’ request. Thus appellants’ request remained pending at the time they brought the motion underlying this appeal. Because appellants’ request for a receiver was still pending, we conclude that the district court abused its discretion when it declined to consider the merits of appellants’ motion.⁴ We therefore reverse the district

⁴Although EDCR 7.12 generally prohibits re-filing a pending motion, district courts must balance this procedural rule with Nevada’s policy of resolving cases on their merits. *See Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 308 (1993) (“[T]he district court must consider the state’s underlying basic policy of deciding a case on the merits whenever possible.”).

court's order and remand this case for the district court to consider appellants' request on the merits.⁵

It is so ORDERED.⁶


Parraguirre, C.J.


Hardesty, J.


Gibbons, Sr.J.

cc: Hon. Carli Lynn Kierny, District Judge
Leon Greenberg Professional Corporation
Hutchison & Steffen, LLC/Las Vegas
Rodriguez Law Offices, P.C.
Cory Reade Dows & Shafer
Eighth District Court Clerk

⁵Because reversal and remand is warranted for the district court to consider the merits of appellants' request, we decline, at this time, to consider their arguments regarding the facts they claim support their request to appoint a receiver. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance.").

⁶The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

003328

003328

EXHIBIT "B"

LEON GREENBERG, ESQ., SBN 8094
 RUTHANN DEVEREAUX-GONZALEZ, ESQ., SBN 15904
 Leon Greenberg Professional Corporation
 2965 South Jones Blvd- Suite E3
 Las Vegas, Nevada 89146
 (702) 383-6085
 (702) 385-1827(fax)
leongreenberg@overtimelaw.com

CHRISTIAN GABROY, ESQ., SBN 8805
 Gabroy Law Offices
 170 S. Green Valley Parkway - Suite 280
 Henderson Nevada 89012
 Tel (702) 259-7777
 Fax (702) 259-7704
christian@gabroy.com

Attorneys for Plaintiffs

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: 2

ATTORNEY'S DECLARATION

DECLARATION

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under penalty of perjury, that:

1. I am one of the attorneys for the plaintiffs and was the sole attorney for the plaintiffs in the appeal taken by plaintiffs from the Court's Order of February 22, 2021, denying plaintiffs' request for the appointment of a receiver, such Order reversed by the Nevada Supreme Court's Order of February 17, 2021. I was also the sole attorney for the plaintiffs in connection with their opposition to the defendants' now mooted motion filed March 15, 2021, seeking an award of attorney's fees to defendants for securing the Court's now reversed order of February 22, 2021.

1 2. I am presenting this declaration in connection with plaintiffs' motion for
2 an award of attorney's fees in connection with their successful appeal of this Court's
3 Order of February 22, 2021, and for opposing defendants' now mooted motion filed
4 March 15, 2021, seeking attorney's fees in response to the plaintiffs' properly
5 presented motion seeking the appointment of a receiver; and for costs on such appeal.
6 Prior to drafting this declaration I have reviewed the contemporaneous time records I
7 personally maintained of the work I performed in connection with that appeal. All
8 such time entries are recorded in increments of a tenth of an hour, with each such entry
9 including the date such work was performed and a description of the work so
10 performed. There are 64 such time entries through today, February 22, 2022. Those
11 64 time entries corroborate that I expended at least the following amounts of time (all
12 figures are rounded down) for which attorney's fees should be awarded;

13 116 hours of my time in total, consisting of:

14 23 hours on the initial motion for a receiver, including replying to
15 defendants' opposition to that motion;

16 11 hours responding to defendants' motion filed March 15, 2021, seeking
17 attorney's fees for opposing plaintiffs' motion for a receiver (1.5 hours of
18 travel time was consumed in addition to those 11 hours);

19 75 hours on the appeal of the Court's Order denying plaintiffs' motion to
20 appoint a receiver;

21 7 hours preparing this motion for fees and costs.

22 3. This fee request includes no requested fee based on the time expenditures
23 of my law clerk or based on any travel time (1.5 hours of travel time is not charged).

24 4. The hourly rate (\$400 an hour) upon which I am basing this fee request
25 (\$400 x 116 = \$46,400) is the same rate found by this Court in its order of February 6,
26 2019, to be reasonable for a fee award based on my time expenditures prior to final
27 judgment (at p. 5, l. 5). The Supreme Court also found in its decision that this Court's
28

1 award of attorney's fees based on that hourly rate was not excessive or performed in an
2 inappropriate manner. 501 P.3d at 975. That hourly rate is also appropriate given my
3 experience and qualifications. I am a 1992 *magna cum laude* graduate of New York
4 Law School where I received the Trustee's Prize for having the highest GPA of all
5 graduating evening division students, graduating first in my division and third out of
6 358 day and evening division students. I am a member of the bars of the States of
7 Nevada, California, New York, New Jersey and Pennsylvania and have continuously
8 practiced law full time since 1993. I have appeared as appellate counsel in at least 15
9 cases and orally argued in the Nevada Supreme Court at least 10 times since 2008.
10 That hourly fee amount is also reasonable as I have been awarded fees at the
11 considerably higher rate of \$720 an hour in 2016 by both the Ninth Circuit Court of
12 Appeals for appellate work and by the United States District Court for the District of
13 Nevada. *See, Tallman v. CPS Security*, United States Court of Appeals for the Ninth
14 Circuit, appeal No. 14-16508, Docket 42, Order filed September 8, 2016, and motion
15 granted by such Order and later district court proceedings in that case, 09-cv-944,
16 Order of November 29, 2016. I believe the foregoing adequately demonstrates the
17 proposed fee award is appropriate under the first *Brunzell* factor, dealing with the
18 quality of the advocate performing the work.

19 5. The second *Brunzell* factor concerns the intricacy, importance and
20 difficulty of the work I performed. This appeal involved a convoluted record that was
21 confusingly presented by defendant to this Court and extensive research and briefing on
22 the relevant legal standard, the latter not being significantly addressed by Nevada's
23 jurisprudence. Significant time was expended on the appeal briefs as a result.

24 6. In respect to the third *Brunzell* factor, the skill, time and attention I gave to
25 this appeal, I expended substantial time on this appeal, as discussed. I also did so in a
26 skillful manner, as confirmed by the quite successful outcome of the appeal for the
27 plaintiffs.
28

1 7. In respect to the fourth *Brunzell* factor, the results achieved and benefit
 2 conferred, I submit the overwhelmingly favorable results achieved for plaintiffs on the
 3 appeal establish that factor is also satisfied. The results achieved for the plaintiffs, a
 4 requirement that this Court examine the merits of the plaintiffs' request for a receiver to
 5 assist them in collecting their award of over \$686,000 in unpaid minimum wages for
 6 662 taxi cab drivers, was outstanding and justifies the requested fee award under such
 7 *Brunzell* factor.

8 8. My office expended at least the following \$291.50 in costs in connection
 9 with this appeal and the proceedings in this Court:

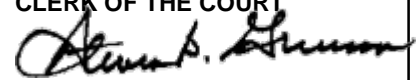
Paid to	For	Amount
Supreme Court	Appeal Fee	\$250
District Court	Notice of Appeal Fee	\$24.00
Wiznet	\$3.50 per filing at least five filings	\$17.50
TOTAL		\$291.50

17
 18 I affirm this 22th day of February that the foregoing is true and correct under the
 19 penalty of perjury.

20
 21 /s/ Leon Greenberg
 22 Leon Greenberg

146

146



ERR

LEON GREENBERG, ESQ., SBN 8094
RUTHANN DEVEREAUX-GONZALEZ, ESQ., SBN 15904
Leon Greenberg Professional Corporation
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
(702) 383-6085
(702) 385-1827(fax)
leongreenberg@overtimelaw.com

CHRISTIAN GABROY, ESQ., SBN 8805
Gabroy Law Offices
170 S. Green Valley Parkway - Suite 280
Henderson Nevada 89012
Tel (702) 259-7777
Fax (702) 259-7704
christian@gabroy.com

Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: 2

**ERRATA TO PLAINTIFFS'
MOTION FOR ENTRY OF
MODIFIED AWARD OF PRE-
JUDGMENT ATTORNEY'S
FEES AS PROVIDED FOR BY
REMITTITUR**

Hearing Date: March 23, 2022
Hearing Time: 9:30 a.m.

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,
hereby submit this errata to their motion for the entry of a modified award of pre-
judgment attorney's fees, as originally awarded by the Court's Order of February 6,
2019, and modified as directed by the Nevada Supreme Court's Opinion in this case
issued on December 30, 2021, 501 P.3d 961, 137 Nev. Adv. Op. 84.

003333

003333

REASON FOR ERRATA

Post-judgment interest should accrue on the modified attorney's fee award from the date of the original judgment, August 21, 2018, not the later February 6, 2019, date of the still to be modified Order awarding fees.

Plaintiffs' motion filed on February 16, 2022, at p. 6, l. 1-13, properly advised the Court of the need for the modified award of attorney's fees to accrue post-judgment interest, but erred in stating that accrual date should be February 6, 2019, the date of the original (and to be modified) fee award order and not August 21, 2018, the date of the final judgment. The proper date from which such award of attorney's fees should accrue post-judgment interest is the date of the original final judgment (August 21, 2018) not the later date (the Order of February 6, 2019) that such award, to now be further modified, was originally calculated. Plaintiffs' motion erred in proposing the later date as the proper date for accrual of post-judgment interest.

Waddell v. L.V.R. Inc., 125 P.3d 1160, 1167 (Nev. Sup. Ct. 2006), reversing the district court on the issue, held that attorney's fee awards accrue post-judgment interest. *Id.* If found the "modern trend" was to award such interest to prevent the party liable for such fees from enjoying an interest free loan on those amounts. *Id.* Among other cases, it cited *Fischbach & Moore Inc. v. McBro*, 619 So. 2d 324, 325 (Ct. App. Florida 1993), holding such interest accrues from "the date the attorneys' right to receive the fee" was established by a final judgment and not the later date when such fee amount was determined.¹ It also relied upon *Issacson Structural Steel Co., v. Armco Steel Corp.*, 640 P.2d 812, 818 (Alaska Sup. Ct. 1982), finding that interest accrues on attorney's fee awards from the time of judgment.

¹ The Florida Supreme Court subsequently affirmed the correctness of *Fischbach* on this issue in *Quality Engineered Installation, Inc., v. Higley South, Inc.*, 670 So.2d 929, 931-32 (Florida Sup. Ct. 1996) ("...interest accrues from the date the entitlement to attorney fees is fixed through agreement, arbitration award, or court determination, even though the amount of the award has not yet been determined.")

1 It is apparent that as a matter of law in Nevada the award of attorney's fees for
 2 the plaintiffs' counsel's work prior to final judgment must accrue post-judgment
 3 interest from the date of that judgment, August 21, 2018. The Court should so state in
 4 its Order entering a modified award of such attorney's fees.²

5 CONCLUSION

6 For all the foregoing reasons, plaintiffs' motion should be granted.

7
 8 Dated: February 23, 2022

9
 10 LEON GREENBERG PROFESSIONAL CORP.

11
 12 /s/ Leon Greenberg
 13 Leon Greenberg, Esq.
 14 Nevada Bar No. 8094
 15 2965 S. Jones Boulevard - Ste. E-3
 16 Las Vegas, NV 89146
 17 Tel (702) 383-6085
 18 Attorney for the Class

19 ² The majority of the Circuit Courts of Appeal, including the Ninth Circuit,
 20 also hold that post-judgment interest accrues on attorney's fee awards from the date of
 21 a judgment unconditionally entitling a party to a fee award (such as in this case where
 22 a fee award is mandatory, not discretionary, to a prevailing plaintiff) and not from a
 23 later date when the amount of that fee is quantified. *See, Friend v. Kolodzieczak*, 72
 24 F.3d 1386, 1391 (9th Cir. 1995); *Associated General Contractors of Ohio v. Drabik*,
 25 250 F.3d 482, 494-495 (6th Cir. 2001); *BankAtlantic v. Blythe Eastman Paine Webber*,
 26 *Inc.*, 12 F.3d 1045, 1052-53 (11th Cir. 1994); *Jenkins v. State of Missouri*, 931 F.2d
 27 1273, 1275 (8th Cir. 1991); *Mathis v. Spears*, 857 F.2d 749 (Fed. Cir. 1988) and
 28 *Copper Liquor Inc., v. Adolph Coors Co.*, 701 F.2d 542, 543 (5th Cir. 1983) (en banc).
But see, Eaves v. County of Cape May, 239 F.3d 527, 530 (3rd Cir. 2001) and
MidAmerica Fed Sav. & Loan Assoc. v. Shearson/American Express, 962 F.2d 1470,
 1475-76 (10th Cir. 1992) (rejecting approach of the Ninth Circuit and the other Courts
 of Appeal).

1
2 PROOF OF SERVICE
3

4 The undersigned certifies that on February 23, 2022, she served the
5 within:

6 **ERRATA TO PLAINTIFFS' MOTION FOR ENTRY OF MODIFIED AWARD**
7 **OF PRE-JUDGMENT ATTORNEY'S FEES AS PROVIDED FOR BY**
8 **REMITTITUR**

9 by court electronic service to:

10 TO:

11 Esther C. Rodriguez, Esq.
12 RODRIGUEZ LAW OFFICES, P.C.
13 10161 Park Run Drive, Suite 150
14 Las Vegas, NV 89145

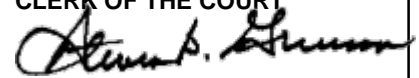
15 Jay A. Shafer, Esq.
16 PREMIER LEGAL GROUP
17 1333 North Buffalo Drive, Suite 210
18 Las Vegas, NV 89128

19 /s/ Ruthann Devereaux-Gonzalez

20 Ruthann Devereaux-Gonzalez
21
22
23
24
25
26
27
28

147

147



1 **RESP**

2 LEON GREENBERG, ESQ., SBN 8094
3 RUTHANN DEVEREAUX-GONZALEZ, ESQ., SBN 15904
4 Leon Greenberg Professional Corporation
5 2965 South Jones Blvd- Suite E3
6 Las Vegas, Nevada 89146
7 (702) 383-6085
8 (702) 385-1827(fax)
9 leongreenberg@overtimelaw.com

6 CHRISTIAN GABROY, ESQ., SBN 8805
7 Gabroy Law Offices
8 170 S. Green Valley Parkway - Suite 280
9 Henderson Nevada 89012
10 Tel (702) 259-7777
11 Fax (702) 259-7704
12 christian@gabroy.com

10 Attorneys for Plaintiffs

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

12 MICHAEL MURRAY, and MICHAEL)
13 RENO, Individually and on behalf of)
14 others similarly situated,)

15 Plaintiffs,)

16 vs.)

17 A CAB TAXI SERVICE LLC, A CAB)
18 SERIES LLC formerly known as A)
19 CAB LLC, and CREIGHTON J. NADY,)

20 Defendants.)

Case No.: A-12-669926-C

Dept.: II

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION
FOR DECLARATORY ORDER**

**COUNTER-MOTION FOR
AWARD OF ATTORNEY'S
FEES**

Hearing Date: March 23, 2022
Hearing Time: 9:30 a.m.

21 Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,
22 hereby submit this response to defendants' motion for a declaratory order and their
23 counter-motion for an award of attorney's fees in connection with this motion pursuant
24 to the Nevada Constitution, Article 15, Section 16, the Nevada Minimum Wage
25 Amendment (the "MWA").
26
27
28

003337

003337

MEMORANDUM OF POINTS AND AUTHORITIES

No basis exists to issue the requested “declaratory order” and such motion is presented to waste the time of plaintiffs’ counsel.

The issues upon which defendants’ propose the Court issue a “declaratory order” were fully resolved by the Nevada Supreme Court’s Opinion in this case issued on December 30, 2021, 501 P.3d 961, 137 Nev. Adv. Op. 84, and its instructions for further proceedings upon remand. No colorable basis exists for presenting that motion. It was filed solely to waste the time of plaintiffs’ counsel and forestall proceedings to collect the now over \$800,000 in unpaid minimum wages and interest owed to the class members, as affirmed by the Nevada Supreme Court.

Plaintiffs’ counter-motion for attorney’s fees in connection with the time expended opposing this motion must be granted, as plaintiffs’ are already established as prevailing parties in this case and such an award is mandatory under the MWA.

ARGUMENT

I. No basis exists to “disallow” \$211.72 of previously calculated unpaid minimum wages incorporated into the affirmed judgment’s finding \$175,056.75 in minimum wages were owed for the 2013-2015 period.

Defendants seek a “declaration” they do not owe any unpaid minimum wages for the time period after June 25, 2014, citing what they claim is evidence in the record that \$211.72 was previously claimed, and awarded in the Court’s final judgment, for that time period. No basis exists for this Court to issue any such “declaration” as its August 21, 2018, final judgment’s findings as to the minimum wage amounts owed for the entire 2013-2015 time period were fully affirmed by the Supreme Court. And even if a basis existed to conduct that examination, no competent evidence is presented supporting defendants’ claim the \$211.72 in unpaid minimum wages at issue for the time period after June 25, 2014, should not be awarded.

1 **A. This Court’s findings on the unpaid minimum wages for the**
2 **2013 to 2015 time period were fully affirmed by the Nevada**
3 **Supreme Court; those findings cannot be further examined.**

4 As discussed in the Nevada Supreme Court’s opinion, the entirety of the
5 minimum wages owed to the class members for the period January 1, 2013 through
6 December 31, 2015, as incorporated into this Court’s judgment, was entirely
7 determined by an arithmetical calculation on A Cab’s records of hours worked and
8 wages paid for that time period. 501 P.3d at 967. That was unlike for earlier periods,
9 where an “....*estimated* data point was the hours-per-shift.” *Id.* (italics in original).
10 The Supreme Court separately examined the issues raised by the 2013-2015
11 calculations and fully affirmed this Court’s use of those calculations in its final
12 judgment, stating:

13
14 A Cab argues that we should reverse the summary judgment as to
15 this [January 1, 2013 - December 31, 2015] period, yet it has not
16 demonstrated existing issues of material fact on the underlying data points
17 (data points it provided to the drivers), the calculations performed by the
18 drivers’ experts, or the minimum wage deficiencies revealed by those
19 calculations. As a result, we have been provided with no justification to
20 reverse the district court's order granting summary judgment for this
21 period. 501 P.3d at 971.

22 Whatever issues A Cab had with errors in the calculations performed for the
23 period after June 25, 2014, and the resulting \$211.72 in unpaid minimum wages found
24 to be owed after that date and prior to December 31, 2015, had to be raised prior to this
25 Court’s final judgment of August 21, 2018. Or possibly in A Cab’s appeal. Having
26 failed to so raise that issue, the Supreme Court’s finding those calculations are correct
27 is not subject to further review and are law of the case. *Hsu v. Clark County*, 173
28 P.3d 174, 178 (Nev. Sup. Ct. 2007) . None of the three “extraordinary circumstances”
discussed in *Hsu* that might allow a deviation from the law of the case doctrine, and an
examination of that issue, are present. There is no “new or different evidence” now
available to A Cab. There is no “intervening change in controlling law.” And the

1 imposition of an additional \$211.72 liability on A Cab, even if “clearly erroneous,”
2 would not result in a “manifest injustice” when it is now liable for over \$800,000 in
3 unpaid minimum wages and post-judgment interest. *Id.*

4 A Cab in its reply may try to confuse the Court by arguing that the exact unpaid
5 minimum wages owed for the 2013-2015 period were never found by the Court prior
6 to judgment and are subject to re-examination. That is untrue. As discussed in detail
7 in the plaintiffs’ motion to enter a modified judgment filed on February 14, 2022 (to be
8 heard on the same date as this motion), the Court’s original judgment of August 21,
9 2018, incorporated (totaled up) the amounts properly found to be owed for three
10 distinct, and separately calculated, time periods: January 1, 2013 to December 31,
11 2015; October 8, 2010 through December 31, 2012; and prior to October 8, 2010.
12 Those calculations for the 2013-2015 period, and incorporated into the final judgment,
13 were placed in the record via the declaration of plaintiffs’ counsel in support of
14 plaintiffs’ motion for partial summary judgment for the 2013-2015 time period, filed
15 on November 2, 2017. That submission was 550 pages long and for the Court’s
16 convenience that declaration, and Exhibit “E” thereto, is annexed as Ex. “1” hereto
17 (omitting the other 524 pages of calculations, expert report, and other materials). As
18 show in Ex. “1” hereto, at its Ex. “E” at column “D” the total amount of \$174,839 in
19 unpaid minimum wages at \$7.25 an hour was established to be owed by those
20 calculations. As explained in the subsequent June 14, 2018, declaration of Charles
21 Bass (originally at Ex. “C” to plaintiffs’ counsel’s declaration filed on June 20, 2018),
22 those same Ex. “E” column “D” amounts were used for the 2013-2015 time period to
23 arrive at the “total” unpaid minimum wage amounts incorporated into the August 21,
24 2018, judgment. *See*, p. 3, l. 8-9, of the June 14, 2018 declaration of Charles Bass,
25 annexed hereto for the Court’s convenience as Ex. “2” (without its original exhibits
26 that total 695 pages). The Court is also referred to the plaintiffs’ pending motion to
27 enter a modified judgment. That motion contains a further discussion of how the
28

1 unpaid wages owed and forming the basis for the final judgment were accurately and
2 fully calculated for each of the three time periods at issue separately and placed in the
3 record and incorporated into the final judgment.

4 **B. Even if this Court's findings as to the minimum wages owed for the**
5 **2013-2015 time period were subject to further examination, no**
6 **competent evidence is presented that the alleged \$211.72 of unpaid**
7 **minimum wages are not actually owed.**

8 Defendants are asking the Court to make a ruling that the \$211.72 in unpaid
9 minimum wages represented to be owed by the plaintiffs' calculations for the period
10 after June 25, 2014, are not, in fact, owed. Issues of fact must be presented by
11 competent evidence. Defendants' motion submits and references lengthy Excel
12 (computer data) printouts relied upon by plaintiffs but does not corroborate the
13 accuracy of those printouts or defendants' assertions with any corroborating
14 declaration (no declaration of any sort is furnished). Moving papers, p. 5, l. 2 - l. 8.
15 Similarly, they make allegations in their brief about a \$7.02 amount being "believed to
16 be a clerical error" and other amounts (\$18.88 and \$30.55) being paid to two persons
17 who as a result are not actually owed such unpaid minimum wages. *Id.* None of that
18 is explained or corroborated. Defendants' motion, even if it sought relief properly
19 obtainable, is completely bereft of any supporting evidence and cannot be granted.

20 **II. No "declaration" as to defendants' non-liability for any unpaid**
21 **minimum wages owed prior to October 8, 2010 is proper, that issue**
22 **was fully resolved by the Nevada Supreme Court.**

23 Defendants' request for a "declaration" as to their non-liability under the MWA
24 for the time period prior to October 8, 2010, is specious. The Nevada Supreme Court
25 has already found defendants have no such liability and the modified judgment to be
26 entered pursuant to its remittitur, as discussed in plaintiffs' motion to enter that
27 modified judgment, does not (and cannot) include any damages accruing prior to
28 October 8, 2010.

IN SUPPORT OF THE COUNTER-MOTION

I. Plaintiffs are prevailing parties in this litigation by a final judgment and under Nevada's Constitution must receive attorney's fees for work performed in post-judgment proceedings.

Plaintiffs secured a final judgment in their favor under the Nevada Constitution, Article 15, Section 16, the Nevada Minimum Wage Amendment (the "MWA"), providing that "...an employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs." Plaintiffs prevailed in this Court and secured a final judgment in their favor on August 21, 2018, that judgment being modified on appeal only to the extent of disallowing damages awarded for the period prior to October 8, 2010, such judgment otherwise being fully affirmed.¹ They are "prevailing employees" in this litigation who must receive appropriate awards of attorneys fees (motions concerning their award of pre-judgment attorney's fees and attorney's fees on their successful response to defendants' final judgment appeal are currently pending with the Court).

In these post-judgment proceedings the plaintiffs have already secured "prevailing party" status through a final judgment awarding them unpaid minimum wages and their attorney's post-judgment actions taken to enforce or defend that judgment must also receive an award of attorney's fees. *See, Velez v. Vassallo*, 203 F. Supp. 2d 312, 315 (S.D.N.Y. 2002) (Additional attorney's fees awarded in case under New York and Federal minimum wage laws for post-judgment attorney work); *Weyant v. Okst*, 198 F.3d 311, 316 (2nd Cir. 1999) (Section 1983 plaintiffs must receive attorney's fees for "...opposing defendant's unsuccessful postjudgment motions."); *Torres-Rivera v. O'Neill-Cancel*, 524 F.3d 331, 335, 341 (2nd Cir. 2008) (Recognizing "presumption" that Section 1983 plaintiffs are to be awarded attorney's fees for compelling collection of judgment); *Lindsay v. Pacific Topsoils*, 120 P.3d

¹ As discussed in plaintiffs other pending motion, that judgment was affirmed for \$686,770 (66.48%) of its original amount of \$1,033,027.

1 102, 109 (Wash. Ct. App. 2005) (If statute allows award of attorney's fees it should
2 also apply to post-judgment litigation, citing *Weyant* and other authorities)
3 (Washington Law); and other cases.

4 **II. Plaintiffs should be awarded attorney's**
5 **fees of \$1,400 for opposing this motion.**

6 As discussed, *supra*, the defendants' motion is without merit and must be
7 denied. Plaintiffs, the prevailing parties in this case, must be awarded fees for the
8 associated expenditure of attorney time in opposing that motion and defending their
9 MWA judgment. That award is required to ensure defendant, a "deep pocket losing
10 party," does not, through its "recalcitrance," evade the purpose of attorney's fee
11 awards in cases such as this by causing an "....erosion of fees awarded to the plaintiff
12 for time spent obtaining the favorable judgment by requiring additional time be spent
13 thereafter without compensation." *See, Hines v. City of Albany*, 862 F.3d 215, 222-23
14 (2nd Cir. 2017), citing and quoting *Weyant*, 198 F.3d at 316, and *Gagne v. Maher*, 594
15 F.2d 336, 344 (2nd Cir. 1979), *affirmed* 448 U.S. 122 (1980). Defendants could have
16 entirely avoided their liability for such fees by withdrawing this motion, as they were
17 urged to do by plaintiffs. Ex. "3" declaration of plaintiffs' counsel. It is apparent they
18 have proceeded with this motion solely to harass plaintiffs' counsel and obstruct the
19 collection of the plaintiffs' judgment.

20 Plaintiffs' counsel should be awarded a fee of \$1,400 for opposing this motion,
21 activity that consumed 3.5 hours of such counsel's time, as discussed in the annexed
22 Ex. "3" declaration of Leon Greenberg. The hourly rate requested (\$400) was
23 approved as reasonable for Leon Greenberg's time in this Court's prior Orders of
24 February 6, 2019, granting attorney's fees and the Discovery Commissioner's Report
25 and Recommendation of December 11, 2015, filed on March 4, 2016. A far higher
26 hourly rate would also be appropriate, as such counsel in 2016 was awarded fees of
27 \$720 an hour by the Ninth Circuit Court of Appeals and the federal district court. *Id.*,
28 ¶ 3.

1 **CONCLUSION**

2 For all the foregoing reasons, defendants' motion should be denied and plaintiffs'
3 counter-motion should be granted.

4
5 Dated: February 25, 2022

6 LEON GREENBERG PROFESSIONAL CORP.

7
8 /s/ Leon Greenberg
9 Leon Greenberg, Esq.
10 Nevada Bar No. 8094
11 2965 S. Jones Boulevard - Ste. E-3
12 Las Vegas, NV 89146
13 Tel (702) 383-6085
14 Attorney for the Class

15 **PROOF OF SERVICE**

16 The undersigned certifies that on February 25, 2022 she served the
17 within:

18 **PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR
19 DECLARATORY ORDER**

20 **COUNTER-MOTION FOR AWARD OF ATTORNEY'S FEES**

21 by court electronic service to:

22 TO:

23 Esther C. Rodriguez, Esq.
24 RODRIGUEZ LAW OFFICES, P.C.
25 10161 Park Run Drive, Suite 150
26 Las Vegas, NV 89145

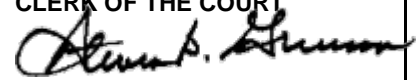
27 /s/ Ruthann Devereaux-Gonzalez
28 Ruthann Devereaux-Gonzalez

EXHIBIT "1"

003345

003345

EXHIBIT "1"



DECL
LEON GREENBERG, ESQ., SBN 8094
DANA SNIEGOCKI, ESQ., SBN 11715
Leon Greenberg Professional Corporation
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
(702) 383-6085
(702) 385-1827(fax)
leongreenberg@overtimelaw.com
dana@overtimelaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, A CAB,
LLC, and CREIGHTON J. NADY,

Defendants.

Case No.: A-12-669926-C

Dept.: I

**DECLARATION OF
PLAINTIFFS' COUNSEL,
LEON GREENBERG, ESQ.**

Re: Motion for Partial Summary
Judgment

Leon Greenberg, an attorney duly licensed to practice law in the State of
Nevada, hereby affirms, under the penalty of perjury, that:

1. I, along with Dana Sniegocki, have been appointed class counsel in this case
for the plaintiff class. That class is composed of defendants' current and former taxi
driver employees.

On the Request for Partial Summary Judgment

2. Pursuant to this Court's orders, and the discovery process in this case,
defendants have provided to my office two excel files: One entitled "10-10-2012 thru
6-27-2014 ssn.xlsx" which was created on October 03, 2016 at 6:25:15 p.m. and
modified on that date at 6:25:26 p.m. and is 14,633,039 bytes in size and the other
entitled "06-28-2014 thru -5-27-2016 ssn.xlsx" which was created on October 03, 2016

1 at 5:35:01 p.m. and modified on that date at 5:35:28 p.m. and is 18,912,120 bytes in
2 size. In producing those files defendants have advised that they contain the full
3 payroll details for the class members for the time period October 10, 2012 through May
4 27, 2016 from the defendants' Quickbooks software. Defendants have confirmed they
5 use that software to produce their payroll for the class members. I provided those two
6 Excel files, in the exact same form as provided to my office by defendants' counsel and
7 not further modified in any fashion, to Charles Bass, the consultant hired by my office
8 to summarize those files and compile certain information from those files.

9 3. Annexed as Ex. "B" is an accurate copy of the report of plaintiff's expert,
10 Dr. Terrence M. Clauretie, Ph.D., dated July 18, 2017. That report, and the two Excel
11 files referenced therein, "2013-2015 Payroll Analysis" and "A-Cab All" have been
12 provided to defendants' counsel.

13 4. Annexed as Ex. "C" is an accurate copy of deposition testimony of
14 defendant Nady, pages 66, 117-124, 128-129 taken on November 22, 2016 and pages
15 94 and 150-154, taken on August 18, 2015.

16 5. I have examined the "2013-2015 Payroll Analysis" Excel file discussed in
17 Dr. Clauretie's Ex. "B" report and in the plaintiffs' motion. That file contains a table
18 (spreadsheet) entitled "2013-2015" which is a "per pay period table." That table lists,
19 on each line, one pay period for one employee, and lists 14,200 such individual pay
20 periods (14,200 lines). It performs, on each line, arithmetic functions on the
21 information contained on that line to calculate the minimum wages owed, if any, for
22 the pay period. Those arithmetic functions (equations) are visible in the particular cells
23 of each line (if one places the cursor over the cell). That file also contains a table (a
24 separate spreadsheet) entitled "2013-2015 per EE." That table tallies, on a single line,
25 the amount of all minimum wages owed, if any, for an employee as shown on all of the
26 employee's lines (pay periods) in the "per pay period table" (the "2013-2015" table) of
27 the file. There are 583 such employees who have that tally made for them in the
28 "2013-2015 per EE" table.

1 6. Because plaintiffs only seek partial summary judgment based upon a
2 portion of the Quickbooks payroll records examined by, and calculations performed in,
3 the "2013-2015 Payroll Analysis" Excel file, I have prepared two excerpts of that file
4 and printed them for use as Exhibits to that motion.

5 7. Annexed as Ex. "D" is a document that is 375 pages long and is printed
6 from the "per payroll period" table (the "2013-2015" table) of the "2013-2015 Payroll
7 Analysis" Excel file. I did not print into this document certain portions of that "per
8 payroll period" table because they are not relevant to the partial summary judgment
9 motion and would make this already lengthy document far longer. I omitted from this
10 document the payroll check number that appeared at Column "A" on every line of that
11 "per payroll period" table. I also omitted from this document calculations made in that
12 "per payroll period" table in Columns "N" and "O" that attempted to determine the
13 amount of minimum wages owed based upon the employee's insurance premium cost.

14 8. Annexed as Ex. "E" is a document that is 19 pages long and is printed
15 from the "per employee" table (the "2013-2015 per EE" table) of the "2013-2015
16 Payroll Analysis" Excel file. This document does not contain certain portions of that
17 "per employee" table because they are not relevant to the partial summary judgment
18 motion and would make this already lengthy document longer. I omitted from this
19 document information for 35 employees who were owed less than \$10.00 under every
20 minimum wage analysis conducted by the "2013-2025 Payroll Analysis" Excel file and
21 that appears in Ex. "D" and Ex. "E." The three such minimum wage analysis that do
22 appear in this document are at Column "D," the \$7.25 an hour minimum wage rate for
23 all pay periods; Column "E," the \$8.25 an hour minimum wage rate for all pay periods;
24 and Column "F," the \$8.25 an hour minimum wage rate for all pay periods prior to the
25 class member qualifying for health insurance (the "insurance waiting period" time) and
26 the \$7.25 an hour minimum wage rate for all later pay periods. I also omitted from
27 this document calculations made in Columns "N" and "O" of that "per employee" table
28 that attempt to determine the amount of minimum wages owed based upon the
 employee's insurance premium cost.

1 9. Annexed as Ex. "F" is an accurate copy of deposition testimony of
2 defendant Nady, page 118, taken on June 16, 2017.

3 10. Annexed as Ex. "H" is an accurate copy of defendants' Supplement to
4 Rebuttal Expert Witness Disclosures furnished on September 13, 2017, confirming that
5 they have paid their expert witness, Scott Leslie, CPA, \$47,203 through September 9,
6 2017. Mr. Leslie's expert witness costs to the defendants are now at least an
7 additional \$1,000 or more over that amount, as he has now attended three depositions
8 since September 9, 2017 consuming at least five hours of his time.

9 11. Annexed as Ex. "I" is an accurate copy of pages 1 and 20-23, and Exhibits
10 3 to 7 thereof, of the Rebuttal Expert Witness report of Scott Leslie, CPA, furnished by
11 defendants' counsel.

12 12. Annexed as Ex. "J" is an accurate copy of an Order of the United States
13 District Court in the case of *Tallman v. CPS Security* making a award of certain
14 attorney's fees.

15 **On the Request for an Interim Fee Award**

16 13. I have reviewed the contemporaneous attorney time records maintained by
17 my office. As of the date of this declaration those records indicate that I, personally,
18 have expended over 850 hours of my time on the prosecution of this case and my
19 associate, and class co-counsel, Dana Sniegocki has expended over 500 hours of time
20 on the prosecution of this case, for a total of over 1,350 hours. My office's records
21 also indicate that my office has advanced expenses in excess of \$35,000 in connection
22 with the prosecution of this case. Those expenses, summarized, are:

23 In excess of \$27,200 for expert witness and technical consultant costs;

24 In excess of \$6,200 for court reporter fees;

25 In excess of \$500 for court filing fees;

26 In excess of \$1,200 for postage and printing costs in connection with the
27 dispatch of class notice;

28 (Total of the above is \$35,200)

 14. In connection with a previous sanctions award of \$3,238.65 against

1 defendants I was awarded attorney's fees at a rate of \$400 an hour in this case. Ex.
2 "G" is a copy of that prior Order of the Court. I am a member of the Nevada,
3 California, New York, New Jersey and Pennsylvania Bars and was first admitted to the
4 practice of law in 1993. I have been engaged in a full time, and continuous, litigation
5 practice since my admission to the bar. I have over 23 years of experience litigating
6 class action and wage and hour cases and have been appointed class counsel or co-class
7 counsel in over 30 cases. I have recently been awarded fees of \$720 an hour for my
8 work by the United States District Court of Nevada and the Ninth Circuit Court of
9 Appeals. Ex. "K" Order.

10 15. The prosecution of this case has been made very difficult by the
11 obstructive and improper conduct of defendants during the pre-trial discovery
12 proceedings in this case. It took the conducting of numerous depositions, and motions,
13 to force the defendants to provide any even marginally proper discovery on the class
14 claims (the defendants willfully withholding and refusing to provide such discovery
15 until they were sanctioned by the Court, Ex. "G"). I had to, over defendants' vigorous
16 and protracted opposition, secure class certification in this case. After this case was
17 class certified, defendants requested another District Judge of this Court certify the
18 same claims for a collusive class settlement in another, later filed, lawsuit. This Court,
19 in this action, issued an injunction on an OST to prohibit such improper actions by
20 defendants. Defendants then appealed that injunction, forced Class Counsel to respond
21 to that appeal, and then did not bother to file a reply brief on that appeal (well aware
22 that the appeal was frivolous and brought solely to burden Class Counsel). Defendants
23 have also sought to sue Class Counsel as a third-party defendant in this case (such
24 frivolous request being denied by the Court). The great expenditure of time incurred
25 by my office in the prosecution of this case is entirely the result of defendants' conduct
26 and their refusal to voluntarily disclose the relevant facts and cooperate with the
27 litigation process.

28

1 I have read the foregoing and affirm the same is true and correct.

2

3 Affirmed this 2nd day of November, 2017

4

/s/ Leon Greenberg
Leon Greenberg

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

003352

003352

EXHIBIT "E"

	A	B	C	D	E	F
1				MINIMUM WAGES OWED OF AT LEAST \$8.25 AN HOUR, UNLESS OTHERWISE ROUNDED DOWN OWED FROM 1/1/15 TO 12/31/15 PER CLASS MEMBER USING HOURS WORKED THE HOURS RECORDED IN CAB'S PAYROLL RECORDS		
2			TOTALS	\$174,839	\$651,262	
3	Payroll Records Employee Account Number	First Name	Last Name	Minimum Wages Owed at \$7.25 an Hour for all Hours	Minimum Wages Owed at \$8.25 an Hour for all Hours	Minimum Wage \$8.25 an Hour Periods Prior to Qualified for In and at \$7.25 an after that date
4	113993	Paolo	Afonso	\$0	\$91	
5	109164	Steven	Alardi	\$0	\$51	
6	114470	Meer	Ali	\$0	\$303	
7	100662	Farid	Alizadeh	\$0	\$261	
8	24802	Keith	Altamirano	\$0	\$39	
9	29709	Jason	Andersen	\$0	\$366	
10	114697	Neal	Anderson	\$0	\$131	
11	114669	Nelson	Anon	\$0	\$391	
12	111600	Reynaldo	Aparicio	\$0	\$75	
13	106151	Orlando	Apodaca	\$0	\$1,380	
14	8812	Peter	Arnold	\$0	\$125	
15	113714	Robert	Arrandt	\$0	\$457	
16	113763	Carlos	Arroyo	\$0	\$130	
17	114195	Juan	Arzola	\$0	\$149	
18	28649	Chaudhry	Asghar	\$0	\$486	
19	113535	Josip	Astalos	\$0	\$223	
20	103560	Edward	Awad	\$0	\$231	

	A	B	C	D	E	F
21	112197	Mickieal	Bachelor	\$0	\$534	
22	114706	Shaun	Bagley	\$0	\$199	
23	113134	Jason	Baker	\$0	\$82	
24	112978	Michael	Bancod	\$0	\$1,270	
25	16654	John	Barnhart	\$0	\$567	
26	26073	Rafael	Barnola	\$0	\$57	
27	113542	Lucia	Basoalto-Sanchez	\$0	\$214	
28	2454	Eugenio	Batista	\$0	\$42	
29	100286	Belay	Bedane	\$0	\$1,089	
30	112830	Vladimir	Bestard-Sanchez	\$0	\$336	
31	105871	Haji	Bilal	\$0	\$79	
32	110126	Brian	Bones	\$0	\$451	
33	106621	Deborah	Booth	\$0	\$212	
34	3723	Christopher	Bowen	\$0	\$79	
35	101034	Terry	Bower	\$0	\$146	
36	106299	Michael	Brown	\$0	\$792	
37	2660	Sonny	Carracedo	\$0	\$100	
38	23673	Willer	Castro	\$0	\$432	
39	103777	Lazaro	Castro-Jaen	\$0	\$13	
40	21398	Surapan	Chenpanas	\$0	\$171	
41	29301	Michael	Cicerchi	\$0	\$20	
42	112446	Reginald	Clarke	\$0	\$21	
43	106890	Pedro	Co	\$0	\$274	
44	102415	Ella	Collier	\$0	\$218	
45	108716	Steven	Collins	\$0	\$252	
46	21803	Danilo	Coloma-Guerra	\$0	\$28	
47	15756	Mason	Craddock	\$0	\$385	
48	112510	Dustin	Crawford	\$0	\$400	
49	109193	Janine	Cursoli	\$0	\$54	
50	112564	Billy	Cyiark	\$0	\$743	
51	103226	Eric	Dash	\$0	\$456	

	A	B	C	D	E	F
52	109293	Carmine	Delligatti	\$0	\$116	
53	112508	William	Demick Jr.	\$0	\$1,280	
54	31358	Getu	Deresu	\$0	\$149	
55	111351	Almamy	Diomande	\$0	\$195	
56	3395	Julius	Dixon	\$0	\$56	
57	111077	Carlos	Dominguez	\$0	\$506	
58	114946	Gary	Dopson	\$0	\$277	
59	113058	Michael	Douzat	\$0	\$251	
60	113030	Anna	Dubaniewicz	\$0	\$165	
61	110273	John	Dufton	\$0	\$604	
62	2006	Jeffrey	Durtschi	\$0	\$13	
63	115072	Dionne	Dutton	\$0	\$34	
64	112745	Michael	Ebert	\$0	\$36	
65	105512	Richard	Eckersley	\$0	\$176	
66	113958	Danielle	Estes	\$0	\$26	
67	14595	Jorge	Estrada	\$0	\$30	
68	104153	Anthony	Feller	\$0	\$435	
69	108011	Alexander	Fernandez-Leon	\$0	\$44	
70	113485	Caluquette	Fields	\$0	\$595	
71	114873	Carr	Flournoy	\$0	\$497	
72	30746	Gil	Foronda	\$0	\$36	
73	25493	Michael	Fragoza	\$0	\$300	
74	111531	Phillip	Gay	\$0	\$869	
75	107680	Osawonyi	Gbajumo	\$0	\$285	
76	31780	David	Gilbert	\$0	\$168	
77	114627	Osbaldo	Gomez	\$0	\$125	
78	115000	Latia	Goree	\$0	\$171	
79	102141	Charles	Gray	\$0	\$75	
80	111916	Kenneth	Gray	\$0	\$434	
81	112337	Carlos	Gutierrez	\$0	\$1,129	
82	16636	William	Hallowell	\$0	\$48	

	A	B	C	D	E	F
83	27832	David	Harding	\$0	\$148	
84	115097	James	Harris	\$0	\$86	
85	113504	Charlene	Harris	\$0	\$468	
86	19800	Ronald	Hasbrouck Jr.	\$0	\$27	
87	112912	Davoud	Hassanzadehalibeikk	\$0	\$432	
88	102378	Frank	Hatch Jr.	\$0	\$433	
89	115043	Devin	Hawkins	\$0	\$81	
90	114928	Curt	Herrlich	\$0	\$182	
91	32082	Gary	Hoffman	\$0	\$341	
92	3809	James	Hollis	\$0	\$134	
93	111071	Charles	Horton	\$0	\$310	
94	113402	Torgom	Hovhannisyan	\$0	\$283	
95	111522	Sidney	Huene	\$0	\$1,024	
96	3187	Edsel	Isaac	\$0	\$78	
97	15638	Shaikh	Jawaid	\$0	\$190	
98	28842	Jo A	Jimerson-Cessna	\$0	\$513	
99	29542	Chong	Kang	\$0	\$60	
100	27999	Zia-Ur-Rehman	Khan	\$0	\$1,021	
101	107692	Chang	Kim	\$0	\$225	
102	114375	Kuen	Ko	\$0	\$91	
103	107625	Jeannine	Lafarge	\$0	\$17	
104	114766	Charles	Laughinghouse	\$0	\$193	
105	108034	Kevin	Leonardi	\$0	\$65	
106	29012	Natalie	Lin	\$0	\$10	
107	112296	Roxana	Loebig	\$0	\$274	
108	112729	Lashawn	Logan	\$0	\$87	
109	27467	Luis	Maciel	\$0	\$378	
110	18640	Ratan	Mahtani	\$0	\$1,072	
111	100830	Yamine	Mahyar	\$0	\$94	
112	31483	Roberto	Malapira	\$0	\$1,004	
113	113874	Joseph	Marino	\$0	\$217	

	A	B	C	D	E	F
114	25853	Samuel	Mari-Santa Cruz	\$0	\$705	
115	112241	Thomas	Martin	\$0	\$117	
116	110395	Charles	Maxwell	\$0	\$407	
117	103078	Zygmond	Mayer	\$0	\$92	
118	111443	Mary	McDonald	\$0	\$665	
119	113696	Randall	McGinn	\$0	\$68	
120	107915	Russell	McLaren	\$0	\$916	
121	101698	Robert	Mecke	\$0	\$432	
122	29265	Emilio	Micu	\$0	\$489	
123	114922	Shawn	Middleton	\$0	\$305	
124	101935	Hamza	Mohamed	\$0	\$17	
125	30777	Jimmy	Moore	\$0	\$209	
126	112561	Sherryl	Morgan	\$0	\$444	
127	109569	Ariel	Munoz-Fernandez	\$0	\$136	
128	108427	Joseph	Murray	\$0	\$10	
129	113865	Jack	Nelson	\$0	\$79	
130	3868	Eric	Olson	\$0	\$43	
131	107567	Guillermo	Ordaz	\$0	\$959	
132	110552	Rosemarie	Padilla	\$0	\$673	
133	113324	Louis	Palomo	\$0	\$51	
134	111204	George	Papania	\$0	\$1,026	
135	22498	John	Paris	\$0	\$240	
136	15968	Kenneth	Peterson	\$0	\$125	
137	109615	Benjamin	Pham	\$0	\$340	
138	109904	Gary	Phillips	\$0	\$170	
139	2826	Amir	Pitts	\$0	\$18	
140	110913	Koosha	Pouyan	\$0	\$791	
141	106825	Rowena	Preza	\$0	\$615	
142	109600	Gregory	Prince	\$0	\$745	
143	109845	Charles	Pruitt	\$0	\$1,014	
144	23178	Jeffrey	Raffensparger	\$0	\$176	

	A	B	C	D	E	F
145	113507	Omar	Ramirez-Ramos	\$0	\$16	
146	3812	William	Ray	\$0	\$127	
147	110975	Joseph	Reynolds	\$0	\$17	
148	113964	Ryan	Rezaei	\$0	\$178	
149	114453	Syedmohammadali	Riazi	\$0	\$12	
150	113948	Syedmohammadhossein	Riazi	\$0	\$169	
151	111648	Jeffrey	Robinson	\$0	\$1,612	
152	3629	Mark	Robles	\$0	\$174	
153	114033	Thomas	Rodde	\$0	\$684	
154	111882	Jose	Rojas-Perez	\$0	\$1,454	
155	114618	James	Romero	\$0	\$375	
156	115163	Frank	Rozowski	\$0	\$54	
157	107934	John	Ryan	\$0	\$263	
158	30644	Ali	Sabitian	\$0	\$105	
159	112826	Abdul	Sameh	\$0	\$115	
160	108213	Christopher	Savino	\$0	\$878	
161	108167	Christopher	Schell	\$0	\$189	
162	3359	Otto	Sevillet	\$0	\$177	
163	110768	Syed	Syed-Mousavi	\$0	\$124	
164	105416	Mahesh	Sharma	\$0	\$143	
165	30308	Sheriff	Sheriff	\$0	\$125	
166	112711	Mark	Shockley	\$0	\$471	
167	114568	William	Simms	\$0	\$178	
168	111778	Shaun	Sims	\$0	\$155	
169	114747	David	Slayton	\$0	\$61	
170	110015	Donna	Smith	\$0	\$32	
171	108547	Domingo	Solano	\$0	\$450	
172	106034	Charles	Stagg	\$0	\$137	
173	15032	Alfred	Tafesh	\$0	\$12	
174	109384	Jose	Tarango	\$0	\$11	
175	111463	Fredrick	Taylor	\$0	\$1,035	

	A	B	C	D	E	F
176	18537	Mekonen	Tewolde	\$0	\$309	
177	102232	Lou	Thetprasit	\$0	\$136	
178	23143	Marc	Thomas	\$0	\$568	
179	114361	Alexis	Toledano	\$0	\$30	
180	107060	Bernardino	Trujillo-Campos	\$0	\$219	
181	20386	Carl	Tucker	\$0	\$437	
182	22597	James	Turner	\$0	\$27	
183	112175	Eduard	Utorov	\$0	\$328	
184	18577	Alex	Vaghefi	\$0	\$167	
185	111338	Pedro	Valiente	\$0	\$990	
186	114386	Alan	Vargo	\$0	\$336	
187	30850	Edward	Villarreal	\$0	\$21	
188	104958	Boris	Volchek	\$0	\$226	
189	31413	Gilbert	Wainwright	\$0	\$972	
190	3058	James	Wallace	\$0	\$213	
191	100619	Charles	Walls	\$0	\$331	
192	105823	Robert	Ward	\$0	\$898	
193	113682	Gregory	Wible	\$0	\$485	
194	108239	Edward	Wright	\$0	\$59	
195	113044	Ali	Yazdian	\$0	\$102	
196	114275	Mollah	Yerima	\$0	\$840	
197	113075	Mary	Yu	\$0	\$765	
198	114189	Maikel	Zaldivar	\$0	\$11	
199	3235	Abraham	Zelege	\$0	\$19	
200	111519	Hassan	Zghaier	\$0	\$50	
201	107492	Jimmy	Brown	\$1	\$1,815	
202	3899	Anthony	Casiello	\$1	\$533	
203	108744	Francisco	Esparza	\$1	\$1,676	
204	30616	Abner	Flores	\$1	\$1,250	
205	113914	Anthony	Gazzara	\$1	\$988	
206	105627	Arthur	Kronenberg	\$1	\$1,269	

	A	B	C	D	E	F
207	112009	Karen	Mock	\$1	\$1,270	
208	27001	David	Olson	\$1	\$555	
209	112670	Keith	Parry	\$1	\$540	
210	112644	Michael	Partipilo	\$1	\$1,275	
211	110625	Joseph	Patricio	\$1	\$1,244	
212	112342	Santo	Pizzimenti	\$1	\$692	
213	103060	David	Ramos	\$1	\$1,340	
214	109604	John	Richards	\$1	\$806	
215	111456	Roger	Riek	\$1	\$1,536	
216	112238	Anthony	Rojas	\$1	\$875	
217	111078	Sherman	Ross	\$1	\$1,072	
218	29249	Abbas	Sameni	\$1	\$1,622	
219	106103	Linn	Smallwood	\$1	\$1,529	
220	112181	Alex	Smith	\$1	\$889	
221	113920	Keli	Vargo	\$1	\$1,316	
222	113891	Kenneth	Washington	\$1	\$1,461	
223	109248	Thomas	Waymark	\$1	\$1,260	
224	29297	Yohannes	Gebremicheal	\$2	\$768	
225	105577	Steven	Seidman	\$2	\$52	
226	24791	Anthony	Garcia	\$6	\$666	
227	113529	Zoltan	Horvath	\$7	\$79	
228	110770	Thomas	Bosley	\$8	\$335	
229	3835	Leykun	Hussien	\$8	\$154	
230	13237	Timothy	Wideman	\$8	\$115	
231	108405	David	Mcarthur	\$9	\$39	
232	106642	Abdelkrim	Kadri	\$10	\$231	
233	112193	Pedram	Bandi	\$11	\$294	
234	112394	Rosemarie	Chavez	\$13	\$39	
235	20466	Moharram	Jafarian	\$13	\$146	
236	22809	Ted	Manitien	\$13	\$33	
237	3671	Miguel	Arellano	\$16	\$185	

	A	B	C	D	E	F
238	111199	Claudia	McCarroll-Jones	\$17	\$36	
239	111068	Andrey	Filatov	\$20	\$44	
240	26636	Kathleen	Garrett	\$20	\$50	
241	111813	Tura	Kadir	\$23	\$62	
242	25454	Jeffrey	Bell	\$26	\$56	
243	111257	Ciprian	Petculescu	\$28	\$56	
244	27059	Joseph	Mottaghian	\$30	\$533	
245	31847	Armando	Rodriguez	\$30	\$909	
246	106897	Dale	Goettsche	\$31	\$270	
247	109641	Paul	Emling	\$35	\$313	
248	109637	Danny	Park	\$38	\$260	
249	23774	Darryl	Crawford	\$41	\$217	
250	3402	Jordan	Hansen	\$44	\$303	
251	110579	Jose	Brooks	\$46	\$96	
252	30374	John	Zafar	\$46	\$165	
253	112455	Arthur	Blum III	\$47	\$94	
254	30300	Antonio	Cruz-Decastro	\$47	\$92	
255	104938	Paul	Ortega	\$47	\$428	
256	3151	Kennard	Johnson	\$50	\$345	
257	3903	Luis	Gonzalez	\$51	\$106	
258	111283	Sean	Kissel	\$51	\$796	
259	3945	Francisco	Lombana	\$51	\$107	
260	31149	David	Pony	\$51	\$341	
261	103413	Miheret	Tsegaye	\$51	\$108	
262	102328	Ronald	Meyer	\$53	\$396	
263	107792	Danilo	Barrameda	\$56	\$312	
264	3864	Alfonso	Holler	\$56	\$200	
265	110936	James	Daniels	\$57	\$473	
266	110687	James	Berger	\$58	\$182	
267	101103	Monica	Davila-Romero	\$58	\$119	
268	100046	Ernest	Dymond	\$62	\$159	

	A	B	C	D	E	F
269	107940	Khamkhung	Maharit	\$63	\$141	
270	106666	Arturo	Martinez	\$63	\$128	
271	19858	Charles	Passera	\$65	\$683	
272	110334	Luis	Michilena	\$66	\$138	
273	3624	Michael	Patry	\$66	\$151	
274	24737	Ivaylo	Charov	\$67	\$159	
275	3652	Miguel	Garcia	\$68	\$651	
276	31467	Michael	Clarke	\$69	\$136	
277	108041	Brian	Comeau	\$70	\$308	
278	3391	Natasha	Grafton	\$72	\$501	
279	107191	Yordan	Ivanov	\$74	\$164	
280	22120	Brian	Travis	\$80	\$303	
281	111405	Fidel	Lopez-Silvero	\$81	\$324	
282	3947	Roland	Wing	\$81	\$170	
283	31112	Yuda	Peer	\$82	\$232	
284	3944	James	Sadler	\$82	\$223	
285	6832	John	Dionas	\$87	\$168	
286	3701	Willie	Jackson	\$88	\$164	
287	103822	Santiago	Alvarado	\$94	\$429	
288	15804	Dennis	Little	\$95	\$1,476	
289	111822	Mohamed	Elgendy	\$96	\$202	
290	3874	Anthony	Romano	\$97	\$684	
291	31840	Guney	Gokcek	\$99	\$198	
292	17189	Muhammad	Imran	\$104	\$262	
293	108404	James	Baca	\$105	\$274	
294	25935	Carlos	Delgado	\$105	\$1,510	
295	28989	Eamonn	Nolan	\$107	\$212	
296	26679	Paul	Polchinski	\$111	\$855	
297	28448	Arthur	Walker	\$114	\$252	
298	3766	Terrance	Warner	\$116	\$294	
299	3890	Quincy	Manor	\$117	\$253	

	A	B	C	D	E	F
300	29536	Paula	Peacock	\$118	\$373	
301	111670	Brittany	Burns	\$122	\$322	
302	25411	Tewoldebrhan	Adhanom	\$124	\$250	
303	29914	Valerie	Bliss	\$124	\$251	
304	106698	Christopher	Emter	\$124	\$305	
305	107427	Jeffrey	McDougle	\$124	\$719	
306	14261	Karl	Riipi	\$126	\$1,822	
307	109475	Mark	Vonkageler	\$130	\$257	
308	25362	Joseph	Lathan	\$131	\$411	
309	25832	Victor	Osterman	\$133	\$951	
310	103826	William	Kull Jr.	\$135	\$341	
311	3567	William	Ernst	\$137	\$281	
312	31648	Karl	Hu	\$137	\$314	
313	20936	Adam	Madi	\$137	\$300	
314	2638	Jacob	Soto	\$137	\$2,199	
315	111290	Gilbert	Lay	\$139	\$659	
316	27315	Marco	Bakhtiari	\$140	\$1,398	
317	17855	Darrol	Milliron	\$140	\$344	
318	100299	Louis	Briski	\$141	\$608	
319	107704	Abdulrahman	Muhtari	\$141	\$1,133	
320	3191	Victor	Rivas	\$143	\$371	
321	3477	Travis	Ruiz	\$148	\$1,014	
322	100128	James	Sampson	\$148	\$1,208	
323	31076	Stephen	Glaser	\$153	\$506	
324	111878	Prinest	White II	\$153	\$356	
325	24038	Kamol	Anantagul	\$154	\$343	
326	21457	Maximillian	Crawford	\$156	\$501	
327	24039	Brandi	Hart	\$162	\$311	
328	26687	Michael	Sargeant	\$164	\$453	
329	105408	Abdirashid	Abdulle	\$165	\$356	
330	2057	William	DeMarco	\$168	\$437	

	A	B	C	D	E	F
331	111284	Melvin	McCall	\$169	\$385	
332	108742	Lee	Ross	\$174	\$419	
333	3822	John	Holt	\$178	\$409	
334	28917	Kamran	Motazedi	\$181	\$389	
335	109584	Tracie	Hosley	\$185	\$389	
336	109457	Stephen	Hearne	\$188	\$382	
337	109502	Oscar	Rios-Lopez	\$189	\$390	
338	105794	Ryan	Kimler	\$198	\$404	
339	108273	Claro	Isanan	\$199	\$433	
340	3882	Oscar	Monteagudo	\$200	\$380	
341	110836	Chima	Uba	\$201	\$1,018	
342	29609	Valko	Haralambov	\$203	\$866	
343	3913	Aileen-Louise	Moore	\$205	\$1,458	
344	111729	Mary	Flanders	\$208	\$760	
345	104747	Robert	Trumpp	\$211	\$2,887	
346	2871	Ivan	Draper	\$212	\$476	
347	107440	Peter	Nantista	\$212	\$2,002	
348	107072	Amilcar	Hernandez-Ocampo	\$219	\$593	
349	107548	James	Rainey	\$219	\$897	
350	29040	Robert	Timko	\$224	\$499	
351	3879	Alexis	Sexner	\$227	\$764	
352	107624	Daniel	Witte	\$228	\$575	
353	2736	Brian	Kenary	\$230	\$1,647	
354	110618	Pamela	Mastrio	\$234	\$2,229	
355	3931	Francis	Arena	\$235	\$491	
356	26363	Luciano	Punzalan	\$236	\$584	
357	3549	Teabe	Fesehazion	\$237	\$2,251	
358	105273	Jamil	Sayed	\$238	\$1,767	
359	112811	Kimberly	Peace	\$241	\$467	
360	104732	Hasan	Thomas	\$247	\$529	
361	109066	Brock	Webster	\$254	\$594	

	A	B	C	D	E	F
362	3916	Lawrence	Duna	\$259	\$508	
363	111390	Pedro	Gonzalez	\$263	\$577	
364	3905	Corey	Dillard	\$267	\$600	
365	107590	Frank	Galtieri	\$269	\$517	
366	3583	Maria	Maras	\$271	\$1,696	
367	18678	George	Eliades	\$272	\$564	
368	101555	Rene	Hernandez	\$272	\$563	
369	111062	Jeffrey	Diamond	\$273	\$618	
370	2031	Ildiko	Dinok	\$283	\$588	
371	2926	Alemayehu	Awalom	\$284	\$540	
372	3650	Janeid	Anif	\$285	\$1,756	
373	111364	John	Stanley	\$286	\$748	
374	104109	Raul	Rivero-Vera	\$288	\$767	
375	109349	Natasha	Sanchez-Ramos	\$288	\$814	
376	3943	William	Anderson	\$289	\$576	
377	3933	Mark	Hendricks	\$290	\$581	
378	3622	Christian	Benel	\$293	\$715	
379	112038	Douglas	Hill	\$294	\$620	
380	112766	Christopher	Sibre	\$294	\$1,005	
381	3595	Ayi	Ekoue	\$297	\$1,339	
382	3941	Andrew	Harrison	\$297	\$860	
383	110108	George	Mathis	\$297	\$573	
384	2097	Dana	Hinks	\$298	\$1,755	
385	100287	Julio	Martins	\$298	\$870	
386	22804	Istvan	Solyar	\$303	\$703	
387	106763	William	Doyle	\$304	\$616	
388	109792	Monroe	Hinds	\$304	\$1,017	
389	110476	Glenn	Auberry Jr.	\$309	\$749	
390	3847	Richard	Murawski	\$313	\$1,540	
391	102656	Atanas	Nedyalkov	\$321	\$764	
392	2785	Paul	Welborn	\$322	\$1,078	

	A	B	C	D	E	F
393	109745	David	Taylor	\$324	\$1,485	
394	17936	Nick	Zekichev	\$324	\$666	
395	3912	James	Rousseau	\$325	\$616	
396	109381	Marc	Fitzsimmons	\$327	\$1,819	
397	3721	Ramon	Viado	\$332	\$2,516	
398	3753	Virginia	Olen	\$334	\$1,075	
399	105304	Jack	Sorkin	\$336	\$691	
400	112015	Matthew	Bambenek	\$337	\$1,733	
401	3770	Juan	Sorrosa	\$339	\$915	
402	111494	Zoltan	Nemeth	\$353	\$1,696	
403	104910	Bert	Archer	\$362	\$753	
404	2637	Jeffrey	Edwards	\$366	\$2,594	
405	108758	Mark	Regans	\$379	\$791	
406	3806	Jon	Pearson	\$380	\$1,663	
407	100221	Charles	Ackman	\$385	\$1,439	
408	2051	Brad	Costello	\$390	\$2,466	
409	106153	Roger	Keller	\$390	\$2,213	
410	109028	Muridi	Secondo	\$391	\$931	
411	104171	Mikalani	Robinson	\$398	\$3,815	
412	3792	Anthony	Urbanski	\$399	\$2,335	
413	3762	Kelly	Godsey	\$410	\$1,363	
414	105863	Becir	Siljkovic	\$414	\$888	
415	102334	Joaquin	Castellanos	\$419	\$3,002	
416	3207	Kenlon	Tucker	\$420	\$1,156	
417	31400	Cator	Thomas	\$427	\$856	
418	110796	Tamas	Toka	\$445	\$970	
419	2412	Vladko	Jelancic	\$446	\$1,216	
420	3696	David	Gillett	\$452	\$1,975	
421	2273	Masfen	Zawoudie	\$452	\$1,681	
422	31622	Wossen	Asefa	\$456	\$1,195	
423	3478	Nedeltcho	Dontchev	\$456	\$1,441	

	A	B	C	D	E	F
424	3597	David	Pariso	\$456	\$1,153	
425	2630	Charles	Smale	\$457	\$1,378	
426	3838	Timothy	Baker	\$462	\$1,195	
427	110194	Lloyd	Henderson	\$467	\$1,382	
428	18960	Melvin	Lee	\$469	\$1,530	
429	3738	James	Conway	\$490	\$1,197	
430	29981	Kirby	Fair	\$496	\$1,719	
431	3717	Tunc	Ozgulgec	\$499	\$3,027	
432	3121	John	Gleason	\$504	\$2,244	
433	25522	Peter	Link	\$505	\$1,643	
434	26783	Dennis	Clark	\$513	\$1,322	
435	109130	Liza	Dacayanan	\$515	\$3,016	
436	109013	Thomas	Stearns	\$528	\$1,240	
437	101942	Gaston	Kalimba	\$530	\$1,295	
438	3685	Jill	Leal	\$536	\$2,312	
439	3381	Joseph	Egan	\$538	\$3,540	
440	25979	Abdul	Alnaif	\$548	\$1,281	
441	19451	Abdolreza	Shafiei	\$552	\$1,064	
442	111756	Pedro	Risco	\$554	\$1,684	
443	27788	Donald	Hurd	\$562	\$1,534	
444	104887	Nisaburo	Miyazaki	\$563	\$1,503	
445	28249	Tommy	Bunns	\$564	\$1,929	
446	106913	Scott	Schraeder	\$569	\$1,126	
447	3790	Rilwan	Shoyombo	\$574	\$1,468	
448	2237	Craig	Relopez	\$584	\$3,390	
449	112063	Agustin	Tapia-Vergara	\$587	\$1,338	
450	3861	Enrique	Abarca	\$593	\$1,357	
451	26553	Howard	Arnwine	\$602	\$2,433	
452	3730	Isam	Arar	\$607	\$3,839	
453	3610	Willie	Smith Jr.	\$613	\$1,438	
454	32238	Rudolph	Daggett Jr.	\$618	\$1,374	

	A	B	C	D	E	F
455	111568	Wissam	Hammoud	\$618	\$1,276	
456	3935	Richard	Craffey	\$620	\$2,265	
457	103096	Phea	Sam	\$625	\$2,076	
458	3756	Ronald	Disbrow	\$627	\$3,388	
459	111807	Brent	Taylor	\$632	\$1,285	
460	25981	William	Schroeder	\$636	\$3,469	
461	101317	Willie	Rivers	\$642	\$1,279	
462	21446	Michael	Handlon	\$649	\$2,226	
463	104310	Chen	Chana	\$657	\$2,083	
464	111137	Giovanna	Dejacto	\$660	\$2,391	
465	3523	Margaret	Pilkington	\$664	\$1,913	
466	23373	Ronald	Bey	\$682	\$2,599	
467	111231	Mark	Lant	\$693	\$1,440	
468	24757	Andrew	Granchelle	\$700	\$2,643	
469	31977	Marvin	Taylor	\$714	\$1,547	
470	2056	Michael	Brauchle	\$718	\$1,757	
471	110866	Thomas	Wolfe	\$726	\$1,928	
472	3808	Larry	Hays	\$729	\$2,357	
473	3949	Daniel	Brown	\$730	\$2,962	
474	3606	Tamrat	Abebe	\$744	\$2,231	
475	27963	Michael	Thompson	\$746	\$3,697	
476	29769	Thomas	Sans	\$769	\$1,569	
477	1076	Steven	Peterson	\$774	\$2,779	
478	112398	Fernando	Corona	\$775	\$2,591	
479	3165	John	Stevenson	\$777	\$2,424	
480	106828	Calvin	Anderson	\$802	\$3,206	
481	3936	Donald	Dial	\$807	\$2,615	
482	27358	Sergio	Baca-Paez	\$809	\$2,501	
483	3496	Gerie	Weaver	\$863	\$3,924	
484	106089	Larry	Phillips	\$881	\$4,401	
485	105813	Daniel	Abt	\$891	\$1,943	

	A	B	C	D	E	F
486	3854	Mladen	Soree	\$899	\$2,234	
487	25641	John	McSkimming	\$901	\$2,677	
488	21811	Sabino	Sameli	\$921	\$1,840	
489	103219	Mike	Berichon	\$947	\$2,472	
490	3828	Mulubahan	Aseffa	\$978	\$2,301	
491	3939	Todd	Ford	\$982	\$3,869	
492	30196	Jason	Miller	\$983	\$2,835	
493	3872	Clarence	Stockton	\$1,006	\$3,855	
494	108839	Frederick	Jackson	\$1,013	\$4,767	
495	107430	Karl	Cobon	\$1,023	\$2,061	
496	3042	Jemal	Saleh	\$1,041	\$3,450	
497	2464	Lee	Hodge	\$1,043	\$4,713	
498	107701	Clifford	Risby	\$1,060	\$2,254	
499	3742	William	Haskell	\$1,070	\$2,664	
500	2903	Otis	Allen	\$1,087	\$2,367	
501	106025	Chris	Paone	\$1,093	\$2,468	
502	3796	Christopher	Vongthep	\$1,101	\$4,078	
503	28160	Wanjin	Wong	\$1,115	\$3,537	
504	2596	Paul	Meloro	\$1,116	\$3,099	
505	106703	David	Mosely	\$1,143	\$2,121	
506	3055	Mark	Spilmon	\$1,144	\$2,685	
507	3855	Dennis	Harris	\$1,157	\$5,326	
508	107992	Donald	Jacobi	\$1,157	\$3,881	
509	106463	Gary	Capone	\$1,177	\$3,040	
510	3859	Mikael	Nazarov	\$1,198	\$3,543	
511	3884	William	Parmenter	\$1,198	\$2,955	
512	18964	Daniel	Guerrero	\$1,211	\$5,492	
513	23388	John	Simmons	\$1,215	\$3,659	
514	23948	Daniel	Daffron	\$1,242	\$4,065	
515	31966	Ilko	Mitrikov	\$1,243	\$3,600	
516	20210	Awa	Ba	\$1,270	\$3,430	

	A	B	C	D	E	F
517	3877	Kamal	Filfel	\$1,272	\$2,809	
518	25190	Tuan	Ngo	\$1,290	\$3,185	
519	2899	Azmy	Shallufa	\$1,305	\$2,844	
520	3867	Glen	Thompson	\$1,308	\$4,701	
521	3778	Jaime	Macato	\$1,330	\$4,713	
522	3814	Polly	Rohlas	\$1,375	\$4,103	
523	3885	Thomas	Cphoon	\$1,385	\$4,147	
524	16676	Gary	Parker	\$1,387	\$2,808	
525	104525	Yusnier	Allegue	\$1,414	\$3,584	
526	100821	Nicholas	Agostino	\$1,436	\$4,700	
527	2782	John	Garcia	\$1,477	\$5,833	
528	3772	Chaipan	Kaiyoorawongs	\$1,477	\$3,722	
529	3092	Gerry	Yabut	\$1,569	\$5,414	
530	3910	Jorge	Wong	\$1,579	\$4,903	
531	2751	Hubert	Hurtado	\$1,593	\$4,909	
532	3784	Leroy	Joseph	\$1,616	\$3,728	
533	100158	Benjamin	Barnes	\$1,629	\$4,849	
534	110053	Francisco	Martinez	\$1,713	\$5,137	
535	3630	Martin	Kogan	\$1,797	\$4,668	
536	3909	Ion	Barbu	\$1,817	\$5,195	
537	109796	Ronald	Curtin	\$1,891	\$5,672	
538	2587	Patrick	McCarter	\$1,912	\$6,167	
539	3820	Roy	Wallace	\$1,945	\$6,915	
540	3664	James	Moreno	\$1,953	\$6,360	
541	19253	Gary	Gray	\$2,076	\$5,303	
542	8321	Thomas	Morris	\$2,085	\$5,974	
543	108389	Alicia	Yamaguchi	\$2,331	\$6,131	
544	105284	Peter	Monforte II	\$2,358	\$5,904	
545	17259	Hilbert	Yurckonis	\$2,395	\$6,937	
546	3893	Phillip	Klein	\$2,443	\$7,054	
547	2757	John	Majors	\$2,690	\$7,595	

	A	B	C	D	E	F
548	3484	Gary	Kern	\$2,969	\$8,111	
549	107617	Carlos	Pineda	\$2,994	\$6,482	
550	3876	Chris	Norvell	\$3,062	\$6,518	
551	3757	Gregory	Steck	\$3,176	\$8,894	

003372

003372

EXHIBIT "2"

1 LEON GREENBERG, ESQ., SBN 8094
 2 DANA SNIEGOCKI, ESQ., SBN 11715
 3 Leon Greenberg Professional Corporation
 4 2965 South Jones Blvd- Suite E4
 5 Las Vegas, Nevada 89146
 (702) 383-6085
 (702) 385-1827(fax)
leongreenberg@overtimelaw.com
dana@overtimelaw.com

6 Attorneys for Plaintiffs

7 **DISTRICT COURT**
 8 **CLARK COUNTY, NEVADA**

9 MICHAEL MURRAY, and MICHAEL)
 10 RENO, Individually and on behalf of)
 11 others similarly situated,)

12 Plaintiffs,)

13 vs.)

14 A CAB TAXI SERVICE LLC, and A)
 15 CAB, LLC,)

16 Defendants.)

Case No.: A-12-669926-C

Dept.: I

DECLARATION OF CHARLES
BASS

17 Charles Bass hereby affirms, under penalty of perjury, that:

- 18 1. I have been retained as an expert witness and computer data consultant in
- 19 this case by Leon Greenberg, plaintiffs' counsel.
- 20
- 21
- 22 2. I was asked to provide a printout from the "Damages 2007-2010" Excel
- 23 file that I previously created as part of my work for Leon Greenberg in
- 24 this case. This is the same file that I furnished to Leon Greenberg and
- 25 discussed in my declaration of September 27, 2017. The information in
- 26 that file covers the period July 1, 2007 through October 7, 2010. I was
- 27 instructed to print out from that Excel file two things. One was the
- 28 amount that Excel file shows is owed, if anything, at the "lower tier"
- minimum wage rate (that rate varies in that file from \$5.30 in 2007 to

1 \$7.25 in 2010) for each of the 13,948 pay periods of information
2 contained in that file if it is assumed 9.21 hours was worked during each
3 work shift of the pay period as recorded in that file (a "per pay period"
4 printout). The other was the total amount owed on that basis, if anything,
5 to each person whose information is in that Excel file (a "per person"
6 printout). That "per pay period" printout, consisting of 350 pages, which
7 states the amount so owed, if any, each pay period in Column "K" of each
8 line, is annexed hereto as Ex. "1." That "per person" printout, consisting
9 of 9 pages, which states the amount so owed, if any, to each person in
10 Column "D" of each line, is annexed hereto as Ex. "2."

- 11
- 12 3. I was asked to provide a printout from the "ACAB-ALL" Excel file that I
13 previously created as part of my work for Leon Greenberg in this case.
14 This is the same file that I furnished to plaintiffs' expert Dr. Terrence
15 Clauretie and conferred with him about and that is discussed in his expert
16 report of July 18, 2017. I was asked to create two printouts from that file
17 using the spreadsheets (tables) in that file that contain information for the
18 period October 8, 2010 through December 31, 2012. I was instructed to
19 print out from those spreadsheets two things. One was the amount that is
20 owed, if anything, at the "lower tier" minimum wage rate (that rate was
21 always \$7.25 and hour for that time period) for each of the 9,759 pay
22 periods of information contained in those spreadsheets if it is assumed
23 9.21 hours was worked during each work shift of the pay period as
24 recorded in that file (a "per pay period" printout). The other was the total
25 amount owed on that basis, if anything, to each person whose information
26 is in those spreadsheets (a "per person" printout). That "per pay period"
27 printout, consisting of 297 pages, which states the amount so owed, if any,
28 each pay period in Column "K" of each line, is annexed hereto as Ex. "3."

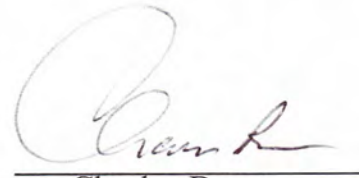
1 That "per person" printout, consisting of 12 pages, which states the
2 amount so owed, if any, to each person in Column "D" of each line, is
3 annexed hereto as Ex. "4."

- 4
- 5 4. I was asked to provide a "combined per person" printout that would add
6 together the information from three separate "per person" printouts, that
7 information being in Column "D" of Ex. "2" and Ex. "4" annexed hereto
8 and Column "D" of Ex. "E" of plaintiffs' motion for partial summary
9 judgment filed on November 12, 2017, the latter also being printed from
10 the A CAB ALL Excel file by Leon Greenberg. I was further asked that
11 upon creating that "combined per employee" printout to eliminate from
12 that printout any person who was indicated as being owed minimum
13 wages of \$10.00 or less. That "combined per person" printout is at Ex.
14 "5" annexed hereto and consists of 28 pages and lists in Column "D" those
15 amounts over \$10.00 so owed to 900 persons. I was also asked, after
16 eliminating those persons owed less than \$10.00, to calculate and place in
17 that printout interest on each of the amounts of minimum wages owed to
18 each person remaining in that combined per employee printout (interest on
19 the amount in Column "D" of Ex. "5" annexed hereto) for the period from
20 January 1, 2016 through June 30, 2018. I was instructed to do so using an
21 interest rate of 5.5% per annum for all of 2016; a rate of 5.75% per annum
22 for the period January 1, 2017 through June 30, 2017; a rate of 6.25% per
23 annum for the period July 1, 2017 through December 31, 2017; and a rate
24 of 6.5% per annum for the period January 1, 2018 through June 30, 2018.
25 I have calculated that interest amount accordingly and it appears in
26 Column "E" of Ex. "5" attached hereto. I was also asked to provide a
27 "total" of both the amount of minimum wages owed to each person
28 (Column "D" of Ex. "5") and interest so calculated (Column "E" of Ex.

1 "5"). I have done so and that total amount appears for each such person in
2 Column "F" of Ex. "5" hereto.

3
4 I have read the foregoing and affirm, under penalty of perjury, that the same is
5 true and correct.

6
7 Affirmed this 14 day of June, 2018

8 
9 Charles Bass

003377

003377

EXHIBIT "3"

LEON GREENBERG, ESQ., SBN 8094
 RUTHANN DEVEREAUX-GONZALEZ, ESQ., SBN 15904
 Leon Greenberg Professional Corporation
 2965 South Jones Blvd- Suite E3
 Las Vegas, Nevada 89146
 (702) 383-6085
 (702) 385-1827(fax)
leongreenberg@overtimelaw.com

CHRISTIAN GABROY, ESQ., SBN 8805
 Gabroy Law Offices
 170 S. Green Valley Parkway - Suite 280
 Henderson Nevada 89012
 Tel (702) 259-7777
 Fax (702) 259-7704
christian@gabroy.com

Attorneys for Plaintiffs

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: 2

ATTORNEY'S DECLARATION

DECLARATION

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under penalty of perjury, that:

1. I am one of the attorneys representing the plaintiffs in this matter and offer this declaration in support of plaintiffs' counter-motion for an award of attorney's fees for opposing defendant's motion filed on February 11, 2022 seeking a declaratory order.

2. I corresponded twice with defendants' counsel, advising them of the baseless nature of their motion and asking them to withdraw it, as well as warning them I would seek an award of attorney's fees if they did not. I attach copies of such

1 correspondence to this motion. They refused to withdraw that motion and I have now
2 consumed over 3.5 hours of my time responding to that motion. I am accordingly
3 requesting a fee award of \$1,400 based upon a \$400 per hour attorney fee rate.

4 3. The hourly rate (\$400 an hour) upon which I am basing this fee request
5 (\$400 x 3.5 = \$1,400) is the same rate found by this Court in its order of February 6,
6 2019, to be reasonable for a fee award based on my time expenditures prior to final
7 judgment (at p. 5, l. 5). The Supreme Court also found in its decision that this Court's
8 award of attorney's fees based on that hourly rate was not excessive or performed in an
9 inappropriate manner. 501 P.3d at 975. That hourly rate is also appropriate given my
10 experience and qualifications. I am a 1992 *magna cum laude* graduate of New York
11 Law School where I received the Trustee's Prize for having the highest GPA of all
12 graduating evening division students, graduating first in my division and third out of
13 358 day and evening division students. I am a member of the bars of the States of
14 Nevada, California, New York, New Jersey and Pennsylvania and have continuously
15 practiced law full time since 1993. I have appeared as appellate counsel in at least 15
16 cases and orally argued in the Nevada Supreme Court at least 10 times since 2008.
17 That hourly fee amount is also reasonable as I have been awarded fees at the
18 considerably higher rate of \$720 an hour in 2016 by both the Ninth Circuit Court of
19 Appeals for appellate work and by the United States District Court for the District of
20 Nevada. *See, Tallman v. CPS Security*, United States Court of Appeals for the Ninth
21 Circuit, appeal No. 14-16508, Docket 42, Order filed September 8, 2016, and motion
22 granted by such Order and later district court proceedings in that case, 09-cv-944,
23 Order of November 29, 2016.

24 I affirm this 25th day of February that the foregoing is true and correct under the
25 penalty of perjury.

26
27 /s/ Leon Greenberg
28 Leon Greenberg

LEON GREENBERG
Professional Corporation
Attorneys at Law
2965 South Jones Boulevard • Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085

Leon Greenberg
Member Nevada, California
New York, Pennsylvania and New Jersey Bars
Joseph Adamiak
Law Clerk

Fax: (702) 385-1827

February 11, 2022

Esther C. Rodriguez, Esq.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

VIA WIZNET SYSTEM SERVICE

Re: Murray v. A Cab
Motion for Declaratory Relief filed today

Dear Ms. Rodriguez:

In respect to above, to the extent you filed this in good faith, I reiterate the need for us to communicate so we can resolve issues cooperatively and without motion practice. This motion is pointless and serves no purpose — except to consume the time of counsel (and escalate the attorney's fee claims of counsel, something you have repeatedly accused me of doing) and the Court.

It is undisputed the modified judgment cannot include any damages accruing prior to October 8, 2010. That is settled by the Supreme Court's decision and if you had bothered to communicate with me I would of course have confirmed the same. In respect to the judgment's award of damages for the time period after June 26, 2014, you are correct that the total amount so awarded was quite small, very likely the \$211.72 (or \$162.29) you discuss (I am not wasting the time right now to verify it). No basis exists to disqualify that amount from the modified judgment as the original judgment for the entire 2013-2015 period was

affirmed, so that is law of the case. But setting aside the vacuousness of your motion in respect to the law on that point, do you really propose to argue over a \$211.72 item on a judgment that with post-judgment interest is now over \$800,000?

If you withdraw this motion I will not ask your client be charged with my attorney's fees for responding to it and writing this letter.

Very truly yours,



Leon Greenberg

003381

003381

RODRIGUEZ
LAW OFFICES, P.C.

www.rodriquezlaw.com

February 15, 2022

Via Electronic Service

Leon Greenberg, Esq.
2965 South Jones Boulevard, Suite E4
Las Vegas, Nevada 89146

Re: A Cab, LLC adv. Murray & Reno; District Court Case No. A-12-669926-C

Dear Mr. Greenberg:

In response to your letter of February 11, 2022, if you think my motion is “pointless”; and you are in fact in agreement with the contents of my request to the Court, we can submit a stipulation and order on these issues. Please indicate what wording you will agree to that addresses the time periods before October 2010 and after June 2014.

In the alternative, you are welcome to serve a notice of “non-opposition” or none at all.
Thank you.

Sincerely,

RODRIGUEZ LAW OFFICES, P.C.

EC Rodriguez

Esther C. Rodriguez, Esq.

ECR:srd

003382

003382

LEON GREENBERG
Professional Corporation
Attorneys at Law
2965 South Jones Boulevard • Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085

Leon Greenberg
Member Nevada, California
New York, Pennsylvania and New Jersey Bars
Joseph Adamiak
Law Clerk

Fax: (702) 385-1827

February 17, 2022

Esther C. Rodriguez, Esq.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

VIA WIZNET SYSTEM SERVICE

Re: Murray v. A Cab
Your letter of February 15, 2022

Dear Ms. Rodriguez:

You are either ignoring or misunderstanding what I communicated to you in my letter of February 11, 2022. There is no stipulation properly entered into in respect to any issue raised in the motion you filed on February 11, 2022. You need to withdraw that motion as it presents no proper claim for relief.

No claim exists for damages pre-dating October 8, 2010, and the motion filed by my office on February 14, 2022, to enter a modified judgment reiterates the same. No basis exists for you to request the Court re-examine \$211.72 (or \$162.29) of damages awarded for the post June 26, 2014, period as the Supreme Court has affirmed the original judgment for that period.

The point of my letter was to invite you to prevent the occurrence of what you repeatedly, and falsely, accuse me of engaging in: protracted motion practice that increases the plaintiffs' attorney's fees claim in this case. Plaintiffs are now irrefutably established to be prevailing parties in this case and are entitled to

attorney's fees for every further unnecessary action you engage in, post-judgment, in this case. If you do not withdraw this motion prior to February 23, 2022, I will file a response to the motion and a counter-motion for an award of attorney's fees in connection with the motion on that basis. You are so advised.

Very truly yours,


Leon Greenberg

003384

003384

148

148

Heather S. Shuman

CLERK OF THE COURT

MSTY

Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
702-320-8400
info@rodriguezlaw.com

Jay A. Shafer, Esq.
Nevada Bar No. 006791
CORY READE DOWS & SHAFER
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
702-794-4411
jshafer@premierelegalgroup.com
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,
and CREIGHTON J. NADY,

Defendants.

Case No.: A-12-669926-C
Dept. No. II

HEARING REQUESTED

DEFENDANTS' MOTION TO STAY ON ORDER SHORTENING TIME

Defendants A Cab, LLC and A Cab Series, LLC (hereinafter collectively "A Cab"), by and through their attorneys of record, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and JAY A. SHAFER, ESQ., of CORY READE DOWS AND SHAFER hereby respectfully move this Honorable Court to stay these proceedings pending the Order from the Nevada Supreme Court which will greatly affect the disposition of this matter. Specifically, Plaintiffs in this matter have appealed to the Nevada Supreme Court in Case No. 83492, District Court Case No. A721063, *Michael Murray v. Jasminka Dubric, A Cab, LLC*. Pursuant to Plaintiffs' own appeal and admissions, the

two matters are intricately intertwined, and thus cannot proceed until a decision is issued by the Nevada Supreme Court.

This Motion is based upon the annexed declaration of counsel, the memorandum of points and authorities submitted with this motion, the attached exhibits, the other papers and pleadings in this action, and any oral argument that may be entertained at the hearing of this Motion.

DATED this 28th day of February, 2022.

RODRIGUEZ LAW OFFICES, P.C.

By: /s/ Esther C. Rodriguez, Esq.
 Esther C. Rodriguez, Esq.
 Nevada Bar No. 6473
 10161 Park Run Drive, Suite 150
 Las Vegas, Nevada 89145
Attorneys for Defendants

ORDER SHORTENING TIME

IT IS HEREBY ORDERED that the foregoing **MOTION TO STAY** shall be heard on the 9th day of March, 2022, at the hour of 9:30 am/pm or as soon as the matter may be heard by the Court in Department II.

IT IS FURTHER ORDERED that Opposition to the Motion shall be filed and served no later than March 4, 2022, with any Reply filed and served no later than March 8, 2022.

DATED this ____ day of February, 2022.

Dated this 28th day of February, 2022

Carli Kierny

HONORABLE CARLI KIERNY
 DISTRICT COURT, CLARK COUNTY
 6AA 5BD 8457 4BBF
 Carli Kierny
 District Court Judge

**DECLARATION OF COUNSEL IN SUPPORT OF
AN ORDER SHORTENING TIME**

ESTHER C. RODRIGUEZ, ESQ., an attorney duly licensed to practice law in the State of Nevada hereby affirms under penalty of perjury that:

1. I am attorney for the Defendants in the above matter.

2. Following the reversal of the judgment and remand by the Nevada Supreme Court on December 30, 2021, in this matter, two motions have been filed by Plaintiffs into this case seeking amended entries of judgments by this Court. Respectfully, Plaintiffs' requested relief in these motions cannot be entertained nor ruled upon by this Court pending the associated appeal by these same Plaintiffs in the matter of *Jasminka Dubric v. A Cab* ("*Dubric*"), Nevada Supreme Court Case No. 83492; District Court Case No. A721063.

3. Specifically, Plaintiffs have appealed as "Intervenors" and "Objectors" in the *Dubric* matter to the Nevada Supreme Court asking for an order from the high court to preclude the final order issued by **Hon. Kathleen Delaney** in the *Dubric* case from interfering with the *Murray* matter. A true and correct copy of Plaintiffs' Opening brief to the Nevada Supreme Court is attached hereto as **Exhibit 1**.

4. Plaintiffs *Murray* and *Reno* were not parties in the *Dubric* matter, but instead were granted rights as Intervenors by Judge Delaney.

5. Nonetheless, in their Opening Brief, Plaintiffs lodge a barrage of character attacks upon Judge Delaney as being biased and colluding with both parties' counsel in approving the *Dubric* class action settlement for the sole purpose of achieving some unseemly end; and motivated by Judge Delaney's alleged personal bias against Mr. Greenberg, Plaintiffs' counsel.

Plaintiffs' request to the Nevada Supreme Court is that Judge Delaney should be removed from the *Dubric* matter, and that her order must be estopped from affecting any judgment that this Court may enter in the future in this case.

Chief Judge Linda Bell already reviewed Mr. Greenberg's accusations; and denied Mr. Greenberg's request to disqualify Judge Delaney, and found no support for his accusations. In her Order attached hereto as **Exhibit 2**, Chief Judge Bell stated:

1 *Mr. Greenberg does not have standing to disqualify Judge Delaney under NRS 1.235*
2 *because Mr. Greenberg is not a party to case A721063. Furthermore, Mr. Greenberg*
3 *does not bring any cognizable claims supported by factual or legal allegations*
4 *against Judge Delaney. Judge Delaney's rulings and actions in the course of official*
5 *judicial proceedings are not evidence of bias or prejudice. Thus, the Mr. Greenberg's*
6 *request to disqualify Judge Delaney is denied. **Exhibit 2, Decision and Order.***

7 6. Mr. Greenberg's Intervenors objected to the settlement reached by the parties in the
8 *Dubric* class action case. Their objections were briefed and argued, but were overruled. This is not
9 Mr. Greenberg's first attempt to remove the judge when he receives an adverse ruling. He similarly
10 attempted to remove **Hon. Michael P. Villani** when representing one of these same intervenors,
11 Michael Sargeant, but was denied by **Chief Judge David Barker** (*Order Denying Plaintiff's Motion*
12 *to Recuse Judge Michael Villani from this Case Pursuant to NRS 1.235* filed in *Sargeant v.*
13 *Henderson Taxi, A-15-714136-C, Exhibit 3*). Again, Chief Judge Barker indicated:

14 *"The Court finds that Plaintiff states no legally cognizable grounds justifying the*
15 *disqualification of Judge Villani."*

16 This is important in that one of the factors for this Court's consideration in granting a stay is the
17 moving party's likelihood of success. Here, two Chief Judges have previously denied Mr.
18 Greenberg's attempts to remove the trial judge.

19 7. Nevertheless, as this Court can read, the entire last third of Plaintiffs' opening brief is
20 a personal attack upon the trial judge, Judge Delaney, and her conduct in entering finality to a class
21 action settlement that was reached through the assistance of settlement judge, **Hon. Jerry A. Wiese**,
22 in the court settlement program more than 5 years ago. Plaintiffs cannot proceed in good faith in
23 simultaneously asking this district court to proceed in entering any type of new judgment, while they
24 are seeking relief otherwise from the Nevada Supreme Court.

25 8. Plaintiffs acknowledge in their opening brief that a settlement was reached in the
26 *Dubric* matter of numerous class members, long before Judge Cory entered judgment in this matter.
27 With the knowledge that final settlement was approved and settlement payments have already been
28 issued, Plaintiffs are trying to hide those facts from this district court by once again pressing for a

1 rush entry of a final judgment.

2 With their pending appeal, Plaintiffs are challenging the legitimacy of the *Dubric* settlement
3 before the Nevada Supreme Court, but are asking this Court at the same time to ignore the *Dubric*
4 final order which is in place.

5 9. It should be readily apparent that Plaintiffs cannot argue out of both sides of their
6 mouth arguing to the Nevada Supreme Court to strike down the *Dubric* final order because it will
7 affect any future entry of judgment in Murray; and at the same time arguing to this District Court to
8 ignore the *Dubric* final order and once again rush to enter a new judgment. This matter must be
9 stayed pending the decision of the Nevada Supreme Court and whether they will reverse the final
10 order already entered by Judge Delaney on September 1, 2021.

11 10. THE NEED FOR AN ORDER SHORTENING TIME: Two of Plaintiffs' motions which are
12 directly reliant upon the decision of the Nevada Supreme Court are presently scheduled on this
13 Court's calendar on **March 23, 2022**:

- 14 (i) "Plaintiffs' motion for modified judgment as provided for by remittitur"; and
- 15 (ii) "Plaintiffs' motion for entry of modified award of pre-judgment attorney's fees
16 as provided for by remittitur."

17 11. Accordingly, this motion for stay should be heard on a date prior to March 23, 2022,
18 when this Court will consider Plaintiffs' requests contained in those motions. There is insufficient
19 time to file this motion to stay in the normal course.

20 12. This Motion, brought on an expedited basis, is brought in good faith and in
21 accordance with the circumstances discussed herein.

22 I have read the foregoing and affirm the same is true and correct.

23 DATED this 28th day of February, 2022.

24
25 /s/ *Esther C. Rodriguez*

26 ESTHER C. RODRIGUEZ, ESQ.

I.

POINTS AND AUTHORITIES

1. **Defendants Seek a Stay of the Proceedings pending a decision from the Nevada Supreme Court on Plaintiffs' appeal. Said appeal by Plaintiffs is for an order to remove Judge Kathleen Delaney from the *Dubric* matter; and moreover for an Order that *Dubric* will not affect entry of a judgment in the Murray case.**

By way of background to the *Dubric* matter, Plaintiffs and Defendants resolved the matter of *Jasminka Dubric v. A Cab, LLC et.al.*, District Court Case No. A721063, pending before the Eighth Judicial District Court, Department 25 ("*Dubric*"), during the last quarter of 2016. An order with preliminary approval was signed by Hon. Kathleen Delaney on October 11, 2020. Notice of the proposed Settlement was provided to potential Class Members; provided Class Members with the opportunity to opt out of the Class or object to the proposed Settlement; and scheduled a final fairness hearing. The Court conducted a fairness hearing on March 11, 2021, and final approval of the settlement was entered on August 31, 2021.

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 in October 2016. Following resolution of the class action, the present Murray Plaintiffs have continuously sought to interfere with that settlement in every imaginable way.

As this Court is aware, one of the primary factors in resolving any case is the consideration by a party of the cost of litigation. Unfortunately, although Plaintiffs and Defendants settled this case in October 2016, it has cost both Plaintiffs' counsel, The Bourassa Law Group, and Defendants over \$100,000 in additional fees and costs due to the actions of the Murray Intervenors and their counsel who are not even the primary parties to the litigation! The Bourassa Group recently filed its request to Judge Delaney seeking an additional \$159,000 from the Intervenors and Mr. Greenberg, but unfortunately Judge Delaney could not find that the MWA provided for such relief. **Exhibit 4, The Bourassa Law Group Motion for Attorneys' Fees Against Intervenors and Their Counsel Leon**

1 *Greenberg, Esq.* (without exhibits).

2 The *Murray* Plaintiffs are now further escalating the fees in the resolved matter by filing an
 3 appeal to the Nevada Supreme Court. In this appeal, the *Murray* Plaintiffs have requested an order
 4 from the high court to declare that the *Dubric* members who have settled their cases will not affect
 5 any future judgment entered in this case. At the same time, Plaintiffs are asking this Court to
 6 proceed to enter a judgment with new calculations that incorporate some of these drivers who they
 7 know settled their cases. Clearly, Plaintiffs cannot argue so disingenuously to this Court that it must
 8 rush to enter a new judgment and ignore the circumstances that have transpired; while arguing to the
 9 appellate court that Judge Delaney and her order must be stopped so that a judgment can be entered
 10 in Murray.

11 **2. Absent a Stay, Irreparable Harm Will Be Done.**

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

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

21 *Dollar Rent a Car of Washington v. The Travelers Indemnity Company*, 774 F.2d 1371 (1985).

22 Here, a stay is proper, because Defendants are likely to prevail in demonstrating that the
 23 *Dubric* settlement was an arms-length fair settlement to all involved. It was facilitated by an
 24 independent well-respected jurist, Hon. Jerry Wiese. It was evaluated by an independent CPA. And
 25 Judge Delaney entered evidence into the record which supported the final approval including
 26 testimony and documents; an evaluation of the other settlements reached in the industry; and the
 27 objections of the intervenors. It is highly unlikely that the appellate Court will overrule the findings
 28 by Chief Judge Bell who declined to remove Judge Delaney from the case and found no bias.

1 Interestingly, although Mr. Greenberg listed a handful of people as “objectors” in the *Dubric*
2 case; none of these persons chose to opt out of receiving money from the *Dubric* settlement. This
3 should speak volumes as to the fairness of the settlement; and that the *Dubric* resolution is the desire
4 of the claimants themselves including Mr. Greenberg’s own clients.

5 Defendants, as well as the members of the *Dubric* class who are entitled to monies, will
6 sustain irreparable injury absent the stay order. If this Court were to turn a blind eye to the issues
7 that are being raised by Plaintiffs in their appeal to the Nevada Supreme Court, the result would once
8 again cost unnecessary injury to the parties. Plaintiffs would no doubt commence to seize and
9 garnish funds from any account called “A Cab,” a move they did in the past and which has been
10 reversed and remanded.

11 The series entities within A Cab Series, LLC all settled their claims with the class members
12 through *Dubric*. Proceeding while this case is pending on appeal risks subjecting them to duplicative
13 judgments and giving class members double recoveries, all the while leaving the A Cab Series LLC
14 entities unable to recover funds already paid out to the class.

15 The *Murray* Plaintiffs represent to this Court that they lost on one small issue before the
16 Nevada Supreme Court in this remand, but this is a misrepresentation. In the reversal and remand,
17 the Nevada Supreme Court specifically stated that a determination had to be made as to which entity
18 existed at the time and which bears liability for any damages that are determined. This is a huge
19 issue which has affected the case throughout the litigation. Plaintiffs were repeatedly informed they
20 had sued the wrong entity, but nonetheless upon receiving a judgment proceeded to garnish over
21 \$200,000 from all bank accounts bearing the name “A Cab” on it. To this date, that money plus
22 another \$100,000 is being held by Plaintiffs’ counsel!

23 If this Court were to ignore the settlements already made in this case, additional funds would
24 no doubt be seized by Plaintiffs; and which are in fact not due to them. Plaintiffs, on the other hand,
25 will not be harmed as they are already holding the money.

26 Here, most clearly, the public interest lies with the granting of stay while Plaintiffs’ appeal is
27 pending to the Nevada Supreme Court. Plaintiffs should be precluded from running up the attorney
28 fees in a frivolous appeal to the Nevada Supreme Court in a separate matter and seeking to stop

1 payments to drivers; and then benefitting by such tactics in this Court by asking this Court to ignore
2 that appeal.

3 **II.**

4 **CONCLUSION**

5 Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully
6 requests this Honorable Court stay the proceedings in this matter pending guidance from the Nevada
7 Supreme Court on Plaintiffs' appeal in Nevada Supreme Court Case No. 83492.

8 DATED this 28th day of February, 2022.

9 **RODRIGUEZ LAW OFFICES, P. C.**

10
11 /s/ Esther C. Rodriguez, Esq.
12 Esther C. Rodriguez, Esq.
13 Nevada State Bar No. 006473
14 10161 Park Run Drive, Suite 150
15 Las Vegas, Nevada 89145
16 *Attorneys for Defendants*
17
18
19
20
21
22
23
24
25
26
27
28

Rodriguez Law Offices, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Tel (702) 320-8400
Fax (702) 320-8401

EXHIBIT 1

003394

003394

EXHIBIT 1

**IN THE SUPREME COURT OF
THE STATE OF NEVADA**

MICHAEL MURRAY, MICHAEL RENO)
AND MICHAEL SARGENT, Individually)
and on behalf of a class of persons similarly)
situated, MARCO BAKHTIARI, MICHAEL)
BRAUCHLE, THOMAS COHOON, GARY)
GRAY, JORDAN HANSEN, ROGER)
KELLER, CHRIS D. NORVELL, POLLY)
RHOLAS and GERRIE WEAVER,)
)
Appellants,)

Supreme Court No. 83492
Electronically Filed
Feb 02 2022 04:48 p.m.
Elizabeth A. Brown
Dist. Ct. Clerk of Supreme Court
Case No. AS21063

vs.

JASMINKA DUBRIC, A CAB LLC, a
Nevada Limited Liability Company; A CAB
SERIES, LLC, EMPLOYEE LEASING
COMPANY, a Nevada Series Limited
Liability Company, CREIGHTON J. NADY,
an individual, and DOES 3 through 20,

Respondents.

APPELLANTS' OPENING BRIEF

LEON GREENBERG PROF CORP.
Leon Greenberg, Esq.
Ruthann Devereaux-Gonzalez, Esq.
2965 South Jones Blvd., #E3
Las Vegas, NV 89146
LeonGreenberg@overtimelaw.com
(702) 383-6085

Attorneys for Appellants

previously appeared in the district court for appellants.

Date: February 2, 2022

/s/ Leon Greenberg
Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney of record for Appellants

003397

003397

TABLE OF CONTENTS

	<i>Page</i>
JURISDICTIONAL STATEMENT	x
NRAP RULE 17 ROUTING STATEMENT	x
STATEMENT OF THE ISSUE PRESENTED	x
SUMMARY OF CASE	1
STATEMENT OF THE FACTS	3
SUMMARY OF ARGUMENT	11
APPLICABLE STANDARD OF REVIEW.....	13
ARGUMENT	15
I. The district court had no subject matter jurisdiction over the 890 <i>Murray</i> class member claims adjudicated into the <i>Murray</i> final judgment; the final judgment it rendered purporting to resolve those claims is void.....	15
A. The final judgment was intended to resolve the <i>Murray</i> final judgment even though the district court contradictorily and improperly defined the settlement class.	15
B. The district court lacked subject matter jurisdiction to release or settle the claims of the 890 class members that were adjudicated by the <i>Murray</i> final judgment and its final judgment purporting to do so is void.	17
II. The district court failed to scrutinize the proposed class action settlement and make findings; its approval of the settlement was improper as the settlement was irrational and unreasonable.	20

Page

A.	The district court must act as a fiduciary of the class members when it approves a class action settlement and the parties proposing that settlement have the burden of establishing settlement approval is appropriate.	20
B.	The district court must make detailed findings explaining its decision to approve a class action settlement and its resolution of any objections to that settlement	22
C.	The district court made no findings supporting its decision to approve the settlement and overrule the objections; the parties did not satisfy their burden of showing settlement approval was proper; the settlement was irrational and unfair and was not capable of approval as a matter of law.	24
1.	The district court made no findings	24
2.	The parties proposing the settlement did not meet their burden of establishing it warranted final approval; they proffered no rational basis for its approval, only their unexplained opinions	25
3.	The settlement was irrational and incapable of being found fair, reasonable and adequate on the record presented (or any record).	26
III.	The district court's approval of an indisputably collusive class action settlement was not the product of mere error or neglect; recusal or other restrictions on post-remand proceedings should be imposed.	30
A.	The district court purposefully ignored Dubric and her counsel's collusion with A Cab.	31

Page

B.	Judge Delaney’s conduct was not just erroneous, it improperly facilitated the wrongful goals of A Cab and requires her recusal or other limitations on remand	37
1.	Judge Delaney allowed Dubric to “reclaim” her abandoned class claims seven months after granting her an individual final judgment	37
2.	Judge Delaney held “under advisement” A Cab’s baseless Rule 11 motion seeking to coerce Dubric’s counsel to proceed with the class settlement; such conduct by her assisted A Cab in that coercion.	38
3.	Judge Delaney’s opposition to her recusal, citing her lack of recollection of this Court’s Order to answer a mandamus petition, and her belief she could properly ignore that Order, create an appearance of impropriety requiring recusal.	39
	CONCLUSION.	42
	CERTIFICATE OF COMPLIANCE WITH NRAP RULE 28.2	44
	CERTIFICATE OF SERVICE.	46
	ADDENDUM.	47

003400

003400

TABLE OF AUTHORITIES

	<i>Page(s)</i>
Nevada Supreme Court & Court of Appeals Decisions	
<i>A Cab LLC v. Murray</i> , 137 Nev.Adv.Op 84 December 30, 2021 (en banc)	2, 11
<i>Hsu v. County of Clark</i> , 173 P.3d 724 (Nev. Sup. Ct. 2007).....	20
<i>Ivey v. Dist. Ct.</i> , 299 P.3d 354 (Nev. Sup. Ct. 2013).....	14
<i>Jeep Corp. V. Second Jud. Dist. Ct.</i> , 652 P.2d 1183 (Nev. Sup. Ct. 1982).....	19
<i>Landreth v. Malik</i> , 251 P.3d 163 (Nev. Sup. Ct. 2011).....	20
<i>Mack-Manley v. Manley</i> , 138 P.3d 525 (Nev. Sup. Ct. 2006).....	19
<i>Marcuse v. Del Webb Communities, Inc.</i> , 163 P.3d 462 (Nev. Sup., Ct. 2007)	13, 22
<i>Metcalf v. District Court</i> , 274 P. 5 (Nev. Sup. Ct. 1929).....	20
<i>Ogawa v. Ogawa</i> , 221 P.3d 699 (Nev. Sup. Ct. 2009).....	13
<i>Perry v. Terrible Herbst</i> , 383 P.3d 257 (Nev. Sup. Ct. 2016).....	1, 15, 35

	<i>Page(s)</i>
<i>Rivero v. Rivero</i> , 216 P.3d 213 (Nev. Sup. Ct. 2009).....	14, 41
<i>SFPP L.P. v. Second Jud. Dist. Ct.</i> , 173 P.3d 715 (Nev. Sup. Ct. 2007).....	18, 19
<i>Shuette v. Beazer Homes Holdings Corp.</i> , 124 P.3d 530 (Nev. Sup. Ct. 2005).....	14
<i>State Indus. Ins. System v. Sleeper</i> , 679 P.2d 1273 (Nev. Sup. Ct. 1984).....	20

Other Court Decisions

<i>Ballard v. Martin</i> , 79 S.W. 3d 564 (Sup. Ct. Ark. 2002).....	22
<i>B.K. by next friend Tinsley v. Snyder</i> , 922 F.3d 957 (9 th Cir. 2019).....	14
<i>Blair v. Equifax Check Services, Inc.</i> , 181 F.3d 832 (7 th Cir. 1999).....	20, 36
<i>Briseno v. Henderson</i> , 998 F.3d 1014 (9 th Cir. 2021).....	30
<i>Churchill Vill v. Genl. Elec.</i> , 361 F.3d 566 (9 th Cir. 2004).....	23, 24, 25
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2 nd Cir. 1974).....	21
<i>Grunin v. Int’l House of Pancakes</i> , 513 F.2d 114 (8 th Cir. 1975)(cert denied, 423 U.S. 864).....	21

Page(s)

<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	23
<i>Holmes v. Continental Can Co.</i> , 706 F.2d 1144 (11 th Cir. 1983)	22
<i>In re Bluetooth Headset Prod. Liab.</i> , 654 F.3d, 935 (9 th Cir. 2011)	23, 30, 31
<i>In re GM Corp. Pick-Up Truck Fuel Tank Products Liability Litig.</i> , 55 F.3d 768 (3 rd Cir. 1995)	22
<i>In re Mego Financial Corp. Securities Lit.</i> , 213 F.3d 454 (9 th Cir. 2000)	23
<i>In re Pacific Enterprises Sec. Litig.</i> , 47 F.3d 373 (9 th Cir. 1995)	23, 24
<i>Jolie v. Superior Court of Los Angeles County</i> , 66 Cal. App. 5 th 1025 (Cal. Ct. App. 2021)	14, 41
<i>Kim v. Allison</i> , 8 F.4th 1170 (9 th Cir. 2021)	22, 24, 30
<i>Mandujano v. Basic Vegetable Products, Inc.</i> , 541 F.2d 832 (9 th Cir. 1976)	23
<i>Plummer v. Chemical Bank</i> , 668 F.2d 654 (2 nd Cir. 1982)	23
<i>Reynolds v. Beneficial Nat. Bank</i> , 288 F.3d 277 (7 th Cir. 2002)	35, 36

Page(s)

Roes, 1-2 v. SFBSC Management, LLC, 944 F.3d 1035
(9th Cir. 2019) 13

Thomas v. Albright, 139 F.3d 227
(D.C. Cir. 1998) 24

United Founders Life Ins. Co. v. Consumers Nat. Life Ins., 447 F.2d 647
(7th Cir. 1971) 21

Young v. Katz, 447 F.2d 431
(5th Cir. 1971) 21

STATUTES

Nevada Constitution, Article 15, Section 16, the Minimum Wage
Amendment 1, 3

OTHER AUTHORITIES

NRAP 3A(b)(1) x

NRAP 17..... x

NRCP 11..... 5, 38

NRCP 23..... 1, 13, 21

NRCP 59..... 19

NRCP 60..... 19

Manual for Complex Litigation, 4th Ed. 21, 22

Newberg on Class Actions 5th Ed. 13, 14, 20, 21, 35, 36

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal as an appeal from a final judgment as provided for by NRAP 3A(b)(1).

The final judgment appealed from was entered by the district court and served electronically with notice of entry on September 1, 2021. The notice of appeal was served and filed electronically on September 8, 2021.

NRAP RULE 17 ROUTING STATEMENT

This appeal is not presumptively assigned to either the Supreme Court or the Court of Appeals under NRAP Rule 17.

STATEMENT OF ISSUES PRESENTED

This appeal presents the following issues:

- (1) Did the district court err in refusing to exclude from any class action it certified the claims already adjudicated in *Murray v. A Cab*, Eighth Judicial District Court, A-12-669926-C, and incorporated into the *Murray* final judgment appealed to this Court?
- (2) Did the district court err by denying recusal of District Judge Kathleen Delaney and/or should other curative measures be directed upon remand?

STATEMENT OF THE CASE

The district court's final judgment of August 31, 2021, granted final approval of a class action settlement pursuant to NRCP Rule 23. AA¹ 1949-1958. It resolved the claims of all members of such certified class pursuant to a settlement agreement between Respondent, and sole plaintiff in the district court, Jasminka Dubric ("Dubric") and Respondents, and defendants in the district court, A Cab LLC, A Cab Series LLC, Employee Leasing Company, Creighton J. Nady, and Does 3 through 20 (collectively "A Cab"). *Id.* In exchange for the release of class claims granted by such final judgment, A Cab was to make payments not exceeding \$219,529 to the class members. AA 1953-54. The released class claims were for all minimum wages owed by A Cab to the class members, its taxi driver employees, under the Nevada Constitution, Article 15, Section 16, the Minimum Wage Amendment (the "MWA") or for any other reason. AA 108-111, 121-22, 1954-55. That release is for the period after April 1, 2009. AA 1952. Yet Dubric commenced this case on July 7, 2015, and could not have secured a judgment at trial on MWA claims pre-dating July 7, 2013, under the two year MWA statute of limitations. AA 8. *See, Perry v. Terrible Herbst*, 383 P.3d 257, 262 (Nev. Sup. Ct. 2016).

¹ Appellants' Appendix is referenced as "AA."

On August 21, 2018, the district court in another class action case, heard in a different department by a different district judge, *Murray v. A Cab*, A-12-669926-C, entered a final judgment on the MWA claims of a class of 890 taxi drivers and against A Cab for \$1,033,027. AA 809-872. The *Murray* case was commenced almost three years earlier, on October 8, 2012, and could collect MWA damages from on or after October 8, 2010. AA 1-7. That final judgment was appealed to this Court and affirmed in part and reversed in part on December 30, 2021, and upon remittitur to the district court will be reduced to approximately \$675,000.² *See*, 137 Nev. Adv. Op. 84. The class granted final certification in this case includes at least 797 of the 890 members of the *Murray* class of MWA judgment creditors and purports to release those *Murray* judgment amounts for payments totaling less than \$196,000. AA 1491-1519, 1536-1541.

Appellants, Michael Murray, Michael Reno, Michael Sargent, Marco Bakhtiari, Michael Brauchle, Thomas Cohoon, Gary Gray, Jordan Hansen, Roger Keller, Chris D. Norvell, Polly Rholas and Gerrie Weaver (collectively “the Taxi Drivers”) were granted Intervention in the district court as the *Murray* class of 890

² The judgment for damages predating October 8, 2010, was reversed, leaving approximately \$675,000 of the original damages judgment. *See, Murray*, Case No. 77050 at Respondents’ Appendix at 1015-1033 and Appellant’s Appendix at 8178-8189.

judgment creditors. AA 1671. The district court's judgment expressly excluded Murray, Reno and Sargent as class members in this case. AA 1952. Appellants objected to the class settlement in this case of all MWA claims entered into the final judgment in *Murray* and the purported release of the *Murray* judgment by that settlement. AA 1788-1797. The district court rejected the Taxi Drivers' request the class action certification and settlement in this case exclude all claims adjudicated in *Murray* for the 890 *Murray* judgment creditors. AA 1949-1958.

STATEMENT OF FACTS

This lawsuit was filed on July 7, 2015, for minimum wages under the Nevada Constitution, Article 15, Section 16, the Minimum Wage Amendment (the "MWA") and for conversion. AA 8-18. Dubric, who remained the only plaintiff throughout the case, asserted claims on behalf of a putative class of A Cab taxi drivers. *Id.* Dubric did not move for class action certification prior to proposing a class action settlement. The putative class action MWA claims made by Dubric were asserted in an earlier case, filed on October 8, 2012, *Murray v. A Cab*, A-12-669926-C. AA 1-8. Those claims were granted class action certification in *Murray* by a motion initially heard on November 3, 2015, as confirmed in Orders entered February 10, 2016 and, as modified by reconsideration, on June 7, 2016. AA 876-888. That Order granting class action certification also enjoined the

Murray class members from compromising the *Murray* class claims except by a future Order issued in *Murray*. AA 887.

On January 17, 2017, Dubric and A Cab jointly moved the district court on an Order Shortening Time for preliminary approval of a proposed class action settlement. AA 80-138. On January 18, 2017, the Taxi Drivers moved to intervene and on January 27, 2017, they filed opposition to that proposed class action settlement. AA 46-79, 139-281. They advised the district court of the *Murray* case enjoining the *Murray* class members from settling the class claims certified in *Murray* except pursuant to a further order in *Murray*. AA 143-144. They further advised even if the proposed class action settlement was within the subject matter jurisdiction of this case, it was collusive, lacked any rational basis, and contained terms making it unfair and incapable of approval as a matter of law. AA 145-148, 151-157.

The district court denied intervention on February 14, 2017, denying the Taxi Drivers any opportunity to be heard in opposition to the motion for preliminary approval of the proposed class action settlement. AA 1969-1970. It set a preliminary approval motion hearing for February 16, 2017, but did not proceed with that hearing because an injunction was issued in *Murray* on that same day enjoining A Cab from proceeding with any class MWA settlement except in

Murray. AA 1107-1113.

On June 17, 2017, a final judgment was entered against Dubric and in favor of A Cab for \$51,644.55 in *Dubric v. A Cab et al*, United States District Court, District of Nevada, 15-cv-2136. AA 1082-1083.

On August 10, 2017, Dubric filed a motion for summary judgment against A Cab solely on her individual claim. AA 282-291. In that motion Dubric stated her putative class claims should be dismissed because the class action certified in *Murray* provided an appropriate means of redress for those claims. AA 290-291. The district court at the September 12, 2017, hearing on that motion granted summary judgment to Dubric, denied A Cab's counter-motion to dismiss, stated it "will recognize the voluntary dismissal" of the "class members" and reserved a ruling on Dubric's individual damages award. AA 312, 323-324.

In response to Dubric's pursuit of summary judgment individually, and abandonment of any putative class claims, A Cab filed a motion on October 4, 2017, seeking sanctions against Dubric's counsel pursuant to NRCP Rule 11. AA 327-394. The district court heard that motion on November 7, 2017, during which A Cab's counsel insisted the case was "a multi-million dollar class action." AA 425. The district court reserved decision on the motion. AA 433-434.

On April 23, 2018, Dubric and A Cab jointly requested a status conference

as a result of this Court's Order of April 6, 2018, dissolving the 2017 *Murray* injunction against A Cab. AA 437-442. On May 9, 2018, the district court issued a minute order setting a May 15, 2018, hearing for "Further Proceedings" and reciting "the parties jointly requested via a chambers conference call to withdraw two matters previously taken under advisement" and those matters were "WITHDRAWN as MOOT." AA 443. On May 10, 2018, the Taxi Drivers filed a motion on order shortening time to intervene and continue the May 15, 2018 hearing. AA 444-624. That motion reiterated the objections to the proposed settlement raised in the Taxi Driver's January 27, 2017, opposition to the motion for preliminary approval of the settlement. It also advised the district court Dubric was now a \$51,664 judgment debtor of A Cab, disqualifying her, as a matter of law, from representing a class of persons holding claims against A Cab. AA 446.

On May 15, 2018, the district court directed Dubric and A Cab to proceed on May 24, 2018, with a hearing on their joint motion for preliminary approval of their proposed class action settlement. AA 657. It also denied intervention to the Taxi Drivers; denied their request for a two week continuance of the preliminary approval hearing until *Murray* ruled on pending motions for consolidation (that pending motion's hearing being delayed by the death of Judge Cory's wife) and for contempt against A Cab, and summary judgment; denied their request for a stay to

seek writ relief; and also ruled the Taxi Drivers could not present opposition at the preliminary approval hearing since they were being denied intervention. AA, 636-639, 650-656. On May 21, 2018, the Taxi Drivers filed a Petition with this Court, *Murray v. Eighth Jud. Dist. Ct.*, No. 75877, seeking a writ to reverse the district court's denial of intervention. AA 660-688. On May 23, 2018, this Court Ordered Dubric and A Cab to answer that Petition. AA 987-988.

The district court held a preliminary settlement approval hearing on May 24, 2018. AA 689-754. At that hearing it granted preliminary approval of the proposed class action settlement and directed Dubric's counsel submit an order setting forth its findings. AA Transcript 747-753. On May 25, 2018, a panel of this Court, over a dissent, denied the Taxi Drivers' motion to stay the district court proceedings. AA 1318-1320.

On August 21, 2018, a final judgment was entered in *Murray* in favor of 890 class members and against A Cab for \$1,033,027. AA 809-872. On September 13, 2018, this Court dismissed as "moot" the Taxi Drivers' still pending Petition because the *Murray* judgment "resolved" the class claims. AA 990-991.

On February 15, 2019, the district court issued an Order to "statistically close" this case based on a "Stipulated Judgment." AA 957.

On October 4, 2019, A Cab requested a "Status Check" with the Court "to

address the settlement documents that are before the Court.” AA 961-982. With that request was a proposed form of order granting preliminary approval to the proposed class action settlement. AA 964-982. On October 19, 2019, the Taxi Drivers, on an order shortening time, moved to intervene and deny preliminary approval to the proposed class action settlement, based on the 890 *Murray* judgments and the district court’s resulting lack of subject matter jurisdiction in this case over those judgments. AA 785-1166. That relief was also sought based on the settlement being collusive and unfair and Dubric’s inability to represent the class, as detailed in the Taxi Drivers’ previously filed motions to intervene and opposition to the proposed settlement. *Id.*

On October 29, 2019, the Taxi Drivers filed a motion to recuse District Judge Delaney based on her bias against the Taxi Drivers’ counsel. AA 1167-1177. The Taxi Drivers’ counsel in 2016 filed a petition with this Court, Case No. 70763, to compel Judge Delaney to issue a decision on a long pending motion in another case (“*Teseme*”). This Court ordered Judge Delaney to answer that petition, she refused to answer it, and this Court then granted such petition to the extent of compelling Judge Delaney to decide the long-pending *Teseme* motion. AA 1173-1174, 1176-1177. Judge Delaney declined to recuse herself. AA 1286-1288. A Cab asked to be heard on the Taxi Driver’s recusal motion, asserting it

made “unfounded allegations” against its counsel and Judge Delaney. AA 1178-1181. On November 18, 2019, District Judge Linda Bell denied the motion to recuse Judge Delaney, finding the Taxi Drivers as non-parties lacked standing to seek recusal and there was no basis to recuse Judge Delaney. AA 1290-1295.

On December 17, 2019, the district court heard and granted the Taxi Drivers’ motion for intervention and denied their motion to deny preliminary approval of the proposed class action settlement. AA 1824-1829. It also directed the Taxi Drivers be provided with additional information on the notice that was to be sent to the proposed class members at least 10 days before the next hearing. AA 1825-1826. It found that the concerns of the Taxi Drivers would be further heard at the next hearing on January 30, 2020. AA 1827. The Taxi Drivers submitted a supplemental briefing regarding the proposed preliminary approval order on January 27, 2020. AA 1386-1542. The Taxi Drivers objected to that order requiring any *Murray* class action judgment creditor who wanted to be excluded from the class settlement in this case personally file an exclusion request and prohibiting the *Murray* class counsel (the Taxi Drivers’ counsel) from filing such exclusion requests. AA 1393. On October 11, 2020, the district court rejected the Taxi Drivers’ objections and entered an order granting preliminary approval of the settlement as proposed by Dubric and A Cab. AA 1625-1642. On October 26,

003414

003414

2020, the Taxi Drivers, filed a motion to rehear or amend and correct that order because, among other things, it was incomplete — it specified the form of notice to the class was at Exhibit “1” but it contained no such Exhibit. AA 1643-1696. The district court heard that motion on November 10, 2020, and in an order entered on February 25, 2021, granted in part and denied in part that motion. AA 1830-1834. It also held it would consider the Taxi Drivers’ objections to the proposed settlement when it held a final class action settlement approval hearing. AA 1833.

The Taxi Drivers filed a Petition with this Court on November 20, 2020. *See, Murray v. Eighth Jud. Dist. Ct.*, Case No. 82126. This Court directed an answer to the Petition and on December 10, 2020, denied it, finding that the Taxi Drivers will be allowed to participate in the district court’s still to be held final approval hearing and “....may appeal from any judgment following that hearing.” AA 1821-1822.

On December 4, 2020, the Taxi Drivers filed objections to the final approval of the proposed class action settlement and opposition to the motion seeking its final approval. AA 1788-1820. On March 11, 2021, the district court held a hearing at which it granted final approval of the proposed class action settlement and rejected all of the Taxi Drivers’ objections. AA 1839-1897. On August 31, 2021, the district court entered an order granting final approval of the proposed

class action settlement entering a final judgment, served with notice of entry on September 1, 2021. AA 1898-1912. That order denied the Taxi Drivers' request the class action certification and settlement in this case exclude all claims adjudicated in *Murray* for the 890 *Murray* judgment creditors. AA 1949-1958. The resulting final judgment entered by the district court purports to release the MWA claims of all class members in this case, including, in exchange for a payment of less than \$196,000, at least 797 of the 890 *Murray* judgment creditors. AA 1491-1519, 1536-1541. On September 8, 2021, the Taxi Drivers filed and served a notice of appeal. AA 1913-2001. On December 30, 2021, this Court affirmed in part and reversed in part the *Murray* judgment which upon remittitur will be reduced to approximately \$675,000.³ See, 137 Nev. Adv. Op. 84.

SUMMARY OF ARGUMENT

The district court lacked subject matter jurisdiction to release or modify any aspect of the final judgment entered in *Murray*. This Court's Order of September 13, 2018, dismissing without prejudice the Taxi Drivers' first writ Petition (Case No. 75877), recognized that the *Murray* final judgment "resolved" the claims of the

³ The judgment for damages predating October 8, 2010, was reversed, leaving approximately \$675,000 of the original damages judgment. See, *Murray*, Case No. 77050 at Respondents' Appendix at 1015-1033 and Appellant's Appendix at 8178-8189.

890 *Murray* class member judgment creditors. AA 990-991. The district court's entry of a final judgment purporting to include claims adjudicated in the *Murray* final judgment was *ultra vires* and void.

The district court improperly approved a manifestly collusive class action settlement. Dubric was a judgment debtor of A Cab for over \$50,000 and incompetent as a matter of law to serve as a class representative but was approved to release, for less than \$300,000, the class action liability of A Cab for over \$1,600,000 as a judgment-debtor in *Murray*. That settlement included claims for a time period that Dubric could not prosecute and well beyond the statute of limitations in her case — the only purpose of doing that was to release the much earlier in time filed *Murray* class claims and judgment. The settlement was an artifice for A Cab, in exchange for a \$5,000 payment to Dubric and a \$57,500 payment to her attorneys, to purportedly vacate the *Murray* judgment and distract the *Murray* counsel from collecting the *Murray* judgment. Its substantive terms were irrational and it was impossible for that settlement to be fair or reasonable even if it did not purport to release the *Murray* judgment.

District Judge Delaney's approval of the proposed class action settlement, and her refusal to allow the Taxi Drivers' counsel to exclude his clients, the *Murray* final judgment creditors, from that settlement, can only be attributed to an

improper motive. She should be disqualified from further proceedings in this case.

APPLICABLE STANDARD OF REVIEW

Whether the district court lacked subject matter jurisdiction to enter the final judgment appealed from is a question of law reviewed by this Court *de novo*.

Ogawa v. Ogawa, 221 P.3d 699, 704 (Nev. Sup. Ct. 2009).

Whether the district court erred in approving the notice program of a class action settlement, in respect to the requirements of due process and Rule 23, is a question of law reviewed *de novo*. See, *Roes, 1-2 v. SFBSC Management, LLC*, 944 F.3d 1035, 1043 (9th Cir. 2019) and other authorities discussed in *Newberg on Class Actions*, 5th Ed. § 14.19.

Whether the district court erred in finding the relevant facts rendered the terms of the class action settlement appropriate and worthy of final approval is reviewed for an abuse of discretion. See, *Marcuse v. Del Webb Communities, Inc.*, 163 P.3d 462, 467 (Nev. Sup. Ct. 2007) (applying, without discussion, abuse of discretion standard) and authorities discussed in *Newberg on Class Actions*, 5th Ed. § 14.19. The district court's factual findings supporting its decision to grant class action certification as part of its approval of the class action settlement is reviewed for an abuse of discretion, with the district court having the obligation of documenting it has conducted "a thorough NRCP 23 analysis" of the issues.

Shuette v. Beazer Homes Holdings Corp., 124 P.3d 530, 537, 546-47 (Nev. Sup. Ct. 2005). The district court’s findings of law supporting its decision to grant class action certification are reviewed under a *de novo* standard. *See, B.K. by next friend Tinsley v. Snyder*, 922 F.3d 957, 965 (9th Cir. 2019) and authorities discussed in *Newberg on Class Actions*, 5th Ed. § 14.19.

This Court has applied an abuse of discretion standard when reviewing a denial of a request for a district judge’s recusal. *See, Ivey v. Dist. Ct.*, 299 P.3d 354, 359 (Nev. Sup. Ct. 2013) and *Rivero v. Rivero*, 216 P.3d 213, 233 (Nev. Sup. Ct. 2009). While that is the prevalent standard of review, a *de novo* standard of review has been used when a recusal request involves “undisputed facts” raising an issue as to how a “reasonable person would view” a jurist’s “ability to be impartial.” *See, Jolie v. Superior Court of Los Angeles County*, 66 Cal. App. 5th 1025, 1041 (Cal. Ct. App. 2021).

003419

003419

ARGUMENT

I. The district court had no subject matter jurisdiction over the 890 *Murray* class member claims adjudicated into the *Murray* final judgment; the final judgment it rendered purporting to resolve those claims is void.

A. The final judgment was intended to resolve the *Murray* final judgment even though the district court contradictorily and improperly defined the settlement class.

The district court's order granting final approval to the class action settlement and directing entry of judgment defines the settlement class as follows:

The Class shall consist of "all persons who were employed by A Cab, LLC and/or A Cab Series, LLC, Employee Leasing Company during the applicable statutory period prior to the filing of this Complaint continuing until date of judgment as Drivers in the State of Nevada." More specifically, the Settlement Class is defined as all current and former hourly paid Drivers employed by A Cab, LLC and/or A Cab Series LLC, Employee Leasing Company at any time from April 1, 2009 through July 2, 2014. AA 1952.

The "applicable statutory period prior to the filing" of the complaint, for the recovery of unpaid minimum wages under Nevada law, is two years. *Perry*, 383 P.3d at 262. The complaint was filed on July 7, 2015. AA 8. This would mean the settlement class consists of all employees of A Cab for the two preceding years, from July 7, 2013, through date of judgment, September 1, 2021. Yet the settlement class is also "more specifically" defined as "all current and former hourly paid Drivers" of A Cab during the time period "April 1, 2009 through July

2, 2014.” These two definitions of the settlement class are contradictory. And if the “more specifically” stated definition were applied there would be no settlement class members, as A Cab did not employ “hourly paid drivers” — as alleged in the complaint it paid its drivers “based on a ‘commission’ ” that was a percentage of the taxi fares. AA 10.

There are 890 *Murray* class members and intervenors with MWA claims against A Cab resolved by the *Murray* final judgment. AA 809-872. The final judgment in this case, by incomprehensibly defining the settlement class, fails to explain what class member claims are resolved. But it is clear the parties, and the district court, intended to have the claims of the 890 *Murray* class member judgment creditors resolved by that final judgment. This is demonstrated by A Cab’s production of a list of 1,115 identified class members to whom notice of the settlement was to be mailed; at least 797 of those class members were confirmed to be among the 890 *Murray* class member judgment creditors. AA 1537. It is also confirmed by the final judgment’s incorporation of the parties’ settlement agreement’s releases and definitions. AA 1954-1955. Those definitions and releases cover “any and all claims” for any “debts” or “rights” possessed by the settlement class members against A Cab that in any fashion involves the claims made in the complaint. *Id.* and AA 108-111, 121-122. And as discussed, *infra*,

Dubric could never have secured class certification of any claims against A Cab — the only reason for A Cab to enter into a class settlement with Dubric was to resolve the *Murray* judgment.

Given the district court's intent to enter a final judgment purporting to settle and release the *Murray* judgment, this Court should not merely reverse the district court for contradictorily defining the settlement class in its final judgment. Doing so, and remanding for a correction of the same by the district court would, unless Judge Delaney was also recused, result in further improper proceedings. 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 member claims from any class action settlement or disposition it enters as part of a final judgment in this case.

B. The district court lacked subject matter jurisdiction to release or settle the claims of the 890 class members that were adjudicated by the *Murray* final judgment and its final judgment purporting to do so is void.

As this Court recognized in its Order of September 13, 2018, dismissing without prejudice the Taxi Drivers' first writ Petition (Case No. 75877), the *Murray* final judgment "resolved" the 890 *Murray* class member claims that were

adjudicated into that judgment. AA 990-991. The *Murray* final judgment rendered the request for writ relief “moot” since the district court proceedings no longer threatened to impair the interests of the *Murray* class members. *Id.* The district court was left free to “proceed differently” in this case, *e.g.*, proceed with a class action disposition that did not involve the now resolved 890 *Murray* class member claims. *Id.* Rather than respect this Court’s Order, the district court did *not* “proceed differently” but in the same fashion that gave rise to the mooted writ petition: it granted final approval of a settlement class that included the 890 class member claims resolved by the *Murray* final judgment.

Once a claim has been resolved by a final judgment entered by the district court, as occurred for the 890 *Murray* class members’ claims, such final judgment cannot be modified or vacated by the district court “...except in conformity with the Nevada Rules of Civil Procedure.” *Greene v. Eighth Jud. Dist. Ct.*, 900 P.2d 184, 186 (Nev. Sup. Ct. 1999). “[O]nce a final judgment is entered, the district court lacks jurisdiction to reopen it, absent a proper and timely motion under the Nevada Rules of Civil Procedure.” *SFPP L.P. v. Second Jud. Dist. Ct.*, 173 P.3d 715, 717 (Nev. Sup. Ct. 2007)

The judgement’s release, as part of the settlement class in this case, of the 890 class members’ claims contained in the *Murray* final judgment, did not rely

upon any of the provisions of the Nevada Rules of Civil Procedure. Nor did the applicable provisions of those rules, NRCP Rules 59 and 60, provide a basis for it to do so.

The district court in this case lacked subject matter jurisdiction to release, modify, or settle, any rights or obligations arising from the *Murray* judgment — jurisdiction to do so was vested solely in this Court pursuant to the notice of appeal filed in *Murray* (Case No. 77050). *See, Mack-Manley v. Manley*, 138 P.3d 525, 529-30 (Nev. Sup. Ct. 2006). Accordingly, the district court’s order and final judgment in this case purporting to do so was void. *See, also, Jeep Corp. v. Second Jud. Dist. Ct.*, 652 P.2d 1183, 1186-87 (Nev. Sup. Ct. 1982) (Purported judgment entered by District Judge was “void *ab initio*” as the district court’s jurisdiction “ended” with the entry of final judgment); *SFPP, LP*, 173 P.3d at 718 (“Nevada district courts retain jurisdiction until a final judgment has been entered” and the district court “lacked jurisdiction to conduct any further proceedings with respect to the matters resolved in the judgment unless it was first properly set aside or vacated.”); *Lemkuil v. Lemkuil*, 551 P.2d 427, 429 (Nev. Sup. Ct. 1976) (Later filed action in different department of same district court involving same dispute of parties was properly dismissed as all issues had to be dealt with in the earlier action “[i]n Nevada, once a court of competent jurisdiction assumes jurisdiction over a

003424

003424

particular subject matter, no other court of coordinate jurisdiction may interfere.”
citing Metcalfe v. District Court, 274 P. 5 (Nev. Sup. Ct. 1929) and *Landreth v. Malik*, 251 P.3d 163, 166 (Nev. Sup. Ct. 2011) (Judgment purported to be rendered by district court lacking subject matter jurisdiction is void, citing *State Indus. Ins. System v. Sleeper*, 679 P.2d 1273, 1274 (Nev. Sup. Ct. 1984)). *See, also, Blair v. Equifax Check Services, Inc.*, 181 F.3d 832, 838 (7th Cir. 1999) (discussing multiple class actions involving same claims; normal rules of preclusion require that the first to reach final judgment be controlling).⁴

II. The district court failed to scrutinize the proposed class action settlement and make findings; its approval of the settlement was improper as the settlement was irrational and unreasonable.

A. The district court must act as a fiduciary of the class members when it approves a class action settlement and the parties proposing that settlement have the burden of establishing settlement approval is appropriate.

Courts act in a “fiduciary role” when approving class action settlements. *See, Newberg on Class Actions*, 5th Ed. § 13:40. They discharge their “fiduciary duty” to the absent class members by ensuring the settlement is not tainted by collusion and the plaintiffs and their counsel have not “sold out” the class for their own

⁴ This Court’s resolution of the *Murray* final judgment appeal, affirming most of that judgment, is now law of the case and the affirmed determinations made in *Murray* cannot be modified or vacated by the district court. *See, Hsu v. County of Clark*, 173 P.3d, 724 728 (Nev. Sup. Ct. 2007)

benefit. *Id.* Because they perform such functions in an “information vacuum,” typically possessing information from only the settlement’s proponents, they must act “in the role of a skeptical client and critically examine the class certification elements, the proposed settlement terms and procedures for implementation.” *Id.* citing and quoting *Manual for Complex Litigation*, 4th Ed. § 21.61. This obligation to independently and rigorously scrutinize proposed class action settlements, as a fiduciary of the class members and to ensure their fairness, is well established and unquestioned. *See, Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975) *cert. denied*, 423 U.S. 864 (1975), the authorities cited therein and subsequent decisions.

The proponents of a class action settlement bear the burden of convincing the district court that such a settlement warrants final approval. *See, Grunin*, 513 F.2d at 123 (“Under Rule 23(e) the district court acts as a fiduciary who must serve as a guardian of the rights of absent class members.... [T]he court cannot accept a settlement that the proponents have not shown to be fair, reasonable and adequate.”) citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2nd Cir. 1974); *United Founders Life Ins. Co. v. Consumers Nat. Life Ins. Co.*, 447 F.2d 647, 655-56 (7th Cir. 1971) and *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971). This holding and language of *Grunin*, placing the burden of justifying settlement

approval on a class action settlement's proponents, has been recited and adopted in every subsequent case discussing the issue. *See, In re GM Corp. Pick-Up Truck Fuel Tank Products Liability Litig.*, 55 F.3d 768, 785 (3rd Cir. 1995); *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1147 (11th Cir. 1983); and *Ballard v. Martin*, 79 S.W. 3d 564, 574 (Sup. Ct. Ark. 2002). *See, also, Manual for Complex Litigation*, 4th Ed., § 21.631 ("settling parties bear the burden of persuasion that the proposed settlement is fair, reasonable and adequate").

B. The district court must make detailed findings explaining its decision to approve a class action settlement and its resolution of any objections to that settlement.

This Court has not opined on the specific factors a district court must weigh, and specific findings it must make, in approving a class action settlement, though it likely would require consideration of the Ninth Circuit Court of Appeal's⁵ eight *Churchill* factors.⁶ *See, Kim v. Allison*, 8. F.4th 1170, 1178 (9th Cir. 2021), *citing*

⁵ This Court has adopted the Ninth Circuit's jurisprudence on other class action issues. *See, Marcuse v. Del Webb Communities, Inc.*, 163 P.3d 462, 466-67 (Nev. Sup. Ct. 2007).

⁶ These eight factors are: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. 361 F.3d at 575.

In re Bluetooth Headset Prod. Liab., 654 F.3d, 935, 946 (9th Cir. 2011); and *Churchill Vill. v. Genl. Elec.*, 361 F.3d 566 (9th Cir. 2004). A district court must make findings that “....show it has explored these factors comprehensively to survive appellate review.” *Kim, id., citing and quoting In re Mego Financial Corp. Securities Lit.*, 213 F.3d 454, 458 (9th Cir. 2000) *citing Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

This Court should also require that a district court’s rejection of objections to a class action settlement be explained by sufficiently detailed findings and conclusions to allow intelligible appellate review, the standard adopted by the Ninth Circuit Court of Appeals. *See, Mandujano v. Basic Vegetable Products, Inc.*, 541 F.2d 832, 834-36 (9th Cir. 1976) (objections to class action settlement must be “carefully reviewed” and “set forth in the record a reasoned response” to the same, and even if the objection is without substance the trial court shall “set forth on the record its reasons for so considering the same”). “Moreover, those findings and conclusions should not be based simply on the arguments and recommendations of counsel.” *Plummer v. Chemical Bank*, 668 F.2d 654, 659 (2nd Cir. 1982) (citing with approval *Mandujano* and expanding on its holding). A thorough evidentiary hearing can suffice in lieu of the express findings of fact and conclusions of law directed by *Mandujano*. *See, In re Pacific Enterprises Sec. Litig.* 47 F.3d 373, 378

(9th Cir. 1995) (district court recital it found class settlement “fair, reasonable and adequate” is insufficient under *Mandujano*; district court’s “extensive settlement hearing” where it considered and explained its rejection of objections, and where it also partially adopted them by modifying attorney fee award, created sufficient record). *See, also, Thomas v. Albright*, 139 F.3d 227, 233 (D.C. Cir. 1998) (hearings where testimony was taken from all parties on settlement approval established record required by *Mandujano* justifying approval over objections).

C. The district court made no findings supporting its decision to approve the settlement and overrule the objections; the parties did not satisfy their burden of showing settlement approval was proper; the settlement was irrational and unfair and was not capable of approval as a matter of law.

1. The district court made no findings.

The district court’s order granting final settlement approval makes none of the findings required by *Kim*, discusses none of the eight *Churchill* factors, and provides no explanation why it was approving the settlement. AA 1898-1912. It noted that the settlement objections were considered, but it made no findings as to those objections. *Id.*, AA 1900-1901. At the final approval hearing the district court heard arguments from the objector’s counsel. AA 1839-1897. But it made no findings as to the objections or its approval of the settlement. It just stated orally it was “not persuaded” by those objections and that it was concluding that

the settlement was “fair, reasonable and adequate.” *Id.* AA 1892-1895.

2. The parties proposing the settlement did not meet their burden of establishing it warranted final approval; they proffered no rational basis for its approval, only their unexplained opinions.

In her motion for final approval of the settlement Dubric asserted that “extensive discovery” and an “extensive analysis with respect to all claims in the case and all potential defenses thereto” supported final approval of the settlement. AA 1710. None of that alleged discovery or analysis is discussed or cited to support the parties’ assertion that “the proposed class recovery is justified and reasonable” except for the two-page report of Nicole S. Omps, CPA (the “Omps Report”). AA 97, 133-135.

The nonsensical methodology and settlement metric used by the Omps Report, discussed *infra*, if actually applied, would establish that the proposed class settlement amount is grossly inadequate. As a result, the parties submitted nothing to the district court supporting approval of the settlement, except the opinions of their counsel. While “the experience and views of counsel” is one of the eight *Churchill* factors properly weighed by the district court, 361 F.3d at 575, it cannot be the *only* factor relied upon to grant settlement approval. Yet that is all the district court had before it and upon which it based its settlement approval. Having

submitted *nothing* to the district court, except the opinions of their counsel, the parties, as a matter of law, failed to meet their burden of establishing approval of their settlement was appropriate and the district court erred in granting such approval.

3. The settlement was irrational and incapable of being found fair, reasonable and adequate on the record presented (or any record).

There is nothing in the record supporting the settlement and some of its terms are so improper final approval would be erroneous irrespective of what further facts might exist.

The parties asked the district court, based on the Omps Report, to find that the settlement warranted final approval. The Omps Report stated a prior United States Department of Labor (“USDOL”) investigation found, during a two year period, that A Cab had underpaid minimum wages to its taxi drivers in an amount equal to 2.161585% of those taxi drivers’ gross pay. AA 135. It applied that percentage to A Cab’s gross payroll of \$6,476,209.51 for the proposed settlement period and concluded that “an estimated settlement range of \$224,258.65 to \$471,651.13” was appropriate. *Id.*

Neither Omps, the parties, or the district court, explain why the metric used in the Omps Report, a percentage of payroll represented by an earlier minimum

wage settlement, was germane to determining whether the proposed settlement was fair. It was not. The unpaid minimum wages owed to the class might be reasonably estimated by examining the hours worked by, and wages actually paid to, the class or a sample of the class. That was not done.

Nor did the USDOL make the determination Ompps claimed justified the settlement: that A Cab had underpaid its taxi drivers \$139,988.80 in minimum wages representing 2.161585% of the gross payroll. That amount, \$139,988.80, was what the USDOL settled its lawsuit against A Cab for, not what it found A Cab owed in unpaid minimum wages.⁷ AA 210. The USDOL found A Cab owed \$2,040,530.05 in minimum wages to its taxi drivers. AA 207, 210. This means the metric used by Ompps and the parties and adopted by the district court, A Cab's "gross payroll underpay percentage," was actually 31.50809%. The resulting minimum fair settlement under that metric would be in excess of \$3,139,528, over 14 times larger than the approved settlement amount of \$224,452.65.

Even if the amount of the settlement was justified it could not be properly approved, as it makes irrational settlement payments, quite possibly to numerous persons who have no unpaid minimum wage claims and are not properly made

⁷ The USDOL elected to settle with A Cab for only 6.86% of what it found A Cab actually owed its taxi drivers in unpaid minimum wages. AA 210. What it elected to settle for is irrelevant to the sufficiency of the settlement in this case.

class members.

The settlement makes all drivers employed by A Cab class members; it makes settlement payments based on “the number of workweeks each Class Member worked during the statutory period”; and provides that class members who “previously settled” or “adjudicated” minimum wage claims against A Cab “are not entitled to receive any benefit” from the settlement. AA 109, 119-120. This means Taxi Drivers who received a payment from the prior USDOL settlement, or adjudicated their claims in the *Murray* case, will have their legal rights resolved by the settlement, since they are class members, but are to receive no benefit from the settlement. *Id.* That is nonsensical.

The parties have further confused the issue of how settlement funds are to be distributed by listing the 1,115 identified class members with their “total weeks” worked and their total weeks worked minus “weeks in DOL audit period.” AA 1448-1488, 1536-1537. This indicates settlement funds are to be distributed, *pro rata*, among 1,115 class members based on the weeks they worked after offsetting their “DOL audit period” weeks. If that “DOL audit period” offset is used *nothing* will be paid to 243 class members, including 198 *Murray* judgment creditors owed \$120,971.83 of the *Murray* judgment. AA 1528-1534, 1540-1541. Alternatively, if the prior settlement payments made by the USDOL were used as a dollar for

dollar offset 104 *Murray* judgment holders will be paid *nothing* under the settlement in exchange for a release of \$183,598.17 of the *Murray* judgment. AA 1541. The district court’s final approval order fails to specify how this “per workweek” *pro rata* distribution will be made, allowing the parties and their agent to make that distribution however they choose.⁸

No rationale was given for distributing settlement funds on a “per week worked” basis to every A Cab taxi driver. The class claims are for unpaid minimum wages. Taxi drivers who possess no claim for unpaid minimum wages are not proper class members. Those possessing such claims, and the amount of their claims, is ascertainable by examining the hours worked, and wages paid, each week to each driver. And if precise information is lacking, a reasonable estimate or approximation, based on the available payroll information, could be used to determine who is a class member owed unpaid minimum wages and the amount so owed. The settlement’s distribution of funds blindly to every driver based on their

⁸ That order “...orders the Class Counsel to disburse the Settlement Fund to the Class Members pursuant to Section 11 of the Settlement Agreement, which provides that Ms. Nichole Omps, CPA of Beta Consulting shall determine the amounts owed to each class member based on the number of workweeks for each Class Member.” AA 1953. Because Section 11 of the Settlement Agreement (AA 119-120) does not explain how the number of workweeks of each class member shall be determined the district court is granting Ms. Omps unlimited discretion to make that determination however she wishes.

weeks worked has no relationship to any unpaid minimum wages owed by A Cab. It may result in large settlement payments to persons who have no unpaid minimum wage claims and are not properly made class members.⁹

The settlement agreement also improperly allows A Cab to retain all funds from uncashed settlement checks. AA 118-120. This allows A Cab to coerce its current employees to not cash their settlement checks so it can retain those funds.

III. The district court’s approval of an indisputably collusive class action settlement was not the product of mere error or neglect; recusal or other restrictions on post-remand proceedings should be imposed.

The district court’s dereliction of its duty went far beyond a failure to examine the proposed class action settlement and make findings weighing the *Churchill* factors or any other relevant factors. The district court had an equally weighty duty to “scrutinize the settlement for evidence of collusion or conflicts of interest before approving the settlement as fair.” *Kim*, 8 F.4th at 1179, citing and quoting *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d at 946 and *Briseno v. Henderson*, 998 F.3d 1014, 1025-26 (9th Cir. 2021). And in cases such as this,

⁹ The parties made no effort to determine or estimate the unpaid minimum wages owed or the Taxi Drivers owed those wages based upon an examination of relevant information. This Court in the appeal of the *Murray* judgment found such relevant information existed and was used properly in *Murray* to make such an estimate and grant summary judgment for the Taxi Drivers.

where a defendant consents to class certification so they may secure a class settlement of all claims, the district court in granting settlement approval must utilize “...an even higher level of scrutiny for evidence of collusion or other conflicts of interest.,” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d at 946 and authorities cited therein.

The district court was willfully blind to the overwhelming evidence that Dubric and her counsel were colluding with A Cab to assist it in avoiding and frustrating the *Murray* judgment. Such evidence demonstrates that the district court’s approval of the settlement cannot be attributed to a lack of understanding or even a gross oversight. It is properly concluded to have involved an improper motive requiring recusal of Judge Delaney upon remand or the imposition of other curative measures.

**A. The district court purposefully ignored
Dubric and her counsel’s collusion with A Cab.**

The district court was aware of, and ignored, improper conduct of Dubric and her counsel going far beyond their submission of a proposed class settlement lacking any rational basis. Dubric and her counsel were wholly unqualified to represent *any* settlement class of plaintiffs against A Cab. It would be difficult to find a more conflicted, inappropriate, and collusive, settlement class representative

and class counsel, given the prior proceedings and relationship between Dubric and A Cab. The district court was aware of all of the following facts, none of which it commented on when it granted final approval to the settlement:

- Class representative Dubric was A Cab's \$51,664.55 judgment debtor:

Dubric, a judgment debtor of A Cab for \$51,664.55, was subject to financial ruin if A Cab elected to collect that judgment. AA 1082-1083. She was irreconcilably conflicted as a result and could not serve as a class representative or a fiduciary of the class members' interests.

- Class representative Dubric and class counsel had previously abandoned and renounced prosecution of the class claims:

Dubric and class counsel advised the district court they were renouncing any interest in prosecuting the class claims and those claims should proceed to disposition in *Murray*. AA 290-291. Instead Dubric sought, and was granted, summary judgment on her individual claims, leave to abandon the putative class claims, and was to enter final judgment accordingly once Judge Delaney ruled on her damages. AA 312, 323-324.

- Class counsel had no understanding of the class damages or even the number of class members and relied exclusively upon A Cab's unverified factual representations.

Class (Dubric's) counsel performed no analysis of the class damages. In its

January 14, 2017, motion for preliminary approval of the class settlement it did not claim to have reviewed A Cab's records of hours worked and wages paid to determine the class MWA claims at issue. It relied upon A Cab's counsel's review of those records to determine there were "approximately" 210 class members and that such records supported a finding that the settlement was appropriate and in the best interests of the class. AA 90, 97, p. 58-59. Yet in 2020 the district court was advised the settlement would include 1,115 identified class members without any change in its financial terms. This incompetent and collusive conduct by class counsel was attacked by A Cab on October 4, 2017, when it filed a motion seeking sanctions against such counsel for failing to proceed at that time with the proposed settlement (they had abandoned any putative class claims and secured summary judgment just for Dubric). AA 327-394. A Cab, who knew what materials were provided by it on the class claims to such counsel, confirmed in that motion that "Plaintiff's counsel does not have even a handle on what Ms. Dubric's damages alone are, much less the damages of the 210 class members they purport to have represented..." and that "Plaintiff's counsel never made *any* attempts to provide a sound computation of Ms. Dubric's damages, or any of the class members." AA 395-396.

003438

003438

- Class counsel demonstrated its incompetence by presenting no evidence supporting the settlement and relying upon A Cab to endorse Dubric's competence to serve as a class representative.

Class counsel presented no evidence of Dubric's competency to serve as a class representative or any evidence at the hearing held by the district court where testimony was taken about the settlement.¹⁰ They asked the district court to confirm Dubric's *bona fides* from A Cab's attestation of her fitness to serve as a class representative, as if she was its *de facto* agent! Her counsel engaged in the following exchange with A Cab's owner:

Q. In your opinion was she [Dubric] respected buy [sic] the other drivers at A Cab?

A. I believe so, yes.

Q. Do you think she is a fair representation of the average driver/employee for A Cab for the time period she was a driver?

A. I would like to say, yes, but she was better than average.

Q. You have any concerns about her serving as class representative?

A. No. She's as good as any. She [is] [sic] a good driver.

MR. RICHARDS: Thank you. That's all my questions. AA 734-735.

¹⁰ The only evidence heard by the district court on the alleged fairness of the settlement (except for Omgs reiteration of her nonsensical report's conclusions) was from A Cab. AA 689-754.

- The settlement was clearly a collusive “reverse auction” as it released claims far beyond the statute of limitations Dubric could prosecute.

The district court granted final approval to a class action settlement purporting to release the MWA claims of all Taxi Drivers employed by A Cab from April 1, 2009 through July 2, 2014, or August 31, 2021.¹¹ Yet Dubric filed her case on July 7, 2015 and could not proceed to trial on any class MWA claims that predated July 7, 2013. *See, Perry*, 383 P.3d at 262. The only reason for a class settlement in Dubric’s case of MWA claims pre-dating July 7, 2013, was to extinguish A Cab’s greater class MWA liabilities (back to October 10, 2010) in *Murray*. This situation, where a defendant is subject to multiple class actions and negotiates a collusive, and lowest cost, settlement with cooperative counsel to extinguish all of its class liabilities, is an improper “reverse auction.” *See, Newberg on Class Actions*, § 13.60 5th Ed.¹² and *Reynolds v. Beneficial Nat. Bank*,

¹¹ The contradictory and improperly defined scope of the class and the class claims subject to the settlement is discussed at I.(A).

¹² Newberg describes the term: “In a normal auction, the seller accepts the highest bid. In a reverse auction, the seller looks for the lowest bid. As applied to class actions, the defendant is conceptualized as “selling” a settlement and is looking to do so for the lowest amount of money possible....the hitch that enables a reverse auction is that, generally speaking, only one set of plaintiffs’ attorneys—those that settle—will get any fees, and attorneys pursuing all the parallel cases will get nothing. Therefore, the defendant can play the plaintiffs’ attorneys off against one another, bargaining down the price of the settlement in exchange for ensuring the lowest selling attorneys that they will be the ones to get

288 F.3d 277, 282 (7th Cir. 2002) (a reverse auction occurs when “...the defendant in a series of class actions picks the most ineffectual class lawyers to negotiate a settlement with in the hope that the district court will approve a weak settlement that will preclude other claims against the defendant. ”) Courts must be “...wary of situations in which there are multiple class suits, defendants settle one of the cases in order to preclude the other actions, and the settlement with that particular group of plaintiffs and their counsel seems suspicious.” *Newberg, Id.*

That the settlement was a collusive reverse auction is indisputable. MWA claims pre-dating July 7, 2013, could not be prosecuted against A Cab in this case. Dubric had no leverage to negotiate a settlement of those claims and was incompetent to represent a class settling those claims. Only A Cab, Dubric, and her counsel, benefitted from settling those claims. A Cab also took no action to consolidate this case with *Murray* and seek a transparent resolution of all potentially related class MWA claims in one litigation, further evidence of reverse auction collusion. *Cf., Blair*, 181 F.3d at 839 (defendant who was alleged to have negotiated settlement of a class action to improperly thwart other class actions could not plausibly explain failure to consolidate those cases).

a fee out of the case. The problem in the reverse auction situation is that the class's interests have been sold out, and class members will get less than the full value of their claims.”

B. Judge Delaney’s conduct was not just erroneous, it improperly facilitated the wrongful goals of A Cab and requires her recusal or other limitations on remand.

Judge Delaney did not just ignore the evidence. She acted to facilitate the entry of an indisputably improper final judgment. The only purpose served by such conduct, outside of any improper personal motive she might have, was to aid A Cab’s wrongful goal of using this litigation to improperly obstruct the collection of the *Murray* judgment.

1. Judge Delaney allowed Dubric to “reclaim” her abandoned class claims seven months after granting her an individual final judgment.

At a hearing on September 12, 2017, while A Cab was prohibited by the *Murray* injunction from proceeding with the proposed class settlement, Judge Delaney granted Dubric’s motion for summary judgment individually. AA 312, 323-325. She also, at Dubric’s counsel’s request, stated she “will recognize the voluntary dismissal” of the “class members,” and that she would make a future ruling on Dubric’s damages. *Id.* She never made that future ruling allowing Dubric to enter a final judgment and conclude her case.

On April 6, 2018, the *Murray* injunction was dissolved by this Court. On May 9, 2018, Judge Delaney, in response to a “joint request” made “via a chambers conference call” on an unspecified date allowed Dubric to withdraw her motion for

individual summary judgment. AA 443. It is incomprehensible that she would allow Dubric, who abandoned her putative class claims and would have proceeded to final judgment individually seven months earlier (if Judge Delaney had acted promptly) to now reassert those claims and act as a class representative.

2. Judge Delaney held “under advisement” A Cab’s baseless Rule 11 motion seeking to coerce Dubric’s counsel to proceed with the class settlement; such conduct by her assisted A Cab in that coercion.

After Dubric sought and was granted summary judgment individually, and renounced the putative class claims, A Cab moved for Rule 11 sanctions against Dubric’s counsel. It claimed Dubric’s counsel had “fraudulently misrepresented” this case was a “class action” and engaged in misconduct “by holding himself out as class counsel” and “by accepting a settlement” that he was failing to consummate for such class. AA 330-332. Dubric’s counsel could not possibly be subject to sanctions for that alleged conduct. He had never been appointed class counsel, this case had not been certified as a class action, and he could not have made a binding “acceptance” of such a class settlement.¹³

¹³ To the extent A Cab’s motion presented other facts indicating misconduct by Dubric’s counsel it concerned the *in pari delicto* misconduct of A Cab itself: an agreement to a class settlement A Cab knew was improper and for class claims that A Cab had never provided any relevant information on to Dubric’s counsel.

As A Cab made clear in its Rule 11 motion, it was only seeking sanctions against Dubric's counsel because it was refusing to proceed with the proposed class action settlement. AA 382-385. At a hearing on November 7, 2017, Judge Delaney found, irrationally and without explanation, that "...there is at least a legal basis, obviously, to be able to assert this [the Rule 11 motion] ..." but reserved decision. AA 420. By doing so she acted, in a *de facto* manner, to coerce Dubric's counsel to proceed with the proposed class action settlement or face possible sanctions. Dubric's counsel then secured the withdrawal of the sanctions motion by Judge Delaney's May 18, 2018, order re-instituting Dubric's abandoned putative class claims and the proposed settlement's approval process — exactly as demanded by A Cab.

3. Judge Delaney's opposition to her recusal, citing her lack of recollection of this Court's Order to answer a mandamus petition, and her belief she could properly ignore that Order, create at least an appearance of impropriety requiring recusal.

The Taxi Drivers sought Judge Delaney's recusal on October 19, 2019, after the *Murray* final judgment and when there could be no colorable justification for her consideration of a class action settlement including the *Murray* claims. Judge Delaney's insistence in proceeding with that settlement was, at that juncture, reasonably attributed to her hostility towards the Taxi Drivers' counsel. Such

counsel had secured an Order from this Court on September 29, 2016, directing her to answer such counsel's petition for an order compelling her to decide a long pending motion for class action certification in another MWA case, *Tesema*, No. 70763. AA 1173-1174. Judge Delaney did not comply with this Court's Order by answering that petition. This Court on February 21, 2017, issued a further Order, finding Judge Delaney's failure to answer that petition "renders meaningful consideration of this petition impracticable" and granting writ relief against Judge Delaney, who then promptly issued a decision denying the *Tesema* motion for class action certification. AA 1176-1177.

Judge Delaney responded to the recusal motion by affirming she had no bias and in respect to the *Tesema* proceedings: (1) That she had "no independent recollection" of those proceedings; and (2) That she "can surmise only" that she failed to respond to this Court's Order to answer the *Tesema* petition because she "had no opposition to the Petition." AA 1286-1289.

Accepting as truthful Judge Delaney's claim she has no memory of the *Tesema* proceedings is difficult — district judges are very likely to remember when they are personally ordered by this Court to answer a petition given the extreme rarity of such orders. Accepting as truthful her claim she likely failed to comply with this Court's Order in *Tesema* because she had "no opposition to the Petition"

is much more troubling. As a district judge she must be aware of her obligation to respect this Court's orders. And if she had no opposition to the petition she was obligated to file an answer with this Court so stating.

Judge Delaney's explanation for her contempt of this Court's Order in *Tesema* creates at least an appearance of impropriety — she opposed her recusal by proffering a manifestly improper explanation for that contempt. That she opposed recusal in such an improper (and unfathomable) fashion is an undisputed fact that should not be subject to an abuse of discretion standard of review. The Court should review the denial of her recusal *de novo* and determine whether a “reasonable person” would perceive that improper conduct by Judge Delaney demonstrates a lack of impartiality requiring recusal. *See, Jolie*, 66 Cal. App. 5th at 1041. Doing so would not be contrary to this Court's application of an abuse of discretion standard to recusal requests under other circumstances, as discussed in *Rivero*, 216 P.3d at 233.

Judge Delaney's conduct was an abuse of her discretion. No rational basis exists (and she offered none) for her approval of a class action settlement that included the claims adjudicated in the *Murray* judgment. Her conduct, if not

motivated by bias, was at least tainted by an appearance of impropriety. Whether reviewed *de novo* or as an abuse of discretion, or in some other fashion, Judge Delaney's failure to be recused in this case should be reversed. Alternatively, this case can be remanded with an instruction that it shall not be granted any class certification upon its remand.

CONCLUSION

Wherefore, the final judgment of the district court, its grant of class action certification, its approval of a settlement of class claims, and its denial of Judge Delaney's recusal, should be reversed, and the Court should make such other instructions upon remand as it deems appropriate under the circumstances.¹⁴ In the event the Court does not recuse Judge Delaney from further proceedings in this case upon its remand, the remittitur should instruct that the district court shall not

¹⁴ That could include an instruction for an award of attorney's fees under NRS 7.085 against respondents' counsel for their pursuit of a class action settlement that included the claims adjudicated in *Murray* after the *Murray* final judgment. Such conduct was unreasonable and vexatious.

grant class action certification, or any class action certification that includes any of the claims adjudicated in *Murray*, during any future proceedings.

Dated: February 2, 2022

/s/ Leon Greenberg
Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Appellants

003448

003448

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)(A)(ii), it is proportionately spaced, has a typeface of 14 points or more and contains 9,974 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 2nd day of February, 2022.

/s/ Leon Greenberg
Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085

003450

003450

CERTIFICATE OF SERVICE

I certify that on February 2, 2022, I served a copy of the foregoing APPELLANTS' OPENING BRIEF upon all counsel of record by the Court's ECF system which served all parties electronically.

Affirmed this 2nd Day of February, 2022

/s/ Leon Greenberg

Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085

003451

003451

ADDENDUM

NEVADA STATUTES

Nevada Constitution, Article 15, Section 16, the Minimum Wage Amendment

Sec. 16. Payment of minimum compensation to employees. [Effective through June 30, 2024, and after that date unless the provisions of Assembly Joint Resolution No. 10 (2019) are agreed to and passed by the 2021 Legislature and approved and ratified by the voters at the 2022 General Election.]

A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents (\$5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents (\$6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being

003452

003452

any part of or offset against the wage rates required by this section.

B. The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.

C. As used in this section, "employee" means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.

D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.

NEVADA COURT RULES

NRAP 3A

RULE 3A. CIVIL ACTIONS: STANDING TO APPEAL; APPEALABLE DETERMINATIONS

(a) Standing to Appeal. A party who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a new trial.

(b) Appealable Determinations. An appeal may be taken from the following judgments and orders of a district court in a civil action:

(1) A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.

(2) An order granting or denying a motion for a new trial.

(3) An order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction.

(4) An order appointing or refusing to appoint a receiver or vacating or refusing to vacate an order appointing a receiver.

(5) An order dissolving or refusing to dissolve an attachment.

(6) An order changing or refusing to change the place of trial only when a notice of appeal from the order is filed within 30 days.

(A) Such an order may only be reviewed upon a timely direct appeal from the order and may not be reviewed on appeal from the judgment in the action or proceeding or otherwise. On motion of any party, the court granting or refusing to grant a motion to change the place of trial of an action or proceeding shall enter an order staying the trial of the action or proceeding until the time to appeal from the order granting or refusing to grant the motion to change the place of trial has expired or, if an appeal has been taken, until the appeal has been resolved.

(B) Whenever an appeal is taken from such an order, the clerk of the district court shall forthwith certify and transmit to the clerk of the Supreme Court, as the record on appeal, the original papers on which the motion was heard in the district court and, if the appellant or respondent demands it, a transcript of any proceedings had in the district court. The district court shall require its court reporter to expedite the preparation of the transcript in preference to any other request for a transcript in a civil matter. When the appeal is docketed in the court, it stands submitted without further briefs or oral argument unless the court otherwise orders.

(7) An order entered in a proceeding that did not arise in a juvenile court that finally establishes or alters the custody of minor children.

(8) A special order entered after final judgment, excluding an order granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment.

(9) An interlocutory judgment, order or decree in an action to redeem real or personal property from a mortgage or lien that determines the right to redeem and directs an accounting.

(10) An interlocutory judgment in an action for partition that determines the rights and interests of the respective parties and directs a partition, sale or division.

NRAP 17

RULE 17. DIVISION OF CASES BETWEEN THE SUPREME COURT AND THE COURT OF APPEALS

(a) Cases Retained by the Supreme Court. The Supreme Court shall hear and decide the following:

- (1) All death penalty cases;
- (2) Cases involving ballot or election questions;
- (3) Cases involving judicial discipline;

(4) Cases involving attorney admission, suspension, discipline, disability, reinstatement, and resignation;

(5) Cases involving the approval of prepaid legal service plans;

(6) Questions of law certified by a federal court;

(7) Disputes between branches of government or local governments;

(8) Administrative agency cases involving tax, water, or public utilities commission determinations;

(9) Cases originating in business court;

(10) Cases involving the termination of parental rights or NRS Chapter 432B;

(11) Matters raising as a principal issue a question of first impression involving the United States or Nevada Constitutions or common law; and

(12) Matters raising as a principal issue a question of statewide public importance, or an issue upon which there is an inconsistency in the published decisions of the Court of Appeals or of the Supreme Court or a conflict between published decisions of the two courts.

(b) Cases Assigned to Court of Appeals. The Court of Appeals shall hear and decide only those matters assigned to it by the Supreme Court and those matters within its original jurisdiction. Except as provided in Rule 17(a), the Supreme Court may assign to the Court of Appeals any case filed in the Supreme Court. The following case categories are presumptively assigned to the Court of Appeals:

(1) Appeals from a judgment of conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere (Alford);

(2) Appeals from a judgment of conviction based on a jury verdict that:

(A) do not involve a conviction for any offenses that are category A or B felonies; or

(B) challenge only the sentence imposed and/or the sufficiency of the evidence;

(3) Postconviction appeals that involve a challenge to a judgment of conviction or sentence for offenses that are not category A felonies;

(4) Postconviction appeals that involve a challenge to the computation of time served under a judgment of conviction, a motion to correct an illegal sentence, or a motion to modify a sentence;

(5) Appeals from a judgment, exclusive of interest, attorney fees, and costs, of \$250,000 or less in a tort case;

(6) Cases involving a contract dispute where the amount in controversy is less than \$75,000;

(7) Appeals from postjudgment orders in civil cases;

(8) Cases involving statutory lien matters under NRS Chapter 108;

(9) Administrative agency cases except those involving tax, water, or public utilities commission determinations;

(10) Cases involving family law matters other than termination of parental rights or NRS Chapter 432B proceedings;

(11) Appeals challenging venue;

(12) Cases challenging the grant or denial of injunctive relief;

(13) Pretrial writ proceedings challenging discovery orders or orders resolving motions in limine;

(14) Cases involving trust and estate matters in which the corpus has a value of less than \$5,430,000; and

(15) Cases arising from the foreclosure mediation program.

(c) Consideration of Workload. In assigning cases to the Court of Appeals, due regard will be given to the workload of each court.

(d) Routing Statements; Finality. A party who believes that a matter presumptively assigned to the Court of Appeals should be retained by the Supreme Court may state the reasons as enumerated in (a) of this Rule in the routing statement of the briefs as provided in Rules 3C, 3E, and 28 or a writ petition as provided in Rule 21. A party may not file a motion or other pleading seeking reassignment of a case that the Supreme Court has assigned to the Court of Appeals.

(e) Transfer and Notice. Upon the transfer of a case to the Court of Appeals, the clerk shall issue a notice to the parties. With the exception of a petition for Supreme Court review under Rule 40B, any pleadings in a case after it has been transferred to the Court of Appeals shall be entitled “In the Court of Appeals of the State of Nevada.”

NRCP 11

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name — or by a party personally if the party is unrepresented. The paper must state the signer’s address, email address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney’s or party’s attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass,

cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney fees, incurred for presenting or opposing the motion.

(3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct

by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney fees and other expenses directly resulting from the violation.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) Requirements for an Order. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 16.1, 16.2, 16.205, 26 through 37, and 45(a)(4). Sanctions for improper discovery or refusal to make or allow discovery are governed by Rules 26(g) and 37.

NRCP 23

Rule 23. Class Actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests

of the class.

(b) Aggregation. The representative parties may aggregate the value of the individual claims of all potential class members to establish district court jurisdiction over a class action.

(c) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of Rule 23(a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the difficulties likely to be encountered in the management of a class action.

(d) Determination by Order Whether Class Action to Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court must determine by order whether it is to be so maintained. The order may be conditional, and may be altered or amended before the decision on the merits.

(2) When determining whether an action may be maintained as a class action, the representative party's rejection of an offer made under Rule 68 or other offer of compromise that offers to resolve less than all of the class claims asserted by or against the representative party has no impact on the representative party's ability to satisfy the requirements of Rule 23(a)(4). When the representative party is unable or unwilling to continue as the class representative, the court must permit class members an opportunity to substitute a class representative meeting the requirements of Rule 23(a)(4), except in cases where the representative party has been sued.

(3) In any class action maintained under Rule 23(c)(3), the court should direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must advise each member that:

(A) the court will exclude the member from the class if the member so requests by a specified date;

(B) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(C) any member who does not request exclusion may, if the member desires, enter an appearance through the member's counsel.

(4) The judgment in an action maintained as a class action under Rule 23(c)(1) or (2), whether or not favorable to the class, must include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under Rule 23(c)(3), whether or not favorable to the class, must include and specify or describe those to whom the notice provided in Rule 23(d)(3) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(5) When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class. In either case, the provisions of this rule should then be construed and applied accordingly.

(e) Orders in Conduct of Actions.

(1) When conducting actions to which this rule applies, the court may make appropriate orders:

(A) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(B) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given to some or all of the members in such manner as the court may direct:

(i) of any step in the action;

(ii) of the proposed extent of the judgment;

(iii) of the opportunity of members to signify whether they consider the representation fair and adequate;

(iv) to intervene and present claims or defenses; or

(v) to otherwise come into the action;

(C) imposing conditions on the representative parties or on intervenors;

(D) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons and that the action proceed accordingly;

(E) dealing with similar procedural matters.

(2) The orders may be combined with an order under Rule 16, and may be altered or amended.

(f) Dismissal or Compromise. A class action must not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise must be given to all members of the class in such manner as the court directs.

NRCP 59

Rule 59. New Trials; Amendment of Judgments

(a) In General.

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues — and to any party — for any of the following causes or grounds materially affecting the substantial rights of the moving party:

(A) irregularity in the proceedings of the court, jury, master, or adverse party or in any order of the court or master, or any abuse of discretion by which either party was prevented from having a fair trial;

(B) misconduct of the jury or prevailing party;

(C) accident or surprise that ordinary prudence could not have guarded against;

(D) newly discovered evidence material for the party making the

motion that the party could not, with reasonable diligence, have discovered and produced at the trial;

(E) manifest disregard by the jury of the instructions of the court;

(F) excessive damages appearing to have been given under the influence of passion or prejudice; or

(G) error in law occurring at the trial and objected to by the party making the motion.

(2) Further Action After a Nonjury Trial. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed no later than 28 days after service of written notice of entry of judgment.

(c) Time to Serve Affidavits. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) New Trial on the Court's Initiative or for Reasons Not in the Motion. No later than 28 days after service of written notice of entry of judgment, the court, on its own, may issue an order to show cause why a new trial should not be granted for any reason that would justify granting one on a party's motion. After giving the parties notice and the opportunity to be heard, the court may grant a party's timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment.

(f) No Extensions of Time. The 28-day time periods specified in this rule

cannot be extended under Rule 6(b).

NRCP 60

Rule 60. Relief From a Judgment or Order

(a) **Corrections Based on Clerical Mistakes; Oversights and Omissions.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) **Grounds for Relief From a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) **Timing and Effect of the Motion.**

(1) **Timing.** A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than 6 months after the date of

the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) upon motion filed within 6 months after written notice of entry of a default judgment is served, set aside the default judgment against a defendant who was not personally served with a summons and complaint and who has not appeared in the action, admitted service, signed a waiver of service, or otherwise waived service; or

(3) set aside a judgment for fraud upon the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

003467

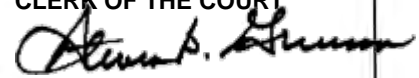
003467

EXHIBIT 2

003468

003468

EXHIBIT 2



1 DAO

2 EIGHTH JUDICIAL DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 JASMINKA DUBRIC, individually and on behalf of
6 those similarly situated,

7 Plaintiffs,

8 vs.

Case No. A-15-721063-C

9 A CAB, LLC, a Nevada Limited Liability Company, et
10 al.,

Dept. No. 25

11 Defendants.
12

13 **DECISION AND ORDER**

14 Attorney Leon Greenberg, on behalf of proposed intervenors, filed a Motion to Recuse Judge
15 Delaney pursuant to NRS 1.235. Mr. Greenberg alleges that Judge Delaney is biased against him
16 personally due to a writ proceeding that Mr. Greenberg instituted against Judge Delaney in 2016.
17 After review of Mr. Greenberg's motion, Judge Delaney's response, and A Cab, LLC's declaration,
18 the Court denies Mr. Greenberg's request to disqualify Judge Delaney.

19 **I. Factual and Procedural Background**

20 On July 7, 2015, Jasminka Dubric filed a class action against complaint against A Cab, LLC.
21 The case was assigned to Judge Delaney with case number A-15-721063-C. On May 24, 2018,
22 Judge Delaney approved a preliminary class settlement agreement.

23 Mr. Greenberg is class counsel for the plaintiffs in Murray v. A-Cab, case number A-12-
24 669926-C. Mr. Greenberg has filed multiple motions on behalf of the Murray plaintiffs to intervene
25 in case A721063. Most recently, on October 21, 2019, Mr. Greenberg filed a Motion to Intervene
26 and Deny Preliminary Approval of Proposed Class Action Settlement on an Order Shortening Time.
27 Judge Delaney has not granted any of Mr. Greenberg's motions to intervene,
28

1 On October 29, 2019, Mr. Greenberg filed a Declaration of Counsel, Leon Greenberg, Esq.
2 for Proposed Intervenor RE: Motion to Recuse Judge Kathleen Delaney from Hearing this Case
3 Pursuant to NRS 1.235. Mr. Greenberg acknowledges that he may not have standing to move to
4 disqualify Judge Delaney under NRS 1.235, but Mr. Greenberg alleges that Judge Delaney is
5 personally biased against him. Mr. Greenberg further argues that the proposed class action
6 settlement is improper and alleges that A Cab's counsel pursued the settlement while being aware of
7 Judge Delaney's purported bias against Mr. Greenberg. On October 1, 2019, A Cab filed a
8 declaration denying Mr. Greenberg's allegations against A Cab's counsel. Judge Delaney filed an
9 affidavit and answer in response on October 5, 2019, categorically denying any bias against Mr.
10 Greenberg.

11 II. Discussion

12 A. Legal Standard

13 Disqualification of a judge under Nevada Revised Statute 1.235 is available to "any party to
14 an action or proceeding." NRS 1.235.

15 Nevada Revised Statute 1.230 provides the statutory grounds for disqualifying district Court
16 judges. The statute in pertinent part provides:

- 17 1. A judge shall not act in an action or proceeding when the judge entertains actual
18 bias or prejudice for or against one of the parties to the action.
- 19 2. A judge shall not act as such in an action or proceeding when implied bias exists
20 in any of the following respects:
 - 21 (a) When the judge is a party to or interested in the action or proceeding.
 - 22 (b) When the judge is related to either party by consanguinity or affinity within the
23 third degree.
 - 24 (c) When the judge has been attorney or counsel for either of the parties in the
25 particular action or proceeding before the court.
 - 26 (d) When the judge is related to an attorney or counselor for either of the parties by
27 consanguinity or affinity within the third degree. This paragraph does not apply
28 to the presentation of ex parte or contested matters, except in fixing fees for an
attorney so related to the judge.

25 The Revised Nevada Code of Judicial Conduct provides substantive grounds for judicial
26 disqualification. Pursuant to NCJC 2.11(A):

1 (A) A judge shall disqualify himself or herself in any proceeding in which the
2 judge's impartiality might reasonably be questioned, including but not limited to the
3 following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's
lawyer, or personal knowledge of facts that are in dispute in the proceeding.

4 A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might
5 be reasonably questioned. Ybarra v. State, 247 P.3d 269, 271 (Nev. 2011). The test for whether a
6 judge's impartiality might be reasonably questioned is objective and courts must decide whether a
7 reasonable person, knowing all the facts, would harbor reasonable doubts about a judge's
8 impartiality. Id. at 272.

9 The burden is on the party asserting the challenge to establish sufficient factual and legal
10 grounds warranting disqualification. Las Vegas Downtown Redevelopment Agency v. District
11 Court, 5 P.3d 1059, 1061 (Nev. 2000). A judge has a duty to preside to the conclusion of all
12 proceedings, in the absence of some statute, rule of court, ethical standard, or compelling reason
13 otherwise. Id. A judge is presumed to be unbiased. Millen v. District Court, 148 P.3d 694, 701
14 (Nev. 2006). A judge is presumed to be impartial, and the burden is on the party asserting the
15 challenge to establish sufficient factual grounds warranting disqualification. Yabarra, 247 P.3d at
16 272. Additionally, the Court must give substantial weight to a judge's determination that the judge
17 may not voluntarily disqualify themselves, and the judge's decision cannot be overturned in the
18 absence of clear abuse of discretion. In re Pet. To recall Dunleavy, 769 P.2d 1271, 1274 (Nev.
19 1988).

20 The Nevada Supreme Court has stated "rulings and actions of a judge during the course of
21 official judicial proceedings do not establish legally cognizable grounds for disqualifications." Id. at
22 1275. The personal bias necessary to disqualify must "stem from an extrajudicial source and result
23 in an opinion on the merits on some basis other than what the judge learned from participation in the
24 case." Id. "To permit an allegation of bias, partially founded upon a justice's performance of his [or
25 her] constitutionally mandated responsibilities, to disqualify that justice from discharging those
26 duties would nullify the court's authority and permit manipulation of justice, as well as the court."
27 Id.

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 The Nevada Supreme Court has noted that while the general rule is that what a judge learns
2 in his or her official capacity does not result in disqualification, "an opinion formed by a judge on
3 the basis of facts introduced or events occurring in the course of the current proceedings, or of prior
4 proceedings, constitutes a basis for a bias or partiality motion where the opinion displays 'a deep-
5 seated favoritism or antagonism that would make fair judgment impossible.'" Kirksey v. State, 923
6 P.2d 1102, 1107 (Nev. 1996). However, "remarks of a judge made in the context of a court
7 proceeding are not considered indicative of improper bias or prejudice unless they show that the
8 judge has closed his or her mind to the presentation of all the evidence." Cameron v. State, 968 P.2d
9 1169, 1171 (Nev. 1998).

10 **B. A proposed intervenor does not have standing to bring a motion to disqualify because**
11 **they are not a party to the action.**

12 Disqualification of a judge under NRS 1.235 is available to "any party to an action or
13 proceeding." The Nevada Supreme Court has held that "a proposed intervenor does not become a
14 party to a lawsuit unless and until the district court grants a motion to intervene." Aetna Life & Cas.
15 Ins. Co. v. Rowan, 812 P.2d 350, 351 (Nev. 1991).

16 Here, Mr. Greenberg may not move to disqualify Judge Delaney in case A721063 because
17 Mr. Greenberg is not a party to case A721063. Under NRS 1.235, "any party" to an action may seek
18 to disqualify the judge for bias or prejudice. Mr. Greenberg represents proposed intervenors and the
19 district court has not granted a motion to intervene. Therefore, Mr. Greenberg does not represent a
20 party to case A721063 and Mr. Greenberg is without standing to bring a motion to disqualify Judge
21 Delaney under NRS 1.235. Mr. Greenberg's request to disqualify Judge Delaney is denied on these
22 grounds.

23 **C. Disqualification is not warranted because Mr. Greenberg has not established sufficient**
24 **factual and legal grounds for disqualification.**

25 Even if Mr. Greenberg's lack of standing was not fatal, Mr. Greenberg has failed to meet his
26 burden of establishing sufficient factual and legal grounds for disqualification. Mr. Greenberg
27 alleges that Judge Delaney is biased against Mr. Greenberg because Mr. Greenberg had brought a
28 writ proceeding against Judge Delaney in 2016. Mr. Greenberg argues that Judge Delaney's

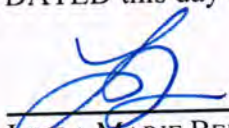
1 approval of the proposed settlement agreement is evidence of Judge Delaney's bias against Mr.
2 Greenberg.

3 The rulings and actions of a judge during the course of official judicial proceedings do not
4 establish legally cognizable grounds for disqualifications. A motion or affidavit for disqualification
5 is an inappropriate vehicle to attack the substantive rulings of the underlying case. If a litigant
6 disagrees with the substantive rulings of a judge, they must go through the appellate process. Here,
7 the facts do not demonstrate the extreme bias or prejudice against Mr. Greenberg that would be
8 necessary for disqualification. Therefore, Mr. Greenberg's request to disqualify Judge Delaney on
9 these grounds is denied.

10 III. Conclusion

11 Mr. Greenberg does not have standing to disqualify Judge Delaney under NRS 1.235 because
12 Mr. Greenberg is not a party to case A721063. Furthermore, Mr. Greenberg does not bring any
13 cognizable claims supported by factual or legal allegations against Judge Delaney. Judge Delaney's
14 rulings and actions in the course of official judicial proceedings are not evidence of bias or
15 prejudice. Thus, the Mr. Greenberg's request to disqualify Judge Delaney is denied.

16
17 DATED this day of November 14, 2019.

18
19 
20 _____
21 LINDA MARIE BELL
22 DISTRICT COURT JUDGE
23
24
25
26
27
28

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
Mark J. Bourassa, Esq. The Bourassa Law Group 2350 W. Charleston Blvd., #100 Las Vegas, Nevada 89102	Attorney for Plaintiffs
Esther C. Rodriguez, Esq. Rodriguez Law Officers, P.C. 10161 Park Run Drive, Suite 150 Las Vegas, Nevada 89145	Attorney for Defendants
Leon Greenberg, Esq. Dana Sniegocki, Esq. Leon Greenberg Professional Corporation 2965 South Jones Blvd, Suite E3 Las Vegas, Nevada 89146	Attorney for Proposed Intervenors
The Honorable Kathleen E. Delaney	Judge

SYLVIA PERRY
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A721063 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date: 11/14/2019

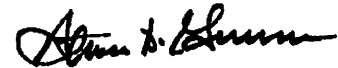
EXHIBIT 3

003475

003475

EXHIBIT 3

Electronically Filed
11/28/2016 12:00:30 PM



CLERK OF THE COURT

1 ORDR

2

3

4

5

6

7

8

9

10

11 MICHAEL SARGEANT, Individually and on
12 behalf of others similarly situated,

12

13 Plaintiff,

13

14 vs.

14

CASE NO. A714136

DEPT NO. XVII

15

15 HENDERSON TAXI,

16

16 Defendant.

17

17

18 **ORDER DENYING PLAINTIFF'S MOTION TO RECUSE JUDGE MICHAEL**
19 **VILLANI FROM THIS CASE PURSUANT TO NRS 1.235**

19

20 The Court, having reviewed Plaintiff's Motion to Recuse Judge Michael Villani from this
21 Case Pursuant to NRS 1.235, and all related pleadings, finds the matter is appropriately decided on
22 the pleadings and without oral argument pursuant to EDCR 2.23.

20

21

22

23 Plaintiff asserts disqualification of Judge Villani is appropriate for the following reasons: (1)
24 the act of deciding Defendant's objection to Plaintiff's claim for exemption from execution puts
25 Judge Villani in a position to decide whether his prior decision granting Defendant summary
26 judgment should receive appellate review, "violating the maxim that no one can ever be a judge in
27

23

24

25

26

27

28

1 his own cause"¹; (2) Defendant has acted to cultivate Judge Villani's hostility towards Plaintiff by
 2 "gratuitously and unnecessarily" advising Judge Villani Plaintiff's appeal brief seeks reassignment
 3 of this case upon remittitur²; and (3) Judge Villani's course of conduct in post-judgment
 4 proceedings "evidences a level of irrational bias and prejudice against the plaintiff that requires his
 5 recusal under the Nevada Code of Judicial Conduct."³
 6

7 NRS 1.230 provides the statutory grounds for disqualifying district court judges. A judge
 8 shall not act as such in an action or proceeding when the judge entertains actual or implied bias.⁴
 9 The Revised Nevada Code of Judicial Conduct ("NCJC") provides substantive grounds for judicial
 10 disqualification.⁵ Pursuant to NCJC 2.11(A) a judge shall disqualify himself or herself in any
 11 proceeding in which the judge's impartiality might reasonably be questioned. The test for whether
 12 a judge's impartiality might reasonably be questioned is objective and courts must decide whether a
 13 reasonable person, knowing all the facts, would harbor reasonable doubts about a judge's
 14 impartiality.⁶
 15

16 A judge is presumed to be impartial and the burden is on the party asserting the challenge to
 17 establish sufficient factual grounds warranting disqualification.⁷ The Nevada Supreme Court has
 18 stated that "rulings and actions of a judge during the course of official judicial proceedings do not
 19 establish legally cognizable grounds for disqualification," and "[t]he personal bias necessary to
 20 disqualify must stem from an extrajudicial source and result in an opinion on the merits on some
 21 basis other than what the judge learned from his participation in the case."⁸ Disqualification must
 22
 23

24 ¹ Pl.'s Mot. to Recuse Judge Michael Villani from this Case Pursuant to NRS 1.235 2:10 (Oct. 11, 2016) (internal
 25 quotes omitted).

26 ² *Id.* at 3:10-15.

27 ³ *Id.* at 3:25-27.

28 ⁴ NRS 1.230(1)-(2).

⁵ *Ybarra v. State*, 127 Nev. 47, 50 (2011).

⁶ *Ybarra*, 127 Nev. at 51.

⁷ *State v. Rippo*, 113 Nev. 1239, 1248 (1997).

⁸ *In re Pet. to Recall Dunleavy*, 104 Nev. 784, 789-90 (1988) (internal quotes omitted).

1 be based on facts and not on mere speculation.⁹ "Rumor, speculation, beliefs, conclusions,
2 innuendo, suspicion, opinion, and similar nonfactual matters do not ordinarily satisfy the
3 requirements for disqualification."¹⁰

4 The Court finds that Plaintiff's grounds for disqualification lack merit. The issue of Judge
5 Villani ruling on an objection to a claim of exemption from execution does not put him in a
6 situation similar to sitting as an appellate judge over his own lower court decision, and it does not
7 put Judge Villani in a position of directly deciding whether there will be appellate review of his
8 decision to grant summary judgment in favor of Defendant. The facts set forth by Plaintiff for this
9 ground are simply too speculative to support disqualification.
10

11 Plaintiff presents no evidence Judge Villani has a personal bias against him which resulted
12 in decisions on some basis other than what Judge Villani learned from participation in this case.
13 Plaintiff's counsel acknowledges the claim of improper bias or hostility "arises solely from [Judge
14 Villani's] exceptional and unprecedented, post-judgment order of July 8, 2016, where, without oral
15 argument he granted [D]efendant's post-judgment motion for attorney's fees of \$26,715 pursuant to
16 NRS 18.010(2)(b)."¹¹ Plaintiff's counsel also contends that Judge Villani's order of July 8, 2016,
17 "is only reasonably explained as the product of some form of irrational or illogical bias or prejudice
18 towards the plaintiff and/or his claims, irrespective of whether Judge Villani harbors any overt or
19 conscious partiality or personal bias in these proceedings."¹²
20

21 Although the Nevada Supreme Court has repeatedly held that under these types of
22 circumstances rulings and actions of a judge do not establish legally cognizable grounds for
23 disqualification, Plaintiff asks this Court to find "a level of irrational bias and prejudice against
24
25

26 ⁹ *Rippo*, 113 Nev. at 1248.

27 ¹⁰ *Id.*

28 ¹¹ Aff. in Reply to the Response to Pl.'s Mot. to Recuse Judge Michael Villani from this Case Pursuant to NRS 1.235
2:9-12 (Oct. 17, 2016).

¹² *Id.* at 4:7-10.

1 Plaintiff that requires recusal under the Nevada Code of Judicial Conduct.”¹³ The Court finds no
 2 legal basis for disqualification of Judge Villani based on his rulings and actions during the course of
 3 official judicial proceedings in this case. The Court further finds that Judge Villani’s knowledge
 4 that Plaintiff seeks reassignment of this case as part of his appeal to the Nevada Supreme Court is
 5 not a legally cognizable ground for disqualification.
 6

7 Judge Villani states he has no actual or implied bias or prejudice for or against either party
 8 in this matter and his decisions in this case have been the result of critical legal and factual analysis
 9 based on the evidence before him and not as a result of partiality or personal bias in favor of any
 10 party.¹⁴ Judge Villani also states that if he believed he could not be fair and impartial to any litigant
 11 or attorney in this matter he would voluntarily recuse himself.¹⁵ When a judge determines not to
 12 voluntarily disqualify himself, as is the situation here, the decision should be given substantial
 13 weight and should not be overturned in the absence of a clear abuse of discretion.¹⁶
 14

15 The Court finds that a reasonable person, knowing all the facts, would not harbor reasonable
 16 doubts about Judge Villani’s impartiality. The Court further finds that Plaintiff states no legally
 17 cognizable grounds justifying the disqualification of Judge Villani.
 18

19 Now, therefore, it is hereby ORDERED that Plaintiff’s Motion to Recuse Judge Michael
 20 Villani from this Case Pursuant to NRS 1.235 is DENIED.

21 DATED this 28th day of November, 2016.

22
 23
 24
 25
 26
 27
 28
 DAVID BARKER
 CHIEF DISTRICT COURT JUDGE

¹³ Pl.’s Mot. to Recuse Judge Michael Villani from this Case Pursuant to NRS 1.235 at 3:23-27.

¹⁴ Aff. of Michael P. Villani in Response to Request to Disqualify Pursuant to NRS 1.235(5)(b) 3:8-12 (Oct. 17, 2016).

¹⁵ *Id.* at 3:13-14.

¹⁶ See generally: Aff. in Reply to the Response to Pl.’s Mot. to Recuse Judge Michael Villani from this Case Pursuant to NRS 1.235. See also *Dumleavy*, 104 Nev. at 788.

1

2

3

I hereby certify that on the date filed, a copy of this
Order was electronically served through the Eighth
Judicial District Court EFP system or hand delivered.

4

5

Leon Greenberg, Esq.
Dana Sniegocki, Esq.

6

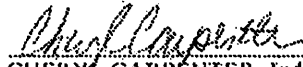
Anthony Hall, Esq.
Andrea Champion, Esq.

7

8

The Honorable Judge Michael P. Villani

9



CHERYL CARPENTER, Judicial Assistant

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

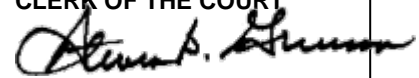
28

EXHIBIT 4

003481

003481

EXHIBIT 4



MATF
MARK J. BOURASSA, ESQ.
Nevada Bar No. 7999
VALERIE S. GRAY, ESQ.
Nevada Bar No. 14716
THE BOURASSA LAW GROUP
2350 W. Charleston Blvd., Suite 100
Las Vegas, Nevada 89102
Telephone: (702) 851-2180
Facsimile: (702) 851-2189
Email: mbourassa@blgwins.com
vgray@blgwins.com

Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JASMINKA DUBRIC, individually and on behalf)
of those similarly situated,)

Case No.: A-15-721063-C

Dept. No.: XXV

Plaintiff,

vs.

**MOTION FOR ATTORNEYS' FEES
AGAINST INTERVENORS' AND THEIR
COUNSEL LEON GREENBERG, ESQ.**

A CAB, LLC, a Nevada Limited Liability)
Company; A CAB SERIES LLC, EMPLOYEE)
LEASING COMPANY, a Nevada Series Limited)
Liability Company; CREIGHTON J. NADY, an)
individual; and DOES 3 through 20)

[HEARING REQUESTED]

Defendant.

Plaintiff JASMINKA DUBRIC ("Dubric"), by and through her counsel of record, The Bourassa Law Group, hereby move this Court for an Order awarding attorneys' fees against the Intervenor's and their counsel Leon Greenberg.

///

///

///

///

1 This Motion is made based upon the attached Memorandum of Points and Authorities, the
2 Declaration of Valerie S. Gray, Esq., together with all pleadings and papers on file in this matter and any
3 further evidence or argument as requested by this Court.

4 DATED this 21st day of September 2021.

5 **THE BOURASSA LAW GROUP**

6 /s/ Valerie S. Gray

7 MARK J. BOURASSA, ESQ.

8 Nevada Bar No. 7999

9 VALERIE S. GRAY, ESQ.

10 Nevada Bar No. 14716

11 2350 W. Charleston Blvd., Suite 100

12 Las Vegas, Nevada 89102

13 *Attorneys for Plaintiffs*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

This matter reached final resolution on August 31, 2021, wherein this Court entered an Order Approving Class Action Settlement, Awarding Attorneys Fees and Costs, and Awarding Incentive Payments as the result of a class action settlement that occurred in October of 2016. As the Court is well aware, this matter has taken five years to come to the final approval stage due to the multiple motions, hearings, and appeals brought by the Intervenors and their counsel Leon Greenberg, Esq. Plaintiff, as the prevailing party, is now seeking her attorneys' fees incurred as a result of Mr. Greenberg's vexatious motion work on behalf of the Intervenors.

A. Procedural History of Plaintiff's Case and Intervenors' Case

Plaintiff filed her original Complaint against A Cab, LLC on July 7, 2015 as a class action alleging, among other things, violations of the Nevada Constitution, Article 15, Section 16 and NRS 608.160(1)(b) arising from A Cab, LLC purportedly failing to pay a minimum wage to its drivers ("Dubric's Case").¹ Plaintiff's claims in this matter have always been in the form of a class action.²

Previously, in October 2012, Intervenors, by and through their counsel Leon Greenberg, Esq. filed their original Complaint against A Cab, LLC and Creighton J. Nady in Case No. A-12-669926-C ("Intervenor's Case").³ The class members in each case appear to overlap to some degree, as do the claims asserted.⁴ Shortly after Plaintiff filed her Complaint, in late 2015, Plaintiff's counsel was contacted by Intervenor's counsel, Leon Greenberg.⁵ Mr. Greenberg stated that he expected Judge Cory

¹ See Complaint filed on July 7, 2015. The complaint was later amended to include A Cab, LLC, A Cab Series LLC, Employee Leasing Company, and Creighton J. Nady. See First Amended Complaint filed on November 30, 2016.

² *Id.*

³ See Complaint filed in Case No. A-12-669926-C on October 8, 2012.

⁴ Compare Complaint filed on July 7, 2015 with Complaint filed in Case No. A-12-669926-C on October 8, 2012. Petitioners' Case is for failure to pay minimum wage generally and failure to pay last check upon termination, while Dubric's Case is for a much more specific violation of law of applying a tip credit to wages before calculation of the minimum wage owing. Some, but not all, of Dubric's Case class members would also belong to the Petitioners' Case, and some, but not all, of Petitioners' Case class members belong to Dubric's Case.

⁵ See 2016 Email Exchange, attached hereto as Exhibit "1."

1 to certify the class in his case and suggested that Plaintiff turn over all information she had to him and
 2 dismiss her claim in order to be part of the class brought by Intervenor.⁶ Plaintiff declined Mr.
 3 Greenberg's invitation to dismiss her claim. Nevertheless, the Intervenor did not seek to intervene in
 4 Dubric's Case at that time, nor did they seek to consolidate the two matters. Leon Greenberg was
 5 appointed as class representatives in Intervenor's Case on June 7, 2016, and once again Intervenor did
 6 not seek to intervene in Dubric's Case, despite knowing and acknowledging that Dubric's Case was filed
 7 as a class action as well.⁷ In fact, the order granting certification in Intervenor's Case specifically
 8 references Dubric's Case.⁸

9 Approximately a year after vigorous prosecution and defense of Dubric's Case, Defendants A
 10 Cab, LLC, A Cab Series LLC, Employee Leasing Company Creighton J. Nady, (collectively the
 11 "Defendants"), Plaintiff, and their respective counsel attended a settlement conference before the
 12 Honorable Jerry A. Wiese II.⁹ Prior to engaging in a settlement conference in this matter, Plaintiff and
 13 Defendants took depositions and propounded written discovery. Hundreds of pages of documents were
 14 exchanged in the process. Additionally, as part of settlement discussions, Plaintiff and Defendants
 15 jointly engaged an independent CPA, Beta Consulting, to prepare a report regarding the dollar amounts
 16 of the allegedly unpaid wages for all potential class members belonging to Dubric's Case.¹⁰ Ultimately,
 17 after arms-length adversarial negotiations before the Honorable Jerry A. Wiese II on October 5, 2016,
 18 Plaintiff and Defendants reached a proposed settlement of Dubric's claims on a class wide basis (the
 19 "Settlement").¹¹

20 **B. The First Attempt to Delay the Dubric Case Settlement – 1st Motion for Intervention**

21 A couple days following the Settlement, Intervenor's counsel, Mr. Greenberg, apparently learned
 22 of the settlement of Dubric's Case. Despite not having sought to intervene in Dubric's Case more than a
 23 _____

24 ⁶ *Id.*

25 ⁷ See Order Granting Plaintiff's Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and
 NRCP Rule 23(b)(3) filed on June 7, 2016 in Case No. A-12-669926-C.

26 ⁸ *Id.*

27 ⁹ See Declaration of Mark J. Bourassa, Esq. In Support of Joint Motion for an Order ("Decl. Mark J.
 Bourassa, Esq.") at ¶4, attached hereto as Exhibit "2."

28 ¹⁰ *Id.* at Exhibit C.

¹¹ *Id.* at Exhibit A.

1 year prior, or bringing Intervenor's Case itself to conclusion, Intervenor filed their first Motion for
2 Intervention on January 18, 2017,¹² which this Court denied upon a finding that they did not meet the
3 standard required under NRCP 24 due to being untimely and the fact that the proposed class members of
4 Dubric's Case were adequately protected by Plaintiff.¹³ On January 24, 2017, Plaintiff and Defendants
5 filed their Joint Motion for an Order (1) Conditionally Certifying Settlement Class; (2) Appointing Class
6 Counsel; (3) Preliminary Approval of Class Settlement Agreement (4) Directing that Notice be Sent to
7 Class Members; and (5) Scheduling a Final Fairness Hearing (the "Joint Motion").¹⁴

8 **C. The Second Attempt to Delay the Dubric Case Settlement – Preliminary Injunction**

9 Ultimately, Intervenor, by and through Mr. Greenberg, were able to secure a preliminary
10 injunction enjoining the Plaintiff and Defendants from settling the class action initiated by Plaintiff, and
11 commanded that Plaintiff and Defendants withdraw the Joint Motion.¹⁵ This preliminary injunction was
12 the subject of an appeal in the Nevada Supreme Court, Case Number 72691. Unable to proceed with the
13 class action settlement due to the preliminary injunction, Plaintiff subsequently brought a Motion for
14 Summary Judgment before this Court, which was granted.¹⁶ However, on April 6, 2018, the Nevada
15 Supreme Court entered an Order of Reversal, reversing the order granting the preliminary injunction.¹⁷
16 As a result of the reversal of preliminary injunction, Plaintiff withdrew her motion for summary
17 judgment, and Plaintiff and Defendants once again sought to pursue their Joint Motion.

18 **D. The Third Attempt to Delay the Dubric Case Settlement – 2nd Motion to Intervene**
19 **and First Appeal Filed by Intervenor by and through Mr. Greenberg**

20 On May 10, 2018, Intervenor once again attempted to intervene in Dubric's Case so as to
21

22
23 ¹² See Motion to Intervene filed on January 18, 2017.

24 ¹³ See Court Minutes from February 14, 2017.

25 ¹⁴ See Joint Motion for an Order (1) Conditionally Certifying Settlement Class; (2) Appointing Class
26 Counsel; (3) Preliminary Approval of Class Settlement Agreement (4) Directing that Notice be Sent to
27 Class Members; and (5) Scheduling a Final Fairness Hearing filed on January 24, 2017.

28 ¹⁵ See Order Granting Certain Relief on Motion to Enjoin Defendants from Seeking Settlement of Any
Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief
filed on February 16, 2017 in Case No. A-12-669926-C.

¹⁶ See Motion for Summary Judgment filed on September 12, 2017.

¹⁷ See Order of Reversal, attached hereto as Exhibit "3."

1 oppose the class Settlement.¹⁸ This Court held that Intervenor made no showing to justify overturning
2 the court's prior intervention determination.¹⁹ This order denying intervention was the subject to
3 another appeal in the Nevada Supreme Court, Case Number 75877.

4 **E. Preliminary Approval of Class Settlement in Dubric Case**

5 In the midst of the chaos created by Leon Greenberg's multiple motions and appeal as counsel
6 for the Intervenor, Plaintiff and Defendant's Joint Motion for Preliminary Approval went forward on
7 May 24, 2018.²⁰ During this hearing, this Court heard oral argument by both counsel for Dubric and
8 counsel for Cab, LLC, A Cab Series LLC, Employee Leasing Company, and Creighton J. Nady
9 ("Defendants"), as well as live testimony from an independent CPA, Nicole Omps of Beta Consulting,
10 and Donna Burleson and Creighton J. Nady on behalf of A Cab, LLC.²¹ This Court further questioned
11 Ms. Omps regarding the number of individuals involved in the class action to which Ms. Omps
12 clarified that her calculation was based on "gross wages for the entire company."²² At the conclusion of
13 the hearing and a review of all the evidence presented, this Court orally granted the joint motion for
14 preliminary approval of class certification and settlement.²³

15 Simultaneously and subsequent to Dubric's Case settlement, Intervenor filed three separate
16 motions for partial summary judgment in Intervenor's Case, which were granted as a final judgment on
17 a class wide basis on August 21, 2018.²⁴ **Following this Court's grant of preliminary approval,**
18 Intervenor were granted summary judgment in Intervenor's case on August 21, 2018.²⁵ This judgment
19 is subject to appeal in the Nevada Supreme Court, Case No. 77050, which is still pending.

20 The Nevada Supreme Court determined "the final judgment in the competing class action
21 appears to obviate [Intervenor's] reasons for seeking intervention, at least at this time, as the class
22

23
24 ¹⁸ See Motion to Intervene filed on May 10, 2018.

25 ¹⁹ See Order Denying Motions for Interventions and Other Relief filed on May 16, 2018.

26 ²⁰ See Transcript of Hearing on May 24, 2018, attached hereto as Exhibit "4."

27 ²¹ *Id.*

28 ²² *Id.* at page 26 - 27.

²³ *Id.* at page 59 - 63.

²⁴ Order entered on August 21, 2018 in Case No. A-12-669926-C.

²⁵ *Id.*

claims have been resolved and real parties in interest may proceed differently in the underlying case.”²⁶
Therefore, the Nevada Supreme Court dismissed the writ petition in Case Number 75877.

F. The Fourth Attempt to Delay the Dubric Case Settlement – Involuntary Bankruptcy

Intervenors by and through Mr. Greenberg then proceeded to find a new way to further delay the proceedings and impede the process. Intervenors filed a petition to place Defendants into involuntary bankruptcy. Dubric understands that the petition was not dismissed until September 26, 2019.²⁷

Once the bankruptcy petition was dismissed, Plaintiff and Defendants were ready to proceed with Settlement in the Dubric’s Case and requested a status check to have the order granting preliminary approval executed by the court.²⁸ Thereafter, Intervenors by and through Mr. Greenberg moved for a third time to intervene and deny preliminary approval.²⁹

G. The Fifth Attempt to Delay the Dubric Case Settlement – 3rd Motion to Intervene; Motion to Rehear; and Second Appeal

On December 17, 2019, this Court heard extensive oral arguments of all counsel on Intervenors’ motion to intervene.³⁰ This Court granted intervention, but found that this did not alter her finding on preliminary approval of the class settlement and therefore would not revisit the factors of preliminary approval.³¹ However, this Court did allow Intervenors the opportunity to coordinate with Plaintiff and Defendants in drafting a revised notice to class members and to exchange class lists, which would be followed by an additional hearing for Intervenor to bring any additional issues to the court’s attention.³²

On January 22, 2020, Dubric’s counsel submitted a revised notice of proposed settlement and

²⁶ See Order Dismissing Petition for Writ of Mandamus, attached hereto as Exhibit “5.”

²⁷ See Notice of Entry of Order of Dismissal of Bankruptcy Proceedings filed on October 3, 2019.

²⁸ See Defendants’ Request for Status Check filed on October 4, 2019.

²⁹ See Motion to Intervene and Deny Preliminary Approval of Proposed Class Action Settlement on Order Shortening Time file on October 21, 2019.

³⁰ See Order Granting Motion to Intervene and Denying Preliminary Approval of Proposed Class Action Settlement, filed on February 25, 2021.

³¹ *Id.*

³² *Id.*

1 right to opt out to include notice to the class members of Intervenor's case, a proposed order on the
2 joint motion for preliminary approval, and the class list.³³

3 This Court had two additional hearings on January 30, 2020 and February 19, 2020 in an effort
4 to hear Mr. Greenberg on behalf of Intervenor on all issues including, whether the settlement should
5 continue to go forward, whether Leon Greenberg could be served with notice on behalf of 890
6 Intervenor's Case class members, and whether Leon Greenberg could opt out of the settlement on
7 behalf 890 Intervenor's Case class members. After a review of all pleadings, supplements thereto, and
8 extensive oral argument, this Court signed the order granting the joint motion on preliminary approval
9 of class certification and settlement.³⁴

10 The order granting the joint motion for preliminary approval set the final fairness hearing for
11 December 10, 2020.³⁵ Dubric's counsel diligently began serving notices on 1,114 proposed class
12 members through first class mail as directed by the court.³⁶ Once again Intervenor through Mr.
13 Greengerg found this as an opportunity to further delay Dubric's Case and filed another motion on
14 order shortening time requesting a rehearing, amendment or correction to the October 11, 2020 order.³⁷
15 The Court granted Intervenor's request for a rehearing. At the November 10, 2020 rehearing, the Court
16 heard argument once again on the form of the notice, Intervenor's request to opt out on behalf of 890
17 members, and objections to the class settlement. This Court held that the previously approved class
18 notice adequately provided notice to the class members of both the settlement in Dubric's Case and the
19 existence of Intervenor's case.³⁸ This Court also determined that the individual class members have the
20

21
22 ³³ See Correspondence to the Court, attached hereto as Exhibit "6."

23 ³⁴ See (1) Conditionally Certifying Settlement Class; (2) Appointing Class Counsel; (3) Preliminary
24 Approval of Class Settlement Agreement (4) Directing that Notice be Sent to Class Members; and (5)
25 Scheduling a Final Fairness Hearing filed on October 11, 2020.

26 ³⁵ *Id.*

27 ³⁶ Declaration of Valerie S. Gray Regarding Mailing of Notice of Class Action and Opt Out Letters,
28 filed on November 25, 2020.

³⁷ See Motion to Rehear Amend or Correct Order Preliminarily Approving Proposed Class Action
Settlement on an Order Shortening Time, filed on October 26, 2020.

³⁸ See Order Granting in Part and Denying in Part Intervenor's Motion to Rehear Amend or Correct
Order Preliminarily Approving Proposed Class Action Settlement on Order Shortening Time, filed on
February 25, 2021.

1 right to receive the notice themselves and make their own decisions as to how to proceed.³⁹
2 Furthermore, the this Court held that Intervenor's objections to the settlement itself were more
3 appropriate for the final fairness hearing scheduled for December 10, 2020.⁴⁰

4 Unsatisfied with the Court's ruling, Intervenor, by and through Leon Greenberg, filed another
5 appeal in the Nevada Supreme Court as well as a motion to stay the district court proceedings, Case No.
6 82126. In effect, the final fairness was postponed until the Nevada Supreme Court rendered its
7 decision.⁴¹ On December 10, 2020, after extensive briefing, the Nevada Supreme Court found that its
8 extraordinary intervention was not warranted and denied Intervenor's petition for writ of prohibition or
9 mandamus.⁴²

10 On March 11, 2021, the final fairness hearing went forward and Mr. Greenberg on behalf of the
11 Intervenor had the opportunity to make all the same unfounded arguments he made during his multiple
12 attempts to delay the proceeding, including the arguments that Plaintiff and Defendants were in
13 collusion despite the settlement being the product of a settlement conference with Judge Weise and that
14 the settlement amount was unfair despite the settlement amount being calculated by independent CPA.
15 After allowing opportunity for all counsel to be heard, this Court granting final approval of the class
16 action settlement. On August 31, 2021, this ruling was reduced to a written order and filed with this
17 court.⁴³

18 Despite this matter settling in October of 2016, Intervenor, by and through their counsel Leon
19 Greenberg, have used every delay tactic to hinder the timely resolution of the Dubric Case until all
20 tactics were exhausted and this Court was finally able to grant final approval in August of 2021 – 5
21 years after the Settlement. Now, Plaintiff, as the prevailing party, is seeking attorneys' fees from
22 Intervenor and their counsel Leon Greenberg, for the time spent opposing Intervenor's and Mr.
23 Greenberg's delay tactics and baseless frivolous claims over the past 5 years in the amount of
24 _____

25 ³⁹ *Id.*

26 ⁴⁰ *Id.*

27 ⁴¹ See December 9, 2020 Court Minutes.

28 ⁴² See Order Denying Petition for Writ of Mandamus, attached hereto as Exhibit "7."

⁴³ Order Approving Class Action Settlement, Awarding Attorneys Fees and Costs, and Awarding Incentive Payments filed on August 31, 2021.

1 \$159,150.00.⁴⁴

2 **II. THE NEVADA CONSTITUTION SUPPORTS AN AWARD OF ATTORNEYS' FEES**
3 **TO PLAINTIFF AND AGAINST INTERVENORS' AND THEIR COUNSEL LEON**
4 **GREENBERG**

5 Nevada Constitution, Article 15, Section 16 provides, in pertinent part, as follows:

6 An employee claiming violation of this section may bring an action
7 against his or her employer in the courts of this State to enforce the
8 provisions of this section and shall be entitled to all remedies available
9 under the law or in equity appropriate to remedy any violation of this
10 section, including but not limited to back pay, damages, reinstatement or
11 injunctive relief. **An employee who prevails in any action to enforce
12 this section shall be awarded his or her reasonable attorney's fees and
13 costs.** Nev. Const. Art. XV, § 16 (B) (emphasis added).

14 Here, Plaintiff aggressively pursued her claims against Defendants for a year under Nevada
15 Constitution, Article 15, Section 16 before Defendants agreed to the Settlement. But this was not the
16 end of Plaintiff's fight to recover under Nevada Constitution, Article 15, Section 16. Plaintiff had to go
17 on for another five years opposing multiple motions and appeals filed by Intervenor, by and through
18 their counsel Leon Greenberg, before she could recover under Nevada Constitution, Article 15, Section
19 16. By virtue of the Order Approving Class Action Settlement, Awarding Attorney Fees and Costs,
20 and Awarding Incentive Payments, Plaintiff has prevailed in her action to enforce Nev. Const. Art. XV.
21 Therefore, Plaintiff shall be awarded her reasonable attorneys' fees incurred during this 5-year period
22 against Intervenor and their counsel Leon Greenberg.

23 At the time Plaintiff settled with Defendants, Plaintiff estimated her attorneys' fees and costs to
24 amount to \$57,500; therefore, Defendants agreed to pay this amount in the Settlement Agreement.
25 However, due to Mr. Greenberg on behalf of the Intervenor delaying this matter five years with
26 multiple motions, hearings, and appeals that required Plaintiff's counsel to vigorously oppose,
27 Plaintiff's attorneys' fees rose to \$216,650.00. Accordingly, Plaintiff requests an award of attorney
28

⁴⁴ This Court has already awarded attorneys' fees against the Defendant based upon the amount agreed to in the Settlement Agreement. This amount includes an offset of the amount to be paid by Defendants.

1 fees in the amount of \$159,150.00, which is the additional attorneys' fees Plaintiff incurred as a result
2 of Intervenor's and Mr. Greenberg's actions.

3 **III. ALTERNATIVELY, NRS 18.010 SUPPORTS AN AWARD FOR ATTORNEYS' FEES**
4 **AS A PREVAILING PARTY TO PUNISH INTERVENORS' AND THEIR COUNSEL**
5 **LEON GREENBERG'S FRIVOLOUS AND VEXATIOUS CLAIMS**

6 "A party can prevail under NRS 18.010 if it succeeds on any significant issue in litigation which
7 achieves some of the benefit it sought in bringing suit."⁴⁵ "To be a prevailing party, a party need not
8 succeed on every issue," but the action must proceed to judgment.⁴⁶

9 Here, Intervenor was made a party to this case as Intervenor and opposed the Settlement
10 between Plaintiff and Defendants since the Settlement was reached in 2016 to the present. On August
11 31, 2021, after 5 years of contentious motion practice and extensive oral arguments with Intervenor and
12 their counsel Mr. Greenberg, this Court entered a final order approving the Settlement rendering
13 Plaintiff a prevailing party. Therefore, Plaintiff is a prevailing party under NRS 18.010.

14 Pursuant to NRS 18.010, the court may make an allowance of attorneys' fees to a prevailing
15 party:

16 Without regard to the recovery sought, when the court finds that the claim,
17 counterclaim, cross-claim or third-party complaint **or defense of the**
18 **opposing party was brought or maintained without reasonable**
19 **ground or to harass the prevailing party.** The court shall liberally
20 construe the provisions of this paragraph in favor of awarding attorney's
21 fees in all appropriate situations. It is the intent of the Legislature that the
22 court award attorney's fees pursuant to this paragraph and impose
23 sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in
24 all appropriate situations **to punish for and deter frivolous or vexatious**
25 **claims and defenses because such claims and defenses overburden**
26 **limited judicial resources, hinder the timely resolution of meritorious**
27 **claims and increase the costs of engaging in business and providing**
28 **professional services to the public.**⁴⁷

29 "For purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible

30 ⁴⁵ *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (internal quotations
31 omitted).

32 ⁴⁶ *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev., Adv. Op. 10, 343 P.3d 608, 615
33 (2015). A judgement "includes a decree and any order from which an appeal lies." NRCP 54(a).

1 evidence to support it.”⁴⁸ The decision to award attorney fees as a sanction against a party for pursuing a
2 claim without reasonable ground is within the district court's sound discretion and will not be overturned
3 absent a manifest abuse of discretion.⁴⁹

4 Here, Intervenor, by and through their counsel Leon Greenberg, continuously opposed the
5 Dubric Case class action settlement for five years without reasonable grounds and to harass Plaintiff. As
6 described above, Leon Greenberg, on behalf of the Intervenor, filed countless motions in this court and
7 two separate appeals on the orders of those motions in order to delay the resolution of Plaintiff's
8 meritorious claims. In every single motion filed by Mr. Greenberg on behalf of the Intervenor in the
9 Dubric Case, Mr. Greenberg made the same three baseless arguments time and time again: (1) Plaintiff
10 and Defendants engaged in collusion; (2) the settlement was unfair; (3) this Court lacked jurisdiction. To
11 date, despite Mr. Greenberg's multiple references to collusion and inadequate counsel, Mr. Greenberg
12 has not offered any evidence to support these allegations. Instead, Mr. Greenberg has thrown the
13 allegations around the courtroom at every hearing and motion as if they were fact requiring Plaintiff's
14 counsel to repeatedly step in and vigorously oppose such false claims. Additionally, Mr. Greenberg
15 continuously contested the amount of the settlement, which was reached with the assistance of Judge
16 Weise at a settlement conference and calculations prepared by an independent CPA, without any
17 evidence to contradict the settlement figures, except his own personal calculations. Despite this lack of
18 evidence and his baseless claims, Mr. Greenberg on behalf of Intervenor filed motion after motion to
19 delay the Settlement for 5 years. The only achievement of these motions was overburdening the limited
20 judicial resources, hindering the timely resolution of meritorious claims and increasing the costs of
21 engaging in business and providing professional services to the public. Therefore, it is appropriate for
22 this Court to award attorneys' fees against Intervenor and their counsel Mr. Greenberg for pursuing
23 claims without any credible evidence to support it and wasting judicial resources.

24 ///

25
26
27 ⁴⁷ NRS 1118.010(2)(b) (emphasis added).

28 ⁴⁸ *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018) (quoting *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009)).

IV. AN AWARD OF ATTORNEYS' FEES IS TO BE BASED UPON ACTUAL TIME EXPENDED, AND NOT THE AMOUNT OF RECOVERY.

The Nevada Supreme Court summarized the method for determining an award of reasonable attorney's fee as follows:

In Nevada, the method upon which a reasonable fee is determined is subject to the discretion of the court, which is tempered only by reason and fairness. Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a lodestar amount or a contingency fee. We emphasize that, whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors enumerated by this court in *Brunzell v. Golden Gate National Bank*, namely, the advocate's professional qualities, the nature of the litigation, the work performed, and the result. In this manner, whichever method the court ultimately uses, the result will prove reasonable as long as the court provides sufficient reasoning and findings in support of its ultimate determination.⁵⁰

"Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a "lodestar" amount or a contingency fee."⁵¹ A court determines the lodestar by multiplying "the number of hours reasonably spent on the case by a reasonable hourly rate."⁵²

Here, Plaintiff entered into a modified contingency fee agreement that allows Plaintiff's counsel to recover the greater of the 33.33% of the gross recovery or the hourly rate of \$450 for attorneys' time and \$150 for paralegal time.⁵³ The Court should give deference to the terms of this fee agreement:

[W]hile a trial court, in the exercise of discretion, is not bound by the terms of an attorney fee contract, it should, nevertheless, consider those terms and even award attorney fees in the same amount as would be called

⁴⁹ See *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 330, 130 P.3d 1280, 1288 (2006) rehearing denied, certiorari denied 127 S.Ct. 438, 549 U.S. 977, 166 L.Ed.2d 311.

⁵⁰ See *Shuette v. Beazer Homes Holding Corp.*, 121 Nev. 837, 864-65 (2005)(footnotes omitted)(internal quotations omitted).

⁵¹ *Id.*

⁵² *Herbst v. Humana Health Ins. of Nev., Inc.*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989).

⁵³ See Declaration of Valerie S. Gray, Esq., attached hereto as Exhibit "8."

for by the terms thereof so long as other factors also bearing on reasonableness are considered as well.⁵⁴

Additionally, another appropriate starting point for determining a reasonable fee to award Plaintiff can be based on the lodestar method and determined by multiplying the hourly rates set forth in the agreement by the number of hours spent by Plaintiff's counsel on this matter.⁵⁵

A. The Impact of Arizona's *Schwartz* Decision on the Lodestar Analysis

In 1969, the Nevada Supreme Court adopted the *Brunzell* factors *verbatim* from the 1959 Arizona case *Schwartz v. Schwerin*.⁵⁶ Since adopting *Schwartz*'s four factor analysis, Nevada courts have heavily relied on these factors with little to no elaboration on what specific evidence is sufficient to support this four-factor analysis.⁵⁷ Arizona, however, long ago set forth the evidentiary standard needed to meet a *Schwartz* (*Brunzell* in Nevada) analysis. Given Nevada's direct quotation to Arizona's *Schwartz* factors for the past 43 years, Arizona law interpreting this four-factor analysis is extremely persuasive given Nevada's lack of law on the same issue.⁵⁸

Arizona courts have recognized that although *Schwartz* (*Brunzell* in Nevada) is a useful starting point, it fails to provide specific guidance on how the four enumerated factors are to be used when

⁵⁴ *Glendora Comm. Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465, 473, 202 Cal. Rptr. 389, 395 (1984).

⁵⁵ See *Herbst v. Humana Health Ins. of Nevada*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989) (The lodestar approach involves multiplying "the number of hours reasonably spent on the case by a reasonable hourly rate.").

⁵⁶ See *Brunzell* at 349 citing *Schwartz v. Schwerin*, 336 P.2d 144, 146 (Ariz. 1959).

⁵⁷ See, e.g., *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821 (2008) (recognizing the continuing applicability of the *Brunzell* factors and explaining that *Shuette* requires the district court to provide sufficient reasoning and findings in support of its ultimate determination of attorney fees awards, but not specifying what constitutes sufficient evidentiary support).

⁵⁸ Adopting guidelines to facilitate the submission and review of attorney fee requests is within the inherent power of the judiciary. See *Albios* at 420 (noting "the judiciary, of course, has the inherent power to govern its own procedures; and that power includes the right to adopt and promulgate rules of procedure." "We have also stated that this inherent power to make rules is 'not only reasonable and necessary, but absolutely essential to the effective and efficient administration of our judicial system, and it is our obligation to insure that such power is in no manner diminished or compromised by the legislature.'") (internal citations omitted).

calculating a reasonable fee.⁵⁹ In *Schweiger v. China Doll Restaurant, Inc.*, the prevailing party filed a statement of costs and attorney's fees to which the non-prevailing party objected asserting that the affidavit was insufficient because it failed to disclose the work performed in the trial court proceedings, failed to itemize the relevant services provided, and that the amount of fees was unreasonable.⁶⁰ Noting the growing number of fee applications and that most cases were disposed of via unpublished orders, the court determined its opinion was necessary to give guidance to counsel in submitting fee requests that would facilitate the work of both counsel and the courts.⁶¹ Specifically, the *Schweiger* Court set forth additional guidelines under the *Schwartz (Brunzell)* factors for determining: (1) a reasonable billing rate; and (2) the hours reasonably expended. These identical factors are also required when calculating lodestar fees; hence, the analysis below shows the evidentiary burden needed to prove a lodestar claim.

1. Lodestar Analysis – The Reasonable Billing Rate Factor

The *Schweiger* court determined that the beginning point in developing a reasonable fee is to first determine the actual billing rate that the lawyer charged in the particular matter.⁶² The court advised that an affidavit in connection with an application for fees must indicate the agreed hourly billing rate between the lawyer and the client for the services performed in connection with the agreement.⁶³ While the court is not bound by the agreement between the parties, "it is unlikely the court will adjust the hourly rate upward."⁶⁴ Instead, on presentation of an opposing affidavit setting forth reasons why the hourly billing rate is unreasonable, the court may utilize a lesser rate." After applying these guidelines to the specific facts of that case, the court determined that plaintiff's fee application was "plainly insufficient" because it failed to specify the agreed upon hourly billing rate.

⁵⁹ See, e.g., *Schweiger v. China Doll Restaurant, Inc.*, 673 P.2d 927 (Ariz. Ct. App. 1983).

⁶⁰ The *Schweiger* Court was presented with a fee award request for which the movant relied on an affidavit in support of its request. *Schweiger* at 929.

⁶¹ *Id.* at 929-30.

⁶² *Id.* at 931.

⁶³ *Id.*

⁶⁴ *Id.* at 932.

1 In this case, the Declaration of Valerie S. Gray, Esq.⁶⁵ clearly specifies the number of hours
2 spent on Plaintiff's case. The Bourassa Law Group's rates are similar to those charged by other law
3 firms in the Las Vegas area with attorneys of similar experience and expertise.

4 Mr. Bourassa has been practicing law for over eighteen years. His practice focuses on litigation
5 and trial work in civil matters representing clients in state and federal courts in consumer litigation,
6 construction defect claims, and personal injury. Mr. Richards has been practicing law for over ten years.
7 His practice focuses business and contract litigation, commercial transaction work, employment law,
8 gaming law and consumer law. Ms. Gray has been practicing law for over three years. Her practice
9 focuses on general litigation, including personal injury litigation, construction litigation, contract
10 litigation, and employment litigation in both state and federal courts, as well as some criminal defense
11 work. Given this experience, and the supporting Declaration of Valerie S. Gray, Esq., this Court should
12 find that the fees actually charged to prosecute Plaintiff's claims were reasonable.⁶⁶

13 **2. Lodestar Analysis – The Hours Reasonably Expended Factor**

14 To evaluate a fee request based on a lodestar analysis, the Court next must determine that the
15 hours incurred were reasonably expended. In order to do so, counsel's affidavit should indicate the type
16 of legal services provided, the date the service was provided, the attorney providing the service (if more
17 than one attorney was involved), and the time spent in providing the service.⁶⁷ Importantly, the
18 *Schweiger* court stated that it is insufficient to provide the court with broad summaries of the work done
19 and time incurred, declaring: "[A]ny attorney who hopes to obtain an allowance from the court should
20 keep accurate and current records of work done and time spent."⁶⁸ Without sufficient detail, the court
21 cannot determine whether the hours claimed are justified.⁶⁹ Counsel need to prepare their summaries
22 based on contemporaneous time records that indicate the work performed by each attorney for whom
23 fees are sought.⁷⁰ Additionally, in instances where counsel expects that the fee application will be
24

25 ⁶⁵ See Declaration of Valerie S. Gray, Esq., attached hereto as Exhibit "8."

26 ⁶⁶ *Id.*

27 ⁶⁷ See *Schweiger* at 932

28 ⁶⁸ See *Schweiger* at 932 (citing *In re Hudson & Manhattan R.R. Co.*, 339 F.2d 114, 115 (2d Cir.1964)).

⁶⁹ See *Schweiger* at 932.

⁷⁰ *Id.*

1 opposed on the grounds that the hours claimed are excessive, counsel should submit actual time records
2 to support the fee request.⁷¹

3 In addition, in *Payless Shoe Source*, a Kansas court applying Nevada law to conduct a lodestar
4 fee analysis extensively reviewed time sheets to determine whether the attorney's fee award was
5 reasonable.⁷² The court referenced billing sheets and un-redacted time sheets to determine what services
6 were performed, who performed the services, whether those services were necessary, whether the billing
7 rate was reasonable, and whether the time devoted to those services was reasonable.

8 Here, Plaintiff has submitted the actual invoice generated for payment for legal services by The
9 Bourassa Law Group.⁷³ By submitting the actual invoices, just like the court in *Payless Shoes Source*,
10 the Court has the ability to determine what services were performed, who performed the services,
11 whether those services were necessary, whether the billing rate was reasonable, and whether the time
12 devoted to those services was reasonable. This invoice was generated based on *contemporaneous time*
13 *records that indicate the work performed by each attorney*.⁷⁴

14 In order to prepare the declaration supporting this fee request, these monthly invoices were
15 reviewed. The time billed was reviewed and separated into time necessarily and actually incurred to
16 defend against Mr. Greenberg's baseless claims on behalf of the Intervenor that delayed settlement for
17 5 years.⁷⁵ In total, The Bourassa Law Group spent 484.93 attorney hours and 125.45 paralegal hours
18 through the final fairness hearing on March 11, 2021.⁷⁶

19 In sum, this case has taken both time and effort for all counsel involved. As such, subject to the
20 *Brunzell* analysis below, the hours expended to vigorously oppose Mr. Greenberg's claims were
21 reasonable. Thus, Plaintiff's request for their attorney's fees is reasonable under the circumstances and
22

23 ⁷¹ See *Schweiger* at 932 (citing *Laje v. R.E. Thomason General Hospital*, 665 F.2d 724, 730 (5th
24 Cir.1982)).

25 ⁷² *Payless Shoe Source, Inc., v. W/J Commercial Venture, L.P.*, U.S. Dist. LEXIS 110758 p.60-71 (D.
26 Kan. Aug. 8, 2012).

27 ⁷³ See Declaration of Valerie S. Gray at Exhibit 8-A, attached hereto as Exhibit "8." Plaintiff has
28 provided this invoice subject to redactions. The attorney-client privilege is not being waived as part of
this motion. Plaintiff will provide un-redacted copies for the Court's *in camera* review upon request.

⁷⁴ *Id.*

⁷⁵ *Id.*

1 should be awarded by the Court. Furthermore, this analysis satisfies the fourth the first three *Brunzell*
 2 factors (*i.e.*, the advocate's professional qualities, the nature of the litigation and the work performed).⁷⁷

3 **B. Plaintiff Is Entitled To Recover Her Attorney's Fees From Intervenors and their**
 4 **counsel Mr. Greenberg Because She Also Satisfies The *Brunzell* Factors**

5 Ultimately, after analyzing any attorneys' fee request, Nevada law also requires the Court to
 6 continue its analysis by considering the requested amount in light of the four factors enumerated in
 7 *Brunzell*,⁷⁸ namely: (1) the advocate's professional qualities; (2) the nature of the litigation; (3) the work
 8 performed; and (4) the result. As this motion has already discussed the first three *Brunzell* factors, only
 9 "the result," the fourth *Brunzell* factor, still needs to be discussed.

10 In sum, Plaintiff, after extensive motion work, three appeals, and constant interference from
 11 Intervenors by and through its counsel Mr. Greenberg, achieved final settlement on a class wide basis
 12 for alleged violations of Nev. Const. Art. XV. Now, Plaintiff seeks to only recover the fees she
 13 reasonably, necessarily, and actually incurred in opposing Intervenors and Mr. Greenberg's false claims.
 14 Having met the *Brunzell* factors, as well as having performed a proper lodestar analysis, an award of
 15 attorney's fees in the amount of \$159,150.00⁷⁹ would be reasonable and proper under Nevada law.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 _____
 23 ⁷⁶ *Id.*

24 ⁷⁷ See *Brunzell* at 349 (*citing Schwartz v. Schwerin*, 336 P.2d 144, 146 (Ariz. 1959)).

25 ⁷⁸ *Id.*

26 ⁷⁹ At the time Plaintiff settled with Defendants, Plaintiff estimate her attorneys' fees and costs to amount
 27 to \$57,500; therefore, Defendants agreed to pay this amount in the Settlement Agreement. However, due
 28 to Mr. Greenberg delaying this matter 5 years with multiple motions, hearings, and appeals that required
 Plaintiff's counsel to vigorous oppose, Plaintiff's attorneys' fees rose to \$216,650.00. Accordingly,
 Plaintiff requests an award of attorney fees in the amount of \$159,150.00, which is the additional
 attorneys' fees Plaintiff incurred as a result of Intervenors' and Mr. Greenberg's actions.

1 **V. CONCLUSION**

2 For all the foregoing reason, Plaintiff requests that this Honorable Court grant Plaintiff's motion
3 and award Plaintiff's attorneys' fees in the amount of \$159,150.00 against Intervenors and their counsel
4 Leon Greenberg.

5 DATED this 21st day of September 2021.

6 **THE BOURASSA LAW GROUP**

7 /s/ Valerie S. Gray

8 MARK J. BOURASSA, ESQ. (NBN 7999)

9 VALERIE S. GRAY, ESQ. (NBN 14716)

10 2350 W. Charleston Blvd., #100

11 Las Vegas, Nevada 89102

12 *Attorneys for Plaintiffs*

003500

003500